LUXEMBOURG LEGAL UPDATE
MARCH 2022

Dear Reader,

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

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

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

Coronavirus: What are the legal implications?

Financial Toolkit

Fintech guide

Green and Sustainable Finance Topic Guide

Brexit Hub

ONLINE RESOURCES

To view the "**client briefings**" mentioned in this publication, please visit: www.cliffordchance.com

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

Follow Clifford Chance Luxembourg on **LinkedIn** to stay up to date with the legal industry in Luxembourg

CONTENTS

Financial Institutions	3
Insurance	26
Fintech	29
ESG	30
Asset Management	33
Employment	36
Corporate	39
Tax	42
Real Estate	48
Glossary	51
Clifford Chance in Luxembourg	54
Your Contacts	55

FINANCIAL INSTITUTIONS

CSSF UPDATE OF THE ADDITIONAL GUIDANCE FOR CREDIT INSTITUTIONS RELATED TO SPECIFIC REPORTING ASPECTS

CSSF Guidance of 4 November 2021[1]

On 4 November 2021, the CSSF issued an updated version of its additional guidance for credit institutions related to specific reporting aspects.

Said updated version contains additional guidance related to:

- LEVER C 40.00 and C 47.00 templates, and
- LAREX C 27.00 template.

Regarding the LEVER C 40.00 template, the CSSF provides additional guidance relating to some specific fields that require special attention either because they are new with respect to the table preceding 30 June 2021 or because the Implementing Technical Standards instruction on the field has to be carefully read.

The LEVER C 47.00 template has dramatically changed since 30 June 2021. Thus, the CSSF provides additional guidance regarding (i) its section "Leverage Exposure" which appears remarkably enlarged by incorporating new items and fields as a result of the new CRR II provisions and (ii) the table section "Requirements" which has been added.

Regarding the LAREX C 27.00 template, the objective of the added guidance is to provide further instructions on how to properly use the counterparty codes in said template which content has been amended following the release of European Banking Authority taxonomy V3.0 (taxonomy to be used starting reference period 06/2021 onwards).

NATIONAL AML/CTF PREVENTION COMMITTEE ADOPTS GUIDELINES ON THE REGISTRATION REQUIREMENT FOR TRUST AND COMPANY SERVICE PROVIDERS

October 2021[2]

In October 2021, the Trust and Company service providers (TCSPs) Working Group of the National Prevention Committee adopted Guidelines on the registration requirement of TCSPs under Article 7-2(1) of the AML/CTF Law (TCSP Guidelines).

The TCSP Guidelines are aimed at professionals under the AML/CTF control by the Administration de l'enregistrement, des domaines et de la TVA, the Institut des réviseurs d'entreprises, the Ordre des experts-comptables, the Ordre des avocats de Luxembourg and the Ordre des avocats de Diekirch. The TCSP Guidelines are therefore not addressed to professionals subject to supervision by the financial or insurance sector regulators CSSF and CAA in Luxembourg, but to certain liberal professions and to unregulated entities.

The TCSPs Working Group states that the purpose of the TCSP Guidelines is to clarify certain concepts (e.g. "legal arrangement" and "director") in order to harmonise the understanding of professionals whether and when they are required to register pursuant to article 7-2 (1) of the AML/CTF Law with the supervisory authority or self-regulatory body to which they belong.

Moreover, the TCSPs Working Group indicates that the drafting of the TCSP Guidelines was necessary in light of the number of situations and circumstances in which the TCSP service defined in article 1(8) of the AML/CTF Law may be relevant.

1 CSSF Guidance

2 TCSP Guidelines

CSSF COMMUNIQUÉ ON DOMICILIATION ACTIVITY EXERCISED WHEN OPERATING A BUSINESS CENTRE OR A COWORKING SPACE

CSSF Communiqué of 23 November 2021[3]

On 23 November 2021, the CSSF issued a communiqué on domiciliation activity exercised when operating a business centre or a coworking space.

The CSSF notes that the activity of operating a business centre or a coworking space has evolved significantly and that the service providers now allow clients to establish their registered office at the service provider's address and provide additional services. Some of them even offer the possibility of registering a registered office at their address on the basis of "virtual offices" without any physical presence of the client being required.

The CSSF reminds that the provision of a registered office or a commercial or professional address to a company which carries out an activity within the scope of its corporate purpose, and the provision of any services related to such activity, constitutes a company domiciliation activity within the meaning of article 1 of the law of 31 May 1999 governing the domiciliation of companies, as amended.

The CSSF considers that a service provider who makes its address available to companies in order to establish their headquarters or addresses via a workstation in an "open space" or a "virtual office" is carrying out a domiciliation activity.

In accordance with the administrative practice of the CSSF, a lease of closed and private offices to a company which establishes its registered office there is, in principle, not considered as a domiciliation activity provided that it is a genuine lease, i.e. a durable and permanent lease, ensuring to the tenant the use of private premises for exclusive use. In case services are provided to companies, the activity is considered to fall within the definition of company domiciliation. The CSSF provides a list of examples of leasing of "closed and private offices" which do not constitute a genuine lease.

The CSSF clarifies that members of the regulated professions mentioned in article 1 of the law of 31 May 1999 governing the domiciliation of companies, as amended, other than specialised PFS authorised as corporate domiciliation agents in accordance with the Financial Sector Law, are exclusively entitled to domicile companies to which they provide professional services. Domiciliation should only be an accessory to their main activity as a regulated profession. Any domiciliation activity carried out outside the regulated profession's main activity requires a prior authorisation from the CSSF as a specialised PFS in accordance with the Financial Sector Law.

The CSSF reminds that the violation of the provisions of articles 1 and 2 of the law of 31 May 1999 governing the domiciliation of companies, as amended constitutes a criminal offence punishable by imprisonment of between eight days and five years, respectively by a fine of between 1250 and 125,000 euros.

3 CSSF Communiqué

CSSF ISSUES COMMUNICATION AND FAQ ON VIRTUAL ASSETS

CSSF Communiqué of 29 November 2021[4]

On 29 November 2021, the CSSF published a communication with guidance and new FAQ in the area of virtual assets.

The prudential guidance and requirements are applicable to CSSF supervised entities intending to be involved in the sector around virtual assets.

The CSSF notes the large diversity of virtual assets which comes with a variety of rights. The CSSF provides a non-exhaustive list of various virtual assets characteristics and functions. These intrinsic characteristics and functions of the tokens will determine their risks and benefits for a professional of the financial sector to get involved in them.

The CSSF therefore stresses that any entity under its prudential supervision interested in pursuing an activity involving virtual assets bears the responsibility to carry out a thorough due diligence and to carefully weigh up the risks and benefits associated with the proposed new activity with respect to the entity's existing business model and risk appetite. The CSSF recalls that internal governance must ensure a sound and prudent management of all the activities of the entity (involved with virtual assets) and the internal governance arrangements shall include a clear risk-taking process including a risk appetite that is formally and precisely defined in all the business areas. Professionals are also reminded of the necessity to follow-up on the current regulatory developments such as the upcoming EU Markets in Crypto Assets Regulation (MiCA) and the prudential treatment of virtual assets. The CSSF finally states that professionals should proactively engage with the CSSF when planning any activity involving virtual assets.

The CSSF takes the position that in light of the risks involved direct or indirect investments in virtual assets by UCITS, by UCIs addressing non-professional customers and by pension funds are not allowed. This position does not apply to digital assets that qualify as MiFID financial instruments and could hence potentially qualify as eligible investments.

An AIF with an authorised AIFM may however invest directly or indirectly in virtual assets if the AIF markets its units only to professional investors and if the AIFM obtains an extension of authorisation from the CSSF for this new investment strategy.

Investment fund managers (IFM) intending to manage an AIF investing in virtual assets will need to obtain prior authorisation from the CSSF for the virtual assets investment strategy. Initiators of AIF intending to invest in virtual assets should further present their project beforehand to the CSSF.

A particular emphasis should be put on assessing the conditions under which the IFM or other participants in the business operations are involved in the control of the virtual assets by means of access to/control over the cryptographic keys and generally, an analysis of the services conducted needs to be performed. If the IFM or another participant intends to provide virtual assets services (e.g. the safekeeping or administration of virtual assets or instruments enabling control over virtual assets), the IFM or participant would be required to register beforehand as a virtual assets service provider.

Regarding the money laundering, terrorist financing and proliferation financing risk aspects, the CSSF calls for implementation of risk mitigation measures commensurate with the increased risks and expects that the person responsible for control (RC) and the person responsible for compliance (RR) of supervised entities investing in virtual assets possess and can demonstrate an adequate understanding of the new risks posed by virtual assets and the necessary measures to mitigate such risks.

The CSSF will regularly update its guidance and FAQ[5] considering the growing interest by professionals in virtual assets and their need to receive concise answers to the main practical issues they are facing.

4 CSSF Communiqué

5 CSSF FAQ

PUBLICATION OF THE 2020 ANNUAL REPORT OF THE LUXEMBOURG FINANCIAL INTELLIGENCE UNIT (CRF)

10 December 2021[6]

On 10 December 2021, the Luxembourg Financial Intelligence Unit (Cellule de renseignement financier, CRF) published its 2020 Annual Report. The report reviews the activity of the CRF over the course of the year 2020.

The CRF indicates that the pandemic had an impact on the CRF's work and the active and passive cooperation with professionals subject to the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

The strategic work carried out by the CRF in 2020 was particularly intensive. Firstly, the CRF conducted strategic reviews to improve its internal operational analysis processes and the quality and relevance of the information received from the relevant professionals. The CRF's "strategic review" team also contributed to the update of the national risk assessment of ML/TF carried out within the framework of the national Committee for the prevention of ML/TF (Comité de prévention du blanchiment et du financement du terrorisme) and to the response to the questionnaires received from the Financial Action Task Force (FATF) assessors. It should be noted that the mutual evaluations of several countries, including Luxembourg, had to be postponed due to the Covid-19 crisis.

On the operational side, the CRF continued to develop the analytical capabilities of its specialised teams in the areas of tax offences, corruption, terrorism, cybercrime in the broad sense and complex money laundering structures. It is worth noting also the intense cooperation between the Luxembourg prosecutor's office and the CRF on large-scale autonomous money laundering cases, which resulted in significant seizures.

At the IT level, the CRF has now direct access to the central electronic data retrieval system related to payment accounts and bank accounts identified by an IBAN number and safe-deposit boxes held by credit institutions in Luxembourg and the register of fiduciary contracts and trusts.

6 Annual Report

CSSF COMMUNIQUÉ ON THE ENFORCEMENT OF THE 2021 ANNUAL REPORTS PUBLISHED BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW

CSSF Communiqué of 17 December 2021[7]

On 17 December 2021, the CSSF issued a communiqué on the enforcement of the 2021 annual reports published by issuers subject to the Transparency Law.

The CSSF draws the attention of those issuers preparing their financial statements in accordance with IFRS and/or their non-financial report in accordance with the Law of 23 July 2016, as well as of their auditors, to a number of topics and issues that will be the subject of a specific monitoring during the CSSF's enforcement campaign planned for 2022.

The CSSF notes the existence of the European common enforcement priorities (the "ECEPs") [8] for the 2021 annual reports to which particular attention will be paid when monitoring and assessing the application of the relevant reporting requirements and that its 2022 enforcement campaign will not only cover the ECEPs but will also focus on the following topics:

- The classification and measurement requirements under International Financial Reporting Standard 9 (IFRS 9);
- The interest Rate Benchmark Reform; and
- The presentation of Primary financial statements.

Finally, the CSSF highlights the entry into force of the following new requirements:

- From financial year 2021, issuers shall prepare their annual financial statements (AFRs) in compliance with the European Single Electronic Format (ESEF)[9]; and
- Issuers need to be prepared for the new disclosure obligations under Article 8 of the Taxonomy Regulation[10] that applied since 1 January 2022.

CSSF CIRCULAR 21/787 ON THE APPLICATION OF THE REVISED EBA GUIDELINES ON MAJOR INCIDENT REPORTING UNDER PSD2

17 December 2021[11]

On 17 December 2021, the CSSF issued Circular 21/787 on the application of the EBA guidelines on Major Incident Reporting under PSD2 dated 10 June 2021 (EBA/GL/2021/03) (Guidelines), which replaced as of 1 January 2022 the current EBA guidelines[12] of 27 July 2017 (EBA/GL/2017/10).

The purpose of the circular is to inform all payment service providers (PSPs) subject to the supervision of the CSSF that the CSSF applies the Guidelines and has integrated them into its administrative practice and regulatory approach in order to promote supervisory convergence in this field at European level.

The circular provides certain details on the revised Guidelines, including in particular that they aim at (i) optimising and, where possible, simplifying the reporting of major incidents under PSD2, (ii) capturing additional security incidents that would not qualify as major incidents under the previous criteria, and (iii) reducing the number of operational incidents that will be reported, but that do not have a significant impact on the operations of PSPs.

The circular also sets out the main deadline requirements for classification and notification of major incidents and draws the attention of PSPs to the fact that the delegation of reporting obligations of major incidents is not accepted.

Annex 1 to the circular lays down detailed technical instructions for sending the data related to the major incidents to the CSSF. PSPs are requested to use the CSSF standard reporting template published on the CSSF website when submitting the initial, intermediate, and final reports related to the same incident, and to complete a single template in an incremental manner for any update of the information provided with previous reports.

7 CSSF Press release

8 ECEPs

9 ESEF

10 Taxonomy Regulation

11 Circular CSSF 21/787

12 EBA guidelines EBA/GL/2021/03

LUXEMBOURG BILL ON THE IMPLEMENTATION OF REGULATION (EU) 2021/23 ON CENTRAL COUNTERPARTIES RECOVERY AND RESOLUTION

Bill N° 7933 of the 20 December 2021[13]

A bill implementing Regulation (EU) 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties (Bill N°7933) was lodged with the Luxembourg Parliament on 20 December 2021.

The bill proposes to amend several laws relating to the financial sector, including, among others:

- the law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories (as amended), which will notably be completed by a new Chapter 1bis on the resolution of central counterparties which designates the competent ministry and resolution authority and attributes sanction powers to such authorities to ensure compliance with Regulation (EU) 2021/23, and
- the law of 23 December 1998 establishing a financial sector supervisory commission (as amended), which sets out the new competences of the resolution board.

