

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

**LUXEMBOURG LEGAL UPDATE
NOVEMBER 2024**

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FINANCIAL INSTITUTIONS



FINANCIAL INSTITUTIONS

CSSF PUBLISHES COMMUNIQUÉ ON THE NEW AML/CTF PACKAGE

19 June 2024¹

On 19 June 2024, the CSSF published a communiqué on the EU's new AML/CTF Regulation, the sixth AML/CTF Directive and the future EU AML/CTF supervisor.

The purpose of the communiqué is to inform the public that on 19 June 2024, the following Regulations and Directives were published in the EU Official Journal:

- 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 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); and
- the Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010 (AMLAR).

The communiqué states that the existing European AML/CTF legal framework has brought forth substantial achievements, yet experience has shown that further improvements should be introduced to adequately mitigate ML/TF risks and to effectively detect attempts to misuse the Union's financial system for criminal purposes.

For this reason, the legislative choice was made to opt for a directly applicable Regulation instead of a Directive with a view to achieving more harmonisation. Concretely, this means that the rules contained in the AMLR, the 'single rulebook', set forth detailed substantive requirements,

which will be directly applicable in the same way in all Member States of the EU.



The AMLR will particularly provide for EU-wide rules on (i) the scope of obliged entities, (ii) internal policies, controls and procedures of obliged entities, (iii) customer due diligence, (iv) beneficial ownership transparency, (v) reporting obligations, (vi) record-retention, and (vii) measures to mitigate risks deriving from anonymous instruments. AMLR will apply from 10 July 2027.

AMLD6 provides, in particular, for enhanced rules regarding beneficial ownership information and their recording in central registers of beneficial ownership information, as well as new rules on centralised automated mechanisms (in Luxembourg, currently the central register of bank accounts). Member States have three years from its entry into force to transpose the AMLD6 in their national legislation.

AMLA will be a Union body with legal personality and seat in Frankfurt am Main (Germany). Its task will be to (i) prevent the use of the EU's financial system for the purpose of ML/TF, (ii) contribute to identify and assess

¹ External Source:
<https://www.cssf.lu/en/2024/06/the-new-aml-cft->

[regulation-the-sixth-aml-cft-directive-and-the-future-eu-aml-cft-supervisor/.](https://www.cssf.lu/en/2024/06/the-new-aml-cft-)

risks and threats of ML/TF, both across the internal market and those originating from outside the EU, (iii) ensure high-quality AML/CTF supervision, (iv) contribute to supervisory convergence in AML/CTF across the internal market, (v) contribute to the harmonisation of practices in the detection of suspicious flows of monies or activities by Financial Intelligence Units, and (vi) support and coordinate the exchange of information between Financial Intelligence Units and between Financial Intelligence Units and other competent authorities. The AMLAR will apply from 1 July 2025 and AMLA will start its direct supervision of a pre-defined number of selected obliged entities in July 2028. AMLA shall further act as indirect supervisor for the non-selected obliged entities and more generally as AML/CFT supervisor for the whole financial sector. AMLA also has missions relating to FIUs, as well as to the supervision of the non-financial sector.

CSSF PUBLISHES COMMUNIQUÉ ON THE MICA QUESTIONNAIRE FOR FINANCIAL ENTITIES CONSIDERING AN ARTICLE 60 NOTIFICATION

24 June 2024²

On 24 June 2024, the CSSF published a communiqué on the MiCA questionnaire for financial entities considering an Article 60 notification.

The purpose of the communiqué is to inform financial entities covered by Article 60 of MiCA (i.e. credit institutions, central securities depositories, investment firms, electronic money institutions, UCITS management companies, alternative investment fund managers and market operators) (together referred to as "Financial Entities") that they will have the option to provide crypto-asset services in the EU equivalent to the services and activities for which they are authorised under relevant EU law, subject to a notification procedure. A questionnaire has been published in order to allow the CSSF to understand to what extent firms with relevant authorisations are planning to notify MiCA services.

The CSSF requested Financial Entities which are considering providing crypto-asset services following the notification procedure to fill out a questionnaire regarding their plans under MiCA by Friday 26 July 2024.

² External Source: Communiqué: [https://www.cssf.lu/en/2024/06/mica-](https://www.cssf.lu/en/2024/06/mica-questionnaire-for-financial-entities-considering-an-article-60-notification/)

[questionnaire-for-financial-entities-considering-an-article-60-notification/](https://www.cssf.lu/en/2024/06/mica-questionnaire-for-financial-entities-considering-an-article-60-notification/)

CSSF PUBLISHES COMMUNIQUÉ ON NOTIFICATION REQUIREMENTS FOR FIRMS USING ALGORITHMIC TRADING OR PROVIDING DIRECT ELECTRONIC ACCESS TO A TRADING VENUE

26 June 2024³

On 26 June 2024, the CSSF published a communiqué on the notification requirements for firms using algorithmic trading or providing direct electronic access to a trading venue.

The purpose of the communiqué is to remind firms of their obligation to notify the relevant authorities when they engage in algorithmic trading or provide direct electronic access to trading venues. This includes notifying both the competent authority of their home member state and, if applicable, the competent authority(or authorities) of the trading venues involved.

Algorithmic trading refers to the process where a computer algorithm autonomously determines various parameters of financial instrument orders, such as initiation, timing, price or quantity, and manages the order post-submission with little to no human intervention.

An automated order routing system is not considered an algorithmic trading system if it only determines the trading venue or trading venues to which the order is to be sent, without changing any other parameter of the order. However, a "smart order routing system" which, additionally to routing orders to trading venues, offers automated management of the order is considered an algorithmic trading system.

A computer algorithm which only draws human traders' attention to trading opportunities or only generates investment advice does not qualify as an algorithmic trading system.

The CSSF also clarifies the concept of direct electronic access, which means an arrangement where a member, participant or client of a trading venue permits a person to use its trading code so the person can electronically

transmit orders relating to a financial instrument directly to the trading venue.

It includes arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access).

The definition of direct electronic access does not encompass any other activity beyond the provision of direct market access and sponsored access. Therefore, arrangements where client orders are intermediated through electronic means by members or participants of a trading venue such as online brokerage do not qualify as direct electronic access.

For a complete understanding of the definition of "algorithmic trading" and the associated notification requirement, the CSSF refers to several key regulatory texts, including MiFID2, Commission Delegated Regulation (EU) 2017/565, and the ESMA "Questions and Answers" on direct electronic access and algorithmic trading. Additionally, the CSSF's own "MiFID II/MiFIR – Questions and Answers" document provides specific guidance on these topics.

Luxembourg firms engaging in algorithmic trading and other EU firms engaging in algorithmic trading at a Luxembourg trading venue shall notify the CSSF by email to mifid2@cssf.lu, using the table as presented in the CSSF MiFID II/MiFIR Q&A.

The same procedure is to be applied for Luxembourg firms providing direct electronic access to a trading venue and other EU firms providing direct electronic access to a Luxembourg trading venue.

Should firms have any questions regarding these notification requirements, they can address them to the CSSF using the email address mentioned above.

³ External Source:
<https://www.cssf.lu/en/2024/06/communication-regarding-the-notification-requirements-for-firms->

[engaging-in-algorithmic-trading-or-providing-direct-electronic-access-to-a-trading-venue/](https://www.cssf.lu/en/2024/06/communication-regarding-the-notification-requirements-for-firms-engaging-in-algorithmic-trading-or-providing-direct-electronic-access-to-a-trading-venue/)

CSSF PUBLISHES CIRCULAR ON THE APPLICATION OF THE EBA GUIDELINES ON BENCHMARKING OF DIVERSITY PRACTICES, INCLUDING DIVERSITY POLICIES AND GENDER PAY GAP

27 June 2024⁴

On 27 June 2024, the CSSF published its Circular CSSF 24/858 on the application of the EBA guidelines on the benchmarking of diversity practices, including diversity policies and the gender pay gap under the CRD and Directive (EU) 2019/2034, as amended (EBA/GL/2023/08).

The circular is addressed to all credit institutions, CRR investment firms and non-SNI IFR investment firms.

The purpose of the circular is to inform them that the CSSF, in its capacity as competent authority, applies the guidelines published on 18 December 2023. Consequently, the CSSF has integrated the guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at a European level. All entities described in the scope of the application section of the circular shall duly comply with the guidelines.

The guidelines specify the information to be provided every three years by a representative sample of relevant institutions on diversity practices, including on diversity policies and the gender pay gap at the level of the management body (diversity benchmarking). They also specify how the CSSF will collect the diversity benchmarking data from relevant institutions, and how the CSSF will submit the data to the EBA.

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

The circular applies with immediate effect.

⁴ External Sources: Circular: https://www.cssf.lu/wp-content/uploads/cssf24_858eng.pdf. EBA guidelines: <https://www.eba.europa.eu/sites/default/files/2023>

[-12/213cc021-d991-43ed-977d-c60245301e70/Final%20report%20on%20Guidelines%20on%20the%20diversity%20benchmarking%20exercise.pdf](https://www.eba.europa.eu/sites/default/files/2023-12/213cc021-d991-43ed-977d-c60245301e70/Final%20report%20on%20Guidelines%20on%20the%20diversity%20benchmarking%20exercise.pdf).

CSSF PUBLISHES COMMUNIQUÉ ON FINAL REPORT FOR ESMA COMMON SUPERVISORY ACTION REGARDING MIFID2 DISCLOSURE RULES WITH REGARD TO MARKETING COMMUNICATIONS AND ADVERTISEMENTS OF FINANCIAL PRODUCTS

28 June 2024⁵

On 28 June 2024, the CSSF published a communiqué on the Final Report for ESMA Common Supervisory Action regarding MiFID2 disclosure rules with regard to marketing communications and advertisements of financial products.

Over the course of 2023, ESMA performed a common supervisory action with NCAs across the EU/EEA on the supervision of the MiFID2 disclosure rules with regard to marketing communications and advertisements of financial products of investment firms as well as of credit institutions.

On 27 May 2024, ESMA published the results of the common supervisory action in a final report, including the experiences and findings of the 27 EU/EEA NCAs (including the CSSF) participating to the exercise.

The purpose of the communiqué is to inform in that context that the overall level of compliance with the applicable rules in the field of marketing communications and advertisement of financial products was satisfactory for most investment firms as well as credit institutions, but that the exercise also showed shortcomings in some areas and the need for improvements in certain key areas.

While the overall analysis of compliance for the investment firms as well as credit institutions in Luxembourg submitted to this common supervisory action is mostly consistent with the conclusions of ESMA's final report, the CSSF requires market participants to comply with ESMA's recommendations and to take, if applicable, the necessary corrective measures in accordance with applicable regulatory requirements.

The CSSF is currently engaging on a bilateral basis with some entities in relation to the observations made in the context of the common supervisory action, thereby asking these entities to implement the necessary corrective measures for the observed shortcomings.

The communiqué contains a link to ESMA's final report.

⁵ External Source:
<https://www.cssf.lu/en/2024/06/final-report-esma-common-supervisory-action-on-the-application-of->

[mifid-ii-disclosure-rules-with-regard-to-marketing-communications-and-advertisements-of-financial-products/.](https://www.cssf.lu/en/2024/06/final-report-esma-common-supervisory-action-on-the-application-of-mifid-ii-disclosure-rules-with-regard-to-marketing-communications-and-advertisements-of-financial-products/)

CSSF PUBLISHES COMMUNIQUÉ ON THE ADOPTION OF THE NEW BANKING PACKAGE (CRR3/CRD6)

2 July 2024⁶

On 2 July 2024, the CSSF published a communiqué on the adoption of the new banking package (CRR3/CRD6).

The CSSF draws the attention of the public to the publication of the banking package, which amends CRD and CRR, in the EU Official Journal on 19 June 2024.

The banking package implements in the EU the outstanding elements of the Basel III regulatory reforms (i.e., output floor, credit risk, market risk, operational risk). It also introduces changes in other non-Basel key areas such as fit and proper third country branches and ESG risks.

As part of the banking package, the EBA has received around 140 mandates to develop new regulatory products such as RTS/ITS and guidelines to strengthen the supervisory framework, provide clarity to the industry and, ultimately, ensure a level playing field.

CRR3 and CRD6 entered into force on 9 July 2024.

CRR3 will generally be applicable from 1 January 2025 (although some provisions have already started to apply since 9 July 2024). Some provisions of CRR3 are also subject to transitional arrangements and will be phased in over the coming years. With regard to the market risk rules and the so-called Fundamental Review of the Trading Book (FRTB), the European Commission announced on 18 June 2024 that the date of application in the EU has been postponed by one year, to 1 January 2026. This delay will be adopted by way of delegated act later this year.

CRD6 must be transposed into national law by Member States by 10 January 2026. In general, it will be applicable from 11 January 2026, apart from provisions on third-country branches applicable one year later (i.e., from 11 January 2027).

⁶ External Source:
[https://www.cssf.lu/fr/2024/07/adoption-du-](https://www.cssf.lu/fr/2024/07/adoption-du-nouveau-paquet-bancaire-crr-iii-crd-vi/?utm_campaign=email-240702-a7e95)

[nouveau-paquet-bancaire-crr-iii-crd-vi/?utm_campaign=email-240702-a7e95](https://www.cssf.lu/fr/2024/07/adoption-du-nouveau-paquet-bancaire-crr-iii-crd-vi/?utm_campaign=email-240702-a7e95)

LUXEMBOURG LAW IMPLEMENTING DORA PUBLISHED

2 July 2024⁷

The law of 1 July 2024 amending certain financial sector laws with a view to implement DORA and its accompanying Directive (EU) 2022/2556 was published in the Luxembourg official journal (*Mémorial A*) on 2 July 2024.

The law has a double objective:

- *First*, it aims to implement DORA; and
- *Second*, it aims to transpose into Luxembourg law Directive (EU) 2022/2556 of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector.

The objective of DORA and Directive 2022/2556 is to harmonise and strengthen ICT security requirements in order to achieve a high level of digital operational resilience for the entire financial sector. DORA consolidates the different rules dealing with ICT risks in the financial sector and brings them together in a single legislative act to fill gaps and inconsistencies. The consolidation and further harmonisation of key digital operational resilience requirements are part of the objective to foster innovation and the adoption of new technologies in the financial sector, while ensuring financial stability and the protection of investors and consumers.

As the provisions of DORA are directly applicable in the European Union, the main purpose of the Law is to provide the national competent authorities for the financial sectors, i.e. the CSSF and the CAA, with the supervisory and investigative powers necessary for the performance of their duties, within the limits defined by DORA, and to lay down a system of penalties.

Directive 2022/2256 accompanies and complements DORA by providing for a series of targeted amendments to existing European directives in the financial sector. Such

amendments are necessary to ensure sectoral consistency with DORA as regards the application of digital operational resilience requirements that are currently scattered across the various existing sectoral laws.

Targeted amendments are therefore made to a series of Luxembourg laws relating to the financial sector, such as the Financial Sector Law, the Payment Services Law, the UCI Law, the AIFM Law and the Insurance Sector Law.

The law will enter into force on 17 January 2025.

⁷ External Source:
<https://legilux.public.lu/eli/etat/leg/loi/2024/07/01/a/2711/jo> (only in French).

CSSF PUBLISHES COMMUNIQUÉ ON THE PUBLIC CONSULTATION AND FEEDBACK PERIOD FOR NIS2 DIRECTIVE ITS RELATED TO CYBERSECURITY RISK MANAGEMENT AND SIGNIFICANT INCIDENTS

5 July 2024⁸

On 5 July 2024, the CSSF published a communiqué on the public consultation and feedback period for implementing regulations laying down rules for the application of the NIS2 Directive as regards technical and methodological requirements of cybersecurity risk management measures and further specification of the cases in which an incident is considered to be significant.

The purpose of the communiqué is to inform the public that, in the context of the implementation of the NIS2 Directive, the European Commission has recently published a draft implementing regulations as well as the related annex laying down the technical and methodological requirements of cybersecurity risk management measures referred to in Article 21(2) of the NIS2 Directive, and to further specify the cases in which an incident shall be considered to be significant as referred to in Article 23(3) of the NIS2 Directive for public consultation and feedback until 25 July 2024.

Support PFS that are providing trust services (as defined in Article 3, point (16), of Regulation (EU) No 910/2014) are in scope of NIS2.

As the transposition in national law of the NIS2 Directive is still ongoing, the identification of other support PFS, which will be in the scope of the NIS2 Directive as essential or important entities, is in progress.

However, due to their activities in the digital infrastructure sector (cloud computing service providers, data centre service providers) and/or the ICT service management

sector (managed service providers and managed security service providers), a large number of support PFS authorised as IT systems and communication networks operators of the financial sector pursuant to Article 29-3 of the Luxembourg law of 5 April 1993 on the financial sector (as amended) are also likely to fall under the NIS2 Directive as essential or important entities.

Therefore, the CSSF invites all the above-mentioned types of support PFS to take note of the draft implementing regulation and, if they are interested, to submit their potential feedback to the European Commission directly through the website provided for this purpose.

⁸ External Sources: Communiqué: https://www.cssf.lu/fr/2024/07/periode-de-consultation-publique-et-avis-pour-le-reglement-dexecution-etablissant-les-regles-dapplication-de-la-directive-ue-2022-2555-directive-nis2-en-ce-qui-concerne-les-exigences-technique/?utm_campaign=email-240705-dabc7.

Consultation: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14241-Cybersecurity-risk-management-reporting-obligations-for-digital-infrastructure-providers-and-ICT-service-managers_en.

CSSF PUBLISHES COMMUNIQUÉ ON THE PUBLICATION OF THE LUXEMBOURG DORA LAW IN THE OFFICIAL JOURNAL

11 July 2024⁹

On 11 July 2024, the CSSF published a communiqué on the publication of the Luxembourg law of 1 July amending certain financial sector laws with a view to implement DORA in the Luxembourg official journal (*Mémorial A*).

The purpose of the communiqué is to inform the public that, after the adoption by the Luxembourg Parliament earlier in June, the national DORA law has been published in the Luxembourg official journal and will apply from 17 January 2025. This constitutes one more step towards a more resilient financial sector in Luxembourg.

As the provisions of DORA are directly applicable in the European Union, the DORA law, for the purpose of the implementation of DORA, aims to provide the competent national authorities responsible for ensuring the application of DORA (i.e., the CSSF and the CAA) with the supervisory and investigative powers necessary for the performance of their duties and to provide for an appropriate system of sanctions.

In addition, the DORA law transposes into Luxembourg law Directive (EU) 2022/2556, which makes specific amendments relating to digital resilience and ICT security to the European directives on the financial sector. The DORA law thus carries out a targeted adaptation of a series of national laws relating to the financial sector. These amendments are necessary to ensure, in the interest of legal certainty, that these national laws are consistent with DORA as regards the application of digital operational resilience requirements currently dispersed across the various existing sector-specific laws.

The CSSF reminds financial entities that DORA will be applicable from 17 January 2025 and that they shall work towards compliance with the requirements of DORA. The communiqué contains a link to the DORA page of the CSSF website. The CSSF invites financial entities to

regularly consult this site, which is kept up to date with new publications and relevant information.

⁹ External Sources: Communiqué: <https://www.cssf.lu/en/2024/07/luxembourg-dora-law-published-in-the-official-journal/>.
Law: <https://www.cssf.lu/en/Document/law-of-1-july-2024/> [].

