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Luxembourg Insights

Spring 2024

Simmons & Simmons Luxembourg LLP

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Asset Management &
Investment Funds



CSSF Published Reform of Circular CSSF 02/77 on NAV Calculation Errors and Investment Rule Breaches

The Commission de Surveillance du Secteur Financier (CSSF) has issued Circular CSSF 24/856 addressing investor protection regarding NAV calculation errors, non-compliance with investment rules, and other errors. This circular replaces Circular CSSF 02/77 from 2002, acknowledging the need for an update given regulatory and market shifts.

The new circular applies to UCITS, UCI Part II, SIFs, SICARs, ELTIFs, MMFs, EuVECAs, and EuSEFs for which the CSSF is the competent authority in accordance with the applicable regulations.

In addition to NAV calculation errors and investment rule breaches, the circular also covers other errors such as those related to cost/fee payments and swing pricing at the UCI level. It also establishes specific tolerance thresholds for NAV calculation errors based on fund types.

The new circular also provides guidelines for addressing errors within UCIs. It consolidates CSSF guidance, offers additional insights on topics like active vs. passive breaches, and integrates CSSF administrative practices.

The text of Circular CSSF 24/856 is available in the link below (*Only available in French. An English version of the circular will be published in the short term.*)

For more information, please click [here](#).

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ESAs Initiate Voluntary Dry Run Exercise to Prepare Industry for Next Stage of DORA Implementation

The European Supervisory Authorities (EBA, EIOPA, and ESMA – collectively ESAs) have announced plans to initiate a voluntary exercise in May aimed at gathering information on contractual arrangements regarding the use of ICT third-party service providers by financial entities.

This initiative is in preparation for the implementation phase of the Digital Operational Resilience Act (DORA), slated to commence in 2025. Under DORA, financial entities will be required to maintain registers of information concerning their utilization of ICT third-party providers.

As part of this exercise, the ESAs will offer feedback on data quality to participating financial entities, conduct workshops, and address frequently asked questions.

The financial entities is expected to submit their registers of information to the ESAs through their competent authorities between July 1st and August 30th.

For more information, please click [here](#).

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Luxembourg Regulators Introduce New Measures to Enhance Resilience of GBP Liability-Driven Investment Funds

The Commission de Surveillance du Secteur Financier (CSSF) published a final set of macroprudential measures to ensure the resilience of GBP Liability-Driven (LDI) funds managed by Luxembourg Alternative Investment Fund Managers (LU AIFMs). The measures codify the existing yield buffer and aim to reduce the probability of these funds contributing to future crises.

Key aspects of the final rules include:

- GBP LDI funds must withstand a minimum of a 300 bps increase in UK yields before their NAV turns negative;
- GBP LDI funds must calculate their monthly average yield buffer at the end of each month and report it to the CSSF; and
- For flexibility, one of the last four monthly reporting observations can be below 300 bps in exceptional circumstances.

After assessing the conditions and appropriateness of the proposed measures, ESMA invited other competent authorities managing such funds to adopt similar measures.

For more information, please click [here](#).

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A Roadmap to Implementing the Overseas Funds Regime in the UK

On May 2, 2024, the UK Financial Conduct Authority (FCA) and HM Treasury have jointly issued released a roadmap detailing the implementation of the Overseas Funds Regime (OFR), as established by the Financial Services Act 2021. This framework aims to facilitate the sale of overseas investment funds to UK retail investors, particularly focusing on European Economic Area (EEA) funds authorized under the UCITS Directive.

The OFR will replace the Temporary Marketing Permissions Regime (TMPR) by the end of 2026.

Following the timeline presented in the roadmap, in September 2024, the OFR gateway should open for non-TMPR funds, which should apply for recognition.

The roadmap also outlines various requirements for OFR funds, including operational rules, retail disclosure, sustainability disclosure requirements, and ongoing data collection.

For more information, please click [here](#).

