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# Luxembourg Insights

**June 2022**

Simmons & Simmons Luxembourg LLP

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Asset Management &  
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## Guidelines on the UCITS risk reporting (URR)

**On 16 June 2022, the CSSF published the Guidelines on the UCITS risk reporting (URR).**

The purpose of these Guidelines is to remind and offer guidance on the risk reporting obligation to all the UCITS domiciled in Luxembourg. The URR is permitted by the CSSF from 30 June 2022. UCITS which have been liquidated during the reference period are considered out of scope for the purpose of risk reporting.

The CSSF requires management companies and investment companies to critically verify all authorised UCITS they manage, by consulting the [list](#) on the CSSF website, which is accessible from 18 July 2022.

The UCITS risk reporting occurs twice a year. The first risk reporting obligation period started 1 January 2022 and ended 30 June 2022. The first semester's risk report must be sent to the CSSF by 16 August 2022 at the latest.

The second risk reporting obligation period starts on 1 July 2022 and ends on 31 December 2022. All Luxembourg UCITS must complete the second semester's risk report by **31 December 2022**.

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



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Asset Management &  
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## Guidelines on Circular CSSF 22/810 on notification and de-notification procedures

**On 20 June 2022 the CSSF published Guidelines on Circular CSSF 22/810.**

The purpose of these Guidelines is to provide further guidance on the Circular, through detailed information on the applicable procedures, documentation required and additional details in regards to the submission of documents via eDesk.

The marketing notification and de-notification procedures apply to Luxembourg Alternative Investment Fund Managers (**AIFM**) (including Luxembourg AIFMs of ELTIFs) wishing to notify arrangements or de-notify arrangements made for

marketing in other Member States of units or shares of an European Union Alternative Investment Fund (**EU AIF**) they manage. The marketing notification and de-notification procedures also apply to Managers of Luxembourg European Venture Capital Funds (**EuVECA**s) or European Social Entrepreneurship Funds (**EuSEF**s) wishing to market funds in Luxembourg or another Member State.

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



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Regulatory



## Authorisation of crowdfunding service providers

On 10 June, the CSSF issued a press release relating to the [Regulation \(EU\) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European Crowdfunding Service Providers for business and amending Regulation \(EU\) 2017/1129 and Directive \(EU\) 2019/1937](#) (the **Regulation**), which is directly applicable in all Member States since **10 November 2021**.

This Regulation only applies to crowdfunding services provided to non-consumer project owners concerning offers of an amount up to EUR 5,000,000 over a period of 12 months per project owner.

Despite there being no national law in Luxembourg on the provision of crowdfunding services, the European Commission has clarified that the Regulation will apply to crowdfunding service providers operating in Luxembourg.

Crowdfunding service providers in Luxembourg that intend to continue the provision of their crowdfunding services must ensure that they obtain authorisation as European crowdfunding service provider from the CSSF pursuant to Article 48 of the Regulation by the end of the transition period on 10 November 2022 at the latest and provide the CSSF with their identifying data, a description of their activity and the link to the dedicated website.

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



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Regulatory



## Recent ESAs publications on SFDR and the EU Taxonomy Regulation

On 15 June 2022, the CSSF has released a new communication to draw attention on the following recent publications made by the European Supervisory Authorities (the ESAs) in respect of Regulation [\(EU\) 2019/2088](#) on sustainability-related disclosures in the financial services sector (SFDR) and of Regulation [\(EU\) 2020/852](#) on the establishment of a framework to facilitate sustainable investment (the EU Taxonomy Regulation):

- [Q&As](#) adopted by the European Commission on 13 May 2022 and related to the interpretation of the SFDR and the EU Taxonomy Regulation.
- a [Supervisory Briefing](#) published by ESMA on 31 May 2022 on the integration of sustainability risks and disclosures in the area of asset management.
- a [statement](#) published by the ESAs on 2 June 2022 and providing clarifications on the ESAs' draft RTS issued under SFDR.

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



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Regulatory



## Circular CSSF 22/816 on the Adoption of the ECB Guideline and Recommendation regarding the exercise of some options and discretions available in Union law by national competent authorities

On 24 June 2022, the CSSF published a circular concerning the adoption of the ECB Guideline ([ECB/2022/12](#)) and the ECB Recommendation ([ECB/2022/13](#)) of 25 March 2022 which specify the way the options and discretions available to national competent authorities in the course of their supervision under Regulation (EU) No 575/2013 on capital requirements (CRR) and Delegated Regulation (EU) 2015/6 should be applied with respect to less significant institutions.

