



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

**LUXEMBOURG LEGAL UPDATE
MARCH 2024**

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

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 Market 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

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FINANCIAL INSTITUTIONS



FINANCIAL INSTITUTIONS

CSSF COMMUNIQUE RELAYING A MESSAGE FROM THE ISRAELI MINISTRY OF JUSTICE ON AML/CTF

25 October 2023¹

On 25 October 2023, the CSSF issued a press release relaying a message from the Israeli Ministry of Justice and the Israel Money Laundering and Terror Financing Prohibition Authority ("IMPA") which calls on the financial sector and the public to increase their vigilance towards terrorist financing attempts in light of the ongoing war and state of emergency in Israel.

The CSSF asks supervised entities to exercise particular vigilance in relation to the transfers referred to in the Message, i.e., financial activity whose purpose is to finance and support terrorist activity and to assist terrorist organisations, particularly Hamas and the Palestinian Islamic Jihad organisation.

The Message states that based on IMPA's experience, terrorist financing activities often appear under the guise of fundraising campaigns for humanitarian aid and are led by various associations and charities or private initiatives. Such campaigns are published in various media, using a variety of channels and avenues for transferring money, including bank and electronic transfers, credit cards, advanced payment methods, gift cards and cryptocurrency. Said publications are mostly made in Arabic and English, and may refer to the Gaza Strip, to the fighting in Gaza, and sometimes include the involvement of declared parties or feature symbols of Hamas or the Palestinian Islamic Jihad organisation.

IMPA works jointly with its partners in the law enforcement and security agencies to freeze and/or block accounts and other financial activities for which there is an indication that they are being used to raise funds for the terrorist organisations.

The Communiqué contains a link to the Message.



¹ Communiqué: <https://www.cssf.lu/en/2023/10/communiqué-aml-ctf/>

CSSF UPDATES THE CSSF CIRCULARS ON THE LONG FORM REPORT AND THE STATUTORY AUDIT MANDATE

14 November 2023²

On 15 November 2023, the CSSF issued a press release to announce the publication of Circular CSSF 23/845 on the update of Circular CSSF 22/821 on the long form report and Circular CSSF 22/826 on the statutory audit mandate.

Circular 23/845 applies to all Luxembourg credit institutions and Luxembourg branches of non-EU credit institutions.

Circular 23/845 amends Circular CSSF 22/821 by including the following five thematic sections in the revised self-assessment questionnaire (SAQ):

- credit and counterparty risk;
- interest rate risk in the banking book (IRRBB) and credit spread risk arising from non-trading book activities (CSRBB);
- liquidity risk;
- strong customer authentication and secure communication following Directive (EU) 2015/2366 on payment services ("**PSD 2**"); and
- climate-related and environmental risks.

Circular 23/845 also introduces changes in relation to the reports to be established by the *réviseurs d'entreprises agréés* (approved statutory auditors or "**REA**"). Whereas both the report on the protection of financial instruments and funds belonging to clients and the report on AML/CFT remain, it is no longer foreseen that Agreed Upon Procedure (AUP) reports are required from all banks on a recurring basis. While the CSSF might request such AUPs in the future on an *ad hoc* basis, no such AUPs are to be submitted with respect to financial year-end 2023 information.

Circular 23/845 amends Circular CSSF 22/826 too by adapting the submission deadline for the management letter in order to ensure a better alignment with the

submission deadline foreseen for the reports to be established by the REA pursuant to Circular CSSF 22/821, as amended.

The Annexes to Circular 23/845 provide details of the amendments to Circular CSSF 22/821 and Circular CSSF 22/826.

² Circular: <https://www.cssf.lu/en/Document/circular-cssf-23-845/>

2023 CSSF SURVEY ON FINANCIAL CRIME

22 November 2023³

On 22 November 2023, the CSSF published a press release to announce details of its 2023 survey on financial crime.

The CSSF launched the annual online survey for the year 2023 on 19 February 2024.

The objective is to collect standardised key information concerning 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/CTF risk-based supervision approach put in place by the CSSF.

The CSSF further notes that the 2023 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. In particular, the CSSF has modified the country list with the addition of Palestine (ISO code PS).

Final submissions to the survey questions will have to be submitted through the CSSF eDesk portal by 1 April 2024 (at the latest).

The CSSF highlights that for the survey it has made available a new Application Programming Interface ("API") solution allowing pre-population of the survey. However, the manual input of the responses directly in the eDesk online form remains possible.

The survey must still be completed 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 a LuxTrust authentication.

³ Communiqué: <https://www.cssf.lu/en/2023/11/2023-survey-on-financial-crime/>

CSSF REGULATION CONCERNING SYSTEMICALLY IMPORTANT INSTITUTIONS AUTHORISED IN LUXEMBOURG

30 November 2023⁴

On 30 November 2023, the CSSF issued regulation 23-05 concerning systemically important institutions ("**SSI**") authorised in Luxembourg.

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

Four of these institutions qualify as O-SIs 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 qualifies as an O-SI 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 market infrastructure.

The Regulation increases the capital buffer rates for *BGL BNP Paribas* from 0.50% to 1.00% and maintains the capital buffer rates for the other O-SIs.

The Regulation entered into force on 1 January 2024 and as of this date replaced the previously applicable CSSF regulation 22-07 concerning SIs authorised in Luxembourg.

⁴ Regulation:
<https://legilux.public.lu/eli/etat/leg/rcsf/2023/11/30/a803/jo> (only in French)

CSSF-CODERES PUBLISHES CIRCULAR ON THE APPLICATION OF EBA GUIDELINES ON RESOLVABILITY, TRANSFERABILITY AND RESOLVABILITY TESTING

30 November 2023⁵

On 30 November 2023, the CSSF issued, in its capacity as Luxembourg resolution authority, circular letter CODERES 23/18 on the application of the three following guidelines of the EBA:

- Guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities under articles 15 and 16 of BRRD (the "**Resolvability Guidelines**");
- Guidelines EBA/GL/2022/11 on transferability to complement the resolvability assessment for transfer strategies (EBA/GL/2022/11) (the "**Transferability Guidelines**"); and
- Guidelines EBA/GL/2023/05 amending the Resolvability Guidelines to introduce a new section on resolvability testing (the "**Resolvability Testing Guidelines**", together with the Resolvability Guidelines and the Transferability Guidelines, the "**Guidelines**").

The CSSF states that the Guidelines are implemented in a single circular, as they shall be read as a whole.

The Circular is addressed to all Luxembourg institutions whose resolution plan established by the CSSF provides for the use of one or more resolution tools and who are not subject to simplified obligations for resolution planning in accordance with Article 5 of the Luxembourg law of 18 December 2015 on the failure of credit institutions and

certain investment firms, as amended (the "**Resolution Law**").

The purpose of the Circular is to inform its addressees that the CSSF, in its capacity as resolution authority, applies the Guidelines and has integrated them into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at the European level.

The Circular requires its addressees to take resolution tool-specific actions in order to improve their resolvability in the context of the resolvability assessment performed by the CSSF according to Articles 26, 27 and 28 of the Resolution Law.

The CSSF reminds its addressees that the resolvability assessment process is a key element of resolution planning in that it ensures that the resolution strategy can be effectively implemented.

Annex 4 of the Circular contains further a self-assessment report standard format to be used in line with point 129 of the Resolvability Testing Guidelines.

The Circular provides a brief overview of the Guidelines which are available on EBA's website, to which a link can be found in the Circular.

The Circular finally contains specifications on its scope of application in groups subject to consolidation supervision in Luxembourg according to Articles 49 and 50-1 of the Luxembourg law of 5 April 1993 on the financial sector, as amended.

The Circular applies as of 1 January 2024.

⁵ Circular: https://www.cssf.lu/wp-content/uploads/CSSF_CODERES_2318.pdf

Resolvability Guidelines:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2022/EBA-GL-2022-01%20Guidelines%20on%20resolvability/1025905/Final%20Report%20on%20Guidelines%20on%20improving%20resolvability%20for%20institutions%20and%20resolution%20authorities%20282%29.pdf?retry=1

Transferability Guidelines:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2022/EBA-GL-2022-11%20GL%20on%20transferability/1039809/Final%20report%20on%20Guidelines%20on%20transferability.pdf

Resolvability Testing Guidelines:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2023/1056369/Guidelines%20amending%20Guidelines%20on%20improving%20resolvability%20for%20institutions%20and%20resolution%20authorities.pdf

CSSF CIRCULAR ON THE ESMA GUIDELINES ON REPORTING UNDER EMIR

1 December 2023⁶

On 1 December 2023, the CSSF issued Circular 23/846 on the adoption of the revised guidelines of the ESMA on reporting under EMIR (ESMA74-362-2281) into its administrative practice and regulatory approach.

The Circular is addressed to financial and non-financial counterparties to derivatives as defined in Articles 2(8) and 2(9) of EMIR for which the CSSF is the competent authority in accordance with Article 1(2) of the Luxembourg law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories, as amended ("**EMIR Law**").

The Guidelines were issued by ESMA on its own initiative, and are related to the application of EMIR reporting obligations in accordance with Article 9 EMIR and the trade repositories' obligations under Articles 78 and 81 EMIR.

The Guidelines fulfil several purposes with regard to the harmonisation and standardisation of reporting under EMIR. This is key to ensure high quality of data necessary for the effective monitoring of systemic risk. Furthermore, increased harmonisation and standardisation of reporting facilitates the containment of costs along the complete reporting chain – the counterparties that report the data, the trade repositories which put in place the procedures to verify the completeness and correctness of data, and the authorities under Article 81(3) EMIR which use data for supervisory and regulatory purposes.

The Guidelines provide clarifications on the following aspects:

- transition to reporting under the new rules;
- the number of reportable derivatives;
- exemption from intragroup derivatives reporting;

- delegation of reporting and allocation of responsibility for reporting;
- reporting logic and the population of reporting fields;
- reporting of different types of derivatives;
- ensuring data quality by the counterparties and the trade repositories;
- construction of the trade state report and reconciliation of derivatives by the trade repositories; and
- data access.

The Guidelines are attached to the Circular and are also available on ESMA's website, to which a link can be found in the Circular.

The Circular states that the Guidelines apply as of 29 April 2024 in the context of the entry into force of the EMIR refit reporting technical standards.

All addressees of the Circular shall duly comply with the Guidelines as of this date.

⁶ Circular: https://www.cssf.lu/wp-content/uploads/cssf23_846eng.pdf

CSSF DOCUMENT ON THE APPROACH TO THE EXECUTION OF THE WRITE-DOWN AND CONVERSION OF CAPITAL INSTRUMENTS AND BAIL-INABLE LIABILITIES IN RESOLUTION

13 December 2023⁷

On 13 December 2023, the CSSF published a document on the CSSF's approach to the execution of the write-down and conversion of capital instruments and bail-inable liabilities in resolution.

The Document has been published by the CSSF in its role as Luxembourg resolution authority in compliance with the Guidelines of the EBA to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic (EBA/GL/2023/01).

It applies in accordance with the scope of application set out in the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

The purpose of the Document is to provide a high-level description of the CSSF's approach to the operational steps necessary to execute the write-down and conversion of relevant capital instruments or the use of the bail-in tool (the "**Exchange Mechanic**") from the preliminary steps to the final execution of the Exchange Mechanic, including any ex-post definitive valuation adjustments, where applicable. The description set out in the Document takes as its starting point the resolution planning phase, where institutions earmarked for resolution (i.e., where normal insolvency proceedings would not be in the public interest), and for which the use of the bail-in tool is envisaged (either as the preferred or as a variant resolution strategy), shall prepare bail-in playbooks and demonstrate their capabilities to provide the data requested in the bail-in data list.

The CSSF notes that the actual execution of write-down and conversion processes might differ from the ones set out in the Document if the resolution objectives or the circumstances of the case so require. Further, processes are subject to change, and the Document is to be

considered an evergreen document susceptible to updates, which will be published on the CSSF's website.

⁷ Document: <https://www.cssf.lu/wp-content/uploads/CSSF-Description-of-the-exchange-mechanic.pdf>

CSSF PUBLISHES COMMUNIQUÉ ON PROFESSIONAL OBLIGATIONS RELATED TO ACCOUNTS' CENTRAL ELECTRONIC DATA RETRIEVAL SYSTEM

14 December 2023⁸

On 14 December 2023, the CSSF published a communiqué reminding AML/CTF professionals, including in particular banks and other payment services providers, of their obligations under the Luxembourg law of 25 March 2020 establishing a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg ("**Central Register**"), as amended.

The CSSF reminds that in accordance with Article 2 of the Law, professionals must set up a data file allowing the identification of any natural or legal person who holds or controls, with such professionals, payment accounts or bank accounts identified by an IBAN, within the meaning of Article 2(15) of Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro, or safes (the "**File**"). In order for the objectives pursued by the Law and the establishment of the Central Register to be fulfilled, it is essential that professionals respect, when making available the File, the structure of the File and the details of the data that must be included in it, in accordance with Article 2(4) of the Law and CSSF Circular 20/747.

To this end, the CSSF draws the attention of professionals in particular to Annexes 1 and 2 to Circular 20/747, which describe the technical arrangements to be strictly followed and the structure of the file to be submitted to the CSSF. Compliance with the mandatory structure and information is intended to ensure proper transmission of the data contained in the File within the Central Register.

The CSSF, as manager of the Central Register, has provided professionals with continuous monitoring during its implementation, in particular by providing technical and legal assistance and publishing (i) information in the form of questions and answers, (ii) communications via MFT and (iii) other specific publications aimed at clarifying and

improving the structure of the File and its availability in the Central Register.

In addition to such reminders, the Communiqué draws the attention of professionals to some examples of deficiencies detected by the CSSF and other users accessing data of the Central Register, and which will have to be taken into account by professionals when reviewing compliance with their obligations in this area.

⁸ Communiqué (only in French):
<https://www.cssf.lu/fr/2023/12/rappel-des-obligations-professionnelles-loi-modifiee-du-25-mars-2020-instituant-un->

[systeme-electronique-central-de-recherche-de-donnees-concernant-des-comptes-de-paiement-et-des-comptes-banc/](https://www.cssf.lu/fr/2023/12/rappel-des-obligations-professionnelles-loi-modifiee-du-25-mars-2020-instituant-un-systeme-electronique-central-de-recherche-de-donnees-concernant-des-comptes-de-paiement-et-des-comptes-banc/)

CSSF PUBLISHES DOCUMENT ON TAXONOMY REGULATION DISCLOSURE BY ISSUERS

18 December 2023⁹

On 18 December 2023, the CSSF published a document on taxonomy regulation disclosure by issuers – the results of a focused examination on corporate reporting practices.

The purpose of the Document is to present a summary of the main findings of an examination by the CSSF to evaluate the quality of the disclosures provided by non-financial issuers under the new requirements contained in the Taxonomy Regulation, conducted in 2023.

The CSSF has carried out a focused examination of the information disclosed under Article 8 of the Taxonomy Regulation as from 1 January 2023 for a selection of non-financial issuers under its supervision conducting economic activities eligible under the Taxonomy Regulation.

2023 was the first year during which non-financial issuers were required to disclose not only their taxonomy eligibility, but also the alignment of their economic activities for the financial year 2022 with the first two environmental objectives set out in the Taxonomy Regulation: climate change mitigation and climate change adaptation.