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Asset Management &
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ESMA Guidelines on ESG and Sustainability Terms in Fund Names

Following a public statement on 14 December 2023, the European Securities and Markets Authority (ESMA) published final Guidelines for the use of ESG and sustainability-related terms in fund names. To use these terms, at least 80% of investments must meet environmental, social, or sustainable investment objectives. The Guidelines also specify exclusion criteria:

- Environmental, Impact, and Sustainability Terms: Exclusions follow Paris-aligned Benchmarks (PAB) rules; and
- Transition, Social, and Governance Terms: Exclusions follow Climate Transition Benchmarks (CTB) rules.

Moreover, funds named with transition, impact, or sustainability terms must meet additional asset-level requirements.

These Guidelines should apply to EU UCITs and AIFS and on AIFM marketing in the the EU.

Next Steps

1. The Guidelines will be translated into all EU languages and published on ESMA's website;
2. Competent authorities must notify ESMA within two months of publication whether they comply, intend to comply, or do not intend to comply; and
3. The Guidelines will apply to new funds three months after publication, and existing funds will have an additional three months to comply.

For more information, please click [here](#).

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The CSSF updates requirements for declarations of honour regarding professional assessment

The Commission de Surveillance du Secteur Financier (CSSF) has updated its declarations of honour for natural and legal persons, reflecting changes in its administrative practices for assessing professional standing and experience. These updates are not related to credit institutions' supervision procedures.

Key Updates:

1. Submission Format:

- Declarations must be signed and dated, submitted either on paper with a handwritten signature or electronically with a qualified electronic signature

2. Content Clarification:

- Declarants must confirm:
- No significant role in entities under criminal investigation or sanction.
- Submission of criminal records from all countries of residence in the past five years or stating if unavailable.
- All submitted documents are complete, accurate, and up-to-date.
- Copies of documents are true and identical to originals.

3. Document Requirements:

- Original documents or certified copies are no longer required, except in exceptional cases.
- Updated documents at the end of the assessment are not required if no changes have occurred.

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The CSSF updates requirements for declarations of honour regarding professional assessment

Implementation:

These updates will be effective from 1 July 2024. Declarants must keep the CSSF informed of any changes to their declarations.

These revisions aim to streamline processes, reduce reliance on physical documents, and ensure consistency and accuracy in declarations.

For more information, please click [here](#).

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LuxCMA Guidance Note on Accounting for Structured Products

On 21 February 2024, the Luxembourg Capital Markets Association (the LuxCMA) has published a guidance note for board members regarding accounting for structured products. The guidance note provides insights on the different valuation frameworks of underlying assets.

For more information, please click [here](#).

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Circular CSSF 24/853 on the revised long form report for investment firms

On 6 February 2024, the CSSF published Circular CSSF 24/853, revising the long form report (LFR) framework for investment firms and altering the application scope of Circular CSSF 03/113.

The revision aims to align the LFR with the CSSF's supervisory focus, emphasising central administration, internal governance, risk management, and compliance with MiFID and AML/CFT regulations. Investment firms are now required to provide annual self-certifications on key aspects of Circular CSSF 20/758 and MiFID regulations via a self-assessment questionnaire (SAQ).

The firms' approved statutory auditors (réviseur d'entreprises agréé) must provide reports for CSSF to assess compliance with relevant MiFID and AML/CFT regulations. The reports are to be submitted online through the CSSF's eDesk portal. The revised framework will be implemented gradually, with all investment firms required to submit the revised LFR for financial years ending after 31 December 2023.

For more information, please click [here](#).

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Communiqué regarding the FAQ for UCIs investing in virtual assets

On 22 February 2024, the CSSF updated its FAQ on virtual assets for Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIFs).

The CSSF reiterated that UCITS investing in virtual assets are prohibited for non-professional customers and pension funds, but digital assets that meet the Markets in Financial Instruments Directive (**MiFID**) financial instruments criteria are not considered virtual assets and are eligible for investment within the usual UCITS regime. For AIFs, the CSSF clarified that they can invest in virtual assets, both directly and indirectly, under certain conditions, including compliance with regulatory framework and marketing only to well-informed investors. The CSSF also emphasised the importance of prudential supervision, regulatory compliance, and transparency in communication with investors.

For more information, please click [here](#).

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EBA publishes its final Guidelines on national lists or registers of credit servicers

On 5 March 2024, the EBA published its final Guidelines on national lists or registers of credit servicers, aimed at Competent Authorities managing these lists or registers.