The CSSF extends the application of the Guideline and the Recommendation to all CRR investment firms as well as to all Luxembourg branches of credit institutions or CRR investment firms incorporated in a third country.

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





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Regulatory



## CSSF Circular 22/817 on the Application of ESMA Guidelines on MiFID II appropriateness and execution-only requirements

On 27 June 2022, the CSSF published a circular to inform that the CSSF will apply [ESMA guidelines](#) (ESMA35-43-3006) which aims at clarifying certain aspects of the MiFID II appropriateness and execution-only requirements in order to ensure the common, uniform, and consistent application.

The Guidelines will apply from 12 October 2022 to all investment firms, credit institutions, and external alternative investment fund managers authorised to provide the service of reception and transmission of orders in relation to financial instruments.

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



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Regulatory



## CSSF Circular 20/758 on central administration, internal governance and risk management

**On 30 June 2022, the CSSF published a Circular to inform investment firms of the revised measures on central administration, internal governance and risk management that have become applicable since 30 June 2022, repealing Circular 12/552.**

This Circular specifies the robust measures investment firms must take pursuant to the provisions of the Law of 5 April 1993 on the financial sector supplemented by Regulation CSSF No 15-02 relating to the supervisory review and evaluation as regards central administration, internal governance and risk management and reflects the European and international principles, guidelines and recommendations which apply in this respect by translating them, in a proportionate way, in the context of the Luxembourg financial sector.

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





## Prudential procedure for the appointment of members of the management body and key function holders in credit institutions

**On 30 June 2022 the CSSF published a Guidance on the prudential procedure for the appointment of members of the management body and key function holders in credit institutions.**

The purpose of the Guidance is to provide further details in relation to the procedural requirements on the application for authorisation or departure notifications of members of the management body and the members of the authorised management of branches of third-country credit institutions, and of the Chief Risk Officer, the Chief Compliance Officer, the Chief Internal Auditor, and lastly the Chief Financial Officer in significant institutions.

The procedural requirements are referring to Circular CSSF 12/552 on central administration, internal governance and risk management, to the joint European Securities and Markets Authority and European Banking Authority guidelines on the assessment of the suitability of members of the management body, and Directive 2013/36/EU of 26 June 2013.

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



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Regulatory



## Crypto-assets – MiCA law agreement

On 30 June the European Parliament achieved a [provisional agreement](#) in Markets in crypto-assets (MiCA) law, but still the legislative project has to go through the ordinary legislative procedure.



***In a nutshell:*** Competent Authorities (CAs) at member state level will be responsible for supervising crypto-asset services providers (CASPs) and enforce requirements under MiCA.

CASPs that have more than 15 million active users will classify as "Significant CASPs" and will remain supervised by CAs but ESMA (the European Securities and Markets Authority) will have an "intervention power" to prohibit or restrict the provision of crypto-asset services by CASPs if there are threats to market integrity, investor protection or financial stability. Additionally, ESMA will be able to issue opinions on how to promote supervisory convergence, ESMA already has these powers for the wider financial market. CASPs (and issuers of crypto-assets) will have to disclose what type of blockchain consensus mechanism they use e.g.

Proof of Work or Proof of Stake in an informational document, called a whitepaper.

The European Banking Authority (EBA) will supervise stablecoins that have more than 10 million users or a reserve of assets that are worth more than €5 billion. We note that the European Central Bank (ECB) will have veto rights in respect of any stablecoin that it has concerns on. Stablecoin issuers will be obliged to maintain reserves 1:1 to cover all claims and provide permanent redemption rights to holders. Reserves will be fully protected in case of insolvency.

Non Fungible Tokens (NFTs) are excluded except if they fall under existing crypto-asset categories.

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



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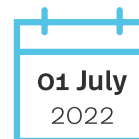
Regulatory



## 3 year suspension of the CSDR buy-in regime

On 2 June 2022, ESMA published a [Final Report](#) on amending the regulatory technical standards (RTS) on amending the regulatory technical standards (RTS) on settlement discipline to postpone the application of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (“CSDR”) mandatory buy-in regime for three years.

