

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

**LUXEMBOURG LEGAL UPDATE  
JULY 2024**

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

Dear Reader,

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

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

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

[ESG and Sustainability: Funds and Investment Management](#)

[Financial Toolkit](#)

[Fintech Guide](#)

[Green and Sustainable Finance Topic Guide](#)

## ONLINE RESOURCES

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

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



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## **FINANCIAL INSTITUTIONS**





## FINANCIAL INSTITUTIONS

### CSSF PUBLISHES A CIRCULAR LETTER RELATED TO THE 2023 QUESTIONNAIRE ON FINANCIAL CRIME

08 February 2024<sup>1</sup>

On 8 February 2024, the CSSF published a circular letter related to the 2023 questionnaire on financial crime.

This circular is addressed to the management board and board of directors of all credit institutions, investment firms and investment fund managers, including registered AIFMs, Luxembourg branches of investment fund managers, SIAG, FIAAG and investment funds which did not designate an investment fund manager, payment institutions and electronic money institutions, VASPs and specialised PFS and central securities depositories, all incorporated under Luxembourg law. It is also addressed to all Luxembourg branches of the above-listed entities having their registered office in an EU country or a third country ("**Professionals under Supervision**").

In its circular, the CSSF informs the above entities of the launch on 19 February 2024 of the annual online questionnaire for the year 2023 collecting standardised key information concerning money laundering and terrorist financing (ML/TF) risks to which the Professionals under Supervision are exposed and the implementation of related risk mitigation and targeted financial sanctions measures, which is mostly unchanged compared to the previous year.

The Professionals under Supervision were required to answer the questionnaire and to submit it through the CSSF eDesk portal by 2 April 2024. In terms of process, the CSSF notes that a new API solution will allow the questionnaire to be pre-populated in order to ease the process. Besides, the questionnaire must be submitted either by the compliance officer in charge of the control of compliance with the professional obligations (*responsable du contrôle du respect des obligations professionnelles* ("**RC**")) or the person responsible for compliance with the

professional obligations (*responsable du respect des obligations professionnelles* ("**RR**")). While the completion of the questionnaire may be assigned to another employee or third party, the ultimate responsibility remains with the RC or RR.

In this respect, the CSSF states that the data provided needs to be accurate under penalty of application of administrative measures or sanctions by CSSF pursuant to Articles 8-2 or 8-4 of the AML/CTF Law.



<sup>1</sup> Circular Letter: [https://www.cssf.lu/wp-content/uploads/circular\\_letter\\_070224\\_AML\\_CFT.pdf](https://www.cssf.lu/wp-content/uploads/circular_letter_070224_AML_CFT.pdf)

## **CSSF PUBLISHES COMMUNIQUÉ ON MICAR**

**28 February 2024<sup>2</sup>**

On 28 February 2024, the CSSF published a communiqué on MiCAR.

The communiqué is addressed to entities with concrete projects to provide services on crypto-assets ("**CASP**") or to issue asset-referenced tokens ("**ART**") or e-money tokens ("**EMT**") falling under MiCAR. It is further noted that MiCAR is subject to a phased entry into application on 30 June 2024 (authorisation and supervision of ART/EMT) and 30 December 2024 (other provisions, in particular on CASP).

The purpose of the communiqué is to inform the public that, in the context of the upcoming application of MiCAR, the CSSF invites entities considering a notification or submission of an authorisation file with a view to the provision of CASP services or the issuance of ART or EMT to contact the CSSF now to initiate a preliminary dialogue.

Entities supervised by the CSSF are invited to contact their usual point of contact at the CSSF, whereas entities not supervised by the CSSF may contact [ipig@cssf.lu](mailto:ipig@cssf.lu). The communiqué finally refers to the dedicated CSSF webpage on MiCAR for more information.

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

## **CSSF PUBLISHES COMMUNIQUÉ ON NEW EDESK PROCEDURE – IPU THRESHOLD MONITORING**

1 March 2024<sup>3</sup>

On 1 March 2024, the CSSF published a communiqué on a new eDesk procedure regarding Intermediate Parent Undertaking ("**IPU**") threshold monitoring reports ("**Reports**") for credit institutions.

The purpose of the communiqué is to inform credit institutions that as from 1 March 2024, the CSSF started collecting Reports from credit institutions (subsidiaries and branches) belonging to third-country groups on behalf of EBA. The purpose of this reporting is to check, on the basis of the total assets of third-country groups in the EU, whether or not the threshold for establishing an IPU has been exceeded. The reporting is in XBRL format (see taxonomy established by EBA). The Q4 2023 report has to be submitted through one of the following means by 12 May 2024 COB:

- XBRL file deposit in the dedicated eDesk procedure; or
- via an API solution (S3 protocol), allowing for automation.

A user guide providing details on how to fill in and submit the report is available on eDesk.

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<sup>3</sup> Communiqué: <https://www.cssf.lu/en/2024/03/new-edesk-procedure-ipu-threshold-monitoring/>

## **CSSF PUBLISHES COMMUNIQUÉ ON THE PAYMENT OF VARIABLE REMUNERATION IN CLASS 2 INVESTMENT FIRMS**

7 March 2024<sup>4</sup>

On 7 March 2024, the CSSF published a communiqué on the payment of variable remuneration in class 2 investment firms (the "**non-SNI IFR IF**"): findings of non-compliance during the EBA's benchmarking exercise on remuneration practices for financial year 2022.

The purpose of the communiqué is to inform the public that in 2023 the CSSF collected data in the framework of the benchmarking exercise on remuneration practices led by EBA for the financial year 2022.

The sample used for the exercise notably included non-SNI IFR IF, selected in compliance with the provisions of §13 of the EBA Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034 (EBA/GL/2022/07).

When examining the reports submitted by the non-SNI IFR IF, the CSSF noticed certain violations of their legal obligations regarding the awarding and payment of any variable remuneration to individuals identified as material risk takers ("**MRT**"), detailed in Article 38-22(3) and (4) of the Financial Sector Law.

The purpose of the communiqué is therefore to shed light on these situations of non-compliance in order to remind the entities of their legal obligations in this area, as well as to inform the market about the measures undertaken by the CSSF as a response to the detected breaches.

The communiqué therefore first summarises the applicable legal rules and then provides details on breaches it has observed by certain entities. They concern the inappropriate application based on the proportionality principle of certain derogations foreseen in the Financial Sector Law and that occurred either on the institutional level generally or on an individual MRT level.

The CSSF emphasises as a result that it is necessary that all entities ensure that the conditions foreseen under Article 38-22(3) and (4) of the Financial Sector Law are

met in order to avoid any situation of non-compliance when awarding and paying variable remuneration to their MRT. This point may, in particular, be carefully examined during the annual, central and independent evaluation of their remuneration policies (Article 38-20(1)(7) of the Financial Sector Law). In addition, should any breach be detected, the CSSF must be informed without delay, and remedial measures must be taken immediately.

Considering that the breaches detected by the CSSF could derive from serious governance issues, the CSSF intends to inform the financial sector that it will continue to monitor the proper application of the rules applicable to the awarding and payment of any variable remuneration within the entities. Failure to comply with these rules may result in strict measures, up to and including sanctions.

<sup>4</sup> Communiqué: <https://www.cssf.lu/en/2024/03/payment-of-variable-remuneration-in-non-sni-ifr-investment-firms-findings-of->

[non-compliance-during-the-ebas-benchmarking-exercise-on-remuneration-practices-for-financial-year-2022/](https://www.cssf.lu/en/2024/03/payment-of-variable-remuneration-in-non-sni-ifr-investment-firms-findings-of-)



## **CSSF PUBLISHES COMMUNIQUÉ ON NEW EDESK PROCEDURE REGARDING THE EBA BENCHMARKING EXERCISE ON GENDER PAY GAP EXERCISE**

7 March 2024<sup>5</sup>

On 7 March 2024, the CSSF published a communiqué on its new eDesk procedure regarding the EBA benchmarking exercise on the gender pay gap ("**GPG**").

The purpose of the Communiqué is to inform the public that from 15 May 2024, the CSSF will start collecting GPG reports from credit institutions and non-SNI IFR investment firms ("**non-SNI IFR IF**") on behalf of the EBA. The objective of this reporting is to collect information on the gender pay gap of credit institutions and non-SNI IFR IF, as required by Articles 38-10 and 38-24(1) of the Financial Sector Law.

This data collection exercise takes place every three years starting in 2024 with regard to financial year 2023. It concerns a sample of credit institutions and non-SNI IFR IF. The reporting is in XBRL format.

The report regarding the financial year 2023 had to be submitted through one of the following means by 15 June 2024:

- XBRL file deposit in the dedicated eDesk procedure GPG; or
- via an API solution (S3 protocol), allowing for automation.

A user guide providing details on how to fill in and submit the report is available on eDesk.

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<sup>5</sup> Communiqué: <https://www.cssf.lu/en/2024/05/new-edesk-procedure-regarding-the-eba-benchmarking-exercise-on-gender-pay-gap-exercise/>

## **CSSF PUBLISHES COMMUNIQUÉ ON UPDATE OF THE REPORTING HANDBOOK AND NEW EDESK PROCEDURE FOR IPU THRESHOLD MONITORING**

11 March 2024<sup>6</sup>

On 11 March 2024, the CSSF published a communiqué to announce an updated version of the Reporting Handbook for investment firms (v.1.3), which integrates precisions with respect to the requirement to submit final versions of some EU reporting templates and the introduction of the Intermediate Parent Undertaking ("IPU") Threshold Monitoring module.

The CSSF refers to a circular email sent to all investment firms on 14 December 2023, which announced that the mandatory annual submission by investment firms of the newly introduced IPU threshold monitoring has now entered into force. This IPU reporting aims at verifying, on the basis of the total assets of third-country groups in the European Union, whether the threshold for establishing an IPU has been exceeded or not.

Supervised entities that are part of a third-country group shall therefore submit to the CSSF the IPU threshold monitoring reporting (U 01.00 template (Annex II)), with reference date 31 December 2023 in XBRL format (see taxonomy established by EBA), by 12 May 2024 at the latest for the first time. The CSSF further draws the attention of supervised entities to the fact that the U 02.00 template will have to be included with a negative filing indicator (= FALSE).

The CSSF has opened the data collection of the IPU Threshold monitoring reporting from investment firms belonging to third-country groups, on behalf of EBA, as from 12 March 2024.

The Q4 2023 IPU report must be submitted through one of the following channels:

- via the submission of the XBRL file in the dedicated eDesk process; or

- via an API solution (S3 protocol), allowing the flow to be automated.

In case of questions related to prudential reporting requirements, the CSSF asks supervised entities to contact [ifd@cssf.lu](mailto:ifd@cssf.lu). For any technical question (i.e. related to the submission of the XBRL file), supervised entities shall contact [ifreport@cssf.lu](mailto:ifreport@cssf.lu).

<sup>6</sup> Communiqué: <https://www.cssf.lu/en/2024/03/update-of-the-reporting-handbook-and-new-edesk-procedure-for-ipu-threshold-monitoring/>

## **CSSF PUBLISHES FIRST JOINT CSSF-CAA REPORT ON THE LUXEMBOURG DERIVATIVES MARKET**

11 March 2024<sup>7</sup>

On 11 March 2024, the CSSF published the first joint Report on the Luxembourg Derivatives Market (the "Report") and a related communiqué informing the public of the publication of the Report by the CSSF and the CAA.

The Report aims at providing an overview of the state of play under EMIR, while also providing insights into the CSSF's and the CAA's ongoing efforts to improve the quality of reported data.

The report contains two elements:

- in a section on market monitoring, an analysis of structures and trends in the Luxembourg derivatives market between the end of 2021 and the end of June 2023, building on the indicators developed for risk monitoring purposes; and
- in a section on the supervision of the quality of EMIR data, a description of the new approach to monitoring data quality developed by ESMA and the national competent authorities, which is fully implemented in Luxembourg. The exposition of details and quantitative components in this section underscores the existing scope for enhancing the data quality in EMIR reporting. Therefore, all stakeholders, and in particular counterparties involved in the derivatives trading activity, are encouraged to use and leverage the regulatory data in their own internal processes, such as – but not limited to – risk and compliance management processes.

According to the data provided by the trade repositories, at the end of June 2023, the Luxembourg derivatives market was represented by slightly more than 914,000 open transactions amounting to a gross national outstanding of around EUR 6,484 billion including both OTC and exchange-traded derivatives.

In order to allow the market and other stakeholders to benefit from this initiative, the CSSF and the CAA welcome any feedback or suggestions by the readers that aim to enhance the information delivered in this Report.

<sup>7</sup> Communiqué: <https://www.cssf.lu/en/2024/03/first-joint-report-on-the-luxembourg-derivatives-market/>

## **CSSF PUBLISHES COMMUNIQUÉ IN RELATION TO THE NEW LUXEMBOURG OFFICE FOR THE MANAGEMENT OF SEIZED ASSETS**

14 March 2024<sup>8</sup>

On 14 March 2024, the CSSF published a communiqué in relation to the asset management office, *Bureau de gestion des avoirs* ("**BGA**").

The purpose of the communiqué is to highlight the obligations arising from the Luxembourg law of 22 June 2022 on the management and recovery of seized or confiscated assets, which came into force on 5 July 2022.

The law established the BGA, responsible for handling all amounts seized in Luxembourg during national or international criminal proceedings, including cash or credit balances in an account, debts or virtual assets.

In accordance with Article 18 of the law, any garnishee holding monies, debts or virtual assets seized as part of a national or foreign criminal proceeding, before Article 18 of the law entered into force, shall declare them to the BGA.

Therefore, the CSSF reminds garnishees, in particular credit institutions and virtual asset service providers, to comply with their legal obligations and thus declare the monies, debts or virtual assets seized before 1 October 2022.

A six-month transition period starting on 1 October 2022 expired on 31 March 2023.

For the practical details, the CSSF asks supervised entities to consult:

<https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/avoirs-saisis/declaration-bureau-gestion-avoirs.html>

In case of any further questions, supervised entities shall contact the BGA directly via: [info@bga.etat.lu](mailto:info@bga.etat.lu).

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<sup>8</sup> Communiqué: <https://www.cssf.lu/en/2024/03/communiqué-in-relation-to-the-bureau-de-gestion-des-avoirs/>

## **CSSF PUBLISHES CIRCULAR ON APPLICATION OF THE ESMA GUIDELINES ON TRANSFER OF DATA BETWEEN TRADE REPOSITORIES UNDER EMIR AND SFTR**

21 March 2024<sup>9</sup>

On 21 March 2024, the CSSF published its Circular 24/855 on the application of the ESMA guidelines on the transfer of data between trade repositories under EMIR and SFTR.

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

The guidelines fulfil several purposes with regards to the establishment of consistent, efficient and effective supervisory practices within the European System of Financial Supervision ("**ESFS**") and to ensure their common, uniform and consistent application by providing clarification for trade repositories, reporting counterparties and entities responsible for reporting ("**ERR**") on how to ensure continuous compliance with the following EMIR provisions:

- Article 9(1e) of EMIR which provides that "Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication";
- Article 80(3) of EMIR which provides that "A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information";
- Article 79(3) of EMIR which provides that "A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and

the redirection of reporting flows to other trade repositories"; and

- the procedure for portability under Article 78(9) of EMIR.

The guidelines are attached to the circular and are available on ESMA's website.

The circular has applied since 21 March 2024 to financial and non-financial counterparties to derivatives as defined in Articles 2(8) and 2(9) of EMIR for which the CSSF is the competent authority in accordance with the EMIR Law ("**reporting counterparties**"). The CSSF reminds reporting counterparties that they must ensure that ERR reporting on their behalf applies these guidelines.

<sup>9</sup> Circular: [https://www.cssf.lu/wp-content/uploads/cssf24\\_855eng.pdf](https://www.cssf.lu/wp-content/uploads/cssf24_855eng.pdf)

Communiqué: [https://www.cssf.lu/fr/Document/circulaire-cssf-24-855/?utm\\_campaign=email-240321-f1c7b](https://www.cssf.lu/fr/Document/circulaire-cssf-24-855/?utm_campaign=email-240321-f1c7b)



## **CSSF PUBLISHES COMMUNIQUÉ ON ITS SUPERVISORY PRIORITIES IN SUSTAINABLE FINANCE**

22 March 2024<sup>10</sup>

On 22 March 2024, the CSSF published a communiqué to give a general overview of its supervisory priorities in the area of sustainable finance.

As the supervisory authority of the financial sector, the CSSF strives to accompany the transition of the financial sector and its players in a proactive way.

The integration of sustainability and adequate consideration of sustainability risks as key drivers of financial strategies is a long-term objective. In support of this ambition, the CSSF's supervisory priorities in the area of sustainable finance aim at fostering a coherent implementation of the sustainable finance framework across the financial sector and ensuring the integration of ESG requirements in the CSSF's supervisory practice.

The regulatory framework in relation to sustainable finance continues to be further enhanced and progressively improved upon. In such an evolving context, and taking into account regulatory developments as well as developing practices, the CSSF will continue implementing its risk-based approach to supervision.

Nevertheless, the primary responsibility of ensuring the compliance with applicable requirements lies with the supervised entities and their board members, who should ensure that the integration of ESG factors in traditional governance, risk management and compliance tools is a focal point within their organisations and endeavour to make suitable ESG education a priority for themselves and their personnel.

The communiqué focusses on supervisory priorities for credit institutions, for the asset management industry, for investment firms and in international cooperation in sustainable finance.

The communiqué is not to be construed as an exhaustive or definitive list. It rather aims at drawing the attention of

the financial sector to a number of prominent matters to be addressed in this area. If deemed necessary, the supervision priorities may be adjusted, and the CSSF's duties of ongoing prudential supervision may also warrant other ESG-related aspects to come under scrutiny.

<sup>10</sup> Communiqué: [https://www.cssf.lu/fr/2024/03/priorites-de-supervision-de-la-cssf-en-matiere-de-finance-durable/?utm\\_campaign=email-240322-34b30](https://www.cssf.lu/fr/2024/03/priorites-de-supervision-de-la-cssf-en-matiere-de-finance-durable/?utm_campaign=email-240322-34b30)

## **CSSF PUBLISHES COMMUNIQUÉ ON DORA**

**25 March 2024<sup>11</sup>**

On 25 March 2024, the CSSF published a communiqué on DORA.

The purpose of the communiqué is to inform the public that the CSSF launched a new webpage dedicated to DORA which will be applicable to no less than 20 types of financial entities in Luxembourg as from 17 January 2025.

The objective of the webpage is to provide financial entities with an introduction to DORA, as well as continuous updates on the latest developments.

The webpage can be found at the following link:

<https://www.cssf.lu/en/digital-operational-resilience-act-dora/>.

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<sup>11</sup> Communiqué: <https://www.cssf.lu/en/2024/03/digital-operational-resilience-act-dora/>

## CSSF PUBLISHES COMMUNIQUÉ ON EMIR REFIT REPORTING

26 March 2024<sup>12</sup>

On 26 March 2024, CSSF published a communiqué to announce that the EMIR REFIT reporting goes live on 29 April 2024.

The purpose of the communiqué was to inform all counterparties involved in derivatives transactions of the entry into force of the new EMIR REFIT reporting on 29 April 2024.

In this context, the CSSF draws the attention of counterparties to the following elements, with a particular emphasis on the importance of testing mentioned under the last point:

- The ESMA website which contains critical information for the proper implementation of EMIR REFIT: <https://www.esma.europa.eu/data-reporting/emir-reporting>
- The previous CSSF press release on EMIR REFIT: [https://www.cssf.lu/wp-content/uploads/PR22\\_33\\_EMIR\\_Refit\\_reporting\\_standards\\_211222.pdf](https://www.cssf.lu/wp-content/uploads/PR22_33_EMIR_Refit_reporting_standards_211222.pdf)
- Entities shall notify the CSSF of significant errors and omissions following Article 9 of the implementing technical standards on reporting.
- The CSSF will monitor the volume of currently submitted trades, including variations in the volumes of reported transactions.
- Should an entity cease to exist, it must close trades (i) from a contractual point of view and (ii) with appropriate termination messages to the relevant trade repositories.
- Should another entity take over the reporting on behalf of one counterparty, that counterparty must ensure that no trades are either forgotten or reported twice.