The Guidelines detail the content of the lists or registers, their accessibility, and deadlines for updates, with the intention of facilitating borrowers' access to information on complaint handling procedures. The lists or registers should include basic information about credit servicers and should be accessible 24/7 on the website of the competent authority or another electronic tool, free of charge and without requiring user registration. After a public consultation, the EBA clarified various provisions and added minor requirements, like making the lists or registers downloadable and available in English. The Guidelines were developed in support of Article 9 (1) subparagraph 1 of Directive 2021/2167 on credit servicers and credit purchasers.

For more information, please click [here](#).

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ICMA publishes briefing note on the ESMA proposals for CSDR penalties

On 11 March 2024, the International Capital Market Association (the ICMA) published a note of the ESMA's proposal to significantly increase penalty rates for settlement fails under the EU Central Securities Depositories Regulation (CSDR).

ICMA argues that the proposed changes are disproportionate and unjustified, given the recent improvements in settlement efficiency in the EU, and could undermine the EU's standing as a global financial marketplace by incentivising adverse market behaviour. ICMA suggests that the US Treasury Markets Practices Group's penalty framework could serve as a better model, as it is designed to discourage poor settlement behaviour in low interest rate environments.

For more information, please click [here](#).

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EBA publishes final draft technical standards on complaints handling for issuers of asset referenced tokens

On 13 March 2024, the EBA published the final draft of the Regulatory Technical Standards (RTS) outlining the requirements, templates, and procedures for handling complaints from issuers of asset reference tokens (ARTs).

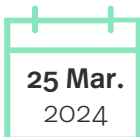
Fulfilling its mandate conferred under the Markets in Crypto-Assets Regulation (MiCA), the EBA developed the RTS in cooperation with ESMA detailing a complaints management policy, information provision to ART holders, and procedures for investigating complaints.

Following a public consultation, the EBA made amendments to align more closely with ESMA's RTS on complaints handling for crypto asset service providers.

For more information, please click [here](#).

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ESMA launches the third consultation under MiCA

On 25 March 2023, ESMA initiated a third consultation package under the Markets in Crypto-Assets Regulation (MiCA).

ESMA is seeking input on proposed rules and guidelines covering:

- Detection and reporting of suspected market abuse in crypto-assets
- Policies and procedures, including the rights of clients, for crypto-asset transfer services
- Suitability requirements for certain crypto-asset services and format of the periodic statement for portfolio management
- ICT operational resilience for certain entities under MiCA

The consultation is open until **25 June 2024**, which will be followed by the submission of the draft technical standard to the European Commission by **30 December 2024** at latest.

For more information, please click [here](#).

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ESMA finalises first rules on crypto-asset service providers

On 25 March 2024, ESMA finalised its first rules on crypto-asset providers.

The first Final Report provided under the Market in Crypto- Asset Regulation (MiCA) includes proposals on :

- Information required for the authorisation of CASPs,
- Information required where financial entities notify their intent to provide crypto-asset services,
- Information required for the assessment of intended acquisition of a qualifying holding in a CASP, and
- How CASPs should address complaints.

For more information, please click [here](#).

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ESMA consults on rules for External Reviewers of EU Green Bonds

On 26 March 2024, the ESMA launched a consultation on draft Regulatory Technical Standards (RTS) related to the registration and supervision of external reviewers under the EU Green Bond Regulation (EuGB).

The ESMA aims to standardise registration requirements and contribute to developing a level playing field through lower entry costs for applicants.

These relate to:

- Senior management and analytical resources;
- Sound and prudent management, including avoidance of conflicts of interest;
- Knowledge and experience of analysts, and;
- The outsourcing of assessment activities, forms, templates, and procedures for the provision of registration information.

Relevant investors, issuers and trade association are encouraged to provide their feedback on the consultation until June 2024.

For more information, please click [here](#).

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Communiqué regarding new reporting procedure for ICT-related incident reporting according to Circular CSSF 24/847

On 27 March 2024, the CSSF issued further guidance on the submission procedure for ICT-related incident notifications under Circular CSSF 24/847, which applies as of 1 April 2024.

