

Swipe to continue →

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# Luxembourg Insights

**May 2022**

Simmons & Simmons Luxembourg LLP

## ASSET MANAGEMENT & INVESTMENT FUNDS

O1

- Circular CSSF 22/810 on **notification and de-notification procedures** to be observed by Luxembourg UCIs and investment fund managers for pre-marketing and cross-border marketing.
- Circular CSSF 22/811 on **authorisation and organisation of entities acting as UCI administrator.**
- Q&A by the ESAs with reference to **the SFDR and the Taxonomy Regulation.**
- **AML/CFT updates**
- Supervisory Briefing on integration of **sustainability risks and disclosures** in the area of investment management.
- Clarifications on the **ESAs' draft regulatory technical standards** under the SFDR.

## REGULATORY

O2

- Guidance for consumers on the context of **virtual assets.**
- ESAs launch **consultation on sustainability disclosures** for STS securitisations.
- EBA publishes **discussion paper on the role of environmental risks** in the prudential framework.
- Promoting a better understanding of **the regulatory technical standards under the SFDR ((EU) 2019/2088).**
- Circular CSSF 22/812 on the adoption of EBA Guidelines on **limited network exclusion** under PSD2 (EBA/GL/2022/02).
- European Insurance and Occupational Pensions Authority assesses **European insurers' exposure to physical climate change risks.**
- European pilot regime for **market infrastructures based on DLT.**

## BANKING

03

- Circular CSSF 22/814 on the monitoring of the threshold and other procedural aspects on the establishment of an **intermediate EU parent** undertaking.
- **Sanctions.**

## CAPITAL MARKETS

04

- **ESG Securitisation:** taking stock.

## CORPORATE

05

- Opinion of the Luxembourg Chambre de commerce on the **online incorporation of companies.**
- Draft Bill n°8007 : Correction of the **material errors in the Company Law.**

## TAX

06

- Guidelines on the interpretation of the **DAC6 law.**
- Draft report by the European Parliament on **ATAD 3.**
- Circular on **non-cooperative countries and territories** for tax purposes.
- New **double tax treaty** between **Luxembourg** and the **United Kingdom.**

Swipe to continue →



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## Circular CSSF 22/810 on notification and de-notification procedures to be observed by Luxembourg UCI and investment fund managers for pre-marketing and cross-border marketing

On 12 May 2022, the CSSF published Circular 22/810 in order to inform undertakings for collective investment ("UCI") as well as investment fund managers governed by Luxembourg law that notification and de-notification procedures for pre-marketing and cross-border marketing will be progressively made available on the eDesk portal.

The CSSF will inform the entities falling within the scope of this new Circular on the evolution of the procedures available on the eDesk portal through separate press releases. The list of relevant procedures is published and kept up to date on the homepage of the eDesk portal and should be consulted regularly by the entities concerned.

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



Swipe to continue →



## Circular CSSF 22/811 on authorisation and organisation of entities acting as an UCI administrator

**On 16 May 2022, the CSSF published Circular 22/811 which replaces Chapter D of Circular IML 91/75 specifying the rules concerning the central administration of Luxembourg undertakings for collective investments (UCI).**

The purpose of Circular 22/811 is to take into account the legislative developments, changes in technology and market evolution with respect to the activity of UCI administration. This new Circular clarifies the activity of administrators by specifying the principles of sound governance and the CSSF requirements on internal organisation and good practice applicable to them.

This Circular is applicable to the entities acting as UCI administrator for regulated and non-regulated UCI established, or not, in Luxembourg.

The Circular 22/811 enters into force with immediate effect. The requirement of the prior CSSF's authorisation before appointing an UCI administrator

does not apply to entities already acting as UCI administrator at the date of entry in force of this Circular. A grandfathering period, in order to comply with the remaining provisions of the present Circular, is granted to such entities already acting as UCI administrator at the date of entry in force of the Circular until 30 June 2023. In relation to the annual reporting required by point 7 and detailed in annex B of this Circular, the UCI administrator must file at the latest five months after its financial year-end, starting from 30 June 2023.

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



Swipe to continue →



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## Q&A by the ESAs with reference to the SFDR and the Taxonomy Regulation

**On 17 May 2022, the European Supervisory authorities (ESAs) published a Q&A adopted by the European Commission.**

The purpose of this Q&A is to answer certain [queries](#) regarding the interpretation of the European Union law with respect to the Sustainable Finance Disclosure Regulation ("SFDR") and the Taxonomy Regulation submitted by the ESAs on 13 May 2022.

