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Luxembourg Insights

November 2022

Simmons & Simmons Luxembourg LLP

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Asset Management &
Investment Funds



Submission procedure before the CSSF on SFDR RTS regulation

On 9 November 2022, the *Commission de Surveillance du Secteur Financier* (CSSF) has published a *communiqué* to the attention of the investment fund industry on the procedure to follow for submitting their prospectus/issuing document in view of the entry into force of the Commission Delegated Regulation 2022/1288 of 6 April 2022 (SFDR RTS regulation).

For the Luxembourg based UCITS, SIFs, SICARs and UCIs Part II that did not submit their prospectus/issuing document before the 31 October 2022, the CSSF confirmed that they shall follow the instructions set out in the CSSF communication dated 6 September 2022.

The CSSF also confirms that these funds must still submit the SFDR RTS confirmation letter along with the draft prospectus/issuing document.

The CSSF is committed to process the requests accompanied by the SFDR RTS confirmation letter on a best effort basis in view of the imminent application date of the SFDR RTS regulation on 1st January 2023.

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



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Asset Management &
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ESAs call for evidence on greenwashing

On 15 November 2022, the European Supervisory Authorities (EBA, ESMA and EIOPA, hereafter referred to as the ESAs) published a Call for Evidence on Greenwashing, aiming at better understanding the key features and risks associated with greenwashing and to collect examples of potential greenwashing practices.

The call for evidence seeks input on potential greenwashing practices in the whole European Union financial sector, including, but not limited to, financial markets, from all interested stakeholders, including, but not limited to, financial institutions under the remit of the ESAs and retail investors.

Respondents are invited to contribute to this call for evidence by 10 January 2023, through the [following link](#).

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



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Asset Management &
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Q&A on SFDR RTS

On 17 November 2022, the Joint Committee of the European Supervisory Authorities (EBA, ESMA and EIOPA, hereafter referred to as the ESAs) published a Q&A in respect of the Commission Delegated Regulation 2022/1288 of 6 April 2022 (SFDR RTS regulation).

The Q&A aims at providing clarifications in the following areas:

- Current value of all investments in principal adverse impacts (PAI) and Taxonomy-aligned disclosures;
- PAI disclosures;
- Financial product disclosures;
- Taxonomy-aligned investment disclosures; and
- Financial advisers and execution-only financial market participants

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



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Launch of a Standardised Model Prospectus by the CSSF

On 17 November 2022, the CSSF published a Standardised Model Prospectus that applicants can use when submitting an application for approval of a new UCITS.

The Standardised Model Prospectus has been developed with the aim to facilitate the drafting of a conventional prospectus for a UCITS project of average complexity and to facilitate through standardisation its examination by the CSSF during the processing of the application file.

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



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Regulatory



Deadline for compliance with CSSF Outsourcing Circular approaching

The CSSF published new rules regarding Outsourcing in the Financial Sector in April 2022 under its [Circular 22/806](#). The Circular applies the EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) as well as imposing certain requirements beyond the scope of the EBA Guidelines.

As such the Luxembourg outsourcing rules apply not only to credit institutions, investment firms and payment and electronic money institutions but also to certain investment fund managers and professionals of the financial sector.

The Circular became applicable as of 30 June 2022 to all outsourcing arrangements entered into, reviewed or amended after this date. In-Scope Entities are required to **review all existing outsourcing arrangements** to ensure compliance with the rules under the Circular and **ensure that compliance is achieved by 31 December 2022** at the latest. Where In-Scope Entities believe that complying with this deadline is not possible, they are required to inform the CSSF in a timely manner and before the December deadline. It will be important to not only review the outsourcing arrangements in place but where it will not be possible to amend them to ensure compliance with the Circular (if required), to put in place measures in order to rectify these and/or plan exit strategies.

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Regulatory



European Commission proposal on instant credit transfers

On 26 October 2022, the European Commission adopted a [legislative proposal](#) to make instant credit transfers in euro (the **Proposal**) with the purpose of making this instant payments available to all citizens and businesses with a bank account in an EU or EEA country.

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



ECB sets deadlines for banks to deal with climate risks

On 2 November 2022, the ECB published the results of the 2022 thematic review on climate-related and environmental risks which shows that banks are still far from adequately managing climate and environmental risks.