- Counterparties are required to monitor the reporting they submit, or the reporting submitted on their behalf, and must ensure its accuracy. For illustration purposes, the CSSF reminds counterparties to implement internal controls such as (non-exhaustive list):
  - identification of outliers;
  - application of the correct action type;
  - identification and removal of duplicates;
  - timeliness checks;
  - consistency between the trading activity and the reporting; and
  - consistency over time of the reporting with the real activity.
- Trade repositories have made their platforms available for testing. The CSSF insists that all participants ensure their ability to submit their trades prior to the go-live date.

The CSSF reiterates that there has been sufficient time for stakeholders to implement the changes required for EMIR REFIT.

<sup>12</sup> Communiqué: <https://www.cssf.lu/en/2024/03/emir-refit-reporting-goes-live-on-29-april-2024/>

## **CSSF PUBLISHES COMMUNIQUÉ REGARDING NEW REPORTING PROCEDURE FOR ICT-RELATED INCIDENT REPORTING**

27 March 2024<sup>13</sup>

On 27 March 2024, the CSSF published a communiqué regarding the new reporting procedure for ICT-related incident reporting according to Circular CSSF 24/847.

The purpose of the communiqué is to publish further guidance related to the submission channels and procedure to be followed when submitting an ICT-related incident notification under Circular CSSF 24/847.

The CSSF reminds supervised entities that the circular entered into force on 1 April 2024 for the supervised entities, as defined in points 2 a) to d) and k) to p) in Section 1.1., and on 1 June 2024 for the supervised entities, as defined in points 2 e) to j) in Section 1.1 of the circular, and on these dates repeals and replaces Circular CSSF 11/504 on "Frauds and incidents due to external computer attacks". Subsequently, on these dates the new reporting methods and procedures described here below come into effect.

Notifications shall be submitted via one of the two below methods:

- Dedicated procedure on CSSF eDesk Portal; or
- Application Programming Interface (API) solution via the simple storage service (S3) protocol.

To avoid connection issues when the procedure became mandatory on 1 April and 1 June, respectively, the CSSF invited all supervised entities to ensure they have set up the relevant eDesk accounts and enrolled as necessary.

To help Supervised Entities with the submission of their notifications, a detailed user guide on major ICT-related incident notification has been developed and is available on the eDesk Portal, as announced by the CSSF in another communiqué dated 27 March 2024. This user guide explains the procedures for completing and

submitting the ICT-related incident notifications with both channels.

For any questions regarding authentication or account creation, or technical issues in submitting a notification, supervised entities shall contact [eDesk@cssf.lu](mailto:eDesk@cssf.lu).

For any question relating to the circular, the timeline or the content of the ICT-related incident, notifications should be addressed to [ictrisksupervision@cssf.lu](mailto:ictrisksupervision@cssf.lu).

<sup>13</sup> Communiqué: <https://www.cssf.lu/en/2024/03/communique-regarding-new-reporting-procedure-for-ict-related-incident-reporting-according-to-circular-cssf-24-847/>

User Guide: <https://www.cssf.lu/wp-content/uploads/Major-ICT-related-Incident-Notification-User-Guide.pdf>

## **CSSF REGULATION ON THE SETTING OF THE COUNTERCYCLICAL BUFFER RATE FOR THE SECOND QUARTER OF 2024**

**28 March 2024<sup>14</sup>**

On 28 March 2024, the CSSF issued regulation N° 24-03 on the setting of the countercyclical buffer rate for the second quarter of 2024.

The regulation provides that the countercyclical buffer rate applicable to the relevant exposures located in Luxembourg remains set at 0.50% for the second quarter of the year 2024.

The regulation entered into force on the date of its publication in the Luxembourg official journal on 28 March 2024.

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<sup>14</sup> Regulation:  
<https://legilux.public.lu/eli/etat/leg/rcsf/2024/03/28/a130/jo> (only in French)



## **CSSF PUBLISHES COMMUNIQUÉ ON DIRECT TRANSMISSION OF PROCEDURES**

5 April 2024<sup>15</sup>

On 5 April 2024, the CSSF published a communiqué on direct transmission of procedures to the CSSF.

In 2023, the CSSF officially introduced new means of communication with professionals in the financial sector.

The purpose of the communiqué is to inform the public of the ways in which they can submit their procedures to the CSSF:

- via the CSSF's eDesk portal by filing in a form or uploading a file; or
- by automating the transmission of information via a file exchanged through an API solution (S3).

The communiqué specifies in a table which procedures are covered by these transmission methods and indicates the procedures, which will soon be able to be transmitted via such means of communication.

In case of any questions, professionals are invited to contact the CSSF directly at [edesk@cssf.lu](mailto:edesk@cssf.lu).

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<sup>15</sup> Communiqué: <https://www.cssf.lu/en/2024/04/direct-transmission-of-procedures-to-the-cssf/>

## **CSSF PUBLISHES COMMUNIQUÉ ON RUSSIA/UKRAINE AND ARTICLE 5R (833/2014)**

15 April 2024<sup>16</sup>

On 15 April 2024, the CSSF published a communiqué on Russia/Ukraine and the introduction of Article 5r in the Council Regulation (EU) No 833/2014 of 31 July 2014.

The purpose of the communiqué is to inform the public that following the introduction of Article 5r in the Council Regulation, the European Commission has published FAQs and a reporting template to be used by concerned entities, such as credit institutions.

The information and template are also available on the website of the Ministry of Finance.

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<sup>16</sup> Communiqué: <https://www.cssf.lu/en/2024/04/russia-ukraine-article-5r-833-2014/>

## **CSSF PUBLISHES COMMUNIQUÉ ON THE RESULTS OF THE ENFORCEMENT OF THE 2022 INFORMATION PUBLISHED BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW**

15 April 2024<sup>17</sup>

On 15 April 2024, the CSSF published a communiqué on the results of the enforcement of the 2022 financial and non-financial information published by issuers subject to the Transparency Law.

The CSSF is the competent authority in Luxembourg to ensure the supervision of securities markets and is in charge of examining the compliance of the financial and non-financial information published by issuers under its supervision with the relevant reporting framework and thereby contributes to investor protection and promotes confidence in financial markets.

The purpose of the communiqué is to present to financial entities the examinations performed in 2023. The main findings include areas such as financial information related to (i) high inflation and rising interest rates, (ii) financial impacts of Russia's invasion of Ukraine, (iii) disclosures of climate-related assumptions, (iv) disclosures on unobservable inputs used in valuations, (v) alternative performance measures, or non-financial information related to (i) policies, the outcome of policies and risks in relation to sustainability matters, (ii) the prevention of greenwashing and improved transparency, (iii) climate-related matters with certain recommendations ahead of the CSRD, and (iv) relating to Article 8 of the Taxonomy Regulation. The CSSF further reports on its main findings in relation to the regulatory technical standards on the specification of a single electronic reporting format (ESEF).

The CSSF indicates that on 8 January 2024, it published its priorities regarding the enforcement on the 2023 annual reports published by issuers subject to the Transparency Law. These priorities can be found on the CSSF's website under Enforcement of Issuer Disclosure.

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<sup>17</sup> Communiqué: <https://www.cssf.lu/en/Document/results-of-the-enforcement-of-the-2022-financial-and-non-financial-information-published-by-issuers-subject-to-the-transparency-law/>

## **CSSF PUBLISHES COMMUNIQUÉ ON A VOLUNTARY DRY RUN EXERCISE FOR THE COLLECTION OF THE REGISTERS OF INFORMATION REQUIRED BY DORA**

17 April 2024<sup>18</sup>

On 17 April 2024, the CSSF published a communiqué on a voluntary dry run exercise for the collection of the registers of information required by DORA.

Under DORA and starting from 2025, financial entities will have to maintain registers of information regarding their use of ICT third-party service providers. In this context, the CSSF draws the attention to the announcement by the ESAs of the voluntary exercise for the collection of the registers of information of contractual arrangements on the use of ICT third-party service providers by the financial entities serving as preparation for the implementation and reporting of registers of information under DORA.

In this dry run exercise, the registers of information will be collected from participating financial entities through their competent authorities who will, in turn, provide those to the ESAs.

The Communiqué also refers to separate press releases published by EBA and ESMA.

The CSSF underlines the following key elements of the ESAs' announcements:

- To provide more information regarding the dry run exercise, the ESAs invited financial entities to take part in an introductory workshop, which took place on 30 April 2024. A dedicated factsheet is also available for more information.
- The ad-hoc data collection was expected to be launched in May 2024 with the financial entities expecting to submit their registers of information to the ESAs through their competent authorities between 1 July and 30 August.

- Financial entities participating in the dry run will receive support from the ESAs to: (1) build their register of information in the format as close as possible to the steady-state reporting from 2025, (2) test the reporting process, (3) address data quality issues, and (4) improve internal processes and the quality of their registers of information.
- As part of the exercise, the ESAs will provide feedback on data quality to financial entities participating, return cleaned files with their register of information, organise workshops and respond to frequently asked questions.

The CSSF invited the supervised entities to consider their participation in this exercise as being a good opportunity to test their readiness concerning the implementation and reporting of registers of information under DORA. The CSSF therefore encouraged the supervised entities that consider participating:

- to register to the ESAs' workshop to be able to gain further information and ask any questions before deciding if they volunteer or not for this exercise; and
- to inform the CSSF of their wish to participate in the exercise by sending an email to [ictrisksupervision@cssf.lu](mailto:ictrisksupervision@cssf.lu) by 17 May 2024. The email had to specify the exact name of the entity and its CSSF code.

<sup>18</sup> Communiqué: <https://www.cssf.lu/en/2024/04/voluntary-dry-run-exercise-for-the-collection-of-the-registers-of-information-required-by-dora/>

EBA press release: <https://www.eba.europa.eu/publications-and-media/press-releases/esas-run-voluntary-dry-run-exercise-prepare-industry-next-stage-dora-implementation>

ESMA press release: <https://www.esma.europa.eu/press-news/esma-news/esas-run-voluntary-dry-run-exercise-prepare-industry-next-stage-dora>

## **CSSF PUBLISHES COMMUNIQUÉ ON THE ADOPTION OF THE AML PACKAGE BY THE EUROPEAN PARLIAMENT**

26 April 2024<sup>19</sup>

On 26 April 2024, the CSSF published a communiqué on the adoption of the AML/CTF package by the European Parliament.

The communiqué mentions that in July 2021, the European Commission presented an ambitious package of legislative proposals to strengthen the EU's AML/CTF rules, which became commonly known as the "**AML Package**". After more than two years of negotiations, the AML Package was adopted by the European Parliament on 24 April 2024.

The AML Package consists of three legislative instruments, namely the sixth Anti-Money Laundering Directive, the EU Single Rulebook Regulation and the Anti-Money Laundering Authority Regulation.

The CSSF further notes that the recast of the Transfer of Funds Regulation which was part of the initial AML Package was uncoupled from the rest of the AML Package and already adopted in June 2023 (Regulation (EU) 2023/1113 of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets).

Once the legislative instruments are formally adopted by the Council and published in the Official Journal of the EU, the CSSF will provide more details on the changes that the AML Package will lead to.

The Communiqué contains a link to the European Parliament's press release on the AML Package.

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<sup>19</sup> Communiqué: <https://www.cssf.lu/en/2024/04/adoption-of-the-aml-package-by-the-european-parliament/>



## **CSSF PUBLISHES INFORMATION ON CSRD**

29 April 2024<sup>20</sup>

On 29 April 2024, the CSSF published information about the CSRD on a dedicated webpage.

The purpose of this publication is to inform the public that on 11 January 2024, the CSRD and the European Sustainability Reporting Standards ("**ESRS**") came into force, with the first visible effects in 2025 with the publication of the first sustainability reports in accordance with the CSRD.

The assessment of an entity's sustainability performance, which includes how well it integrates environmental, social and economic factors into its operations, is increasingly crucial. This trend has been growing since the OECD Guidelines were introduced in 1976. NFRD, established in 2014, aimed to increase transparency and accountability for large companies' non-financial performance and has become a vital part of the European regulatory framework.

The CSRD was created to address the NFRD's limitations and to enhance corporate non-financial reporting obligations alongside the ESRS for better harmonisation and quality of information. The CSRD and ESRS ensure that entities publish enough information to help those at the higher levels of the sustainability reporting chain, like those subject to SFDR, meet their reporting requirements.

The CSRD is seen as the regulatory embodiment of CSR in terms of transparency, asserting that social responsibility should not merely be voluntary but an integral part of corporate governance. It aims to turn CSR goals into regulated realities, mirroring evolving societal expectations of companies, particularly in their contribution to a more sustainable future.

The CSSF publication is accompanied by three tabs that can be consulted for further information on the CSRD:

- Overview of the CSRD;
- ESRS main requirements; and
- Scope of application of the CSRD.

These tabs provide a comprehensive understanding of the CSRD, its essential standards and its applicability.

<sup>20</sup> CSSF publication: <https://www.cssf.lu/en/corporate-sustainability-reporting-directive-csrd/>

## **CSSF PUBLISHES COMMUNIQUÉ ON NEW SFTR & EMIR PROCEDURES AVAILABLE FOR NOTIFICATION FORMS AND INTRA-GROUP EXEMPTION REQUESTS**

29 April 2024<sup>21</sup>

On 29 April 2024, the CSSF published a communiqué on new SFTR and EMIR procedures available for notification forms and intra-group exemption requests.

The purpose of the communiqué is to enable financial and non-financial counterparties to complete and submit the "EMIR – notification form and request for intragroup exemption" and "SFTR – notification form" procedure either through eDesk or by using an API solution based on the submission of a structured exchange file via the S3 protocol.

The "EMIR – notification form and request for intragroup exemption" procedure includes the following notifications and exemption requests:

Notification by Financial Counterparties ("**FC**") and Non-Financial Counterparties ("**NFC**") exceeding or ceasing to exceed the clearing threshold (Articles 4a and 10 of EMIR):

- Notification by NFC for outstanding disputes;
- Information from FC and RAIFs;
- Notification on data quality issues and other errors or omissions (Article 9 of the ITS on reporting);
- Notification for intragroup exemption from the central clearing (Article 4(2) of EMIR);
- Notification for intragroup exemption from collateral exchange (Articles 11(6) to 11(10) of EMIR); and
- Notification for intragroup exemption from reporting (Article 9(1) of EMIR).

The "SFTR – notification form" procedure includes the following notification:

- Notification on data quality issues and other errors or omissions.

A user guide, available in the EMIR and SFTR procedures, details the submission modalities for eDesk and API.

The webforms and Excel files previously available for this data collection are no longer accessible and have been replaced by these new eDesk procedures.

For practical details, the CSSF recommends consulting the dedicated EMIR and SFTR pages on its website.

In case of any further questions, supervised entities shall contact [edesk@cssf.lu](mailto:edesk@cssf.lu) for any technical questions regarding eDesk/S3 or [emir@cssf.lu](mailto:emir@cssf.lu) / [sftr@cssf.lu](mailto:sftr@cssf.lu) for any other questions related to the forms.

<sup>21</sup> Communiqué: <https://www.cssf.lu/en/2024/04/new-sftr-emir-procedures-available-for-notification-forms-and-intra-group-exemption-requests/>

## **LUXEMBOURG CENTRAL BANK AMENDS REGULATION ON ADDITIONAL TEMPORARY MEASURES RELATING TO EUROSYSTEM REFINANCING OPERATIONS AND ELIGIBILITY OF COLLATERAL**

**3 May 2024<sup>22</sup>**

On 3 May 2024 the Luxembourg Central Bank ("**BCL**") adopted a new Regulation 2024/N° 34 which amends BCL Regulation 2024/N° 18 implementing Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and the eligibility of collateral.

The regulation implements the following amendments of the guideline:

- The acceptance of certain short-term debt instruments issued by non-financial corporations which do not fulfil the eligibility criteria for marketable assets as collateral for Eurosystem monetary policy operations is discontinued.
- The provisions of the guideline allowing Eurosystem national central banks to accept as eligible collateral, for the purposes of Eurosystem credit operations, marketable debt instruments issued by the central government of the Hellenic Republic that do not meet the Eurosystem's credit quality requirements for marketable assets but fulfil all other eligibility criteria for marketable assets, subject to a specific haircut table, have become obsolete and are repealed, as the marketable debt instruments issued by the central government of the Hellenic Republic have become compliant with the Eurosystem's credit quality requirements.
- Further clarification is provided on the treatment of interest rate benchmarks.

The amendments to the regulation entered into force on 6 May 2024.

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<sup>22</sup> Regulation:  
<https://legilux.public.lu/eli/etat/leg/rbcl/2024/05/03/a175/fo> (only in French)

## **CSSF AML/CTF CONFERENCE DEDICATED TO INVESTMENT FIRMS**

14 May 2024<sup>23</sup>

In order to foster interaction with the investment firms under its supervision, the CSSF held an online conference on 23 April 2024 highlighting the key issues of AML/CTF for the sector. Representatives of the Luxembourg Ministry of Finance and the Luxembourg Financial Investigations Unit ("**FIU**") were also amongst the speakers.

The speakers gave feedback and clarifications on the following topics:

- Key take-aways from AML/CTF investment firms' supervision;
- Results of the FATF's Mutual Evaluation 2023; and
- Findings, typologies and best practices by the FIU.

The slides of the presentations are available on the CSSF website.

<sup>23</sup> Communiqué: <https://www.cssf.lu/en/2024/05/looking-back-on-the-2024-cssf-aml-cft-conference-for-investment-firms/>

Slides: <https://www.cssf.lu/wp-content/uploads/2024-AMLCFT-Conference-dedicated-to-Investment-Firms-of-the-Financial-Sector.pdf>

## **CSSF PUBLISHES COMMUNIQUÉ ON THE REVIEW OF POLICIES PROMOTING DIVERSITY WITHIN THE MANAGEMENT BODY OF CREDIT INSTITUTIONS**

15 May 2024<sup>24</sup>

On 15 May 2024, the CSSF published a communiqué on the review of policies promoting diversity within the management body of credit institutions.

The communiqué states that the Financial Sector Law and the joint EBA and ESMA guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06) require credit institutions to implement policies that promote diversity within the management body.

Following a survey launched in April 2023 on the subject of diversity within the management bodies of less significant credit institutions ("**LSIs**"), in October 2023 the CSSF published a communiqué summarising its findings, which revealed shortcomings in the understanding and implementation of the regulations on diversity.

As part of its follow-up monitoring, the CSSF then enjoined sixteen LSIs to communicate their diversity policies in order to carry out an initial series of checks. This first review of diversity policies enabled the CSSF to confirm the existence of significant issues in relation to the application of the legal and regulatory requirements on diversity in the management body.

The communiqué indicates the following main pitfalls encountered by the CSSF:

- There is a lack of knowledge on or understanding of the applicable legal and regulatory provisions on diversity.
- The policies communicated do not contain sufficient undertakings and detailed measures on the basis of which a real impact on diversity within the management body could be observed in the short or medium term.

- The qualitative objectives set by the diversity policies reviewed are not sufficiently concrete.
- Diversity policies often focus exclusively on the provisions applicable to members of the management body. However, it is crucial to also implement the requirements applicable to members of staff, including measures aimed at career planning and equal treatment and opportunities.

As stated in its previous communiqué, diversity is a growing concern for the CSSF, and the market needs to accelerate its transition towards diversity in compliance with current regulations. The CSSF therefore informs LSIs that it intends to continue its controls in this area, in particular through the review of existing diversity policies.