The information to be disclosed as well as the timing for the disclosure are specified in Commission Delegated Regulation (EU) 2021/2178, as amended (the "**Disclosure Delegated Act**").

Regarding quantitative information, the CSSF has assessed:

- the use and completeness of the templates required by Annex II of the Disclosure Delegated Act;
- the adequate reporting of the different key performance indicators; and
- the avoidance of double counting for activities contributing to both climate objectives (mitigation and adaptation).

For qualitative information, the accounting policy and the assessment of compliance with Annex I to the Disclosure Delegated Act were examined, as well as the existence of references to other parts of the financial or non-financial statements. Finally, the disclosure of additional voluntary information was also analysed.

When reviewing the reports prepared by issuers, the CSSF undertook a more in-depth analysis of the areas where more clarity was deemed necessary or where incorrect application had been identified, and further action was taken by the CSSF accordingly.

⁹ Document: <https://www.cssf.lu/wp-content/uploads/Taxonomy-Regulation-Disclosures-by-Issuers.pdf>

CSSF PUBLISHES PRESS RELEASE ON NATIONAL REPORTING MODALITIES OF CREDIT INSTITUTIONS

21 December 2023¹⁰

On 21 December 2023, the CSSF published a press release on new transmission methods for certain national reporting of credit institutions.

In particular, from 2 January 2024, the CSSF allows credit institutions to transmit their national B4.5 (Analysis of shareholdings) and B4.6 (Persons responsible for certain functions and activities) reports by using two new methods:

- A dedicated eDesk approach accessible via the eDesk Portal; and
- An API solution based on the submission of a structured exchange file (json format) via the S3 protocol ("simple storage service").

The corresponding user guide will be available on eDesk, detailing the procedures for completing, validating and submitting these B4.5 and B4.6 national reports. The former transmission channels will no longer be available.

The CSSF further informs that it will gradually allow entities to submit all other European and national banking reports through these eDesk/S3 transmission methods.

¹⁰ Document: <https://www.cssf.lu/en/2023/12/new-transmission-methods-for-b4-5-and-b4-6-national-reportings/>

CSSF PUBLISHES CIRCULAR ON A SURVEY ON THE AMOUNT OF COVERED DEPOSITS HELD ON 31 DECEMBER 2023

27 December 2023¹¹

On 27 December 2023, the CSSF, acting in its function as Depositor and Investor Protection Council (*Conseil de Protection des Déposants et des Investisseurs*) (the "CPDI"), published CSSF-CPDI Circular 23/39 to carry out a regular survey on the amount of covered deposits held on 31 December 2023.

The Circular is addressed to all members of the Luxembourg deposit protection scheme, *Fonds de garantie des dépôts Luxembourg* ("FGDL"), including in particular credit institutions incorporated under Luxembourg law, Luxembourg branches of non-EU/EEA credit institutions and POST Luxembourg, the latter in respect of its postal financial services.

The Circular draws members' attention to the definitions of "covered deposits" and "eligible deposits", in particular with regard to the exclusions of structures assimilated to financial institutions as well as the treatment of accounts the holders of which are not absolutely entitled to the sums on the accounts (e.g., omnibus or fiduciary/trust accounts, third-party accounts, etc.).

FGDL members had to provide the data at the level of their legal entity, comprising data from branches located within other member states, by **18 January 2023**.

Additionally, FGDL members are reminded that neither accounts denominated in units of precious metals nor accounts denominated in virtual currencies constitute eligible deposits for the purpose of the FGDL guarantee, and shall hence not be reported under this data collection exercise.

Institutions are also informed that the reporting of this survey via E-File or SOFiE has been deactivated. Since 9 October 2023, institutions have been required to submit

the reporting through one of the following means of communication:

- Via CSSF eDesk platform which is also accessible through the CSSF website; or
- Via the submission of a structured file through S3 ("simple storage service") protocol.

A user guide is available on eDesk, explaining the technical procedures for completing, validating and submitting the Distressed Credit Operations Review (DCOR) quarterly reporting.

A member of the authorised management, in this case the member in charge of the membership of the FGDL in accordance with section C of CSSF Circular 13/555, as amended, must review and approve the document prior to its transmission to the CSSF.

¹¹ Circular: https://www.cssf.lu/wp-content/uploads/CSSF_CPDI_2339eng.pdf

CSSF REGULATION ON THE SETTING OF THE COUNTERCYCLICAL BUFFER RATE FOR THE FIRST QUARTER OF 2024

29 December 2023¹²

On 29 December 2023, the CSSF issued regulation No 23-06 on the setting of the countercyclical buffer rate for the first quarter of 2024.

Regulation No 23-06 provides that the countercyclical buffer rate applicable to the relevant exposures located in Luxembourg remains set at 0.50% for the first quarter of the year 2024.

Regulation No 23-06 entered into force on the date of its publication in the Luxembourg official journal on 29 December 2023.

¹² Regulation: and
<https://legilux.public.lu/eli/etat/leg/rcsf/2023/12/29/a875/jo>

<https://www.cssf.lu/fr/Document/reglement-cssf-n-23-06-du-29-decembre-2023/> (only in French)

CSSF PUBLISHES COMMUNIQUÉ ON SUBMISSION OF THE REVISED LONG FORM REPORT

3 January 2024¹³

On 3 January 2024, the CSSF published a communiqué on the submission of the revised long form report through the S3 ("simple storage service") solution.

The background to the communiqué is that on 15 November 2023, the CSSF made available on its eDesk module the revised long form report, which had been introduced by Circulars CSSF 22/821 and CSSF 07/325.

The Communiqué informs the concerned entities under CSSF supervision (i.e., Luxembourg credit institutions and Luxembourg branches of third-country credit institutions as well as to a limited extent Luxembourg branches of EU/EEA credit institutions and investment firms) that, in this context, an IT solution optimising the completion of the self-assessment questionnaire has been made available as from 3 January 2024 to in-scope entities. This API solution allows completion of the questionnaire through a structured file transmitted to the CSSF via an S3 protocol. This file will prefill the questionnaire available on the CSSF eDesk Portal. Before the submission, entities will still be able to manually modify and update the data prefilled through S3 directly in eDesk. The manual completion of the questionnaire through eDesk remains possible. For further details regarding the modalities on how to use this new feature, the Communiqué refers to the dedicated user guide published on the eDesk module.

¹³ Communiqué: <https://www.cssf.lu/en/2024/01/submission-of-the-revised-long-form-report-lfr-through-the-s3-solution/> and <https://www.cssf.lu/fr/2024/01/soumission-des-rapports-relatifs->

[au-compte-rendu-analytique-revisé-long-form-report-ou-lfr-via-s3/](https://www.cssf.lu/en/2024/01/submission-of-the-revised-long-form-report-lfr-through-the-s3-solution/)

CSSF PUBLISHES COMMUNIQUÉ ON REVISED INBOUND EMAIL PROTOCOL SECURITY

4 January 2024¹⁴

On 4 January 2024, the CSSF published a communiqué on revised inbound email protocol security at the CSSF.

The Communiqué informs the public that, in order to increase email security at the CSSF, all inbound emails are now checked with an email authentication protocol using Domain-based Message Authentication, Reporting & Conformance policies (DMARC) at the Domain Name System level (DNS), verifying server origin and digital signature of the email using the Sender Policy Framework (SPF) and DomainKeys Identified Mail (DKIM) protocols.

Any failure during these verification steps will result in the email not being delivered to its intended recipient(s).

The CSSF therefore asks senders to make sure that their DNS records are complete and correctly configured according to SPF/DKIM/DMARC best practices to avoid any rejected emails addressed to the CSSF.

¹⁴ Communiqué: <https://www.cssf.lu/en/2023/10/communique-aml-ctf/>

CSSF PUBLISHES CIRCULAR ON APPLICATION OF THE EBA GUIDELINES RELATING TO INTEREST RATES AND TO CREDIT SPREAD RISKS OF INSTITUTIONS' NON-TRADING BOOK ACTIVITIES

5 January 2024¹⁵

On 5 January 2024, the CSSF published its Circular 24/848 dated 29 December 2023 on the application of the Guidelines of the EBA on the criteria for the identification, evaluation, management and mitigation of the risks arising from potential changes in interest rates and of the assessment and monitoring of credit spread risk of institutions' non-trading book activities (EBA/GL/2022/14).

The CSSF informs the public that it has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at the European level, and has notified the EBA thereof.

The Guidelines specify the criteria that institutions and competent authorities should apply in view of the sound and prudent management of interest rate risk for non-trading book activities ("IRRBB") and credit spread risk for non-trading book activities ("CSRBB") further to Article 53-20 of the Financial Sector Law.

The Guidelines repeal the previous Guidelines on the management of interest rate risk arising from non-trading book activities (EBA/GL/2018/02). Compared to the EBA/GL/2018/02, the Guidelines mainly provide the following changes:

- Interest income, interest expenses and market value changes should be considered for the measurement of IRRBB and CSRBB under internal systems to ensure a comprehensive assessment of the impact of all interest-rate and credit-spread-sensitive items.
- More prudent behavioural assumptions on non-maturity deposits from non-financial counterparties and introducing a five-year cap on weighted

average repricing maturity for certain retail and wholesale non-maturity deposits.

- Minimum criteria that will be assessed by the CSSF to determine whether an institution's IRRBB internal systems are satisfactory. If internal systems are found to be non-satisfactory, the CSSF may require an institution to use the standardised approach as envisaged in Article 53-20(3) of the Financial Sector Law.
- Further details on the definition of CSRBB, which shall include assets recognised at fair value, but also any other assets, liabilities or off-balance sheet items that can be exposed to CSRBB.
- The Guidelines also provide further details on the expected assessment and monitoring of CSRBB, adequate and proportionate governance arrangements on CSRBB and processes to identify, manage, monitor and report CSRBB as well as related internal control mechanisms.

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

The Circular also specifies that the reference to the previous EBA/GL/2018/02 in CSSF Circular 12/552 shall now be read as a reference to the Guidelines.

The Circular applies as from 31 December 2023 to all credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism and CRR investment firms incorporated under Luxembourg law and to the Luxembourg branches of credit institutions and CRR investment firms having their registered office in a third country.

¹⁵ Communiqué: <https://www.cssf.lu/en/Document/circular-cssf-24-848/>

NEW CSSF ICT-RELATED INCIDENT REPORTING REQUIREMENTS AND PROCEDURE

5 January 2024¹⁶

On 5 January 2024, the CSSF published two important documents regarding the ICT-related incident reporting framework, in order to acquire a better and more structured overview of the nature, frequency, significance and impact of ICT-related incidents, also considering the growing ICT and security risk in the context of a highly interconnected global financial system.

The first one is CSSF Regulation No 24-01 of 5 January 2024 relating to the notification of incidents according to the Law of 28 May 2019 transposing Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the European Union (the "**NIS Law**").

The second one is Circular CSSF 24/847 regarding the ICT-related incident reporting framework, replacing Circular 11/504 on fraud and incidents due to external computer attacks.

Both CSSF Regulation No 24-01 and Circular CSSF 24/847 will enter into force on 1 April 2024.

In its Article 2, CSSF Regulation No 24-01 informs Operators of Essential Services ("**OES**") and Digital Service Providers ("**DSP**") subject to the NIS Law, and for which the "NIS authority" is the CSSF according to article 3 of the NIS Law, of the incident classification and major incident notification requirements under the NIS Law. These have been further specified in Circular CSSF 24/847, in order to have one uniform document detailing the process for classification and reporting of ICT-related incidents for all entities under CSSF supervision in accordance with financial sector regulatory frameworks and/or with the NIS Law.

In its competence as NIS authority, the CSSF already informed the relevant supervised entities of their identification as OES, or of their consideration as DSP, when the NIS Law entered into force.

Circular CSSF 24/847 brings the following changes to the current incident reporting mechanism:

- Increase of the incident coverage, currently limited to fraud and incidents due to external computer attacks, by covering more broadly ICT operational and security incidents while avoiding double reporting for incidents to be notified under other incident notification frameworks.
- Introduction of reporting based on classification. Supervised entities will be required to classify ICT-related incidents based on the criteria indicated in this Circular and to notify to the CSSF the cases where ICT-related incidents are classified as major or significant incidents.
- Introduction of a new incident reporting notification form for major or significant incidents.
- Introduction of a specific chapter to cover in the same Circular CSSF 24/847 the incident notification requirements (previously communicated via bilateral communications to Supervised entities that are under the scope of the NIS Law).

ICT-related incident notifications shall be submitted by considering the time limits and the data fields respectively laid down in Annex I and II to Circular CSSF 24/847 as from 1 April 2024 and 1 June 2024, respectively.

The CSSF announces also that further guidance related to the submission channels and related submission procedure will be published at a later stage.

¹⁶ CSSF Regulation: <https://legilux.public.lu/eli/etat/leg/rcsf/2024/01/05/a3/jo> and <https://www.cssf.lu/fr/Document/reglement-cssf-n-24-01-du-5-janvier-2024/>

CSSF Circular: <https://www.cssf.lu/fr/Document/circulaire-cssf-24-847/>

CSSF Communiqué: https://www.cssf.lu/fr/2024/01/communiqué-relatif-a-la-notification-d'incidents-lies-aux-tic/?utm_campaign=email-240105-8b1fa

CSSF PUBLISHES GAP ANALYSIS IN 2022 CLIMATE-RELATED DISCLOSURES BY ISSUERS

8 January 2024¹⁷

On 2 February 2024, the CSSF published its paper 2022 climate-related disclosures: Gap analysis – Thematic review on issuers' sustainability statements on the verge of the CSRD entry into force (the "**Gap Analysis**") as well as a related communiqué.

To ensure transparent communication to their stakeholders on the evolution of the companies' business models towards more sustainable and resilient ones, since 2017, some sizeable issuers have been required to publish non-financial information under the NFRD. Starting from the financial year 2024, the CSRD will enter into force and issuers in its scope will have to report according to European Sustainability Reporting Standards ("**ESRS**").

The new rules will ensure that investors and other stakeholders have access to the information they need to assess the impact of companies on people and the environment and to evaluate financial risks and opportunities arising from sustainability issues, including climate change.

In order to gain a preliminary understanding of the gap that remains to be addressed by issuers with regard to the transition from the NFRD to the CSRD, in terms of sustainability disclosures, the CSSF has carried out a thematic review to examine the current reporting practices for 2022 for a selection of the largest issuers with a potential material impact of climate change under its supervision and falling within the scope of the NFRD. The CSSF's Gap Analysis presents therefore a snapshot of certain climate-related information as well as some more general related disclosures that issuers already publish. In addition, the CSSF takes the opportunity to issue some recommendations to the issuers concerned in light of certain of the new requirements that will come into force as from 2024 for publication in 2025. Given the prominence of

the subject, the Gap Analysis focuses primarily on information relating to climate change.

The Gap Analysis further refers to the CSSF's Communiqué dated 8 January 2024 on the priorities set for the 2024 enforcement campaign and that the CSSF expects to find substantial progress and good practices on the issuers' 2023 non-financial disclosure in preparation for the introduction of the CSRD.

