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# Luxembourg Insights

July 2022

Simmons & Simmons Luxembourg LLP



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Asset Management &  
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## Notice to private consumers in the context of investment funds providing exposure to virtual assets

On 22 July 2022, the CSSF issued a press release to draw the attention of private consumers to the risks associated with an investment in virtual assets.

The CSSF informed private consumers that material exposure to virtual assets may occur, in some instances, through investment funds (and, where applicable, the managers thereof) that are not subject to any prudential supervision by the CSSF.

Therefore, the CSSF highlighted the risks associated with an investment in virtual assets, which does not benefit from its prudential supervision of the relevant funds and the careful consideration that private consumers must have, with a reduced level of investor protection.

The CSSF advises private consumers, before considering any investment in virtual assets, to familiarise themselves with such assets and perform their own research in order to fully understand the risks associated with such an investment.

Further guidance on the minimal steps to perform before considering investing in virtual assets and specific risks associated with any investment in virtual assets, may be found in the [press release published on 27 April 2022](#) on the CSSF website.

This guidance on the specific risks, provided in the press release, is also applicable with regards to exposure through an investment in a fund, which potentially may not be subject to any prudential supervision.

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



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Asset Management &  
Investment Funds

## Reports of investment funds of Circular CSSF 21/790 – additional clarifications for their completion/submission

On 22 July 2022, the CSSF issued a press release, adding more clarifications for the completion and submission of the reports foreseen by Circular CSSF 21/790.



Reminder:

The Circular CSSF 21/790 defines the practical rules concerning the preparation and annual submission of the documents by Luxembourg undertakings for collective investment (**UCIs**), and their *réviseurs d'entreprises agréés* (approved statutory auditors).

This Circular introduces, amongst others, the self-assessment questionnaire to be completed on an annual basis by UCIs and details of the role and engagement of a *réviseur d'entreprise agréé*, in the context of the statutory audit of UCIs. Finally, it establishes a specific regulatory framework applicable to the management letter and also introduces a separate report. Both documents must be drawn up by the UCIs' *réviseur d'entreprise agréé* on an annual basis. The separate report includes procedures for the approved statutory auditor to perform, as per request by the CSSF, in relation to the self-assessment questionnaire of UCIs.

The purpose of this press release is to provide further

clarifications to regulated UCIs and the entities involved in their functioning (e.g. investment fund managers, other service providers) in relation to the organisation of the operational processes carried out in the Collective Investment Sector Reporting Tool (**CISERO**) module on the CSSF eDesk platform, for the completion of the self-assessment questionnaire and the submission of the reports applicable to those regulated UCIs to the CSSF.

This press release highlights the responsibilities of the *dirigeants* (managers) of the regulated UCIs, as referred to in the applicable sectorial laws relating to reports, and confirms that regulated UCIs can rely on the support of service providers (e.g. investment fund managers and/or other service providers) for the completion and/or the submission to the CSSF of the reports.

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



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## SFDR - CSSF Communication to the investment fund industry on regulatory requirements in relation to SFDR and upcoming entry into force of SFDR Level 2 Provisions

On 27 July 2022, the CSSF issued a [press release](#) on regulatory requirements relating to Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector (**SFDR**) and the entry into force of the Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 with regard to regulatory technical standards (**SFDR RTS** or **SFDR Level 2 provisions**).

The purpose of the press release is to inform the financial market participants of the regulatory requirements relating to the disclosure of sustainability-related information set out in the SFDR and SFDR RTS. The SFDR Level 2 provisions require alternative investment fund managers (**AIFMs**) and UCITS management companies (**UCITS Mancos**, together with AIFMs, **Fund Managers**) to present by 1 January 2023, for Funds subject to Articles 8 and 9 of the SFDR, *precontractual* and *periodic disclosure* information in the format of templates provided in the annexes of the SFDR RTS.

The SFDR RTS further require mandatory *website*

*product disclosure* to be displayed in a separate website section titled 'Sustainability-related disclosures' by Fund Managers.

Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investments (**EU Taxonomy**) requires Fund Managers, for Funds subject to Articles 8 and 9 of SFDR, to provide precontractual documents and periodic reports in regards to the environmental objectives referred to in Article 9 of the EU Taxonomy, by 1 January 2023.



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## SFDR - CSSF Communication to the investment fund industry on regulatory requirements in relation to SFDR and upcoming entry into force of SFDR Level 2 Provisions (Cont'd)

▶▶ The CSSF requires Fund Managers, which have not submitted the required updates to prospectus/issuing documents of UCITS and/or AIFs in accordance with the provisions of the SFDR RTS and the EU Taxonomy, to submit their updated precontractual documents by **31 October 2022** at the latest.

- The CSSF will give priority for visa-stamping to issuing documents/prospectuses of UCITS and AIFs in which updates are limited to the sustainability related disclosure changes indicated above.
- Provided these submissions follow the filing procedure set out below, and are complete, compliant and received by the CSSF by **31 October 2022**, the CSSF will endeavour to release the visa stamp prior to 31 December 2022.

The press release also provides a procedure and specific guidance for disclosing information in periodic reports and pre-contractual documents, and informs the investment

fund industry of recent regulatory developments.

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



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Regulatory



## Update on FATF Declarations

On 22 June 2022, the CSSF published [Circular CSSF 22/815](#) (the **Circular**) concerning the FATF Plenary of June 2022 decision relating to high risk jurisdictions in terms of deficiencies in their regimes to counter money laundering, terrorist financing and proliferation financing and the repeal of Circular CSSF 22/801 of 11 March 2022.

In this respect, the FATF maintains its reinforced vigilance measures and, where necessary, its countermeasures against Democratic People's Republic of Korea (DPRK) and Iran. The FATF also updates the list of jurisdictions subject to the FATF's enhanced monitoring process, adding Gibraltar and removing Malta following the substantial efforts made.

This list now includes the following countries:

- Albania;
- Barbados;
- Burkina Faso;
- Cambodia;
- United Arab Emirates;
- Haiti;
- Cayman Islands;
- Jamaica;
- Jordan;
- Mali;
- Morocco;
- Myanmar;
- Nicaragua;
- Pakistan;
- Panama;
- Philippines;
- Senegal;
- South Sudan;
- Syria;
- Turkey;
- Uganda;
- Yemen; and
- Gibraltar.

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





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Regulatory



## Handbook on Reporting Requirements for Investment Firms

On 1 July 2022, the CSSF published the Handbook on Reporting Requirements for Investment Firms (the Handbook).

The purpose of the Handbook is to provide guidance on the reporting framework, such as the reporting formatting and technical specifications, that investments firms must comply to under EU Regulation 2019/2033, the Investment Firm Regulation (the IFR).

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



## Communiqué related to the notification template for outsourcing a critical or important business process (BPO)

On 1 July 2022, the CSSF published a Communiqué related to the notification template for outsourcing a critical or important business process (BPO).

The CSSF has published a new template to be used from that date onwards by investment firms incorporated under Luxembourg law and Luxembourg branches of third-country firms when out-sourcing important business processes (**BPO**) in accordance with points 59 and 60 of the [Circular CSSF 22/806](#) on outsourcing arrangements. Significant institutions shall also use this template to notify the ECB to the extent that no ECB specific notification template is available yet.

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



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Regulatory



## ESMA reviews MIFID II product governance guidelines

On 8 July 2022, the European Securities and Markets Authority (ESMA) published a consultation on the reviewed MiFID II product governance guidelines.

The purpose of this consultation is to propose 2017 product governance guidelines as a result of recent regulatory and supervisory developments, such as the outcome of the 2021 common supervisory action (**CSA**) on product governance.

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



## Amended EU sanctions on Russia

On 21 July 2022, amendments to EU Regulations N°833/2014 and N°269/2014 on sanctions against Russia were published in the Official Journal of the European Union.