<sup>24</sup> Communiqué: [https://www.cssf.lu/wp-content/uploads/C\\_Diversity\\_150524.pdf](https://www.cssf.lu/wp-content/uploads/C_Diversity_150524.pdf)



## **NEW CSSF REGULATION RELATING TO TEMPORARY ADAPTATIONS OF CSSF REGULATION N°20-08 PUBLISHED**

**21 May 2024<sup>25</sup>**

On 21 May 2024, the CSSF issued a new Regulation 24-04 relating to temporary adaptations of CSSF Regulation N°20-08 of 3 December 2020 laying down conditions for the granting of loans relating to immovable property for residential use situated in the territory of Luxembourg.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 7 May 2024 (CRS/2024/003) and makes temporary adjustments to the measures introduced by CSSF Regulation N°20-08 to take account of cyclical developments. In particular, banks granting loans for buy-to-let residential property may respect a loan-to-value (LTV) ratio of >80% up to 95% (thereby derogating from the up to 80% LTV ratio limit), provided the total of loans benefitting from this derogation is not higher than 10% of the total of such type of loans.

The regulation entered into force on 22 May 2024, the day of its publication in the official journal, and will apply until 31 December 2024.

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<sup>25</sup> Regulation:  
<https://legilux.public.lu/eli/etat/leg/rcsf/2024/05/21/a198/fo> (only in French)

## **LUXEMBOURG BILL IMPLEMENTING THE ELTIF 2, MICAR, TRANSFER OF FUNDS 2 AND EUROPEAN GREEN BONDS EU REGULATIONS PUBLISHED**

21 May 2024<sup>26</sup>

Bill N°8387 was lodged with the Luxembourg Parliament on 21 May 2024.

The main purpose of the bill is to implement the recent European Union regulations concerning crypto-assets, European long-term investment funds and European green bonds. To this end, the bill proposes to amend the law of 16 July 2019 on the operationalisation of EU regulations and of certain other financial sector laws.

Among these regulations, the bill particularly aims to integrate MiCAR and the regulation (EU) 2023/1113 of the Parliament and the Council of 31 May 2023 on information accompanying fund transfers and certain crypto-assets into Luxembourg law and to adapt Luxembourg law accordingly.

The CSSF will be designated as the supervisory authority to ensure compliance with these regulations and will be vested with the necessary supervisory and investigation powers for its new role and with the power to issue sanctions in case of breaches of these regulations.

The entry into force of MiCAR and the establishment of the European crypto-asset services provider ("**CASP**") status thereunder trigger the repeal of the Luxembourg VASP regime. Consequently, the bill will repeal, effective from 30 December 2024, the provisions related to the registration of VASPs currently provided for in the AML/CTF Law. CASPs will become subject to the AML/CTF Law, and the AML/CTF will be adapted to take account of MiCAR and the amendments MiCAR has made to the EU's fourth anti-money laundering directive (EU) 2015/849 (AMLD4).

Bill N°8387 finally proposes minor technical amendments to the Insurance Sector Law.

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

<sup>26</sup> Bill: <https://www.chd.lu/en/dossier/8387> (only in French)

## **CSSF PUBLISHES COMMUNIQUÉ ON THE ASSESSMENT OF PROFESSIONAL STANDING AND EXPERIENCE AND AN UPDATE OF ITS DECLARATIONS OF HONOUR FORMS**

22 May 2024<sup>27</sup>

On 22 May 2024, the CSSF published a communiqué on the assessment of professional standing and experience – update of the declarations of honour.

The CSSF has updated the forms for declarations of honour ("**DoH**") for natural and legal persons following an adjustment to its administrative practice regarding the assessment of professional standing and experience. These adjustments do not affect the procedures or DoH to be submitted in the context of the supervision of credit institutions.

The CSSF has made the following adjustments to the DoH:

- DoH must be signed, dated and delivered in original form bearing a wet-ink signature or in electronic form bearing a qualified electronic signature within the meaning of Regulation (EU) No 910/2014 authenticating the declarant itself.
- The content of certain information items to be provided in DoH has been clarified.

In particular, the declarant must declare the following:

- not to have held or currently hold a position or significant influence in an entity that has been or is currently the subject of criminal proceedings or sanctions;
- having submitted extracts from criminal records issued by the competent authorities in each of the countries of residence for the last five years prior to signing the DoH (or in the country of establishment for legal persons, where the registered office has been registered and the actual registered office is located) or, where applicable,

declare and justify if a criminal record cannot be issued for one or more of the countries of residence concerned;

- that the documents transmitted or to be transmitted to the CSSF contain complete, sincere and accurate information and are up to date at the date of transmission to the CSSF;
- that the copies of the documents submitted or to be submitted to the CSSF are true copies of and identical to the original documents.
- The content of DoH for natural persons and DoH for legal persons has been aligned.

From now on, the CSSF will no longer require original versions or certified copies of the documents to be submitted together with the declaration of honour, except in specific cases. Furthermore, the CSSF will no longer require the declarant to submit an updated version of the documentation at the end of the assessment procedure, provided that no changes have occurred in the meantime.

The new versions of the DoH will be applicable from 1 July 2024 and are available on the CSSF website.

The CSSF also states that the curricula vitae to be submitted in the context of an assessment of professional standing and experience must include in full and in detail:

- first and last names, place and date of birth, address and nationality(ies);
- diplomas obtained, as well as any training courses and certificates relevant to the post applied for, and language skills;
- all functions held during the declarant's working life, indicating in each case the names and areas of activity of the employers, a description of the responsibilities and tasks carried out and the dates of starting and leaving the function; and
- current and previous authorisations issued by a financial-sector supervisory authority of any country and the nature, scope and duration of the authorisation.

<sup>27</sup> Communiqué: <https://www.cssf.lu/en/2024/05/assessment-of-professional-standing-and-experience-update-of-the-declarations-of-honour/>

## **CSSF PUBLISHES UPDATE OF ITS TECHNICAL FAQ ON REGULATION CSSF NO 20-08 ON BORROWER-BASED MEASURES FOR RESIDENTIAL REAL ESTATE CREDIT**

23 May 2024<sup>28</sup>

On 23 May 2024, the CSSF published an updated version of its technical FAQ on Regulation CSSF No 20-08 on borrower-based measures for residential real estate credit as temporarily amended by Regulation CSSF No 24-04.

The FAQ aims to clarify the implementation aspects associated with the loan-to-value ("**LTV**") measure in place.

Following their update, the FAQ states that until 31 December 2024, cash collateral and the State guarantee on mortgage loans (the "**State Guarantee**") can be considered as own funds for the purpose of the LTV requirement but should only be permitted for loans that had an initial LTV requirement strictly below 100% in accordance with the maximum limits set out in Regulation CSSF No 20-08. For the cases where the borrower provides own funds for the compliance with the LTV requirement that consist of cash collateral and/or the amount corresponding to the State Guarantee, these should be deducted from the value of "L", i.e., the sum of all loan tranches secured by the borrower on the immovable property at the moment of loan origination, for the purpose of the LTV computation calculated in accordance with Regulation CSSF No 20-08.

In addition, as per the amendment introduced by Regulation CSSF No 24-04, until 31 December 2024 banks granting loans for buy-to-let residential property may respect an LTV ratio of > 80% up to 95% (thereby derogating from the up to 80% LTV ratio limit), provided the total of loans benefitting from this derogation is not higher than 10% of the total of such type of loans.

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<sup>28</sup> FAQ <https://www.cssf.lu/en/Document/technical-faq-on-regulation-cssf-no-20-08-on-borrower-based-measures-for-residential-real-estate-credit/>

## **CSSF PUBLISHES COMMUNIQUÉ ON CRYPTO-ASSET ATMs**

27 May 2024<sup>29</sup>

On 27 May 2024, the CSSF published a communiqué on crypto-asset ATMs.

The CSSF recommends that persons interested in conducting crypto-asset transactions on ATMs located in Luxembourg verify beforehand whether the providers operating these ATMs are registered as VASPs with the CSSF. The list of VASPs is available on the CSSF's website in the application "Search Entities".

Furthermore, the communiqué notes that any provider wishing to operate such an ATM in Luxembourg must register with the CSSF as a VASP beforehand. More information on the registration procedure is available on the CSSF website.

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<sup>29</sup> Communiqué: <https://www.cssf.lu/en/2024/05/communique-on-crypto-asset-atms/>

## **CSSF PUBLISHES COMMUNIQUÉ ON THE CREATION OF A PILLAR 3 PUBLICATIONS CORNER FOR BANKS ON THE CSSF WEBSITE**

29 May 2024<sup>30</sup>

On 29 May 2024, the CSSF published a communiqué on the creation of a Pillar 3 publications corner for banks on the CSSF website.

The communiqué announces the launch of a new webpage dedicated to Pillar 3 disclosures for institutions in the scope of Pillar 3 requirements, i.e. mainly certain credit institutions and class 1 ("systemic and bank-like") investment firms. This initiative highlights the CSSF's commitment to enhancing public disclosures by gathering all essential resources for drafting meaningful Pillar 3 reports in one convenient location. Specifically, within this Pillar 3 section, there is guidance available for disclosing Environmental, Social and Governance (ESG) risks, encouraging institutions to enhance transparency regarding their dedication to transitioning to a greener economy.

The webpage will be updated regularly to ensure institutions have the most up-to-date information on Pillar 3 readily available.

The communiqué contains a link to the new webpage.

<sup>30</sup> Communiqué: <https://www.cssf.lu/en/2024/05/creation-of-a-pillar-3-publications-corner-for-banks-on-the-cssf-website/>

Pillar 3 webpage: <https://www.cssf.lu/en/pillar-3-framework/>

## **CSSF PUBLISHES COMMUNIQUÉ ON NON-PROFIT ORGANISATIONS AND THE FIGHT AGAINST TERRORIST FINANCING**

30 May 2024<sup>31</sup>

On 30 May 2024, the CSSF published a communiqué concerning non-profit organisations and the fight against terrorist financing ("TF").

The communiqué states that the vertical risk assessment published by the Luxembourg Ministry of Justice in 2022 (the "**Vertical Risk Assessment**") apprehends the level of exposure to TF risks of certain non-profit organisations ("**NPOs**") as being high based on the characteristics and activities of NPOs (in particular those carrying out development and humanitarian projects abroad).

The Vertical Risk Assessment notes that NPOs are exposed to TF risks through the donations they receive as well as the destination of their funds:

- When it comes to donations, terrorists or terrorist organisations sometimes use false pretexts to collect funds.
- As for the destination of the funds, they may, deliberately or inadvertently, be paid by NPOs active in projects abroad to terrorists.

The communiqué stresses that although both typologies have not yet been identified in Luxembourg, the sub-sector of NPOs remains very vulnerable given the location of activities, particularly near to or in conflict zones.

It is further noted that due to the current geopolitical context, it has become even more risky that illegal financing networks will exploit the weaknesses of certain NPOs, in particular given the fact that they are not directly subject to obligations under AML/CTF legislation.

As a result, the implementation of an appropriate risk-based approach should lead financial institutions to target NPOs presenting higher risk and to apply appropriate mitigating measures to them, while not stigmatising all NPOs. The application of risk mitigation measures should not undermine the financial inclusion of NPOs, which could

then turn to unregulated and unsupervised financial services, further increasing TF risks.

The FATF therefore adopted amendments to Recommendation 8 on NPOs to provide a framework for enhanced protection against potential TF abuses. Following these amendments, the FATF has also updated its best practices on combating the abuse of NPOs (which also include examples of bad practice). In parallel, the FATF's evaluation methodology has also been adapted.

The communiqué draws attention to the fact that the FATF invites financial institutions, when they have identified a TF risk specific to an NPO and its activities, to determine whether there are appropriate safeguards and measures to enable them to manage it. The FATF also recommends that financial institutions work more closely with the non-profit sector to open discussions on the expectations and issues faced by each party.

It is also reminded that the EBA has updated its guidelines to incorporate the factors that financial institutions must take into account when assessing the money laundering and TF risks associated with a business relationship with NPOs. Reference is made to CSSF Circular 23/842 adopting these updated guidelines.

Finally, the communiqué contains a non-exhaustive list of indicators that financial institutions could consider in order to determine whether they are facing a TF risk situation caused by abusive use of an NPO.

The communiqué concludes that based on their risk-based approach, financial institutions should apply appropriate and proportionate mitigation measures to NPOs that they have identified as being exposed to TF risks, while not stigmatising all players in the sector and avoiding any de-risking that would undermine the financial inclusion of NPOs and transparency.

<sup>31</sup> Communiqué: <https://www.cssf.lu/en/2024/05/communique-concerning-non-profit-organisations-and-the-fight-against-terrorism-financing/>

## **CSSF PUBLISHES COMMUNIQUÉ ON PUBLIC CONSULTATION ON THE REVISION OF THE PRUDENTIAL FRAMEWORK FOR INVESTMENT FIRMS**

**5 June 2024<sup>32</sup>**

On 5 June 2024, the CSSF published a communiqué on public consultation on the revision of the prudential framework for investment firms.

The purpose of the communiqué is to inform all investment firms and relevant stakeholders regarding the EBA and ESMA discussion paper on the revision of the investment firms' prudential framework, published on 3 June 2024 on the EBA website, with the aim to gather relevant stakeholder feedback. Interested stakeholders are invited to submit comments to this consultation to the EBA via the dedicated consultation page.

A public hearing on the discussion paper will take place via the dedicated EBA website. The consultations run until 3 September 2024.

In addition, the CSSF has invited all investment firms to participate in an ad-hoc EBA data collection to dispose of sufficient and relevant quantitative information in the context of the discussion paper. The relevant instructions and templates have been attached to a circular letter sent to all investment firms on 5 June 2024 and are available on the EBA website.

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<sup>32</sup> Communiqué: [https://www.cssf.lu/fr/2024/06/consultation-publique-sur-la-revision-du-cadre-prudentiel-des-entreprises-dinvestissement/?utm\\_campaign=email-240605-8fb88](https://www.cssf.lu/fr/2024/06/consultation-publique-sur-la-revision-du-cadre-prudentiel-des-entreprises-dinvestissement/?utm_campaign=email-240605-8fb88)



## CSSF PUBLISHES PRESS RELEASE RELATING TO BASIC PAYMENT ACCOUNTS

18 June 2024<sup>33</sup>

On 18 June 2024, the CSSF published its press release 24/15 relating to basic payment accounts.

The purpose of the press release is to inform the public that in accordance with the Luxembourg law of 13 June 2017 on payment accounts (as amended) (the "**Payment Accounts Law**") the following institutions must open basic payment accounts for consumers who request so:

- *Banque et Caisse d'Epargne de l'Etat, Luxembourg;*
- *Banque Raiffeisen;*
- *BGL BNP Paribas;* and
- *POST Luxembourg.*

In addition, *Banque Internationale à Luxembourg* has chosen to also offer basic payment accounts.

Consumers legally resident in the EU, including consumers who do not have a residence permit but whose expulsion is impossible for legal or practical reasons, are entitled to open a basic payment account with the above-mentioned institutions and are entitled to use it, regardless of their place of residence.

The basic payment account must enable consumers to access at least certain basic services.

The press release further states that under the Payment Accounts Law there are specific procedural rules regarding the application for a basic payment account as well as the rejection of such application in limited cases, including where the consumer already holds a payment account in Luxembourg which enables the consumer to take advantage of the above-mentioned basic services (unless the consumer declares that he/she was warned that this account was to be closed).

The press release also states that consumers may refer to the CSSF if they (i) would like to contest an institution's decision to refuse the opening of a basic payment account

or (ii) believe that the institution that opened a basic payment account for them has closed the account unjustifiably.

<sup>33</sup> Press release: <https://www.cssf.lu/en/2024/06/press-release-relating-to-basic-payment-accounts/>





## **INSURANCE**





## INSURANCE

### CSSF PUBLISHES FIRST JOINT CSSF-CAA REPORT ON THE LUXEMBOURG DERIVATIVES MARKET

11 March 2024<sup>34</sup>

On 11 March 2024, the CSSF published the first joint Report on the Luxembourg Derivatives Market (the "Report") and a related communiqué informing the public of the publication of the Report by the CSSF and the CAA.

The Report aims at providing an overview of the state of play under EMIR, while also providing insights into the CSSF's and the CAA's ongoing efforts to improve the quality of reported data.

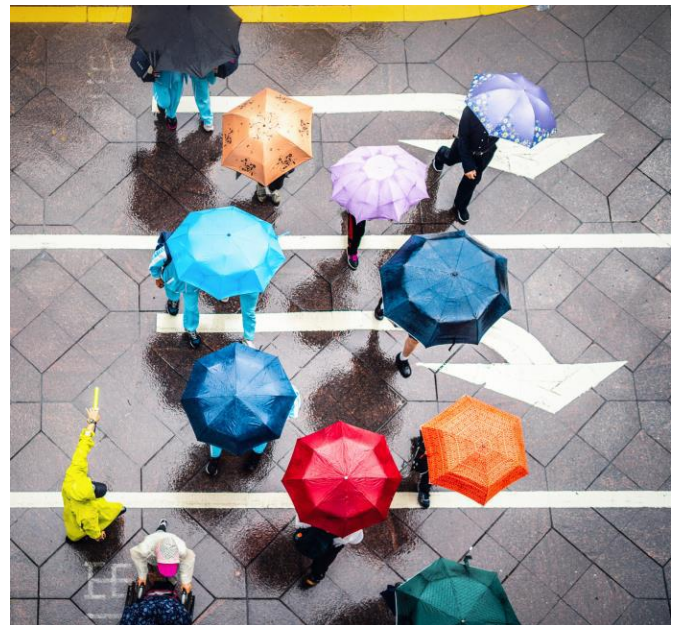
The report contains two elements:

- in a section on market monitoring, an analysis of structures and trends in the Luxembourg derivatives market between the end of 2021 and the end of June 2023, building on the indicators developed for risk monitoring purposes; and
- in a section on supervision of the quality of EMIR data, a description of the new approach to monitoring data quality developed by ESMA and the national competent authorities, which is fully implemented in Luxembourg. The exposition of details and quantitative components in this section underscores the existing scope for enhancing the data quality in EMIR reporting. Therefore, all stakeholders, and in particular counterparties involved in the derivatives trading activity, are encouraged to use and leverage the regulatory data in their own internal processes, such as – but not limited to – risk and compliance management processes.

According to the data provided by the trade repositories, at the end of June 2023, the Luxembourg derivatives market was represented by slightly more than 914,000 open transactions amounting to a gross national outstanding of

around EUR 6,484 billion including both OTC and exchange-traded derivatives.

In order to allow the market and other stakeholders to benefit from this initiative, the CSSF and the CAA welcome any feedback or suggestions by the readers that aim to enhance the information delivered in this Report.



<sup>34</sup> Report: <https://www.cssf.lu/en/2024/03/first-joint-report-on-the-luxembourg-derivatives-market/>

## **CAA PUBLISHES CIRCULAR 24/2 ON THE EXTERNAL AUDITOR'S SEPARATE REPORT FOR DIRECT INSURANCE UNDERTAKINGS**

12 March 2024<sup>35</sup>

On 12 March 2024, the CAA issued its Circular Letter 24/2 on the separate report and supplementary separate report to be provided by the REA of direct insurance undertakings.

The CAA reminds that under Article 94 of the Insurance Sector Law any Luxembourg insurance undertaking is required to submit to an external audit to be carried out annually, at the expense of the insurance undertaking by an REA. Article 95 of the Insurance Sector Law involves the REA in the prudential supervision carried out by the CAA.

The circular letter further provides that for all Luxembourg insurance undertakings the REA must produce, in addition to the audit report on the annual accounts, a separate report to be sent to the audited undertaking, with a copy to be sent directly to the CAA (the "**Separate Report**").