In its outlook, the CSSF further emphasises that while the first companies that will have to apply the ESRS in financial year 2024, for reports published in 2025, are those that report today under the NFRD (with the addition of large listed EU subsidiaries of listed parents, exempted under the NFRD), the scope of entities concerned will increase gradually in subsequent years. Moreover, sector-specific standards will later supplement the first set of standards published in 2023. Finally, the CSSF reminds that issuers should take all necessary measures to keep themselves informed on the transposition of the CSRD into Luxembourg law, which should occur by 6 July 2024.

¹⁷ CSSF Document: https://www.cssf.lu/fr/Document/informations-relatives-au-climat-pour-2022-analyse-des-ecarts/?utm_campaign=email-240202-f991f

CSSF PUBLISHES DOCUMENT ON THE ENFORCEMENT OF THE 2023 ANNUAL REPORTS BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW

8 January 2024¹⁸

On 8 January 2024, the CSSF published a document on the enforcement of the 2023 annual reports published by issuers subject to the Transparency Law as well as a related communiqué.

Pursuant to Article 22 of the Transparency Law, the CSSF is monitoring that financial and non-financial information published by issuers is drawn up in compliance with the applicable reporting frameworks.

As issuers are now preparing their reporting for the 2023 financial year, the CSSF wishes to draw the attention of those preparing their financial statements in accordance with IFRS and/or their non-financial report in accordance with the law of 23 July 2016 which transposes Directive 2014/95/EU ("**NFRD**"), as well as of their auditors, to a number of topics and issues that will be the subject of specific monitoring during the CSSF's enforcement campaign planned for 2024.

These topics and issues are set out in the Document and derive from the European Common Enforcement Positions ("**ECEPs**") identified, as in previous years, by the **ESMA**, together with the European national accounting enforcers, including the CSSF. ESMA issued on 25 October 2023 a public statement describing these 2023 ECEPs (ESMA32-193237008-1793) which is available on the CSSF website. The CSSF encourages issuers to consider the ECEPs in addition to its enforcement priorities outlined in the Document as the latter are derived from the ECEPs.

The CSSF's priorities topics and issues are explained in detail in the Document and concern the following areas:

- As regards IFRS Financial Statements:
 - the impact of climate-related matters;

- the increase in interest rates and impact on (re)financing; and
- fair-value measurement and disclosures;
- As regards Non-Financial Statements:
 - disclosures relating to Article 8 of the Taxonomy Regulation; and
 - the impact of climate-related matters; and
- As regards alternative performance measures:
 - the impact of Article 8 of the Taxonomy Regulation.

¹⁸ CSSF Document: https://www.cssf.lu/wp-content/uploads/C_Enforcement_2023_annual_reports_080124.pdf

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

CSSF PUBLISHES FAQS DOCUMENT RELATING TO NATIONAL REPORTING BY CREDIT INSTITUTIONS ON SHAREHOLDER AND FUNCTION HOLDERS

15 January 2024¹⁹

On 15 January 2024, the CSSF published its document FAQ National reporting B4.5 and B4.6.

From 2 January 2024, the CSSF requires that credit institutions transmit their national reports B4.5 (Analysis of shareholdings) and B4.6 (Persons responsible for certain functions and activities) using one of the two following methods:

- A dedicated eDesk approach accessible via the eDesk Portal;
- An API solution based on the submission of a structured exchange file (json format) via the S3 protocol ("simple storage service").

Historical national reportings "B4.5 – Analysis of shareholdings" (Circular CSSF 12/553) and "B4.6 – Persons responsible for certain functions and activities" (Circular CSSF 13/576) are merged into a single eDesk procedure, National Banking Reporting.

Following the dedicated communication of the CSSF on 21 December 2023 and the start of the reporting campaign, the CSSF has received several questions from supervised entities. As some of the questions may be of interest to other supervised entities as well, the CSSF has decided to make the FAQs public. These FAQs aim at clarifying certain elements (such as scope of supervised entities subject to reporting, reporting frequency, practical details where functions are not occupied or on reporting error correction, or reporting of changes occurring over the year) of the new procedure. The FAQs also contain in their annex a list of holders of functions or activities to be reported.

The FAQs will be regularly updated when required.

¹⁹ CSSF Document: https://www.cssf.lu/fr/Document/questions-reponses-relatives-aux-reportings-nationaux-b4-5-et-b4-6/?utm_campaign=email-240115-f59ce

CSSF PUBLISHES UPDATE OF ITS CIRCULAR ON THE IMPLEMENTATION OF A STRESS TEST IN ORDER TO ASSESS THE INTEREST RATE RISK ARISING FROM BANKING BOOK ACTIVITIES

16 January 2024²⁰

On 16 January 2024, the CSSF published its Circular CSSF 24/849 providing for an update of Circular CSSF 08/338 (as amended by Circulars CSSF 16/642 and 20/762) on the implementation of a stress test in order to assess the interest rate risk arising from non-trading book activities pursuant to Article 53-7(4) of the Law of 5 April 1993 on the financial sector.

Circular 24/849 is addressed to all Luxembourg law credit institutions and CRR investment firms as well as Luxembourg branches of third country credit institutions and CRR investment firms.

The object of Circular 24/849 is to draw the attention of the addressees to the changes to Circular CSSF 08/338 which take account of the Guidelines on interest rate risks for banking book ("**IRRBB**") and credit spread risk arising from non-trading book activities ("**CSRBB**") (Guidelines issued on the basis of Article 84 (6) of Directive 2013/36/EU specifying criteria for the identification, evaluation, management and mitigation of the risks arising from potential changes in interest rates and of the assessment and monitoring of credit spread risk of institutions' non-trading book activities) issued by the EBA (EBA/GL/2022/14).

The changes to Circular CSSF 08/338 are shown in tracked changes in the annex to Circular 24/849. The changes concern in particular:

- The update of the legal references relating to the supervisory tests relating to outliers (SOT) on IRRBB;
- The inclusion of provisions which were previously included in the EBA Guidelines 2018/02, notably section 4.5 and the annex thereof;

- The changes of the modalities of the calculation of the development of the economic value of equity (EVE); and
- The supplementary requirements relating to the modalities of calculation of the net interest income (NII).

Circular 24/849 also notes that Circular CSSF 08/338 (as amended by the Circular) will cease its effects when the regulatory technical standards (RTS) specifying the supervisory shock scenarios, the common modelling and parametric assumptions and what constitutes a large decline and the implementing technical standards (ITS) modifying Commission Implementing Regulation (EU) 2021/451 as regards IRRBB reporting will enter into force. This will include notably any methodological derogation to an institution which is a subsidiary of its group with its parent company being located in a third country or which is a branch the head office of which is located in a third country in accordance with point 7 of Circular CSSF 08/338.

²⁰ CSSF Circular: <https://www.cssf.lu/en/Document/circular-cssf-24-849/> (in French only)

CSSF PUBLISHES CIRCULAR ON PRACTICAL RULES CONCERNING ANNUAL REPORTING BY SUPPORT PFSS AND THE ROLE AND ENGAGEMENT OF THEIR EXTERNAL AUDITORS

19 January 2024²¹

On 19 January 2024, the CSSF published its Circular CSSF 24/850 on practical rules concerning the descriptive report and the self-assessment questionnaire to be submitted on an annual basis by support professionals of the financial sector ("**PFSS**") as well as on the engagement of the approved statutory auditors (*réviseurs d'entreprises agréés*, "**REAs**") of support PFSSs and practical rules concerning the management letter and the separate report to be drawn up on an annual basis.

The Circular is addressed to all support PFSSs supervised by the CSSF and applies to all PFSSs exercising one or several support PFS activities as defined in Articles 29-1 to 29-6 of the Law of 5 April 1993 on the financial sector and classified as "I" by the CSSF.

The Circular introduces, on the one hand, a self-assessment questionnaire to be completed on an annual basis by support PFSSs and to be submitted to the CSSF as a replacement of the risk assessment report required so far under Circular CSSF 12/544. The self-assessment questionnaire represents the result of an in-depth review of the objective and content of the information the CSSF requests to receive on the support PFSSs' self-assessment and management of the risks to that it may expose to the financial sector. It takes into account the regulatory developments and the main points that the CSSF intends to bring to the support PFSSs' attention.

On the other hand, the Circular broadly details the role and engagement of REAs in the context of the statutory audit of support PFSSs. Moreover, it establishes a specific regulatory framework applicable to the management letter, and also introduces a separate report. The separate report includes the specific procedures that the CSSF requests

the REAs to perform in relation to the support PFSSs' self-assessment questionnaires. Both documents must be drawn up by the support PFSSs' REAs on an annual basis.

Lastly, this Circular adapts and simplifies the descriptive report to be provided on an annual basis by support PFSSs and repeals Circulars CSSF 12/544 and CSSF 19/727 following the introduction of the new supervisory tools by this Circular.

The instructions in this Circular must be complied with in their entirety for the financial years closing on 31 December 2023 (first year of application) and after 31 December 2023. All financial years closing as from the above-mentioned dates will thus fall within the scope of this Circular.

²¹ CSSF Communiqué: https://www.cssf.lu/fr/2024/01/publication-de-la-circulaire-cssf-24-850-definissant-les-documents-a-soumettre-annuellement-par-les-psf-de-support-et-leurs-reviseurs-dentreprises-agrees/?utm_campaign=email-240119-50685 (in French only)

CSSF Circular: https://www.cssf.lu/wp-content/uploads/cssf24_850eng.pdf and https://www.cssf.lu/wp-content/uploads/cssf24_850.pdf

CSSF PUBLISHES CIRCULAR ON THE APPLICATION OF THE EBA GUIDELINES ON OVERALL RECOVERY CAPACITY IN RECOVERY PLANNING

19 January 2024²²

On 25 January 2024, the CSSF published its Circular CSSF 24/851 on the application of the Guidelines of the EBA on overall recovery capacity in recovery planning (EBA/GL/2023/06).

The Circular is addressed to all BRRD institutions submitting a recovery plan to the CSSF.

The purpose of the Circular is to inform them that the CSSF, in its capacity as competent authority, applies the Guidelines published on 19 July 2023. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at the European level. All entities described in the scope of application section of the Circular shall duly comply with the Guidelines.

The Guidelines are issued by the EBA on its own initiative in relation to Directive 2014/59/EU ("**BRRD**") and Commission Delegated Regulation (EU) 2016/10752 ("**CDR**"), which provide for institutions to include a summary of their overall recovery capacity ("**ORC**") within their recovery plans, the ORC being the extent to which the recovery options allow an institution to recover in a range of scenarios of severe macroeconomic and financial stress. Section III of the CDR also provides for the competent authorities' assessment of the recovery plan, including the ORC. The Guidelines aim to achieve a harmonised approach to the determination and assessment of the ORC. In defining the methodology for the determination of the ORC, the first part of the Guidelines specifies the steps that institutions should follow when establishing their ORC based on two fundamental components: i) the list of credible and feasible recovery options; and ii) the range of sufficiently severe scenarios. The second part of the Guidelines complements the ORC framework by supporting competent authorities in their assessment of institutions' ORC as part of the overall

assessment of recovery plans. The Guidelines and an illustrative example of how the different steps for the ORC determination could be practically implemented are attached to the Circular and are available on the EBA's website.

In accordance with paragraph 9 of the Guidelines, the CSSF has decided that the Guidelines are not applicable to BRRD institutions submitting a recovery plan under simplified obligations.

The Circular applies with immediate effect. BRRD institutions that were held to submit their recovery plans by 1 March 2024 must contact the CSSF in case they need an additional delay for complying with the Guidelines.

²² CSSF Circular: https://www.cssf.lu/wp-content/uploads/cssf24_851eng.pdf

CSSF PUBLISHES CIRCULAR 24/853 ON THE REVISED LONG FORM REPORT FOR INVESTMENT FIRMS

6 February 2024²³

On 6 February 2024, the CSSF published Circular 24/853 on the revised long form report for investment firms as well as a related communiqué.

The Circular aims at revising the framework of the long form report applicable to investment firms that applies for the financial year ending 31 December 2023 for the first time for a sample of investment firms, namely all non-SNI IFR investment firms incorporated under Luxembourg law, including their branches (the In-Scope Class 2 IF) and certain SNI IFR investment firms incorporated under Luxembourg law, including their branches (the In-Scope Class 3 IF). Class 3 IFs that are out of scope of the revised LFR are required to submit the long form report drawn up in accordance with Circular CSSF 03/113 for the financial year ending 31 December 2023. As from the financial year ending after 31 December 2023, all investment firms will be subject to the revised LFR.

The Circular requires investment firms to provide annually self-certifications on key aspects of Circular CSSF 20/758 as well as MiFID regulations via a self-assessment questionnaire ("**SAQ**"), taking into consideration the nature, size and complexity of their business model.

Their *réviseur d'entreprises agréé* ("**REA**") shall provide dedicated reports allowing the CSSF to assess the investment firm's compliance with relevant MiFID aspects, including provisions on the protection of financial instruments and funds belonging to clients as required under Article 7 of the Grand Ducal Regulation of 30 May 2018, and the relevant AML/CFT laws and regulations.

The completion and submission of the reports must be performed using online forms to be uploaded through a dedicated channel via the eDesk online portal of the CSSF.

Finally, Part 3 "Annual long form audit report" and Part 4 "Consolidated long form audit report" of Circular CSSF

03/113 (as amended), related to practical rules concerning the role of the REA in investment firms, will no longer apply as from the above dates of entry into force of the Circular.

²³ CSSF Circular 24/853: https://www.cssf.lu/wp-content/uploads/cssf24_853eng.pdf

Communiqué: <https://www.cssf.lu/en/2024/02/publication-of-circular-cssf-24-853-on-the-revised-long-form-report-for-investment-firms/>

CSSF PUBLISHES THE UPDATE OF THE PRIVATE BANKING SUB-SECTOR ML/TF RISK ASSESSMENT

7 February 2024²⁴

On 7 February 2024, the CSSF published its 2023 update of the Private Banking Sub-Sector ML/TF Risk Assessment (the "**PBSSRA**") as well as a related communiqué.

The CSSF highlighted that since the publication of the first PBSSRA, Luxembourg has issued several important publications relating to AML/CFT. A revised National Risk Assessment of Money Laundering and Terrorist Financing and a Vertical Risk Assessment on Virtual Asset Service Providers were published in 2020. Furthermore, a Vertical Risk Assessment on Legal Persons and Legal Arrangements and a Vertical Risk Assessment on Terrorist Financing were published in 2022.

Taking into account these assessments as well as the FATF Mutual Evaluation Report of 2023, the CSSF has now reviewed and updated the PBSSRA. The 2023 PBSSRA update includes several new sections (e.g., on the terrorist financing risk in private banking as well as new or developing risks) and provides updated recommendations to the private banking sub-sector.

The CSSF expects all supervised entities engaging in private banking activities to integrate the findings, conclusions and recommendations resulting from this sub-sector risk assessment into their AML/CFT frameworks to ensure they remain appropriate to effectively mitigate ML/FT risks.