The CSSF and the resolution board will each be attributed new competences regarding the recovery, and respectively the resolution, of central counterparties.

The bill also proposes to amend the law of 5 August 2005 on financial collateral arrangements (as amended) by introducing more detailed provisions regarding enforcement of pledges by public sale as well as enforcement of pledges over UCI shares or insurance agreements.

The lodging of the bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

LUXEMBOURG LAW OF 17 DECEMBER 2021 TRANSPOSING THE DIRECTIVE (EU) 2018/1673 OF 23 OCTOBER 2018

Law of 20 December 2021[14]

The law of 17 December 2021 transposing Directive (EU) 2018/1673 of 23 October 2018 on combating money laundering by criminal law was published in the Luxembourg official journal (Mémorial A) on 20 December 2021.

The law amends the Luxembourg Criminal Code (Code pénal), the Luxembourg Criminal Procedure Code (Code de procedure pénale) and the law of 17 March 1992 on medical substances and the fight against drug addiction, by, among others.

- introducing an aggravating circumstance to the offence of money laundering when the offender is a professional within the meaning of the AML/CTF Law and has committed the offence in the exercise of their professional activities;
- specifying that a money laundering offence is reprehensible independently of whether there is a prosecution or conviction for one of the predicate offences listed in Article 506-1 of the Criminal Code and this without having to establish all factual elements and circumstances specific to the predicate offence, including the identity of the offender; and
- completing Article 5-1 of the Criminal Procedure Code in order to allow, the prosecution in Luxembourg of a perpetrator of a money laundering offence, where the predicate offence is committed outside Luxembourg by a foreigner who does not have his/her main residence or is not located in Luxembourg, even though the act is not punishable by the legislation of the country where it has been committed and a Luxembourg authority has not received a complaint by the victim or a denunciation by the authority of the country where the offence was committed.

The law entered into force on 24 December 2021.

[13] Bill N° 7933

[14] Law of 20.12.2021

GRAND DUCAL REGULATION REGARDING THE FEES TO BE LEVIED BY THE CSSF

Regulation of 22 December 2021[15]

A Grand Ducal Regulation dated 17 December 2021 repealing and replacing the amended Grand Ducal Regulation of 21 December 2017 relating to the fees to be levied by the CSSF was published in the Luxembourg official journal (Mémorial A) on 22 December 2021.

The Regulation mostly retains the existing structure on fee imposition but contains certain changes, including notably:

- Increase of most of the lump sums to be levied (e.g., the single lump sum for the examination of each authorisation request for a new credit institution increases from EUR 15.000 to EUR 50.000),
- Regarding credit institutions specifically the following new elements have been added:
  - A single lump sum of EUR 15.000 for the processing of each notification received in connection with an application to hold a qualifying participation in a credit institution,
  - An additional annual fee of EUR 500 payable by each credit institution covered by the Luxembourg Deposit Guarantee Fund for each branch established in a country of the European Economic Area,
  - An annual lump sum of EUR 25.000 to be paid by each credit institution incorporated in Luxembourg which is a supervised contributor within the meaning of Regulation (EU) 2016/1011,
- As regards in particular payment institutions, the Regulation, among others, amends the fixed annual fee to an annual fee based on the cumulative volume of payment transactions in the previous year and foresees a new lump sum of EUR 500 for each notification under Article 3-1 of the amended law of 10 November 2009 on payment services,
  - The Regulation also adds a lump sum of EUR 5.000 in the case of an application to extend the authorisation of electronic money institutions to additional payment services and amends the fixed annual fee to an annual fee based on the cumulative volume of payment and e-money transactions in the previous year,
  - Financial holding companies, mixed financial holding companies and account information services providers are now also covered by the Regulation,
  - Additional annual lump sums regarding investment fund managers,
  - Additional annual fee of EUR 1,800 payable by each investment firm covered by the Luxembourg Investor Compensation Scheme whose authorisation includes the ancillary service of safekeeping and administration of financial instruments for the account of clients,
  - Addition of the mention that umbrella UCITS, UCIs, SIFs and SIF-AIFs, SICARs and SICAR-AIFs and securitisation undertakings authorised by the CSSF as multiple compartment structures and which do not have active compartments are subject to the annual lump sum of EUR 8,800, and
  - Addition of a lump sum of EUR 10.000 for each on-site inspection conducted on a specific topic relating to the authorisation, registration or recognition of benchmark administrators or the endorsement of benchmarks.

The Regulation entered into force on 1 January 2022.

[15] Grand Ducal Regulation of 17 December 2021

Grand Ducal Regulation of 21 December 2017

CSSF FAQ ON VIRTUAL ASSETS ADDRESSED TO CREDIT INSTITUTIONS

23 December 2021[16]

On 23 December 2021, the CSSF issued new FAQ in the area of virtual assets addressed to credit institutions in continuation of the FAQ on virtual assets addressed to investment funds and investment fund managers.

In this new FAQs, the CSSF confirms that in line with the actual banking regulation, it is not prohibited for credit institutions to invest in virtual assets. However, when investing in virtual assets, a series of accounting and capital-related considerations apply.

In addition to investing, credit institutions may as well open accounts that allow customers to deposit virtual assets. Even though these accounts are comparable to securities accounts, there are certain operational risks to be considered. Therefore, virtual assets accounts must be segregated from the bank's own assets. The CSSF further notes that credit institutions cannot open bank accounts, such as current accounts, in virtual assets, nor take deposits in virtual currencies or facilitate/execute the settlement of payments in virtual currencies.

Regarding the registrations and notifications needed for providing virtual assets services, credit institutions are required submit and present beforehand a detailed business case to the CSSF including a risk-benefit assessment, required adaptations to their governance and risk management frameworks, the effective handling of counterparty and concentration risk and the implementation of investor protection rules. Furthermore, if a credit institution intends to provide one or more of the services in scope of article 1(20c) of the AML/CTF Law, a complete application file for registration as a virtual asset service provider needs to be submitted beforehand to the CSSF.

The CSSF expects that credit institutions using specialised virtual assets exchange and custody platforms avoid that operational disruptions and failures of virtual assets service providers would spread to their regulated financial activities and ultimately result in financial losses harming their stakeholders. These institutions are also required to manage their concentration risk on such providers. Credit institutions that envisage to directly safeguard virtual assets are required to inform the CSSF of such plans in a timely manner.

With regard to the requirements on investor protection in the context of the provision of virtual assets services, the CSSF expects from credit institutions to set up an effective investor protection framework and to undertake sufficient steps in order to guarantee best execution, suitability and appropriateness of the investments and to inform investors accordingly on the underlying risks.

Finally, credit institutions have to comply with the general principles of sound and prudent banking further to CSSF circular 12/552.

16 CSSF FAQ

CSSF REGULATION CONCERNING SYSTEMICALLY IMPORTANT INSTITUTIONS AUTHORISED IN LUXEMBOURG

23 December 2021[17]

The CSSF, issued on 23 December 2021 a regulation 21-04 (Regulation) concerning systemically important institutions (SSI) authorised in Luxembourg.

The Regulation identifies seven SSI authorised in Luxembourg, all qualifying as other systemically important institutions (O-SIIs). There is no global systemically important institution (G-SII) authorised in Luxembourg.

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

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

Finally, another institution qualifies as O-SIIs 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 authorised SIIs in Luxembourg are Banque et Caisse d'Epargne de l'Etat Luxembourg, Banque Internationale à Luxembourg, BGL BNP Paribas, Clearstream Banking S.A., J.P. Morgan Bank Luxembourg S.A., RBC Investor Services Bank S.A., and Société Générale Luxembourg.

The Regulation maintains the capital buffer rates for these O-SIIs, except for J.P. Morgan Bank Luxembourg S.A. and Société Générale Luxembourg, set already on 1 January 2021 by CSSF regulation 20-07 which is abrogated by the new Regulation.

The Regulation entered into force on 1 January 2022.

CSSF COMMUNIQUÉ ON THE ESRB RECOMMENDATION ON THE USE OF THE LEI FOR THE IDENTIFICATION OF LEGAL ENTITIES

28 December 2021[18]

On 28 December 2021, the CSSF issued a communiqué on the ESRB recommendation on the use of legal entity identifier (LEI) codes for the identification of legal entities (ESRB/2020/12).

Said recommendation was issued on 24 September 2020 and aims at promoting the adoption and the use of LEI codes for all legal entities involved in financial transactions, especially in the context of reportings and public disclosures.

The CSSF indicates in its communiqué that it would like to encourage all legal entities involved in financial transactions (as defined in Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, i.e. the net acquisition of financial assets or the net incurrence of liabilities for each type of financial instrument), under the CSSF's supervisory remit and that have not been required to have an LEI in the context of existing national or European legislation, to obtain and maintain an LEI.

The CSSF also requests supervised entities to identify themselves through an LEI, if available, when communicating and reporting to the CSSF.

17 Regulation CSSF Communiqué

18 CSSF Circular 21/784

CSSF CIRCULAR ON THE PERIODIC PRUDENTIAL REPORTING OF INVESTMENT FIRMS

CSSF Circular 21/784 of 1 October 2021[19]

The CSSF has announced the entry into force of the new regulatory provisions applicable to investment firms ("IFs") under the EU wide IFD/IFR package (as implemented in Luxembourg), which aim to subject IFs to a better suited and harmonized framework with respect to prudential supervision.

The IFD/IFR package introduced, among others, a new EU harmonized framework for prudential reporting by IFs ("IFR reporting"), which includes information regarding the level, composition, requirements and calculation of capital requirements, level of activity, concentration risk and liquidity requirements. However, IFs remain also subject to the national reporting framework laid down in Circular CSSF 05/187, as amended.

Therefore, the CSSF issued, on 1 October 2021, Circular CSSF 21/784 to introduce the "Reporting Handbook for Investment Firms" (the "Reporting Handbook"), which clarifies the applicable requirements by combining the reporting requirements pursuant to the IFR reporting and the national reporting frameworks and related technical specifications.

The Reporting Handbook[20] applies to (i) IFs incorporated under Luxembourg law, including their branches, (ii) Luxembourg branches of third-country IFs and (iii) as regards some national reporting requirements, Luxembourg branches of EU IFs.

Considering the classification of IFs adopted by the IFD/IFR package, the CSSF requires:

- Class 2 IFs to report prudential data for the reference period ending 30 September 2021 for the first time and on a quarterly basis thereafter,
- Class 3 IFs to report for the reference period ending 31 December 2021 for the first time and on an annual basis thereafter, while large IFs, which are systemically important or exposed to the same type of risks as credit institutions (Class 1 IFs), continue to fall under the scope of the CRR and CRD and are, therefore, not subject to the Reporting Handbook, but to the credit institution reporting framework.

The CSSF also indicates that the IFR reporting shall be communicated through the "Investment firms reporting" module in the CSSF's eDesk portal, while national reporting tables will continue to be submitted through the usual transmission mode in compliance with the Circular CSSF 08/334 on encryption specifications for reporting firms. [21]

19 CSSF Circular 21/784

20 Reporting Handbook

21 CSSF Press - release

CSSF CIRCULAR SPECIFYING THE CRITERIA TO ASSESS THE EXCEPTIONAL CASES WHEN INSTITUTIONS EXCEED THE LARGE EXPOSURE LIMITS AND THE TIME AND MEASURES TO RETURN TO COMPLIANCES

CSSF Circular 22/791 of 3 January 2022[22]

On 3 January 2022, the CSSF issued Circular 22/791 on the application of the EBA guidelines specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits of Article 395(1) of CRR and the time and measures to return to compliance pursuant to Article 396(3) CRR dated 15 September 2021 (EBA/GL/2021/09) (Guidelines)[23].

The purpose of the circular is to inform (i) all credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism, (ii) all CRR investments firms and (iii) all Luxembourg branches of credit institutions or CRR investment firms incorporated in a third country that the CSSF applies the Guidelines and has integrated them into its administrative practice and regulatory approach in order to promote supervisory convergence in this field at European level.

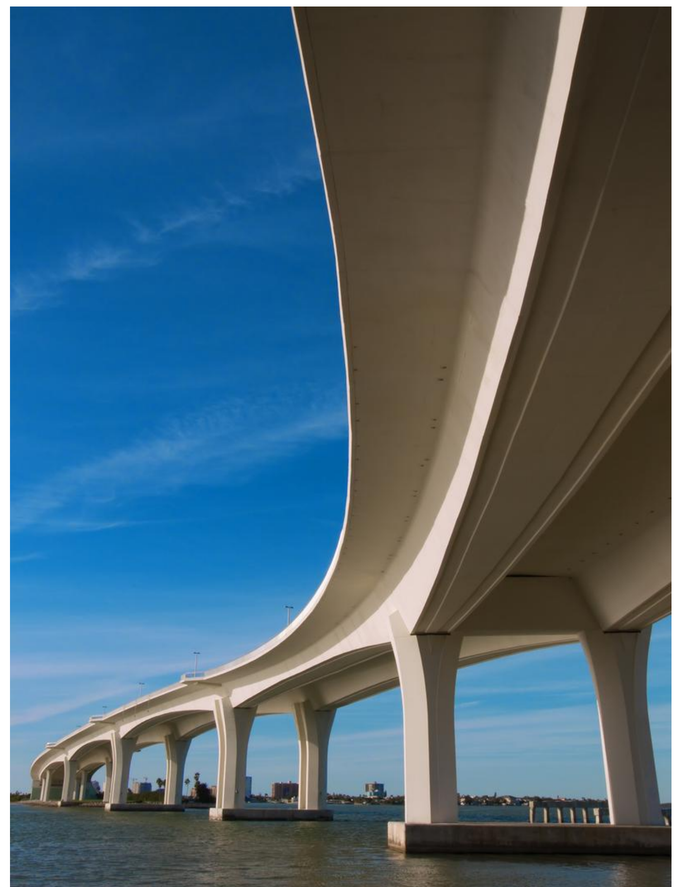
The circular provides certain details on the Guidelines, including in particular:

- the information to be provided when reporting a breach of the large exposure limits and
- the measures to be taken to ensure the timely return to compliance.

The circular also sets out the criteria that the CSSF will use

- to assess the exceptional cases and where it will allow an institution to exceed the limits, and
- to determine the appropriate timeframe for an institution to return to compliance with the large exposure limits and the measures to be taken to ensure the timely return to compliance with those limits.