As of the reporting for the 2023 financial year, the Separate Report has been split into two documents, i.e., the separate report and the supplementary separate report, with different submission dates, and each comprising two parts:

- Part 1 is an Excel file containing a series of mainly yes/no questions ("**Part 1**");
- Part 2 is a paper document signed by the REA and containing further explanations ("**Part 2**").

Insurance undertakings are notified annually in a CAA information note of the procedures for transmitting these two parts, as well as of the submission dates.

The CAA further mentions that depending on the answer given to a question in Part 1, a message appears indicating that further explanations should be given in Part 2. This does not mean that, in the absence of such a message, the REA cannot develop considerations in Part

2. Not only is the REA always free to provide spontaneous comments, but certain questions are only dealt with in Part 2 without a corresponding question in Part 1.

details to be contained in each of the chapters of the separate report and of the supplementary separate report. The separate report deals with more general insurance law matters whereas the supplementary separate report covers special areas under wider laws and EU regulations, including anti-money laundering and counterterrorism financing, international financial sanctions, PRIIPS, EMIR, SFTR, EU Securitisation Regulation, sustainability and SFDR.

The CAA reminds that although the preparation of the Separate Report is the responsibility of the REA, insurance undertakings must fully cooperate with the REA in this respect.

The circular letter repeals CAA Circular Letter 22/6.

<sup>35</sup> Circular Letter:  
<https://www.caa.lu/uploads/documents/files/LC24-2.pdf> (only in French)

## CAA PUBLISHES CIRCULAR 24/3 ON THE EXTERNAL AUDITOR'S SEPARATE REPORT FOR REINSURANCE UNDERTAKINGS

12 March 2024<sup>36</sup>

On 12 March 2023, the CAA issued its Circular Letter 24/3 on the separate report and supplementary separate report to be provided by the REA of reinsurance undertakings.

The CAA reminds that under Article 94 of the Insurance Sector Law any Luxembourg reinsurance undertaking is required to submit to an external audit to be carried out annually, at the expense of the reinsurance undertaking, by an REA. Article 95 of the Insurance Sector Law involves the REA in the prudential supervision carried out by the CAA.

The circular letter further provides that for all Luxembourg reinsurance undertakings the REA must produce, in addition to the audit report on the annual accounts, a separate report to be sent to the audited undertaking, with a copy to be sent directly to the CAA (the "**Separate Report**").

As of the reporting for the 2023 financial year, the Separate Report has been split into two documents, i.e., the separate report and the supplementary separate report, with different submission dates, and each comprising two parts:

- Part 1 is an Excel file containing a series of mainly yes/no questions ("**Part 1**");
- Part 2 is a paper document signed by the REA and containing further explanations ("**Part 2**").

Reinsurance undertakings are notified annually in a CAA information note of the procedures for transmitting these two parts, as well as of the submission dates.

The CAA further mentions that depending on the answer given to a question in Part 1, a message appears indicating that further explanations should be given in Part 2. This does not mean that, in the absence of such a message, the REA cannot develop considerations in Part

2. Not only is the REA always free to provide comments on a voluntary basis, but certain questions are only dealt with in Part 2 without a corresponding question in Part 1.

The circular letter further sets out the details to be contained in each of the chapters of the separate report and of the supplementary separate report. The separate report deals with more general insurance law matters whereas the supplementary separate report covers special areas under wider laws and EU regulations, including anti-money laundering and counterterrorism financing, international financial sanctions, EMIR, SFTR, EU Securitisation Regulation, sustainability and SFDR.

The CAA reminds that although the preparation of the Separate Report is the responsibility of the REA, reinsurance undertakings must fully cooperate with the REA in this respect.

The circular letter repeals CAA Circular Letter 22/7.

<sup>36</sup> Circular Letter:  
<https://www.caa.lu/uploads/documents/files/LC24-3.pdf> (only in French)

## LUXEMBOURG LAW IMPLEMENTING THE MOTOR VEHICLES CIVIL LIABILITY INSURANCE DIRECTIVE AND AMENDING CERTAIN INSURANCE LAWS

29 March 2024<sup>37</sup>

The law of 29 March 2024 which (i) implements Directive (EU) 2021/2018 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (the "**Motor Vehicles Civil Liability Insurance Directive**"), and (ii) amends several insurance laws was published in the Luxembourg official journal (*Mémorial A*) on 2 April 2024.

The law amends several laws relating to the insurance sector, including:

- the law of 16 April 2003 on the mandatory insurance against civil liability in respect of the use of motor vehicles, as amended;
- the Insurance Sector Law; and
- the EMIR Law.

The law introduces a series of changes. With respect to the insurance against civil liability in respect of the use of motor vehicles, the law (i) amends and clarifies the definition of a motor vehicle, (ii) introduces a new public institution, the *Fonds d'Insolvabilité en Assurance Automobile* (FIAA), which will be in charge of compensating parties injured in a motor accident in case of an insurer's insolvency and (iii) clarifies the use of certificates of claims (*attestation de sinistres*) in a cross-border context.

In addition, the law introduces other targeted changes to insurance laws that are not related to the implementation of the Motor Vehicles Civil Liability Insurance Directive. In this context, the law (i) modifies the amounts provided for by Solvency II to take account of inflation, (ii) adapts the governance structure of the CAA to reflect the expansion of insurance activity in Luxembourg, (iii) modifies the rules relating to the digital preservation of documents and to

dealing with certain third-party service providers in order to take account of the development of new technologies or (iv) submits insurance holding companies under the supervision of the CAA to the same obligation to have their accounts audited by an approved auditor as (re)insurance companies and pension funds.

The law also establishes a new statutory exemption to the Luxembourg regime of professional secrecy of insurance in respect of the digital storage and processing of confidential information and documents by critical third-party ICT service providers (such as cloud service providers) subject to supervision by an ESA in accordance with Article 31 of DORA, as well as a statutory mechanism of deemed policyholder consent where a policyholder of policies concluded before 6 April 2024 in certain life insurance classes has been approached by the insurance undertaking to obtain the policyholders' disclosure of confidential information to outsourcing service providers and does not react following the sending of two registered letters and lapsing of certain timelines after each sending.

<sup>37</sup> Law: [https://legilux.public.lu/eli/etat/leg/loi/2024/03/29/a136/0#chapter\\_4](https://legilux.public.lu/eli/etat/leg/loi/2024/03/29/a136/0#chapter_4) (only in French)

## **CAA PUBLISHES INFORMATION NOTE ON REGULATORY ISSUES LINKED TO SUSTAINABLE FINANCE**

**16 April 2024<sup>38</sup>**

On 16 April 2024, the CAA issued its Information Note 24/4 on regulatory issues linked to sustainable finance.

Its aim is to raise awareness of the insurance operators concerned regarding the main existing and forthcoming regulatory texts governing sustainability in the insurance sector.

The information note includes a table summarising the main texts pertaining to sustainable finance (such as SFDR, CSRD, Taxonomy Regulation, Solvency II and IDD provisions related to sustainability) in the insurance sector, since the publication of the last CAA information note 22/9 on regulatory issues linked to sustainable finance published on 10 August 2022. This table outlines the scope of application of such texts and the main issues that operators need to take into account.

In its Information Note, the CAA specifies that it expects operators to:

- apply the regulatory texts depending on eligibility criteria;
- where appropriate, and depending on the dates of application, implement concretely the obligations arising from the regulations in force by taking into consideration the greenwashing risks;
- track the development of regulatory texts in progress and prepare for their future entry into force; and
- be able to respond to requests from the CAA.

The CAA control system has thus been adapted and incorporates in particular:

- the enrichment of conformity checks in on-site inspection tools;

- the integration of information related to sustainable finance in reports to the CAA; and
- questionnaires concerning the implementation of sustainable finance regulations.

<sup>38</sup> Information Note:  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_24-4\\_Finance\\_Durable.pdf](https://www.caa.lu/uploads/documents/files/Note_info_24-4_Finance_Durable.pdf) (only in French)

## **CAA PUBLISHES INFORMATION NOTE REGARDING PROFESSIONAL INDEMNITY INSURANCE OF INSURANCE BROKERS**

**23 April 2024<sup>39</sup>**

On 23 April 2024, the CAA issued its Information Note on the publication of the Commission Delegated Regulation 2024/896 of 5 December 2023 amending Directive (EU) 2016/97 of the European Parliament and of the Council as regards the regulatory technical standards adapting the base amounts in euro for professional indemnity insurance and for financial capacity of insurance, reinsurance and ancillary insurance intermediaries (the "**Delegated Regulation**").

The information note aims at drawing the attention of (re)insurance brokerage firms and (re)insurance brokers (together "**Brokers**") on the publication on 20 March 2024 of the Delegated Regulation which applies indexation to certain amounts, including with respect to the minimal professional indemnity insurance coverage of Brokers.

Pursuant to the Delegated Regulation, as of 9 October 2024, the minimum insurance coverage amounts are the following:

- EUR 1,564,610 per claim; and
- in aggregate EUR 2,315,610 per year for all claims.

Brokers are therefore invited to verify their minimum coverage amounts and to increase them if needed before 9 October 2024.

The CAA regulation N°19/01 relating to (re)insurance distribution will be amended accordingly.

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<sup>39</sup> Information Note:  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_24-5\\_UE-2024-896.pdf](https://www.caa.lu/uploads/documents/files/Note_info_24-5_UE-2024-896.pdf) (only in French)



## **CAA PUBLISHES NEW FORMS AND A DEDICATED EMAIL ADDRESS FOR THE NOTIFICATION OF (RE)INSURANCE DISTRIBUTION ACTIVITIES**

23 April 2024<sup>40</sup>

On 23 April 2024, the CAA issued its Circular Letter 24/6 introducing: (i) forms for the notification of (re)insurance distribution activities of Luxembourg intermediaries under the freedom to provide services ("FoS") and freedom of establishment ("FoE") in other member states of the EEA and (ii) an e-mail address dedicated for sending over these forms.

This circular letter introduces two new forms in English containing all the information that the CAA requires to receive to assess the requests and notifications related to the (re)insurance distribution activities of Luxembourg intermediaries under the FoS and the FoE in other member states of the EEA pursuant to Articles 291 and 293 of the Insurance Sector Law. These two forms are the following:

- notification of FoS of a (re)insurance intermediary within the EEA; and
- notification of FoE of a (re)insurance intermediary within the EEA.

The use of these forms is optional, but they are well adapted for all brokerage and agent activities as well as insurance intermediaries on an ancillary basis.

The CAA also provides a dedicated email address ([gouvernanceIDD@caa.lu](mailto:gouvernanceIDD@caa.lu)) to which all notifications with related forms for (re)insurance distribution activities have to be sent, including, but not limited to, FoS and FoE notifications.

The CAA finally states that, in case of a wet-ink signature, the original signed forms also have to be sent to the CAA by courier in addition to the version sent by email, except where the electronic version is signed by a qualified electronic signature.

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<sup>40</sup> CAA Circular Letter:  
[https://www.caa.lu/uploads/documents/files/LC24-6\\_FR.pdf](https://www.caa.lu/uploads/documents/files/LC24-6_FR.pdf) (in French only)

## **BGA AND CAA PUBLISH INFORMATION NOTE ON THE IMPLEMENTATION OF ARTICLE 18 OF THE ASSET MANAGEMENT AND RECOVERY LAW**

23 May 2024<sup>41</sup>

On 23 May 2024, the Luxembourg asset management office *Bureau de gestion des avoirs* ("**BGA**") and the CAA issued a joint information note 24/7 on the implementation of Article 18 of the Luxembourg law of 22 June 2022 on the management and recovery of garnished and confiscated assets, as amended (the "**Asset Management and Recovery Law**").

Article 18 of the Asset Management and Recovery Law provides that garnishees who hold sums of money (be it physical cash or balances credited to an account), claims or virtual assets that were garnished before 1 October 2022, the date of the entry into force of the Asset Management and Recovery Law, must notify the BGA thereof within a period of six months from such date of entry into force.

This provision applies notably to the garnishment of claims arising from an insurance contract.

Article 4(4°) of the Asset Management and Recovery Law provides that claims are collected and retained by way of subrogation of the State in the creditor's rights. It is therefore important that the BGA be notified of claims arising from a life or non-life insurance contract, garnished before 1 October 2022, in order to exercise its rights in the event of redemption, payment of compensation or payment of capital.

The legal deadline for notifying the BGA expired on 1 April 2023.

Consequently, the BGA and the CAA ask insurance undertakings which have not yet fulfilled their obligation to declare insurance claims garnished before 1 October 2022 to do so as soon as possible.

Undertakings wishing to make a declaration are asked to send an email to [info@bga.etat.lu](mailto:info@bga.etat.lu) to request the sending

of an OTX link allowing them to securely upload a copy of (i) the insurance contract subject to the coercive measure, (ii) the order of the investigating judge ordering the garnishment and (iii) the minutes of execution of the Grand Ducal police. The transmission of these documents will constitute a declaration, and an acknowledgement of receipt will be sent to such undertakings within the days following receipt of the documents by the BGA.

In the event that an insurance undertaking does not have any garnishments to report, the BGA and the CAA kindly ask the undertaking to notify the BGA thereof by e-mail to [info@bga.etat.lu](mailto:info@bga.etat.lu).

<sup>41</sup> Information Note:  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_24-7.pdf](https://www.caa.lu/uploads/documents/files/Note_info_24-7.pdf)  
(only in French)

## CAA PUBLISHES INFORMATION NOTE REGARDING AML/CTF ARRANGEMENTS OF LIFE INSURANCE UNDERTAKINGS

23 May 2024<sup>42</sup>

On 21 May 2024, the CAA issued its Information Note 24/6 on the analysis of the special reports for the 2022 financial year of the REAs concerning the AML/CTF arrangements of life insurance undertakings.

The purpose of the information note is to present a summary of the results of the CAA's analyses of a sample of special reports on the AML/CTF system of REAs of 21 life insurance undertakings for the financial year 2022 and to describe best practices in this area.

The CAA has in particular noted the following shortcoming in the REA reports and highlighted the following best practices:

- Overall AML/CTF risk assessment: the special reports generally include a description of the risk assessment methodology but do not always present the results or the REA's assessment of the adequacy of the measures taken. It is recommended that the special reports include an assessment by the REA and verify the adequacy of the AML/CTF measures.
- Checking a sample of contracts: the special reports often show the results of documentary checks but not necessarily the overall consistency of the client/contract file. The CAA suggests that the REA includes in the special report the complete analysis of the business relationship and the operations relating to the contract.
- Absence of information in the special report: the special reports do not systematically contain information on the regular controls of compliance with the undertakings AML/CTF policy by the compliance officer or on the follow-up of observations from previous years. It is advised that such information is integrated in the special report.

In order to ensure a harmonised comparison across the life insurance sector, the CAA draws life insurance undertakings' attention furthermore to the following issues:

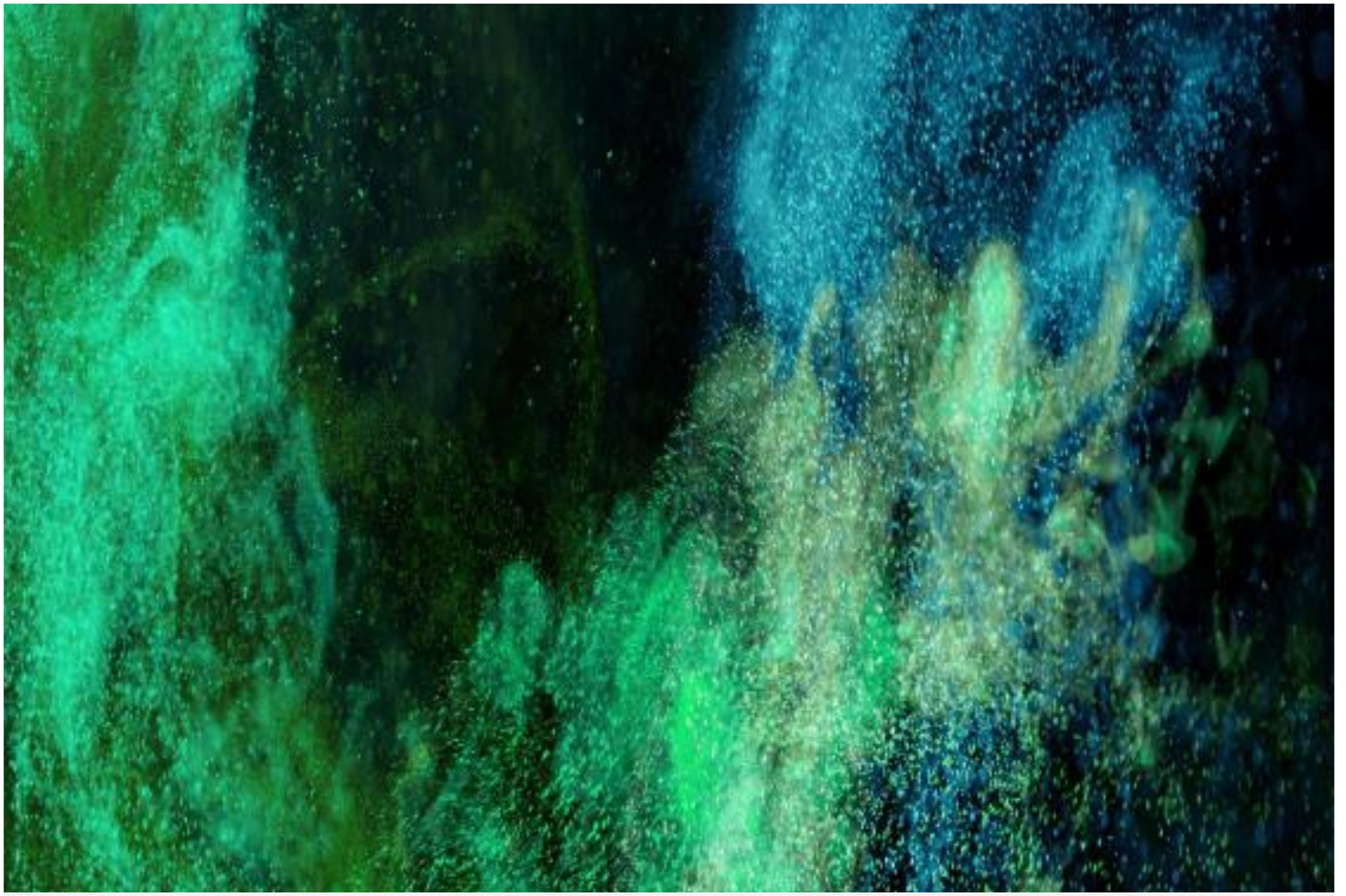
- Concerning the action plan relating to the monitoring of deadlines for manual review of policies rated using the "model point" methodology, the CAA expects in particular that the undertakings will make available to their REA the information and documents required so that the special report can reflect the monitoring carried out by the undertaking in this respect. The CAA states that high-risk contracts need to be reviewed until the end of 2024 and lower-risk contracts until the end of 2027;
- With regard to the review and updating of information, the CAA expects undertakings to provide their REA with the information and documents necessary to enable the REA to make a judgment, in the special report, on the adequacy of the system of ongoing vigilance implemented by the undertaking, in particular in relation to the CDD update requirements set out in Article 33(1) of CAA Regulation 20/03, which provides that the interval of CDD measures may not exceed seven years.

Certain letters issued by the CAA in the area of AML/CTF provide injunctions to insurance undertakings to provide their REA with the information and documentation necessary to enable the REA to usefully assess and issue a judgment as part of the special report audits on the adequacy and the effectiveness of remediation actions taken. Undertakings must communicate these injunctions to their REA as soon as they receive them in order to facilitate audit planning.