[See Contacts](#)

²⁴ CSSF 2023 Update: <https://www.cssf.lu/wp-content/uploads/Private-Banking-Sub-Sector-Risk-Assessment-2023.pdf>

Communiqué: <https://www.cssf.lu/en/2024/02/publication-of-the-update-of-the-private-banking-sub-sector-ml-tf-risk-assessment/>



INSURANCE



INSURANCE

CAA ISSUES CIRCULAR LETTER ON THE REVISED EBA GUIDELINES ON MONEY LAUNDERING AND TERRORIST FINANCING RISK FACTORS

14 November 2023²⁵

On 14 November 2023, the CAA issued its circular letter 23/13 on the revised guidelines on ML/TF risk factors – supplement to circular letter 21/16.

The Circular applies to all undertakings and persons under the supervision of the CAA who are subject to the obligations as regards the fight against ML/TF ("**Professionals**").

The aim of the Circular is to draw the attention of Professionals to the publication by the EBA of its guidelines EBA/GL/2023/03, revising its guidelines on ML/TF risk factors (EBA/GL/2021/02). The Guidelines EBA/GL/2023/03 aim to assist Professionals in their understanding of the specificities of prospective or existing customers that are not-for-profit organisations ("**NPOs**") and clarify, among others, the steps that the Professionals should undertake and the factors the Professionals should consider when assessing the ML/TF risk associated with a business relationship with customers that are NPOs.

The CAA also informs Professionals that it has notified the EBA that the CAA complied with the Guidelines EBA/GL/2023/03.

The Circular complements CAA circular letter 21/16.

A link to the Guidelines EBA/GL/2023/03 and the consolidated version of EBA/GL/2021/02 is available in the Circular.



²⁵ CAA Circular 23/13:
https://www.caa.lu/uploads/documents/files/LC23-13_FR.pdf
(only in French)

CAA Circular 23/13 (English convenience translation):
https://www.caa.lu/uploads/documents/files/LC23-13_EN.pdf

Amending Guidelines:

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2023/1054143/Amending%20GLs%20to%20the%20RFGs%20in%20relation%20to%20NPOs.pdf

CAA ISSUES CIRCULAR LETTER ON THE ADOPTION OF THE EBA GUIDELINES ON POLICIES AND CONTROLS FOR THE EFFECTIVE MANAGEMENT OF ML/TF RISKS WHEN PROVIDING ACCESS TO FINANCIAL SERVICES

14 November 2023²⁶

On 14 November 2023, the CAA issued its circular letter 23/14 on the adoption of the Guidelines of the EBA on policies and controls for the effective management of ML/TF risks when providing access to financial services.

The Circular applies to all undertakings and persons under the supervision of the CAA who are subject to the obligations as regards the fight against ML/TF ("**Professionals**").

The purpose of the Circular is to draw the attention of the Professionals to the publication by the EBA of the Guidelines EBA/GL/2023/04 (hereinafter, the "**Guidelines**"), supplementing the Guidelines on ML/TF risk factors (ref. EBA/GL/2021/02), as amended (cf. Circular letter CAA 23/13 of 14 November 2023).

The Guidelines specify the policies, procedures and controls credit and financial institutions should have in place to mitigate and effectively manage ML/TF risks in accordance with Article 8(3) of Directive (EU) 2015/849. The Guidelines also specify that the approach by institutions to applying customer due diligence (CDD) measures should not result in them unduly denying customers legitimate access to financial services.

The Guidelines also address aspects relating to the complaint mechanism that the Professionals should have put in place to ensure that customers can complain if they feel they have been treated unfairly.

The CAA informs Professionals that it has notified the EBA that the CAA complies with the Guidelines.

A link to the Guidelines is available in the Circular.

²⁶ CAA Circular 23/13:
https://www.caa.lu/uploads/documents/files/LC23-14_FR.pdf
(French original)

CAA Circular 23/13 (English convenience translation):
https://www.caa.lu/uploads/documents/files/LC23-14_EN.pdf

Guidelines:
https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2023/1054143/Amending%20GLs%20to%20the%20RFGs%20in%20relation%20to%20NPOs.pdf

CAA INFORMATION NOTE ON THE PROCEDURE ON ADMINISTRATIVE DISSOLUTION WITHOUT LIQUIDATION

21 November 2023²⁷

On 21 November 2023, the CAA issued its Information Note 23/10 on the Luxembourg law of 28 October 2022 creating the procedure of administrative dissolution without liquidation (*procédure de dissolution administrative sans liquidation*).

The Luxembourg law provides for the possibility of commercial companies established in Luxembourg to be dissolved without undergoing a full judicial liquidation procedure. The procedure is closed no later than six months after the publication of the decision opening the procedure. The Luxembourg register of commerce and companies ("RCS") established an insolvency register ("REGINSOL") which includes a record of judicial decisions and administrative dissolutions without liquidation. The REGINSOL can be consulted on the RCS website (www.lbr.lu).

The CAA reminds intermediaries as well as insurance and reinsurance undertakings that it is in their interest, in particular in the case of potential indebtedness, to check whether their counterparties (policyholders, external service providers, co-contractors, etc.) are mentioned in the record of judicial decisions and administrative dissolutions published in the REGINSOL.

The CAA notes that the manager of the RCS requests information on the financial situation of commercial companies that are subject to administrative dissolution proceedings from Luxembourg non-life insurance undertakings duly authorised in one or more of the insurance classes listed in points 13, 14, 15 or 16 of Annex I to the Luxembourg law of 7 December 2015 on the insurance sector, as amended.

In the absence of further information and notifications within the legal time limits, the RCS may, at the end of its verification mission, inform the state prosecutor (*procureur*

d'Etat) that the commercial company has no employees and owns no assets, in order to dissolve said company.

After an initial phase during which the CAA assisted the RCS with weekly verification requests of a maximum of 50 companies, it has been decided that from 1 January 2024 and in the context of processing the backlog, such verification requests will be transmitted by the CAA to the non-life insurance undertakings concerned on a quarterly basis with an expected volume of 2,500 companies to be verified.

The CAA asks the undertakings concerned to make appropriate preparations.

²⁷ [CAA Information Note 23/10:
https://www.caa.lu/uploads/documents/files/Note_info_23-10_PDAL.pdf](https://www.caa.lu/uploads/documents/files/Note_info_23-10_PDAL.pdf) (only in French)

**CAA INFORMATION NOTE 23/11 ON
PUBLICATION OF THE SINGLE LIST OF
PROMINENT PUBLIC FUNCTIONS AT
NATIONAL LEVEL, AT THE LEVEL OF
INTERNATIONAL ORGANISATIONS AND
AT THE LEVEL OF EUROPEAN UNION
INSTITUTIONS AND BODIES**

30 November 2023²⁸

On 30 November 2023, the CAA issued its Information Note 23/11 on the publication by the European Commission of the single list of prominent public functions at national level, at the level of international organisations and at the level of European Union institutions and bodies.

The purpose of the Information Note is to draw the attention of the persons under the CAA's supervision, who are subject to the obligations relating to the fight against money laundering and terrorist financing, to the publication of the List.

The CAA emphasises that in accordance with Articles 1(9) and (10)(i) of the AML/CTF Law, the natural persons performing the functions referred to in the List are to be considered as politically exposed persons.

The List was published on 10 November 2023.

A link to the List can be found in the Information Note.

²⁸ CAA Information Note 23/10:
https://www.caa.lu/uploads/documents/files/Note_info_23-11.pdf
(only in French)

List: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202300724

CAA INFORMATION NOTE 23/12 ON THE PRODUCTION OF SEPARATE SOLVENCY II REPORTS

5 December 2023²⁹

On 5 December 2023, the CAA issued its Information Note 23/12 on the production of separate Solvency II reports.

The purpose of the Information Note is to present a summary of the results obtained following the analysis of the separate Solvency II reports of 2022.

The CAA reminds that the separate Solvency II reports are produced in a digital format (Excel) and in narrative form:

- annually and on a declaratory basis by insurance and reinsurance undertakings ("**Operators**"); and
- occasionally by the Operator's statutory auditor (*réviseur d'entreprises agréé*) ("**Statutory Auditor**") when the latter is expressly notified thereof by the CAA.

The Reports show the level of compliance of the written procedures for evaluating the elements underlying the estimation of Solvency II technical provisions, the correct application of such procedures and compliance with the relevant regulatory provisions.

In view of the fact that all direct insurance undertakings and a representative proportion of the reinsurance sector (selection of insurance sector professionals) have been covered by an independent review by their Statutory Auditor since Solvency II came into force, the CAA has decided to stop the production of separate Solvency II reports (declaratory and by the Statutory Auditor) from the 2023 financial year onwards.

The CAA reiterates that the elements of non-compliance declared by the Operators and/or identified by the Statutory Auditors must be the subject of an appropriate remediation plan by the Operator and form an integral part of the internal auditor's plan.

The CAA also reserves the right to request a report on the progress of compliance.

²⁹ CAA Information Note 23/12:
https://www.caa.lu/uploads/documents/files/Note_info_23-12.pdf
(only in French)

CAA ISSUES CIRCULAR LETTER ON THE DEFINITION, VALIDATION, IMPLEMENTATION AND MONITORING OF AML/CTF COMPLIANCE PLANS

11 December 2023³⁰

On 11 December 2023, the CAA issued its circular letter 23/15 on the definition, validation, implementation and monitoring of AML/CTF compliance plans.

The Circular applies to all life insurance undertakings under the supervision of the CAA.

The CAA reminds that in accordance with Article 33(3) of CAA Regulation No. 20/03 of 30 July 2020 relating to the fight against money laundering and terrorist financing, ongoing customer due diligence includes the verification and updating of documents, data and information, which must always be carried out, without delay, in situations qualified as appropriate points in time in accordance with Article 3(5) of the AML/CTF Law, and Article 1(4) of the Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the AML/CTF Law, as amended, regardless of the frequency of ongoing due diligence otherwise determined in accordance with Article 33(1) of the CAA Regulation.

The CAA further states that situations which qualify as appropriate points in time include in particular substantial changes to the standards relating to customer identification documents and situations in which the undertaking realises that it does not have adequate information on a customer.

In this context, AML/CTF Compliance Plans may be initiated by undertakings or imposed on undertakings following documentary or on-site inspections by the CAA.

The purpose of the Circular is to specify the CAA's requirements regarding the definition, validation, operationalisation and monitoring of AML/CTF Compliance Plans, and in particular to:

- impose a structured and harmonised format for AML/CTF Compliance Plans;

- specify principles of good governance, with regard to both the validation and the implementation and monitoring of AML/CTF Compliance Plans; and
- introduce harmonised monitoring indicators, in order to enable the undertaking's administrative, management or supervisory body and the CAA to monitor the effective implementation of AML/CTF Compliance Plans.

The Circular entered into force with immediate effect. However, in cases where AML/CTF Compliance Plans which are already in application and for which corrective actions have been appropriately formalised, only the Circular's provisions relating to the implementation and monitoring of AML/CTF Compliance Plans apply.

³⁰ CAA Circular 23/15: (French only)
<https://www.caa.lu/uploads/documents/files/LC23-15.pdf>

CAA PUBLISHES INFORMATION NOTE ON REPORTING CALENDARS FOR 2024

15 December 2023³¹

On 15 December 2023, the CAA issued its Information Note on the publication of the calendars for reporting to the CAA in 2024.

The calendars differ depending on the status of the relevant supervised professional: (i) life- and non-life insurance undertakings; (ii) reinsurance undertakings; (iii) pension funds; (iv) groups; (v) professionals of the insurance sector; and (vi) brokerage firms and independent brokers.

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

³¹ CAA Information Note:
<https://www.caa.lu/fr/actualites/calendriers2024> (only in French)

CAA PUBLISHES CIRCULAR LETTER ON THE INSURANCE AGENCIES' ANNUAL REPORTING

25 January 2024³²

On 25 January 2024, the CAA published Circular Letter 24/1 on the insurance agencies' annual reporting.

On 13 June 2023, the CAA published circular letter 23/9 on the information sheet of the insurance agencies' annual reporting, introducing the annual reporting for insurance agencies. The first Reporting file to be provided by insurance agencies in the year 2023 contained a section (B) named "information sheet" concerning general information on Agencies. As announced in circular letter 23/9, the Reporting file to be provided from the year 2024 (hereafter the "**Annual Reporting File**") onwards contains a part (A) entitled "Business report" relating to figures on the agency's distribution activity during the reference year. The purpose of the Circular Letter is to provide a general explanation of the Annual Reporting File, and details of how to complete its two parts (A) and (B).

³² CAA Information Notice:
https://www.caa.lu/uploads/documents/files/LC24-1_Reporting_annuel_Agences_EN.pdf

CAA PUBLISHES INFORMATION NOTICE ON ONSITE INSPECTIONS

29 January 2024³³

On 29 January 2024, the CAA published Information Notice 24/3 on onsite inspection reports for 2021 and 2022.

In the Information Notice, the CAA presents a summary of the results of the prudential onsite inspections carried out in 2021 and 2022.

On the procedure, the Information Notice sets out that insurance and reinsurance undertakings concerned receive after the respective onsite inspection a draft letter from the CAA with an attachment listing the observations of breaches, insufficiencies and irregularities made during the onsite inspection by the CAA's officers. Following receipt of responses (including the remediation actions) of the undertaking and consideration thereof by the CAA, the CAA has issued a final letter on the respective onsite inspection with a listing of the breaches, insufficiencies and irregularities and conclusions by the CAA. The further follow-up on remediation actions have to be carried out by the internal audit of the undertaking and reported periodically to its governing instances. The authorised external auditor of the undertaking also has to report on the status of progress of remediation actions in its annual distinct report. The CAA may, on a case-by-case basis depending on gravity of breaches, require that the undertaking concerned engages an independent third party to produce a status report on the remediation actions' implementation.

The Information Notice further reports on certain recurrent observations made. These concern the areas of outsourcing management, key functions, investment management, board of directors and authorised managers, calculation of technical provisions and certain other areas.

The CAA encourages undertakings to ensure that the regulatory provisions linked at least to the issues highlighted in the Information Notice are, as the case may be, considered in their compliance action plan.

³³ CAA Information Notice:
https://www.caa.lu/uploads/documents/files/Note_info_24-3.pdf
(in French only)

CAA PUBLISHES INFORMATION NOTE ON THE NOTION OF INSURANCE INTERMEDIARY IN THE CONTEXTS OF COLLECTIVE INSURANCE CONTRACTS

31 January 2024³⁴

On 24 January 2024, the CAA published Information Notice 24/1 on the notion of "insurance intermediary" in the context of collective insurance contracts.

The Information Notice follows up on decision C-633/20 of 29 September 2022 by the CJEU specifying the notion of insurance intermediary under the EU Insurance Distribution Directive in a context where a German operator allowed consumers to adhere to group insurance subscribed by the operator and to give them the opportunity to benefit from the benefits of this insurance. The CJEU considers that a legal entity whose activity consists of proposing to its clients to adhere on a voluntary basis, against remuneration of such legal entity by the clients, in a group insurance previously subscribed with an insurance undertaking, and to give them the right to the provision of insurance, qualifies as an insurance intermediary and insurance distributor.