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



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Regulatory



## Modifications surrounding the filing of accounts data to the CRBA

On 14 July 2022, the CSSF amended Annexes 1 and 2 of [Circular CSSF 20/747](#) on the technical arrangements relating to the application of the Law of 25 March 2020 establishing a central electronic data retrieval system related to IBAN accounts and safe-deposit boxes held by credit institutions in Luxembourg.

Henceforth, professionals must make their data file available in the CRBA on a daily basis from Monday to Friday only, except on the days of Luxembourg public and banking holidays.

The absence of data now marked as optional will no longer prevent the data from being filed into the

database, this optionality is however purely technical and the data still has to be kept in books of the professional filing the data.

The reporting of inactive accounts, safe-deposit boxes and unclaimed insurance policies is now also possible.

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



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Regulatory



## New EBA guidelines on the role and responsibilities of the AML/CFT compliance officer

On 20 July 2022, the CSSF published a communiqué on the new the European Banking Authority (EBA) guidelines laying out the role and responsibilities of AML/CFT compliance officers and internal policies, controls and procedures to ensure AML/CFT compliance.

The six core pillars of the guidelines are:

1. Governance: clarification of the role of the management body in its management function and the role of the management body in its supervisory function.
2. Proportionality criteria for the appointment of a separate AML/CFT compliance officer.
3. Assessment prior to the appointment of the suitability, skills and expertise of the compliance officer.
4. Tasks and responsibilities: clarification of expectations regarding the role, tasks and responsibilities of the AML/CFT compliance officer and management.
5. Outsourcing: clarification of the list of strategic decisions to comply with AML/CFT obligations that should not be outsourced.
6. Group level: appointment of a group AML/CFT compliance officer and the tasks and responsibilities assigned.

**The guidelines will apply from 1 December 2022.**

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



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Regulatory



## China and Australia considered as equivalent jurisdictions by the CSSF

On 22 July 2022, the CSSF published CSSF [Regulation n°22-04](#) dated 20 July 2022 modifying CSSF Regulation n°20-02 on the equivalence of certain third countries as regards supervision and authorisation rules for the provision of investment services or the exercise of investment activities and ancillary services by third country firms.

This new regulation adds China and Australia to the list of countries benefiting from this regime. It now includes the following countries:

- Canada;
- Switzerland;
- United States;
- Japan;
- Honk Kong;
- Singapore;
- United Kingdom;
- China; and
- Australia.

This means that Chinese and Australian firms will be able to carry out these activities and ancillary services in Luxembourg for eligible counterparties and professional clients without the need for an establishment or licence in Luxembourg. However, they must meet the requirements of the national equivalence regime and complete the form available [here](#).

To access our article on this subject, please click [here](#).



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Regulatory



## Law of 20 July 2022 setting up a monitoring committee for restrictive measures in financial matters and amending: 1° Article 506-1 of the Penal Code

On 24 July 2022, the law of 20 July 2022 setting up an interinstitutional committee in charge of monitoring the implementation of financial sanctions within the meaning of the [Law of 19 December 2020](#) entered into force. The law aims to facilitate the effective supervision and application of sanctions and to foster cooperation between authorities.

It should also be noted that the new law added non-compliance with financial sanctions imposed under the above Law of 19 December 2020 to the list of money laundering offences as set out in Article 506-1(1) of the Penal Code.

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



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Regulatory



## Draft Bill 8055 on the implementation of Regulation (EU) 2022/858

On 27 of July 2022, the Ministry of Finance introduced [Draft Bill 8055](#) that aims to implement [Regulation \(EU\) 2022/858](#) (**DLTR**) on a pilot regime for market infrastructures based on distributed ledger technology (**DLT**).

The regulation gives regulators the possibility to temporarily exempt DLT market infrastructures from requirements imposed on traditional market infrastructures. Furthermore, the draft bill aims to improve legal certainty by insuring that new financial instruments based on DLT can be traded on the market under current regulations.

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

Our whitepaper on DLT & Blockchain can be found [here](#).



## Cloud computing adoption in the Luxembourg financial sector

In July 2022, the ABBL and KPMG Luxembourg published the results of their second survey on cloud computing adoption in the financial sector of Luxembourg.