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

LUXEMBOURG LAW IMPLEMENTING THE NPL DIRECTIVE PUBLISHED

15 July 2024¹⁰

The law of 15 July 2024 implementing, among others, the NPL Directive was published in the Luxembourg official journal (*Mémorial A*) on 18 July 2024.

The law has a double objective:

- *First*, it aims to transpose the NPL Directive, establishing a European framework for the transfer or assignment of non-performing loans, thus enabling credit institutions to be able to sell on the secondary markets non-performing loans to other operators with the necessary risk appetite and expertise to manage them; and
- *Second*, it aims to operationalise Articles 2(1) and (3) of Regulation (EU) 2022/2036, relating to certain amendments of the BRRD as regards the determination of the minimum requirement for own funds and eligible liabilities for resolution entities of global systemically important institution (G-SII) entities.

The law transposes the provisions relating to the transfer or assignment of non-performing loans initially granted by a credit institution, the obligations incumbent on credit purchasers and the provisions applicable to supervision and sanctions, among others. The law also introduces, in the Financial Sector Law, credit servicers in Luxembourg law as a new type of professional of the financial sector subject to authorisation and supervision by the CSSF.

Targeted amendments are also made to the Consumer Code, the law of 23 December 1998 establishing a financial sector supervisory commission (as amended), the law of 22 March 2004 on securitisation (as amended), the Resolution Law, as well as certain other laws.

The Law entered into force on 22 July 2024.

¹⁰ External Source:
<https://legilux.public.lu/eli/etat/leg/loi/2024/07/15/a/292/jo> (only in French).

CSSF PUBLISHES PRESS RELEASE ON A USER GUIDE ON THE TRANSMISSION OF MONTHLY COREP-FINREP REPORTS

16 July 2024¹¹

On 16 July 2024, the CSSF published a communiqué on a user guide on the transmission of monthly COREP-FINREP reports.

Following its communiqué dated 21 June 2024 on the new transmission method for monthly COREP-FINREP reports, the CSSF has published the user guide which details the submission methods as well as the new naming convention applicable for the following reportings:

- Monthly reportings to be submitted since 1 September 2024:
 - ALM – Reporting on additional monitoring metrics for liquidity; and
 - LCRDA – Liquidity Coverage requirements;
- IRRBB reporting – Interest Rate Risk in the Banking Book – to be submitted since 1 October 2024.

The user guide also includes the naming convention for the following quarterly reports, for which the applicable deadlines will be communicated at a later date:

- COREP – Own Funds;
- LAREX – Large Exposures;
- LEVER – Leverage Ratio;
- NSFR – Stable Funding;
- FINREP – Financial Reporting;
- AE – Asset Encumbrance; and
- FRTB – Fundamental Review of the Trading Book.

The communiqué contains a link to the user guide. In case of questions, the CSSF can be contacted via email at edesk@cssf.lu.

¹¹ External Sources: Communiqué: <https://www.cssf.lu/en/2024/07/transmission-of-monthly-corep-finrep-reports-user-guide/>.

Document: https://www.cssf.lu/wp-content/uploads/Bank_prudential_reporting.pdf.

LUXEMBOURG BILL INTRODUCING NEW ROLE OF CONTROL AGENT FACILITATING THE USE OF DISTRIBUTED LEDGER TECHNOLOGY FOR SECURITIES ISSUANCES

24 July 2024¹²

A new bill N°8425/00 amending, among others, the Luxembourg law of 6 April 2013 on dematerialised securities (2013 Law) was lodged with the Luxembourg Parliament on 24 July 2024.

In a nutshell, the bill proposes to introduce the new role of "control agent" and expand the scope of dematerialised securities which may be issued using secured electronic recording mechanisms (*mécanismes d'enregistrement électroniques sécurisés*), including distributed ledgers or databases (DLT).

The new control agent role, which is an alternative to the existing central account keeper (CAK) and settlement organisation roles for the issuance of unlisted debt securities, is open, among others, to EU credit institutions and investment firms. The control agent holds the securities issuance account by means of DLT and provides a reconciliation function in respect of the dematerialised securities by monitoring the custody chain of the dematerialised securities held in securities accounts maintained within or by virtue of a DLT system and reconciling the issued securities. One of the novelties is that the control agent will not be required to also hold the first level securities accounts (as is the case for the CAK and the settlement organisation under the existing legal framework).

By further broadening the scope of the 2013 Law, the bill thereby asserts Luxembourg's endeavours to promote financial sector innovation. It is a continuation of the law of 1 March 2019 modifying the law of 1 August 2001 on the circulation of securities which already explicitly recognised the possibility to hold and register securities in securities accounts (*comptes-titres*) within or by virtue of a DLT system, and the law of 22 January 2021 modifying the

2013 Law to explicitly introduce the possibility to use a DLT system for the issuance of dematerialised securities.

The publication of the bill constitutes the start of the legislative procedure.

¹² External Source: <https://wdocs-pub.chd.lu/docs/exped/0148/149/297498.pdf> (only in French).

LUXEMBOURG BILL IMPLEMENTING AMENDMENTS TO BRRD, SRMR AND CRR PUBLISHED

25 July 2024¹³

Bill N°8427 was lodged with the Luxembourg Parliament on 25 July 2024.

The purpose of the bill is threefold:

- *First*, it aims to implement into Luxembourg law Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024 amending the BRRD and the SRMR as regards certain aspects of the minimum requirement for own funds and eligible liabilities. The latter adapts the current European framework for bank resolution, implemented by the Resolution Law.
- *Second*, the bill aims to implement CRR3, which implements into EU law the reform of the "Basel III" standards adopted by the Basel Committee on Banking Supervision in 2017.
- *Third*, the bill proposes targeted adjustments to certain sectoral laws, including the Financial Sector Law, the Resolution Law and the Luxembourg law of 8 December 2021 on the issuance of covered bonds. The objective is notably to perfect the implementation of Directive (EU) 2019/878 and Directive (EU) 2019/2162 into Luxembourg law. Targeted amendments are also being made to the aforementioned laws with a view to clarifying the existing regulatory framework, in particular as regards the extension of the maturity of covered bonds, the shareholding structure in case of licensing of professionals of the financial sector, respectively the provisions on the governance of the motor vehicle insurance insolvency fund (*fonds d'insolvabilité en assurance automobile*) and the Luxembourg intergenerational sovereign fund (*fonds souverain intergénérationnel*).

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

¹³ External Source:
<https://www.chd.lu/en/dossier/8427> (only in French).

2023 ANNUAL REPORT OF LUXEMBOURG FIU PUBLISHED

31 July 2024¹⁴

On 31 July 2024, the FIU published its annual report of 2023. The report covers the activity of the FIU over the course of the year 2023. Main activity points reported on include the following:

- At the operational level, the FIU is witnessing a rise in the intricacy of declarations, which is largely due to the increased vigilance of entities under the AML Law towards autonomous money laundering activities. The FIU's task is to integrate this new information within existing data, enrich its databases and secure more definitive information through global cooperation. The hiring of expert financial analysts in recent years has significantly enhanced the FIU's analytical strength, enabling it to add value to the declarations by augmenting the information they hold and by compiling detailed reports on complex criminal networks for the prosecution authorities.
- The FIU maintains close cooperation with judicial and police authorities to synchronise efforts in combating crime. The objective is to conduct thorough investigations and ensure that crime does not pay by ultimately seizing the proceeds and benefits derived from criminal activities.
- The FIU is actively enhancing the quality and volume of information it receives from professionals under the AML Law. In 2023, FIU members participated in various training sessions and conferences to discuss the latest ML/TF typologies. Of particular note is the FIU's participation in Europol's public-private partnership.
- In light of the international dynamics affecting the Luxembourg financial centre, the FIU has had to adapt to geopolitical shifts, such as the sanctions against Russia following its invasion of Ukraine and the October 7 2023, attacks in Israel. The FIU highlights the significance of its collaboration within the European Financial Intelligence Public Private Partnership, which

resulted in a high-quality document shared with Luxembourg registrants in 2023. Regarding the attacks in Israel, the FIU joined an international task force to gain a deeper understanding of the financing behind individuals and entities connected to these events.

- The FIU is preparing for the enactment of the EU legislative package aimed at the prevention of AML/CTF by engaging in EU-level working groups.

¹⁴ External Source: <https://justice.public.lu/dam-assets/fr/publications/rapport-activites-crf/rapport-crf-2023.pdf> (only in French).

NEW GOVERNMENT DECREE ESTABLISHING AN INTER-MINISTERIAL AML/CTF STEERING COMMITTEE PUBLISHED

31 July 2024¹⁵

The government decree of 8 May 2024 establishing an inter-ministerial AML/CTF steering committee was published in the Luxembourg official journal (*Mémorial A*) on 31 July 2024.

The decree establishes the steering committee under the authority of the Minister responsible for AML/CTF.

The tasks of the steering committee are to:

- propose to the Government broad guidelines and strategic priorities on the national AML/CTF policy;
- propose measures to the Government to mitigate the risks of ML/TF and related data protection issues; and
- report to the Government on the progress made in implementing the national AML/CTF strategy.

The decree entered into force on 4 August 2024.

¹⁵ External Source:
<https://legilux.public.lu/eli/etat/leg/agc/2024/05/08/a327/jo> (only in French).

CSSF PUBLISHES CIRCULAR ON THE REPLACEMENT OF THE SECURE EXCHANGE CHANNEL FOR THE NOTIFICATION AND ENFORCEMENT OF COURT ORDERS

2 August 2024¹⁶

On 2 August 2024, the CSSF published its Circular CSSF 24/859 on the replacement of the secure exchange channel for the notification and enforcement of court orders and the repeal of Circular CSSF 13/566.

The purpose of this new circular is to inform credit institutions under CSSF supervision that the secure electronic exchange channel "e-file" for court orders, as per CSSF circular 13/566, will be replaced by the "MyGuichet" system. This change affects judicial orders from the District Courts of Luxembourg and Diekirch under Articles 66-2 to 66-5 of the Code of Criminal Procedure *Code de procédure pénale* (CPP) and the Law of 1 August 2018, which transposes Directive 2014/41/EU on the European Investigation Order in criminal matters.

As part of the judicial administration's digitisation and data security programme, the new project will expand the scope of prescriptions processed through the JUPER application to include orders under Article 66-4 of the CPP, initially for international mutual assistance cases.

The technical sheet attached in the circular's appendix outlines the steps for enrolling in the new secure "MyGuichet" information transmission system, operational from 6 October 2024.

The circular states that under Article 66-2(1) of the CPP, the investigating judge may, exceptionally, if the criminal prosecution concerns an act punishable by a criminal penalty or a correctional penalty with a maximum of two years' imprisonment or more, order the designated credit institutions to inform him/her if the person under investigation holds, controls or has power of attorney over one or more accounts of any kind, or has held, controlled or had power of attorney over such an account.

Reference is also made to Articles 66-3 to 66-5 of the CPP which govern the request for the monitoring of banking

transactions, the request for information on the execution of banking transactions and the procedural questions relating to the various requests.

In accordance with these provisions, and more particularly paragraph 2 of Article 66-5 of the CPP, it is necessary to comply with the procedure as described in the technical sheet in the appendix, to ensure the proper execution of the orders.

In the event of an internal change in the credit institution that may impact the transmission of the required information, the CSSF asks the public to immediately inform the competent authorities and update the concerned data.

The circular also indicates the contact details of the International Mutual Legal Assistance Section of the Judicial Police and the Luxembourg investigation office in case of questions.

This circular repeals CSSF Circular 13/566 of 6 June 2013 and applies with immediate effect.

¹⁶ External Source: https://www.cssf.lu/wp-content/uploads/cssf24_859.pdf (only in French)

CSSF PUBLISHES COMMUNIQUÉ ON NEW COREP/FINREP PROCEDURES

6 August 2024¹⁷

On 6 August 2024, the CSSF published a communiqué on "New COREP/FINREP procedures – initiating the list of persons to notify".

The purpose of the communiqué is to inform the public that, as part of the new transmission method for monthly COREP/FINREP reports (AML, LCRDA) which applies since 1 September 2024 to Luxembourg reporting institutions, the CSSF made the new "Bank Prudential Reporting" eDesk procedure available, including the new "Bank Prudential Reporting Responsible" role. This role allows for the management of the list of users who will receive various notifications, including reminders.

The CSSF advised the institution to assign this new role as well as to identify/inform the persons to be notified by 1 September 2024 at the latest. The CSSF reminded that from this date onwards, the AML (Reporting on additional monitoring metrics for liquidity) and LCRDA (Liquidity Coverage requirements) reports will have to be submitted solely via eDesk/S3.

For more information about this role and details on the use of the eDesk tool related to such role, the CSSF invites supervised entities to refer to the dedicated user guide.

In case of any further question, supervised entities shall contact edes@cssf.lu.

¹⁷ External Source:
<https://www.cssf.lu/en/2024/08/new-corep-finrep-procedures-initiate-the-list-of-persons-to-notify/>.

CSSF PUBLISHES PRESS RELEASE ON THE NEW TRANSMISSION MODE FOR MONTHLY COREP-FINREP REPORTING

14 August 2024¹⁸

On 14 August 2024, the CSSF published a communiqué regarding the new mode of transmission for monthly COREP-FINREP reporting.

As announced in the CSSF's communiqué dated 5 April 2024 regarding the direct submission of filings to the CSSF, the collection procedures for the following monthly COREP/FINREP reports have changed since 2 September 2024:

- ALM – Reporting on additional monitoring metrics for liquidity; and
- LCRDA – Liquidity Coverage requirements.

These monthly COREP/FINREP reports are now collected exclusively through the following two methods, free of charge:

- Submission of the XBRL file via the dedicated eDesk procedure; and
- Automated submission of the XBRL file via API (S3 protocol).

Since 2 September 2024:

- the monthly reports for the current reference period, as well as all resubmissions for previous reference periods, are affected; and
- no monthly reports are accepted through the previous external channels.

The communiqué contains a link to a user guide detailing the submission procedures for the monthly reports and the new naming convention. In case of questions, the CSSF can be contacted via email at edesk@cssf.lu.

¹⁸ External Source:
[https://www.cssf.lu/en/2024/08/reminder-new-](https://www.cssf.lu/en/2024/08/reminder-new-mode-of-transmission-for-monthly-corep-finrep-reporting-alm-lcrda/)

[mode-of-transmission-for-monthly-corep-finrep-reporting-alm-lcrda/](https://www.cssf.lu/en/2024/08/reminder-new-mode-of-transmission-for-monthly-corep-finrep-reporting-alm-lcrda/).

CSSF PUBLISHES UPDATED CIRCULAR CSSF 12/552 RELATING TO CENTRAL ADMINISTRATION, INTERNAL GOVERNANCE AND RISK MANAGEMENT

29 August 2024¹⁹

On 29 August 2024, the CSSF published its Circular CSSF 24/860 updating Circular CSSF 12/552, as amended, relating to central administration, internal governance and risk management.

The purpose of this update is to clarify certain provisions of Circular CSSF 12/552.

It notably specifies the definition of significant institutions in Part I of the circular and introduces the definition of "transactions with related parties".

The scope of application of the circular has also been clarified for (mixed) financial holding companies when they are intermediaries in the holding chain in order to promote proportionality.

Certain elements of the circular have been adjusted for consistency with the applicable regulations:

- The requirement to establish an audit committee in Part II has been aligned with the Luxembourg law of 23 July 2016 concerning the audit profession, as amended.
- The provisions concerning the veto right of the head of the risk management function and his/her ability to challenge management decisions have been adapted to fully comply with the EBA guidelines on internal governance (EBA/GL/2021/05). Some adjustments have also been made to align with Circular CSSF 22/806 on outsourcing arrangements.
- In Part III, Chapter 3 on credit risk, Circular CSSF 12/552 now establishes direct links with Circular CSSF 22/824 adopting the EBA guidelines on loan origination and monitoring (EBA/GL/2020/06) and Circular CSSF 17/675 adopting the EBA guidelines on credit institutions' credit risk management practices and accounting for expected credit losses (EBA/GL/2017/06) and develops the content of the

requirements applicable for exposures to individuals secured by mortgages on residential property and for exposures to real estate developments.

- Finally, in accordance with the CRD, the term "risk control function" has been replaced by "risk management function" throughout the circular, and the legal references have been updated.

In the near future, the CSSF plans to publish a consolidated and amended version of all applicable Questions/Answers relating to Circular CSSF 12/552.

Update changes are shown in a mark-up version annexed to the new circular.

The updated version of Circular CSSF 12/552 applies since 30 September 2024.

¹⁹ External Source:
<https://www.cssf.lu/en/Document/circular-cssf-24-860/>.

CSSF PUBLISHES COMMUNIQUÉ ON A NEW PLATFORM FOR CARRYING OUT TESTS

2 September 2024²⁰

On 2 September 2024, the CSSF published a communiqué on eDesk PREPROD, a new platform for carrying out tests.

The purpose of the communiqué is to inform credit institutions that the CSSF set up a new eDesk PREPROD platform enabling professionals to test specific procedures.

The first procedure available for testing via this new platform is the collection of monthly "EBA ITS Reports" (ALM and LCRDA), since 2 September 2024.

The following two collection methods will be available through eDesk PREPROD:

- Filing of documents in the dedicated eDesk procedure; and
- Automated submission of documents via API (S3 protocol).

The platform and a user guide can be accessed at <https://edesk.preprod.apps.cssf.lu/>.

In case of questions about this new environment, the CSSF asks the addressees to contact edesk.preprod@cssf.lu.

²⁰ External Source:
<https://www.cssf.lu/en/2024/09/edesk-preprod-a-new-platform-for-carrying-out-tests/>.

CSSF PUBLISHES CIRCULAR CLARIFYING THE OBLIGATIONS OF IDENTIFICATION AND VERIFICATION OF THE IDENTITY OF ULTIMATE BENEFICIAL OWNERS

5 September 2024²¹

On 5 September 2024, the CSSF published its Circular CSSF 24/861 amending Circular 19/732 of 20 December 2019 on the Prevention of Money Laundering and Terrorist Financing: clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s).

The purpose of the circular is to modify point 74 of Circular CSSF 19/732 with immediate effect so as to apply a risk-based approach in the identification and verification of legal persons or arrangements that are placed in between the customer and the natural person beneficial owner, rather than foreseeing a list of information and documents to be collected in relation to such legal persons or arrangements. A mark-up version of Circular CSSF 19/732 showing the update change is appended to the new circular.

²¹ External Source: https://www.cssf.lu/wp-content/uploads/cssf24_861eng.pdf.

CSSF PUBLISHES CIRCULAR AMENDING CSSF CIRCULAR 24/859 ON THE REPLACEMENT OF THE SECURE EXCHANGE CHANNEL FOR THE NOTIFICATION AND ENFORCEMENT OF COURT ORDERS

9 September 2024²²

On 9 September 2024, the CSSF published its Circular CSSF 24/862 amending Circular CSSF 24/859 on the replacement of the secure exchange channel for the notification and enforcement of court orders and repeal of Circular CSSF 13/566.

The new circular is addressed to all credit institutions supervised by the CSSF.

The purpose of the circular is to modify two points in CSSF Circular 24/859:

- *First*, it changes the date of the implementation of the new secure exchange method for the notification and execution of court orders to 6 November 2024; and
- *Second*, it adds steps to Annex 1: Technical User Guide, including the creation and certification of a professional MyGuichet space, and the receipt of court orders in the certified professional space.

The updated version of Circular CSSF 24/859 is appended to Circular CSSF 24/862.