Notifications can be submitted via a dedicated procedure on the CSSF eDesk Portal or through an Application Programming Interface (API) solution using the S3 protocol, both of which require specific user roles to be assigned by the Supervised Entities' Advanced User in eDesk. To assist with the submission process, a detailed user guide on Major ICT-related Incident Notification is available on the eDesk Portal, and the CSSF encourages all Supervised Entity hereinafter to set up the necessary eDesk accounts in advance to avoid connection issues. The authority oversees a wide range of financial entities, including:

- Credit institutions;
- Financial sector professionals;
- Management companies;
- Various fund managers and investment vehicles, pension funds;
- Securitisation undertakings;
- Payment and electronic money institutions;
- Crowdfunding service providers.

For more information, please click [here](#).

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ESMA consults on possible amendments to the Credit Rating Agencies Regulatory Framework

On 2 April 2024, ESMA launched a consultation on proposed amendments to Commission Regulation (EU) 477/2012 and to Annex I of the Credit Rating Agencies Regulation (CRAR).

The proposals aim to ensure a better incorporation of ESG factors in the credit rating methodologies and subsequent disclosure to the public, as well as to enhance transparency and credibility in the credit rating process.

In particular, they aim to:

- Ensure that the relevance of ESG factors within credit rating methodologies is subject to systematic documentation;
- Enhance disclosures on the relevance of ESG factors in credit ratings and rating outlooks;
- Deliver a more robust and transparent credit rating process through the consistent application of credit rating methodologies.

For more information, please click [here](#).

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EBA publishes its final Guidelines on resubmission of historical data under the EBA reporting framework

On 9 April 2024, the EBA published its final Guidelines on the resubmission of historical data under its reporting framework, providing a common approach for financial institutions to correct errors or inaccuracies in previously reported data.

The Guidelines, developed with the principle of proportionality, aim to limit the number of historical periods subject to resubmission and clarify circumstances where resubmission may not be required. After a public consultation period, the EBA adjusted the precision requirement in its filing rules for monetary data, reducing the number of resubmissions, with this new requirement effective from 1 April 2025.

For more information, please click [here](#).

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EBA publishes final Guidelines on the application of the group capital test for investment firm groups

On 11 April 2024, the EBA published its final Guidelines on the application of the group capital test for investment firm groups, aiming to harmonise criteria and ensure a level playing field across the EU.

The Guidelines assist Competent Authorities in assessing the simplicity of group structures and the significance of risk posed to clients and the market, with a simplified assessment for groups comprising only small, non-interconnected investment firms. The Guidelines include both quantitative and qualitative criteria, detailing aspects like the number of undertakings within a group, the clarity of ownership structure, and providing a methodology for assessing the adequacy of own funds requirement of third country undertakings of EU groups. The EBA developed these Guidelines under Article 16 of its founding Regulation, with the group capital test set out in Article 8 of Regulation (EU) 2019/2033.

For more information, please click [here](#).

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Voluntary trial exercise for the collection of information records under DORA

On the 17 April 2024, the ESAs initiated a voluntary exercise to gather records, which will help prepare for the enforcement and reporting of information registers under DORA.

This exercise will involve collecting data from participating financial institutions through their competent authorities, who will then share this data. The ESAs will assist the participating institutions in creating their registers, testing the reporting mechanism, resolving data quality issues, and enhancing their internal processes and the quality of their registers, and will offer feedback on data quality.

For more information, please click [here](#).

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ESAs consult on technical standards for joint examination teams under DORA

On 18 April 2024, the ESAs initiated a public consultation on draft Regulatory Technical Standards (RTS) for oversight activities under the Digital Operational Resilience Act (DORA).

The primary goal will be to define the composition, tasks, and working arrangements of joint examination teams. Indeed, the draft RTS aims to ensure efficient and effective oversight of critical ICT third-party service providers (CTPPs), considering the high technical complexity and limited expertise availability.

Stakeholders are invited to submit comments on the draft RTS by 18 May 2024, with the ESAs planning to submit these standards to the European Commission by 17 July 2024, and the DORA and related RTS will apply from 17 January 2025.

For further information, please consult our previous publications and don't hesitate to reach out to our team.