The draft RTS will be sent to the European Commission for endorsement in the form of a Delegated Regulation.



## New rules on teleworking

On 31 March 2022, the CSSF published its Circular 21/769 on telework, aiming to address the market concerns and questions surrounding working conditions and provide guidance to supervised entities.

The new rules apply as of 1 July 2022 to all supervised entities in Luxembourg.

For more information, please read our Practical Guide on Teleworking [here](#).



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Capital Markets



### ISDA calendar of compliance deadlines and regulatory dates for the OTC derivatives

On 2 June 2022, ESMA published a [Final Report](#) on amending the regulatory technical standards (RTS) on amending the regulatory technical standards (RTS) on settlement discipline to postpone the application of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (“CSDR”) mandatory buy-in regime for three years.

The draft RTS will be sent to the European Commission for endorsement in the form of a Delegated Regulation.



### ESMA proposes EUR1 bn increase of the commodity derivatives EMIR clearing threshold

On 3 June 2022, the European Securities and Markets Authority (ESMA) published a [Final Report](#) on the regulatory technical standards (RTS) for the EMIR clearing threshold proposing to the increase of the commodity derivatives clearing threshold from EUR 3 billion to EUR 4 billion.

This proposal has been sent to the European Commission for the amendment of the RTS.

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



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## Extension of the clearing obligation under EMIR for pension scheme arrangement

On 16 June 2022, ESMA published a public statement regarding the publication by the European Commission of a delegated act extending the current exemption from the clearing obligation for pension scheme arrangement (“PSAs”) until 18 June 2023. ESMA draws the attention of entities operating PSAs on the fact the this is the last possible extension of the exemption for PSAs under EMIR and therefore every effort should be undertaken to ensure compliance with the clearing obligation by 18 June 2023.

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





## Distributed Ledger Technology (DLT)

On 2 June, [Regulation \(EU\) 2022/858](#) on the pilot regime for market infrastructures based on distributed ledger technology (DLT) was published in the Official Journal. The DLT Pilot Regime has been introduced as part of the EU 's Digital Finance Package and is intended to sit alongside MiCA and the Digital Operational Resilience Act (DORA).

The DLT pilot regime adopts a sandbox approach to create certain exemptions from requirements under MiFID and the CSDR. This is intended to act as a testing environment allowing the EU legislators to gather data on the operation of the regime whilst encouraging the market to be able to develop solutions to the trading and settlement of crypto assets. Some of the key features of the regime are:

- **Restrictions on DLT Financial Instruments** - The DLT Pilot regime provides the framework for the trading and settlement of transactions in crypto assets that qualify as financial instruments under MiFID2 which are issued, transferred and stored on a distributed ledger. Crypto assets that do not qualify as MiFID financial instruments such as stablecoins and utility tokens will be regulated under MiCA. Under the regime, limits are placed on DLT financial instruments that can be admitted to trading and settled and places an overall market cap on new DLT instruments.

- **6 years permission** - Permissions and exemptions to operate a DLT are to be granted on a temporary basis, for a period of up to six years from the date on which the specific permission was granted and should be valid only for the duration of the pilot regime.
- **Exemptions** - The DLT Pilot offers the ability for operators (once permission is granted) to request exemptions from the current regulatory regime, which include exemptions from intermediation, transaction reporting and CSD settlement requirements.

Most of the provisions of the DLT Pilot Regime shall apply from 23 March 2023. In 2026, ESMA and the European Commission will be required to report on the regime and decisions to amend the regime will be made. Organisations considering operating under the DLT Pilot, as well as market participants that plan to use DLT market infrastructures should now be taking steps to prepare for the launch of the regime and conducting impact assessments and implementation plans.



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Corporate



## Crypto-assets – CASPs

**On 29 June 2022, the European Parliament, the Commission, and the Council reached a provisional agreement on the European Union proposal to update Regulation 2015/847 on information accompanying the transfer of funds ("TFR") by extending its scope to transfers of crypto-assets.**

Under the future TFR regime, the crypto-asset service provider ("CASP") of the party initiating the transfer will have to ensure that the transfer includes information on both the initiator and the beneficiary. The thresholds (from the first euro or from EUR 1,000) will apply depending on whether the transfers occur between CASPs, between CASPs and unhosted wallets, or between unhosted wallets. The beneficiary's CASP then

will have to check whether the required information is included in the transferring message prior to executing the transfer.