The review aimed at fostering the alignment of the banking sector with the supervisory expectations of the ECB set out in its [guide on climate-related and environmental risks](#) published in November 2020.

The ECB has set institution-specific deadlines for achieving full alignment with its expectations by the end of 2024.

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





RTS supplementing Regulation (EU) 2020/1503 on European crowdfunding service providers for business

On 8 November 2022, new delegated regulations to [Regulation \(EU\) 2020/1503](#) on European crowdfunding service providers for business were published in the Official Journal of the European Union.

The new delegated regulations supplement Regulation (EU) 2020/1503 by introducing the following regulatory technical standards with respect to:

- individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds ([Commission Delegated Regulation \(EU\) 2022/2118](#));
- conflicts of interest requirements for crowdfunding service ([Commission Delegated Regulation \(EU\) 2022/2111](#));
- requirements and arrangements for the application for authorisation as a crowdfunding service provider ([Commission Delegated Regulation \(EU\) 2022/2112](#));
- the methodology for calculating default rates of loans offered on a crowdfunding platform ([Commission Delegated Regulation \(EU\) 2022/2115](#));
- the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects ([Commission Delegated Regulation \(EU\) 2022/2114](#));

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Regulatory



RTS supplementing Regulation (EU) 2020/1503 on European crowdfunding service providers for business (Cont'd)

- for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business ([Commission Delegated Regulation \(EU\) 2022/2113](#));
- the measures and procedures for crowdfunding service providers' business continuity plan ([Commission Delegated Regulation \(EU\) 2022/2116](#));
- the requirements, standard formats and procedures for complaint handling ([Commission Delegated Regulation \(EU\) 2022/2117](#)); and
- the key investment information sheet ([Commission Delegated Regulation \(EU\) 2022/2119](#)).

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Regulatory



Grand-Ducal Regulation on the implementation of restrictive measures in financial matters

On 14 November 2022, the Grand-Ducal Regulation (the Regulation) provides clarification on the implementation of restrictive measures under the Law of 19 December 2020, in particular, the execution by the natural and legal persons obliged to apply such restrictive measures shall be carried out without undue delay (*sans délai*) and without prior notification (*sans notification préalable*).

In addition, the Regulation repeals the Grand-Ducal Regulation of 29 October 2010 implementing the Law of 27 October 2010 on the implementation of United Nations Security Council resolutions and acts adopted by the European Union containing prohibitions and restrictive measures in financial matters directed against certain persons, entities and groups in the context of the fight against terrorist financing.

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



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Regulatory



European Supervisory Authorities call for evidence on greenwashing

On 15 November 2022, the European Supervisory Authorities (EBA, EIOPA and ESMA) (the ESAs) issued a joint call for evidence on potential greenwashing practices in the EU financial sector.

This consultation is intended to aid the ESAs in providing the European Commission with input on greenwashing risks and occurrences in the EU financial sector, the supervisory action taken and the challenges faced to address those risks.

The deadline for answering the consultation is 10 January 2023 and a progress report on this issue is expected to be released in May 2023. Contributions should be submitted by stakeholders [here](#).

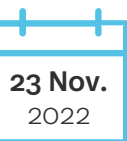
For more information, please click [here](#).



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Regulatory



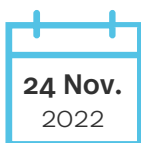
FATF Public Consultations on Beneficial Ownership

On **23 November 2022**, the FATF published two public consultations in relation to the revisions of:

- i. Recommendation 24 on the transparency and beneficial ownership of legal persons support the implementation of the new requirements; and
- ii. Recommendation 25 and its Interpretive Note on the transparency and beneficial ownership of legal arrangements to prevent the misuse of legal arrangements for money laundering or terrorist financing.

The public consultation is open until **6 December 2022**.

For more information, please find the guidance and revisions of Recommendation 24 [here](#) and the revisions to Recommendation 25 and its Interpretive Note [here](#).



CSSF Press Release on integration of sustainability factors into the MiFID product governance obligations

On 24 November 2022, the CSSF published a press release reminding supervised entities that from **22 November 2022** onwards, entities are required to take into account sustainability factors when specifying the target markets for the financial instruments and structured deposits they manufacture and/or distribute.

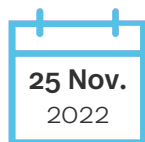
For more information, please click [here](#).