²² External Source: https://www.cssf.lu/wp-content/uploads/cssf24_862.pdf (only in French)

CSSF - PUBLICATION OF 2023 ANNUAL REPORT

19 September 2024²³

The CSSF has published its annual report for 2023.

The report contains, among other things, an overview of the CSSF's organisation and priority action areas, including money laundering and terrorist financing prevention, given the size and international nature of Luxembourg's finance centre. In that sense, the CSSF highlights that although the Financial Action Taskforce concluded Luxembourg's mutual evaluation with the best possible outcome, several areas of improvement have been identified, including the prevention of terrorist financing, on which the CSSF and other stakeholders are already working.

Furthermore, the report provides insight into the CSSF's work and activities in relation to the main legal and regulatory developments of 2023 and the CSSF's activities at a national and international level, as well as an analysis of the evolution of the different sectors that are under the supervision of the CSSF.

Attention is drawn to the current main challenges faced by supervised entities and the CSSF. These include challenges in the areas of:

- Inflation. Central bank intervention to counter inflation led to record high interest rates in the Eurozone. 2023 saw also the collapse of three regional banks in the US and a globally systemically important bank;
- The Capital Markets Union. Huge amounts of capital – public and private – are needed to finance the digital and green transitions. The CSSF is of the view that the Capital Markets Union can only be achieved through accelerated regulatory convergence, as well as strong institutions;
- Cyber risk. The CSSF notes that it is important that supervised entities step up their defences against cybersecurity threats. A key regulatory framework, DORA, entered into force in January 2023 and will apply as of January 2025. It provides consistent rules addressing digital resilience needs and establishes an

EU-wide oversight framework for critical ICT third-party providers;

- Green finance: The green finance regulatory agenda continued to be implemented throughout 2023. The implementation of the EU Green Deal needs significant investments, estimated at EUR 500 billion annually. The CSSF considers that investor confidence will lead to effective capital allocation. Thus, transparency in the EU sustainability framework is key, as investors need clear information on the environmental and social impacts of their investments;
- Artificial intelligence (AI): The CSSF notes that the EU's AI Act has introduced a risk-based approach, imposing stricter rules on AI systems that pose greater harm to society. Separately, it announces a comprehensive survey for the first time in 2024, jointly with the BCL, covering not only banks but also fund management companies, investment firms and all other supervised entities;
- Consumers. The CSSF states that in the current environment, consumers are facing several challenges: inflation, high interest rates, over-indebtedness, offerings of financial products and crypto assets through digital channels, including social media; and
- Financial literacy. The CSSF notes that a 2023 survey done by the OECD has shown (i) young adults (18-29 years), and (ii) digital literacy to be weak spots. It welcomes the fact that the government has expressly recognised this twice in the 2023-2028 coalition.

²³ External Source: https://www.cssf.lu/wp-content/uploads/CSSF_RA_2023_EN.pdf.

CSSF PUBLISHES FAQ REGARDING THE DETERMINATION OF DISTRIBUTABLE AMOUNTS OF CREDIT INSTITUTIONS

24 September 2024²⁴

On 24 September 2024, the CSSF published on its website a set of Questions & Answers regarding the implementation of CSSF Regulation No 14-02 regarding the determination of distributable amounts of credit institutions.

The Q&A has been prepared in order to assist banks in implementing the requirements of CSSF Regulation No 14-02 relating to the determination of distributable results and reserves of credit institutions applying the fair value measurement in their statutory accounts published either under IFRS or under the LUX GAAP mixed regime.

Concerning the tax effects, CSSF Regulation No 14-02 clearly states that the amount to be regarded as unavailable/non-distributable must be assessed on a net-of-tax basis (i.e. by deducting current and/or deferred taxes charged on the unrealised gains allocated to the unavailable reserve).

Most of the answers in the Q&A only focus on the determination of the gross amount of unrealised gains and omit the computation of the tax effect. That tax effect is, however, always supposed to be subsequently included in the computation (at a later stage). The Q&A includes specific guidance concerning the use of a generic tax rate to measure the non-distributable amount.

For the realised results recognised in other comprehensive income, IFRS may require or permit the recognition of certain unrealised gains and losses in revaluation reserves (through other comprehensive income). When those gains and losses are subsequently realised, IFRS sometimes prohibit the recycling of those results in profit or loss. Such results will thus remain in equity but can be transferred to other components of equity (e.g. to retained earnings).

The requirements of CSSF Regulation No 14-02 only apply to unrealised gains and losses and not to realised results – even if an institution continues to recognise such

realised results in a revaluation reserve. In order to avoid the mix of realised and unrealised results in a revaluation reserve, the CSSF encourages credit institutions to transfer realised results out of the revaluation reserves (e.g. to retained earnings) when gains and losses are realised (e.g. when the underlying instruments are derecognised).

²⁴ External Source: <https://www.cssf.lu/wp-content/uploads/FAQ-CSSF-Regulation-No14-02.pdf>.

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

30 September 2024²⁵

On 30 September 2024, the CSSF issued its regulation N°24-06 on the setting of the countercyclical buffer rate for the fourth 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 fourth quarter of the year of 2024.

The regulation entered into force on the date of its publication in the Luxembourg official journal on 7 October 2024.

²⁵ External Source:
<https://legilux.public.lu/eli/etat/leg/rcsf/2024/09/30/a416/jo> (only in French).

CSSF PUBLISHES COMMUNIQUÉ ON THE FINAL CEAOB GUIDELINES ON LIMITED ASSURANCE ON SUSTAINABILITY REPORTING

3 October 2024²⁶

On 3 October 2024, the CSSF published a communiqué on the publication of the final CEAOB guidelines on limited assurance on sustainability reporting.

The guidelines have been developed by the CEAOB, the Committee of European Oversight Bodies, at the request of the European Commission to help statutory auditors and other assurance service providers in charge of limited assurance engagements introduced by CSRD.

Pending the adoption of a standard covering the limited assurance engagement by the European Commission, the CSSF recommends the use of the guidelines in Luxembourg.

²⁶ External Source:
[https://www.cssf.lu/en/2024/10/the-final-ceaob-](https://www.cssf.lu/en/2024/10/the-final-ceaob-guidelines-on-limited-assurance-on-sustainability-reporting-are-now-public/)

[guidelines-on-limited-assurance-on-sustainability-reporting-are-now-public/.](https://www.cssf.lu/en/2024/10/the-final-ceaob-guidelines-on-limited-assurance-on-sustainability-reporting-are-now-public/)

CSSF-CODERES CIRCULAR LETTER ON THE INFORMATION REQUEST BY THE SRB TO COLLECT DATA FOR THE CALCULATION OF THE 2025 EX-ANTE CONTRIBUTION TO THE SRF

4 October 2024²⁷

On 4 October 2024, the CSSF issued Circular letter CODERES 24/19 on SRF – Information request by the SRB for the calculation of the 2025 *ex-ante* contribution, according to Articles 4 and 14 of Commission Delegated Regulation (EU) 2015/63.

The circular is addressed to all credit institutions established in Luxembourg and subject to the SRMR, except for Luxembourg branches of credit institutions, which have their head office outside of the EU, as they will be covered by the Luxembourg Resolution Fund. Branches established in Luxembourg by a credit institution having its head office in another Member State, participating in the banking union or not participating, are covered by their head office.

The purpose of this circular is to collect data for the calculation of the 2025 *ex-ante* contribution to the SRF. The SRMR requires the raising of contributions to the SRF after the end of the initial period, where the amount of available financial means in the SRF diminishes below 1% of the amount of covered deposits of all credit institutions authorised in all Member States participating in the banking union. The SRB will verify in early 2025 whether the available financial means in the SRF are equal to at least 1% of covered deposits held in the banking union. Based on the outcome of that verification exercise, the SRB will decide whether contributions to the SRF will be calculated and collected in the 2025 contribution period. The SRB needs, therefore, a certain amount of information.

The circular therefore launches in Luxembourg this data collection exercise which has been done, as in the previous year, in XBRL format. In order to properly complete the required XBRL file, the SRB has provided the data reporting form along with guidance, which can be found in an annex to the Circular. The duly completed

XBRL file must be sent by the credit institutions concerned to the CSSF at the latest by 17 January 2025 at 00:00 CET.

In case not all required information is transmitted correctly by that date, the SRB shall use estimates or its own assumptions for the calculation of the 2025 contribution of the concerned credit institution to the SRF. In specific cases, the SRB may assign the credit institutions concerned to the highest risk adjusting multiplier, for the calculation of the institution's contribution to the SRF.

In addition, each credit institution that directly or as part of a group falls under direct ECB supervision, unless it is subject to the lump-sum payment and has not asked for the alternative contribution, must make available to the resolution department of the CSSF additional assurance documents. The credit institutions must provide confirmation by an auditor on specific agreed-upon procedures. As an exceptional element applying to the 2025 contribution period, in order to limit the operational and financial burden on credit institutions while safeguarding the objective of the additional assurance requirements, the effective application of the additional assurance requirements on the 2025 data reporting form is conditional on the SRB adopting a decision on the calculation and collection of contributions to the SRF based on the 2025 DRFs of the credit institutions in scope in 2025. Therefore, if credit institutions are required to prepare the submission of the AUP, the CSSF will notify it through the publication of another circular.

In case restatements for the previous years must be taken into account, credit institutions concerned shall proactively inform the CSSF of the intention to send these files and of the collection years concerned by 30 November 2024.

²⁷ External Source: https://www.cssf.lu/wp-content/uploads/CSSF-CODERES_24_19.pdf.

CSSF PUBLISHES COMMUNIQUÉ ON THE RESULTS OF THE DORA READINESS SURVEY CONDUCTED IN SEPTEMBER 2024

7 October 2024²⁸

On 7 October 2024, the CSSF published a communiqué on the results of the DORA readiness survey conducted in September 2024.

The CSSF launched the survey in August 2024 to nearly 500 entities which will fall under the DORA regulation, applicable as of 17 January 2025.

The objectives of the survey were twofold:

- *First*, to assess the level of readiness as of 1 September 2024 by financial entities towards DORA, and capture the main challenges encountered by financial entities; and
- *Second*, to raise once more the awareness to those financial entities that are late in getting ready.

The survey consisted of a limited number of 10 closed questions around the following topics:

- Gap analysis and perceived readiness; and
- Top challenges encountered.

With 90% of respondents having completed their DORA gap analysis, and despite the challenges encountered, the survey shows encouraging progress by financial entities in their DORA compliance work. With more than four months to go before DORA applies, the financial centre is still in a preparatory phase. More than two-thirds of entities consider themselves to be "partially ready", while almost a quarter of entities consider themselves to be "almost ready".

The detailed results of the Survey have been published on the CSSF's website.

²⁸ External Sources: Communiqué: <https://www.cssf.lu/en/2024/10/results-of-the-dora-readiness-survey-conducted-in-september-2024/>.

Detailed results: <https://www.cssf.lu/wp-content/uploads/Results-of-DORA-readiness-survey.pdf>.

CSSF PUBLISHES COMMUNIQUÉ ON THE UPCOMING END OF THE TRANSITION PERIOD UNDER THE EMIR RTS AND ITS ON REPORTING

7 October 2024²⁹

On 7 October 2024, the CSSF published a communiqué on the upcoming end of the transition period under the EMIR RTS and ITS on reporting on 26 October 2024.

The communiqué states that following the CSSF's press release 22/33 on EMIR Refit reporting that was published on 21 December 2022 and in accordance with Article 10 of the Commission Implementing Regulation (EU) 2022/1860 of 10 June 2022 laying down implementing technical standards for the application of EMIR, counterparties to a derivative contract or entities responsible for reporting needed to update all their outstanding derivatives to conform with the revised reporting requirements by 26 October 2024.

In this context, for all derivatives that remained outstanding after that date, counterparties had to submit a report with the event type 'Update', unless they had submitted a report with the action type 'Modify' or 'Correct' for such derivatives before this date.

The CSSF refers to Section 4.1 of the ESMA final report on guidelines for reporting under EMIR for further information on the actions that had to be taken before the end of the transition period.

²⁹ External Source: Communiqué:
<https://www.cssf.lu/en/2024/10/26-october-2024-end-of-the-transition-period-under-the-emir-rts-and-its-on-reporting/>.

ESMA Final Report:
https://www.esma.europa.eu/sites/default/files/library/esma74-362-2281_final_report_guidelines_emir_refit.pdf.

CSSF PUBLISHES CIRCULAR ON SURVEY ON THE AMOUNT OF COVERED DEPOSIT HELD ON 30 SEPTEMBER 2024

9 October 2024³⁰

On 9 October 2024, the CSSF, acting in its function as CPDI, published the CSSF-CPDI circular 24/42 regarding the survey on the amount of covered deposits held as of 30 September 2024.

The circular is addressed to all members of the FGDL (in particular to all credit institutions incorporated under Luxembourg law, the *POST Luxembourg*, and to Luxembourg branches of non-EU/EEA credit institutions) and reminds them that the CPDI collects the amount of covered deposits on a quarterly base in order to identify the trends and changes in the relevant indicators on deposit guarantee throughout the year.

The circular draws members' attention to the fact that the present circular has not undergone any change regarding the content and terms and conditions of the survey process on the amount of covered deposits. In comparison with the previous circular regarding the quarterly survey on the amount of covered deposits, changes are limited to the date of reference and deadline.

The circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02 (as amended by Circular CSSF-CPDI 23/35), notably as regards the exclusion of structures assimilated to financial institutions and the treatment of accounts whose holder is not absolutely entitled to the sums in the account, including, in particular, omnibus accounts. The volume of eligible and covered deposits in such accounts and the number of beneficiaries (*ayants droit*) are to be reported where FGDL members wish to ensure deposit protection for relevant beneficiaries and to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, including branches located within other Member States, by **15 November 2024** at the latest.

In order to transmit these data, institutions are required to submit to the reporting through one of the following means of communication:

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

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF Circular 13/555, must review and approve the file prior to its transmission to the CSSF.

³⁰ External Sources: Circular:
https://www.cssf.lu/wp-content/uploads/CSSF_CPDI_2442eng.pdf.

Communiqué:
<https://www.cssf.lu/en/Document/circular-cssf-cpdi-24-42/>.

CSSF-CODERES PUBLISHES CIRCULAR ON THE ADOPTION OF THE EBA GUIDELINES ON RESUBMISSION OF HISTORICAL DATA UNDER THE EBA REPORTING FRAMEWORK

17 October 2024³¹

On 17 October 2024, the CSSF, acting in its capacity as Luxembourg resolution authority, issued circular letter CSSF-CODERES 24/40 on the adoption of the EBA guidelines (EBA/GL/2021/04) on the resubmission of historical data under the EBA reporting framework.

The purpose of this circular is to inform the public that the CSSF applies the guidelines, published on 9 April 2024, insofar as they concern the resolution reporting framework. Consequently, the CSSF has integrated the guidelines into its administrative practice and regulatory approach. For that purpose, the CSSF has also updated its document on Resolution Reporting and Notification Requirements.

The guidelines set out a common approach to the resubmission by the entities in scope of historical data to the competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework developed by the EBA. The guidelines also set out general circumstances when the resubmission of historical data may not be required.

The common approach to the resubmission of historical data should apply unless there are specific requirements for the resubmission of data set out in the reporting framework developed by the EBA.

The number of the reference dates to resubmit depends on the frequency of the affected reporting, the number of affected periods and the timing of the affected data in relation to the previous year-end.

The guidelines do not embed any specific proportionality elements apart from those that are already built into the underlying reporting requirements and the filing rules.

Depending on the needs of the national authorities, the SRB or the EBA, the authorities may require the financial institutions to resubmit historical data for additional reference dates compared to the common approach set out in these guidelines.

These guidelines do not tamper with the primary obligation of financial institutions to report data that is consistent, complete and of high quality.

The circular applies to the Luxembourg institutions and entities in scope of Article 2 of the Resolution Law.

The circular applies at the individual, sub-consolidated and consolidated level following the level of application of the actual resolution reporting obligation concerned.

The EBA guidelines are annexed to the Circular.

The circular applies since 17 October 2024.

³¹ External Sources: Circular: https://www.cssf.lu/wp-content/uploads/CSSF-CODERES_24_20.pdf.
Resolution reporting requirements: <https://www.cssf.lu/en/Document/resolution-reporting-requirements/>.

Communiqué: <https://www.cssf.lu/en/Document/circular-cssf-coderes-24-20/>.

CSSF PUBLISHES COMMUNIQUÉ ON NEW Q&A REGARDING THE IMPACT OF CHANGE IN THE CONSOLIDATION SCOPE OF A GROUP

23 October 2024³²

On 23 October 2024, the CSSF published a communiqué concerning the publication of Q&A CNC 24/033 on the impact of a change in the consolidation scope of a group on the assessment of size criteria.

The purpose of the communiqué is to draw attention to the publication by the Luxembourg accounting rules commission, *Commission des normes comptables* (CNC), of the Q&A CNC 24/033 entitled "*Implications of a change in the scope of consolidation of a group on the assessment of size criteria*", which is available online on the CNC website.

The law and accounting doctrine clarify the calculation methods for a group regarding the numerical limits of the three size criteria (total balance sheet, net turnover and average number of employees), as well as the practical application methods of the repetition criterion referred to in Article 361 of the law concerning the RCS. However, they remain silent on the implications of a change in the scope of consolidation of a group on the assessment of size criteria.

Therefore, the Q&A aims to clarify the implications of such a change on the assessment of size criteria for the categorisation of a group. In this Q&A, the CNC takes the position that a variation in the scope of consolidation of a group during fiscal year N (through the acquisition or disposal of subsidiary companies) should not result in a retrospective modification of the consolidated accounts for fiscal years N-2 and N-1 to determine the category to which the group belongs.

Indeed, the CNC considers that requiring such a retrospective modification of the scope of consolidation for fiscal years N-2 and N-1 – necessitating that the group

performs a new fictitious consolidation exercise – solely for the purpose of categorising a group, is contrary to the objective of reducing the administrative burden pursued by the European legislator, as well as the imperative of legal certainty.

The Q&A may be relevant for all types of regulated entities supervised by the CSSF.

³² External Sources: Communiqué: <https://www.cssf.lu/en/2024/10/cssf-communique-concerning-the-publication-of-qa-cnc-24-033-on-the-impact-of-change-in-the-consolidation-scope-of-a-goup-regarding-the-assessment-of-size-criteria/>

CNC Q&A: https://www.cnc.lu/fileadmin/user_upload/publications/doctrine/Q_A_CNC_24-033_Changement_de_perimetre_d_un_groupe_et_criteres_de_taille_vf_-_20241008_b.pdf

CSSF PUBLISHES CIRCULAR ON THE APPLICATION OF THE EBA GUIDELINES ON RESUBMISSION OF HISTORICAL DATA UNDER THE EBA REPORTING FRAMEWORK

28 October 2024³³

On 28 October 2024, the CSSF published its Circular 24/864 on the application of the EBA guidelines on the resubmission of historical data under the EBA reporting framework (EBA/GL/2024/04).

The circular is addressed to all supervised entities required to submit data using the supervisory reporting framework developed by the EBA, for which the CSSF is the competent authority.

The purpose of the circular is to inform them that the CSSF, in its capacity as competent authority, applies the guidelines published on 9 April 2024. Consequently, the CSSF has integrated the guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level. All entities described in the scope of application section of the circular shall duly comply with the guidelines.

The guidelines set out a common approach to the resubmission by the entities in scope of historical data to the competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework developed by the EBA. The guidelines also set out general circumstances when the resubmission of historical data may not be required.