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



## AML/CFT updates

On 30 May 2022, the CSSF updated the

- [AML/CFT questionnaire](#);
- the [AML/CFT Market Entry form](#); and
- the [External AML/CFT report](#) on eDesk.

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



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## Supervisory Briefing on integration of sustainability risks and disclosures in the area of investment management

**On 31 May 2022, the European Supervisory Authorities (ESAs) published a Supervisory Briefing issued under article 29(2) of the ESMA Regulation which enables ESMA to develop new practical instruments and convergence tools such as supervisory briefings.**

The purpose of this Supervisory Briefing is to ensure convergence across the European Union in the supervision of investment funds with sustainability features, and in combating greenwashing by investment funds.

The Supervisory Briefing establishes a common supervisory criteria for National Competent Authorities, to effectively supervise investment funds with sustainability features.

This Supervisory Briefing covers the following areas:

- Guidance for the supervision of fund documentation and marketing material, as well as guiding principles on the use of sustainability-related terms in funds' names; and
- Guidance for convergent supervision of the integration of sustainability risks by AIFMs and UCITS managers.

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



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## Clarifications on the ESAs draft regulatory technical standards under the SFDR

On 2 June 2022, the European Supervisory authorities (ESAs) published a statement providing clarifications on the draft Regulatory Technical Standards (RTS) issued under the Sustainable Finance Disclosure Regulation (SFDR).

The purpose of this statement is to provide clarifications on the following areas of the SFDR disclosures:

- use of sustainability indicators;
- principal adverse impact disclosures;
- financial product disclosures;
- direct and indirect investments;
- taxonomy-related financial product disclosures;
- “do not significantly harm” disclosures; and
- disclosures for products with investment options



**Reminder:** The disclosures required under the technical standards of the SFDR will be applicable on 1 January 2023.

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



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Regulatory



## Guidance for consumers on the context of virtual assets

**On 27 April 2022, the CSSF published a communiqué as guidance for consumers in the context of virtual assets.**

The aim of the guidance is to provide consumers with the tools required to make an informed decision prior to investing in virtual assets by addressing the risks involved and providing the minimum steps that consumers should follow, mainly

- (i) educating oneself; and
- (ii) advising consumers to enter into a contract with regulated entities offering crypto assets.

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





## ESAs launch consultation on sustainability disclosures for STS securitisations

**On 2 May 2022, the Joint Committee of the European Supervisory Authorities published a [consultation paper](#) on draft Regulatory Technical Standards (RTS).**

In respect of the content, methodologies and presentation of information to be disclosed for simple, transparent and standardised (STS) securitisations regarding the consideration of adverse impacts on sustainability factors.

The aim of the draft RTS is to assist investors in measuring and comparing the negative impacts on sustainability factors caused by the assets financed by the underlying exposures of STS securitisations and to assist financial market participants by providing a framework for measuring negative impacts.. This initiative is part of the European Commission's broader Digital Finance Package and the purpose of the pilot regime is test the

development of certain European market infrastructures for the trading and settlement of DLT-based financial instruments, in particular crypto-assets by temporarily exempting these operators from some of the specific requirements of European Union legislation in the area of financial services that could restrict and consequently prevent operators from developing solutions, without weakening any existing requirements or safeguards applied to traditional market infrastructures.

In accordance with Article 14 of the Regulation, ESMA shall provide a report to the European Commission providing a thorough assessment of the pilot regime at the latest by 24 March 2026.

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



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Regulatory



## EBA publishes discussion paper on the role of environmental risks in the prudential framework

On 2 May 2022, the European Banking Authority (EBA) published a [discussion paper](#) assessing the appropriateness of the current prudential framework to address environmental risk drivers.

The discussion paper further considers the potential justification for a dedicated prudential treatment of exposures associated with environment or social objectives and/or impacts and poses questions on whether adaptations to the current prudential framework are required to effectively address environmental risks.

Feedback on the discussion paper can be submitted until 2 August 2022.

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





## Promoting a better understanding of the regulatory technical standards under the SFDR ((EU) 2019/2088)

On 6 May 2022, the European Securities and Markets Authority (ESMA) published two letters from the European Commission to the European Supervisory Authorities (ESAs) in relation to the regulatory technical standard (RTS) under the Sustainable Finance Disclosure Regulation (SFDR).