The report shares insights on cloud computing adoption drivers, different implementation strategies and IT security considerations.

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



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Banking



## New ABL guide on inactive accounts

On 18 July 2022, the ABL has published new guidance on the law of 30 March 2022 on inactive accounts, inactive safes and unclaimed insurance contracts.

The guide covers the scope, as well as obligations and processes imposed by the new law and provides practical advice to ensure compliance.

**The new law has been in force since 1 June 2022.**

To access our article, please click [here](#).



## Sanctions

During the month of July, the CSSF has published information about administrative penalties imposed on two investment fund managers in March 2022, [Generali Investments Luxembourg S.A.](#) and [an investment fund manager](#) and two [réviseurs d'entreprises agréés](#) in April 2022, indicating more scrutiny from the CSSF.



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Banking



## Law of 20 July 2022 amending the law of 5 August 2005 on collateral arrangement

On 24 July 2022, [the law of 20 July 2022](#) entered into force clarifying and updating certain provisions of the law of 5 August 2005 on financial collateral arrangements.

This law, although it does not transform the 2005 law in depth, helps to integrate it into the current economic and legal context. In this sense, it establishes a creditor-friendly approach through several new provisions that offer:

- Freedom of contract relating to enforcement events;
- Payment of proceeds in a default non-payment scenario;
- Modernisation of the enforcement process;
- Changes to the public sale regime; and
- Clarification on pledges over insurance claims

To access our article, please click [here](#).





## Proposal for a directive on corporate sustainability due diligence

On 29 June 2022, the Luxembourg Chamber of Commerce and FEDIL – The Voice of Luxembourg's Industry published a joint statement (the Joint Position) on the proposal for a directive on corporate sustainability due diligence (the Proposal).

As a reminder, on 23 February 2022, the European Commission (the Commission) published the Proposal, which imposes extensive obligations on EU and non-EU companies to develop and implement due diligence policies aimed at identifying, preventing or mitigating, and ultimately ending negative impacts of their activities on human rights and the environment.

The Proposal also introduces a specific climate change obligation and a revised duty of care for directors regarding sustainability issues, as well as a personal liability regime for directors of European companies within the scope of the directive by stakeholders (as defined in the Proposal).

The Joint Position states several general point regarding the Proposal:

- The need to introduce proportionate, workable, and more targeted rules for companies;
- Ensuring an adequate level playing field and avoiding further fragmentation of EU internal market rules;
- Important definitions should be revised and clarified;
- Need for legal certainty, effectiveness and enforceability of

due diligence obligations and the importance of standardisation;

- Model contractual clauses should be developed together with business, including SMEs;
- Guidelines to companies and precise accompanying measures are needed;
- Obligations on climate change should not be included in the Directive;
- Sanctions and enforcement are not proportionate and lack guarantees;
- The proposed civil liability regime is in principle inadequate and needs considerable redrafting in line with EU civil law principles; and
- Rules on directors' duties need to be revised or deleted.

For more information, the Proposal can be found [here](#) and the Joint Position [here](#).



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Corporate



## Case law – Luxembourg Act 2 September 2011 (Business license) – criterion of professional integrity

On 18 July 2022, the Luxembourg Administrative Court (*Tribunal Administratif du Grand-Duché de Luxembourg, 2e chambre*) gave more explanations on the notion of professional integrity (*honorabilité professionnelle*) referred to in article 3 of the Act of 2 September 2011.

According to the Court, while it is true that the mere fact of having been convicted of a criminal offence and sentenced to a prison term, even one that has been fully suspended, does not necessarily and peremptorily imply a lack of professional integrity of the person concerned, the facts that led to the conviction in question must be assessed in each individual case, particularly and more specifically in relation to the activities for which the authorisation of establishment is sought.

provisions governing this activity or to the rules of good conduct generally accepted in the profession and if there is reason to fear that the manager constitutes a risk, either for himself or for the consumers or suppliers who will have to deal with him, it is preferable to dismiss him.