The common approach to the resubmission of historical data should apply unless there are specific requirements for the resubmission of data set out in the reporting framework developed by the EBA.

The approach for the resubmission of historical data depends on the frequency and the reference date of the

affected reporting and the timing of the affected data in relation to the previous year-end.

The guidelines do not embed any specific proportionality elements apart from those that are already built into the underlying reporting requirements and the filing rules.

The guidelines do not tamper the primary obligation of financial institutions to report data that is of high quality, consistent and complete. Furthermore, the guidelines do not restrict the CSSF's already existing ability to require additional resubmissions on a case-by-case basis.

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

The circular applies with immediate effect.

³³ External Sources: Circular:
https://www.cssf.lu/wp-content/uploads/cssf24_864eng.pdf

Guidelines:
<https://www.eba.europa.eu/publications-and-media/press-releases/eba-publishes-its-final-guidelines-resubmission-historical-data-under-eba-reporting-framework>.

MINISTRY OF FINANCE PUBLISHES UPDATED GUIDELINES RELATING TO THE IMPLEMENTATION OF FINANCIAL RESTRICTIVE MEASURES

5 November 2024³⁴

On 5 November 2024, the Luxembourg Ministry of Finance published updated versions of its guidelines relating to (i) the implementation of financial sanctions (restrictive measures) against certain persons, entities, bodies and groups within the framework of combating terrorism financing, and (ii) the implementation of financial restrictive measures against third countries, entities or individuals.

The main changes made to the guidelines are, *inter alia*:

- the introduction of illustrative examples describing circumstances that may qualify as indications that a designated person or entity has control over a non-designated entity, such as being the largest shareholder thereof compared to other shareholders, buyback options, transfers of shares around the time of the designation or certain circumstances linked to the use of front persons, trusts, shell companies and limited liability companies,
- the introduction of express guidance on what is construed by "acting on behalf of or at the direction of", and
- the introduction of a reference to the Security Council resolution 2744 (2024) of 19 July 2024 implementing an amended delisting procedure.

The updated guidelines are available in English and in French on the website of the Luxembourg Ministry of Finance.

³⁴ External Sources: [Guidelines relating to the implementation of financial sanctions against certain persons, entities, bodies and groups within the framework of combating terrorism financing: https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/1-guide-de-bonne-conduite-sanctions-financieres-tf-en.pdf](https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/1-guide-de-bonne-conduite-sanctions-financieres-tf-en.pdf)

[Guidelines relating to the implementation of financial restrictive measures against third countries, entities or individuals: https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/3-guide-de-bonne-conduite-sanctions-financieres-non-tf-en.pdf](https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/3-guide-de-bonne-conduite-sanctions-financieres-non-tf-en.pdf)

CSSF UPDATES CIRCULAR ON THE LONG FORM REPORT

12 November 2024³⁵

On 12 November 2024, the CSSF, issued a press release to announce the publication of CSSF Circular 24/865 on the update of CSSF Circular 22/821 on the long form report (as amended).

The circular applies to all Luxembourg credit institutions and Luxembourg branches of non-EU credit institutions.

The purpose of the new circular is to amend CSSF Circular 22/821 on the long form report with the aim to further align the content of the self-assessment questionnaire with supervisory points of focus, by including the following two thematic sections in the revised self-assessment questionnaire:

- DORA preparedness; and
- Article 23(2) of the Commission Delegated Regulation (EU) 2015/61 of 10 October 2014, with regard to liquidity coverage requirement for credit institutions.

Furthermore, some of the existing sections have been slightly modified to better suit supervisory needs.

Annex I of the new circular provides a mark-up of CSSF Circular 22/821, showing the amendments.

³⁵ External Sources:
https://www.cssf.lu/wp-content/uploads/cssf24_865eng.pdf

CSSF PUBLISHES PRESS RELEASE ON GREENWASHING AND GREEN FINANCE

15 November 2024³⁶

On 15 November 2024, the CSSF published its press release 24/29 '*Greenwashing and green finance: the CSSF calls for vigilance and informs on www.letzfin.lu*'.

The purpose of the press release is to inform the public that the market of sustainable financial products is growing rapidly, driven by an increased demand for environmentally friendly and socially responsible investments. The CSSF recognises this trend as being a positive signal for the ecological transition and the fight against climate change, notes however that it is worth

remembering that not all green or sustainability claims are necessarily true.

The press release reminds that greenwashing is a deceptive practice whereby certain companies present themselves as more sustainable than they actually are, which could mislead investors into believing that their money is being used for environmentally friendly purposes, although that is not always the case. Therefore, the CSSF invites investors to think critically and not to rely blindly on labels and promises of sustainability.

The press release contains a number of tips to help investors assess the reliability of green financial products and refers to the website www.letzfin.lu/greenwashing (available in French and German) for more information.

³⁶ External Sources: Circular:
<https://www.cssf.lu/en/2024/11/greenwashing-and-green-finance-the-cssf-calls-for-vigilance-and-informs-on-www-letzfin-lu/>



INSURANCE



INSURANCE

CAA PUBLISHES INFORMATION NOTE ON THE NEW AML/CTF PACKAGE

25 June 2024³⁷

On 25 June 2024, the CAA issued an information note 24/8 on the publication of the AML/CTF package in the EU Official Journal.

The information note draws the attention of CAA supervised entities subject to AML/CTF professional obligations on the publication on 19 June 2024 in the EU Official Journal of the following legislative acts aimed at strengthening and harmonising the EU AML/CTF framework:

- Regulation (EU) 2024/1620 establishing the Authority for AML/CTF (AMLA Regulation).

The AMLA Regulation entered into force on the seventh day following its publication and will apply from 1 July 2025. However, Articles 1, 4, 49, 53, 54, 55, 57 à 66, 68 à 71, 100, 101 and 107 of the AMLA Regulation apply since 26 June 2024, and Article 103 thereof will apply from 31 December 2025.

- Regulation (EU) 2024/1624 on the prevention of the use of the financial system for the purposes of ML/TF (AML Regulation).

The AML Regulation will enter into force on the twentieth day following its publication and will apply three years following its entry into force, i.e., from 10 July 2027, except for the obliged entities under Article 3(3)(n) and (o) thereof (i.e., football agents and professional football clubs), to which the AML Regulation applies from 10 July 2029.

- Directive (EU) 2024/1640 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of ML/TF (6th AML Directive).



The 6th AML Directive will enter into force on the twentieth day following its publication and will apply three years following its entry into force, i.e., from 10 July 2027, except for:

- (i) Article 24 which amends Articles 30 and 31 of Directive (EU) 2015/849 on the access to information on beneficial owners (implementation deadline: 10 July 2025);
- (ii) Articles 11, 12, 13 and 15 which contain provisions on beneficial ownership registers (implementation deadline: 10 July 2026); and
- (iii) Article 18 on the single point of access to information on immovable property (implementation deadline: 10 July 2029).

³⁷ External Source:
https://www.caa.lu/uploads/documents/files/Note_info_24-8_AML.pdf

CAA PUBLISHES INFORMATION NOTE ON STUDY ON THE SUSTAINABILITY COMMITMENT OF LIFE INSURANCE UNDERTAKINGS

2 July 2024³⁸

On 2 July 2024, the CAA issued an information note 24/9 on its study on the sustainability commitment of life insurance undertakings.

The objective of the information note is to present the results of the CAA's study of the commitment of life insurance undertakings in relation to sustainability. The CAA's assessment aims to:

- take stock of the different categories of life insurance undertakings with regard to their commitment to sustainability in the first quarter of 2024; and
- highlight the best practices adopted by life insurance undertakings.

SFDR applies since 10 March 2021 in particular to life insurance undertakings. The objective of SFDR is to improve transparency within the financial markets of sustainable investment products and to prevent, in particular, greenwashing. Among other things, SFDR requires the publication of extra-financial information and the classification of different investment vehicles to help consumers make informed decisions.

In this respect, life insurance undertakings must also publish on their website information about their policies on integrating sustainability risks into their investment decision-making process. This is to enable consumers to have an overall view of the commitment of life insurance undertakings and to be able to identify the impact of sustainability in the undertakings' investment decision-making processes. The policies must therefore be sufficiently clear so as not to mislead the consumer.

The study carried out by the CAA aimed to assess the level of maturity and commitment of life insurance undertakings, in particular through their policies.

Through discussions with undertakings selected based on a representative sample of the Luxembourg life insurance market and in consideration of the policies published on their respective websites, the CAA's study proposes a market classification of whether or not sustainability factors are actively taken into account in investment decisions. The information note lists the criteria that were taken into account for the classification and the four classification groups retained, depending on maturity and commitment as regards the taking into account of sustainability factors.

The information note finally sets out a list of best practices that have been adopted or should be adopted by life insurance undertakings.

³⁸ External Source:
https://www.caa.lu/uploads/documents/files/Note_info_24-9.pdf (only in French).

LUXEMBOURG LAW IMPLEMENTING DORA PUBLISHED

2 July 2024³⁹

The law of 1 July 2024 amending certain financial sector law with a view to implement DORA and its accompanying Directive (EU) 2022/2556 was published in the Luxembourg official journal (*Mémorial A*) on 2 July 2024.

The law has a double objective:

- *First*, it aims to implement DORA; and
- *Second*, it aims to transpose into Luxembourg law Directive (EU) 2022/2556 of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector.

The objective of DORA and Directive 2022/2556 is to harmonise and strengthen ICT security requirements in order to achieve a high level of digital operational resilience for the entire financial sector. DORA consolidates the different rules dealing with ICT risks in the financial sector and brings them together in a single legislative act to fill gaps and inconsistencies. The consolidation and further harmonisation of key digital operational resilience requirements are part of the objective to foster innovation and the adoption of new technologies in the financial sector, while ensuring financial stability and the protection of investors and consumers.

As the provisions of DORA are directly applicable in the European Union, the main purpose of the Law is to provide the national competent authorities for the financial sectors, i.e. the CSSF and the CAA, with the supervisory and investigative powers necessary for the performance of their duties, within the limits defined by DORA, and to lay down a system of penalties.

Directive 2022/2256 accompanies and complements DORA by providing for a series of targeted amendments to existing European directives in the financial sector. Such amendments are necessary to ensure sectoral consistency

with DORA as regards the application of digital operational resilience requirements that are currently scattered across the various existing sectoral laws.

Targeted amendments are therefore made to a series of Luxembourg laws relating to the financial sector, such as the Financial Sector Law, the Payment Services Law, the UCI Law, the AIFM Law and the Insurance Sector Law.

The law will enter into force on 17 January 2025.

³⁹ External Source:
<https://legilux.public.lu/eli/etat/leg/loi/2024/07/01/a2711/jo> (only in French).

CAA COMMUNIQUÉ ON THE PUBLICATION OF THE 2023/2024 ANNUAL REPORT AND THE 2023 KEY FIGURES

26 July 2024⁴⁰

On 26 July 2024, the CAA issued a press release on the publication of the 2023/2024 annual report and the 2023 key figures.

In its communiqué, the CAA provides an overview of the main findings for the period 2023-2024, noting in particular that, despite geopolitical uncertainties and rising energy prices, inflation and interest rates are falling in the eurozone, offering a respite after three years of high inflation that heavily impacted the insurance industry.

The CAA highlights that, at the same time, the general upward trend in the frequency and severity of natural disasters continues.

The demand for insurance is high, but the reduced purchasing power of European consumers has led some to make choices between consumption and non-life insurance protection, or to opt for short-term financial strategies in life insurance. In life insurance, this has resulted in a significant shift of funds from guaranteed rate products to banking products, reminding life insurance companies of the need to plan for contractual mechanisms for prudent asset-liability management or to reserve these products for clients seeking long-term savings. The non-life insurance sector achieved a record technical result, despite negative outcomes in specific branches like "aircraft body" and "motor vehicle liability".

The CAA's study on the profitability of motor vehicle insurance, particularly in the context of establishing the Automobile Insurance Insolvency Fund (FIAA) in Luxembourg in 2023, indicated that profitability depends on portfolio size, associated costs and reinsurance efficiency. In 2023, improvements were noted for operators who adjusted their rates or reinsurance programs.

In addition to this, the communiqué provides an overview of the main legislative and regulatory updates that occurred during the period 2023-2024. This includes:

- in life insurance, the CAA continued its targeted supervision of the governance of insurance-based investment products (IBIPs). The CAA's review indicates that the ranges of charges provided are too broad and do not accurately reflect the actual charges applied, which are generally at the lower end of the presented ranges;
- regarding sustainability policies, the CAA observed varying levels of maturity and commitment based on the business models of life insurance companies. Products with a sustainable investment goal remain an exception;
- in distribution, data collected from insurance agencies in 2024 is satisfactory but will require further discussions with some agencies; and
- the introduction of a circular letter to structure compliance plans in AML/CTF; among others.

In 2024, the CAA summarised the main gaps observed in recent years during prudential on-site inspections, noting weaknesses in subcontracting management and formalisation of key function policies.

Finally, the communiqué sets out the CAA's main priorities for the coming months, which will be implemented at the level of the undertakings' head offices and branches.

These include:

- monitoring the maintenance of a satisfactory level of prudence in technical provisions in an inflationary environment that is indeed decreasing but with strong disparities between the countries in which the operators are active;
- monitoring the AML/CTF system put in place by life insurance companies and intermediaries in terms of primary tax offenses, but also the control of the

⁴⁰ External Sources:
Press release:
https://www.caa.lu/uploads/documents/files/Communiqué_20240726.pdf (only in French).

Annual report:
https://www.caa.lu/uploads/documents/files/rapport_annuel_2023.pdf (only in French).
Key figures:
https://www.caa.lu/uploads/documents/files/rapport_annuel_2023-chiffres_cles.pdf (only in French).

application of international financial sanctions and restrictive measures following the invasion of Ukraine by Russia; and

- control of non-life insurance companies in the context of distributing insurance contracts to individuals to verify the modalities of applying regulatory obligations in terms of product governance.

NEW GOVERNMENT DECREE ESTABLISHING AN INTER-MINISTERIAL AML/CTF STEERING COMMITTEE PUBLISHED

31 July 2024⁴¹

The government decree of 8 May 2024 establishing an inter-ministerial AML/CTF steering committee was published in the Luxembourg official journal (*Mémorial A*) on 31 July 2024.

The decree establishes the steering committee under the authority of the Minister responsible for AML/CTF.

The tasks of the steering committee are to:

- propose to the Government broad guidelines and strategic priorities on the national AML/CTF policy;
- propose measures to the Government to mitigate the risks of ML/TF and related data protection issues; and
- report to the Government on the progress made in implementing the national AML/CTF strategy.

The decree entered into force on 4 August 2024.

⁴¹ External Source:

<https://legilux.public.lu/eli/etat/leg/agc/2024/05/08/a327/jo> (only in French).

CSSF PUBLISHES COMMUNIQUÉ ON THE FINAL CEAOB GUIDELINES ON LIMITED ASSURANCE ON SUSTAINABILITY REPORTING

3 October 2024⁴²

On 3 October 2024, the CSSF published a communiqué on the publication of the final CEAOB guidelines on limited assurance on sustainability reporting.

The guidelines have been developed by the CEAOB, the Committee of European Oversight Bodies, at the request of the European Commission to help statutory auditors and other assurance service providers in charge of limited assurance engagements introduced by CSRD.

Pending the adoption of a standard covering the limited assurance engagement by the European Commission, the CSSF recommends the use of the guidelines in Luxembourg.

⁴² External Source:

<https://www.cssf.lu/en/2024/10/the-final-ceaob-guidelines-on-limited-assurance-on-sustainability-reporting-are-now-public/>.

CAA PUBLISHES NEW CIRCULAR LETTER ON CHANGES IN THE SHAREHOLDING STRUCTURE OF CAPTIVE INSURANCE UNDERTAKINGS AND OF REINSURANCE UNDERTAKINGS

9 October 2024⁴³

On 23 April 2024, the CAA issued its circular letter 24/9 on changes in the shareholding structure of captive insurance undertakings and of reinsurance undertakings.

The purpose of the circular letter is to:

- provide additional clarification on the identification of qualifying holdings;
- clarify certain practical aspects of the procedure for notifying changes in the shareholding structure; and
- define the content of notifications by introducing notification forms allowing filings to be submitted digitally to the CAA.

First, as regards the clarifications on the identification of qualifying holdings, amongst others the CAA specifies the obligation of (re-)insurance undertakings to inform the CAA as soon as they become aware of an acquisition or disposal of a qualifying holding in their shareholding structure. The CAA recognises that, in practice, it may be impossible to determine the specific point in time at which the (re-)insurance undertaking has become aware thereof. Thus, the circular letter clarifies that it is presumed that the undertaking is aware of any (in-)direct acquisition or disposal of a qualifying holding in its shareholding structure in case of intragroup shareholding structure changes and in case of public availability once the shareholding structure change information is publicly available, for example in press articles, annual reports (in particular, structure charts showing the amended shareholding structure) or declarations made to financial markets authorities.

Second, the circular letter further completes the CAA information note relating to changes in the shareholding of direct insurance undertakings and reinsurance undertakings dated 27 September 2017. In this regard, the CAA confirms that it identifies indirect qualifying holdings

by applying the two-staged criteria set out in the European supervisory authorities' joint guidelines for the prudential assessment of acquisitions of qualifying holdings, i.e., first a control criterion and second (where the control criterion does not determine that a qualifying holding was acquired) a multiplication criterion. Practical examples are set out in Annex I of the circular letter.

Third, the circular letter also introduces a simplified notification procedure for successive crossings of notification thresholds (the minimum content of which is set out in Annex V to the circular letter) which applies if the following cumulative conditions are fulfilled:

- the previous CAA non-objection is no older than 5 years;
- no change to the business plan or governance is envisaged at the level of the target following the increase in the shareholding; and
- the shareholders covered by the second filing are identical to those covered by the previous filing.

Fourth, without prejudice to the CAA's right to request any information it deems necessary for its assessment, the circular letter defines the minimum content of the file to be submitted to the CAA. Three types of files are distinguished, the minimum content of which is defined in the Annexes to the circular letter:

- acquisitions/increases of qualifying holdings without impact on the business plan (Annex II);
- acquisitions/increases of qualifying holdings with impact on the business plan (Annex III); and
- disposals/decreases of qualifying holdings (Annex IV).

The CAA considers that the introduction of these new notification forms, and the further clarifications provided by the circular letter, should make it easier for the parties concerned to submit filings on changes in shareholding structures to the CAA, and should thus improve the processing times for these files.

Finally, the circular letter repealed, as of 1 November 2024, CAA circular letters 06/1 and 02/7.

⁴³ External Source:

<https://www.caa.lu/fr/actualites/lettre-circulaire-24-9> (only in French).

MINISTRY OF FINANCE PUBLISHES UPDATED GUIDELINES RELATING TO THE IMPLEMENTATION OF FINANCIAL RESTRICTIVE MEASURES

5 November 2024⁴⁴

On 5 November 2024, the Luxembourg Ministry of Finance published updated versions of its guidelines relating to (i) the implementation of financial sanctions (restrictive measures) against certain persons, entities, bodies and groups within the framework of combating terrorism financing, and (ii) the implementation of financial restrictive measures against third countries, entities or individuals.