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Regulatory



CSSF Press Release on integration of sustainability factors into the MiFID product governance obligations

On **25 November 2022**, the CSSF published a press release addressed to crowdfunding service providers and drawing attention on the extension of the transitional period provided for in Article 48(1) of Regulation (EU) 2020/1503 and allowing crowdfunding service providers to continue to provide participatory finance services in accordance with national law, until **10 November 2023**.

Therefore, crowdfunding service providers active before **10 November 2021** may, in accordance with the applicable national law, continue to provide participatory finance services at national level which fall within the scope of the Regulation 2020/1503 until they have obtained authorisation in accordance with the provisions of Regulation 2020/1503 and until **10 November 2023** at the latest.

The CSSF reminds that any entity established in Luxembourg wishing to provide crowdfunding services and which had not yet started its activities before 10 November 2021, must obtain an authorisation from the CSSF, prior to providing such a service.

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



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Banking



ICMA publishes new climate resilient debt clauses to facilitate sovereign debt relief and financial stability

On 9 November 2022, the ICMA published new Climate Resilient Debt Clauses (CRDCs) which can defer a country's debt repayments in the event of a pre-defined, severe climate shock or natural disaster.

Although no country is excluded from scope, the CRDCs are most suitable for low-income countries, such as, developing countries particularly vulnerable to the impacts of climate change.

A standardised term sheet for this has been produced by the Private Sector Working Group (PSWG) bringing together international financial institutions, including the International Monetary Fund (IMF) and World Bank (WB), G7 countries, borrowing countries, and the private sector, including major US and European banks and investment firms, legal and financial advisors specialising in sovereign debt, as well as academic experts.

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



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Banking

17 Nov.
2022

Updates to the LMA Intercreditor Agreement for Leveraged Acquisition Finance Transactions

On 17 November 2022, the LMA updated its Intercreditor Agreement for Leveraged Acquisition Finance Transactions (Senior/Mezzanine) (Compounded Rate/Term Rate) to fix a number of cross-references within the document.

The LMA has also produced a mark-up of this document against the LMA's LIBOR-referencing Intercreditor Agreement for Leveraged Acquisition Finance Transactions.

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



Nov.
2022

Sanctions

During the month of November 2022, the CSSF announced that it has imposed administrative penalties on an investment firm for non-compliance with some professional obligations with regard to the fight against money laundering and combatting the financing of terrorism ([here](#)) and on a Luxembourg issuer for non-compliance with the Law of 11 January 2008 on transparency requirements for issuers ([here](#)).



European Commission issue call for advice on green loans and mortgages

On 22 November 2022, the European Commission issued a request for advice from the European Banking Authority (EBA) on the European green loan and mortgages market in order for the Commission to consider measures to encourage the development of these markets.

The request for advice covers the following areas:

- i. overview of current market practices, with an emphasis on the green loans' origination process;
- ii. observations on the prevalence of green loans in banking markets;
- iii. the impact of other ongoing regulatory initiatives;
- iv. the merits of an EU definition of green loans and mortgages; and
- v. measures to encourage the uptake or access to green loans by retail and SME borrowers.

The Commission have requested that the EBA provide their advice by **29 December 2023**.

For more information, please find the European Commission's letter [here](#) and the request for advice [here](#).





Bill of law number 8053 (implementation of the Mobility Directive)

On 10 November 2022, the Luxembourg Chamber of Commerce published its advice on the draft bill of law number 8053 (the Bill) which aims at amending (i) the law of 10 August 1915 on commercial companies, as amended (the 1915 Law), and (ii) the law of 19 December 2002 on the Luxembourg Trade and Companies Register and the annual accounts (the 2002 Law and together with the 1915 Law, the National Laws).

In its advice, the Luxembourg Chamber of Commerce asks the authors of the Bill to look more closely at cost matters and makes suggestions for clarification and legibility purposes.