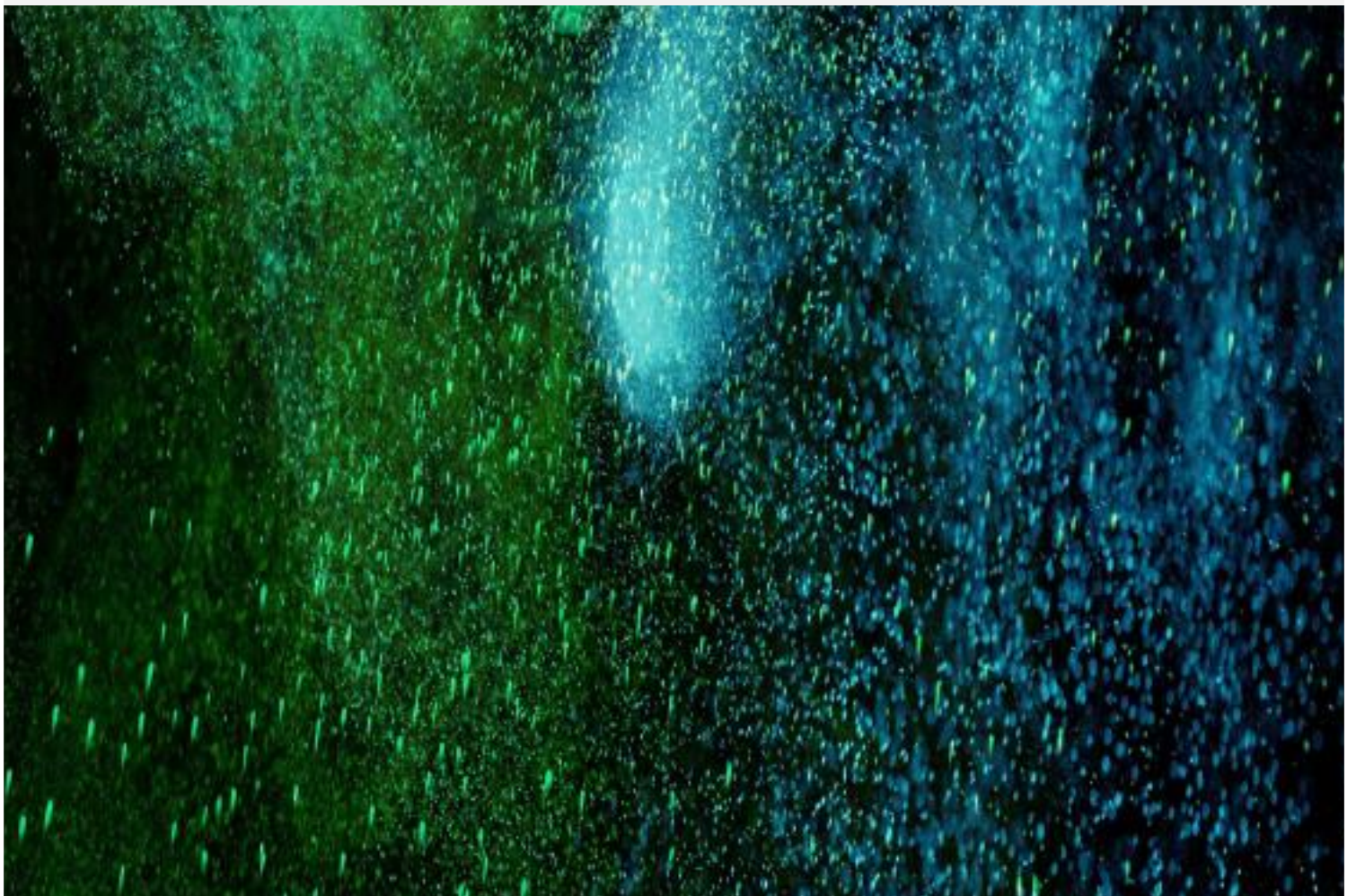
Finally, the CAA reminds boards of insurance undertakings of their responsibilities under Circular Letter 22/15 to review the risks, deficiencies and injunctions presented amongst others in the special reports of the REA and to take appropriate preventive or corrective measures.

<sup>42</sup> Information Note:  
[https://www.caa.lu/uploads/documents/files/Note\\_info\\_24-6.pdf](https://www.caa.lu/uploads/documents/files/Note_info_24-6.pdf)  
(only in French)





**FINTECH**





## FINTECH

### LUXEMBOURG BILL IMPLEMENTING THE ELTIF 2, MICAR, TRANSFER OF FUNDS 2 AND EUROPEAN GREEN BONDS EU REGULATIONS PUBLISHED

21 May 2024<sup>43</sup>

Bill N°8387 was lodged with the Luxembourg Parliament on 21 May 2024.

The main purpose of the bill is to implement the recent European Union regulations concerning crypto-assets, European long-term investment funds and European green bonds. To this end, the bill proposes to amend the law of 16 July 2019 on the operationalisation of EU regulations and of certain other financial sector laws.

Among these regulations, the bill particularly aims to integrate MiCAR and regulation (EU) 2023/1113 of the Parliament and the Council of 31 May 2023 on information accompanying fund transfers and certain crypto-assets into Luxembourg law and to adapt Luxembourg law accordingly.

The CSSF will be designated as the supervisory authority to ensure compliance with these regulations and will be vested with the necessary supervisory and investigation powers for its new role and with the power to issue sanctions in case of breaches of these regulations.

The entry into force of MiCAR and the establishment of the European crypto-asset services provider ("**CASP**") status thereunder trigger the repeal of the Luxembourg VASP regime. Consequently, the bill will repeal, effective from 30 December 2024, the provisions related to the registration of VASPs currently provided for in the AML/CTF Law. CASPs will become subject to the AML/CTF Law, and the AML/CTF will be adapted to take account of MiCAR and the amendments MiCAR has made to the EU's fourth anti-money laundering directive (EU) 2015/849 (AMLD4).

Bill N°8387 finally proposes minor technical amendments to the Insurance Sector Law.

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



<sup>43</sup> Bill: <https://www.chd.lu/en/dossier/8387> (only in French)

## **CSSF PUBLISHES COMMUNIQUÉ ON CRYPTO-ASSET ATMS**

**27 May 2024<sup>44</sup>**

On 27 May 2024, the CSSF published a communiqué on crypto-asset ATMs.

The CSSF recommends that persons interested in conducting crypto-asset transactions on ATMs located in Luxembourg verify beforehand whether the providers operating these ATMs are registered as VASP with the CSSF. The list of VASPs is available on the CSSF's website in the application "Search Entities".

Furthermore, the communiqué reminds that any provider wishing to operate such an ATM in Luxembourg must register with the CSSF as VASP beforehand. More information on the registration procedure is available on the CSSF website.

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<sup>44</sup> Communiqué: <https://www.cssf.lu/en/2024/05/communique-on-crypto-asset-atms/>





**ESG**





## ESG

### **ESG: EU COUNCIL PUBLISHES FINAL COMPROMISE TEXT OF REGULATION ON ESG RATINGS ACTIVITIES**

**9 February 2024<sup>45</sup>**

The EU Council has released the final compromise text of a regulation aimed at enhancing the reliability and comparability of environmental, social and governance (ESG) ratings. The new rules mandate ESG rating providers to be authorised by the European Securities and Markets Authority (ESMA) and adhere to transparency requirements. The regulation awaits formal approval from both the Parliament and the Council and will be applicable 18 months after its entry into force.

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<sup>45</sup> Text (external source):  
<https://data.consilium.europa.eu/doc/document/ST-6255-2024-INIT/en/pdf>



## **CSSF PUBLISHES COMMUNIQUÉ ON NEW EDESK PROCEDURE REGARDING THE EBA BENCHMARKING EXERCISE ON GENDER PAY GAP EXERCISE**

**7 March 2024<sup>46</sup>**

On 7 March 2024, the CSSF published a communiqué on its new eDesk procedure regarding the EBA benchmarking exercise on gender pay gap ("**GPG**").

The purpose of the Communiqué is to inform the public that from 15 May 2024, the CSSF will start collecting GPG reports from credit institutions and non-SNI IFR investment firms ("**non-SNI IFR IF**") on behalf of the EBA. The objective of this reporting is to collect information on the gender pay gap of credit institutions and non-SNI IFR IF, as required by Articles 38-10 and 38-24(1) of the Financial Sector Law.

This data collection exercise takes place every three years starting in 2024 with regard to financial year 2023. It concerns a sample of credit institutions and non-SNI IFR IF. The reporting is in XBRL format.

The report regarding the financial year 2023 had to be submitted through one of the following means by 15 June 2024:

- XBRL file deposit in the dedicated eDesk procedure GPG; or
- via an API solution (S3 protocol), allowing for automation.

A user guide providing details on how to fill in and submit the report is available on eDesk.

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<sup>46</sup> Communiqué (external source):  
<https://www.cssf.lu/en/2024/05/new-edesk-procedure-regarding-the-eba-benchmarking-exercise-on-gender-pay-gap-exercise/>

## **CSSF LAUNCHES SECOND STAGE OF THE ESMA COMMON SUPERVISORY ACTION (CSA) ON SUSTAINABILITY RISKS AND DISCLOSURES IN THE INVESTMENT FUND SECTOR**

22 March 2024<sup>47</sup>

Through a communiqué dated 22 March 2024, the Commission de Surveillance du Secteur Financier (CSSF) announced the launch of the second stage of the European Securities and Markets Authority's (ESMA) Common Supervisory Action (CSA) with National Competent Authorities (NCAs) across the European Union on the integration of sustainability risks and disclosures. During this second stage, the CSSF requested that a sample of UCITS Managers and AIFMs complete a questionnaire dedicated to the integration of sustainability risks and factors in the organisational arrangements of such UCITS Managers and AIFMs and to the transparency disclosures at IFM and product level.

<sup>47</sup> Communiqué (external source):  
<https://www.cssf.lu/en/2024/03/second-stage-of-the-esma->

[common-supervisory-action-csa-on-sustainability-risks-and-disclosures-in-the-investment-fund-sector/](https://www.cssf.lu/en/2024/03/second-stage-of-the-esma-common-supervisory-action-csa-on-sustainability-risks-and-disclosures-in-the-investment-fund-sector/)

## **CSSF PUBLISHES COMMUNIQUÉ ON ITS SUPERVISORY PRIORITIES IN SUSTAINABLE FINANCE**

22 March 2024<sup>48</sup>

On 22 March 2024, the CSSF published a communiqué to give a general overview of its supervisory priorities in the area of sustainable finance.

As the supervisory authority of the financial sector, the CSSF strives to accompany the transition of the financial sector and its players in a proactive way.

The integration of sustainability and adequate consideration of sustainability risks as key drivers of financial strategies is a long-term objective. In support of this ambition, the CSSF's supervisory priorities in the area of sustainable finance aim at fostering a coherent implementation of the sustainable finance framework across the financial sector and ensuring the integration of ESG requirements in the CSSF's supervisory practice.

The regulatory framework in relation to sustainable finance continues to be further enhanced and progressively improved upon. In such an evolving context, and taking into account regulatory developments as well as developing practices, the CSSF will continue implementing its risk-based approach to supervision.

Nevertheless, the primary responsibility of ensuring the compliance with applicable requirements lies with the supervised entities and their board members, who should ensure that the integration of ESG factors in traditional governance, risk management and compliance tools is a focal point within their organisations and endeavour to make suitable ESG education a priority for themselves and their personnel.

The communiqué focusses on supervisory priorities for credit institutions, for the asset management industry, for investment firms and in international cooperation in sustainable finance.

The communiqué is not to be construed as an exhaustive or definitive list. It rather aims at drawing the attention of the financial sector to a number of prominent matters to be

addressed in this area. If deemed necessary, the supervision priorities may be adjusted, and the CSSF's duties of ongoing prudential supervision may also warrant other ESG-related aspects to come under scrutiny.

<sup>48</sup> Communiqué (external source):  
<https://www.cssf.lu/fr/2024/03/priorites-de-supervision-de-la-cssf->

[en-matiere-de-finance-durable/?utm\\_campaign=email-240322-34b30](https://www.cssf.lu/fr/2024/03/priorites-de-supervision-de-la-cssf-en-matiere-de-finance-durable/?utm_campaign=email-240322-34b30)

## **ESMA PUBLISHES FINAL GUIDELINES ON FUNDS' NAMES USING ESG AND SUSTAINABILITY-RELATED TERMS**

14 May 2024<sup>49</sup>

The European Securities and Markets Authority (ESMA) has published guidelines on the use of ESG or sustainability-related terms in fund names, aiming to protect investors from misleading sustainability claims and provide clear criteria for asset managers. The guidelines stipulate that at least 80% of investments should meet environmental, social or sustainable investment objectives to use these terms. These guidelines will be available in all official EU languages on ESMA's website and will be effective three months post-publication.

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<sup>49</sup> Guidelines (external source):  
[https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-472-440\\_Final\\_Report\\_Guidelines\\_on\\_funds\\_names.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-472-440_Final_Report_Guidelines_on_funds_names.pdf)

## **CSSF PUBLISHES COMMUNIQUÉ ON THE REVIEW OF POLICIES PROMOTING DIVERSITY WITHIN THE MANAGEMENT BODY OF CREDIT INSTITUTIONS**

15 May 2024<sup>50</sup>

On 15 May 2024, the CSSF published a communiqué on the review of policies promoting diversity within the management body of credit institutions.

The communiqué states that the Financial Sector Law and the joint EBA and ESMA guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06) require credit institutions to implement policies that promote diversity within the management body.

Following a survey launched in April 2023 on the subject of diversity within the management bodies of less significant credit institutions ("LSIs"), in October 2023 the CSSF published a communiqué summarising its findings, which revealed shortcomings in the understanding and implementation of the regulations on diversity.

As part of its follow-up monitoring, the CSSF then enjoined sixteen LSIs to communicate their diversity policies in order to carry out an initial series of checks. This first review of diversity policies enabled the CSSF to confirm the existence of significant issues in relation to the application of the legal and regulatory requirements on diversity in the management body.

The communiqué indicates the following main pitfalls encountered by the CSSF:

- There is a lack of knowledge on or understanding of the applicable legal and regulatory provisions on diversity.
- The policies communicated do not contain sufficient undertakings and detailed measures on the basis of which a real impact on diversity within the management body could be observed in the short or medium term.

- The qualitative objectives set by the diversity policies reviewed are not sufficiently concrete.
- Diversity policies often focus exclusively on the provisions applicable to members of the management body. However, it is crucial to also implement the requirements applicable to members of staff, including measures aimed at career planning and equal treatment and opportunities.

As stated in its previous communiqué, diversity is a growing concern for the CSSF, and the market needs to accelerate its transition towards diversity in compliance with current regulations. The CSSF therefore informs LSIs that it intends to continue its controls in this area, in particular through the review of existing diversity policies.

<sup>50</sup> Communiqué (external source): [https://www.cssf.lu/wp-content/uploads/C\\_Diversity\\_150524.pdf](https://www.cssf.lu/wp-content/uploads/C_Diversity_150524.pdf)

## **LUXEMBOURG BILL IMPLEMENTING THE ELTIF 2, MICAR, TRANSFER OF FUNDS 2 AND EUROPEAN GREEN BONDS EU REGULATIONS PUBLISHED**

16 May 2024<sup>51</sup>

Bill N°8387 was lodged with the Luxembourg Parliament on 21 May 2024.

The main purpose of the bill is to implement the recent European Union regulations concerning crypto-assets, European long-term investment funds and European green bonds. To this end, the bill proposes to amend the law of 16 July 2019 on the operationalisation of EU regulations and of certain other financial sector laws.

Among these regulations, the bill particularly aims to integrate MiCAR and regulation (EU) 2023/1113 of the Parliament and the Council of 31 May 2023 on information accompanying fund transfers and certain crypto-assets into Luxembourg law and to adapt Luxembourg law accordingly.

The CSSF will be designated as the supervisory authority to ensure compliance with these regulations and will be vested with the necessary supervisory and investigation powers for its new role and with the power to issue sanctions in case of breaches of these regulations.

The entry into force of MiCAR and the establishment of the European crypto-asset services provider ("**CASP**") status thereunder trigger the repeal of the Luxembourg VASP regime. Consequently, the bill will repeal, effective from 30 December 2024, the provisions related to the registration of VASPs currently provided for in the AML/CTF Law. CASPs will become subject to the AML/CTF Law, and the AML/CTF will be adapted to take account of MiCAR and the amendments MiCAR has made to the EU's fourth anti-money laundering directive (EU) 2015/849 (AMLD4).

Bill N°8387 finally proposes minor technical amendments to the Insurance Sector Law.

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

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<sup>51</sup> Bill (external source): <https://www.chd.lu/en/dossier/8387> (only in French)





## **ASSET MANAGEMENT**





## ASSET MANAGEMENT

### ESG: EU COUNCIL PUBLISHES FINAL COMPROMISE TEXT OF REGULATION ON ESG RATINGS ACTIVITIES

9 February 2024<sup>52</sup>

The EU Council has released the final compromise text of a regulation aimed at enhancing the reliability and comparability of environmental, social and governance (ESG) ratings. The new rules mandate ESG rating providers to be authorised by the European Securities and Markets Authority (ESMA) and adhere to transparency requirements. The regulation awaits formal approval from both the Parliament and the Council and will be applicable 18 months after its entry into force.



<sup>52</sup> Text: <https://data.consilium.europa.eu/doc/document/ST-6255-2024-INIT/en/pdf>



## **DELEGATED REGULATION ON AML/CFT DATABASE PUBLISHED IN OFFICIAL JOURNAL**

26 February 2024<sup>53</sup>

Commission Delegated Regulation (EU) 2024/595, outlining the regulatory technical standards (RTS) for the anti-money laundering and counter-terrorist financing (AML/CFT) central database, EuReCa, has been published.

EuReCa, launched by the European Banking Authority (EBA) in 2022, will house data on material weaknesses in financial-sector operators that heighten their vulnerability to money laundering or terrorist financing.

The RTS detail the criteria for material weaknesses, reporting requirements for competent authorities, the EBA's analysis and dissemination of this information and the upholding of confidentiality and data protection.

The Delegated Regulation will enter into force on 7 March 2024.

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<sup>53</sup> Regulation: [https://eur-lex.europa.eu/eli/reg\\_del/2024/595/oj](https://eur-lex.europa.eu/eli/reg_del/2024/595/oj)

## **CSSF UPDATES ITS FAQ ON THE SUBMISSION OF CLOSING DOCUMENTS AND FINANCIAL INFORMATION BY MANAGERS**

13 March 2024<sup>54</sup>

On 13 March 2024, the Commission de Surveillance du Secteur Financier (CSSF) updated its FAQ on the submission of annual closing documents and financial information by investment fund managers (IFMs).

IFMs are required to submit an organisation chart of their group on an annual basis to the CSSF. The CSSF clarified certain minimum information to be included in the chart. The CSSF also deleted certain documents from the list of documents to be submitted by IFMs to the CSSF on an annual basis.

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<sup>54</sup> FAQ: [https://www.cssf.lu/wp-content/uploads/FAQ-IFM-documents\\_en.pdf](https://www.cssf.lu/wp-content/uploads/FAQ-IFM-documents_en.pdf)

## **PRIIPS: ESMA PUBLISHES CONSOLIDATED Q&AS ON KID**

15 March 2024<sup>55</sup>

The European Securities and Markets Authority (ESMA) has published a consolidated set of Q&As on the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document. The updated sections cover general topics, product information, risk assessments, performance scenarios, past performance and cost calculation methodology.