The main changes made to the guidelines are, *inter alia*:

- the introduction of illustrative examples describing circumstances that may qualify as indications that a

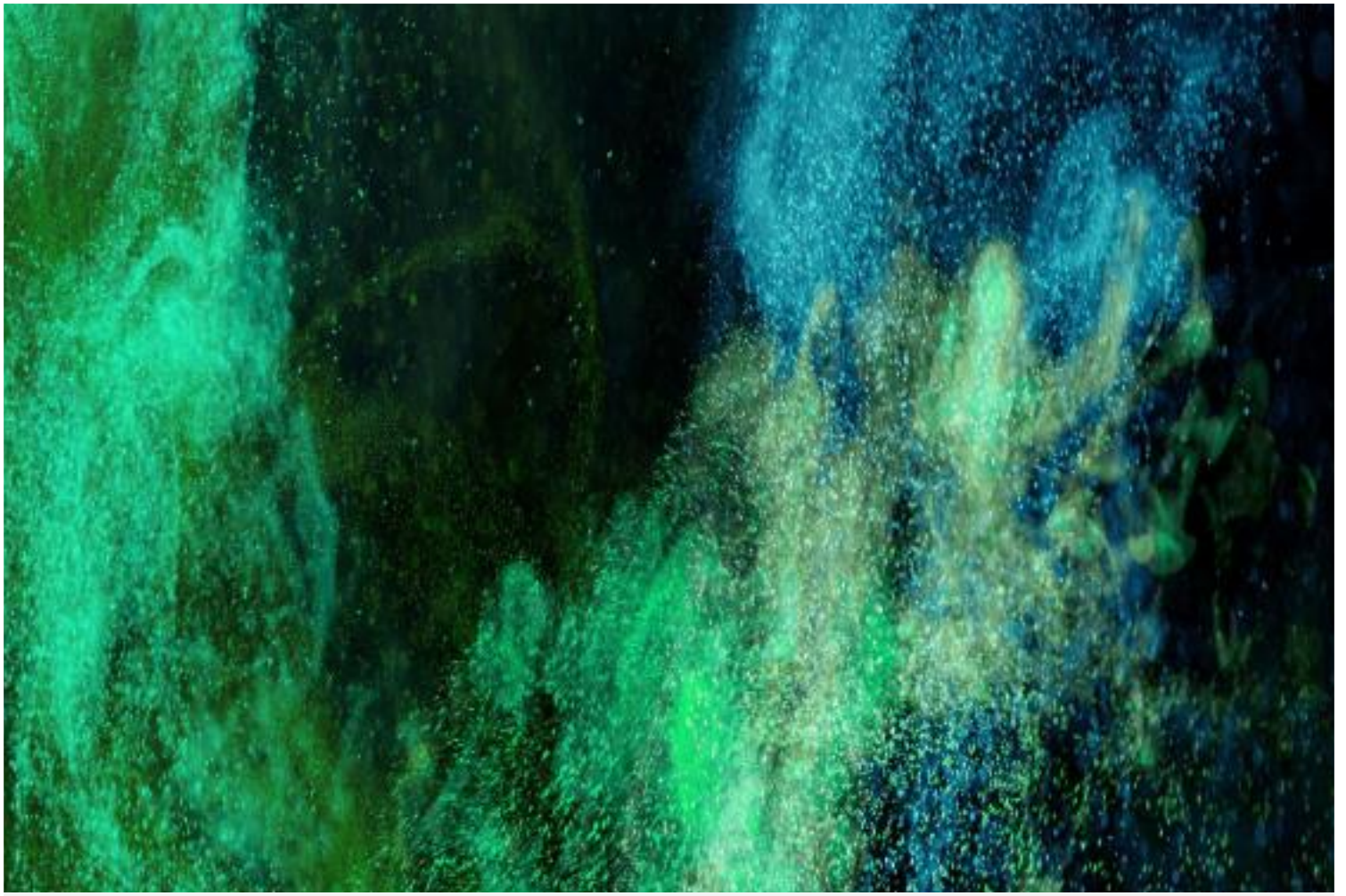
designated person or entity has control over a non-designated entity, such as being the largest shareholder thereof compared to other shareholders, buyback options, transfers of shares around the time of the designation or certain circumstances linked to the use of front persons, trusts, shell companies and limited liability companies,

- the introduction of express guidance on what is construed by "acting on behalf of or at the direction of", and
- the introduction of a reference to the Security Council resolution 2744 (2024) of 19 July 2024 implementing an amended delisting procedure.

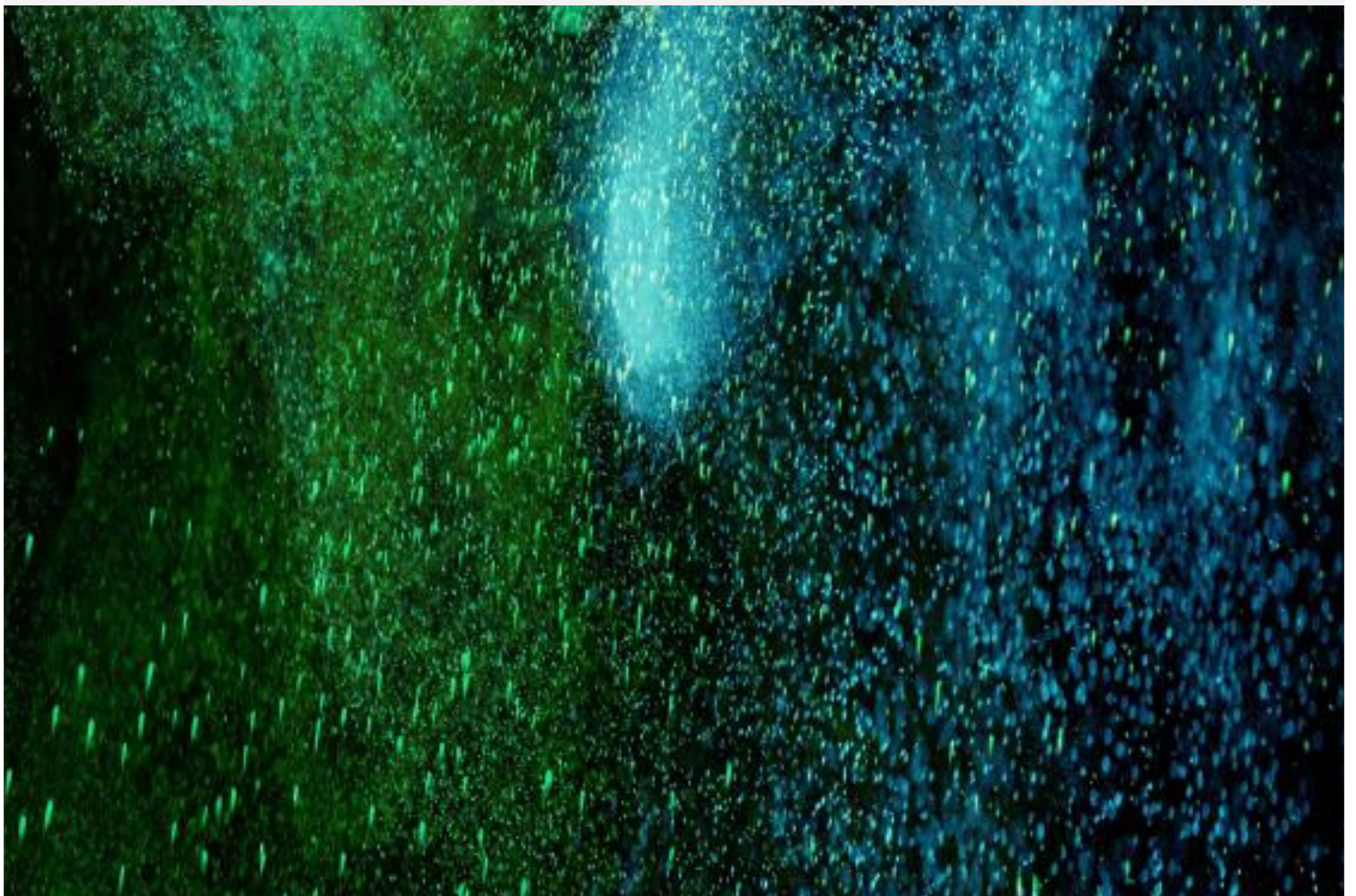
The updated guidelines are available in English and in French on the website of the Luxembourg Ministry of Finance.

⁴⁴ External Sources: [Guidelines relating to the implementation of financial sanctions against certain persons, entities, bodies and groups within the framework of combating terrorism financing: https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/1-guide-de-bonne-conduite-sanctions-financieres-tf-en.pdf](https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/1-guide-de-bonne-conduite-sanctions-financieres-tf-en.pdf)

[Guidelines relating to the implementation of financial restrictive measures against third countries, entities or individuals: https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/3-guide-de-bonne-conduite-sanctions-financieres-non-tf-en.pdf](https://mfin.gouvernement.lu/dam-assets/dossiers/sanctions-financi%C3%A8res-internationales/documentation/guides-2024/3-guide-de-bonne-conduite-sanctions-financieres-non-tf-en.pdf)



FINTECH



FINTECH

CSSF PUBLISHES COMMUNIQUÉ ON THE MICA QUESTIONNAIRE FOR FINANCIAL ENTITIES CONSIDERING AN ARTICLE 60 NOTIFICATION

24 June 2024⁴⁵

On 24 June 2024, the CSSF published a communiqué on the MiCA questionnaire for financial entities considering an Article 60 notification.

The purpose of the communiqué is to inform financial entities covered by Article 60 of MiCA (i.e. credit institutions, central securities depositories, investment firms, electronic money institutions, UCITS management companies, alternative investment fund managers and market operators) (together referred to as "Financial Entities") that they will have the option to provide crypto-asset services in the EU equivalent to the services and activities for which they are authorised under relevant EU law, subject to a notification procedure. A questionnaire has been published in order to allow the CSSF to understand to what extent firms with a relevant authorisation are planning to notify MiCA services.

The CSSF requested Financial Entities which are considering providing crypto-asset services following the notification procedure to fill out a questionnaire regarding their plans under MiCA by Friday 26 July 2024.



⁴⁵ External Source: Communiqué:
[https://www.cssf.lu/en/2024/06/mica-](https://www.cssf.lu/en/2024/06/mica-questionnaire-for-financial-entities-considering-an-article-60-notification)

[questionnaire-for-financial-entities-considering-an-article-60-notification](https://www.cssf.lu/en/2024/06/mica-questionnaire-for-financial-entities-considering-an-article-60-notification)

LUXEMBOURG BILL INTRODUCING NEW ROLE OF CONTROL AGENT FACILITATING THE USE DISTRIBUTED LEDGER TECHNOLOGY FOR SECURITIES ISSUANCES

24 July 2024⁴⁶

A new bill N°8425/00 amending, among others, the Luxembourg law of 6 April 2013 on dematerialised securities (2013 Law) was lodged with the Luxembourg Parliament on 24 July 2024.

In a nutshell, the bill proposes to introduce the new role of control agent and expand the scope of dematerialised securities which may be issued using secured electronic recording mechanisms (*mécanismes d'enregistrement électroniques sécurisés*), including distributed ledgers or databases (DLT).

The new control agent role, which is an alternative to the existing central account keeper (CAK) and settlement organisation roles for the issuance of unlisted debt securities, is open, among others, to EU credit institutions and investment firms. The control agent holds the securities issuance account by means of DLT and provides a reconciliation function in respect of the dematerialised securities by monitoring the custody chain of the dematerialised securities held in securities accounts maintained within or by virtue of a DLT system and reconciling the issued securities. One of the novelties is that the control agent will not be required to also hold the first level securities accounts (as is the case for the central account keeper and the settlement organisation under the existing legal framework).

By further broadening the scope of the 2013 Law, the bill thereby asserts Luxembourg's endeavours to promote financial sector innovation. It is a continuation of the law of 1 March 2019 modifying the law of 1 August 2001 on the circulation of securities which already explicitly recognised the possibility to hold and register securities in securities accounts (*comptes-titres*) within or by virtue of a DLT system, and the law of 22 January 2021 modifying the

2013 Law to explicitly introduce the possibility to use a DLT system for the issuance of dematerialised securities.

The publication of the bill constitutes the start of the legislative procedure.

⁴⁶ External Source: <https://wdocs-pub.chd.lu/docs/exped/0148/149/297498.pdf>.

DORA: EU COMMISSION ADOPTS TECHNICAL STANDARDS ON MAJOR ICT-RELATED INCIDENTS AND CYBER THREATS

23 October 2024⁴⁷

The EU Commission has adopted regulatory and implementing technical standards (RTS and ITS) under the Digital Operational Resilience Act (DORA) for major ICT-related incidents and significant cyber threats. The RTS detail the content and timing for notifications and reports on such incidents, while the ITS provide the forms and procedures for reporting.

These regulations will take effect twenty days after their publication in the Official Journal.

⁴⁷ External Sources:
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2024\)6901&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2024)6901&lang=en) and

[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2024\)7277&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2024)7277&lang=en).



ESG



ESG

CSSF PUBLISHES CIRCULAR ON THE APPLICATION OF THE EBA GUIDELINES ON BENCHMARKING OF DIVERSITY PRACTICES, INCLUDING DIVERSITY POLICIES AND GENDER PAY GAP

27 June 2024⁴⁸

On 27 June 2024, the CSSF published its Circular CSSF 24/858 on the application of the EBA guidelines on the benchmarking of diversity practices, including diversity policies and gender pay gap under the CRD and Directive (EU) 2019/2034, as amended (EBA/GL/2023/08).

The circular is addressed to all credit institutions, CRR investment firms and non-SNI IFR investment firms.

The purpose of the circular is to inform them that the CSSF, in its capacity as competent authority, applies the guidelines published on 18 December 2023. Consequently, the CSSF has integrated the guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at European level. All entities described in the scope of application section of the circular shall duly comply with the guidelines.

The guidelines specify the information to be provided every three years by a representative sample of relevant institutions on diversity practices, including on diversity policies and gender pay gap at the level of the management body (diversity benchmarking). They also specify how the CSSF will collect the diversity benchmarking data from relevant institutions, and how the CSSF will submit the data to the EBA.

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

The circular applies with immediate effect.



⁴⁸ External Source:
Circular: https://www.cssf.lu/wp-content/uploads/cssf24_858eng.pdf
EBA guidelines: [https://www.eba.europa.eu/sites/default/files/2023](https://www.eba.europa.eu/sites/default/files/2023-12/213cc021-d991-43ed-977d-c60245301e70/Final%20report%20on%20Guidelines%20on%20the%20diversity%20benchmarking%20exercise.pdf)

[-12/213cc021-d991-43ed-977d-c60245301e70/Final%20report%20on%20Guidelines%20on%20the%20diversity%20benchmarking%20exercise.pdf](https://www.eba.europa.eu/sites/default/files/2023-12/213cc021-d991-43ed-977d-c60245301e70/Final%20report%20on%20Guidelines%20on%20the%20diversity%20benchmarking%20exercise.pdf)

CAA PUBLISHES INFORMATION NOTE ON STUDY ON THE SUSTAINABILITY COMMITMENT OF LIFE INSURANCE UNDERTAKINGS

2 July 2024⁴⁹

On 2 July 2024, the CAA issued an information note 24/9 on its study on the sustainability commitment of life insurance undertakings.

The objective of the information note is to present the results of the CAA's study of the commitment of life insurance undertakings in relation to sustainability. The CAA's assessment aims to:

- take stock of the different categories of life insurance undertakings with regard to their commitment to sustainability in the first quarter of 2024; and
- highlight the best practices adopted by life insurance undertakings.

SFDR applies since 10 March 2021 in particular to life insurance undertakings. The objective of SFDR is to improve transparency within the financial markets of sustainable investment products and to prevent, in particular, greenwashing. Among other things, SFDR requires the publication of extra-financial information and the classification of different investment vehicles to help consumers make informed decisions.

In this respect, life insurance undertakings must also publish on their website information about their policies on integrating sustainability risks into their investment decision-making process. This is to enable consumers to have an overall view of the commitment of life insurance undertakings and to be able to identify the impact of sustainability in the undertakings' investment decision-making processes. The policies must therefore be sufficiently clear so as not to mislead the consumer.

The study carried out by the CAA aimed to assess the level of maturity and commitment of life insurance undertakings, in particular through their policies.

Through discussions with undertakings selected based on a representative sample of the Luxembourg life insurance market and in consideration of the policies published on their respective websites, the CAA's study proposes a market classification of whether or not sustainability factors are actively taken into account in investment decisions.

The information note lists the criteria that were taken into account for the classification and the four classification groups retained, depending on maturity and commitment as regards the taking into account of sustainability factors.

The information note finally sets out a list of best practices that have been adopted or should be adopted by life insurance undertakings.

⁴⁹ External Source:
https://www.caa.lu/uploads/documents/files/Note_info_24-9.pdf.

ESMA PUBLISHES TRANSLATIONS OF ITS GUIDELINES ON FUNDS' NAMES USING ESG OR SUSTAINABILITY-RELATED TERMS AND CSSF ISSUES COMMUNIQUÉ

21 August 2024⁵⁰

Publication of ESMA Guidelines

On 14 May 2024, the European Securities and Markets Authority ("ESMA") published its Final Report on the ESMA Guidelines on funds' names. The Final Report also contained the final Guidelines on funds' names (the "Guidelines").

On 21 August 2024, the Guidelines were published on ESMA's website in all EU official languages, meaning that they apply as of 21 November 2024.

These Guidelines apply to UCITS management companies (as well as UCITS which have not designated a UCITS management company), alternative investment fund managers, including internally managed AIFs, EuVECA, EuSEF and ELTIF and Money Market Fund managers.

Investment fund managers ("IFMs") of any new funds created after 21 November 2024 should apply these Guidelines immediately in respect of those funds. IFMs of funds existing before 21 November 2024 should comply with the Guidelines with respect to those funds at the latest by 21 May 2024.

The purpose of the Guidelines is to specify the circumstances where the fund names using ESG or sustainability-related terms are unfair, unclear or misleading. IFMs and internally managed funds that include ESG or sustainability-related terms in the names of the UCITS and AIFs they manage must comply with the requirements included in the Guidelines.

CSSF communiqué

On 21 October 2024, the CSSF published a communiqué to inform market participants of the publication of Circular CSSF 24/863, implementing the Guidelines into the

Luxembourg regulatory framework. The CSSF reminded market participants of the relevant application dates above and drew their attention to the fact that the Guidelines apply to IFMs managing UCITS or AIFs, irrespective of whether they are disclosing under Article 6, 8 or 9 of SFDR. IFMs are thus expected to carry out a self-assessment of the applicability of the Guidelines to the products they manage and to ensure compliance of fund names with these Guidelines.

The CSSF also listed the following overarching principles:

- Funds' names should not be misleading, as the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund.
- The CSSF expects adequate disclosure in the precontractual documentation of elements supporting the use of ESG or sustainability-related terms in funds' names.
- The list of ESG and sustainability-related terms mentioned in the Guidelines is not exhaustive. Accordingly, market participants are expected to review the names of all the financial products they manage and assess, on a case-by-case basis, whether [or not] the Guidelines apply to those products.
- Finally, the CSSF expects market participants to closely monitor and duly consider any further developments on this topic at European level.

CSSF Priority Processing Procedure

The CSSF made available a priority processing procedure ("PPP") to existing UCITS and AIFs that limit the update of their issuing document/prospectus to amendments required in the context of the entry into force of the Guidelines.

The amendment(s) must be limited to either a name change of at least one sub-fund or minor adjustments to the fund's/sub-fund's ESG engagement/SFDR precontractual disclosure.