The Guidelines are enclosed in an Annex to the circular.



22 Circular CSSF 22/791

23 EBA guidelines EBA/GL/2021/09

CSSF CIRCULAR ON THE APPLICATION OF THE ESMA GUIDELINES ON SETTLEMENT FAILS REPORTING UNDER ARTICLE 7 CSDR

CSSF Circular 22/792 of 2 January 2022[24]

On 3 January 2022, the CSSF issued Circular 22/792 on the application of the ESMA Guidelines on Settlement Fails Reporting under Article 7 CSDR dated 8 December 2021 (ESMA70-156-4717) (Guidelines) [25].

The purpose of the circular is to inform all central securities depositories (CSDs) established in Luxembourg (i.e. currently Clearstream Banking S.A. and LUXCSD S.A.) that the CSSF applies the Guidelines and has integrated them into its administrative practice and regulatory approach.

The purpose of these Guidelines is

- to establish consistent, efficient and effective supervisory practices within the European system of financial supervision, and
- to ensure proper exchanges of information between ESMA and the competent authorities regarding settlement fails, and proper reporting by CSDs. The Guidelines are enclosed in an Annex to the circular and apply from the date of entry into force of the RTS on settlement discipline, i.e. 1 February 2022.

The circular entered into force on 11 January 2022.

24 Circular CSSF 22/792

25 ESMA guidelines ESMA70-156-4717

LUXEMBOURG CENTRAL BANK REGULATION 2021/N°31 OF 7 DECEMBER 2021 PUBLISHED

24 January 2022[26]

The Luxembourg Central Bank (BCL) has adopted a new Regulation 2021/N° 31 of 7 December 2021 on the checks carried out to ensure compliance with the applicable provisions on recirculation of euro banknotes and coins which repeals and replaces BCL Circular BCL/2003/179 of 8 May 2003 relating to the obligation to withdraw and transmit counterfeit euro banknotes and coins or presumed as such (the Regulation).

The Regulation applies to

- credit institutions,
- other payment service providers (for their payment activity) as well as to
- any other economic agent participating in the processing and delivery to the public of banknotes and coins in Luxembourg (including a.o. exchange offices, money transporters or casinos).

The Regulation reminds that the BCL controls the correct application of the principles relating to the processing of cash activities for recirculation of euro banknotes (unless an exception is requested) and coins.

The Regulation requires supervised entities to notify the BCL if they intend to

- install equipment to process euro cash, or
- outsource their processing of cash activities for their recirculation with other professionals that handle cash.

The Regulation further requires such entities to return to the BCL counterfeit banknotes and coins, or presumed as such, within 20 working days.

Finally, the Regulation allows the BCL to collect data and conduct on-site inspections (at least once a year) to assess the quality of the euro cash in circulation.

26 Regulation 2021/N°31

The new Regulation entered into force on 24 January 2022, the day of its publication in the Luxembourg official journal (Mémorial A).

CSSF REGULATION AND RELATED CSSF CIRCULAR ON THE ADOPTION OF AUDIT STANDARDS IN THE FIELD OF STATUTORY AUDIT AND STANDARDS ON PROFESSIONAL ETHICS AND INTERNAL QUALITY CONTROL RESPECTIVELY QUALITY MANAGEMENT

CSSF Circular 22/794 of 27 January 2022[27]

The CSSF, issued on 27 January 2022 the regulation No 22-01[28] on

- the adoption of audit standards in the field of statutory audit, and
- the adoption of standards on professional ethics and internal quality control or on quality management, respectively, both under the law of 23 July 2016 concerning the audit profession, as amended.

The regulation No 22-01 specifies the applicable standards, which are contained in the Regulation's annexes. The regulation No 22-01 takes into account the developments in audit standards on internal level and EU legislation.

The CSSF also published on the same date a related Circular 22/794 dated 26 January 2022. The Circular amends CSSF Circular 19/717 (more particularly its paragraph 8 and its Annex) by incorporating the amendments made by Regulation also on the level of the circular letter.

The regulation No 22-01 entered into force on 27 January 2022 and repealed the previous CSSF Regulation No 19-02 and its annexes on the same matters. The Circular 22/794 entered into force on the same date.

27 CSSF Circular 22/794

28 Regulation No 22-01

LUXEMBOURG BILL AMENDING THE RBE LAW

Bill N° 7961 of 27 January 2022[29]

A bill amending the RBE Law (Bill N°7961) was lodged with the Luxembourg Parliament on 27 January 2022.

The amendments relate to

- the access to the RBE and
- keeping the RBE up-to-date via incentive and coercive measures and penalties if the registered entity fails to comply with its obligation vis-à-vis the RBE.

The initial intention of the legislator was to create an independent database of beneficial owners, preventing any connection with the Register of Commerce and Companies (RCS). However, the practice quickly showed how necessary it was for these databases to be interconnected. Therefore, the Bill proposes to simplify the administrative procedure for making declarations to the RBE.

The RBE being a key tool in the fight against money laundering and terrorist financing, it is also proposed to facilitate RBE access to the national authorities listed in the RBE Law so that they can effectively exploit the information available.

The Bill also amends the RBE Law by introducing a new channel to exchange information between the RBE manager and its users, which will allow mass electronic communications without human intervention. This technology is already used for accessing the RCS.

Finally, it is proposed, as for the RCS, to offer to the manager of the RBE the same panel of incentive or coercive measures to induce registered entities to make their declarations and to keep the information up to date.

The lodging of the bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

CSSF CIRCULAR ON THE APPLICATION OF THE ESMA GUIDELINES ON METHODOLOGY, OVERSIGHT FUNCTION AND RECORD KEEPING UNDER THE BENCHMARKS REGULATION

CSSF Circular 22/796 of 31 January 2022[30]

On 31 January 2022, the CSSF issued Circular 22/796 on the application of the ESMA guidelines[31] on methodology, oversight function and record keeping under Benchmarks Regulation dated 7 December 2021 (ESMA81-393-288) (Guidelines).

The purpose of the Circular is to inform Benchmark Administrators (as defined in Article 3(1)(6) of the Benchmarks Regulation) that the CSSF applies the Guidelines and has integrated them into its administrative practice and regulatory approach in order to promote supervisory convergence in this field at European level.

The Guidelines apply in relation to the application of:

- any methodology to be used to determine a critical or significant benchmark in exceptional circumstances;
- material changes to the methodology used to determine a critical or significant benchmark;
- the oversight function for critical and significant benchmarks;
- the record-keeping requirements for any deviation from the standard methodology.

The new Guidelines further amend the Guidelines on non-significant benchmarks (ESMA70-145-1209) of 20 December 2018.

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

The Guidelines and the Circular apply as from 31 May 2022.

---

29 Bill 7961

30 Circular CSSF 22/796

31 ESMA guidelines ESMA81-393-288

LUXSE PUBLISHED GUIDELINES FOR THE REGISTRATION OF DLT FINANCIAL INSTRUMENTS ON LUXSE'S SECURITIES OFFICIAL LIST (LUXSE SOL)

31 January 2022[32]

On 31 January 2022, the LuxSE issued a press release[33] on the admission of the very first financial instruments registered on a public Distributed Ledger Technology (DLT) on LuxSE's Securities Official List (LuxSE SOL).

To clarify the eligibility criteria and guide issuers of security tokens through the admission process, LuxSE published also Guidelines for the registration of DLT financial instruments onto SOL. To be considered for admission on LuxSE SOL, security tokens will need to respect these guidelines as well as the LuxSE SOL Rulebook.

It is also stated that as is the case for other securities registered on LuxSE SOL, security tokens will not be admitted to trading on LuxSE's markets.

The three series of security tokens admitted on LuxSE SOL are digital covered bonds (OFH Tokens) and structured products that have been issued and deployed by Societe Generale's digital assets arm, Societe Generale - FORGE (SG - FORGE), natively on the Ethereum and Tezos public blockchains respectively. They are characterized as financial instruments and debt securities under French law and are compliant with the CAST (Compliant Architecture for Security Token) open-source interoperability and securitization framework.

CIRCULAR CSSF 22/797 ON THE APPLICATION OF THE REVISED EBA GUIDELINES ON SOUND REMUNERATION POLICIES UNDER CRD IV

CSSF Circular 22/797 of 31 January 2022[34]

On 31 January 2022, the CSSF issued Circular 22/797 on the application of the EBA Guidelines on sound remuneration policies under Directive 2013/36/EU published on 2 July 2021 (EBA/GL/2021/04) (Guidelines) [35], replacing the current EBA guidelines of 21 December 2015 (EBA/GL/2015/22) (Circular).

The Circular is addressed to CRR credit institutions, CRR investment firms, to a limited extent other investment firms.

The purpose of the Circular is to inform them that the CSSF applies the Guidelines and has integrated them into its administrative practice and regulatory approach in order to promote supervisory convergence in this field at European level. All CRR credit institutions and all CRR investment firms shall duly comply with them. The Circular provides an overview of changes introduced by the revised Guidelines which are attached to the Circular.

The previous Circular CSSF 17/658 regarding the adoption of the EBA Guidelines on sound remuneration policies (EBA/GL/2015/22) and Circular CSSF 11/505 regarding details relating to the application of the principle of proportionality are repealed by the Circular. Non-CRR investment firms that are concerned by the repeal shall apply the new requirements of articles 38-20 ff. of the Financial Sector Law stemming from the Investment Firm Directive (EU) 2019/2034 and/or the requirements set out in Circular CSSF 10/437.

The Circular applies with effect as of 31 January 2022 and, as of such date, repeals and replaces Circular CSSF 17/658 and Circular CSSF 11/505.

32 LuxSE Press – release 31.01.2022

33 Guidelines for the registration of DLT financial instruments onto SOL

34 Circular CSSF 22/797

35 EBA guidelines EBA/GL/2021/04

CSSF PRESS RELEASE ON MONITORING THE QUALITY OF TRANSACTION REPORTS RECEIVED UNDER ARTICLE 26 OF MIFIR

CSSF Press Release of 1 February 2022[36]

On 1 February 2022, the CSSF issued a press release relating to the obligation for credit institutions and investment firms to report transactions in financial instruments as set out in Article 26 of MiFIR.

The CSSF press release reports that during the last year, the CSSF not only carried out the standardised quality tests developed together with the other competent authorities and ESMA, but also conducted a series of data completeness and quality enhancement campaigns with a focus on different topics (i.e. INTC (March 2021), TVTIC Assessment (July 2021), Designation to identify natural persons (July 2021) and Price / Quantity (October 2021)).

The CSSF also announced the topics that will be the subject of dedicated campaigns during the year 2022. These are:

- analytical summary; among others, the CSSF plans to provide relevant entities with an overview of erroneous transaction reports on a quarterly basis;
- error messages, among others, the CSSF will more closely monitor the error messages that are generated by its reporting system upon processing the received transaction reports; and
- data quality, among others, it is important to note that a low level of data quality (e.g. incomplete or missing transaction reports) will not be considered as negligible offense, but may constitute a serious infringement of professional obligations under MiFIR, in particular if such omissions lead to the concealment of potential cases of market abuse.

The CSSF also draws the attention of the relevant entities to the amended transaction reporting validation rules[37] which will become applicable as of Q2 2022. However, ESMA is still to communicate their exact implementation date. In this regard, relevant entities are asked to prepare the adjustment of their reporting systems as soon as possible and to have their systems ready once the amended validation rules will become applicable.

[36] CSSF Press – release 01.02.2022

[37] Amended transaction reporting validation rules

CIRCULAR CSSF 22/793 ON THE ELECTRONIC SUBMISSION OF ANNUAL CLOSING DOCUMENTS FOR SPECIALISED PROFESSIONALS OF THE FINANCIAL SECTOR

CSSF Circular 22/793 of 3 February 2022[38]

The CSSF, published on 3 February 2022 Circular 22/793 on the electronic submission to the CSSF of the annual closing documents of specialised PFS, a specific category of CSSF regulated entities to which the circular is addressed.

The submission of the annual financial statements and other annual closing documents (documents de clôture annuels) of specialised PFS is from now only authorised to be caried out through the eDesk portal. The Circular provides details on the modalities of accessing the portal, creating user profiles and identifying oneself on the portal. The eDesk portal lists the annual closing documents that need to be submitted from time to time.

The CSSF reminds specialised PFS of their responsibility to keep informed of updates of the list of annual closing documents to be submitted and to submit the documents in an appropriate and timely manner.

The CSSF emphasizes that specialised PFS may be held liable for actions on their eDesk portal account. The CSSF points out that the day-to-day managers of the specialised PFS are responsible for the content and the format of the files submitted on the portal and that it is their responsibility to ensure that these documents are the official and final versions. Finally, the day-to-day managers are also asked to ensure strict compliance with the legal and regulatory provisions relating to the filing and the publication of the annual closing documents of the specialised PFS.

The Circular entered into force on the date of its publication.

38 Circular CSSF 22/793

CSSF CIRCULAR 22/798 ON THE ADJUSTMENT OF THE THRESHOLD FOR THE NOTIFICATION OF SIGNIFICANT NET SHORT POSITIONS IN SHARES UNDER THE EU SHORT SELLING REGULATION

CSSF Circular 22/798 of 1 February 2022[39]

On 1 February 2022, the CSSF issued Circular 22/798 which amends Circular CSSF 12/548 of 30 October 2012 on the entry into force of the EU Short selling Regulation and details on certain practical aspects of notification, disclosure and exemption procedures, as amended.

The new amending circular letter has been issued in order to reflect changes made by Commission Delegated Regulation (EU) 2022/27 of 27 September 2021 amending the EU Short selling Regulation as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares (attached to the Circular).

The Circular is addressed to all entities subject to the SSR.

The purpose of the Circular is to inform them that any natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall notify the relevant competent authority, in accordance with Article 9 of the EU Short selling Regulation, where the position reaches or falls below the relevant notification threshold which is 0.1% of the issued share capital of the company concerned, and each 0.1% above that percentage.

This adjustment from 0.2% to 0.1% results from the substantial selling pressure and unusual volatility stemming from the global outbreak of COVID-19 which led to a more frequent recourse to emergency measures on short selling by regulators.