The Information Notice puts this CJEU decision in the Luxembourg law context and requests subscribers of collective insurance contracts ("**sponsors**") to analyse their specific situation and, if they fall within the notion of insurance intermediary, to obtain the required licence or registration and comply with the resulting IDD regime, such as applying conduct of business rules, or establish in their analysis that they fall under an exemption or do not meet the criteria set out above. Sponsors should, *inter alia*, verify:

- whether the insurance adherence will be voluntary or mandatory for the adhering party;
- the role and responsibilities of the sponsor in addition to being the group policyholder;

- the interest or not of adhering parties in the insurance vs. interest of the sponsor in the insurance;
- the importance of the insurance product within the range of products or services provided by the sponsor; and
- the qualification of the adhering party under the insurance contract.

The CAA is available to sponsors or insurance undertakings who wish to present their analysis to the CAA.

The CAA informs that it has carried out a first investigation on collective insurance contracts with insurance undertakings most active on the Luxembourg market and that could be affected by the Information Notice. The CAA emphasises the legal obligation of such undertakings to cooperate with intermediaries who are registered or licensed, and that the CAA therefore expects a proactive approach from such insurance undertakings. Insurance undertakings should therefore make sure that their existing or future partners respect the CJEU decision and obtain licensing or registration where required.

Clifford Chance in Luxembourg has produced a client briefing on the new Information Note of the CAA and action points for insurance undertakings and sponsors concerned.

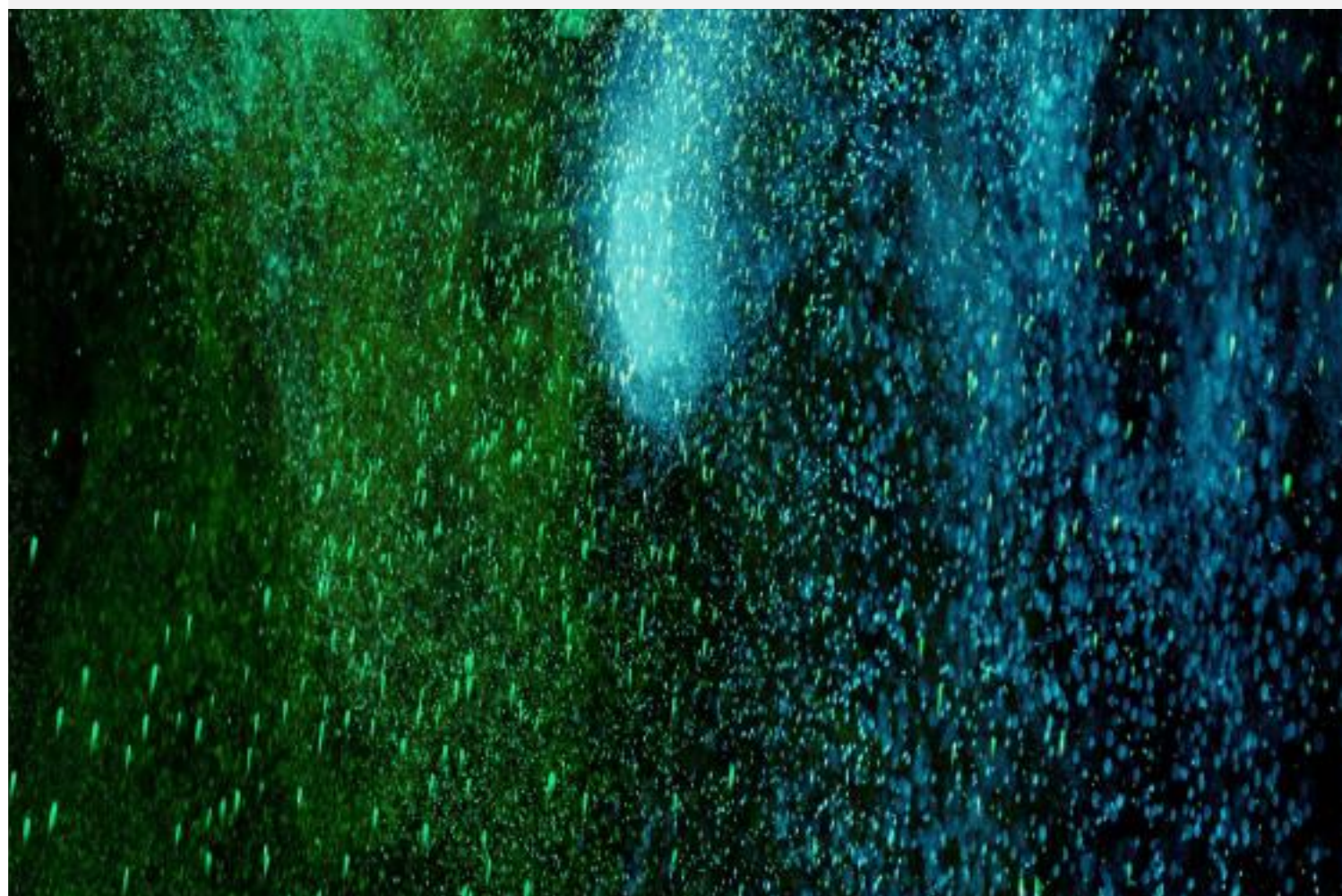
[See Contacts](#)

³⁴ CAA Information Notice:
https://www.caa.lu/uploads/documents/files/Note_info_24-1.pdf
(in French only)

Clifford Chance Client Briefing:
<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/01/caa-guidance-note-on-the-notion-of-insurance-intermediary-in-contexts-of-collective-insurance-contract.pdf>



FINTECH



FINTECH

EBA CONSULTS ON GUIDELINES ON PREVENTING ABUSE OF FUNDS AND CERTAIN CRYPTOASSETS TRANSFERS FOR MONEY LAUNDERING AND TERRORIST FINANCING

24 November 2023³⁵

The EBA launched a consultation on its draft 'travel rule' guidelines to prevent money laundering and terrorist financing through funds and certain cryptoasset transfers. The travel guidelines outline the measures that payment service providers (PSPs), intermediary PSPs (IPSPs), cryptoasset service providers (CASPs) and intermediary CASPs (ICASPs) should take to detect missing or incomplete information accompanying a transfer of funds or cryptoassets. They also provide procedures for managing transfers lacking required information. The guidelines aim to ensure consistent application of EU law and a stronger anti-money laundering and countering the financing of terrorism (AML/CFT) regime. Comments were due by 26 February 2024.



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https://extranet.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2024/Consultation%20on%20Guidelines%20on%20preventing%20the%20abuse%20of%20funds%20and%20certain%20crypto-

[assets%20transfers%20for%20ML-TF%20%28Travel%20rule%20Guidelines%29/1063898/Consultation%20paper%20on%20draft%20travel%20rule%20Guidelines%20under%20Regulation%20%28EU%29%202023_1113.pdf?retry=1](https://extranet.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2024/Consultation%20on%20Guidelines%20on%20preventing%20the%20abuse%20of%20funds%20and%20certain%20crypto-assets%20transfers%20for%20ML-TF%20%28Travel%20rule%20Guidelines%29/1063898/Consultation%20paper%20on%20draft%20travel%20rule%20Guidelines%20under%20Regulation%20%28EU%29%202023_1113.pdf?retry=1)

CSSF PUBLISHES COMMUNIQUÉ ON PROFESSIONAL OBLIGATIONS RELATED TO ACCOUNTS CENTRAL ELECTRONIC DATA RETRIEVAL SYSTEM

14 December 2023³⁶

On 14 December 2023, the CSSF published a communiqué reminding AML/CTF professionals, including in particular banks and other payment services providers, of their obligations under the Luxembourg law of 25 March 2020 establishing a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg ("**Central Register**"), as amended.

The CSSF reminds that in accordance with Article 2 of the Law, professionals must set up a data file allowing the identification of any natural or legal person who holds or controls, with such professionals, payment accounts or bank accounts identified by an IBAN, within the meaning of Article 2(15) of Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro, or safes (the "**File**"). In order for the objectives pursued by the Law and the establishment of the Central Register to be fulfilled, it is essential that professionals respect, when making available the File, the structure of the File and the details of the data that must be included in it, in accordance with Article 2(4) of the Law and CSSF Circular 20/747.

To this end, the CSSF draws the attention of professionals in particular to Annexes 1 and 2 to Circular 20/747, which describe the technical arrangements to be strictly followed and the structure of the file to be submitted to the CSSF. Compliance with the mandatory structure and information is intended to ensure proper transmission of the data contained in the File within the Central Register.

The CSSF, as manager of the Central Register, has provided professionals with continuous monitoring during its implementation, in particular by providing technical and legal assistance and publishing (i) information in the form of questions and answers, (ii) communications via MFT and (iii) other specific publications aimed at clarifying and

improving the structure of the File and its availability in the Central Register.

In addition to such reminders, the Communiqué draws the attention of professionals to some examples of deficiencies detected by the CSSF and other users accessing data of the Central Register, and which will have to be taken into account by professionals when reviewing compliance with their obligations in this area.

³⁶ Communiqué (only in French):
<https://www.cssf.lu/fr/2023/12/rappel-des-obligations-professionnelles-loi-modifiee-du-25-mars-2020-instituant-un->

[systeme-electronique-central-de-recherche-de-donnees-concernant-des-comptes-de-paiement-et-des-comptes-banc/](https://www.cssf.lu/fr/2023/12/rappel-des-obligations-professionnelles-loi-modifiee-du-25-mars-2020-instituant-un-systeme-electronique-central-de-recherche-de-donnees-concernant-des-comptes-de-paiement-et-des-comptes-banc/)

CSSF PUBLISHES COMMUNIQUÉ ON REVISED INBOUND EMAIL PROTOCOL SECURITY

4 January 2024³⁷

On 4 January 2024, the CSSF published a communiqué on revised inbound email protocol security at the CSSF.

The Communiqué informs the public that, in order to increase email security at the CSSF, all inbound emails are now checked with an email authentication protocol using Domain-based Message Authentication, Reporting & Conformance policies (DMARC) at the Domain Name System level (DNS), verifying server origin and digital signature of the email using the Sender Policy Framework (SPF) and DomainKeys Identified Mail (DKIM) protocols.

Any failure during these verification steps will result in the email not being delivered to its intended recipient(s).

The CSSF therefore asks senders to make sure that their DNS records are complete and correctly configured according to SPF/DKIM/DMARC best practices to avoid any rejected emails addressed to the CSSF.

³⁷ <https://www.cssf.lu/en/2024/01/revised-inbound-email-protocol-security-at-the-cssf/>

NEW CSSF ICT-RELATED INCIDENT REPORTING REQUIREMENTS AND PROCEDURE

5 January 2024³⁸

On 5 January 2024, the CSSF published two important documents regarding the ICT-related incident reporting framework, in order to acquire a better and more structured overview of the nature, frequency, significance and impact of ICT-related incidents, also considering the growing ICT and security risk in the context of a highly interconnected global financial system.

The first one is CSSF Regulation No 24-01 of 5 January 2024 relating to the notification of incidents according to the Law of 28 May 2019 transposing Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the European Union (the "**NIS Law**").

The second one is Circular CSSF 24/847 regarding the ICT-related incident reporting framework, replacing Circular 11/504 on fraud and incidents due to external computer attacks.

Both CSSF Regulation No 24-01 and Circular CSSF 24/847 will enter into force on 1 April 2024.

In its Article 2, CSSF Regulation No 24-01 informs Operators of Essential Services ("**OES**") and Digital Service Providers ("**DSP**") subject to the NIS Law, and for which the "NIS authority" is the CSSF according to article 3 of the NIS Law, of the incident classification and major incident notification requirements under the NIS Law. These have been further specified in Circular CSSF 24/847, in order to have one uniform document detailing the process for classification and reporting of ICT-related incidents for all entities under CSSF supervision in accordance with financial sector regulatory frameworks and/or with the NIS Law.

In its competence as NIS authority, the CSSF already informed the relevant supervised entities of their identification as OES, or of their consideration as DSP, when the NIS Law entered into force.

Circular CSSF 24/847 brings the following changes to the current incident reporting mechanism:

- Increase of the incident coverage, currently limited to fraud and incidents due to external computer attacks, by covering more broadly ICT operational and security incidents while avoiding double reporting for incidents to be notified under other incident notification frameworks.
- Introduction of reporting based on classification. Supervised entities will be required to classify ICT-related incidents based on the criteria indicated in this Circular and to notify to the CSSF the cases where ICT-related incidents are classified as major or significant incidents.
- Introduction of a new incident reporting notification form for major or significant incidents.
- Introduction of a specific chapter to cover in the same Circular CSSF 24/847 the incident notification requirements (previously communicated via bilateral communications to supervised entities that are under the scope of the NIS Law).

ICT-related incident notifications shall be submitted by considering the time limits and the data fields respectively laid down in the Annex I and II to Circular CSSF 24/847 as from 1 April 2024 and 1 June 2024, respectively.

The CSSF announces also that further guidance related to the submission channels and related submission procedure will be published at a later stage.

[See Contacts](#)

³⁸ CSSF Regulation: <https://legilux.public.lu/eli/etat/leg/rcsf/2024/01/05/a3/jo> and <https://www.cssf.lu/fr/Document/reglement-cssf-n-24-01-du-5-janvier-2024/>

CSSF Circular: <https://www.cssf.lu/fr/Document/circulaire-cssf-24-847/>

CSSF Communiqué: https://www.cssf.lu/fr/2024/01/communiqué-relatif-a-la-notification-d'incidents-lies-aux-tic/?utm_campaign=email-240105-8b1fa



ESG



ESG

ESMA PUBLISHES THREE EXPLANATORY NOTES ON EU SUSTAINABLE FINANCE FRAMEWORK

22 November 2023³⁹

The European Securities and Markets Authority (ESMA) published three explanatory notes covering key topics on the Sustainable Finance framework. These include the definition of sustainable investments; the application of do no significant harm (DNSH) requirements; and the use of estimates. The notes set out factual information regarding these concepts and are intended to aid stakeholders to navigate and better understand the legislative framework.



³⁹ https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2279_Note_Sustainable_investments_SFDR.pdf

[https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2281_Note_DNSH_definitions_and_criteria_across_the_EU_Sustainable_Finance_framework.pdf)

[2281_Note_DNSH_definitions_and_criteria_across_the_EU_Sustainable_Finance_framework.pdf](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-1668416927-2548_Note_Use_of_estimates_and_equivalent_information.pdf)

https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-1668416927-2548_Note_Use_of_estimates_and_equivalent_information.pdf

ESMA PROVIDES UPDATE ON TIMELINE FOR ADOPTING GUIDELINES ON FUNDS' NAMES USING ESG OR SUSTAINABILITY-RELATED TERMS

14 December 2023⁴⁰

ESMA postponed the adoption of the guidelines to ensure that the outcome of the AIFMD and UCITS Directive reviews (AIFMD2) may be fully considered, including two new mandates for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair or misleading. ESMA plans to adopt the guidelines shortly after the date of entry into force of AIFMD2, and the guidelines are expected to be approved and published in Q2 2024.

⁴⁰ https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1592494965-554_Public_statement_on_Guidelines_on_funds_names.pdf

CSSF PUBLISHES DOCUMENT ON TAXONOMY REGULATION DISCLOSURE BY ISSUERS

18 December 2023⁴¹

On 18 December 2023, the CSSF published a document on taxonomy regulation disclosure by issuers – the results of a focused examination on corporate reporting practices.