Sources:

- [Digital operational resilience for the financial sector and beyond | Simmons & Simmons \(simmons-simmons.com\)](#)
- [The Digital Operational Resilience Act | Simmons & Simmons \(simmons-simmons.com\)](#)
- [Preparing for DORA | Simmons & Simmons \(simmons-simmons.com\)](#)
- <https://www.eba.europa.eu/publications-and-media/press-releases/esas-consult-technical-standards-joint-examination-teams-under-dora>

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Adoption of the AML/CTF package

On 24 April 2024, the European Parliament adopted the AML Package encompassing the sixth Anti-Money Laundering Directive (AMLD 6), the EU Single Rulebook Regulation (AMLR), and the Anti-Money Laundering Authority Regulation (AMLAR).

Further details on the changes resulting from the AML Package will be provided by the CSSF once the legislative instruments are formally adopted and published in the Official Journal of the European Union.

For more information, please click [here](#).

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Sanctions

Since February 2024, the CSSF announced that it has imposed administrative penalties for:

- non-compliance with **professional obligations** related to governance and IT organisation ([here](#))
- non-compliance with a **letter of injunction** following significant delays in the submission of the annual closing documents ([here](#))
- non-compliance with **depository obligations** ([here](#))
- non-compliance with **AML/CFT professional obligations** ([here](#))
- non-compliance with the notification requirements on access to the activity of credit institutions and the prudential supervision of credit institutions (CRD) ([here](#))
- professional **misconduct and negligence** which have led to the infringement of the legal and regulatory requirements relating to statutory audits ([here](#))
- non-compliance with the **obligation of registration** as alternative investment fund manager ([here](#))
- **delays in the information** regarding the changes of the direct and indirect shareholding structures of an investment firm ([here](#))

On 22 March 2024, ESMA published a sanction for breaches of the Credit Rating Agencies Regulation (CRA Regulation) ([here](#))



Bill of law number 8296 on merger control

On 22 March 2024, the Luxembourg Chamber of Commerce provided a positive opinion on the draft bill of law number 8296 on the control of concentration between companies (the Bill), taking the said Bill one step closer to its approval by the Parliament.

As a reminder, the Bill was first submitted to the Luxembourg Parliament on 23 August 2023.

Once enacted, the new law will implement an ex ante merger control regime, marking a substantial change in Luxembourg's approach to business concentrations.

The proposed law will empower the Luxembourg Competition Authority to assess in advance whether a corporate concentration significantly hampers competition in Luxembourg. This applies to mergers, acquisitions, or joint ventures that meet specific turnover thresholds in Luxembourg. In particular, the total combined turnover in Luxembourg of all the undertakings concerned must exceed €60 million, and at least two of the undertakings concerned must individually exceed €15 million in turnover in Luxembourg.

Entities gaining control or involved in mergers or joint ventures will be required to notify the Luxembourg Competition Authority before completion. The Authority will then conduct a two-phase review process. In Phase I, it will decide within 25 business days whether the contemplated transaction falls within the scope of the law and whether it should be authorised. If there are serious doubts about the transaction's impact on competition, a more detailed examination, or Phase II, will be initiated.



Bill of law number 8296 on merger control

The law also includes provisions for certain exemptions. Transactions that fall within the scope of the EU Merger Regulation are excluded from the scope of the Bill, except for European Commission referrals to the Luxembourg Competition Authority. Certain activities, such as internal restructurings and acquisitions by specific financial entities, are also exempted.

It is worth noting that the Bill foresees significant sanctions if the obligation to notify has not been complied with, or if the transaction has been completed without authorisation (i.e. fines of up to 10% of the total worldwide turnover of the companies concerned in the last completed financial year).

Furthermore, if a concentration has already been implemented and is declared incompatible, or if a concentration has been implemented in breach of a condition attached to a decision, the Luxembourg Competition Authority may order the undertakings concerned to dissolve the concentration in order to restore the pre-merger situation.

The Bill is expected to be adopted in the coming weeks or months and will enter into force four months after its publication in the Luxembourg official journal.

The law will not have retroactive effect and will not apply to mergers or joint ventures that have already been agreed, announced, or completed before the law enters into force.

This new law represents a significant step in Luxembourg's regulatory landscape, ensuring that business concentrations do not unfairly restrict or distort competition

For more information, please click [here](#).