⁵⁰ External Sources:
https://www.esma.europa.eu/sites/default/files/2024-08/ESMA34-1592494965-657_Guidelines_on_funds_names_using_ESG_or_sustainability_related_terms.pdf

<https://www.cssf.lu/en/2024/10/communication-to-the-investment-fund-industry-in-relation-to-the-esma-guidelines-on-funds-names-using-esg-or-sustainability-related-terms/>

CLIFFORD CHANCE

ESG

The conditions and modalities for benefiting from the PPP are further explained within the communiqué and within a dedicated Fund naming confirmation letter, which will need to accompany the submission of the fund prospectus/issuing document updated in accordance with the Guidelines under the PPP.

ESMA UPDATES IMPLEMENTATION TIMELINE

30 October 2024⁵¹

The European Securities and Markets Authority (ESMA) has released an updated timeline for implementing various sustainable finance regulations.

This includes the SFDR and its Delegated Regulation, the Taxonomy Regulation, the CSRD, the Benchmarks Regulation, the European Green Bonds Regulation and ESMA guidelines on ESG or sustainability-related fund names.

The SFDR Level 1 review is set at mid-2025.

⁵¹ External Source:
[https://www.esma.europa.eu/sites/default/files/libr](https://www.esma.europa.eu/sites/default/files/library/sustainable_finance_-_implementation_timeline.pdf)

[ary/sustainable_finance_-_implementation_timeline.pdf.](https://www.esma.europa.eu/sites/default/files/library/sustainable_finance_-_implementation_timeline.pdf)

CSSF PUBLISHES PRESS RELEASE ON GREENWASHING AND GREEN FINANCE

15 November 2024⁵²

On 15 November 2024, the CSSF published its press release 24/29 'Greenwashing and green finance: the CSSF calls for vigilance and informs on www.letzfin.lu'.

The purpose of the press release is to inform the public that the market of sustainable financial products is growing rapidly, driven by an increased demand for environmentally friendly and socially responsible investments. The CSSF recognises this trend as being a positive signal for the ecological transition and the fight against climate change, notes however that it is worth remembering that not all green or sustainability claims are necessarily true.

The press release reminds that greenwashing is a deceptive practice whereby certain companies present themselves as more sustainable than they actually are, which could mislead investors into believing that their money is being used for environmentally friendly purposes, although that is not always the case. Therefore, the CSSF invites investors to think critically and not to rely blindly on labels and promises of sustainability.

The press release contains a number of tips to help investors assess the reliability of green financial products and refers to the website www.letzfin.lu/greenwashing (available in French and German) for more information.

⁵² External Sources: Circular:
<https://www.cssf.lu/en/2024/11/greenwashing-and-green-finance-the-cssf-calls-for-vigilance-and-informs-on-www-letzfin-lu/>



CORPORATE



CORPORATE

LUXEMBOURG TRANSPOSES PUBLIC COUNTRY-BY-COUNTRY REPORTING DIRECTIVE

15 August 2023 – entered into force on 24 June 2024

The law of 15 August 2023, transposing Directive (EU) 2021/2101 on the Disclosure of Income Tax Information by certain undertakings and branches, amending the law of 10 August 1915 on commercial companies and the law of 19 December 2002 on the trade and companies register, entered into force on 24 June 2024.

This law introduces additional reporting obligations for multinational enterprises, both within and outside the EU, that conduct business in the EU through a branch or subsidiary and have a consolidated annual revenue of at least 750 million euros for two consecutive years.

Multinational enterprises meeting the above criteria are required to publicly report their Income Tax Information on a country-by-country basis. This includes details such as the amount of income, profit before tax, corporate tax and withholding tax payable for each country.

The report must be publicly disclosed within 12 months from the closing date of the financial statements for the fiscal year for which the declaration is made, in one of the EU official languages and deposited annually:

- on the website of the said ultimate parent company or the said standalone company; or
- in the trade and companies register for a period of five years.

These additional reporting obligations apply to financial years starting on or after 24 June 2024.

In accordance with Directive (EU) 2021/2101, Luxembourg has opted to allow companies falling within the scope of this law to temporarily omit specific data from the declaration for up to five years if disclosing such information would be particularly detrimental to the company's commercial position.

EU banks that already disclose information as part of CRD IV⁵³ are exempt from this additional reporting obligation.



⁵³ Directive (EU) 2013/36/EU.

FILING RCS: NEW FORMALITIES UPCOMING FOR NATURAL PERSONS

14 October 2024

As of 12 November 2024, the RCS will adopt new RCS forms in HTML format. These forms will require natural persons registered or to be registered with the RCS to provide their Luxembourg national identification number. Individuals who do not have such a number will be provided with one as part of the filing process with RCS.

The national identification number is a unique number, allocated by the Luxembourg National Register of Natural Persons in accordance with the law of 19 June 2013 on the identification of natural persons. This number is commonly called "*matricule*" and is necessary to be able to complete certain administrative formalities with the public administrations in Luxembourg.

Recently, the RCS manager announced on the LBR website that as from 12 November 2024 onwards:

For filing relating to a natural person⁵⁴, the national identification number must be provided. No filing relating to a natural person will be possible without the provision of the national identification number or the request to obtain one. If the natural person has a national identification number, this number is to be communicated in the requisition forms without any supporting documents

- For filings non-related to natural persons:
 - during a transitional period, the national identification number of the natural person(s)

registered in the file of the company will not be compulsory, the provision of such number or the application to obtain one will be possible on a voluntary basis as part of the same filing process;

- at the end of the transitional period, the national identification number will be compulsory, which means that no filing with the RCS will be possible without the provision of the national identification number or the application to obtain one for each natural person registered in the file of the company.
- A stand-alone procedure to file the national identification number or to apply to obtain one will be commenced for natural persons already registered with the RCS. It is worth noting that this procedure will be available without charge during the transitional period.

The duration of the transitional period has not been communicated yet.

The national identification number will not be publicly disclosed. It will not appear on documents to be issued by the entity and will not be visible on the RCS extract of the entity.

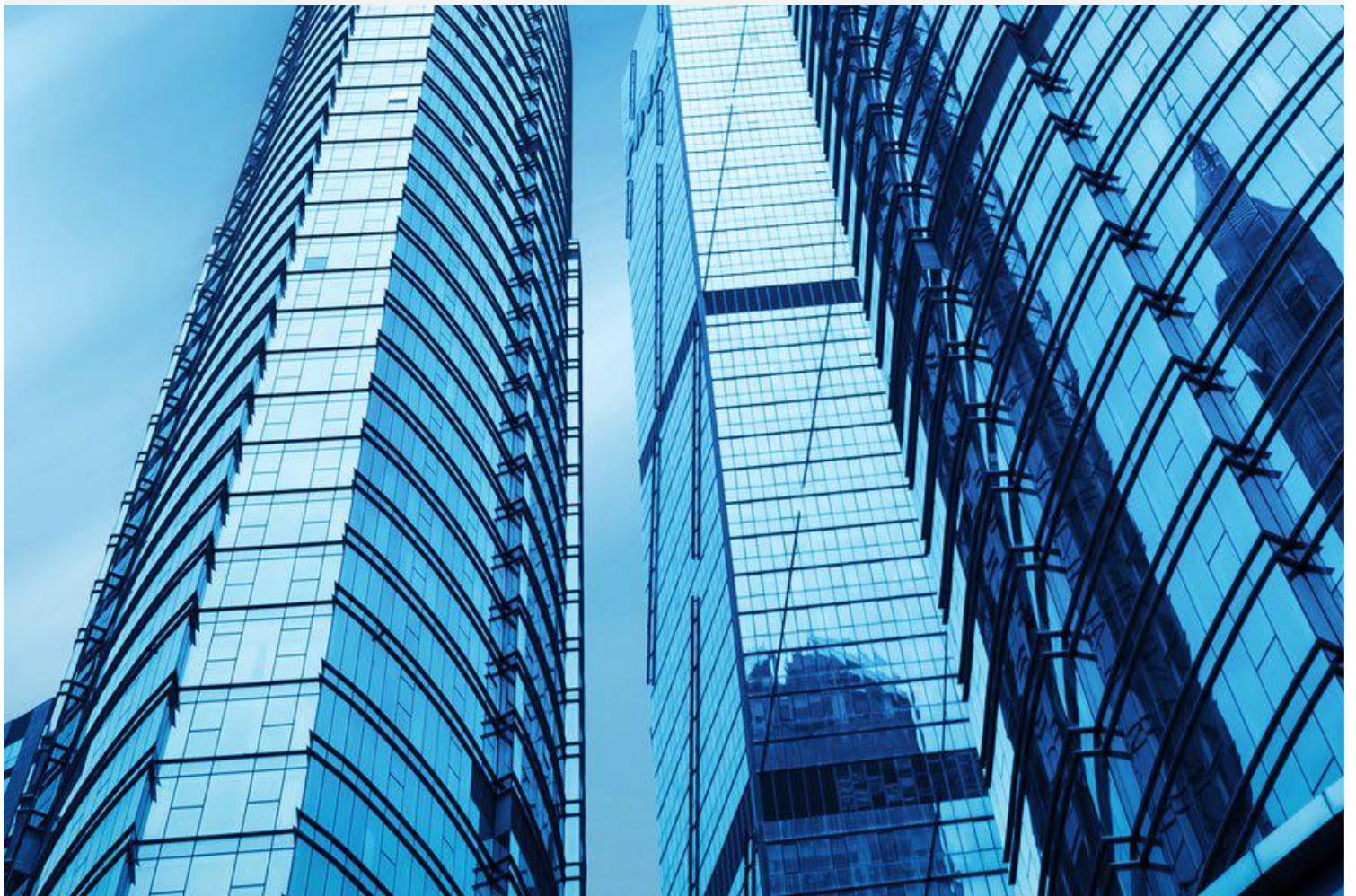
All natural persons who are or will be registered with the RCS and who are not already in possession of a Luxembourg national identification number should anticipate that, as from 12 November 2024, additional information and supporting documents will need to be provided as part of their registration with the RCS.

More details regarding these additional formalities can be found in our Client Briefing by clicking [here](#).

⁵⁴ Filing of natural persons not yet registered with the RCS or the amendment of the information pertaining to natural persons.



EMPLOYMENT, PENSIONS AND BENEFITS



EMPLOYMENT, PENSIONS AND BENEFITS

NEW LEGAL OBLIGATIONS FOR EMPLOYERS

Law of 24 July 2024 amending the Labour Code to transpose Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU⁵⁵

The Law of 24 July 2024 amending the Labour Code to transpose Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU (the "**Law**") entered into force on 4 August 2024.

The main provisions of the Law are the following:

- The employer shall provide the employee with additional information in the employment contract (e.g. terms and conditions relating to the performance of overtime and its remuneration, procedure to be followed in the event of termination of the employment contract, conditions of application of the trial period, identity of the social security institution collecting the social security contributions), as well as in documents to be delivered to employees in the case of temporary work abroad.
- Trial periods in fixed-term contracts ("**FTC**") must be between two weeks (minimum) and one quarter of the duration of the contract or the minimum duration for which it is concluded (maximum).
- Employees who have been working with the same employer for at least six months may request, once every 12 months, to convert their FTC into an open-ended contract or to change their working duration from part-time to full-time (and vice versa). The employer must respond within one month of the request, by amending the employment contract by mutual agreement of the parties (if the employer accepts the request) or by stating precisely, and in writing, the reasons for its refusal.



- Any clause that prohibits an employee from exercising another employment relationship with one or more employers outside the normal working hours agreed in the employment contract ("exclusivity clause") is null and void. This prohibition does not apply when the combination of two employments is incompatible due to objective reasons, such as occupational safety and health, the protection of business confidentiality, the integrity of public function or the prevention of conflicts of interest.
- When the employer is required, by virtue of the law, regulatory, administrative or statutory provisions, or certain collective agreements, to provide training to employees for the performance of the work for which they are employed, this training must be provided free of charge to the employees during their working time.

The Law also creates new criminal offences for the employer in the event of failure to comply with:

- the obligation to provide the employees with mandatory information in the employment contract and;
- the obligation to apply the new statutory procedure and rules to answer a request to convert an FTC into an open-ended contract or part-time employment into full-time employment (and *vice versa*).

These criminal offences are punishable by a fine ranging, for physical persons, from EUR 251 to EUR 5,000 per employee, and from EUR 500 to EUR 10,000 per employee for legal persons.

⁵⁵ External Source:
<https://legilux.public.lu/eli/etat/leg/loi/2024/07/24/a324/jo>

<https://www.cliffordchance.com/briefings/2024/08/important-changes-in-employment-contracts-and-working-conditions.html>.

NEW COLLECTIVE BARGAINING AGREEMENT FOR EMPLOYEES OF THE BANK SECTOR

Signed on 1 August 2024 with an entry into force on 1 January 2024⁵⁶

On 1 August 2024, social partners entered into a new collective bargaining agreement (the "**New Banking CBA**"), applicable for a three-year period, from 1 January 2024 to 31 December 2026. The main provisions of the New Banking CBA include the following ones:

- Increase in the presumption of acquisition of skills: employees joining or who have joined the financial sector since 2018 benefit from a presumption of acquisition of skills within the first 10 years of their career (against eight years previously) of at least 1% per year up until the threshold of their group.
- Increase in starting base salary amounts and thresholds for the 4 groups: financial envelop to be

distributed by the employer of 1% for 2024, 0.5% for 2025 and 1% for 2026.

- Increase of the loyalty bonus: 25% of the base salary from the second year of employment and from 75% to 90% of the base salary from the eleventh year of employment.
- Punctual and exceptional salary adjustment for certain employees who have joined their company before 2014.
- One-off exceptional bonus of EUR 500 gross for all employees (in service and whose employment contract has not been terminated by 31 December 2024), payable in January 2025.
- Introduction of a minimum budget for outplacement training of EUR 5,000 (with a maximum of EUR 8,000).
- 10% increase in the annual training budget with effect from 1 January 2024.
- Allocation of an individual training allowance of at least 16 hours per year.

⁵⁶ External Source: <https://abbl.lu/en/signing-of-the-new-collective-bargaining-agreement-for-the-luxembourg-banking-sector>



ASSET MANAGEMENT AND INVESTMENT FUNDS



ASSET MANAGEMENT AND INVESTMENT FUNDS

ESMA PUBLISHES TRANSLATIONS OF ITS GUIDELINES ON FUNDS' NAMES USING ESG OR SUSTAINABILITY-RELATED TERMS AND CSSF ISSUES COMMUNIQUÉ

21 August 2024⁵⁷

Publication of ESMA Guidelines

On 14 May 2024, the European Securities and Markets Authority ("**ESMA**") published its Final Report on the ESMA Guidelines on funds' names. The Final Report also contained the final Guidelines on funds' names (the "**Guidelines**").

On 21 August 2024, the Guidelines were published on ESMA's website in all EU official languages, meaning that they apply as of 21 November 2024.

These Guidelines apply to UCITS management companies (as well as UCITS which have not designated a UCITS management company), alternative investment fund managers including internally managed AIFs, EuVECA, EuSEF and ELTIF and Money Market Fund managers.

Investment fund managers ("**IFMs**") of any new funds created after 21 November 2024 should apply these Guidelines immediately in respect of those funds. IFMs of funds existing before 21 November 2024 should comply with the Guidelines with respect to those funds at the latest by 21 May 2024.

The purpose of the Guidelines is to specify the circumstances where the fund names using ESG or sustainability-related terms are unfair, unclear or misleading. IFMs and internally managed funds that include ESG or sustainability-related terms in the names of the UCITS and AIFs they manage must comply with the requirements included in the Guidelines.



CSSF communiqué

On 21 October 2024, the CSSF published a *communiqué* to inform market participants of the publication of Circular CSSF 24/863, implementing the Guidelines into the Luxembourg regulatory framework. The CSSF reminded market participants of the relevant application dates above and drew their attention to the fact that the Guidelines apply to IFMs managing UCITS or AIFs, *irrespective of whether they are disclosing under Article 6, 8 or 9 of SFDR*. IFMs are thus expected to carry out a self-assessment of the applicability of the Guidelines to the products they manage and to ensure compliance of fund names with these Guidelines.

The CSSF also listed the following overarching principles:

- Funds' names should not be misleading, as the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund.
- The CSSF expects adequate disclosure in the precontractual documentation of elements supporting the use of ESG or sustainability-related terms in funds' names.
- The list of ESG and sustainability-related terms mentioned in the Guidelines is not exhaustive.

⁵⁷ External Source:
https://www.esma.europa.eu/sites/default/files/2024-08/ESMA34-1592494965-657_Guidelines_on_funds_names_using_ESG_or_sustainability_related_terms.pdf

<https://www.cssf.lu/en/2024/10/communication-to-the-investment-fund-industry-in-relation-to-the-esma-guidelines-on-funds-names-using-esg-or-sustainability-related-terms/>

Accordingly, market participants are expected to review the names of all the financial products they manage and assess, on a case-by-case basis, whether the Guidelines apply to those products.

- Finally, the CSSF expects market participants to closely monitor and duly consider any further developments on this topic at European level.

CSSF Priority Processing Procedure

The CSSF made available a priority processing procedure ("**PPP**") to existing UCITS and AIFs that limit the update of their issuing document/prospectus to amendments required in the context of the entry into force of the Guidelines.

The amendment(s) must be limited to either a name change of at least one sub-fund or minor adjustments to the fund's/sub-fund's ESG engagement/SFDR precontractual disclosure.

The conditions and modalities for benefiting from the PPP are further explained within the *communiqué* and within a dedicated [Fund naming confirmation letter](#), which must accompany the submission of the fund prospectus/issuing document updated in accordance with the Guidelines under the PPP.

CSSF PUBLISHES CIRCULAR CLARIFYING OBLIGATIONS ON IDENTIFICATION AND VERIFICATION OF IDENTITY OF ULTIMATE BENEFICIAL OWNERS

5 September 2024⁵⁸

The CSSF has issued [Circular CSSF 24/861](#), amending Circular 19/732 on the Prevention of Money Laundering and Terrorist Financing.

The amendment modifies point 74 to implement a risk-based approach for identifying and verifying legal persons or arrangements between the customer and the ultimate beneficial owner, rather than specifying a list of required information and documents.

The circular includes a marked-up version of Circular 19/732 showing the changes.

⁵⁸ [Circular CSSF 24/861](#).

CSSF PUBLISHES 2023 ANNUAL REPORT

19 September 2024⁵⁹

The *Commission de Surveillance du Secteur Financier* (CSSF) has published its [2023 annual report](#), highlighting its organisation, priority action areas and key challenges. The report emphasises the importance of preventing money laundering and terrorist financing, despite Luxembourg's positive FATF evaluation. It also addresses issues such as inflation, the Capital Markets Union, cyber risk, green finance, artificial intelligence, consumer challenges and financial literacy.

59 [2023 annual report](#)

CSSF: UPDATED FAQ ON THE AML/CFT SUMMARY REPORT RC ON COMPLIANCE WITH AML/CFT OBLIGATIONS IN ACCORDANCE WITH CIRCULAR CSSF 24/854

7 October 2024⁶⁰

On 7 October 2024, the *Commission de Surveillance du Secteur Financier* (the "**CSSF**") published an updated FAQ on the AML/CFT Summary Report RC ("**SRRC**") on compliance with AML/CFT obligations in accordance with Circular CSSF 24/854.

The FAQ includes two new questions.

The first one confirms that a Luxembourg investment fund that was managed by a foreign investment fund manager at the date of the closing of the annual accounts or thereafter but has appointed a Luxembourg investment fund manager before the submission date of the SRRC does not fall within the scope of Circular CSSF 24/854.