The purpose of the Document is to present a summary of the main findings of an examination by the CSSF to evaluate the quality of the disclosures provided by non-financial issuers under the new requirements contained in the Taxonomy Regulation, conducted in 2023.

The CSSF has carried out a focused examination of the information disclosed under Article 8 of the Taxonomy Regulation as from 1 January 2023 for a selection of non-financial issuers under its supervision conducting economic activities eligible under the Taxonomy Regulation.

2023 was the first year during which non-financial issuers were required to disclose not only the taxonomy eligibility, but also the alignment of their economic activities for the financial year 2022 with the first two environmental objectives set out in the Taxonomy Regulation: climate change mitigation and climate change adaptation.

The information to be disclosed as well as the timing for the disclosure are specified in Commission Delegated Regulation (EU) 2021/2178, as amended (the "**Disclosure Delegated Act**").

Regarding quantitative information, the CSSF has assessed:

- the use and completeness of the templates required by Annex II of the Disclosure Delegated Act;
- the adequate reporting of the different key performance indicators; and
- the avoidance of double counting for activities contributing to both climate objectives (mitigation and adaptation).

For qualitative information, the accounting policy and the assessment of compliance with Annex I to the Disclosure Delegated Act were examined, as well as the existence of references to other parts of the financial or non-financial statements. Finally, the disclosure of additional voluntary information was also analysed.

When reviewing the reports prepared by issuers, the CSSF undertook a more in-depth analysis of the areas where more clarity was deemed necessary or where incorrect application had been identified, and further action was taken by the CSSF accordingly.

⁴¹ Document: <https://www.cssf.lu/wp-content/uploads/Taxonomy-Regulation-Disclosures-by-Issuers.pdf>

EU COMMISSION ISSUES ADDITIONAL GUIDANCE ON TAXONOMY DISCLOSURES DELEGATED ACT

21 December 2023⁴²

The EU Commission has adopted a guidance document on the Taxonomy Disclosures Delegated Act, addressing frequently asked questions about its interpretation and implementation. The document clarifies reporting obligations of large financial undertakings and those trading on EU markets, taxonomy assessment of specific exposures, verification rules and compliance with the EU taxonomy, with specific focus on credit institutions, insurance undertakings and asset managers.

⁴² https://ec.europa.eu/finance/docs/law/231221-draft-commission-notice-eu-taxonomy-reporting-financials_en.pdf

CSSF PUBLISHES GAP ANALYSIS IN 2022 CLIMATE-RELATED DISCLOSURES BY ISSUERS

8 January 2024⁴³

On 2 February 2024, the CSSF published its paper 2022 climate-related disclosures: Gap analysis – Thematic review on issuers' sustainability statements on the verge of the CSRD entry into force (the "**Gap Analysis**") as well as a related communiqué.

To ensure transparent communication to their stakeholders on the evolution of the companies' business models towards more sustainable and resilient ones, since 2017, some sizeable issuers have been required to publish non-financial information under the NFRD. Starting from the financial year 2024, the CSRD will enter into force and issuers in its scope will have to report according to European Sustainability Reporting Standards ("**ESRS**").

The new rules will ensure that investors and other stakeholders have access to the information they need to assess the impact of companies on people and the environment and to evaluate financial risks and opportunities arising from sustainability issues, including climate change.

In order to gain a preliminary understanding of the gap that remains to be addressed by issuers with regard to the transition from the NFRD to the CSRD, in terms of sustainability disclosures, the CSSF has carried out a thematic review to examine the current reporting practices for 2022 for a selection of the largest issuers with a potential material impact of climate change under its supervision and falling within the scope of the NFRD. The CSSF's Gap Analysis presents therefore a snapshot of certain climate-related information as well as some more general related disclosures that issuers already publish. In addition, the CSSF takes the opportunity to issue some recommendations to the issuers concerned in light of certain of the new requirements that will come into force as from 2024 for publication in 2025. Given the prominence of

the subject, the Gap Analysis focuses primarily on information relating to climate change.

The Gap Analysis further refers to the CSSF's Communiqué dated 8 January 2024 on the priorities set for the 2024 enforcement campaign and that the CSSF expects to find substantial progress and good practices on the issuers' 2023 non-financial disclosure in preparation of the introduction of the CSRD.

In its outlook, the CSSF further emphasises that while the first companies that will have to apply the ESRS in financial year 2024, for reports published in 2025, are those that report today under the NFRD (with the addition of large listed EU subsidiaries of listed parents, exempted under the NFRD), the scope of entities concerned will increase gradually in subsequent years. Moreover, sector-specific standards will later supplement the first set of standards published in 2023. Finally, the CSSF reminds that issuers should take all necessary measures to keep themselves informed on the transposition of the CSRD into Luxembourg law, which should occur by 6 July 2024.

⁴³ CSSF Document: https://www.cssf.lu/fr/Document/informations-relatives-au-climat-pour-2022-analyse-des-ecarts/?utm_campaign=email-240202-f991f

ESAS PUBLISHES CONSOLIDATED Q&A ON SFDR

12 January 2024⁴⁴

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published a consolidated version of its Q&A on the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (SFDR) and the SFDR Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288).

[See Contacts](#)

⁴⁴ https://www.esma.europa.eu/sites/default/files/2023-05/JC_2023_18_-_Consolidated_JC_SFDR_QAs.pdf



ASSET MANAGEMENT



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⁴⁵ https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2279_Note_Sustainable_investments_SFDR.pdf

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[2281_Note_DNSH_definitions_and_criteria_across_the_EU_Sustainable_Finance_framework.pdf](https://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-1668416927-2548_Note_Use_of_estimates_and_equivalent_information.pdf)

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https://extranet.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2024/Consultation%20on%20Guidelines%20on%20preventing%20the%20abuse%20of%20funds%20and%20certain%20crypto-

[assets%20transfers%20for%20ML-TF%20%28Travel%20rule%20Guidelines%29/1063898/Consultation%20paper%20on%20draft%20travel%20rule%20Guidelines%20under%20Regulation%20%28EU%29%202023_1113.pdf?retry=1](https://extranet.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2024/Consultation%20on%20Guidelines%20on%20preventing%20the%20abuse%20of%20funds%20and%20certain%20crypto-assets%20transfers%20for%20ML-TF%20%28Travel%20rule%20Guidelines%29/1063898/Consultation%20paper%20on%20draft%20travel%20rule%20Guidelines%20under%20Regulation%20%28EU%29%202023_1113.pdf?retry=1)

CSSF ISSUES UPDATED FAQs CONCERNING THE LUXEMBOURG LAW OF 17 DECEMBER 2010 RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT

30 November 2023⁴⁷

The CSSF issued updated FAQs on UCITS on 30 November 2023. The updates aim to clarify the type of assets falling within the "ancillary liquid assets" bracket UCITS may hold up to 20%. The new FAQs, among others, clarify that bank deposits, money market instruments and/or money market funds cannot be included in this bracket.

⁴⁷ <https://www.cssf.lu/en/Document/faq-concerning-the-luxembourg-law-of-17-december-2010-relating-to-undertakings-for-collective-investment-version-16/>

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ESMA postponed the adoption of the guidelines to ensure that the outcome of the AIFMD and UCITS Directive reviews (AIFMD2) may be fully considered, including two new mandates for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair or misleading. ESMA plans to adopt the guidelines shortly after the date of entry into force of AIFMD2, and the guidelines are expected to be approved and published in Q2 2024.

⁴⁸ https://www.esma.europa.eu/sites/default/files/2023-12/ESMA34-1592494965-554_Public_statement_on_Guidelines_on_funds_names.pdf

**AIFMS/UCITS: EUROPEAN COMMISSION
ADOPTS TECHNICAL STANDARDS ON
CROSS-BORDER MARKETING AND
MANAGEMENT NOTIFICATIONS**

15 December 2023

The Commission adopted: RTS specifying the information to be notified in relation to the cross-border activities of managers of alternative investment funds (AIFMs); RTS specifying the information to be notified in relation to the cross-border activities of UCITS management companies and UCITS; ITS with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters; and ITS with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies and the exchange of information between competent authorities on cross-border notification letters.

ESMA FINALISES RTS UNDER REVISED ELTIF REGULATION

19 December 2023⁴⁹

The final draft RTS cover, among other things, the compatibility of the life of a European Long-Term Investment Fund (ELTIF) with the life-cycles of its individual assets, the circumstances for the use of the matching mechanism, and costs disclosure. They provide a framework for aspects such as the minimum holding period, maximum redemption frequency, choice of liquidity management tools, notice period and the maximum percentage of liquid assets that can be redeemed. ESMA has submitted the draft RTS to the EU Commission for approval.

⁴⁹ <https://www.esma.europa.eu/press-news/esma-news/esma-finalises-technical-standards-under-revised-eltif-regulation>

EU COMMISSION ISSUES ADDITIONAL GUIDANCE ON TAXONOMY DISCLOSURES DELEGATED ACT

21 December 2023⁵⁰

The EU Commission has adopted a guidance document on the Taxonomy Disclosures Delegated Act, addressing frequently asked questions about its interpretation and implementation. The document clarifies reporting obligations of large financial undertakings and those trading on EU markets, taxonomy assessment of specific exposures, verification rules and compliance with the EU taxonomy, with specific focus on credit institutions, insurance undertakings and asset managers.

⁵⁰ https://ec.europa.eu/finance/docs/law/231221-draft-commission-notice-eu-taxonomy-reporting-financials_en.pdf

ESAS PUBLISHES CONSOLIDATED Q&A ON SFDR

12 January 2024⁵¹

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published a consolidated version of its Q&A on the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (SFDR) and the SFDR Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288).

⁵¹ https://www.esma.europa.eu/sites/default/files/2023-05/JC_2023_18_-_Consolidated_JC_SFDR_QAs.pdf

DORA: ESAS PUBLISHES DRAFT TECHNICAL STANDARDS FOR ICT AND THIRD-PARTY RISK MANAGEMENT AND INCIDENT CLASSIFICATION

17 January 2024⁵²

The Joint Committee of the European Supervisory Authorities (ESAs) has published final draft technical standards under the Digital Operational Resilience Act (DORA) to bolster the digital operational resilience of the EU financial sector. These standards focus on enhancing ICT and third-party risk management and incident reporting frameworks, and include regulatory technical standards (RTS) on ICT risk management, criteria for ICT-related incidents, policy on ICT services and implementing technical standards (ITS) for information register templates. The draft standards have been submitted to the EU Commission for adoption.

⁵² <https://www.esma.europa.eu/press-news/esma-news/esas-publish-first-set-rules-under-dora-ict-and-third-party-risk-management> 17 January 2024

AIFMD2/ UCITS REVIEW: ADOPTION OF TEXT BY THE EUROPEAN COUNCIL

26 February 2024⁵³

The European Council adopted the new directive amending the Directive on Undertaking for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD) in relation to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds (AIFMD2).

The directive will now be published in the EU's Official Journal and enter into force 20 days later. Member states will have 24 months after the entry into force to transpose the rules into national legislation.

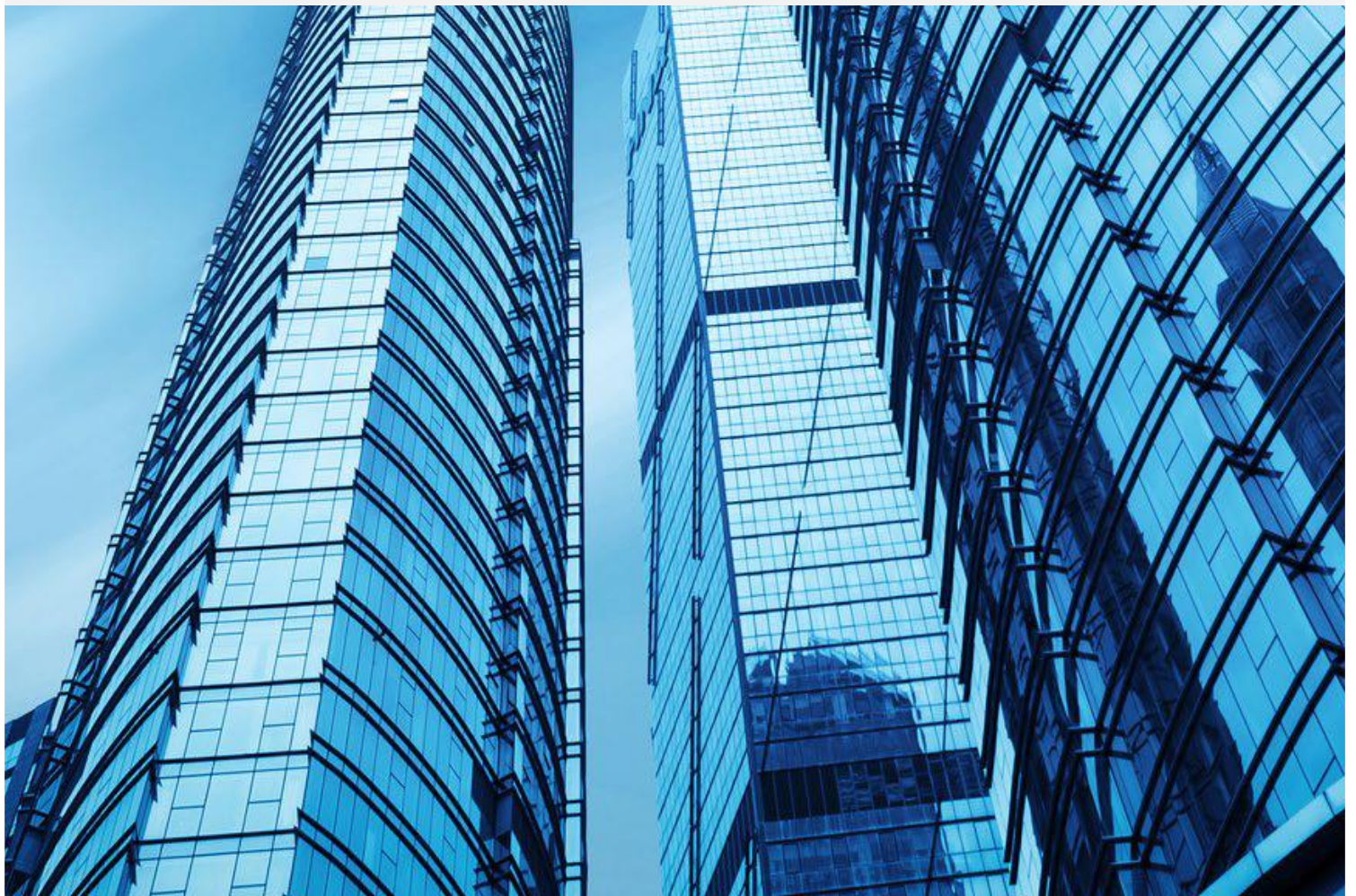
[See Contacts](#)

⁵³ https://www.consilium.europa.eu/en/press/press-releases/2024/02/26/capital-markets-union-council-adopts-new-rules-on-alternative-investment-fund-managers-and-plain-vanilla-eu-investment-funds/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Capital+markets+uni

[on%3a+Council+adopts+new+rules+on+alternative+investment+fund+managers+and+plain-vanilla+EU+investment+funds](https://www.consilium.europa.eu/en/press/press-releases/2024/02/26/capital-markets-union-council-adopts-new-rules-on-alternative-investment-fund-managers-and-plain-vanilla-eu-investment-funds/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Capital+markets+uni)



EMPLOYMENT, PENSIONS AND BENEFITS



EMPLOYMENT, PENSIONS AND BENEFITS

CHANGES REGARDING LUNCH VOUCHERS

1 January 2024 ⁵⁴

The regime applicable to lunch vouchers has been reformed by two Grand Ducal Regulations dated 25 September 2023, which entered into force on 1 January 2024.