One of the main challenges with the application of this "travel rule" relates to unhosted wallets, which are crypto-asset wallet addresses held directly by their owners without using a CASP. The final text should be published soon.

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



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Tax



## DAC 7 draft law

**On 1 June 2022, the Luxembourg government released a draft law to transpose the seventh EU Directive on Administrative Cooperation in the field of taxation (Council Directive (EU) 2021/514) (DAC 7) into domestic law.**

DAC 7 extends EU tax transparency rules to digital platforms, especially tax transparency regarding the sale of goods or services on platforms, within and outside the EU. DAC 7 also ensure that Member States automatically exchange information on the revenues generated by such sellers on online platforms. In addition, the draft

law gives a definition of the concept of ‘foreseeable relevance’ (*pertinence vraisemblable*) regarding the information that may be requested by the tax authorities of other countries. The draft law still has to go through the legislative process before entering into force.

To access DAC 7 draft law (only available in French), please click [here](#).





## New double tax treaty between Luxembourg and the United Kingdom

**On 7 June 2022, Luxembourg signed a new double tax treaty (DTT) with the United Kingdom.**

The new treaty contains some significant changes compared with the existing treaty.

In particular, **changes to the provisions dealing with capital gains** will mean that, once the treaty is in force, Luxembourg resident investors in UK real estate held indirectly will be subject to UK tax on any gains arising on indirect disposals of that real estate (e.g. through a share sale) in many cases.

As well the Article 10 of the new treaty will generally introduce a **0% withholding tax for dividends** paid from Luxembourg to a UK shareholder who is the beneficial owner of those

dividends (the UK does not generally impose withholding tax on dividends). This is welcome as the current treaty only reduces withholding taxes to 5%.

The new DTT will enter into force after the completion of the ratification process in both countries. Hence investors in UK real estate held through Luxembourg structures should take this opportunity to review those structures and take action where necessary.

For the version of the new DTT in English, please click [here](#); for the French version, please click [here](#). For further information, please see our article by clicking [here](#).





## Circular regarding the controlled foreign companies rules

**On 17 June 2022, the Luxembourg tax administration released a Circular LIR n°164ter/1 replacing the Circular LIR 164ter/1 of 4 March 2020.**

The objective of the controlled foreign companies (CFC) rules contained in Article 164ter LIR is to avoid that a taxpayer, who has direct or indirect control over a subsidiary or has a permanent establishment, the income of which is not taxable or is exempt in Luxembourg, can reduce its tax base in its country of residence by transferring its income to this subsidiary or permanent establishment which is subject to low taxation in its country of residence or establishment.

The income diverted to the subsidiary or permanent establishment constituting a CFC will be included in the taxpayer's net income and therefore subject to corporate income tax.

This new Circular supplements the previous one from 2020 as a result of the introduction of a new No. 10 at paragraph 8 of the *Gewerbsteuergesetz*, effective from 1 January 2022.

To access the Circular (only available in French), please click [here](#).






## Termination of the exceptional COVID-19 measures for cross-border workers



### Short reminder:

 On 23 March 2022, the agreement signed on 7 October 2020 between Luxembourg and Germany stating that working days during which cross-border workers work from home during the Covid-19 pandemic can be considered as working days in Luxembourg had been terminated, with effect from 30 June 2022.

 On 6 December 2021, the corresponding agreement signed on 16 July 2020 between Luxembourg and France had been extended until 31 March 2022 and tacitly extended until 30 June 2022. It has not been renewed.

 Similarly, on 14 December 2021, the agreement signed on 19 May 2020 between Luxembourg and Belgium had been extended until 31 March 2022 and tacitly extended until 30 June 2022. It has not been renewed.

From 1 July 2022, cross-border workers are fully subject to the rules of their respective double tax treaties (DTT), thus the threshold of working day outside Luxembourg depends on such DTT.

The **Luxembourg-France** DTT currently provides for **29 days**, even though both countries agreed on 19 October 2021 to further discuss the increase of this threshold to 34 days. The **Luxembourg-Belgium** DTT already provides for **34 days**. Finally, the **Luxembourg-Germany** DTT provides for **19 days**.

The consequences of the termination of the exceptional COVID-19 measures is that, when the applicable threshold is passed, the employee income received for days worked outside Luxembourg is subject to tax in the employee's country of residence.

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