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<sup>55</sup> Q&As: [https://www.esma.europa.eu/sites/default/files/2023-05/JC\\_2023\\_22\\_-\\_Consolidated\\_JC\\_PRIIPs\\_Q\\_As.pdf](https://www.esma.europa.eu/sites/default/files/2023-05/JC_2023_22_-_Consolidated_JC_PRIIPs_Q_As.pdf)

## **EUROPEAN PARLIAMENT ADOPTS RETAIL INVESTMENT STRATEGY**

20 March 2024<sup>56</sup>

The European Parliament adopted a report on the European Commission's retail investment strategy, aimed at strengthening retail investor protection rules. The legislative package includes a proposed Omnibus Directive amending several existing directives and a proposed regulation amending the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. The report was approved by the Parliament's Committee on Economic and Monetary Affairs on 20 March 2024.

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<sup>56</sup> Report: [https://www.europarl.europa.eu/doceo/document/A-9-2024-0162\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2024-0162_EN.html)

## **CSSF LAUNCHES SECOND STAGE OF THE ESMA COMMON SUPERVISORY ACTION (CSA) ON SUSTAINABILITY RISKS AND DISCLOSURES IN THE INVESTMENT FUND SECTOR**

22 March 2024<sup>57</sup>

Through a communiqué dated 22 March 2024, the Commission de Surveillance du Secteur Financier (CSSF) announced the launch of the second stage of the European Securities and Markets Authority's (ESMA) Common Supervisory Action (CSA) with National Competent Authorities (NCAs) across the European Union on the integration of sustainability risks and disclosures. During this second stage, the CSSF requested that a sample of UCITS Managers and AIFMs complete a questionnaire dedicated to the integration of sustainability risks and factors in the organisational arrangements of such UCITS Managers and AIFMs and to the transparency disclosures at IFM and product level.

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<sup>57</sup> Communiqué: <https://www.cssf.lu/en/2024/03/second-stage-of-the-esma-common-supervisory-action-csa-on-sustainability-risks-and-disclosures-in-the-investment-fund-sector/>

## **CSSF PUBLISHES ITS SUPERVISORY PRIORITIES IN THE AREA OF SUSTAINABLE FINANCE**

22 March 2024<sup>58</sup>

The Commission de Surveillance du Secteur Financier (CSSF) has issued a communiqué giving in-scope CSSF-supervised entities a general overview of its supervisory priorities in the area of sustainable finance. The communiqué is not to be construed as an exhaustive or definitive list of applicable regulatory frameworks in this space but rather aims at drawing the attention of the financial sector to a number of prominent matters to be addressed by the relevant in-scope entities. Among others, the communiqué covers the supervisory priorities in terms of sustainable finance for the asset management industry.

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<sup>58</sup> Communiqué: [https://www.cssf.lu/en/2024/03/the-cssfs-supervisory-priorities-in-the-area-of-sustainable-finance/?utm\\_campaign=email-240322-d8444](https://www.cssf.lu/en/2024/03/the-cssfs-supervisory-priorities-in-the-area-of-sustainable-finance/?utm_campaign=email-240322-d8444)

## **CSSF LAUNCHES NEW WEBPAGE ON DORA**

25 March 2024<sup>59</sup>

The Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg has announced the launch of a new webpage dedicated to the EU's Digital Operational Resilience Act (DORA), which will apply to at least 20 types of financial entities in Luxembourg from 17 January 2025. The webpage aims to introduce financial entities to DORA and provide ongoing updates on the latest developments.

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<sup>59</sup> Communiqué: <https://www.cssf.lu/en/2024/03/digital-operational-resilience-act-dora/>

**UCITS/AIFMS: TECHNICAL STANDARDS  
ON CROSS-BORDER MARKETING AND  
MANAGEMENT NOTIFICATIONS  
PUBLISHED IN OFFICIAL JOURNAL**

25 March 2024<sup>60</sup>

The EU Commission has published a set of Delegated and Implementing Regulations, which include regulatory technical standards (RTS) and implementing regulatory standards (ITS) for cross-border marketing and management of funds under the UCITS Directive and AIFMD. These regulations specify the information to be notified for cross-border activities of AIFMs and UCITS, as well as the form and content of such notifications. All four regulations will come into force on 14 April 2024, with the RTS applying from 25 June 2024 and the ITS for AIFMs and UCITS applying from 14 April 2024 and 14 July 2024, respectively.

<sup>60</sup> Regulations: [https://eur-lex.europa.eu/eli/reg\\_del/2024/911/oj](https://eur-lex.europa.eu/eli/reg_del/2024/911/oj)  
[https://eur-lex.europa.eu/eli/reg\\_impl/2024/910/oj](https://eur-lex.europa.eu/eli/reg_impl/2024/910/oj)

[https://eur-lex.europa.eu/eli/reg\\_del/2024/912/oj](https://eur-lex.europa.eu/eli/reg_del/2024/912/oj)

[https://eur-lex.europa.eu/eli/reg\\_impl/2024/913/oj](https://eur-lex.europa.eu/eli/reg_impl/2024/913/oj)



## **DORA: EU COMMISSION ADOPTS DELEGATED REGULATIONS ON CRITICAL ICT THIRD-PARTY SERVICE PROVIDERS AND PAYMENT OF OVERSIGHT FEES**

31 March 2024<sup>61</sup>

The EU Commission has adopted two Delegated Regulations under the Digital Operational Resilience Act (DORA) that define the criteria for designating an ICT third-party service provider as 'critical' for financial entities and establish the oversight fees that can be charged by the EBA, EIOPA and ESMA. These regulations also detail the payment process for these fees and will come into effect 20 days after their publication in the Official Journal.

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<sup>61</sup> Regulations: [https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/digital-operational-resilience-regulation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/digital-operational-resilience-regulation_en)

**DORA: EU COMMISSION ADOPTS RTS ON CLASSIFYING CYBER INCIDENTS, ICT RISK MANAGEMENT AND USE BY FINANCIAL ENTITIES OF ICT THIRD-PARTY SERVICE PROVIDERS**

31 March 2024<sup>62</sup>

The EU Commission has adopted three Delegated Regulations supplementing the Digital Operational Resilience Act (DORA), outlining criteria for ICT-related incidents and cyber threats, detailing policies for contractual arrangements on ICT services and specifying ICT risk management tools and policies. These regulations follow the adoption of provisions relating to ICT third-party service providers on 22 February 2024. If unopposed by the Parliament or Council, these regulations will be enforced 20 days post their Official Journal publication.

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<sup>62</sup> Regulations: [https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/digital-operational-resilience-regulation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/digital-operational-resilience-regulation_en)

## **NEW AIFMD AND UCITSD PUBLISHED IN OFFICIAL JOURNAL**

15 April 2024<sup>63</sup>

Directive (EU) 2024/927, also known as AIFMD2, has been published in the Official Journal, aiming to enhance the regulatory framework for EU investment funds. It amends the UCITS and AIFMD directives, addressing delegation arrangements, liquidity risk management, supervisory reporting, depositary and custody services and loan origination by alternative investment funds.

The directive comes into effect on 15 April 2024, with Member States given 24 months to incorporate the rules into national legislation.

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<sup>63</sup> Directive: <https://eur-lex.europa.eu/eli/dir/2024/927/oj>

## **DORA: CSSF PUBLISHES COMMUNIQUÉ ON VOLUNTARY DRY RUN EXERCISE FOR COLLECTION OF REGISTERS OF INFORMATION**

17 April 2024<sup>64</sup>

The Commission de Surveillance du Secteur Financier (CSSF) has issued a communiqué on a voluntary dry run exercise for the collection of registers of information required by the Digital Operational Resilience Act (DORA). The exercise, announced by the European Supervisory Authorities (ESAs), involves collecting information from financial entities about their use of ICT third-party service providers in preparation for DORA's implementation in 2025. The CSSF encourages supervised entities to participate in this exercise, which includes an introductory workshop, ad-hoc data collection and support from the ESAs, as a way to test their readiness for DORA's requirements.

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<sup>64</sup> Communiqué: <https://www.cssf.lu/en/2024/04/voluntary-dry-run-exercise-for-the-collection-of-the-registers-of-information-required-by-dora/>

## **ESMA PUBLISHES OPINION ON RTS UNDER REVISED ELTIF REGULATION**

22 April 2024<sup>65</sup>

The European Securities and Markets Authority (ESMA) has published its opinion on the revised European Long-Term Investment Fund (ELTIF) Regulation's draft regulatory technical standards (RTS) following feedback from the EU Commission. The Commission suggested a more proportionate approach to cater to the unique characteristics of different ELTIFs, especially in terms of redemptions and liquidity management tools. In response, ESMA proposed a few changes to the Commission's amendments, aiming to balance retail investor protection, financial stability and the role of ELTIFs in achieving capital market union objectives.

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<sup>65</sup> Opinion: [https://www.esma.europa.eu/sites/default/files/2024-04/ESMA34-1300023242-167\\_Opinion\\_ELTIF\\_RTS\\_2024.pdf](https://www.esma.europa.eu/sites/default/files/2024-04/ESMA34-1300023242-167_Opinion_ELTIF_RTS_2024.pdf)

## **UCITS: ESMA PUBLISHES CALL FOR EVIDENCE ON ELIGIBLE ASSETS**

7 May 2024<sup>66</sup>

The European Securities and Markets Authority (ESMA) published a call for evidence to review the Undertakings for Collective Investment in Transferable Securities (UCITS) Eligible Assets Directive (EAD). This initiative aims to evaluate potential risks and benefits of UCITS exposure to various asset classes, with ESMA's findings informing its technical advice to the Commission. Comments are due by 7 August 2024.

<sup>66</sup> Call for Evidence:  
<https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34->

[1270380148-1032\\_Call for Evidence on the UCITS EAD Review.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-1032_Call_for_Evidence_on_the_UCITS_EAD_Review.pdf)



## **ESMA PUBLISHES FINAL GUIDELINES ON FUNDS' NAMES USING ESG AND SUSTAINABILITY-RELATED TERMS**

14 May 2024<sup>67</sup>

The European Securities and Markets Authority (ESMA) has published guidelines on the use of ESG or sustainability-related terms in fund names, aiming to protect investors from misleading sustainability claims and provide clear criteria for asset managers. The guidelines stipulate that at least 80% of investments should meet environmental, social or sustainable investment objectives to use these terms. These guidelines will be available in all official EU languages on ESMA's website and will be effective three months post-publication.

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<sup>67</sup> Guidelines: [https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-472-440\\_Final\\_Report\\_Guidelines\\_on\\_funds\\_names.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-472-440_Final_Report_Guidelines_on_funds_names.pdf)

## **LUXEMBOURG BILL IMPLEMENTING ELTIF 2, MICAR, TRANSFERS OF FUNDS 2 AND EUROPEAN GREEN BONDS REGULATION PUBLISHED**

21 May 2024<sup>68</sup>

Bill No. 8387, lodged with the Luxembourg Parliament, aims to implement EU regulations on crypto-assets, European long-term investment funds (ELTIFs) and European green bonds by amending existing financial-sector laws. The bill seeks to integrate the Markets in Crypto-Assets Regulation (MiCAR) and Regulation (EU) 2023/1113 into Luxembourg law, with the Commission de Surveillance du Secteur Financier (CSSF) designated as the supervisory authority. The bill also proposes the repeal of the Luxembourg virtual asset services provider (VASP) regime following the enforcement of MiCAR and minor technical amendments to the law of 7 December 2015 on the insurance sector.

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<sup>68</sup> Bill: <https://www.chd.lu/en/dossier/8387>

## **CSSF UPDATES ITS DECLARATIONS OF HONOUR**

22 May 2024<sup>69</sup>

The *Commission de Surveillance du Secteur Financier* (CSSF) has published a communiqué whereby it has made available updated declarations of honour for natural and legal persons.

The CSSF specified that these declarations must be submitted signed and dated either in paper form bearing a handwritten signature or in electronic form bearing a qualified electronic signature. The CSSF further clarified certain content elements, as well as extended the list of declarations to be made by the relevant natural and/or legal person completing the declaration.

The CSSF will no longer require original versions or certified copies of documents to be submitted with the declaration of honour, except in exceptional circumstances. The CSSF will also no longer require the declarant to submit an updated version of the documentation at the end of the assessment procedure where no change has occurred in the meantime.

The new versions are applicable as of 1 July 2024.

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<sup>69</sup> Communiqué: <https://www.cssf.lu/en/2024/05/assessment-of-professional-standing-and-experience-update-of-the-declarations-of-honour/>

## **MIFID2: ESMA REPORTS ON APPLICATION OF MARKETING REQUIREMENTS**

27 May 2024<sup>70</sup>

ESMA published a report on its 2023 common supervisory action and mystery shopping exercise on MiFID2 marketing disclosure rules. The report finds that while marketing communications generally comply with MiFID2 requirements, there are concerns about sustainability claims. It highlights several areas for improvement, including the clarity of marketing communications, the need for adequate approval processes, compliance with legal requirements, record-keeping measures and the involvement of control functions and senior management.

<sup>70</sup> Report: <https://www.esma.europa.eu/sites/default/files/2024-05/ESMA35-335435667->

[5931 Final Report on the 2023 Common Supervisory Action and Mystery Shopping Exercise on marketing.pdf](#)

## **NEW AML PACKAGE: NEW AML/CFT REGULATION, SIXTH AML/CFT DIRECTIVE AND FUTURE EU AML/CFT SUPERVISOR**

19 June 2024<sup>71</sup>

On 19 June 2024, the new AML Package was fully published. On the same day, the CSSF issued a dedicated communication introducing the package (<https://www.cssf.lu/en/2024/06/the-new-aml-cft-regulation-the-sixth-aml-cft-directive-and-the-future-eu-aml-cft-supervisor/>).

The new AML package is composed of:

- The [Regulation](#) of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLR). The AMLR will apply from 10 July 2027.
- the [Regulation](#) of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010 (AMLAR). AMLAR will apply from 1 July 2025. The AMLA shall start direct supervision of selected obliged entities in July 2028.
- The [Directive](#) of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (AMLD6). Member States have three years from its entry into force to transpose the AMLD6 in their national legislation.

The AMLR is meant to harmonise the AML/CFT framework across the EEA Member States through a dedicated 'single rulebook'. The AMLR will cover the already known AML/CFT rules on the scope of obliged entities, internal policies, controls and procedures of obliged entities, customer due diligence, ultimate beneficial owners, reporting, record retention, etc. AMLR takes this

opportunity to introduce some new rules around enhanced due diligence obligations, a limit on cash payments, clarification of the ultimate beneficial owner concept, a widening of the scope of obliged entities to cover entities and activities in the space of new financial technologies, etc.

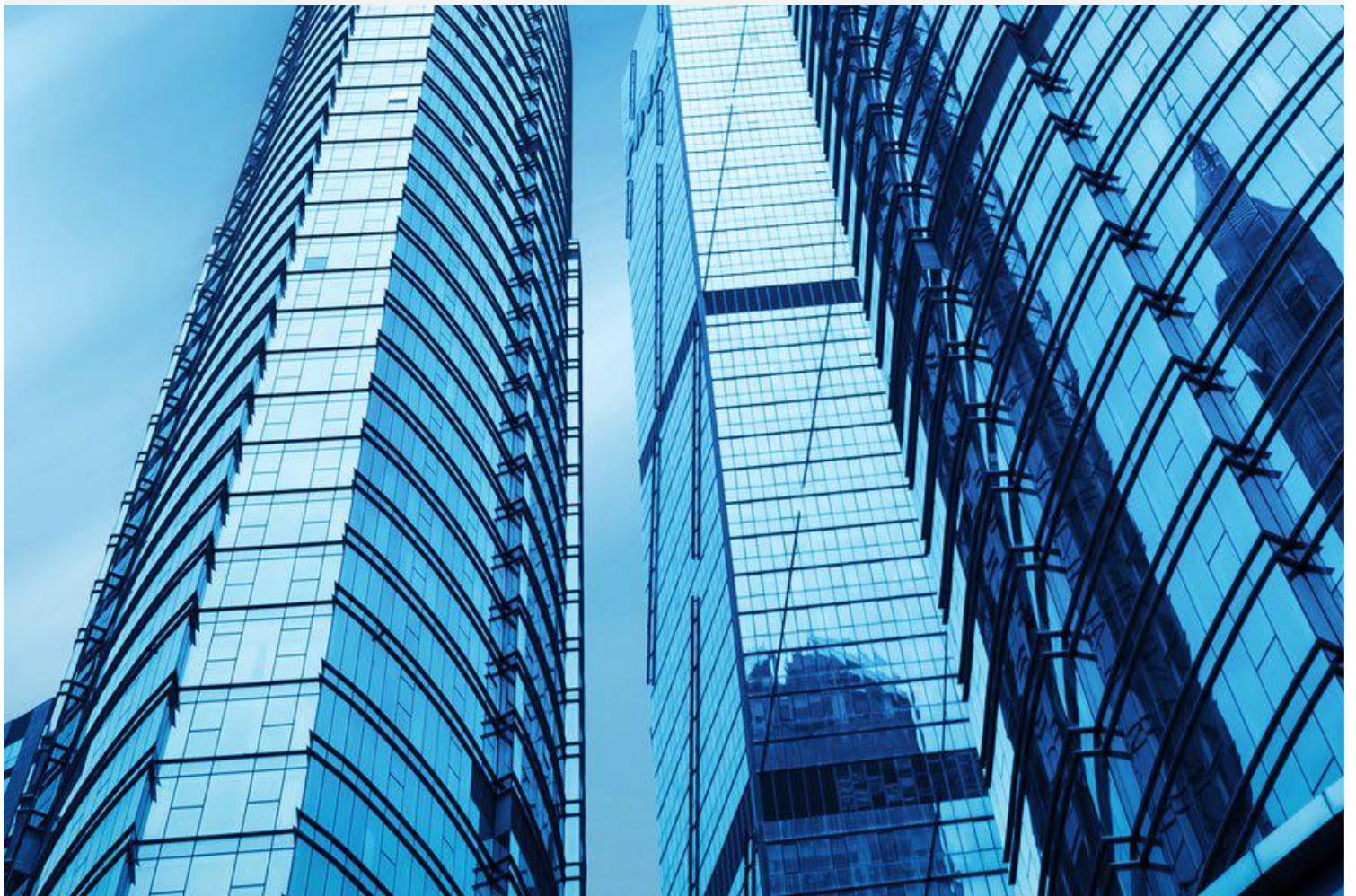
As previously announced, AMLA will have its seat in Frankfurt am Main (Germany). AMLA's objective will be 'to protect the public interest, the stability and the integrity of the Union's financial system and the good functioning of the internal market'. With regard to supervision, AMLA will have a dual role: 1) it shall supervise directly a pre-defined number of SOEs, which shall be selected among the obliged entities, as defined under the AMLR and 2) it shall act as indirect supervisor for the non-selected obliged entities and more generally as AML/CFT supervisor for the whole financial sector.

<sup>71</sup> External link: <https://www.cssf.lu/en/2024/06/the-new-aml-cft-regulation-the-sixth-aml-cft-directive-and-the-future-eu-aml-cft-supervisor/>





## **EMPLOYMENT, PENSIONS AND BENEFITS**





## EMPLOYMENT, PENSIONS AND BENEFITS

### NEW COLLECTIVE BARGAINING AGREEMENT FOR EMPLOYEES OF INSURANCE COMPANIES

Signed on 4 June 2024 with an entry into force on 1 January 2024<sup>72</sup>

On 4 June 2024, social partners in the insurance sector entered into a new collective bargaining agreement (the "New Insurance CBA"), which main provisions are the following:

- **On-call duty:** each company using an on-call system must put in place a policy after negotiation with the staff delegation. This policy may regulate, notably, the period of prior notification to the employee, the frequency of on-call periods, the rest period after the on-call duty period, etc. Companies with an on-call system already in place must request the negotiation with the staff delegation of an agreement compliant with the New Insurance CBA.
- **Health and psychosocial risks:** two hours of the training credit are to be dedicated to occupational health and the prevention of psychosocial risks. In addition, the safety and health delegate (*délégué à la sécurité et à la santé*) has a specific hour credit (which depends on the number of employees in the company) to carry out their mission.
- **Family life vs. professional life:** the agreement to be negotiated with the staff delegation to reconcile family and professional life may also address, for example, the donation of leave, menstrual absence and endometriosis and unpaid leave.
- **Remuneration:**
  - the start base salary of employees starting after 1 January 2024 is increased, and the

base salary of employees who started before this date must be adjusted to correspond at least to the new starting salary. The thresholds for all employees from 2024 to 2026 are also increased; and

- employees will be entitled to an economic bonus ("*prime de conjuncture*") for 2024 to 2026 as well as to a new exceptional attractiveness bonus.
- **Background check:** the New Insurance CBA provides for some rules regulating background checks conducted by insurance companies (information verified, moment of the verification and obligation to comply with existing legal provisions).
- **Information to be provided to the staff delegation:** the New Insurance CBA includes a new article specifying that employees can consult the staff delegation for the interpretation and resolution of conflicts within the company, in particular for the interpretation of the collective bargaining agreement and the Labour Code, problems and issues of equal pay, harassment situations, etc.