39 Circular CSSF 22/798

BILL CREATING A MONITORING COMMITTEE FOR RESTRICTIVE MEASURES IN FINANCIAL MATTERS PUBLISHED

Bill N° 7967 of 14 February 2022[40]

A bill creating a monitoring committee for restrictive measures in financial matters and amending the law of 19 December 2020 on the implementation of restrictive measures in financial matters (Bill N°7967) was lodged with the Luxembourg Parliament on 14 February 2022.

This bill aims to establish a committee that will ensure the active and systematic monitoring that is essential to ensure consistent and effective implementation of financial sanctions, including the exemptions granted, in accordance with the provisions of Article 6(1)(2) of the law of 19 December 2020 on the implementation of restrictive measures in financial matters, in compliance with the applicable international and national requirements.

The term "monitoring" is composed of a reactive and a proactive component. The reactive component consists of the examination, analysis and evaluation of quantitative and qualitative data relating to the implementation of financial sanctions. The proactive component consists in particular of active and systematic communication, consultation and coordination between all the competent authorities, and aims to formulate proposals for improvement, to set priorities and to decide on measures to be implemented.

The bill also defines the tasks, composition and functioning of this committee.

The committee is composed of a representative of the Minister of Finance, who chairs it, as well as one representative each of the Minister of Foreign and European Affairs, the Minister of Justice, the CSSF, the CAA, the tax authority Administration de l'Enregistrement, des Domaines et de la TVA and the financial intelligence unit Cellule de Renseignement Financier.

The Committee shall meet as often as its tasks so require and at least twice a year.

The lodging of the bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

[40] Bill N° 7967

CSSF CIRCULAR LETTER TO SUPERVISED PERSONS AND ENTITIES ON THE RESTRICTIVE MEASURES IMPOSED BY THE EU AS A REACTION TO THE CURRENT SITUATION IN UKRAINE

CSSF Circular Letter of 1 March 2022[41]

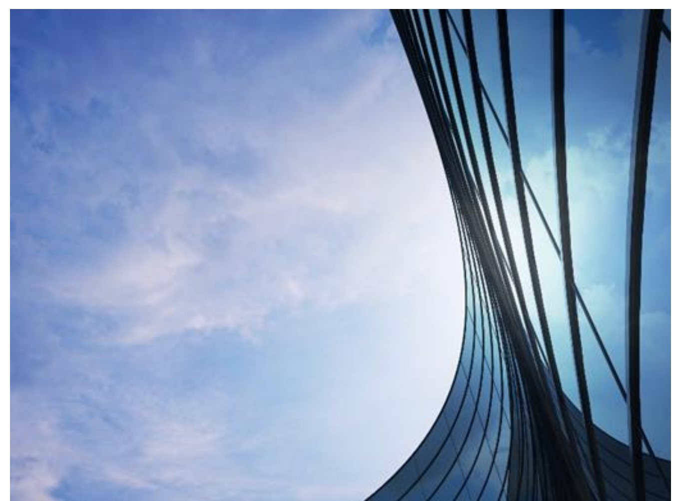
On 1 March 2022, the CSSF published a circular letter addressed to persons and entities supervised by it regarding the restrictive measures imposed by the EU as a reaction to the current situation in Ukraine.

The CSSF draws the attention of the financial sector professionals falling under its supervision to the restrictive measures imposed by the European Union (EU), notably the amendments made to regulation (EU) N° 269/2014 and regulation (EU) N° 833/2014 as well as the new regulation (EU) N° 2022/263, which were published in the Official Journal of the European Union on 23, 25 and 28 February 2022 and are also available on the CSSF website under a webpage dedicated to international financial sanctions[42] with a sub-section Ukraine/Russia.

The CSSF reminds that these EU regulations are directly applicable under national law and professionals are thereby obliged to comply therewith and to put in place the necessary controls and measures. Professionals further have to assess whether, depending on the international character of their activities, other restrictive financial measures of third countries need to be implemented.

The CSSF further stresses that following the entry into force of the law of 19 December 2020 regarding the implementation of restrictive financial measures the CSSF expects persons and entities subject to its supervision to apply these restrictive measures without delay and in the forms prescribed by Article 6(1) of this law and to inform the Ministry of Finance without delay as well as in parallel the CSSF in accordance with Article 33(2) of CSSF Regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing.

Lastly, the CSSF requests that the supervised entities are highly vigilant in respect to the risk of cyberattacks, in particular by denial of service (déni de services) and also demands these entities to pay particular attention to their continuity plan and to ensure the proper functioning and recovery of backups. The CSSF stresses the importance of having offline backups of the most essential systems and data, i.e. not physically or software connected to the production environment.



41 CSSF Circular Letter 01.03.2022

42 International financial sanctions CSSF website

CSSF UPDATES INSTRUCTIONS ON LEGAL REPORTING OF CREDIT INSTITUTIONS

CSSF Instructions of 1 March 2022

On 1 March 2022, the CSSF, published updated instructions on legal reporting of credit institutions relating to tables B 4.5 (shareholding structure) and B 4.6 (responsible persons of certain functions and activities).

Regarding table B 4.5 instructions[43], the CSSF provides certain clarifications to Luxembourg law credit institutions and branches of third-country credit institutions on the determination of the holders of and the amount of the direct and indirect qualified holdings in the credit institution concerned that it has to report on a yearly basis to the CSSF. The reporting instructions document informs such entities further of a change of the transmission method of the report.

Regarding table B 4.6[44], the aim of the updated instructions and the updated table itself is to take account of regulatory changes, namely to CSSF Circular 12/552 and CSSF Regulation 12-02 that occurred since the last update of the reporting table in July 2018, provide clarifications in the instructions document relating thereto and to inform the above-mentioned entities that a new transmission method has been implemented.

LUXEMBOURG LAW OF 25 FEBRUARY 2022 AMENDING THE LAWS OF 17 DECEMBER 2010, 17 APRIL 2018 AND 16 JULY 2019, TRANSPOSING DIRECTIVE (EU) 2021/2261 AND IMPLEMENTING PEPP REGULATION, SFDR, TAXONOMY REGULATION, REGULATION (EU) 2021/557 AND REGULATION (EU) 2021/2259

Law of 3 March 2022[45]

The Luxembourg law of 25 February 2022 amending the UCI Law, the amended law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products (PRIIPS Law) and the law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation, in order to transpose Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS) and to implement certain provisions of the following EU Regulations, was published in the Luxembourg official journal (Mémorial A) on 3 March 2022:

- Regulation (EU) 2019/1238 of European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (PEPP Regulation);
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR);
- Regulation (EU) 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending SFDR (Taxonomy Regulation);
- Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific

---

43 Instructions relating to table B 4.5

44 Instructions relating to table B 4.6

45 Law 25.02.2022

framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis; and

- Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.

The above-mentioned Luxembourg laws are amended in order notably to:

- appoint the Luxembourg financial sector authority, the CSSF respectively the CAA, as Luxembourg competent authorities for monitoring the application of the PEPP Regulation, SFDR and Taxonomy Regulation by the Luxembourg entities subject to their respective supervision;
- specify the supervision and investigation powers of the CSSF and the CAA for the purpose of the PEPP Regulation, SFDR and Taxonomy Regulation as well as the sanctions and other administrative measures that may be applied by the CSSF and the CAA as Luxembourg competent authorities in the context of the abovementioned EU Regulations. As an example, the sanctions that may be applied by the CSSF and the CAA in case of non-compliance by the entities subject to their respective supervision with the relevant requirements of the PEPP Regulation, SFDR and Taxonomy Regulation include, amongst others, a ban against the responsible persons from exercising management functions, pecuniary fines on both natural and legal persons, as well as publication of decisions in relation thereto on the CSSF's and CAA's websites; and
- specify that the key information document, prepared in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), shall be deemed to meet the key investor information requirements imposed by Articles 55 and 159 to 163 of the UCI Law.

The Law enters into force on 8 March 2022, with the following exceptions: Article 5 of the Law (change to PRIIPS Law) entered into force on 1 January 2022 and Article 4 of the Law (change to UCI Law) will enter into force on 1 January 2023.

LUXEMBOURG LAW OF 25 FEBRUARY 2022 AMENDING INTER ALIA THE LUXEMBOURG SECURITISATION LAW AND IMPLEMENTING THE EU REGULATION ON CROWDFUNDING SERVICE PROVIDERS FOR BUSINESS

4 March 2022[46]

On 4 March 2022, the Luxembourg law of 25 February 2022 was published in the Luxembourg official journal (Mémorial A). The main purposes of the Law are to:

- amend the Luxembourg law of 22 March 2004 on securitisation, as amended;
- amend the Luxembourg law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
- amend the Luxembourg law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, as amended;
- amend the Luxembourg law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation; and
- implementing the Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.

With respect to the Luxembourg law of 22 March 2004 on securitisation, as amended, the Law modernises and provides increased legal certainty on key aspects of the Luxembourg law of 22 March 2004 on securitisation, as amended. Please refer to our client briefing on these amendments to the Luxembourg law of 22 March 2004 on securitisation, as amended, for further information in relation thereto: click here.

In addition, the Law specifies the supervision and investigation powers of the CSSF services as well as the sanctions and other administrative measures that may be applied by the CSSF as Luxembourg competent authority with respect to crowdfunding services as provided for under Regulation (EU) 2020/1503.

The Law enters into force on 8 March 2022.

46 Law of 25.02.2022

LUXEMBOURG LAW OF 25 FEBRUARY 2022 AMENDING THE LUXEMBOURG LAW ON INDICES USED AS BENCHMARKS

4 March 2022[47]

On 4 March 2022, the Luxembourg law of 25 February 2022 amending the Luxembourg law on indices used as benchmarks was published in the Luxembourg official journal (Mémorial A).

The Law amends the Luxembourg law of 17 April 2018 on indices used as benchmarks in order to reflect three European regulations amending the Benchmark Regulation. The Law introduces among others a framework relating to the termination of benchmarks, in particular LIBOR by the end of 2021. The new rules are intended to reduce legal uncertainty and avoid risks to financial stability by ensuring that a legal replacement rate can be put in place before the benchmark ceases to exist.

In addition, the Law integrates into Luxembourg law the changes brought at the European level by Regulation 2019/2175 granting additional powers to the ESMA. ESMA has direct supervisory powers over certain critical benchmarks and their administrators since January 1, 2022, and in particular over recognised third-country benchmark administrators.

Finally, the Law also amends Article 4 of the Luxembourg law of 17 April 2018 on indices used as benchmarks to include two new provisions in the list of provisions that are sanctionable under the Luxembourg law of 17 April 2018 on indices used as benchmarks.

Article 1, points 1°, 2° and 4° and Article 3 of the Law enter into force starting from 1 January 2022, while the remainder of the Law enters into force on 8 March 2022.

47 Law of 25.02.2022

INSURANCE

CAA CIRCULAR LETTER 21/18 REVISING THE EXEMPTION CONDITIONS FOR THE SUBMISSION OF A QUARTERLY REPORT UNDER SOLVENCY II

CAA Circular Letter 21/18 of 30 November 2021[48]

On 30 November 2021, the CAA issued Circular letter 21/18 amending circular letter 16/1 establishing the exemption conditions for the submission of a quarterly report under Solvency II.

The Circular letter specifies that the exemption threshold for the submission of such reports needed to be reassessed for the first quarter of the reporting year 2022.

The CAA therefore clarifies in this Circular letter that, as the exempt population cannot exceed 20% of the market share, on the basis of 2020 accounting numbers, the exemption threshold will be raised from EUR 90 million to EUR 100 million (or the foreign currency equivalent, where relevant).

Consequently, Luxembourg non-life insurance and reinsurance undertakings which have gross written premia for the year for an amount less than or equal to EUR 100 million (or the equivalent amount) will benefit from this automatic exemption. However, where such companies belong to a group holding several non-life insurance and reinsurance undertakings in Luxembourg and the sum of the gross written premia accounted for their Luxembourg non-life insurance and reinsurance activities exceeds the threshold, these companies cannot benefit from this automatic exemption.

This threshold will allow to catch undertakings of interest for the CAA because of their belonging to a group for which a college of supervisors is in place and to apply an adequate proportionality measure.

To avoid sudden regime changes and to stabilise the mechanism, the threshold and resulting status ("exempt" or "not-exempt") will remain applicable for the next three reporting years, i.e. 2022 to 2024, except in case of exceptional circumstances, and be reassessed for the first quarter of the reporting year 2025 only.

48 CAA Circular Letter 21/18

CAA CIRCULAR LETTER 21/19 ON THE ANNUAL ACTUARIAL REPORT OF LUXEMBOURG NON-LIFE INSURANCE UNDERTAKINGS

CAA Circular letter 21/19 of 16 December 2021[49]

On 16 December 2021, the CAA issued Circular Letter 21/19 which replaces CAA Circular Letter 12/4 on the annual actuarial report of Luxembourg non-life insurance undertakings.

The actuarial report is required to be established since the reporting for the financial year 2005 and is an essential tool used by the CAA in its supervision of non-life insurance undertakings. Since the entry into force of CAA Circular Letter 12/4 setting out the current provisions in this respect, Solvency II has entered into force and the CAA deemed it opportune to modify certain provisions of the circular letter in order to adapt them to the current legal framework.

The new circular notably provides for the following novelties:

- two additional questions concerning the status of the actuary have been added;
- the actuary must provide a description of the accounting treatment of written premiums in case of a split of the latter;
- a new paragraph has been introduced in order to reconcile the provisions as valued pursuant to the amended law of 8 December 1994 on the annual accounts and under Solvency II, from a financial Solvency II, from a methodological and quantitative point of view;
- the development triangles for gross claims paid have been removed from the actuarial report, as the Solvency II annual QRTs contain sufficient information on this subject. The ones for gross claims costs have however been maintained, since no equivalent information is provided in the QRT;
- a column has been added to table RAC.D.0060 in order to compare the valuation of the company's accounting technical provisions and the actuary's undiscounted best estimate;
- the provisions relating to the credit balancing provision have been deleted; they have become obsolete with the entry into force of the Solvency II;
- with respect to reinsurance, the actuary must specify for each reinsurance whether it has been set up by the group for the benefit of the Luxembourg entity and other group entities and, if applicable, the treatment of the exhaustion of the limits applicable to the entities concerned at group level;
- the stress-testing framework has been modified to take into account the diversity of market participants;
- the stress test on the failure of the custodian bank has been removed;
- the section on fees has been clarified.