By way of background, pursuant to the Bill, the Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions would be implemented into the National Laws by 31 January 2023. This implementation would notably consist of the following:

- Establishing a new regime of cross-border transactions (the **Transactions**) of companies between Member States of the European Union;
- Integrating ways to protect the interests of stakeholders impacted by the Transactions;
- Introducing procedures for cross-border conversions/migrations and demergers;

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Corporate

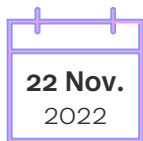


Bill of law number 8053 (implementation of the Mobility Directive) (Cont'd)

- Extending the internal and cross-border merger and demerger operations to special limited partnerships (*sociétés en commandite spéciale* – SCSp), which had been excluded from the Operations thus far due to their lack of legal personality;
- Implementing a double control of legality procedure and an anti-abuse control to be carried out by notaries; and
- Protecting minority shareholders by allowing them to withdraw against fair remuneration in case they are opposed to the Transactions, and by giving them the possibility to challenge the exchange ratio.

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





Decision of the ECJ on the Luxembourg RBE

On 22 November 2022, the European Court of Justice (the ECJ) ruled that the public access of the Luxembourg's Register of Beneficial Owners (*Recueil Electronique des Sociétés et Associations* – the RBE), established on 1 March 2019 to fight money laundering and the financing of terrorism by granting public access to the information on companies' ultimate beneficial owners (the UBOs), was invalid pursuant to the provisions of the Charter of Fundamental Rights of the European Union – in particular those relating to private life and the protection of personal data.

The Luxembourg district court shall solve the matter in accordance with the decision of the ECJ. In the meantime, the consultation of the RBE has been temporarily suspended, which impacts the anti-money-laundering directive at Luxembourg level. However, the Luxembourg Ministry of Justice has pointed out that Luxembourg will adapt to European case law. The European Commission has announced to be in the process of analysing the matter. The

Luxembourg Business Registers (the LBR) is, in turn, also working on a solution to continue allowing access to certain professionals and obliged entities in order to allow them to comply with their professional obligations.

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





Draft bill of law number 7479A (Competition)

On 24 November 2022, the Chamber of Deputies adopted the draft bill of law number 7479A on competition, which aims to provide means for implementing competition rules more effectively and contributing to the proper functioning of the internal market (the Bill). The Bill further transposes the European Directive 2019/1 of the European Parliament and of the Council (the Directive) into Luxembourg law in consideration of its European obligations.

The Bill will consist of the following:

- The independent administrative authority, the Competition Council, will be converted into a public institution and renamed to “*Autorité de concurrence du Grand-Duché de Luxembourg*” (Competition Authority of the Grand Duchy of Luxembourg, hereinafter the **Authority**) in order to (i) meet the independence requirements set out in the Directive, and (ii) act more independently;
- Extending the Authority’s activities, especially in terms of controls or inspections; and
- Extending the Authority’s powers to new areas, notably (i) unfair practices in the agri-food sector, and (ii) relations between online platforms and their professional users.

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



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Tax



Signature of an amendment to the double tax treaty concluded between Luxembourg and France

On 7 November 2022, a new addendum was signed to modify the tolerance threshold for teleworking from 29 days to 34 days in the context of the application of article 14 of the double tax treaty.

This modification would apply to taxable periods beginning on or after 1 January 2023.

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



State aid decision of the Court of Justice of the European Union (CJEU) on Fiat

On 8 November 2022, the CJEU has set aside the decision of the General Court of the European Union in Fiat Chrysler Finance Europe v European Commission (Case C-885/19).

In this decision, the CJEU has held that the European Commission (the **Commission**) had misapplied the rules identifying the necessary reference tax system in deciding that Luxembourg had applied illegal state aid in granting tax rulings in favour of Fiat and accordingly has set aside the Commission's decision.

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



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Tax



Issuance of a new draft directive on Pillar 2

On 25 November 2022, the Council of the European Union (EU) issued a revised draft directive ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the European Union (Directive 8778/22).

As a reminder, the Pillar 2 initiative of the Organisation for Economic Cooperation and Development (**OECD**) aims at implementing a minimum 15% tax rate for multinational enterprises (**MNEs**). If these MNEs do not have an effective tax rate of at least 15%, a top-up tax would be due by application of the Income Inclusion Rule (**IIR**) and the Undertaxed Profit Rule (**UTPR**). This new draft directive provides notably with an extension of the initial deadlines for its transposition by the EU Member States to 31 December 2023 for an entry into force as from financial years starting from 31 December 2023 and from 31 December 2024 with respect to the UTPR. As a draft directive, it would still need to pass the European legislative process to become EU law.

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



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