The second one clarifies that an entity that is no longer under the CSSF's supervision at the expected date of submission of the SRRC is no longer required to submit the SRRC.

⁶⁰ External Source:
<https://www.cssf.lu/en/Document/faq-on-the-aml-cft-summary-report-rc-srrc-on-compliance-with->

[aml-cft-obligations-in-accordance-with-circular-cssf-24-854/](https://www.cssf.lu/en/Document/faq-on-the-aml-cft-summary-report-rc-srrc-on-compliance-with-aml-cft-obligations-in-accordance-with-circular-cssf-24-854/).

DORA: CSSF COMMUNIQUÉ ON READINESS SURVEY

7 October 2024⁶¹

On 7 October 2024, the *Commission de Surveillance du Secteur Financier* (the "**CSSF**") published the results of the DORA readiness survey launched back in August 2024 to nearly 500 entities which will fall under the DORA regulation, applicable as from 17 January 2025.

In short, the CSSF indicates that 90% of respondents have completed their DORA gap analysis and, despite the challenges encountered, the survey shows encouraging progress by financial entities in their DORA compliance work. The CSSF further indicates that the financial place is still in a preparatory phase. More than two-thirds of entities consider themselves to be partially ready, while almost a quarter of entities consider themselves to be almost ready.

The detailed results of the survey are available on the CSSF's website.

⁶¹ External Source:
<https://www.cssf.lu/en/2024/10/results-of-the->

[dora-readiness-survey-conducted-in-september-2024/.](https://www.cssf.lu/en/2024/10/results-of-the-dora-readiness-survey-conducted-in-september-2024/)

PERFORMANCE FEES: UPDATED ESMA Q&AS

11 October 2024⁶²

The European Securities and Markets Authority ("**ESMA**") has updated its Q&As on performance fees with the publication of a new question 966 and an update to existing question 1033.

The new question 966 refers to the crystallisation of performance fees in the case of creation of a new UCITS/compartment/share class in the course of the financial year. The answer confirms that no, performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, the crystallisation date should be the same for all share classes of a fund that levies a performance fee.

The same approach has been reflected under updated question 1033 in the case of creation of a new compartment/share class in an existing AIF in the course of its financial year or in the case of creation of a new AIF.

⁶² External Source:
<https://www.esma.europa.eu/press-news/esma-news/new-qas-available->

[18?utm_source=Sarbacane&utm_medium=email&utm_campaign=No%20title%20.](https://www.esma.europa.eu/press-news/esma-news/new-qas-available-18?utm_source=Sarbacane&utm_medium=email&utm_campaign=No%20title%20.)

CSSF COMMUNIQUÉ REMINDING OF THE PROCEDURES FOR TRANSMISSION OF KEY INFORMATION DOCUMENT (KID) AND OFFICIAL DOCUMENTS (MR/AI)

16 October 2024⁶³

On 16 October 2024, *the Commission de Surveillance du Secteur Financier* (the "**CSSF**") reminded undertakings for collective investments to make available a key information document (KID) and that, from 15 November 2024:

- Only the API (S3) channel or the eDesk approach will be authorised for submitting KIDs and official documents.
- Any KID or official document submitted using the old transmission method (external channels) will not be processed by the CSSF.

⁶³ External Source:
<https://www.cssf.lu/en/2024/10/reminder-of-the->

[procedures-of-transmission-for-key-information-document-kid-and-official-documents-mr-ai/](https://www.cssf.lu/en/2024/10/reminder-of-the-procedures-of-transmission-for-key-information-document-kid-and-official-documents-mr-ai/).

CSSF COMMUNICATION ON THE THEMATIC REVIEW ON THE DELEGATION OF THE PORTFOLIO MANAGEMENT FUNCTION BY INVESTMENT FUND MANAGERS (IFMS)

23 October 2024⁶⁴

On 23 October 2024, the *Commission de Surveillance du Secteur Financier* ("**CSSF**") issued a communiqué on the CSSF thematic review on the delegation of the portfolio management function by investment fund managers ("**IFMs**").

The CSSF published its feedback report, including its main findings and recommendations.

Most importantly, the CSSF invites all IFMs to perform, at the latest by the end of Q1/2025, a comprehensive assessment of how they monitor the delegation of their portfolio management function in the light of the observations mentioned in the thematic review document and of the applicable regulatory requirements.

⁶⁴ External Source:
<https://www.cssf.lu/en/2024/10/cssf-thematic-review-on-the-delegation-of-the-portfolio->

[management-function-by-investment-fund-managers-ifms-cssf-feedback-report/.](https://www.cssf.lu/en/2024/10/cssf-thematic-review-on-the-delegation-of-the-portfolio-management-function-by-investment-fund-managers-ifms-cssf-feedback-report/)

DORA: EU COMMISSION ADOPTS TECHNICAL STANDARDS ON MAJOR ICT-RELATED INCIDENTS AND CYBER THREATS

23 October 2024⁶⁵

The EU Commission has adopted regulatory and implementing technical standards ([RTS](#) and [ITS](#)) under the Digital Operational Resilience Act (DORA) for major ICT-related incidents and significant cyber threats. The RTS detail the content and timing for notifications and reports on such incidents, while the ITS provide the forms and procedures for reporting.

These regulations will take effect 20 days after their publication in the Official Journal.

⁶⁵ External Sources:
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2024\)6901&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2024)6901&lang=en) and

[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2024\)7277&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2024)7277&lang=en).

DORA: EU COMMISSION ADOPTS RTS ON CONDUCT OF OVERSIGHT ACTIVITIES

24 October 2024⁶⁶

The EU Commission has adopted a [Delegated Regulation](#) with regulatory technical standards (RTS) under the Digital Operational Resilience Act (DORA). These RTS outline the information that ICT third-party service providers must provide to be designated as critical, the data that critical providers must submit to their Lead Overseer, and how competent authorities will assess measures taken by critical providers.

The regulation will take effect 20 days after its publication in the Official Journal.

⁶⁶ External Source: [Delegated Regulation](#).

ELTIF: FINAL EUROPEAN LONG-TERM INVESTMENT FUND (ELTIF) REGULATORY TECHNICAL STANDARDS PUBLISHED BY EU COMMISSION

25 October 2024⁶⁷

25 October 2024 marked a significant milestone as the EU Commission published the final Delegated Regulation supplementing Regulation (EU) 2015/760, setting out the regulatory technical standards applicable to ELTIFs under the recently updated ELTIF regime. These standards are effective immediately and provide comprehensive guidelines on several key aspects of the ELTIF regime, including:

- **Redemption Policy and Liquidity Management Tools:** outlining the minimum information to be provided to competent authorities on the redemption policy and liquidity management tools applicable to non closed-ended ELTIFs.
- **Liquidity Buffer:** setting the liquid asset percentage criteria applicable in respect of redemptions.
- **Duration of the ELTIF:** introducing criteria to assess the compatibility of an ELTIF's life with the life cycles of its assets.
- **Transfers:** detailing the transparency and execution requirements to match transfers of units or shares.
- **Minimum Holding Period:** introducing criteria for determining the minimum holding period for non closed-ended ELTIFs, if applicable.
- **Valuation:** valuation criteria and deadlines for the divestment of assets.
- **Use of Derivatives:** setting out a definition of the use of derivatives solely for the purpose of hedging risks.
- **Cost Disclosure:** definitions, calculation methodologies and cost presentation formats.

These standards aim to improve clarity and enhance the efficient management of ELTIFs, fostering a more robust investment environment.

In parallel, the CSSF has updated the ELTIF application questionnaire. The CSSF's communication on the final Delegated Regulation and the updated application questionnaire can be accessed here: <https://www.cssf.lu/en/2024/10/eltif-communique-update-of-the-existing-eltif-application-questionnaire/>.

⁶⁷ External Source:
<https://op.europa.eu/en/publication-detail/>

</publication/83cd83c9-9269-11ef-a130-01aa75ed71a1/language-en>.

ESMA UPDATES IMPLEMENTATION TIMELINE

30 October 2024⁶⁸

The European Securities and Markets Authority (ESMA) has released an [updated](#) timeline for implementing various sustainable finance regulations.

This includes the SFDR and its Delegated Regulation, the Taxonomy Regulation, the CSRD, the Benchmarks Regulation, the European Green Bonds Regulation and ESMA guidelines on ESG or sustainability-related fund names.

The SFDR Level 1 review is set at mid-2025.

⁶⁸ External Source:
[https://www.esma.europa.eu/sites/default/files/libr](https://www.esma.europa.eu/sites/default/files/library/sustainable_finance_-_implementation_timeline.pdf)

[ary/sustainable_finance_-_implementation_timeline.pdf.](https://www.esma.europa.eu/sites/default/files/library/sustainable_finance_-_implementation_timeline.pdf)

NEW RCS FORMALITIES

12 November 2024⁶⁹

The Luxembourg Business Registers, including the *Registre de Commerce et des Sociétés* ("**RCS**"), announced back in 2021 certain changes to the registration requirements for natural persons associated with entities registered with the RCS.

These changes were subsequently put on hold but have recently been announced as becoming effective as from 12 November 2024. The more significant change is the requirement to submit a Luxembourg national identification number (*matricule*) for every natural person registered or to be registered on the RCS. This includes people who are not Luxembourg residents and therefore might need to separately request such a number.

⁶⁹ External Source:
<https://url.uk.m.mimecastprotect.com/s/cRKRcBN1h2rL3kFvCIH2AIX4?domain=subscription.alfi.lu>.



TAX



TAX

AMENDMENT TO THE LUXEMBOURG TAX LAW.

17 July 2024⁷⁰

On 17 July 2024, the Luxembourg Government submitted a bill n°8414 (the "**Bill**") to the Parliament which aims to (i) reduce the tax burden on individuals, (ii) create an environment to attract talent and (iii) set out a framework to favour the development of the investment fund sector.



I. Amendment to the impatriate regime

The Bill amends the impatriate tax regime⁷¹ (*régime d'impatrié*) which enhances recruitment through the setting of a tax regime for highly qualified and specialised employees on the international market. In this regard, the Bill:

- sets out a lump-sum regime according to which 50% of the gross annual remuneration of the employee (excluding any benefits in kind or in cash) would be tax exempt, provided that the amount of such remuneration does not exceed EUR 400,000;

⁷⁰ External Source: <https://wdocs-pub.chd.lu/docs/exped/0148/197/297979.pdf>.

⁷¹ The impatriate tax regime is provided for in article 115, 13b of the [income tax law of 4 December 1967](#) ("LITL") and details are set out in [Circular n°95/2 LIR of 31 December 2010](#).

- provides clarification on the "*main professional activity*" condition. In this respect, the employee should carry out the professional activity for which he or she benefits from the exemption for at least 75% of his or her working time.

Employees who already benefit from the currently applicable impatriate tax regime shall continue to do so, unless they request the Luxembourg tax authorities to apply the new regime as from 2025.

II. The profit sharing bonus

The profit sharing bonus⁷² (*prime participative*) is a tax measure designed to contribute to retaining employees by allowing them to share in company profits. This measure allows employers to grant, under conditions, a bonus based on the employer's results to one or more of their employees.

The Bill improves the profit sharing bonus regime with the increase of the following thresholds:

- the limit of the partially tax-exempt profit sharing bonus is increased from 25% of gross annual remuneration, before incorporation of benefits in cash and in kind, to 30%; and
- the threshold of the profit sharing bonus that a company can grant to employees has been increased from 5% to 7.5% of the positive result for the operating year.

III. Amendment to the tax scale

The Bill amends the personal income tax scale⁷³ by adding 2.5 index brackets, which should reduce the tax burden of individuals and would be applicable from the year 2025.

IV. Incentives for young workers

The Bill introduces a new bonus (*prime jeune salarié*) designed to support young employees at the beginning of their careers, who would benefit from a tax exemption indexed to their gross annual salary.

⁷² The profit sharing bonus is provided for in article 115, 13a LITL. The [draft budget bill n°7666](#) published on 14 October 2020 and [Circular L.I.R. n°115/12](#) set out details on the regime.

⁷³ The personal income tax scale is provided for in article 118 of the LITL.

V. The decrease of the corporate income tax rate ("CIT")

The Bill proposes to reduce the rate of CIT⁷⁴ by 1%, reducing the maximum rate of CIT from 17% to 16% and the minimum rate of CIT from 15% to 14%.

VI. Exemption from registration duty

Under the Bill, Luxembourg listed undertakings for collective investment in transferable securities ("**OPCVM ETF**") may be exempted under conditions from subscription tax⁷⁵.

⁷⁴ CIT rates are provided for in article 174 of the LITL.

⁷⁵ The [Law of 17 December 2010](#) relating to undertakings for collective investment provides for the subscription tax in articles 174 to 176.

TAX TREATMENT OF A SIMPLIFIED LIQUIDATION

19 July 2024⁷⁶

On 19 July 2024, the Luxembourg tax authorities issued circular L.I.R. n°170/1, 170bis/1, I.C.C. n°44, I. Fort n°55 (the "**Circular**") clarifying the tax treatment of a simplified liquidation or dissolution without liquidation (the "**Simplified Liquidation**") in accordance with article 1865bis of the Civil Code.

I. The dissolution without liquidation

The Civil Code⁷⁷ provides that the reunion of all the shares in one sense does not lead to the dissolution of a company. However, had such a situation not been fixed within one year⁷⁸, the dissolution of the company can be called for at any time upon the request of the shareholder who is holding all the shares. In the case of a Simplified Liquidation, all of the company's assets and liabilities are transferred to the sole shareholder with no need for a liquidation.

II. Corporate income tax and municipal business tax

A Simplified Liquidation should be treated from a tax perspective as a transfer of assets⁷⁹. In this respect, a Simplified Liquidation gives rise to taxation on the net profit, which includes unrealised capital gains.

The company should be taxable on the liquidation profit which corresponds to the difference between the company's net invested assets at the time of the dissolution and the remuneration incurred from the transfer of the corporate assets, estimated on the transfer date.

The Circular provides that a Simplified Liquidation can also be treated as a merger, provided that (i) the transfer is carried out in exchange for the allocation to the company's shareholders (i.e. the transferring entity) of shares representing the share capital of the receiving entity and, where applicable, a cash payment (*soulte*) not exceeding 10% of the nominal value of these shares,

and (ii) the transfer should be realised in such a way as to expose the resulting profit to subsequent taxation in Luxembourg. Where these conditions are met, such an operation can be carried out on a tax-neutrality basis and profits issued from the transfer of the company's assets can be tax-exempt.

The Circular also confirms that the profit realised on the occasion of the dissolution without liquidation, according to article 1865bis of the Civil Code, is not subject to municipal business tax.

III. Net wealth tax ("NWT")

Where the dissolved company has an NWT reserve for which the minimum period (i.e., five years) is not over at the time of the Simplified Liquidation, such an operation does not entail a break in the five-year period for the computation of the NWT reserve.

Moreover, a Simplified Liquidation has no impact on the NWT due, provided that the undertaking to which the assets are transferred maintains the NWT reserve to comply with the five-year period condition.

In order to reduce the NWT payable by the dissolved company in respect of the tax year in which the Simplified Liquidation occurs, the NWT reserve should be constituted at the time of the Simplified Liquidation, at the latest.

⁷⁶ External Source:
<https://impotsdirects.public.lu/dam-assets/fr/legislation/legi24/lir-170-1-170bis-1-icc44-ifort55-du-1972024.pdf>

⁷⁷ [Article 1865bis](#) of the Civil Code.

⁷⁸ The tribunal may grant a maximum extra period of six months to remedy the situation.

⁷⁹ A dissolution without liquidation is to be assimilated to a transfer of the company's assets within the meaning of article 170 (1) of the Luxembourg income tax law of 6 December 1967 ("**LITL**") giving rise to taxation as provided in article 169 LITL.

THE EUROPEAN COURT OF JUSTICE RULED THAT APPLE MUST PAY EUR 13 BILLION IN A STATE AID CASE

10 September 2024⁸⁰

On 10 September 2024, the European Court of Justice ("ECJ") in case C-465/20 P held that Ireland granted unlawful State aid to Apple⁸¹.

The decision confirmed the European Commission's ("EC") position that two contentious tax rulings granted to Apple conferred a selective advantage and constituted illegal State aid, thus ordering Ireland to recover the unlawful aid amounting to EUR 13 billion plus interest.

The tax rulings were issued in 1991 and 2007 by Ireland to Apple Inc. and assured two of its non-resident subsidiaries (but incorporated in Ireland) that only certain sums of operating expenses were taxable as permanent establishment profits. However, the majority of the profits were allocated to the respective head offices outside Ireland, which were deprived of any real substance. Without these tax rulings, no profits could have been attributed to the head offices and the licence income would have been subject to normal corporate income tax under section 25 of the 1997 Irish Tax Consolidation Act.

The EC therefore accused Ireland of having granted Apple a selective advantage by allocating hardly any profits to the Irish branches of Irish companies with a foreign registered office in deviation from the "*normal Irish corporation tax system*". The EC argued that the tax rulings were not issued in accordance with the arm's-length principle, which is usually required under Irish law, but were instead negotiated between Apple and the Irish tax authorities.

In an earlier decision related to this case⁸², the General Court confirmed that domestic tax law may not grant State aid for the purposes of article 107 of the Treaty on the Functioning of the European Union ("TFEU"); however, it

came to the conclusion that the EC did not demonstrate sufficiently such selective advantage and annulled the 2016 decision of the EC⁸³.

In the case at hand, the ECJ sided with the EC and, contrary to the General Court's judgment, confirmed that it has been sufficiently demonstrated that the Irish subsidiaries, by significantly reducing their taxable profits, received tax treatment more favourable than resident companies taxed in Ireland through the tax rulings. The selective advantage financed by State resources therefore constituted prohibited State aid pursuant to article 107 TFEU.

⁸⁰ External Source: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62016TJ0778>.

⁸¹ EC v. Ireland and Apple Sales International of 10 September 2024, Case C-465/20 P: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CJ0465>.

⁸² Judgment of the General Court of 15 July 2020 Cases T-778/16 and T-892/16: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62016TJ0778>.

⁸³ Commission decision (EU) 2017/1283 of 30 August 2016: <https://eur-lex.europa.eu/eli/dec/2017/1283/oj>.

THE EUROPEAN COURT OF JUSTICE RULED ON LEGAL PROFESSIONAL PRIVILEGE PROTECTION

26 September 2024⁸⁴

On 26 September 2024, the European Court of Justice ("ECJ") ruled on whether, and under what conditions, a tax administration may seek disclosure from a law firm in the context of an exchange of information on request (case C-432/23) given the principle pertaining to the protection of the confidentiality of communications between a lawyer and his client.

In the case at hand, the Spanish tax authorities issued a request for information to the Luxembourg tax authorities ("LTA"). The latter required a law firm to produce all available documents concerning services which it had provided to its client in connection with the acquisition of two undertakings.

As part of the exchange of information regime, the Directive⁸⁵ on administrative co-operation ("DAC"), which aims to establish the correct tax to be levied and to combat tax evasion, lays down rules and procedures under which the Member States shall communicate any foreseeably relevant information, provided that such communication does not lead to the disclosure of professional secrecy⁸⁶.

Indeed, the Charter of Fundamental Rights of the European Union⁸⁷ (the "Charter") and the case law of the European Court of Human Rights⁸⁸ recognise the protection of confidentiality of all correspondence between individuals and afford strengthened protection to exchanges between lawyers and their clients.