This new Circular applies for the first time to the accounts of the financial year 2021.

49 CAA Circular Letter 21/19

CAA CIRCULAR LETTER 22/1 ON THE TECHNICAL BASES FOR LIFE INSURANCE

CAA Circular Letter 22/1 of 9 January 2022[50]

On 19 January 2022, the CAA issued Circular Letter 22/1 on the technical bases for life insurance.

Pursuant to Article 4b of the CAA Regulation No 15/03 of 7 December 2015 on insurance and reinsurance undertakings, as amended, Luxembourg insurance undertakings must communicate to the CAA the technical bases used for the calculation of premium tariffs and technical provisions, as well as any subsequent changes at the latest at the time of the introduction of the contract in the market.

The circular specifies the content and terms of the afore-mentioned communication regarding life insurance and the modalities of signature and submission to the CAA. It further specifies that the technical bases notified to the CAA must be used to calculate the mathematical provisions per contract. However, if during a product's life, such technical bases prove to be imprudent, insurance companies must constitute additional technical provisions and communicate a new technical file to the CAA. If the product remains in the market, the actuary must assess the adequacy of the tariff pursuant to Article 76 of the Insurance Sector Law.

The circular provides details on other related topics, including amongst others details regarding the regime applicable to surrender penalty (pénalité de rachat).

The Circular Letter applies as of 1st March 2022 and has abrogated CAA Circular Letter 03/5.

CAA INFORMATION NOTE ON CONTINUOUS TRAINING AND PROFESSIONAL DEVELOPMENT

CAA Information Note 22/2 of 28 January 2022[51]

On 28 January 2022, the CAA issued its Information Note 22/2 on continuous training and professional development (the Information Note).

Pursuant to Article 47 of Regulation CAA 19/01 of 26 February 2019 relating to the distribution of insurance and reinsurance, as amended, insurance companies having approved insurance agents for their behalf and brokerage companies are required to provide annually, on 31 January, the list of intermediaries in office as of 31 December of the previous year failing to fulfil their obligation of continuous training.

The purpose of the Information Note is to inform (i) insurance companies having approved insurance agents for their behalf and brokerage companies and (ii) intermediaries in office as of 31 December of the previous year of the following:

(i) the practice of catch-up agreements (in place during the COVID-19 pandemic) will end on 30 April. At the end of this period, the CAA reserves the right to pronounce any sanction and/or appropriate administrative measure against the abovementioned entities and intermediaries that have not met their obligations in terms of continuous training, if (a) the relevant Intermediaries have not been subject to a withdrawal of their authorisation or (b) a request for withdrawal not been duly addressed to the CAA;

(ii) the files allowing the entities to list such intermediaries has been communicated to the entities by the CAA during February 2022 by e-mail and the CAA will publish a circular letter to explain how to complete the files;

(iii) the submission date of the duly completed files mentioned in (ii) is 13 May 2022 in order to ensure the provision of exhaustive information.

50 CAA Circular Letter 22/1

51 CAA Information Note 22/2

FINTECH

CSSF WHITE PAPER ON DLT & BLOCKCHAIN

CSSF White paper of 21 January 2022[52]

On 21 January 2022, the CSSF published a white paper on DLT & Blockchain.

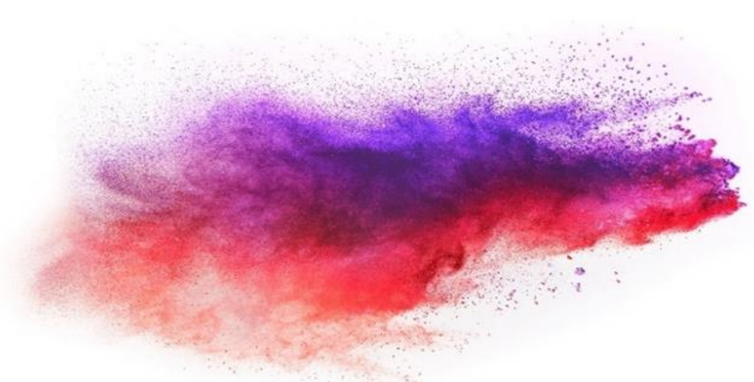
The white paper is a non-binding supporting document aimed at guiding professionals in their due diligence process related to the use of a DLT, in particular on the risk assessment to be carried out in the context of developing, providing, using or implementing a DLT solution. The white paper sets out a list of elements on which particular focus should be given when conducting such risk assessment and provides a list of 18 questions to be analysed by relevant professionals involved. The White paper emphasises main risks related to the DLT, both in terms of governance and technical risks.

The white paper further discusses some technical aspects of DLT and its use. The paper also provides examples of use cases and further asserts the technology neutral approach applied by the CSSF. The CSSF recognises that, when properly used, a DLT, like other technologies, can provide important advantages and benefits for the financial sector. However, the CSSF emphasises that institutions must demonstrate that prudential and regulatory requirements are met when using a DLT. The CSSF further sets out that it remains open to consultation and exchange and encourages market players to contact it in order to either present an innovative project, request information on the regulatory framework applicable to a project or to initiate a dialogue on new technologies or regulation that may impact the financial sector.

The white paper is mainly addressed to professionals being financial and non-financial institutions providing or intending to provide services to the Luxembourg financial sector.

The CSSF invites any stakeholder to consider the concrete implications of the use of DLT in the provision of its services and encourages these stakeholders to conduct a proper assessment and weighting of the risks and benefits related to the DLT and its use in the provision of services in the financial sector.

The CSSF also announced the publication of the white paper in its press releases[53][54] published on 21 and 24 January 2022.



52 CSSF White paper

53 CSSF Press releases

54 CSSF Press releases

ESG

CSSF PUBLISHES 2021 REPORT ON ITS THEMATIC REVIEW ON ISSUERS' CLIMATE AND ENVIRONMENTAL RELATED DISCLOSURES

29 November 2021[55]

On 29 November 2021, the CSSF published the 2021 report on its thematic review on Issuers' climate and environmental related disclosures.

Said review aimed to examine the current status of environmental and climate-related information reported by issuers under the CSSF's supervision (i.e. entities whose securities are admitted to trading on a regulated market, for which Luxembourg is the home Member State, exceeding 500 employees, total assets of EUR 20 million and/or a net turnover of EUR 40 million) and to assess how such information has evolved since the first application of the NFRD.

The CSSF observed that significant improvements have been made by issuers when addressing how current and foreseeable environmental and climate-related matters may affect their development, performance or position.

The CSSF noticed that for the purpose of preparing disclosures, the use of frameworks and standards to select and present nonfinancial information has evolved. Moreover, certification has gained in importance for issuers.

The review concerns qualitative information provided on 6 different topics including pollution, energy, emissions, use of natural resources, waste management, and products & services.

On the upside, the CSSF notices that there is more and more relevant and entity-specific information presented, that the share of issuers presenting information, as well as the number and relevancy of indicators presented have increased, and that information presented by issuers in 2020 met overall the objectives of the NFRD on the environmental aspects.

However, the CSSF indicates that there is still an important share of information that has been assessed as incomplete or boilerplate, that regarding climate information there are too many issuers still obscuring the topic, while other struggle to provide a comprehensive information covering all aspects required, and that all sectors analysed are not at the same level yet.

Thus, progress is still to be made but the gap is expected to be filled thanks to the upcoming regulations, including the entry into force of the Taxonomy Regulation and the forthcoming Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting.

For more information and resources on Green and Sustainable Finance, see the Topic Guide on the Clifford Chance Financial Markets Toolkit.

---

55 Review

LUXEMBOURG LAW OF 25 FEBRUARY 2022 AMENDING THE LAWS OF 17 DECEMBER 2010, 17 APRIL 2018 AND 16 JULY 2019, TRANSPOSING DIRECTIVE (EU) 2021/2261 AND IMPLEMENTING PEPP REGULATION, SFDR, TAXONOMY REGULATION, REGULATION (EU) 2021/557 AND REGULATION (EU) 2021/2259

Law of 3 March 2022[56]

The Luxembourg law of 25 February 2022 amending the UCI Law, the amended law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products (PRIIPS Law) and the law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation, in order to transpose Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS) and to implement certain provisions of the following EU Regulations, was published in the Luxembourg official journal (Mémorial A) on 3 March 2022:

- Regulation (EU) 2019/1238 of European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (PEPP Regulation);
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR);
- Regulation (EU) 2020/852 of the European Parliament and the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending SFDR (Taxonomy Regulation);
- Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis; and
- Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.

The above-mentioned Luxembourg laws are amended in order notably to:

- appoint the Luxembourg financial sector authority, the CSSF respectively the CAA, as Luxembourg competent authorities for monitoring the application of the PEPP Regulation, SFDR and Taxonomy Regulation by the Luxembourg entities subject to their respective supervision;
- specify the supervision and investigation powers of the CSSF and the CAA for the purpose of the PEPP Regulation, SFDR and Taxonomy Regulation as well as the sanctions and other administrative measures that may be applied by the CSSF and the CAA as Luxembourg competent authorities in the context of the abovementioned EU Regulations. As an example, the sanctions that may be applied by the CSSF and the CAA in case of non-compliance by the entities subject to their respective supervision with the relevant requirements of the PEPP Regulation, SFDR and Taxonomy Regulation include, amongst others, a ban against the responsible persons from exercising management functions, pecuniary fines on both natural and legal persons, as well as publication of decisions in relation thereto on the CSSF's and CAA's websites; and
- specify that the key information document, prepared in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), shall be deemed to meet the key

[56] Law 25.02.2022

investor information requirements imposed by Articles 55 and 159 to 163 of the UCI Law.

The Law enters into force on 8 March 2022, with the following exceptions: Article 5 of the Law (change to PRIIPS Law) entered into force on 1 January 2022 and Article 4 of the Law (change to UCI Law) will enter into force on 1 January 2023.

ASSET MANAGEMENT

CSSF ISSUES CIRCULAR IMPLEMENTING THE ESMA GUIDELINES ON MARKETING COMMUNICATIONS

CSSF Circular 22/795 of 31 January 2022

By means of its Circular CSSF 22/795 (the "Circular) ,the CSSF integrated the ESMA Guidelines on marketing communications under the Regulation on Cross-Border Distribution of Funds (the "CBDF Regulation") into its administrative practices and regulatory approach (the "Guidelines").

The Guidelines provide common principles regarding the identification of marketing notifications which must, in accordance with the CBDF, mandatorily describe the risks and rewards of purchasing units or interests in an equally prominent manner and must be fair, clear and not misleading. Furthermore, the Guidelines provide more details as to the application of the abovementioned requirements.

With regard to its scope of application, the Circular is applicable to all investment fund managers incorporated under Luxembourg law (the "IFMs"), being, authorised AIFMs, internally managed authorised AIFs, UCITS management companies, self-managed UCITS, managers of EuVECAs and managers of EuSEFs.

Hence, management companies subject to Article 125-1 of Chapter 16 of the 2010 Law, management companies subject to Chapter 17 or 18 of the 2010 Law as well as registered alternative investment fund managers benefitting from an exemption under Article 3 of the 2013 Law do not fall within the scope of the Circular.

The above in scope IFMs must assess whether certain messages or communications addressed to investors or potential investors qualify as 'marketing communications' on the basis of the examples mentioned in the ESMA guidelines.

The CSSF further stressed the fact that IFMs' compliance with the requirements set out in the CBDF will be subject to its control. However, the CSSF has yet to communicate the means through which it will collect information for performing controls and will complete the circular with annexes and a separate FAQ for this purpose.

CSSF ADDRESSES QUESTIONS OF THE FUNDS SECTOR IN RELATION TO VIRTUAL ASSETS

FAQ on virtual assets (UCIs) published on 29 November 2021 and updated on 4 January 2022[57]

Investments in virtual assets by UCITS

UCITS, other UCIs addressing non-professional investors and pension funds are not allowed to invest directly or indirectly in virtual assets unless these assets qualify as MiFID financial instruments and in this case, they could potentially be eligible investments.

Investments in virtual assets by AIFs

An AIF with an authorised AIFM may however invest directly or indirectly in virtual assets if the AIF markets its interests only to professional investors and if the AIFM obtains an extension of authorisation from the CSSF for this new investment strategy.

Investment fund managers (IFM) intending to manage an AIF investing in virtual assets will need to obtain prior authorisation from the CSSF for the investment strategy. Initiators of AIFs intending to invest in virtual assets should further present their project beforehand to the CSSF.

Virtual assets and AML

Regarding the money laundering, terrorist financing and proliferation financing risk aspects, the CSSF calls for implementation of risk mitigation measures commensurate with the increased risks and expects that the *person responsible for control* (RC) and the *person responsible for compliance* (RR) of supervised entities investing in virtual assets possess and can demonstrate an adequate understanding of the new risks posed by virtual assets and the necessary measures to mitigate such risks.

Requirements for the depositary

A Luxembourg depositary can act as depositary for investment funds investing directly in virtual assets, subject to complying with certain regulatory requirements.

In relation to the depositary's liability and additional conditions, the CSSF distinguishes three cases:

- when the virtual assets qualify as 'other assets', the depositary function is limited to ownership verification and record keeping;
- when the depositary does not offer safekeeping or administration type of services for virtual assets, the investment fund or investment fund manager must directly appoint a specialised virtual asset service provider (VASP) and is required to establish a direct contractual relationship with that VASV. The depositary is then not liable for the restitution of the assets; and
- when the depositary does provide safekeeping or administration type services for virtual assets, including custodian wallet services, the depositary must be registered as a VASP, has an obligation of restitution for the loss or theft of the assets, and must inform the CSSF in a timely manner when it envisages directly safeguarding virtual assets.

57 CSSF Press-release

CSSF REFORMS POST FINANCIAL YEAR REQUIREMENTS FOR IFMS AND UCIS

Publication of Circulars CSSF 21/788, 21/789 and 21/790 concerning IFMs and UCIs on 22 December 2021

The CSSF published three circulars introducing new annual reporting requirements, and amending some of the existing ones, for Luxembourg-based IFMs, regulated UCIs and their approved statutory auditors (*réviseurs d'entreprises agréés*). These new circulars also include the abrogation of the CSSF Circular 02/81 concerning the Long Form Report.