EU rules on greenwashing and deceptive environmental claims

On 26 March 2024, the Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information amending the Unfair Commercial Practices Directive and the Consumer Rights Directive (the Directive) entered into force, 20 days after its publication in the European Union Official Journal on 6 March 2024.

The Directive provides for the first time at the European level a proper definition in its article 1 of the term “environmental claims” (greenwashing) as any message or representation which is not mandatory under Union or national law, in any form, including text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time.

The Directive aim to protect consumers rights regarding greenwashing and therefore prohibits several practice viewed as unfair in every circumstance such as:

generic environmental claims that do not match a recognized environmental performance related to the claim;



EU rules on greenwashing and deceptive environmental claims

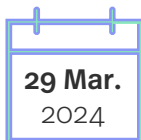
1. environmental claims that apply to the entire product or the company's overall business, when they only pertain to one aspect of the product or a specific activity of the company;
2. claims that assert, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions;
3. concealing from the consumer the fact that a software update will negatively affect the operation of goods with digital elements;
4. sustainable development labels that are not based on a certification system or have not been established by public authorities.

The Directive also foresees new deceptive commercial practices especially regarding the allegations of future environmental performance not proven by established facts and data. This provision also align with a general aim to provide more information to consumers, especially in precontractual area.

The text must be transposed by Member States before 27 March 2026. The provisions shall be applicable as from 27 September 2026.

For more information, please click [here](#).





Bill of Law number 8370 on the transposition of the Corporate Sustainability Reporting Directive

On 29 March 2024, a bill of law (the CSRD Bill) to transpose the Corporate Sustainability Reporting Directive 2022/2464 of the European Parliament and the European Council of 14 December 2022 (CSRD), has been submitted to the Luxembourg Parliament.

As a reminder, CSRD, which came into force on 5 January 2023, seeks to improve the quality, comparability, and reliability of sustainability information disclosed by certain EU and non-EU companies with significant activities in the EU. Member States have up to 6 July 2024 to transpose CSRD into national law.

The CSRD Bill will amend several Luxembourg laws that regulate the accounting and reporting obligations of companies, including the laws on the register of commerce and companies, commercial companies, and the financial sector. The aim is to align these laws with the CSRD's requirements.

The CSRD Bill broadens the scope of companies required to report on sustainability matters. It applies to large listed and non-listed companies, listed small and medium enterprises, parent companies of large groups, and third-country companies listed in the EU that exceed certain thresholds. These companies will need to include sustainability information in their management reports, using the so-called "double materiality" approach whereby a given company must understand its impact on sustainability matters and how sustainability matters affect the company's development, performance, and position.



Bill of Law number 8370 on the transposition of the Corporate Sustainability Reporting Directive

The CSRD Bill also provides for a gradual implementation, starting with large listed companies from 1 January 2024, and ending with non-EU companies having EU subsidiaries or branches from 1 January 2028.

The CSRD Bill confirms that the Commission de Surveillance du Secteur Financier (CSSF) will be the competent authority for the control of non-financial, sustainable information included in the annual financial report. Managers of in-scope companies will risk being subject to criminal sanctions in the event of a breach of their sustainability obligations.

The CSRD Bill is expected to be adopted in the upcoming months, ahead of the CSRD transposition deadline of 6 July 2024.

For more information, please click [here](#).





Adoption of Corporate Sustainability Due Diligence Directive at the EU level

On 24 May 2024, the European Council finally approved a watered down version of the Corporate Sustainability Due Diligence Directive (CS3D).

The CS3D aims to bolster the protection of human rights and the environment by setting due-diligence obligations for large companies within the EU and those operating in the EU market. These requirements focus on mitigating adverse impacts related to human rights abuses and environmental degradation across their entire supply chains, encompassing both upstream and downstream activities. The CS3D represents a crucial advancement in corporate accountability, ensuring that environmental sustainability and human rights are central to business operations.

The CS3D provides that large companies, roughly defined as those with over 1,000 employees and a net worldwide turnover exceeding €450 million, implement due diligence processes to identify, prevent, and mitigate potential human rights violations and environmental harm. The final text no longer foresees lower thresholds for specific high-impact sectors, such as textiles and agriculture. Additionally, non-EU companies generating significant turnover within the EU are also covered under the CS3D, which also includes mechanisms for civil liability, enabling affected parties to claim damages directly from companies responsible for harm.