For more information,  
the judgment can be found [here](#).



If the manager's actions are contrary to the legal

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Corporate



New bill of law n°8053 transposing Directive (EU) 2019/2121, itself amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions

On 27 July 2022, the bill of law n°8053 was filed in Luxembourg (the Bill), the purpose of which is to transpose Directive (EU) 2019/2121 of the European Parliament and of the Council of 7 November 2019 amending Directive (EU) 2017/ as regards cross-border conversions, mergers and divisions.

This Bill introduces numerous innovations with the aim of providing an increased mobility for companies within the internal market while introducing mechanisms protecting stakeholders' interests that are impacted by a cross-border operation.

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



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Tax



## New addendum to the double tax treaty between Luxembourg and Belgium

The law of 22 June 2022 approves the addendum to the double tax treaty concluded between Luxembourg and Belgium related to the avoidance of double taxation and settlement of certain other questions relating to taxes on income and capital, signed in Luxembourg on 31 August 2021.

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



## New double tax treaty concluded Luxembourg and the Federal Democratic Republic of Ethiopia

The law of 22 June 2022 approves the double tax treaty concluded between Luxembourg and the Federal Democratic Republic of Ethiopia and related Protocol related to the avoidance of double taxation, signed in Luxembourg on 29 June 2021.

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



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Tax



## Introduction of an energy tax credit for self-employed persons, employees and pensioners

The law of 29 June 2022 transposing certain measures provided for by the tripartite agreement of 31 March 2022 introduces notably a new energy tax credit for self-employed persons, employees and pensioners.

This is one of the Luxembourg government's flagship measures to help households to cope with the explosion of energy prices that has been observed since the beginning of the war in Ukraine.

The energy tax credit is intended to compensate the postponement of the index bracket which was supposed to fall in August 2022.

**This energy tax credit would therefore stop to apply as from 31 March 2023.**

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



## Simmons & Simmons Luxembourg LLP

Royal Monterey  
26A Boulevard Royal  
L-2449 Luxembourg  
Luxembourg  
T +352 26 21 16 01  
**in** [simmons-simmons-Luxembourg](https://simmons-simmons-Luxembourg)



Contacts

Investment Funds



### Augustin de Longeaux

Partner  
T +352 26 21 16 34  
E [augustin.delongeaux@simmons-simmons.com](mailto:augustin.delongeaux@simmons-simmons.com)



### Pieter Leguit

Partner  
T +352 26 21 16 18  
E [pieter.leguit@simmons-simmons.com](mailto:pieter.leguit@simmons-simmons.com)

Banking, Capital Markets,  
Regulatory



### Louis-Maël Cogis

Partner  
T +352 26 21 16 14  
E [louis-mael.cogis@simmons-simmons.com](mailto:louis-mael.cogis@simmons-simmons.com)



### Cathrine Foldberg Møller

Partner  
T +352 26 21 16 19  
E [cathrine.foldberg-moller@simmons-simmons.com](mailto:cathrine.foldberg-moller@simmons-simmons.com)

Corporate, M&A



### Thierry Somma

Partner  
T +352 26 21 16 00  
E [thierry.somma@simmons-simmons.com](mailto:thierry.somma@simmons-simmons.com)



### Arnaud Fostier

Counsel  
T +352 26 21 16 27  
E [Arnaud.fostier@simmons-simmons.com](mailto:Arnaud.fostier@simmons-simmons.com)

Tax



### Julie Carbiener

Partner  
T +352 26 21 16 16  
E [Julie.carbiener@simmons-simmons.com](mailto:Julie.carbiener@simmons-simmons.com)



### Pierre-Régis Dukmedjian

Partner  
T +352 26 21 16 12  
E [pierre-regis.dukmedjian@simmons-simmons.com](mailto:pierre-regis.dukmedjian@simmons-simmons.com)

Key contact biographies can be viewed at [simmons-simmons.com](https://simmons-simmons.com)

For additional information on our firm, please visit our website at [simmons-simmons.com](https://simmons-simmons.com).

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