The aim of this reform is to improve the risk-based supervision of the CSSF, both for prudential and AML/CFT purposes, and to provide a clear framework for the role of the approved auditors.

The new requirements apply to IFMs for the first time for their financial years ending as of 31 December 2021 and to regulated UCIs for their financial years ending as of 30 June 2022.

The new requirements for both IFMs and regulated UCIs have to be fulfilled on the CSSF eDesk platform and consist of:

- completing a self-assessment questionnaire, and
- sending a letter to the CSSF with certain information in case the approved statutory auditor issues a modified audit opinion in the context of the annual audit.

In addition, the approved statutory auditors have to review the self-assessment questionnaires submitted by IFMs and regulated UCIs and complete a separate report on this basis. The management letter to be prepared on an annual basis by the approved statutory auditor remains applicable, but a specific regulatory framework is now set out for this.

Finally, a new CSSF AML/CFT external report has to be prepared by the approved statutory auditor for all Luxembourg investment fund managers, including registered AIFMs, and all Luxembourg investment funds supervised by the CSSF for AML/CFT purposes. This report is due for the first time for the financial years ending on or after 31 December 2021.

CSSF CLARIFIES WHETHER SPACS CONSTITUTE ELIGIBLE INVESTMENTS FOR UCITS

Update of CSSF FAQ on UCI Law on 17 December 2021

The CSSF updated its FAQs on the law of 17 December 2010 on undertakings for collective investment ("UCI Law") to clarify the conditions for UCITS to invest in SPACs.

UCITS may invest in SPACs if these qualify, at any point of their life cycle, as transferable securities withing the meaning of Article 1 (34) and Article 41 of the UCI Law and Article 2 of the Grand-Ducal Regulation of 8 February 2008.

Before investing in SPACs, UCITS must perform a detailed risk assessment covering all material risks to which the UCITS will be exposed as a result of the investment, and in particular, ensure the liquidity of the SPAC investments does not compromise the ability of the UCITS to repurchase its units at the request of unit-holders.

In addition, a UCITS' investment in SPACs should in principle be limited to a maximum of 10% of a UCITS' NAV and be appropriately disclosed in UCITS prospectuses.

EMPLOYMENT

REMOTE WORKING TAX THRESHOLDS FOR BELGIAN RESIDENTS

1 January 2022[58]

The threshold of days Belgian residents employed in Luxembourg may perform in their country of residence, without their remuneration becoming taxable in such country, is increased to 34 days (instead of 24 days) with effect as from 1 January 2022. A similar increase to 34 days of the threshold of days French residents employed in Luxembourg may perform in France (which is currently of 29 days) should also be implemented in 2022 (but the exact date is not known yet).

However, working days performed by French, Belgium (and German) residents, employed in Luxembourg, in their country of residence due to the COVID-19 pandemic, are currently not considered to determine the country of taxation of their remuneration, in accordance with tax agreements concluded between Luxembourg and its border countries (this derogation currently applies until 31 March 2022 with a possible tacit extension until 30 June 2022 for France and Belgium, if none of these countries object before 31 March 2022) [59].

58 Press - release

59 Briefing

BILL OF LAW TRANSPOSING THE EU DIRECTIVE 2019/1937 ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW

Bill of Law N°7945 of 10 January 2022[60]

Some key points of the bill (which is being discussed and is hence subject to amendments):

- Scope: unlike the directive, the bill covers all breaches to national law and EU Law (whereas the scope of the directive is limited to EU Law)
- Protection of whistleblowers: reporters are protected against any form of retaliation (including, employment termination or suspension, discrimination, harassment, etc.), provided that their report is made in accordance with the following:
  - the reporter must have reasonable grounds to believe that the information reported is true at the time of reporting and that it falls within the scope of the law
  - the report must have been made either internally, externally or in accordance with the framework for public disclosure
- Internal reporting channels: legal entities are required to establish internal reporting channels and procedures (after consultation with the staff delegation). Private entities are only subject to this obligation if they employ at least 50 individuals - companies with 50 to 249 employees will have until 17 December 2023 to implement this measure
- External reporting channels: whistleblowers can alternatively report externally, to one of the competent authorities indicated in the law (CSSF, CAA, CNPD, ITM, etc.)
- Public disclosures: situations in which a whistleblower can make public disclosures are limited (e.g., after an (unsuccessful) internal/external report, in case of imminent danger for public order, or risk of retaliation or limited chances that the breach be actually remedied) [61].

60 Bill 7945

61 Briefing

BILL OF LAW INTRODUCING A CULTURAL LEAVE

Bill of Law N°7948 of 13 January 2022[62]

This bill (which is being discussed and remains subject to amendments) enables employees (as well as independent workers), who are artists or involved in a cultural project, to benefit from a leave of up to 12 days per year (for a full-time employee), in order to participate in high-level cultural events or specialised training in the cultural sector.

Administrative managers of a federation or national network representative of the cultural sector, as well as those of associations in the cultural sector, may also benefit from a cultural leave of between 2 and 10 days per year (depending on the type of organisation and the number of members).

Certain eligibility conditions apply for employees (e.g., length of service, social security affiliation, etc.). The granting of leave may be refused by the employers if (regarding the private sector) there is a risk of major repercussions on the operation of the undertaking or on the other employees' annual leave.

During the cultural leave, the employee does not receive his or her usual salary, but benefits from a compensatory allowance advanced by the employer and reimbursed by the State (within a certain limit).

3G COVIDCHECK IN THE WORKPLACE

Law of 11 March 2022

The Law of 11 March 2022, with effect as from the same date has removed the possibility for employers to apply the "3G CovidCheck" scheme at the workplace.

This measure, which required employees to present a certificate of vaccination, recovery or negative test for COVID-19 (or a certificate of contraindication to vaccination with a negative COVID-19 test) to access the workplace, could be implemented by the employer, on an optional basis, since its creation, before being made mandatory as from 15 January 2022. It became optional again with the Law of 11 February 2022 amending the Law of 17 July 2020 on the measures to fight against the Covid-19 pandemic.

As from 11 March 2022 (in the evening), the employer is no longer entitled to require employees to present any certificate of vaccination, recovery or negative test for COVID-19 to access the workplace.

The 3G CovidCheck regime also ceases to mandatorily apply in company restaurants and at gatherings.

62 Bill 7948

CORPORATE

AMENDMENT OF THE LEGAL PROVISIONS APPLICABLE TO THE RCS AND RBE

Bill of Law N°7961 of 27 January 2022

On 27 January 2022, the bill of law n°7961 was introduced by the Luxembourg Minister of Justice to reform the legal provisions applicable to the RCS and RBE. This bill of law aims to improve the quality of the information registered with the RCS and RBE and to provide their administrators with new resources so that an effective policy can be implemented to monitor registered persons and entities and ensure that they comply with their filing obligations with LBR.

According to the Minister of Justice, four major objectives have been identified:

- Provide accurate, complete, up-to-date and correct information;
- Ensure optimal use of data and maximise the usefulness of the registers for the Luxembourg economy;
- Ensure compliance with legal requirements to guarantee reliable data for professionals and administrations;
- Support and guide users to provide a seamless user experience.

The transformation of the LBR will be implemented by the end of 2023 and structured around three key initiatives:

- the introduction amongst other of a range of administrative measures of prevention and sanctions that RCS and RBE administrators will be able to engage to encourage or constrain registered entities to update their data, including in the most serious cases or in the case of refractory persons or entities, their denunciation to the public prosecutor's office.
- deepen the support and individualised follow up provided to registered entities to comply with their filing obligations,
- the investment in technology to optimize the flow of information between the administrators and the users, with a new electronic platform which will ensure to accelerate, automated and continuous communication.

FILING RCS: NEW FORMALITIES UPCOMING FOR NATURAL PERSONS

LBR Public notice - 4 March 2022

The RCS will introduce new RCS forms that will require inter alia that natural persons registered or to be registered with the RCS in any capacity whatsoever[63], will need to provide their Luxembourg national identification number to the RCS or apply to obtain one as part of the filing process. Initially scheduled for 31 March 2022, the date for the application of these new forms was postponed by the LBR to an unknown date.

The adoption of these new RCS forms derives from article 12bis of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of companies, which was introduced by the law of 13 January 2019 establishing a register of beneficial owners.

As from the date of application of these new measures:

No filing relating to natural persons, will be possible without the provision of the national identification number or the application to obtain one.

For filings non-related to natural persons:

during a transitional period, the national identification number of the natural person(s) registered in the file of the company, will not be compulsory, the provision of such number or the application to obtain one will be possible on a voluntary basis as part of the same filing process;

at the end of the transitional period, the national identification number will be compulsory which means that no filing with the RCS will be possible without the provision of the national identification number or the application to obtain one for each natural person registered in the file of the company.

A stand-alone procedure to file the national identification number or to apply to obtain one will be opened for natural persons already registered with the RCS. It is worth noting that this procedure will be available without charge during the transitional period.

The national identification number will not be publicly disclosed, it will not appear on documents to be issued by the entity, it will not appear on pre-filled requisition forms and will not be visible on the RCS extract of the entity.

With the adoption of the new RCS forms, the RCS will also introduce the control of all addresses located in Luxembourg registered or to be registered in the RCS.

All natural persons who are or will be registered with the RCS and who are not already in a possession of a Luxembourg national identification number, should anticipate that additional information and supporting documents will need to be provided as part of their registration with the RCS[64].

[63] N/A to court-appointed representative (*mandataire judiciaire*) and to legal representative of a foreign company which opened a branch in Luxembourg.

[64] More details on this topic are available in our client briefing

BILL OF LAW IMPLEMENTING DIGITALISATION DIRECTIVE

Bill of Law of 15 February 2022

On 15 February 2022, the Ministry of Justice lodged the bill n°7968. This bill aims to implement Directive (EU) 2019/1151 also known as the "Digitalisation directive" amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in companies' law as well as the digitalisation of the notary profession. This bill will open new options for several aspects of companies' processes.

- Possibility to incorporate companies and establish branches online

The bill introduces the possibility to incorporate companies and to establish branches online without any physical presence. Even though the Directive 2019/1151 let the option to the Member States to open this possibility to SARL only, it appears based on the current version the bill that the Luxembourg legislator has chosen to open this possibility to SA, SCA and SARL. The online incorporation of companies will also be possible through the use of standard articles of association made available free of charge by the Chamber of Notaries.

- Introducing legal framework for the digitalisation of the notary profession

The bill creates a legal basis for the notarial deed in electronic format and introduces the set of rules applicable to notarial deed enacted in this format. Bill of law set the rules for the use of the electronic signature of notarial deed passed in the presence or without the physical presence of the appearing parties. In any case, the bill does not impact the general principle of the notary's responsibility and the involvement of the notary as a trusted third party, constituting the basis of the authenticity of the notarial deed.

- Strengthen the exchange of information between European commercial registers

Based on Directive 2017/1132, Member States' commercial register already exchange information on foreign branches and cross-border mergers of companies and Directive 2019/1151 thus aims to further improve the flow of exchanges between them.

TAX

EU PROPOSAL DIRECTIVES ON TRANSPARENCY STANDARDS FOR THE USE OF SHELL ENTITIES IN EUROPE AND MINIMUM TAXATION

22 December 2021

On 22 December 2021, the European Commission issued two draft directives on substance requirements and minimum taxation:

- a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the "Unshell Directive"[65] or commonly named "ATAD 3")[66];
- a proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union (the "Pillar II")[67].

ATAD 3

The aim of ATAD 3 is to prevent the misuse of so-called "shell companies" (i.e., legal entities with no – or only minimal – substance and economic activity) interposed to obtain tax advantages within the EU.

The proposal introduces a substance test (mainly related to personnel and premises) to help Member States identify entities that are ostensibly engaged in economic activity but do not comply with minimum substance standards. The proposal also sets rules regarding the tax treatment of those entities that do not meet the substance indicators and provides for automatic exchange of information and tax audits among Member States' tax authorities.

The proposal provides that Member States are required to implement the Unshell Directive by 30 June 2023 and apply its provisions from no later than 1 January 2024.

Pillar II

On 20 December 2021, following an agreement known as Pillar II signed by more than 130 countries in October 2021 on a global minimum tax, the OECD published final model rules for a global minimum tax (the Global Anti-Base Erosion Rules or "GloBE rules") which provides for a set of minimum taxation rules for large multinational enterprises ("MNEs") groups.

The GloBE rules aim to ensure that large multinational enterprises ("MNEs") groups pay an income tax at a minimum effective tax rate of 15%. Pillar II applies to MNEs that have a combined annual group turnover of at least EUR 750 million based on consolidated financial statements of the ultimate parent entity.

On 22 December 2021, the European Commission issued the Pillar II proposal built on the GloBE rules and expanding their scope to domestic groups.

The proposal provides that Member States are required to implement Pillar II by 31 December 2022 and apply its provisions from 1 January 2023.

65 Client Briefing

66 Consult Directive

67 Press-release

Tax

THREE NEW DOUBLE TAX TREATIES SIGNED BY LUXEMBOURG

13, 31 January and 10 February 2022

On 13 January 2022, the Luxembourg Minister of Finance, Yuriko Backes, signed a double tax treaty with respect to taxes on income and capital between Luxembourg and Cabo Verde[68]. The purpose of the treaty is to promote the economic relationships between the two countries through the elimination of double taxation. The treaty is in line with the latest international standards related to the exchange of information as well as the standards resulting from the OECD Model Tax Convention and BEPS action plan.

On 31 January 2022, the President of Rwanda ratified the Luxembourg – Rwanda double tax treaty[69] for the elimination of double taxation with respect to taxes on income and capital. This is the first treaty between Luxembourg and Rwanda. The treaty serves as an incentive for businesses and investors in both regions, facilitates business but also aids the purpose of fiscal transparency as it serves as a deterrent against tax evasion and tax avoidance. It also intends to attract Luxembourg investors in Rwanda as banks will be less reluctant to provide loans to companies looking to invest in Rwanda.

On 10 February 2022, Colombia and Luxembourg signed a double tax treaty[70]. The treaty is in line with the latest international standards, following the OECD Model Tax Convention and BEPS action plan. The purpose of the treaty is to promote economic relationships between the two countries through the elimination of double taxation as Colombia is an attractive market for Luxembourg investment funds in Latin America, especially regarding pension funds.