The key modifications to lunch vouchers are the following ones:

- **Digitalisation of lunch vouchers:** lunch vouchers must now be issued and used in digital format. A transitional period allows the issuance and the granting of paper vouchers until 31 December 2024.
- **Use of lunch vouchers:** the rules on lunch vouchers, which previously restricted the use of lunch vouchers to paying of all or part of a meal, now allow employees to purchase food from an affiliated restaurant or merchant. It is also now specified that the applicable tax exemption is limited to the use of five lunch vouchers per day.

Increase in face value and in tax exemption: employers can increase the face value of lunch vouchers up to EUR 15 (instead of EUR 10.80). The maximum tax exemption is increased from EUR 8 to EUR 12.20 (the employee contribution remains at EUR 2.80).



⁵⁴ <https://legilux.public.lu/eli/etat/leg/rgd/2023/09/25/a621/jo>
<https://legilux.public.lu/eli/etat/leg/rgd/2023/09/25/a622/jo>

RULES APPLICABLE WHEN TWO PUBLIC HOLIDAYS FALL ON THE SAME DAY

Law of 8 February 2024 amending the Labour Code notably ⁵⁵

Two public holidays will fall on 9 May 2024 (Ascension Day and Europe Day). A law of 8 February 2024, entered into force on 27 February 2024, regulate the employees' rights in this exceptional situation.

The rules and employees' entitlements provided for by the law are the following ones:

- Increase of 100% of the normal remuneration for the hours effectively worked on this day; and
- One day of compensatory holiday to be granted by the employer within three months.

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i. Two public holidays fall on a working day on which the employee would normally have worked:

- Normal remuneration for the hours which would have been performed on this day; and
- One day of compensatory holiday to be granted by the employer within three months.

ii. Two public holidays fall on a working day on which the employee would not normally have worked:

- Two days of compensatory holidays to be granted by the employer within three months.

iii. Two public holidays fall on a working day on which the employee would normally have worked only four hours or less:

- Normal remuneration for the hours which would have been performed on this day; and
- Two half days of compensatory holidays to be granted by the employer within three months.

iv. Two public holidays fall on a working day on which the employee is required to work:

- Normal remuneration for the hours which would have been performed on this day;
- Normal remuneration for the hours effectively worked on this day;

⁵⁵ <https://legilux.public.lu/eli/etat/leg/loi/2024/02/08/a66/jo>



CORPORATE



CORPORATE

EUROPEAN COMMISSION PROPOSES BROADER FDI SCREENING REQUIREMENTS FOR M&A

24 January 2024

On 24 January 2024, the European Commission published a draft EU Regulation that would require all EU member states to impose mandatory filing requirements for investments by foreign (i.e., non-EU) investors in certain sectors. It would also strengthen and, for many deals, lengthen the "cooperation mechanism" that requires clearance to be delayed until other member states and the European Commission have had the opportunity to comment on screened transactions, while substantially reducing the number of deals that would be subject to the mechanism. The draft EU regulation is currently subject to the EU's legislative process.

Separately, the European Commission has also been considering whether to introduce a screening regime for certain "outbound" investments (i.e., investments by EU businesses in other jurisdictions). Such decision has been delayed to 2025.

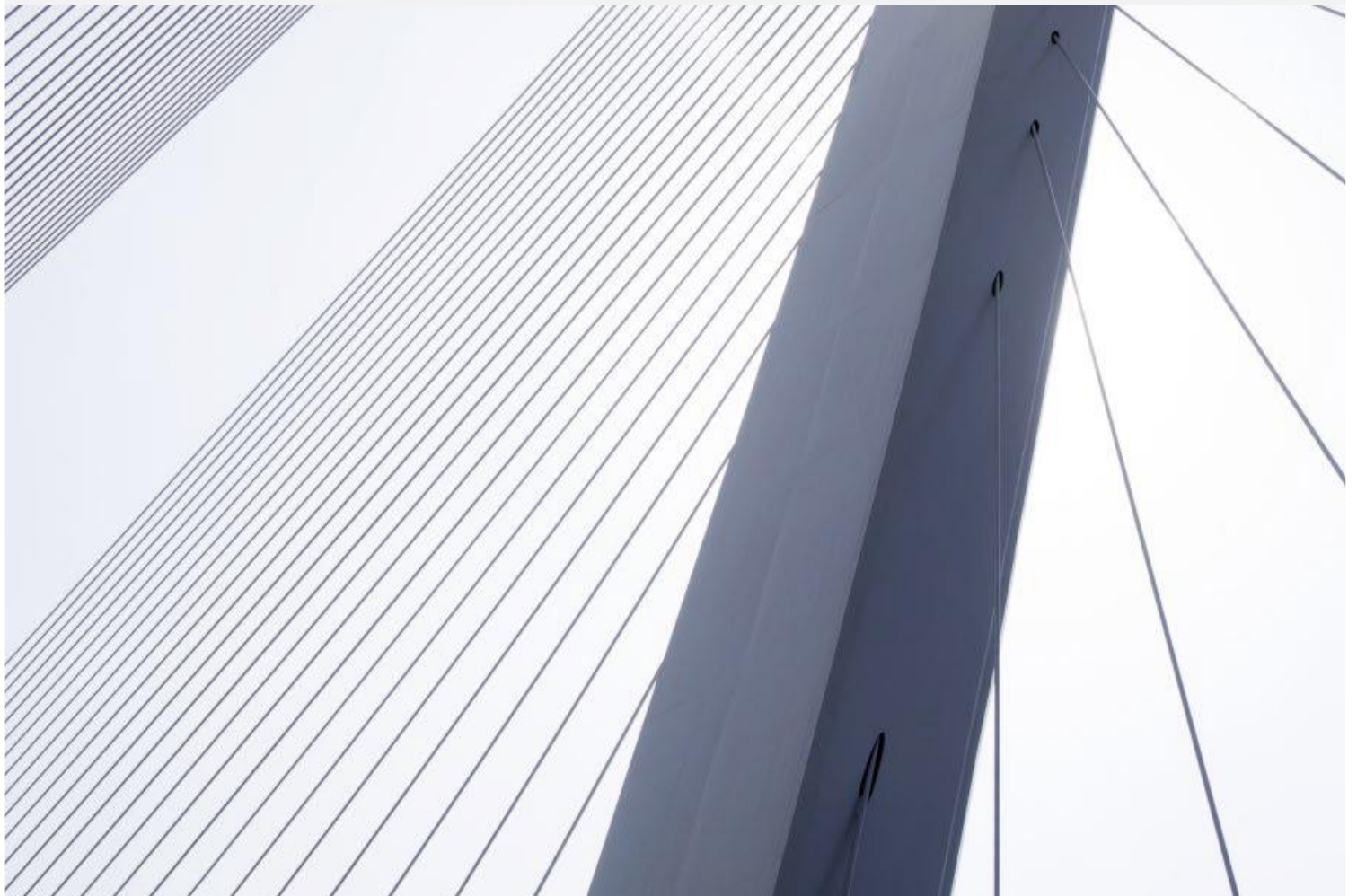
For further information in relation thereto check out our client briefing [here](#).

[See Contacts](#)





TAX



TAX

MINIMUM NET WEALTH TAX DECLARED PARTIALLY UNCONSTITUTIONAL

10 November 2023⁵⁶

On 10 November 2023, the Luxembourg Constitutional Court ruled on the compatibility with the Luxembourg Constitution of the provisions related to the minimum net wealth tax ("**NWT**") applicable to holding and financing companies (case No 00185).

Under Luxembourg law, resident companies are subject to an annual NWT at the rate of 0.5% on their worldwide net wealth on a taxable base of up to EUR 500 million (0.05% on the portion of the NWT base above EUR 500 million, without any cap). In any case, all Luxembourg-resident companies are at least subject to a minimum NWT, the computation of which depends on the structure of their balance sheet. According to §8 (2) a) of the law dated 16 October 1934 concerning the NWT ("*Vermögenssteuergesetz*" – "**VStG**"), the flat minimum NWT is set at EUR 4,815 for companies whose financial assets, receivable against related companies, transferable securities and cash deposits ("**Qualifying Assets**"), cumulatively exceed 90% of their total balance sheet and EUR 350,000. For companies which do not meet these conditions, the minimum NWT is computed according to a progressive tax scale varying from EUR 535 to EUR 32,100 for a total balance sheet comprising respectively from EUR 350,000 to at least EUR 30,000,001 pursuant to §8 (2) b) of the VStG. For example, such a company having a total balance sheet comprising a range of EUR 350,001 to 2,000,000 will be subject to a minimum NWT of EUR 1,605.

The question referred to the Constitutional Court was whether these provisions are compliant with the constitutional principle of equality before the law which prohibits unjustified discrimination (article 15 of the Luxembourg Constitution, as amended and applicable as of 1 July 2023; former article 10bis §1).

To this end, the Constitutional Court ruled that companies in comparable situations (i.e., companies with a balance

sheet meeting the 90% threshold) may be subject to a minimum NWT set at EUR 4,815 or EUR 1,605, depending on whether the total amount of their Qualifying Assets also exceeds EUR 350,000, leading to a difference of treatment between these companies.

To the extent that no justification of this discrimination was brought by the government representative and that such justification could not be inferred from the parliamentary documents, the Constitutional Court considered that the flat minimum NWT was unconstitutional. Finally, the Constitutional Court ruled that, pending a legislative reform, the progressive NWT must be applied to taxpayers whenever it is more favourable than the flat NWT.



⁵⁶ <https://legilux.public.lu/eli/etat/leg/acc/2023/11/10/a745/jo>

THE ADMINISTRATIVE COURT OF LUXEMBOURG QUALIFIES AN INTEREST-FREE LOAN AS A DEBT FROM A TAX STANDPOINT

23 November 2023⁵⁷

On 23 November 2023, the Administrative Court of Luxembourg ruled in case No 48125C on whether an interest-free loan should be qualified as equity or debt from a Luxembourg tax perspective.

In the case at hand, a Luxembourg company (the "**Lender**") had funded its wholly owned subsidiary (also a Luxembourg company – the "**Borrower**") with an interest-free loan (the "**IFL**").

The Borrower subsequently made a tax adjustment according to transfer pricing rules and deducted in its tax return a notional interest on the IFL. At the Lender's level, a corresponding income had been declared. However, the Luxembourg tax administration refused such deduction on the ground that the sums made available via the IFL had to be qualified as equity.

Based on a precedent case law⁵⁸, the Administrative Court ruled that to qualify as an interest-free loan for tax purposes, the principle of economic reality (*substance over form principle*) – which should prevail over a purely legal qualification – must be applied, based on all the characteristics of the loan and the circumstances in which it has been granted.

The Administrative Court then considered, based on a global approach, that the IFL should be qualified as debt in light of, notably, the following hallmarks:

- the IFL does not grant to the Lender shareholder voting rights or the right to participate in the Borrower's profits or liquidation surplus;
- the IFL could not be repaid in kind with the Borrower's shares nor converted into equity unilaterally by the Lender;

- the IFL does not provide for a stapling clause that would prevent the Lender from transferring its rights and obligations under the IFL independently of the Borrower's shares; and
- the IFL has a "short" maturity date, on which it must be repaid.

Furthermore, the following circumstances had been considered as not relevant for the analysis at hand:

- the fact that the IFL was drafted and signed after the funds had been made available does not allow to presume the existence of a disguised contribution of equity under the form of a loan;
- the sums made available through the IFL substantially financed the acquisition of securities, so that they cannot be considered to have been allocated to long-term fixed assets; and
- there is no disproportion between the amount loaned and the borrower's equity.

In light of the above, the Administrative Court ruled in favour of the Borrower and confirmed that the IFL qualified as a debt instrument for Luxembourg tax purposes, without however tackling the question of the deductibility of notional interest in its principal and the amount effectively tax deductible.

⁵⁷ <https://ja.public.lu/45001-50000/48125C.pdf>

⁵⁸ CA, 26 July 2017, n° 38357C: <https://ja.public.lu/35001-40000/38357C.pdf>

ADOPTION OF THE BILL TRANSPOSING PILLAR 2 DIRECTIVE INTO LUXEMBOURG LAW

22 December 2023⁵⁹

On 22 December 2023, the Luxembourg Parliament adopted bill No 8292 which implements Council Directive (EU) 2022/2523 of 15 December 2022 (the "**Pillar 2 Directive**") on ensuring a global minimum level of taxation for multinational entities ("**MNEs**") and large-scale domestic entities within the European Union (the "**Pillar 2 Law**")⁶⁰. The Pillar 2 Law aims to implement a system of interlocking rules to ensure that large group companies having consolidated annual revenue of at least EUR 750 million will pay a minimum of 15% effective tax rate on their profits in each country where they operate and earn revenue.

To enforce the minimum taxation, the Pillar 2 Law introduces new taxes, based on the application of interrelated rules, namely the Income Inclusion Rule ("**IIR**") and the Under-Taxed Profits Rule ("**UTPR**"). The IIR is the primary mechanism, compelling the parent company's country of residence to impose a top-up tax (*impôt complémentaire*) on the earnings of foreign subsidiaries (or the parent company itself) should these subsidiaries incur an effective tax rate below the 15% threshold. The UTPR acts as a safety mechanism in cases where the minimum taxation of 15% is not already achieved by applying the IIR or the QDMTT (as defined below), by reallocating the residual amount of profits which have not been subject to a minimum level of taxation.

Certain entities are excluded from the Pillar 2 Law, notably governmental entities, non-profit organisations, pension funds, investment funds and real estate investment vehicles that are ultimate parent entities. In addition, entities are also excluded if they are owned (directly or indirectly) at least 95% by exempt entities and operate almost exclusively to hold assets or invest funds for the exempt entities.

Furthermore, the Pillar 2 Directive allows member states to impose a Qualified Domestic Minimum Top-up Tax ("**QDMTT**"). This mechanism allows for the levy of a national top-up tax prior to the application of the IIR or UTPR that would otherwise be payable in another jurisdiction. This rule has been implemented into Pillar 2 Law and consists of an additional tax on low-taxed Luxembourg constituent entities of a MNE group to guarantee compliance with the minimum tax threshold.

The Pillar 2 Law's rules apply to fiscal years starting as from 31 December 2023, with an exception for the rules related to the UTPR⁶¹ which will enter into force for fiscal years starting from 31 December 2024.

⁵⁹ <https://legilux.public.lu/eli/etat/leg/loi/2023/12/22/a864/jo>

⁶⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2523>

⁶¹ Articles 11 to 13 of the Pillar 2 Law.