Firstly, the ECJ noted that Member States are responsible for laying down in their domestic law the conditions under which a person subject to the law may refuse to provide information on the ground of professional secrecy.

Moreover, each Member State shall guarantee the strengthened protection of communications between lawyers and their clients.

In this respect, the Luxembourg general tax law⁸⁹ sets out a carve-out for lawyers in respect of information entrusted to them in the exercise of their profession with an exception for legal advice in corporate and tax law⁹⁰.

However, the ECJ observed that, by excluding the content of advice given by lawyers in corporate and tax matters from the strengthened protection of legal professional privilege, Luxembourg general tax law rendered that protection devoid of its substance in that branch of law.

Moreover, the ECJ relied on a precedent case⁹¹, where it ruled, on 8 December 2022, that the obligation of a lawyer who designs a cross-border arrangement to disclose his assessment of the content of the cross-border arrangement as well as the fact of his having been consulted, entails an interference with the right to respect communications between lawyers and their clients as guaranteed by the Charter.

Therefore, in the case at hand, the ECJ ruled that the legal advice provided by a law firm with a view to setting up an investment structure under corporate law fell within the scope of the protection of lawyer-client privilege guaranteed by the Charter and that the LTA's injunction decision constituted an interference with the right to respect communications between the lawyer and his client.

The case will now return to the Administrative Court, which will have to conclude taking into account the decision of the ECJ.

⁸⁴ External Source: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:62023CJ0432>.
⁸⁵ [Directive 2011/16 of 15 February 2011 on administrative cooperation in the field of taxation](#).
⁸⁶ Article 17, paragraph 4 of the DAC.
⁸⁷ [Article 7 of the Charter of Fundamental Rights of the European Union](#).

⁸⁸ [Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950](#).
⁸⁹ [Article 177, paragraph 2 of the Abgabenordnung of 22 May 1931](#), as amended.
⁹⁰ Unless such disclosure of information would expose the client to a risk of criminal prosecution. [CJUE, gde ch., 8 December 2022, aff. C-694/20, Orde van Vlaamse Balies and others](#).
⁹¹

UPDATE OF THE EU LIST OF NON-COOPERATIVE TAX JURISDICTIONS

8 October 2024⁹²

On 8 October 2024, the Council of the European Union (the "**Council**") released its conclusions on the revised European list of non-cooperative jurisdictions for tax purposes (the "**EU list of non-cooperative tax jurisdictions**").

Since December 2017, the Council has provided a list of jurisdictions which do not comply with international tax standards and, as from 2019, the Council has encouraged EU Member States to take defensive measures and apply administrative and legislative measures towards such jurisdictions.

In terms of defensive measures, Luxembourg opted for a derogation to the operating expenses deductibility principles regarding interest and royalties paid or due by a Luxembourg taxpayer to an entity located in a country or territory mentioned in the EU list of non-cooperative tax jurisdictions.

The Luxembourg law of 10 February 2021 provides that interest or royalties paid or owed would not be deductible for corporate income tax purposes when the following conditions are simultaneously met:

1. the entity to which the interest or royalties are paid or due is established in a country or territory included in the latest applicable version of the EU list of non-cooperative tax jurisdictions;
2. the entity to which the interest or royalties are paid or due is an affiliated undertaking within the meaning of article 56 of the Luxembourg income tax law (the "**LITL**");
3. the entity to which the interest or royalties are paid or due is a corporation within the meaning of article 159 LITL (i.e., partnerships are excluded from the scope).

As amended on 8 October 2024, the new EU list of non-cooperative tax jurisdictions comprises the following jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau,

Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu. As a consequence, the deduction of interest and royalties due to these 11 jurisdictions may only be denied, under the conditions described above, as from 1 January 2025.

Following the revision, Antigua and Barbuda are removed from the EU list of non-cooperative tax jurisdictions. The next revision of the list is scheduled for February 2025.

⁹² External Source:
[https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/.](https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/)

UPDATE ON GLOBAL MINIMUM TAXATION (COMMONLY NAMED "PILLAR 2")

8 October 2024⁹³

In the Luxembourg Legal Update of July 2024, we presented bill n°8396 amending the law of 22 December 2023 on the global minimum taxation (the "**Pillar 2 Law**"). The amendments aim to clarify certain aspects of the Pillar 2 Law and to incorporate some technical aspects of the OECD commentaries as well as the OECD administrative guidance published over the course of 2023.

On 8 October 2024, the Council of State has released its opinion on the bill and did not raise any formal objections⁹⁴. The Council's findings will be considered, but it is anticipated that the legislative process will progress without significant hindrance. The endorsement from the Council of State marks a crucial step towards the final enactment of the amendments, which seek to enhance the clarity and precision of the Pillar 2 Law. The amendments are instrumental in aligning the national legislation with the technical nuances and administrative guidelines of the OECD.

⁹³ External Source: <https://wdocs-pub.chd.lu/docs/exped/0149/114/299148.pdf>.

⁹⁴ Avis du Conseil d'Etat du 8 October 2024: <https://wdocs-pub.chd.lu/docs/exped/0149/114/299148.pdf>.

AMENDMENT PROPOSED BY COUNCIL OF STATE FOR BILL N°8388

8 October 2024⁹⁵

In the Luxembourg Legal Update of July 2024, we presented bill n°8388 submitted by the Luxembourg Government on 23 May 2024, which aims to introduce, among others, an option for taxpayers to opt out of the partial (50%) exemption regime related to a dividend. This new option is granted via amendment to article 115, 15a of the Luxembourg income tax law ("**LITL**") and in its preparatory work the legislator specifies that "*the notion of participation used in the amendment is to be considered as a whole and not in an isolated manner as regards the securities of which it is composed*".

The Council of State has now formally objected to the amendment and requested further clarification from the legislator on the concept of participation. In a published opinion of 8 October 2024⁹⁶, the Council of State indicates that issues related to the principle of legal certainty may arise from the current wording.

⁹⁵ External Source: <https://wdocs-pub.chd.lu/docs/exped/0149/114/299146.pdf>.

⁹⁶ Avis du Conseil d'Etat du 8 octobre 2024: <https://wdocs-pub.chd.lu/docs/exped/0149/114/299146.pdf>.

DAC 9 PROPOSAL – RATIONALISING TAXPAYER'S FILING OBLIGATION UNDER PILLAR 2

28 October 2024⁹⁷

On 28 October 2024, the European Commission ("EC") proposed an 8th amendment to the Directive on administrative co-operation in the field of taxation (Directive 2011/1/EU)⁹⁸ ("DAC 9"). The proposal aims to reduce the administrative burden of constituent entities ("CE") which have filing obligations under Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU⁹⁹ ("Pillar 2"), thereby streamlining the filing process.

Essentially, DAC 9 will allow for a single and centralised return for all multinational enterprises ("MNEs") instead of requiring each CE within the MNE to file separate top-up tax information returns. In practice, the ultimate parent entity (or a designated filing entity) of the group will be charged with the filing obligation in the jurisdiction where it is established.

Directly related to the Pillar 2 framework, DAC 9 creates:

- a system for tax authorities to exchange information with each other; and
- a standard form based on the OECD and the G20's Inclusive Framework for MNEs and large-scale domestic groups to report tax-related information.

Adhering to the EU's goal of simplifying and rationalising reporting requirements, DAC 9 is expected to be implemented by Member States by 31 December 2025. MNEs must file their first top-up tax information return by 30 June 2026 and tax authorities should exchange this data by 31 December 2026.

⁹⁷ External Sources: https://taxation-customs.ec.europa.eu/news/administrative-cooperation-taxation-2024-10-28_en (Press release); <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2024:497:FIN> (DAC 9 Proposal).

⁹⁸ Proposal for a Council Directive amending Directive 2011/16/EU on administrative co-

operation in the field of taxation: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2024:497:FIN>. Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for MNE and LSDG in the Union: <https://eur-lex.europa.eu/eli/dir/2022/2523/oj>.

AGREEMENT REACHED ON THE VALUE ADDED TAX RULES INTO THE DIGITAL AGE.

5 November 2024¹⁰⁰

On 8 December 2022, the European Commission presented the value added tax ("VAT") in the digital age package (the "ViDA"), which aims to address VAT losses and challenges in VAT raised by the development of the platform economy. The package proposes to modernise the VAT system among the Member States of the European Union (the "EU") through a digital transition. The agreement covers three acts, including a directive¹⁰¹, a regulation¹⁰² and an implementing regulation¹⁰³.

To this extent, the package introduces new requirements pertaining to (i) e-invoicing, (ii) single VAT registration and (iii) VAT obligations for the platform economy sector.

While Member States were unable to reach an agreement on the current compromise text of the proposed ViDA package at the meeting of the Economic and Financial Affairs Council ("ECOFIN") on 21 June 2024, the EU has finally reached an agreement on the package's proposal on 5 November 2024.

ViDA measures include three pillars which will be implemented gradually:

- transition to real-time digital declaration based on electronic invoicing for cross-border operation by 2030;
- responsibility of online platforms to pay VAT on short-term accommodation and passenger transport services where these service providers do not charge VAT¹⁰⁴;
- provision for a single VAT registration with the improvement of the online VAT one-stop-shops¹⁰⁵

model to avoid businesses having to register for VAT in every Member State in which they operate.

Following this recent agreement, the European Parliament should be consulted on the agreed text. The text would then need to be adopted by the Council before entering into force.

¹⁰⁰ External Source:
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5666.

¹⁰¹ [Proposal for a Council directive amending directive 2006/112/EC as regards VAT rules for the digital age.](#)

¹⁰² [Proposal for a Council regulation amending regulation \(EU\) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age.](#)

¹⁰³ [Proposal for a Council implementing regulation amending implementing regulation \(EU\) No 282/2011 as regards information requirements for certain VAT schemes.](#)

¹⁰⁴ This measure should be applicable as of 1 July 2028 on a voluntary basis.

¹⁰⁵ Building on the existing VAT One Stop Shop model for shopping-commerce companies.



LITIGATION AND DISPUTE RESOLUTION



LITIGATION AND DISPUTE RESOLUTION

THIRD-PARTY ATTACHMENT PROCEEDINGS AND LAWYERS' FEES¹⁰⁶

5 June 2024

A limited partnership issued a bill of fees for the legal services performed and initiated third-party attachment proceedings against its defaulting debtor by virtue of an enforceable title.

The court pointed out that interim order is a title used for the conservatory phase but also for the validation of the attachment itself. As interim orders do not have the authority of res judicata in the main proceedings, the judgment validating attachment proceedings filed based on interim orders has effect only as it stands. In the event that the interim order is revoked by the judge sitting on the merits, the judgment validating the attachment will be subject to revision.

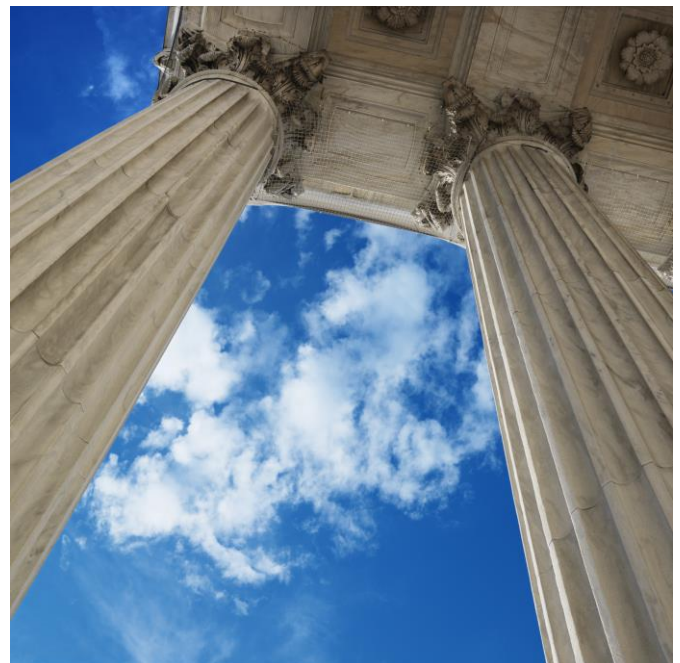
In the case at hand, the attaching creditor had a payment order and requested that the attached debtor be ordered by the judge sitting on the merits to pay the amount of the claim at hand.

As regards the assessment of the merits of the lawyer's fees, the court recalled, interestingly, that the lawyer's right to fair remuneration is conditional upon the importance of the work to the client. So that fees are due, they must relate to services of a professional nature useful to the client or that could have been useful. The result of the service rendered does not only depend on the action of the lawyer. It cannot therefore be the only criterion in the determination of fees. Neither the importance of the lawyer's work, nor the time devoted by him in the handling of a case can be used as the sole criterion of appreciation. The service provided to the client depends on the efficiency of this work and the importance of the interests at stake. The lawyer's personal authority must also come

into play. Finally, the financial capacity of the client must be taken into consideration.

Regarding the work of the lawyer, there are two kinds of activities. There are intellectual acts, which use creative imagination, knowledge and talent of the litigant and the acts which, for any lawyer, are administrative or routine acts.

The former weigh more heavily in the assessment of fees. The latter justify unquestionably lower fees, because their impact on the service rendered is usually less important.



¹⁰⁶ Link (external source): <https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement>

[%20Luxembourg%20civil/17_Chambre/2024/2024-0605_TAL17_TAL-2023-02537_pseudonymis%C3%A9-accessible.pdf](https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/Tribunal%20d%27arrondissement%20Luxembourg%20civil/17_Chambre/2024/2024-0605_TAL17_TAL-2023-02537_pseudonymis%C3%A9-accessible.pdf)



GLOSSARY



GLOSSARY

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

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

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

"**BCL**": Luxembourg Central Bank, *Banque centrale du Luxembourg*

"**BRRD**": Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (as amended)

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

"**CPDI**": Council for the Protection of Depositors and Investors, *Conseil de protection des déposants et des investisseurs*

"**CRD**": Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (as amended)

"**CRD6**": Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks

"**CRR**": Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (as amended)

"**CRR3**": Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor

"**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)

"**ESG**": Environmental, social and governance

"**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)

"**FIU**": Financial intelligence unit

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

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

"**ITS**": Implementing technical standards

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

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

"**ML/TF**": money laundering and terrorism financing

"**NCA**": National competent authority

"**NIS2 Directive**": Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union (as amended)

"**NPL Directive**": Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers

"**Payment Services Law**": Luxembourg law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems (as amended)

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

"**RCS**": Luxembourg register of commerce and companies, *Registre de Commerce et des Sociétés Luxembourg*

"**Resolution Law**": Luxembourg law of 18 December 2015 on the resolution, reorganisation and winding-up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes (as amended)

"**RTS**": Regulatory technical standards

"**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

"**SRB**": Single Resolution Board

"**SRF**": Single Resolution Fund

"**SRMR**": Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund (as amended)

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

"**UCITS**": Undertakings for Collective Investment in Transferable Securities

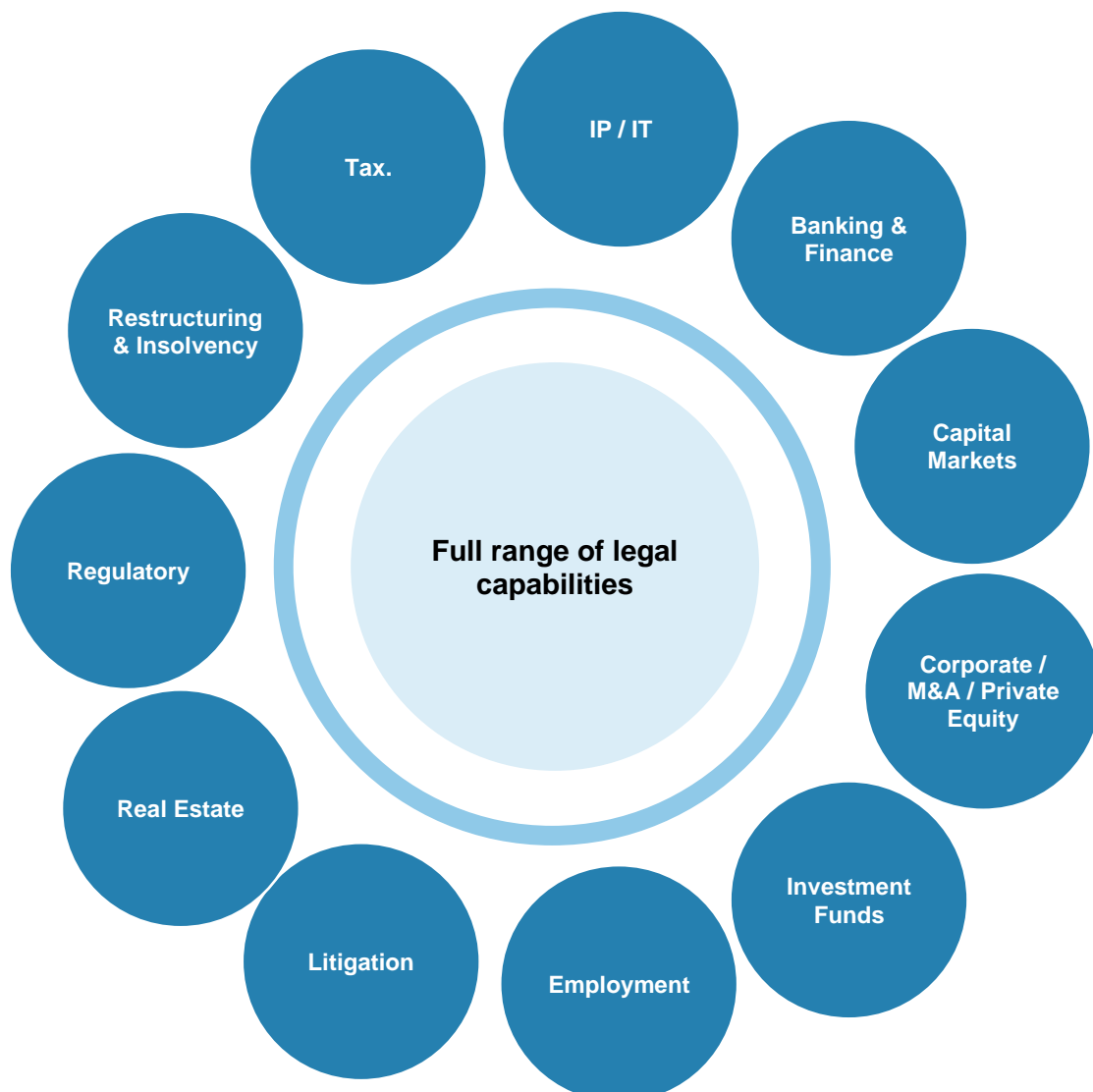
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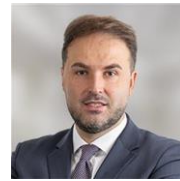
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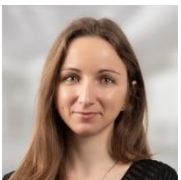
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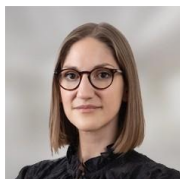
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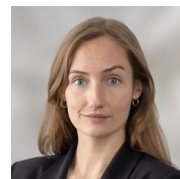
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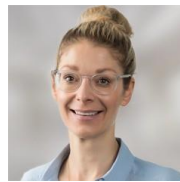
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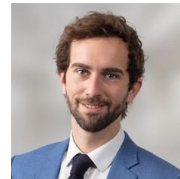
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