The New Insurance CBA is applicable for a three-year period, from 1 January 2024 to 31 December 2026.



<sup>72</sup> Agreement: <https://www.aca.lu/wp-content/uploads/2024/06/Convention-Collective-Assurances-2024-2026-Original-signe-04.06.2024.pdf>



## **CORPORATE**





## **CORPORATE**

### **CASE LAW JUDICIAL LIQUIDATIONS CAL-2023-01150 & CAL-2023-01047**

**23 January 2024 & 6 February 2024**

Each year Luxembourg companies are mandated to file their annual accounts with the Luxembourg trade and companies register ("**RCS**") within seven months following the end of their financial year. Delayed filing incurs increased fees. Moreover, the omission of filing annual accounts may give rise to criminal penalties against the legal representatives of the company and potentially lead to their judicial liquidation.

In the rulings CAL-2023-01150 and CAL-2023-01047, the Court of Appeal was requested to pronounce the judicial liquidation for companies that had failed, amongst others, to comply with their annual account filing obligations, thereby violating the law of 10 August 1915. These offences prompted the State prosecutor to seek their judicial liquidation. However, in both instances, the companies addressed the non-compliance by submitting their accounts to the RCS prior to the issuance of the verdict. This proactive rectification led the Court of Appeal to rescind the dissolution orders previously contemplated.





**TAX**



## TAX

### AMENDMENTS TO THE LUXEMBOURG-GERMANY DOUBLE TAX TREATY

18 March 2024<sup>73</sup>

On 18 March 2024, the Luxembourg tax authorities issued a circular related to the amending protocol signed between Luxembourg and Germany (the "**Protocol**") to update the Germany-Luxembourg income and capital tax treaty (the "**DTT**") in Berlin.

The Protocol intends to foster modern and efficient regulations that evolve with the work landscape. It updates certain clauses to implement the Base Erosion and Profit Shifting ("**BEPS**") Multilateral Instrument ("**MLI**") and revises substantial provisions impacting employees, employers, corporate taxpayers and investment funds.

The core changes relate to these measures:

- the agreement expands the home office rule provided in the former DTT, allowing cross-border workers to work from home for up to 34 days per year (instead of 19 days previously);
- the "*principal purpose*" anti-abuse rule<sup>74</sup> has been integrated and denies a benefit under the DTT where one of the main purposes of an arrangement or a transaction is to benefit from an advantage provided by the DTT<sup>75</sup>;
- a new clause<sup>76</sup> has been incorporated to the provision preventing the double taxation. It extends the application of the credit method by Germany to items of income or capital whose taxation right is allocated to Luxembourg under the DTT but which are not effectively taxed in Luxembourg;
- under the revision, investment funds<sup>77</sup> and *Fond commun de placement* now fall within the scope of the entire DTT. Moreover, an investment fund

established in a Member State and receiving revenue from another shall be considered as tax resident from the first State and the beneficial owner of the revenues; and

- a mechanism similar to the exit tax has been introduced<sup>78</sup> and provides for the taxation of unrealised gains on shares and other participations by the departing State in the case of a taxpayer's change of tax residence.

These provisions have already applied since 1 January 2024.

<sup>73</sup> (external source): <https://impotsdirects.public.lu/dam-assets/fr/legislation/circulaires/circulaire-lq-conv-di-71-du-18-mars-2024.pdf>

<sup>74</sup> Provided in the OECD's work related to BEPS and the MLI.

<sup>75</sup> Article 12 of the Protocol.

<sup>76</sup> Article 10 of the Protocol modifying article 22 of the DTT.

<sup>77</sup> Within the meaning of [the Law of 17 December 2010](#), [Law of 13 February 2007](#), and [Law of 23 July 2016](#), with the exception of funds incorporated as partnerships.

<sup>78</sup> Article 6 of the Protocol.



## THE FRENCH STATE COUNCIL LIMITED THE RIGHT OF A COMPANY TO DEDUCT ITS FOREIGN PERMANENT ESTABLISHMENT'S FINAL LOSSES

24 April 2024<sup>79</sup>

On 24 April 2024, the French State Council (*Conseil d'Etat*) ("CE") ruled on whether a company could set off against its profits the final losses of its foreign permanent establishment (case 466062).

In the case at hand, the parent company of a tax-consolidated group had requested that the final losses, incurred by the Luxembourg branch of one of its subsidiaries, be set off against the group's overall income.

As a reminder, on 13 December 2015, the European Court of Justice ("ECJ") ruled in a precedent case<sup>80</sup> that a parent company established within the European Union could set off against its profits the final losses of its foreign European subsidiary. This case had been transposed to the case of final losses incurred by a non-resident permanent establishment ("PE") in a decision of 12 June 2018<sup>81</sup>.

Firstly, the CE noted that profits subject to French corporate tax are either incurred by companies operating in France or whose taxation is allocated to France under a double tax treaty ("DTT"). However, in this respect, article 4 of the Luxembourg-France DTT of 1 April 1958<sup>82</sup> allocates the right to tax the profits of a PE to its State of residence. By symmetry, the losses of a PE follow the same allocation rule.

Then, the CE observed that a Member State's tax legislation resulting in a difference of treatment to the detriment of companies exercising their freedom of establishment does not constitute an obstacle to this freedom in case of objectively non-comparable situations or if such provision is justified by an overriding public interest motive.

The issue at stake was to assess whether the situation of a non-resident PE and that of a resident PE were comparable.

However, the CE relied on a judgment<sup>83</sup> in which the CJEU specified that comparability cannot be applied where, as a result of the conclusion of a DTT, the State concerned waives the power to tax the profits of non-resident PE normally provided for under its national law (and thus to deduct losses).

In the present case, the France-Luxembourg DTT allocated the right to tax a PE's results in accordance with the principle of territoriality, namely its State of residence.

Thus, the CE ruled that no restriction on the freedom of establishment could be found on the basis of the fact that it was impossible for the integrated subsidiary to set off against its results the losses incurred by its Luxembourg branch, nor on account of the resulting impossibility of benefiting from those losses for the determination of the overall result of the integrated group.

Finally, it should be noted that the reasoning underlying this decision relies on the version of the France-Luxembourg DTT dating from 1 April 1958. Nevertheless, a recent version was signed on 20 March 2018<sup>84</sup> which allows France to tax a foreign PE's profits by eliminating risks of double taxation with the imputation method.



<sup>79</sup> (external source):  
[https://www.legifrance.gouv.fr/ceta/id/CETATEXT000049478763?init=true&page=1&query=466062&searchField=ALL&tab\\_select ion=all](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000049478763?init=true&page=1&query=466062&searchField=ALL&tab_select ion=all)

<sup>80</sup> [CJUE, gde ch., 13 décembre 2005, aff. C-446/03, Marks & Spencer](#)

<sup>81</sup> [CJUE, gde ch., 12 juin 2018, aff. C-650/16, A/S Bevola, Jens W. Trock ApS c/ Skatteministeriet](#)

<sup>82</sup> [https://www.impots.gouv.fr/sites/default/files/media/10\\_conv entions/luxembourg/luxembourg\\_2017\\_04\\_28.pdf](https://www.impots.gouv.fr/sites/default/files/media/10_conv entions/luxembourg/luxembourg_2017_04_28.pdf)

<sup>83</sup> [CJUE, gde ch., 22 septembre 2022, aff C-538/20, Finanzamt B contre W AG](#)

<sup>84</sup> <https://legilux.public.lu/eli/etat/leg/loi/2019/07/12/a495/jo>

## THE LUXEMBOURG ADMINISTRATIVE COURT RULED ON THE EXISTENCE OF AN ABUSE OF RIGHTS IN THE CONTEXT OF CARRY-FORWARD LOSSES

25 April 2024<sup>85</sup>

On 25 April 2024, the Luxembourg Administrative Court ("CA") ruled on whether setting off carry-forward losses from a discontinued activity against the profits of a newly carried out activity constitutes an inappropriate means and thus characterises participation in an abuse of rights (case 48917C).

In the present case, a Luxembourg company ("LuxCo") had ceased its activity of holding participation and thus no longer had any corporate assets with real economic value. Subsequently, LuxCo changed its corporate purpose and bought a building in Luxembourg, which the company sold less than six months after purchasing it, which gave rise to high capital gain that the company set off against its carry-forward losses.

Firstly, the CA reiterated the rules underlying the right of loss carry-forward. In this regard, the requirement of the right to a deferral's personal nature (*caractère personnel du droit de report*) entails that tax losses can only be deducted from the income of the taxpayer which actually incurred them as provided by the Luxembourg income tax law<sup>86</sup>.

In this respect, the right to carry losses shall only be subordinated to the persistence of the same legal identity by the company and not to the maintenance of an economic identity.

Subsequently, the CA set out the cumulative criteria constituting an abuse of rights as identified by a precedent case law<sup>87</sup>, namely, the use of forms and institutions governed by private law, a tax saving, the use of an inappropriate means and the absence of a valid non-fiscal ground to justify such a means.

The Court considered that carry-forward losses could be deducted after the business' cessation of operations as long as the right to a deferral's personal nature is met. The CA reckoned that a taxpayer is allowed to cease a business incurring losses to start a more lucrative activity.

Therefore, LuxCo's change of activity could not, in itself, be regarded as an inappropriate means to keep benefiting from the carry-forward losses.

Finally, while the building's sale would have given rise to taxation of speculative profits, had the disposal been carried out through the private assets of LuxCo's beneficial owner<sup>88</sup>, the CA considered that choosing to sell the property through the company fell within the freedom to choose the least taxed means and cannot, once again, be considered an inappropriate means.

In a second case, the CA ruled the same day<sup>89</sup> that once a transaction, the purpose of which was to benefit from the allocation of a company's carry-forward losses, is regarded as an abuse of rights, that same company cannot latterly claim the allocation of those losses on the grounds that the factors characterising the abuse of rights have disappeared following another economic operation. The Court concluded that once the right to carry-forward losses is lost due to an abuse of rights, such a loss is definitive.

<sup>85</sup> (external source): <https://ja.public.lu/45001-50000/48917C.pdf>

<sup>86</sup> Article 114(2) of the [LIR](#).

<sup>87</sup> See, for instance, [Cour administrative du Luxembourg, 18 mars 2014, n° 33125C](#).

<sup>88</sup> Article 99 of the Luxembourg income tax law provides that assets detained less than six months shall give rise to speculative profits' taxation.

<sup>89</sup> [Cour administrative du Luxembourg, 25 avril 2024, n° 49336C](#).

## **EU COMMISSION OPENS A DAC PUBLIC CONSULTATION**

8 May 2024<sup>90</sup>

On 8 May 2024, the EU Commission launched an evaluation of the Directive on Administrative Cooperation in the Field of Direct Taxation<sup>91</sup> ("**DAC**") including a public consultation open for feedback.

As a reminder, DAC sets up a harmonised framework allowing Member States' tax authorities to assist each other through the exchange of information<sup>92</sup> as well as other forms of cooperation.

DAC has been amended to include financial information (DAC 2), cross-border tax ruling and advance pricing agreements (DAC 3), country-by-country reporting (DAC 4), reportable cross-border arrangements (DAC 6)<sup>93</sup>, income received from platform (DAC 7) and cryptocurrency (DAC 8).

The evaluation intends to assess the extent to which the DAC and its amendments are:

- effective in fulfilling expectations and meeting its objectives;
- efficient in terms of cost-benefit ratio;
- relevant to current and arising needs;
- displaying consistency between DAC amendments and the EU and international legal framework; and
- generating EU added value by reaching objectives that would not have been achievable without such cooperation.

The aim of the consultation is to collect views from all stakeholders on the impact of the DACs. The targeted stakeholders of the consultation are the tax administrations

of the Member States, taxpayers carrying out cross-border operations and entities that need to report under the DAC (e.g. investment entities, multinational companies, financial institutions)<sup>94</sup>.

The consultation period runs from 7 May 2024 to 30 July 2024<sup>95</sup>.

It should be noted that the evaluation covers the years 2018 to 2022. Therefore, DAC 7 and DAC 8 are not included in this evaluation.

<sup>90</sup> (external source): [https://taxation-customs.ec.europa.eu/news/evaluation-administrative-cooperation-field-direct-taxation-open-public-consultation-and-call-2024-05-08\\_en](https://taxation-customs.ec.europa.eu/news/evaluation-administrative-cooperation-field-direct-taxation-open-public-consultation-and-call-2024-05-08_en)

<sup>91</sup> [Directive 2011/16/EU](#) of 15 February 2011.

<sup>92</sup> The automatic exchange of information being the most important tool.

<sup>93</sup> The evaluation includes an assessment of the hallmarks for the exchange of information on potentially harmful cross-border arrangements.

<sup>94</sup> (external source): [https://taxation-customs.ec.europa.eu/news/evaluation-administrative-cooperation-field-direct-taxation-open-public-consultation-and-call-2024-05-08\\_en](https://taxation-customs.ec.europa.eu/news/evaluation-administrative-cooperation-field-direct-taxation-open-public-consultation-and-call-2024-05-08_en)

<sup>95</sup> Midnight, Brussels time.

## EU COMMISSION WELCOMES THE PROPOSAL FOR A COUNCIL DIRECTIVE ON FASTER AND SAFER RELIEF OF EXCESS WITHHOLDING TAX

14 May 2024<sup>96</sup>

On 14 May 2024, the EU Commission welcomed the Proposal for a directive published on 19 June 2023 laying down rules on a faster and safer relief of excess withholding taxes (hereinafter "**FASTER**" or the "**Proposal**")<sup>97</sup>.

The Proposal includes two key actions: (i) the creation of an EU-wide digital residency certificate for investors, and (ii) fast-track procedures complementing the existing standard refund procedure.

The digital residency certificate ("**eTRC**") would be issued within three<sup>98</sup> working days and would be recognised across the EU, ensuring that an investor with a diversified portfolio can claim multiple refunds in any Member State, regardless of the revenues' source country.

The EU Commission introduced two alternative fast-track procedures. Member States will opt for the relief at source procedure or the quick refund procedure or combine both. Under the relief at source procedure, the applicable lower rate is directly applied at the time of the payment of dividend and interest. Under the quick refund procedure, withholding taxes ("**WHT**") apply but the excess would be refunded within 60 days of the request.

Investors would turn to certified financial intermediaries<sup>99</sup> which would assess their eligibility to the relief, check the

WHT rate applicable to the transaction, collect the certificate and share information with the authority under a standardised reporting obligation.

It might be relevant to note that investment funds may not be considered as the beneficial owner of the investments in the securities they hold and thus do not access double tax treaties.

Moreover, certified financial intermediaries shall verify the eTRC of the registered owner and/or appropriate proof of tax residence in a third country. However, some investment funds are not able to obtain a certificate of tax residency and thus might be prevented from the benefits of such measures even though those funds may still be entitled to relief at source<sup>100</sup>.

Following a re-consultation with the European Parliament, the Proposal is expected to be adopted in 2025. The measures would be implemented by 1 January 2030<sup>101</sup>.

<sup>96</sup> (external source): [https://taxation-customs.ec.europa.eu/document/download/7ce0c79c-2db3-4dc3-a1b8-d2a93d1cfc86\\_en?filename=COM\\_2023\\_324\\_1\\_EN\\_ACT\\_part1\\_v3.pdf](https://taxation-customs.ec.europa.eu/document/download/7ce0c79c-2db3-4dc3-a1b8-d2a93d1cfc86_en?filename=COM_2023_324_1_EN_ACT_part1_v3.pdf)

<sup>97</sup> EU Council Directive proposal: [https://taxation-customs.ec.europa.eu/document/download/7ce0c79c-2db3-4dc3-a1b8-d2a93d1cfc86\\_en?filename=COM\\_2023\\_324\\_1\\_EN\\_ACT\\_part1\\_v3.pdf](https://taxation-customs.ec.europa.eu/document/download/7ce0c79c-2db3-4dc3-a1b8-d2a93d1cfc86_en?filename=COM_2023_324_1_EN_ACT_part1_v3.pdf)

<sup>98</sup> Amendment 13, proposal for a directive, [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0102\\_EN.html/](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0102_EN.html/)

<sup>99</sup> Either central securities depositaries as defined by Regulation (EU) 909/2014 of 23 July 2014 (CSDs), credit institutions (EU) N°575/2013 or investment firms (Directive 2014/65/EU)

<sup>100</sup> Because they comply with the UCITS Directive or the AIFMD. <https://www.alfi.lu/getmedia/e6ee2a54-f1f0-418a-bb2e-5e34da89364e/2023-09-20-alfi-feedback-on-the-faster-directive-proposal.pdf>

<sup>101</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751436/EPRS\\_BRI\(2023\)751436\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751436/EPRS_BRI(2023)751436_EN.pdf)

## IMPORTANT AMENDMENTS TO THE LUXEMBOURG TAX LAW ISSUED BY THE GOVERNMENT

23 May 2024<sup>102</sup>

On 23 May 2024, the Luxembourg Government submitted bill n°8388 (the "Bill") to the Parliament which provides clarification on the tax treatment of a redemption or withdrawal of a class of shares, simplifies the minimum net wealth tax ("NWT") regime and introduces an opt-out mechanism for dividend tax exemption.

### I. The general tax law<sup>103</sup>

The Bill provides an electronic filing obligation to (i) the declaration of the withholding tax on directors' fees, (ii) the declaration of withholding tax on wages and enhanced tax credit, and (iii) the declaration of flat rate withholding tax.

### II. The net wealth tax law<sup>104</sup>

The Bill simplifies the conditions under which the minimum NWT<sup>105</sup> applies following a decision of the Luxembourg Constitutional Court<sup>106</sup>.

The Bill amends the minimum NWT regime with (i) the withdrawal of the condition related to the composition of the balance sheet<sup>107</sup>, which means that the minimum NWT should only rely on the criteria of the total balance sheet, and (ii) a decrease of the number of applicable tax brackets.

Whereas the minimum NWT varied from EUR 535 to EUR 32,500 depending on the total value of the balance sheet, the maximum amount of minimum NWT is henceforth EUR 4,815 for taxpayers whose total balance sheet exceeds two million euros.

### III. The income tax law ("LITL")

#### a. Article 101 LITL

Under article 101(2) of the LITL, the redemption of a class of shares is considered as a partial liquidation. The proposed amendment put forward that for a redemption or withdrawal of a class of shares to be considered as a partial liquidation, such redemption should give rise to a corresponding share capital reduction within six months and meet the following cumulative conditions:

- the redemption affects the whole shares comprised in a class;
- the classes of shares are set up at the time of the company's incorporation or in the context of a share capital increase;
- each class of shares carries distinct economic rights<sup>108</sup> defined in the company's articles of association; and
- the redemption price of a class of shares is settled on criteria laid down in the company's articles of association (or any document referred to in these articles of association), thus allowing the fair value of the shares at the time of the redemption or withdrawal to be ascertained.