Adoption of Corporate Sustainability Due Diligence Directive at the EU level

Penalties for non-compliance are stringent, including fines up to 5% of a company's net turnover and public "naming and shaming." The CS3D also requires in-scope companies to adopt transition plans aligning their business operations with climate goals, particularly those set out in the Paris Agreement. This involves not only addressing direct environmental impacts but also ensuring broader corporate strategies contribute to limiting global warming to 1.5°C. These measures aim to integrate sustainability deeply into corporate governance and operational practices.

The CS3D will need to be transposed into national laws within 2 years after it enters into force.

For more information, please click [here](#).



EHDS

On 24 April 2024, the European Parliament adopted European Health Data Space (EHDS), a regulation aiming at enhancing health data access throughout EU Member States to improve healthcare in Europe and support research and innovation activities in the healthcare sector.

EHDS organises both primary and secondary uses of electronic health data.

Primary Use refers to the use of health data for the direct care and treatment of patients, involving the collection and use of data during the course of providing healthcare services to diagnose, treat, manage or prevent a disease or injury.

Secondary Use refers to the use of health data for purposes other than direct patient care. This can include research, health policy planning, public health surveillance, quality and safety improvement, and healthcare payment systems. As such, health data will be reused without infringing on any personal data rights that are attached to individuals. Data access bodies established in every Member States will be responsible for issuing data access permit to data users.

The EHDS will be beneficial to a variety of actors and will deeply contribute to innovation whilst allowing individuals to access their data in a world where the digital transformation reigns.

For more information, please click [here](#) and [here](#).

Swipe to continue

TMT



Adoption of AI Act

On 21 May 2024, the Council gave its final approval on the Artificial Intelligence Act adopted a couple of months before by the European Parliament. The one commonly referred to as the “AI Act” is the first AI regulation in the EU, aiming at enhancing innovation whilst respecting compliance with fundamental rights and preventing related risks.

The regulation will present a risk-based approach with different level of obligations imposed on AI companies. AI systems will indeed be classified regarding the potential risks they represent towards users-unacceptable risk, high risk, limited risk, and minimal risk. Companies will need to identify the risk level of their AI systems and comply with corresponding regulatory requirements.

The range includes firstly **minimal risk systems** subject to no obligations. Then, **limited risks systems** are under a transparency obligations whereas **high risk systems** (such as ChatGPT) need to complete a risk assessment process as well as a human supervision for their AI systems. Lastly, **unacceptable risks** are banned since they represent a threat to citizens’ rights (eg. Human behaviour manipulation or social scoring).

Furthermore, to promote innovation, regulatory sandboxes and real-world testing will be implemented.

The AI Act will be published soon, and will be enter into force 20 days after its publication in the Official Journal of the European Union. The AI Act is expected to be applicable 24 months after its entry into force. However, bans on unacceptable risks AI systems will be effective 6 months after entry into force.

For more information, please click [here](#).

Swipe to continue

TMT



DORA

On 17 January 2024, the designated European Supervisory Authorities (EBA, EIOPA and ESMA) have published the first set of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) under the Digital Operational Resilience Act (DORA). These Level 2 texts come alongside DORA to strengthen financial entities' resilience in regards to information and communication technology as well as third-party risk management and incident reporting.

These RTS and ITS are the following :

- Regulatory Technical Standards (RTS) on ICT risk management framework and on simplified ICT risk management framework;
- RTS on criteria for the classification of ICT-related incidents;
- RTS to specify the policy on ICT services supporting critical or important functions provided by ICT third-party service providers (TPPs); and
- Implementing Technical Standards (ITS) to establish the templates for the register of information.

The second set of RTS / ITS should be published in July 2024.

For more information, please click [here](#).

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TMT



DMA

On 6 March 2024, the Digital Markets Act officially came into force. The DMA's purpose is to increase competition in the digital market by reducing the dominance of gatekeepers, encouraging innovation, and providing consumers with more options between competitors.