PUBLIC CONSULTATION ON NEW VAT RULES FOR DIGITAL ERA

21 January 2022[71]

On 21 January 2022, the European Commission launched a public consultation in view of a new legislation to be presented later this year that aims to adapt the way VAT is reported and collected in our newly digital world. The consultation focuses on whether the current VAT rules are adapted to the digital age and how digital technology can be used to help Member States fight VAT fraud and benefit businesses. The VAT in the digital age reform is seeking to reimagine how VAT intersects with the emerging digital economy and how opportunities afforded by new technologies can improve collections, reduce compliance costs, and cut the VAT gap fraud.

The consultation seeks feedback from businesses, academics, Member States, and other interested parties. They are invited to provide their comments by 15 April 2022 on VAT digital reporting requirements, e-invoicing, VAT treatment of the platform economy and the use of a single EU VAT registration. These topics refer to the diverse subjects covered by the proposal of a new legislation to come in 2022.

The consultation was presented considering that VAT remains as a major source of revenue for Member States budgets as economic recovery efforts continue following the coronavirus pandemic. However, the current VAT system is still not prepared to deal with the new digital reality, due to its complex rules for businesses and its proneness to fraud.

In its 2020 action plan for fair and simple taxation supporting the recovery, the European Commission announced a set of 25 initiatives[72] to be implemented up until 2024 to make taxation fairer, simpler, and more adapted to modern technologies.

68 Press-release

69 Press-release

70 Press-release

71 European Commission Initiatives

72 Press-release

TAX AUTHORITIES UPDATED GUIDELINES ON VAT TREATMENT OF OPERATIONS BETWEEN HEAD OFFICE AND BRANCHES

29 December 2021

In its 2014 decision on Skandia America Corporation (Case C-7/13), the CJEU ruled that the supply of services by a head office to its branch is a taxable transaction for VAT purposes if the branch is established in an EU Member State and the principal place of business is located in another State and the branch is a member of a VAT group.

Recently, in its Danske Bank A/S decision of 11 March 2021 (C-812/19), the CJEU extended this interpretation when the principal place of business (i.e., principal establishment of a company), and not the branch, is a member of a VAT group in its Member State of establishment.

Consequently, intercompany cross-border services should be inside the scope of VAT, if either the head office or the branch is a member of a VAT group. Furthermore, this decision restates that members of a VAT group cannot be identified by a separate/individual VAT number. This may challenge the current Luxembourg practice which so far provided for a global VAT number of the group and individual VAT numbers to be used by the members of the group in their transactions with third parties and for filing purposes of the EC sales list.

The French Supreme Administrative Court applied the aforementioned principles in its 2020 judgments. In addition, the French tax authorities recently published comments clarifying their position that "*the transactions that the permanent establishments not located in the Member State of the VAT group carry out with the single taxable person or acquire from the single taxable person are within the scope of VAT, even though they benefit an establishment pertaining to the same legal entity*"[73].

The French tax authorities also stated that the permanent establishments not located in the Member State of the VAT group are, where applicable, subject to the identification and declaration obligations of these taxable transactions under the conditions of ordinary law.

In practice, this approach applies to:

- the branch and its head office, when established in two different EU Member States, where at least one is a member of a VAT group;
- two branches located in two different EU Member States, where at least one is a member of a VAT group.

It remains to be monitored whether the Luxembourg tax authorities will adopt and communicate a respective position.

73 BOI-TVA-CHAMP-10-10-20 n°285

EUROPEAN COMMISSION CALLS ON LUXEMBOURG TO AMEND ITS LEGISLATION TO CORRECTLY TRANSPOSE THE NON-DEDUCTIBILITY OF INTEREST PAYMENTS RULE SET BY THE EU ANTI-TAX AVOIDANCE DIRECTIVE ("ATAD 1")

2 December 2021[74]

Article 4(7) of ATAD 1 provides for a derogation of the measures limiting the deductibility in the corporate tax base of interest payments in favour of financial undertakings which are exhaustively listed in article 2(5) of the directive. ATAD 1 as transposed into Luxembourg law (in article 168*bis* of the Luxembourg income tax law), includes in such carve-out for financial undertakings, securitisation special purpose entities ("SSPE") within the meaning of article 2 (2) of Regulation (EU) 2017/2402 of 12 December 2017 (the "Securitisation Regulation").

Following the formal notice of 14 May 2020, the European Commission sent a reasoned opinion to Luxembourg on 2 December 2021 on the grounds of incorrect transposition of ATAD 1. The European Commission considers indeed that SSPE are not financial undertakings within the meaning of the aforementioned provision. Luxembourg had two months to respond after which the European Commission may decide to refer the case to the CJEU.

Concerned SSPE should therefore assess their exposure in light of the expected change of law. While this remains to be monitored, most securitisation vehicles established in Luxembourg (and not qualifying as a SSPE in the sense of the Securitisation Regulation), are not expected to be directly impacted by these modifications. Such securitisation vehicles are already in scope of the interest limitation provision and should continue to assess and monitor their exposure on a regular basis.

Furthermore, a possible change in Luxembourg tax law[75] should not have a significant impact on the Luxembourg securitisation market as the vast majority of the EU securitisation transactions receive only interest income and similar types of income (e.g. financing income on derivatives or synthetic transactions that should, in our view, generally also qualify as interest income) and, therefore, are generally not impacted by the interest limitation rules.

Any changes in the Luxembourg should not be retroactive but only be applicable going forward.

On 9 March 2022, the Luxembourg Government tabled a bill no 7974 amending the Luxembourg income tax law and removing the SSPE from the list of financial undertakings excluded from the application of interest limitation rules. Such amendment should be applicable as from 1 January 2023.

74 Press - release

75 Law N°7974

ITALIAN COURT GRANTS WITHHOLDING TAX REFUND TO A LUXEMBOURG SICAV UCITS

7 February 2022

On 7 February 2022, an Italian Court held a decision stating that a Luxembourg SICAV UCITS is entitled to a refund of the withholding tax levied on dividends distributed by Italian companies. This decision comes in line with past rulings of the CJEU.

Pursuant to the Italian legislation, SICAV UCITS are considered taxable entities for corporate income tax purposes. However, according to the same legislation, UCITS set up in Italy are exempt from corporate income tax provided they are subject to prudential supervision. In a consistent manner, Italian legislation does not provide for the application of corporate income tax on dividends paid to domestic UCITS.

However, before 1st January 2021 Luxembourg SICAV UCITS, even if subject to prudential supervision by their own State, did not enjoy any tax exemption and were subject to withholding tax in Italy.

This denial of tax exemption was based exclusively on the difference of location, since SICAV incorporated in Italy and a Luxembourg SICAV UCITS, are comparable, since they are both subject to forms of prudential supervision.

Thus, this exclusion from tax exemption has been considered as a restriction on the free movement of capital by the CJEU. Consequently, the Italian Court decided that the Luxembourg SICAV UCITS in the case at hand was legitimately entitled to the reimbursement requested.

FIAT CHRYSLER: OPINION OF THE ADVOCATE GENERAL ON THE STATE AID QUALIFICATION OF A RULING GRANTED BY LUXEMBOURG

16 December 2021

Advocat General proposes that the ECJ dismisses the appeal in the Fiat Chrysler case (C-885/19 P): Opinion of the AG on the State aid qualification of a ruling granted by Luxembourg

16/12/2021

The Advocate General ("AG") proposes in his opinion of 16 December 2021 ("Opinion"), that the appeal brought forward by Fiat Crysler Finance Europe (C-885/19 P) should be dismissed.

Background

In 2015, the European Commission ("EC") concluded that a tax ruling issued by the Luxembourg tax authorities in favour of Fiat Chrysler Finance Europe ("FFT"), an undertaking in the Fiat group that provided treasury and financing services to the European-based group companies, constitutes a State aid under Article 107 TFEU[76].

The EC concluded that Luxembourg was required to recover the unlawful and incompatible aid from FFT. The validity of the EC's decision was confirmed by the judgment of 24 September 2019 of the European General Court ("EGC"). FFT and Ireland (in case C-898/19 P) separately appealed against this decision before the Court of Justice ("ECJ").

AG Opinion: key takeout

The Opinion proposes that the ECJ dismiss the appeal of FFT. This is mainly based on the following grounds:

The AG starts by examining the first ground of appeal and traces the origin of the arm's length principle applied. The Opinion suggests that the ECJ uphold the first ground of appeal in so far as the EGC erred in law in approving normal taxation rules as identified by the EC for the purpose of examining the existence of an advantage in the

[76] Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01.

Press release

present case. The AG considers that the first ground of appeal should be declared well founded in so far as the arm’s length principle used in the decision at issue is not a rule which is expressly codified in national law but the EC and the EGC in their decisions have introduced the arm's length principle as an extraneous element.

The AG also states that the judgment under appeal disregards the treaty provisions governing the division of competences between the European Union and the Member States and providing for a prohibition of harmonisation in the field of taxation (articles 3(6), 4(1), 5(1) and (2), and 114(2) TFEU).

Regarding the Fiat Chrysler case (C-885/19 P), the AD proposes that the ECJ dismiss the whole appeal. The AD considers that the EGC correctly held that the EC was not required to consider the intra-group and cross-border dimension of the effects of the tax ruling when determining whether that ruling conferred an economic advantage, and that the errors made in the calculation of the remuneration of the financing services provided by FFT prevented an arm’s length outcome from being obtained and could therefore form the basis for a finding of economic advantage.

It should be noted that the AD's opinion is not binding, and it remains to be seen whether the decision of the ECJ will follow the AD's opinion.

REAL ESTATE

OBLIGATIONS OF THE DEVELOPERS TO PROVIDE THE AFFORDABLE HOUSING IN THE CONTEXT OF THE SPECIAL DEVELOPMENT PLAN "NEW DISTRICT" (PAP NQ) FOR WHICH THE PROCEDURE HAS BEEN LAUNCHED AFTER 18 FEBRUARY 2022

The "Housing Pact 2.0" ("*Pacte logement 2.0*") adopted by the Chamber of Deputies 30 July 2021 aims to stimulate the creation of affordable housing ("*logements abordables*").

In particular, the Housing Pact 2.0 introduced a new article 29bis in the amended law of 19 July 2004 on municipal planning and urban development. This article looks to contribute to a substantial increase in the provision of affordable housing, which imposes new constraints and obligations on property developers who, after a transitional period ended 18 February 2022, are required in certain circumstances to reserve up to 30 percent of the gross constructed surface they are to build under a Special Development Plan "New District" ("PAP NQ") for moderately priced or “affordable” housing which must be transferred to public authorities after construction.

For each new PAP NQ for which the procedure of the adoption has been launched ("*entamée*") after 18 February 2022, a certain percentage of the gross constructed surface must be reserved for affordable housing:

- concerning land classified as a building zone <u>before</u> 18 February 2022:
  - If the PAP NQ provides for 10-25 dwellings, at least 10% of the gross constructed surface must be reserved for affordable housing;
  - If the PAP NQ provides for more than 25 dwellings, at least 15% of the gross constructed surface must be reserved for affordable housing;
- concerning land classified as a building zone <u>after</u> 18 February 2022
  - If the PAP NQ provides for 5 to 9 dwellings, at least 10% of the gross constructed surface must be reserved for affordable housing;
  - If the PAP NQ provides for 10 to 25 dwellings, at least 15 % of the gross constructed surface must be reserved for affordable housing;
  - If the PAP NQ provides for more than 25 dwellings, at least 20 % of the gross constructed surface must be reserved for affordable housing.

In the specific case of a PAP NQ located in a "priority housing zone" according to the sectoral master plan for housing ("plans directeurs sectoriels logement") ("PSL"), 30% of the constructed surface for housing has to be reserved for affordable housing.

In order to clarify the term "launched" ("*entamée*") regarding the beginning of the procedure of adoption of a PAP NQ, the Minister of the Interior and the Minister of Housing explained in their ministerial answer of 11 February 2022 that the procedure for the adoption of a PAP NQ is "launched" once the relevant PAP NQ file has been submitted to the College of Mayor and Aldermen.

The land on which the dwellings will be built, or both the affordable dwellings and the corresponding land are to be transferred to the municipality or in the event of renunciation by the latter, the State, through the Minister having Housing in his or her attributions, who can be substituted by a public promoter other than the municipality (*Fonds du Logement, Société Nationale des Habitations à Bon Marché (SNHBM*)) (the "Transfer").

In the context of the Transfer, the agreements need to be concluded between the developers and the municipalities or the State or a public promoter (the "Transfer Agreements"). Otherwise, the developer will not be able to obtain any building permit.

As a compensatory measure for the transfer of land for affordable housing, the building potential reserved for normal housing is increased by 10% compared to the general development plan (*PAG*). The increase in the level of land use is aimed at increasing the gross constructed surface dedicated to housing.

In the above-mentioned specific case of a PAP NQ located in a "priority housing zone" according to the PSL, aside from the increasing by 10% of the building potential, an

additional counterpart may be defined between the transferor and the transferee. This compensation can, for example, take the form of an additional increase in the building potential or a financial compensation.

The value of the affordable dwellings and the corresponding land to be transferred to the public authorities, should be set in the Transfer Agreements on the basis of the costs of construction, the development plans and specifications.

If the transferor and the transferee do not agree on the value of the affordable housing to be transferred, each of them may appoint an expert. If the experts are divided, the parties call on an arbitrator. In the event of disagreement on the arbitrator, the president of the district court of the place where the concerned land lies shall appoint the arbitrator.

Once the municipalities or the State or a public promoter are the owners of the affordable dwellings, they may proceed to rent it in accordance with the provisions and criteria laid down in particular by the amended Grand-Ducal regulation of 16 November 1998 on the implementing measures relating to rental housing.

Alternatively, they may opt for the sale of the affordable dwellings by means of a long lease ("*bail emphytéotique*") and a right of repurchase.