In the [first letter](#), the European Commission requested that the ESAs review and amend the RTS by 30 September 2022 in light of the Commission's adoption of the Complementary Climate Delegated Regulation on 9 March 2022. In the [second letter](#), the European Commission requested that the ESAs propose amendments to the RTS specifically in relation to

- (i) the principal adverse impact indicators (PAIs), and;
- (ii) the information to be provided regarding financial products in pre-contractual documents, on websites, and in periodic reports on decarbonisation targets to be provided at the **latest 12 months from the date of receipt of the letter**.

On 25 May 2022, the ESMA published the European Commission's responses to the ESAs' questions from December 2021 on the SFDR and the Taxonomy Regulation ((EU) 2020/852).

On 2 June 2022, the ESAs provided [clarifications](#) on key areas of the RTS under the SFDR, focusing on the following:

1. use of sustainability indicators;
2. principal adverse impact (PAI) disclosures;
3. financial product disclosures;
4. direct and indirect investments;
5. taxonomy-related financial product disclosures;
6. "do not significantly harm" (DNSH) disclosures; and
7. disclosures for products with investment options.

The purpose of these publications is to promote a better understanding of the RTS as adopted in the Delegated Regulation under the SFDR, which are scheduled to apply from 1 January 2023.

For more information, please consult the [Commission Decision](#) and the [Q&A](#).





## Circular CSSF 22/812 on the adoption of EBA Guidelines on limited network exclusion under PSD2

**On 18 May 2022, the CSSF published Circular 22/812 on the adoption of the EBA Guidelines on the limited network exclusion under Directive 2015/2366 (PSD2) (EBA/GL/2022/02) .**

The Circular applies to all persons providing in Luxembourg services based on specific instruments that can be used only in a limited way (e.g. meal vouchers, cards that can only be used in a particular chain of stores or a particular shopping centre, fuel card...) and aims at clarifying the requirement under article 3(k)(i) or (ii) of the law of 2009 on payment services to address to the CSSF a notification where the value of payment transactions executed with the specific instrument over the preceding 12 months exceeds

the amount of EUR 1 million.

The Circular apply as of 1 June 2022.

Entities benefiting from an exclusion under article 3(k)(i) or (ii) of the Law of 2009 and that already submitted a notification to the CSSF shall as soon as possible and at latest by 1 September 2022 submit a new notification taking into account the provisions of the EBA Guidelines using the [form](#) available on the CSSF website.

For more information on the notification obligation, please click [here](#).



Swipe to continue →



Regulatory



## European Insurance and Occupational Pensions Authority assesses European insurers' exposure to physical climate change risks

**On 20 May 2022, the European Insurance and Occupational Pensions Authority (EIOPA) published a report on assessing the materiality of the insurance sector exposure to physical climate change risk under a financial stability perspective.**

The CSSF communication sets out a table of articles under Regulation (EU) 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended, that became applicable on 12 April 2022 and need to be put in place by professionals in the Luxembourg financial market.

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



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Regulatory



## European pilot regime for market infrastructures based on distributed ledger technology (DLT)

On 30 May 2022, Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (the Regulation) was published in the Official Journal of the European Union and shall be applicable from 23 March 2023, except for Articles 8(5), 9(5) and 10(6) of the Regulation which require the European Securities and Markets Authority (ESMA) to develop guidelines in relation to the application for specific permission by operators before 23 March 2023.

This initiative is part of the European Commission's broader Digital Finance Package and the purpose of the pilot regime is test the development of certain European market infrastructures for the trading and settlement of DLT-based financial instruments, in particular crypto-assets by temporarily exempting these operators from some of the specific requirements of European Union legislation in the area of financial services that could restrict

and consequently prevent operators from developing solutions, without weakening any existing requirements or safeguards applied to traditional market infrastructures.

In accordance with Article 14 of the Regulation, ESMA shall provide a report to the European Commission providing a thorough assessment of the pilot regime at the latest by 24 March 2026.

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





## Circular CSSF 22/814 on the monitoring of the threshold and other procedural aspects on the establishment of an intermediate EU parent undertaking

**On 25 May 2022, the CSSF published Circular 22/814 on the application of the EBA Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of an intermediate EU parent undertaking under Article 21b of Directive 2013/36/EU (CRD) (EBA/GL/2021/08).**

The Circular applies to all credit institutions falling within the scope of Less Significant Entities (as defined under the Single Supervisory Mechanism) and investment firms that are part of the third party group, to branches of credit institutions or of investment firms incorporated in a third-country, as well as financial holding companies, mixed financial holding companies and investment holding companies incorporated in Luxembourg.