The DMA targets large online platforms, referred as “gatekeepers” due to their control over market access. Do date, the European Commission designated 7 gatekeepers (Apple, Alphabet, Meta, Amazon, Microsoft, ByteDance and more recently Booking.com).

Here are some key points about the DMA and its impact on competition:

- **Fair Competition:** The DMA aims to prevent gatekeepers from prioritizing their own services and products over those of competitors. This could lead to a more level playing field for smaller businesses and startups.
- **Interoperability:** The DMA provides that gatekeepers should ensure interoperability and data portability between their services and those of competitors. This could reduce the 'lock-in' effect where users find it hard to switch to other services.
- **Non-discriminatory Practices:** The DMA seeks to prohibit practices that are deemed unfair, such as blocking users from accessing certain services or making the ranking of services or products dependent on whether the provider has purchased advertising.
- **Regulatory Oversight:** The DMA establishes a regulatory framework to monitor and enforce these rules, including the ability to impose significant fines for non-compliance. These obligations and prohibitions should allow users to benefit from a larger range of choices and have better control on their data by being able to access, transfer and use it.

For more information, please click [here](#).

Swipe to continue

Tax



The Direct Tax Authorities have published its annual activity report

On 1st March, 2024, the 2023 annual activity report of the Direct Tax Authorities (ACD) was published in the annexes to the activity report of the Ministry of Finance. It gives a succinct description of the execution of the main objectives and responsibilities of the ACD for financial year 2023.

For more information, please click [here](#).



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Tax



The ACD has published an FAQ regarding Pillar 2

On 25 March, 2023, the ACD has just published details in the form of an FAQ concerning the implementation of the law of December 22, 2023 relating to the creation of the effective minimum taxation rules for multinational groups and large-scale domestic groups (“Pillar 2” law).

This FAQ only concerns Chapter 11 of the law dealing with transitional provisions. The aim of the FAQ is to be further supplemented when the ACD will have additional information to communicate with regards to the Pillar 2 law.

For more information, please click [here](#).





Pillar 2 : Publication of the revised version of the comments on the GloBE model rules

The OECD has just updated the consolidated commentary on the GloBE model rules, which incorporates the administrative instructions published by the OECD up to December 2023.

After publishing the GloBE rules model (Pillar 2 of the BEPS 2.0 project) in December 2021, the OECD published their comments in March 2022.

These comments were subsequently supplemented by a series of administrative guidance aimed at clarifying various technical aspects to facilitate the implementation of the GloBE rules in domestic law.

The OECD has just published a revised version of the comments to the GloBE Model Rules which incorporates the administrative instructions published by the OECD until December 2023 as well as consolidated examples which provide helpful practical guidance regarding the application of the GloBE rules.

For more information, please click [here](#) for the consolidated comments and [here](#) for the consolidate examples..

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Tax



Automatic exchange of information – Update of the lists of Reporting Jurisdictions and Partner Jurisdictions

The list of jurisdictions subject to declaration and the list of partner jurisdictions have been updated by the Grand-Ducal Decree of 18 April 2024 amending the amended Grand-Ducal Decree of 15 March 2016 implementing Article 2 (4) of the Law of 18 December 2015 on the Common Reporting Standard.

It should be noted that one of the amendments introduced by the Grand-Ducal Decree consists of the removal of Liberia, Morocco, Moldova, Montenegro and Uganda from the list of Partner Jurisdictions.

For more information, please click [here](#).



EU Council agrees new rules on directive for Faster and Safer Relief of Excess Withholding Taxes

On 14 May, 2024, the EU Council has announced that it has reached political agreement on the proposed harmonised approach to EU withholding tax procedures. The European Commission has published a proposal for consultation for a directive which aims to introduce a common EU-wide system for withholding tax on certain dividend or interest payments. The proposed Directive contains measures introducing a common EU digital tax residence certificate (with an automated procedure for the issue of such certificates), accelerated procedures in addition to the current normal refund procedure for withholding taxes and standardised reporting obligations for financial intermediaries.

The proposed Directive will first need to go back to the European Parliament for consultation on the agreed text before formal adoption by the Council.

Member States will then have until 31 December 2028 to transpose the Directive into national legislation, with the new rules having effect from 1 January 2030.

For more information, please click [here](#).

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