NON-APPLICATION OF THE PRINCIPLES OF ESTOPPEL AND LEGITIMATE EXPECTATIONS TO THE POSITION TAKEN BY THE MUNICIPAL AUTHORITIES DURING THE ELABORATION OF THE DRAFT REVISED GENERAL DEVELOPMENT PLAN (PAG)

Case law Administrative Court, 10 February 2022, n° 46552C

- Estoppel is a legal principle that prevents someone from taking a position contrary to a position which has been previously taken when the change is to the detriment of a third party. It is meant to prevent people from being unjustly wronged by the inconsistencies of another person's words or actions.
- In 2014 the Luxembourg Court of Appeal introduced the "theory of estoppel" in Luxembourg law.[77] While recalling its Anglo-Saxon origin, the Court of Appeal defined the principle of estoppel as follows: "Everyone must be consistent with himself; no one can contradict himself. Anyone who behaves in a way that is contrary to his previous attitude or statements violates the legitimate trust placed in him".
- Following this judgement, the Luxembourg courts are therefore called from time to time to pronounce on the application of the principle of estoppel in their decisions.

The Administrative Court has rendered a judgement on 10 February 2022 where it declined to apply the principle of estoppel in the context of appeal for annulment of a resolution of the Steinsel municipal council dated 26 April 2019 adopting the draft revised general development plan ("PAG") and the related approval decision of the minister of the interior dated 23 August 2019, regarding the classification of two parcels in the green zone (the "Administrative Decisions").

- The appellants objected to the Administrative Decisions classifying the parcels in question as green area ("*zone de verdure*") by requesting their reclassification as residential area ("*zone d'habitation*") (the "Disputed Areas").
- The court of first instance, the Administrative Tribunal, declared unfounded the action for annulment of the Administrative Decisions in its judgement rendered on 1 September 2021.
- The appellants invoked the violation of the principle of estoppel, as one of their arguments before the Administrative Court, referring to the intention of the municipal administration expressed during the procedure of elaboration of the PAG in 2017, to classify the Disputed Areas in urbanized zone.
- The Court recalled the general principle of adaptability ("*principe de mutabilité*") of the PAG[78]and underlined that "the implementation of a revised PAG is a very complex operation", in which different options may be considered at different stages of the procedure".
- The Administrative Court decided that for the principle of estoppel to be validly applied, the position of the municipal administration invoked by the appellants, must have been taken at a decisive moment, i.e. after the deliberation on the draft PAG by the municipal council pursuant to article 10 of the law of 19 July 2004 on municipal planning and urban development, as amended (the "Launching of the PAG").
- In the case at hand, the facts put forward by the appellants related to a period before the Launching of the PAG and cannot therefore not support the ground alleging non-compliance with the principle of estoppel or even the principle of consistency.
- Similarly, the Administrative Court further decided that the violation of the principle of legitimate expectations (*confiance légitime*) cannot be either successfully invoked, insofar as the appellants could not have a well-found trust regarding the standpoint of the municipal administration expressed at a stage prior to the Launching of the PAG.

[77] CA lux., 27 March 2014, n° 37018.

[78] CC lux., 4 October 2013, n° 00101.

GLOSSARY

"**AIF**": Alternative Investment Fund

"**AIFM**": 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 Law**": Luxembourg law of 12 November 2004 (as amended) on the fight against money laundering and terrorism financing

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

"**AMLD 5**": Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

"**BCL**": *Banque Centrale du Luxembourg*, the Luxembourg Central Bank

"**BdL**": *Bourse de Luxembourg*

"**Benchmarks Regulation**": Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

"**Brexit**": The withdrawal of the United Kingdom from the European Union

"**BRRD II**": Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC

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

"**CJEU**": The Court of Justice of the European Union

"**CNPD**": The Luxembourg data protection authority (*Commission Nationale de la Protection des Données*)

"**Companies Law**": Luxembourg law of 10 August 1915 (as amended) on commercial companies

"**CRD**": Capital Requirements Directives 2006/48/EC and 2006/49/EC

"CRD V": Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

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

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

"CRR II": Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and Regulation (EU) No 648/2012

Glossary

"**CSDR**": Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories, and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012

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

"**CSSF Regulation 12-02**": CSSF regulation 12-02 of 14 December 2002 (as amended) on AML/CTF

"DLT": Distributed Ledger Technologies

"**EBA**": European Banking Authority

"**ECB**": European Central Bank

"**EEA**": European Economic Area

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

"**EMIR**": Regulation (EU) 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

"**ESAs**": EBA, EIOPA and ESMA

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

"**ESRB**": European Systemic Risk Board

"**ETFs**": Exchange-Traded Funds

"EU Short selling Regulation": Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps

"**FATF**": Financial Action Task Force/*Groupe d'Action Financière* (FATF/GAFI)

"**FGDL**": *Fonds de garantie des dépôts Luxembourg* / Luxembourg Deposit Guarantee Fund

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

"**IFD**": Directive (EU) 2019/2934 on the prudential supervision of investment firms

"**IFR**": Regulation (EU) 2019/2033 on the prudential requirements of investment firms

"**Insurance Sector Law**": Luxembourg law of 6 December 1991 (as amended) on the insurance sector

"LuxSE": Luxembourg Stock Exchange

"**MiFID**": Directive 2004/39/EC of the European Parliament and of the Council dated 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council, and repealing Council Directive 93/22/EEC

"**MiFID2**": Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

"**MiFIR**": Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012

"**ML/TF**": Money laundering and terrorist financing

"**NCA**": National Competent Authority

Glossary

"**NFRD**": Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

"**Payment Services Law**": Luxembourg law of 10 November 2009 on payment services (as amended)

"**PFS**": Professional of the Financial Sector, other than a credit institution and subject to CSSF's supervision in accordance with the Financial Sector Law

"**PSD2**": Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

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

"**RBE Law**": the Luxembourg Law of 13 January 2019 establishing the beneficial owner register

"**SFDR**": Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

"**Solvency II**": Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance

"**SRB**": the Single Resolution Board

"**SRF**": the Single Resolution Fund

"**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

"**UCITS Directive**": Directive 2009/65/EC of 13 July 2009 of the EU Parliament and of the Council on the co-ordination of laws, regulations and administrative provisions relating to UCITS, as amended

"UCI Law": Luxembourg law of 17 December 2010 (as amended) on undertakings for collective investment

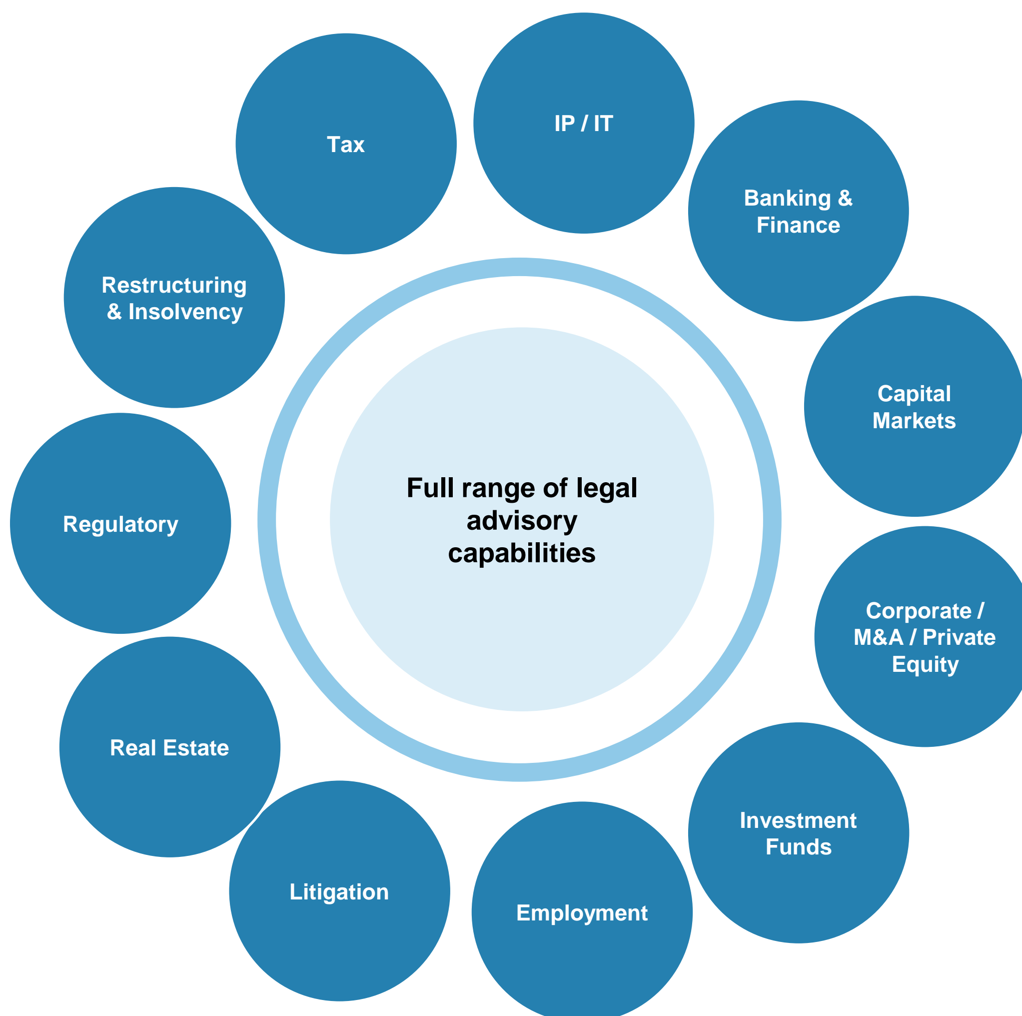
CLIFFORD CHANCE IN LUXEMBOURG

Luxembourg is one of the founding members of the European Union and home to many European institutions. It is a leading investment funds and banking centre with a reputation for competence and innovation.

Clifford Chance has specialist knowledge of the local and international dynamics of this unique location across all major areas of business.

We have a strong team of more than 120 lawyers, including 13 partners.

Our lawyers have a thorough understanding of different business cultures, the ability to work in many languages and experience in multi-jurisdictional work.



YOUR CONTACTS

BANKING, FINANCE AND CAPITAL MARKETS

Steve Jacoby
Managing Partner
T +352 48 50 50 219
E steve.jacoby
@cliffordchance.com

Christian Kremer
Senior Partner
T +352 48 50 50 201
E christian.kremer
@cliffordchance.com

Marc Mehlen
Partner
T +352 48 50 50 305
E marc.mehlen
@cliffordchance.com

Martin Wurth
Partner
T +352 48 50 50 237
E martin.wurth
@cliffordchance.com

Stefanie Ferring
Partner
T +352 48 50 50 253
E stefanie.ferring
@cliffordchance.com

Audrey Mucciante
Counsel
T +352 48 50 50 409
E audrey.mucciante
@cliffordchance.com

Udo Prinz
Counsel
T +352 48 50 50 232
E udo.prinz
@cliffordchance.com

Isadora Rousselle
Associate
T +352 48 50 50 467
E isadora.rousselle
@cliffordchance.com

INVESTMENT FUNDS

Emmanuel-Frédéric Henrion
Partner
T +352 66 14 85 190
E emmanuelfrederic.henrion
@cliffordchance.com

Kristof Meynaerts
Partner
T +352 48 50 50 226
E kristof.meynaerts
@cliffordchance.com

Maren Stadler-Tjan
Partner
T +352 48 50 50 472
E Maren.StadlerTjan
@cliffordchance.com

Paul Van den Abeele
Partner
T +352 48 50 50 478
E paul.vandenabeele
@cliffordchance.com

Bart Denys
Counsel
T +32 2 533 5905
E bart.denys
@cliffordchance.com

Christian Lennig
Counsel
T +352 48 50 50 459
E christian.lennig
@cliffordchance.com

Matthias Kerbusch
Counsel
T +352 48 50 50 470
E matthias.kerbusch
@cliffordchance.com

Oliver Zwick
Counsel
T +352 48 50 50 476
E oliver.zwick
@cliffordchance.com

Your Contacts

Sarra Mouhli
Knowledge Lawyer

T +352 48 50 50 483
E sarra.mouhli
@cliffordchance.com

CORPORATE

Katia Gauzès
Partner

T +352 48 50 50 205
E katia.gauzes
@cliffordchance.com

Saskia Myners
Partner

T +352 48 50 50 431
E saskia.myners
@cliffordchance.com

Christian Kremer
Senior Partner

T +352 48 50 50 201
E christian.kremer
@cliffordchance.com

Dunja Pralong-Damjanovic
Counsel

T +352 48 50 50 222
E dunja.pralong-damjanovic
@cliffordchance.com

Judit Stern
Counsel

T +352 48 50 50 426
E judit.stern
@cliffordchance.com

Sascha Nolte
Counsel

T +352 48 50 50 249
E sascha.nolte
@cliffordchance.com

Aurélien Le Ret
Senior Knowledge Lawyer

T +352 48 50 50 446
E aurelien.leret
@cliffordchance.com

LITIGATION, EMPLOYMENT, IP/IT AND REAL ESTATE

Albert Moro
Partner

T +352 48 50 50 204
E albert.moro
@cliffordchance.com

Ada Schmitt
Counsel

T +352 48 50 50 435
E ada.schmitt
@cliffordchance.com

Charles-Henri Laevens
Senior Associate

T +352 48 50 50 485
E charleshenri.laevens
@cliffordchance.com

Sébastien Schmitz
Counsel

T +352 48 50 50 455
E sebastien.schmitz
@cliffordchance.com

CLIFFORD

CHANCE

Your Contacts

John Ted
Senior Associate

T +352 48 50 50 379
E john.ted
@cliffordchance.com

Alma Custovic
Senior Associate

T +352 48 50 50 322
E alma.custovic
@cliffordchance.com

TAX

Geoffrey Scardoni
Partner

T +352 48 50 50 410
E geoffrey.scardoni
@cliffordchance.com

Josselin Badoc
Counsel

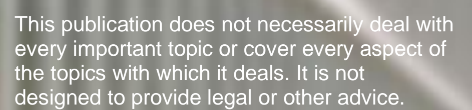
T +352 48 50 50 291
E josselin.badoc
@cliffordchance.com

Maxime Budzin
Counsel

T +352 48 50 50 465
E maxime.budzin
@cliffordchance.com

Aude Tusamba
Senior Knowledge Lawyer

T +352 48 50 50 411
E aude.tusamba
@cliffordchance.com



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

www.cliffordchance.com

Clifford Chance, 10 boulevard G.D. Charlotte, B.P. 1147, L-1011 Luxembourg, Grand-Duché de Luxembourg

© Clifford Chance 2022

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.