RESTORATION OF VAT RATES AS IN FORCE IN 2022

1 January 2024⁶²

In response to inflationary pressures, article 1 of the law of 26 October 2022⁶³ temporarily reduced certain VAT rates for the calendar year 2023.

In the absence of legislation to extend this decrease, the VAT rates in force in 2022 have thus been restored from 1 January 2024, as follows:

- the standard VAT rate (applicable to all transactions that do not benefit from lower rates) is increased from 16% to 17%;
- the intermediate VAT rate (applicable to custodian services, management of credits and credit guarantees, etc.) is increased from 13% to 14%; and
- the reduced VAT rate (applicable to electricity, gas, etc.) is increased from 7% to 8%.

The super-reduced rate of 3% remains unchanged.

⁶² <https://pfi.public.lu/dam-assets/pdf/legislation/tva/circulaires/812-1-tva-taux-applicables-partir-01012024.pdf>

⁶³ <https://legilux.public.lu/eli/etat/leg/loi/2022/10/26/a534/jo>

THE EUROPEAN PARLIAMENT ADOPTED A REVISED VERSION OF THE PROPOSAL FOR THE DIRECTIVE DEBRA

16 January 2024⁶⁴

On 11 May 2022, the European Commission published a proposal for a directive laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (hereinafter "DEBRA" or the "Proposal")⁶⁵.

The Proposal includes two main measures: (i) allowing the tax deduction of an equity allowance; and (ii) limiting the tax deductibility of interest up to 85% of net borrowing costs. The equity allowance is computed by multiplying the difference between net equity at the end of the current fiscal year and net equity at the end of the previous fiscal year with an interest rate made up of (i) a risk-free rate⁶⁶ and (ii) a flat risk premium of 1.5% or 1%, depending on whether the taxpayer qualifies as an SME.

On 16 January 2024, the European Parliament adopted a new version of the Proposal with minor changes in order to adapt it to different company sizes⁶⁷ and related, *inter alia*, to the period of tax deductibility of the equity allowance, the carry forward period of the excess of such allowance over taxpayer's net income or the taxation period in the event of a decrease in the taxpayer's equity⁶⁸.

In this regard, it may notably be noted that:

- the risk premium of 1% would now be reserved for SMEs only, which should imply that other taxpayers would not benefit from an incentive in addition to the risk-free rate allowance; and

- the new rule limiting the tax deductibility of interest would apply from 1 January 2027 and only to the taxpayers who do not qualify as an SME or a medium-sized group.

Since the Proposal is passing through the consultation procedure, the Council of the European Union is not bound by the amendments of the Parliament, which means that these modifications are not set in stone.

⁶⁴ [https://www.europarl.europa.eu/RegData/seance_pleniere/textes_depotes/rapports/2023/0387/P_9_A\(2023\)0387_FR.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_depotes/rapports/2023/0387/P_9_A(2023)0387_FR.pdf)

⁶⁵ EU Council Directive proposal: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0216>

⁶⁶ Corresponding to the 10-year risk-free interest rate for the relevant currency.

⁶⁷ Namely: SME, medium-sized group, large undertaking and large group. These notions are defined by the Proposal by reference to the [Directive 2013/34/EU of 26 June 2013](#) on the annual financial

statements, consolidated financial statements and related reports.

⁶⁸ For instance, the possibility to carry forward the excess of allowance on equity without time limitation would now be available only for the taxpayers who qualify as an SME or a medium-sized group, whereas the taxpayers who qualify as a large undertaking or large group would be able to perform such carry forward only over a period of three fiscal years.

THE EUROPEAN COURT OF JUSTICE RULED THAT DIRECTORS' FEES ARE OUT OF THE SCOPE OF VAT

16 January 2024⁶⁹

On 21 December 2023, the European Court of Justice ("ECJ") ruled on whether directors' fees (*tantièmes*) should be subject to VAT (case C-288/22).

Indeed, the question referred to the ECJ was whether the function of member of a board of directors of a Luxembourg company (i) is an economic activity (ii) which is performed independently by the board member – in the meaning of the VAT Directive – leading to the taxation of such activity.

As a reminder, based on circular No 781 of 30 September 2016⁷⁰, the Luxembourg VAT administration (*Administration de l'Enregistrement, des Domaines et de la TVA*) considered that director mandates of Luxembourg companies exercised independently by private individuals or legal persons constitute an activity falling within the scope of VAT. Thus, since 1 January 2017, directors' fees are subject to VAT at the standard rate and Luxembourg-based directors are liable to register for VAT, issue VAT compliant invoices and file Luxembourg VAT returns.

Firstly, the ECJ ruled that directors may carry out an economic activity to the extent that they supply services to the company on a permanent basis – in the case at hand due to the director's renewable six-year term – in consideration of a remuneration for which the procedures for fixing the amount are foreseeable. In addition, the ECJ considered that there is a direct link between the service and the remuneration, since the director was remunerated in respect of his or her function as a member of the board of directors.

However, in a second step, the ECJ ruled that this economic activity is not carried out independently despite the fact that the director is free to arrange how to perform his or her work, receives the emoluments making up his or her income, acts in his or her own name and is not subject

to an employer-employee relationship. It was ruled that the director indeed does not bear the economic risk linked to his or her own activity, instead it is the company itself that will bear such risk, thereby excluding the independent character of the director's economic activity.

The ECJ decision contradicts the position of the Luxembourg VAT administration and will directly impact both directors and companies. Directors, on the one hand, would need to deregister from Luxembourg VAT, stop issuing invoices with VAT, thereby stop collecting VAT from companies and stop remitting it to the Luxembourg VAT administration. On the other hand, they will not be able to deduct VAT on their costs and they will have to reimburse the previously deducted VAT.

In a formal response dated 22 January 2024⁷¹, the Luxembourg Finance Minister stated that any person (providing directorship services) in the scope of the ECJ decision should issue rectifying invoices to the companies to which directorship services were supplied to obtain a refund of the VAT unduly levied by the Luxembourg VAT administration. Then, the VAT refunded must be returned to the debtor of the director's fees (i.e., the company). Furthermore, the VAT claim may relate to the last five calendar years, it being explicitly specified that, by exception to the applicable statutory limitation rules, the Luxembourg VAT administration would accept requests for the year 2018 as well.

[See Contacts](#)

⁶⁹ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=280777&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1043161>

⁷⁰ Circular No 781: https://pfi.public.lu/dam-assets/pdf/circulaires/tv/2016/Circ_-N_781-du-30_09_2016.pdf

⁷¹ Formal response dated 22 January 2024: <https://wdocs-pub.chd.lu/docs/exped/0144/110/289101.pdf>



LITIGATION AND DISPUTE RESOLUTION



LITIGATION AND DISPUTE RESOLUTION

THE APPLICATION FOR JUDICIAL REORGANISATION TO BENEFIT FROM A STAY (SURSIS)

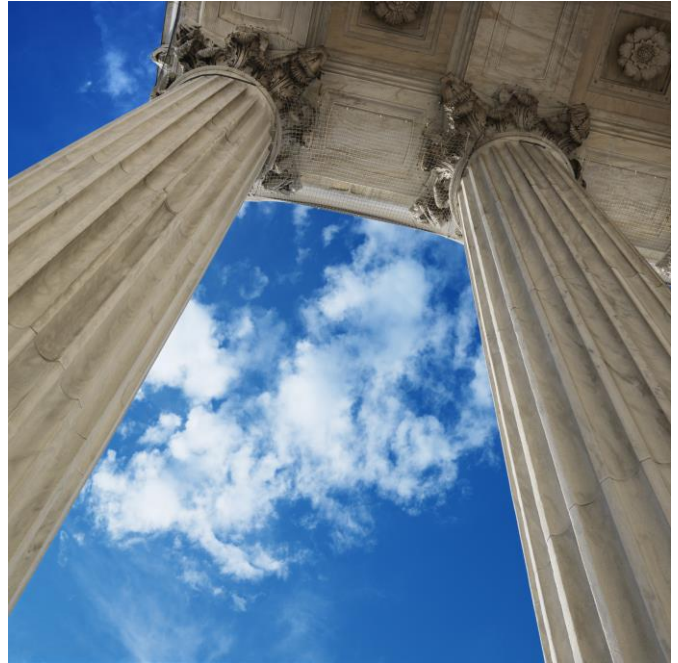
22 November 2023⁷²

A limited liability company filed an application for the opening of judicial reorganisation proceedings, based on articles 12 et. seq. of the law of 7 August 2023 on business preservation and modernisation of bankruptcy law ("**Law**") and arguing for the existence of financial difficulties jeopardising its continuity and for a request for bankruptcy pending against it filed by its only creditor.

Pointing out that the debtor's state of bankruptcy does not preclude the opening or the continuation of judicial reorganisation proceedings, and that the creditors of the claimant were more numerous than those declared by the claimant in the application and during the proceedings, the Luxembourg District Court ruled that the initiation of judicial reorganisation proceedings is not conditional on the good faith of the debtor, whereas it requires, above all, that the continuity of the business is threatened.

In addition, the Luxembourg District Court concluded that there was clear and serious misconduct in the case at hand, based on the delay in the publication of the claimant's annual accounts, the existence of a debt of the claimant's shareholder against the claimant and of dividends paid to the claimant's shareholder despite the existence of unpaid debts.

The Luxembourg District Court consequently granted the State Prosecutor's request and appointed, pursuant to article 23 of the Law, a provisional administrator to replace the manager for the duration of the stay (sursis).



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<https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20c>

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LATE SUBMISSION OF EXHIBITS AND NULLITY FOR FRAUD

1 February 2024⁷³

The Luxembourg District Court first ruled that the communication of the exhibits the day before the court hearing scheduled for the pleadings of the matter is to be considered as late, and the exhibits submitted late shall be set aside.

The Luxembourg District Court then held that a training contract entitled "*master's study contract*" ("**Contract**") offered by a company, even though the diploma awarded is not a "master's degree" recognised by law, is null and void on grounds of fraud.

The court considered indeed that the title is clearly liable to mislead the candidate-student as regards the nature and the value of the training provided and the diploma awarded at the end of it. The reference made in the Contract to the terms "*Master 1*" and "*Master 2*", respectively to "*European Diploma*" reinforces the misleading appearance created and denotes the intention to create an apparent situation likely to lead the candidate-student to believe that, at the end of the training followed under the Contract, he or she would hold a diploma conferring a master's degree and officially validating five years of university studies BAC+5.

[See Contacts](#)

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<https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20c>

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GLOSSARY



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

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

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

"**EBA**": European Banking Authority

"**EMIR**": Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended

"**EMIR Law**": Luxembourg law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories, as amended

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

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

"**Insurance Sector Law**": Luxembourg Law of 7 December 2015 on the insurance sector, as amended

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

"**PSD2**": Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, as amended

"**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

"**Transparency law**": law of 11 January 2008 on Transparency requirements for issuers

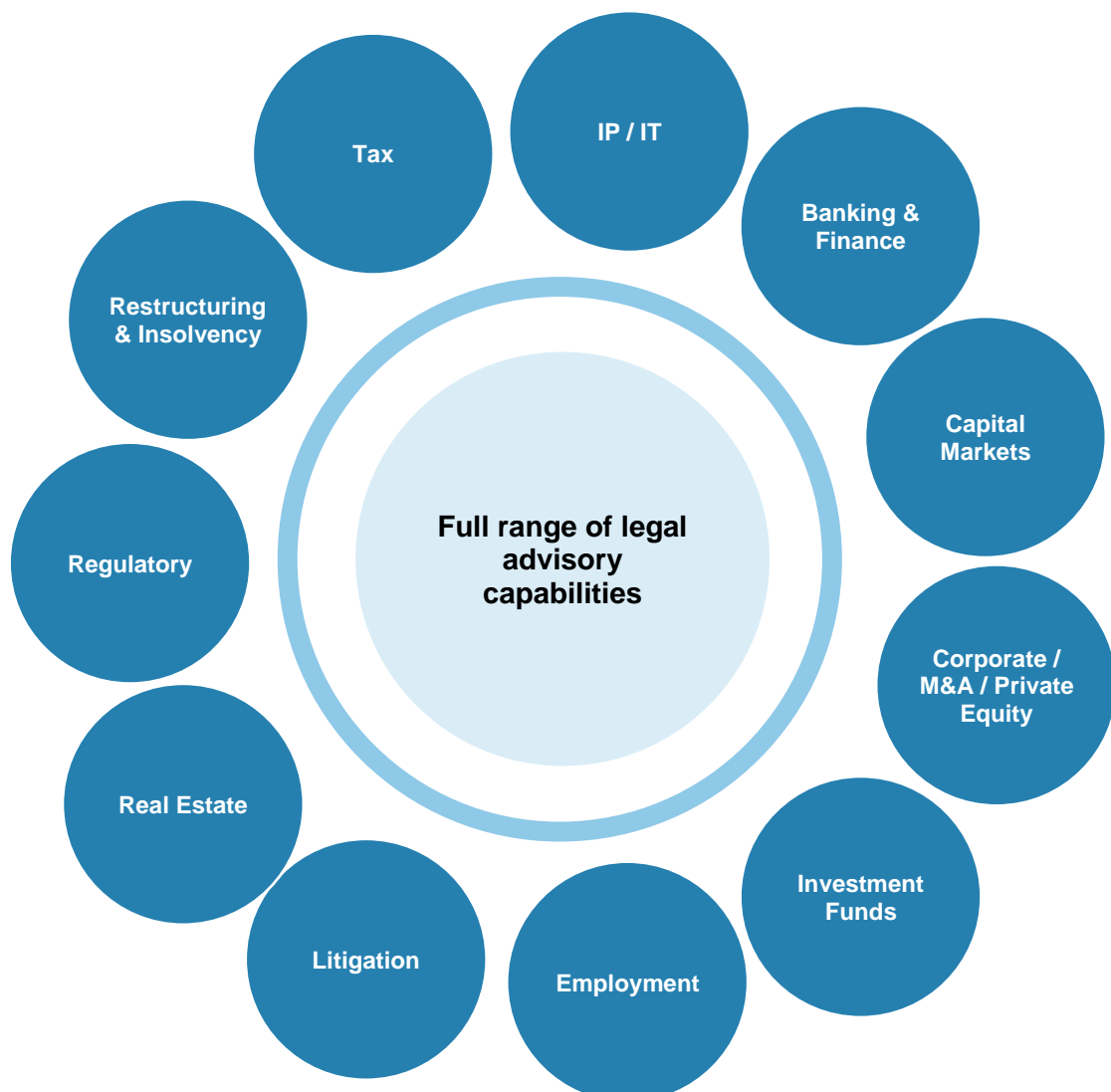
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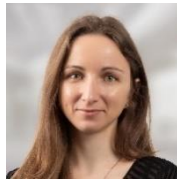
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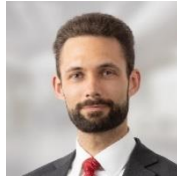
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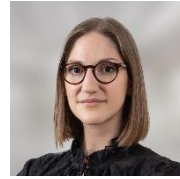
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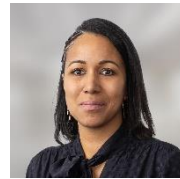
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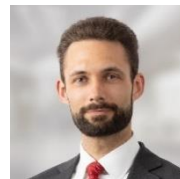
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