It should be noted that the general anti-abuse provisions remain applicable if such a redemption's principal purpose is the avoidance or reduction of a tax charge.

#### b. Article 115, 15a LITL

The Bill introduced an option that taxpayers can exercise if they wish to opt out of the partial (50%) exemption regime related to a dividend. Such an option should be exercised individually each year and for each participation.

<sup>102</sup> (external source): <https://wdocs-pub.chd.lu/docs/exped/0147/058/294588.pdf>

<sup>103</sup> [Abgabenordnung](#) of 22 May 1931.

<sup>104</sup> [Vermögensteuergesetz](#) of 16 October 1934.

<sup>105</sup> §8 of the [Vermögensteuergesetz](#).

<sup>106</sup> *Cour Constitutionnelle de Luxembourg*, 10 November 2023, n°[185/23](#).

<sup>107</sup> Currently, MNWT amounts to EUR 4,815 for Luxembourg companies whose financial assets, receivables from affiliated enterprises, securities and bank deposit exceed (i) 90% of the total balance sheet, and (ii) EUR 350,000.

<sup>108</sup> The commentary to the Bill specifies that distinct economic rights chiefly relate to shares giving entitlement to preferential dividends, securities giving exclusive right to the profits of a specified period or securities with financial rights indexed to performance.

**c. Article 166 LITL**

The Bill introduced an option for taxpayers to renounce the benefit of the dividend exemption under the Luxembourg participation exemption regime. This option is only available when the conditions for the exemption are met solely because of the threshold of the participation's acquisition price. Namely, if the latter at least amounts to EUR 1.2 million.

Such an option should be exercised individually each year and for each participation.



## UPDATES ON THE GLOBAL MINIMUM TAX (COMMONLY NAMED "PILLAR 2")

12 June 2024<sup>109</sup>

On 25 March 2024, the Luxembourg tax administration (the "LTA") released an FAQ<sup>110</sup> pertaining to the law of 22 December 2023 ensuring a global minimum level of taxation for multinational enterprises' groups ("MNE") and large-scale domestic groups in the European Union ("Pillar 2" or "Pillar 2 Law")<sup>111</sup>.

In this FAQ, the LTA clarifies the rules regarding the tax treatment of deferred tax assets and liabilities<sup>112</sup>:

- the financial statements used to compute the effective tax rate (the "ETR") (taking into account deferred tax assets and liabilities) are those of the Luxembourg constituent entity and/or of the ultimate parent entity (the "UPE")<sup>113</sup>;
- deferred tax assets and liabilities considered to compute the ETR are either accounted for in the balance sheet of the financial statements or included in the notes to the financial statements; and
- these transitional measures should apply as of the transition year, namely the first year in which the company falls into the scope of Pillar 2.

On 12 June 2024, the Luxembourg Government submitted bill n°8396 (the "Bill") to the Parliament which provides clarifications on investment funds falling into the scope of Pillar 2, the computation of the Qualifying Domestic Minimum Top-up tax (the "QDMTT") and reporting obligations.

The Bill clarifies that an investment fund or a real estate investment vehicle, which is not a UPE for the sole reason that the qualifying financial accounting standard does not

require it to prepare consolidated financial statements, is to be treated as an entity excluded from the scope of Pillar 2. Thus, entities owned by such investment fund or real estate investment vehicles should be excluded from the scope of Pillar 2 provided that they meet the conditions of the participation thresholds, the nature of their activity and the nature of their revenues<sup>114</sup>.

### The Qualifying Domestic Minimum Top-Up Tax

The Bill amends the provision pertaining to the QDMTT<sup>115</sup>. It limits the amount of QDMTT of a jurisdiction that can be considered for the purposes of calculating the top-up tax, to the one of the jurisdiction in which constituent entities are located.

The Bill sets out the currency for QDMTT computation. Provided that all Luxembourg constituent entities do not use the euro as their functional accounting currency, the group can opt to compute the QDMTT based on euro or the currency used to prepare the UPE's financial statements.

Moreover, a Luxembourg constituent entity shall not be subject to the QDMTT during the first five years (i) in the initial phase of the international activity of its MNE's group, or (ii) as of the first day of the tax year in which the MNE group falls for the first time in the scope of Pillar 2<sup>116</sup>.

The Bill provides clarification on the computation of the ETR where an MNE group opted for the QDMTT.

### Reporting obligations

The deadline for filing declarations and notifications (i.e., registration of a constituent entity, information on top-up tax, declaration and terms of payment of the IIR<sup>117</sup>, UTPR<sup>118</sup> and QDMTT) cannot expire before 30 June 2026<sup>119</sup>.

<sup>109</sup> (external source): <https://wdocs-pub.chd.lu/docs/exped/0147/140/295405.pdf>

<sup>110</sup> [FAQ – Loi "Pilier 2"](#)

<sup>111</sup> [Law of 22 December 2023](#)

<sup>112</sup> As provided in article 53(2) of the Pillar 2 Law.

<sup>113</sup> The FAQ refers in particular to the publications of the Accounting Standards Commission ([Q&A CNC 24/032](#)).

<sup>114</sup> The Bill proposes to amend article 2(3) of the Pillar 2 Law.

<sup>115</sup> The Bill proposes to amend article 14(1) of the Pillar 2 Law.

<sup>116</sup> The Bill proposes to amend article 44(9) of the Pillar 2 Law.

<sup>117</sup> Income Inclusion Rule.

<sup>118</sup> Undertaxed Payments Rule.

<sup>119</sup> The Bill proposes to amend article 56(2) of the Pillar 2 Law.

Article 59 of the Pillar 2 Law as amended by the protocol specifies the terms of the transitional protection regime pertaining to the country-by-country reporting.





## **LITIGATION AND DISPUTE RESOLUTION**





## LITIGATION AND DISPUTE RESOLUTION

### THE DISCONTINUANCE OF ACTION AND THE DISCONTINUANCE OF PROCEEDINGS

2 May 2024<sup>120</sup>

A limited liability company filed a partial appeal against the judgment of 17 June 2022. The LLC then stated that it wished to discontinue the proceedings against the defendants. The company used an ambiguous formulation between discontinuance of action and discontinuance of instance.

Reminder of the discontinuance's principles:

Art. 545 of the NCPC: The discontinuance may be made and accepted by simple deeds, signed by the parties or their agents and served from solicitor to solicitor.

Art. 546 of the NCPC: The discontinuance, accepted, implies by operation of law consent that things be restored to the same state as they were before the application. It will also entail submission to pay the costs to the payment of which the party who has abandoned will be compelled.

The Court of Appeal of Luxembourg clarifies the distinction between a discontinuance of action and discontinuance of proceedings:

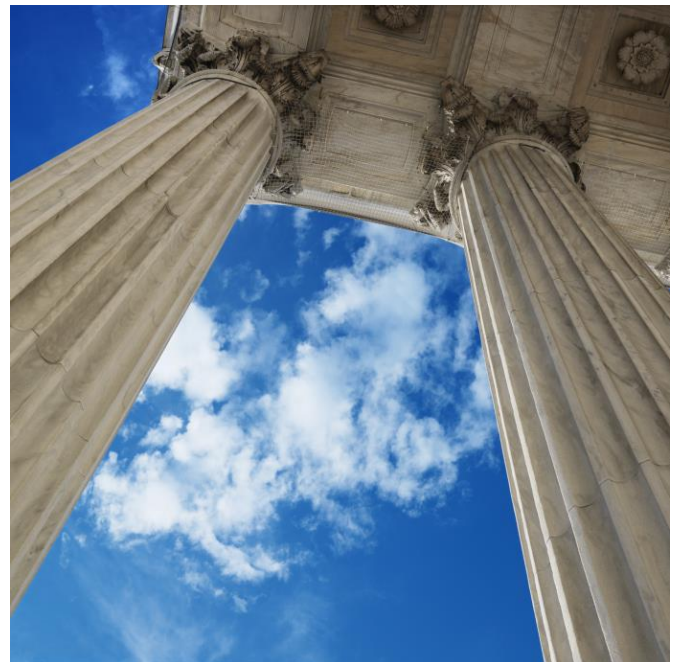
The **discontinuance of action** encompasses necessarily a discontinuance of proceedings and a discontinuance of the right. It is a definitive waiver, and there is an extinguishment of the right itself which forms the basis of the action, rendering any new action barred.

The **discontinuance of proceedings** only implies the waiver of the proceedings currently commenced without abandoning the right, subject of the action. Abandonment of proceedings pending appeal affects only the appeal instance, and the first instance remains. However, a new appeal procedure can be initiated.

When the appellant was not a plaintiff at first instance against one of the parties, he cannot usefully waive a right

that he does not have, since he did not initiate an action that would pursue its consecration. This withdrawal must then be interpreted as withdrawal of appeal proceedings.

The Court of Appeal took into account the unequivocal expression of will by the applicant of the discontinuance of proceedings and of action in order to declare them extinguished towards him.



<sup>120</sup> (external source): [https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/09\\_Chambre/2024/20240502\\_CA9\\_CAL-2023-00035\\_pseudonymis%C3%A9-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/09_Chambre/2024/20240502_CA9_CAL-2023-00035_pseudonymis%C3%A9-accessible.pdf)

[s/CSJ/09\\_Chambre/2024/20240502\\_CA9\\_CAL-2023-00035\\_pseudonymis%C3%A9-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/09_Chambre/2024/20240502_CA9_CAL-2023-00035_pseudonymis%C3%A9-accessible.pdf)

## THE STAY OF PROCEEDINGS AND THE "ACTIO MANDATI"

30 May 2024<sup>121</sup>

A limited liability company has assigned an administrator and a limited company to claim damages constituting damage to reputation and financial damage. The plaintiff alleges a breach of the administrator's management obligations.

The **stay of proceedings** consists of a court not taking a decision on the dispute before it pending the intervention of a future event, in principle certain in its occurrence, but more or less distant in time. It is up to the person raising the dilatory exception and intending to form an obstacle to the normal course of civil proceedings to demonstrate that the conditions of application are met.

The rule "the criminal holds the civil in the state", of article 3 of the Code of Criminal Procedure, applies when a public action that is likely to influence the civil decision is pending before a criminal court. Its application is not subject to a condition of identity of the person or facts, but it is sufficient that the decision to intervene on the public action is likely to affect the decision that will be rendered by the civil court.

The rule applies in international relations only by virtue of a treaty that would make the rule applicable to public actions brought abroad. The question of the impact of its public policy character does not arise.

In the event of an optional stay of proceedings, the judge has the power to assess the conditions and the appropriateness of its issuance.

The "**actio mandati**" is a social action in contractual liability directed by the principal against his agent. The corporation gives a mandate to its directors to represent it and act on its behalf. It is necessarily up to the general meeting of shareholders to decide whether to bring the action in liability against the directors (Article 63 of the LSC).

The conditions for admissibility of the request are assessed on the day of its submission; the decision of the

general meeting must in principle exist on the day of the summons.

The plaintiff must establish a mismanagement or report proof of an infringement of the legal framework or the articles of association of the company on the part of the director as well as a prejudice related to this fault or offence.

To be repairable, the alleged damage must be certain and not hypothetical or contingent.

According to the principle of full reparation, damages must cover all aspects of the damage and the amount due must correspond strictly to the loss caused by the damaging act.

<sup>121</sup> (external source):  
<https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9s/Tribunal%20d%27arrondissement%20Luxembourg%20comme>

[rce/06\\_Cambre/2024/20240530\\_TAL06\\_175406%20et%20TAL-2021-01052\\_pseudonymis%C3%A9-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9s/Tribunal%20d%27arrondissement%20Luxembourg%20comme)





**REAL ESTATE**





## REAL ESTATE

### EXTENTION OF THE EXPIRY DATE FOR BUILDING PERMITS FROM 1 TO 2 YEARS

29 March 2024<sup>122</sup>

The bill of law n°8369 (the "Bill of Law"), aiming to amend article 37(5) of the amended law of 19 July 2004 on municipal planning and urban development (the "Law of 2004"), provides for the extension of the expiry date for building permits from one year to two years.

As a result, the new mechanism will double the deadline under existing legislation for authorised persons to undertake building work in a significant manner (*de manière significative*). The building permits can then be extended at the request of the holders for a maximum period of one year.

The Bill of Law establishes the exact date on which the two-year period begins, corresponding to the date on which the building permit was issued and signed by the mayor (*bourgmestre*).

Other provisions of article 37, paragraph 5, remain unchanged. Their operation is specified by the well-established case law.

Thus, the criterion of work undertaken in a "significant manner" is constituted by the first act of execution that is carried out on the building site, insofar as this material work complies with the authorised layout of the construction, provided that the undertaken work is of sufficient importance, that it bears witness to the real intention of the beneficiary of the building permit to implement it and that the said work is subject to the building permit.

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<sup>122</sup> Link (external source): <https://www.chd.lu/fr/dossier/8369>

## **REMOVAL OF THE 35-YEAR DEADLINE FOR BRINGING INTO COMPLIANCE THE DESCRIPTIVE STATEMENTS OF DIVISION OF BUILDINGS IN CO-OWNERSHIP DRAWN UP BEFORE 1 APRIL 1989**

2 April 2024<sup>123</sup>

The new law of 29 March 2024 (the "**New Law**"), amending the amended law of 19 March 1988 on land registration in matters of co-ownership (the "**Law of 1988**"), repeals the deadline of 31 March 2024 for bringing into conformity the descriptive statements of division (*états descriptifs de division*) of buildings in co-ownership that were drawn up before 1 April 1989.

Therefore, this amendment, which came into force on 2 April 2024, removes the obligation to bring the descriptive statements of division (*états descriptifs de division*) into compliance, thereby placing the decision to do so entirely in the hands of the co-owners.

Formerly, article 4 of the Law of 1988 required that the descriptive statements of division (*états descriptifs de division*) drawn up before 1 April 1989 had to be brought into conformity within 35 years, specifying that deeds drawn up after this date and not using the new cadastral designations are no longer to be registered or transcribed.

It is important to note that the New Law does not affect any of the other provisions of the Law of 1988.

For the administration, the consequence of the abolition of the deadline is the continuation of the parallel management of two systems, as has been the case for the last 35 years: an "old system" for files prior to the entry into force of the Law of 1988 and a "new system" for files drawn up in accordance with the Law of 1988.

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<sup>123</sup> (external source):  
<https://legilux.public.lu/eli/etat/leg/loi/2024/03/29/a133/jo>



## **GLOSSARY**



## **GLOSSARY**

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

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

"**AIF**": Alternative Investment Fund

"**AIFM**": Alternative Investment Fund Manager

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

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

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

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

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

"**CCP**": Central counterparty

"**CDD**": Customer due diligence

"**CSRD**": Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

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

"**DORA**": Regulation (EU) 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011

"**EBA**": European Banking Authority

"**EEA**": European Economic Area

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

"**EMIR Law**": Luxembourg law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services (as amended)

"**ESA**": European Supervisory Authority

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

"**EU**": European Union

"**FGDL**": Luxembourg deposit protection scheme, *Fonds de garantie des dépôts Luxembourg*

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

"**ICT**": Information and Communication Technology

"**IDD**": Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (as amended)

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

"**MiCAR**": Regulation (EU) 2023/1114 on markets in crypto-assets (as amended)

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

"**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

"**OTC**": over-the-counter

"**PFS**": Professionals of the Financial Sector

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

"**REA**": *Réviseurs d'entreprises agréé* (approved statutory auditor)

"**SFDR**": 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

"**SFTR**": Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse (as amended)

"**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 (as amended)

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

"**Transparency Law**": Luxembourg law of 11 January 2008 on transparency requirements for issuers of securities (as amended)

"**VASP**": Virtual Asset Service Providers



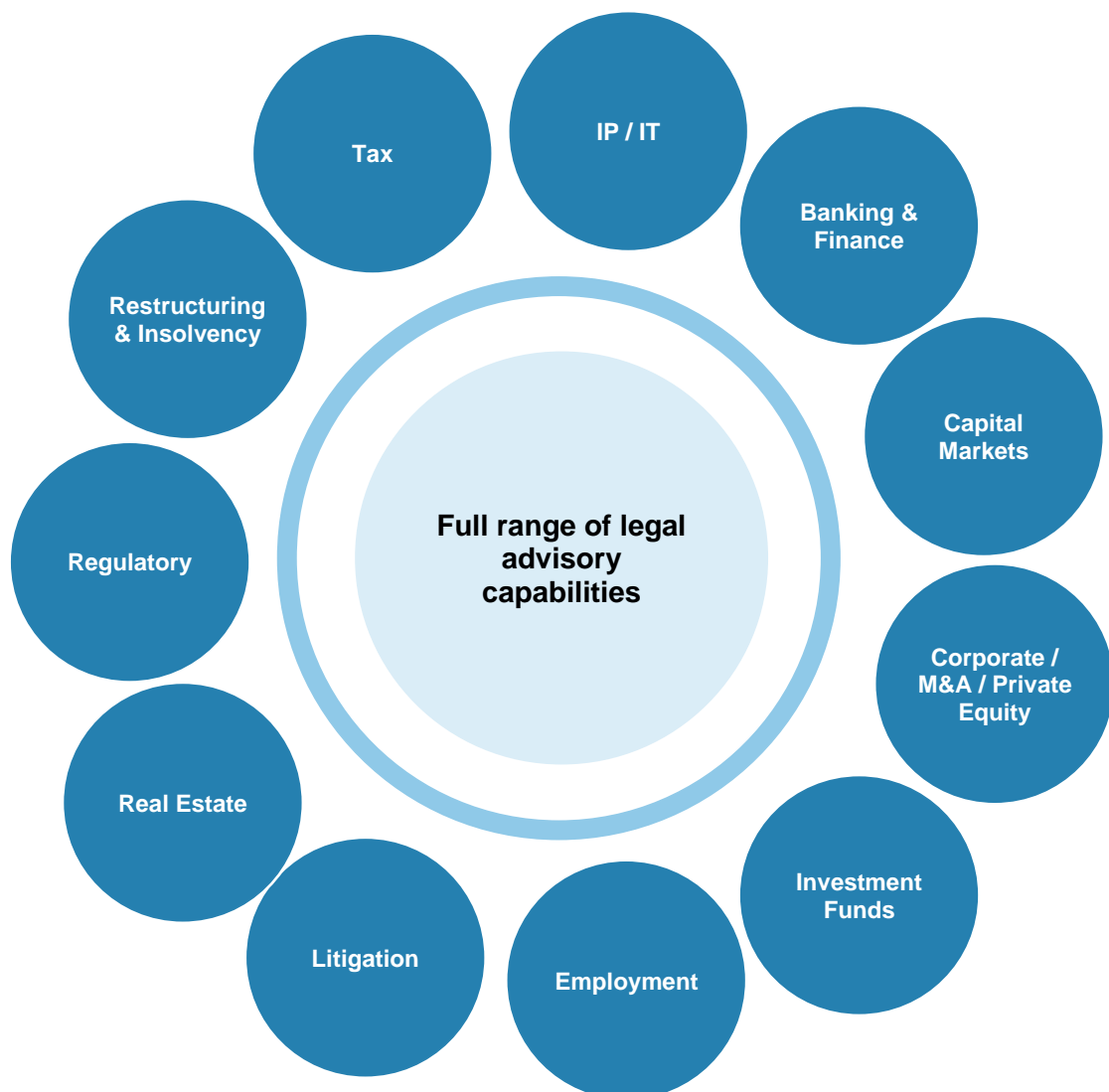
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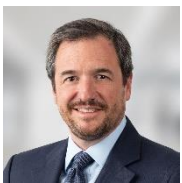
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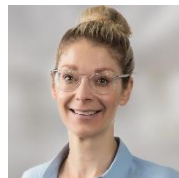
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