The purpose of the Guidelines is to specify a common methodology to calculate the total value of assets in the European Union of third party groups in order to establish a consistent application of the intermediate EU parent undertaking (the IPU) requirement.

According to Article 34-4 of the Luxembourg law of 5 April 1993 on the financial sector, as amended, this IPU requirement applies when of two or more credit institutions and/or investment firms that are part of the same third party group and the total value of assets in the EU of this group equals or is greater than EUR 40 billion (the IPU threshold).

The entity is obliged to notify the CSSF, without undue delay, when it is expected that the third party group will reach the IPU threshold within the next three years.

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



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Banking



## Sanctions



During the month of May, the CSSF has published information about administrative penalties imposed on [Natixis Wealth Management Luxembourg PFS Atos Luxembourg PSF S.A.](#), and the European Depositary Bank during [March](#) and [April](#) 2022, indicating more scrutiny from the CSSF.

Swipe to continue →



## ESG Securitisation: taking stock

**On 17 May 2022, Simmons & Simmons published a practical guide on ESG securitisation both in the United Kingdom and the EU.**

The purpose of the practical guide is to outline the issues that should be considered when originators and sponsors structure an ESG securitisation, focusing primarily on the present legislation and frameworks, and outlining potential future legislative developments.

To access the ESG Securitisation guide, please click [here](#).





## Opinion of the Luxembourg Chambre de commerce on the online incorporation of companies

On 5 May 2022, the Luxembourg “Chambre de Commerce” highly approved the draft bill n°7968 transposing the EU Directive 2019/1151 of the European Parliament and the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law.

**The bill aims to facilitate the online incorporation of companies, execution of notarial instruments, registration of branches and filing of documents.**

Currently, the public limited company (SA), private limited-liability company (SàRL), and partnership limited by shares (SCA) must be incorporated before a Luxembourg notary. With the new regime, the companies could be incorporated - and notarial instruments executed - completely online, without requesting the founders to appear physically / be represented before a Luxembourg notary. If the incorporation formalities are filled out online, it still remains possible to hold a physical or visio conference meeting in order, inter alia, to verify the identity and legal capacity of the parties.

Different changes and amendments have been made in the Luxembourg legislation to implement a legal regime for the authentic instruments as well as the possibility to

incorporate the company under an electronic format, notably the introduction of new articles 1317-1 and 1317-2 in the Code civil establishing the requirements that authentic instruments in electronic format must meet to be valid and have legal effect. The Notarial Law is amended as well in order to set up a notarial electronic exchange platform in which all documents will have to go through.

The Chamber of Commerce highly welcomes the provisions of the draft, mainly the possibility to incorporate in electronic format without physical appearance and the notary digitalisation.

The deadline for transposition of the EU Directive into Luxembourg law is 1 August 2022. The Bill will be subject to consultation with various professional bodies and the Council of State.

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



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Corporate



## Draft Bill n°8007 : Correction of the material errors in the Company Law

**The Law of 10 August 1915 on commercial companies had been subject of an important modernisation reform initiated in June 2007 and completed with the adoption of the Law of 10 August 2016.**

Even with an extreme thoroughness in the course of the legislative process, certain material errors, omissions as well as uncertainties slipped into the text. It appeared therefore quite useful to correct those inconsistencies without substantially modifying the provisions.

The draft bill n°8007 also intends to update some references and contradictions in:

- (i) the Law of 19 December 2002 on the Register of Commerce and Companies and the Accounting and Annual Accounts of Companies;
- (ii) the Law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies; and
- (iii) the Civil Code.

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



Swipe to continue →



Tax



## Guidelines on the interpretation of the DAC6 law

On 4 May 2022, the Luxembourg tax administration has updated its guidelines on the implementation of the law of 25 March 2020 on reportable cross-border arrangements, known as the DAC6 Law. The guidelines are now presented in the form of frequently asked questions (**FAQ**) and also cover certain hallmarks listed in the annex to the DAC6 Law.

For the FAQ (only available in French), please click [here](#).



## Draft report by the European Parliament on ATAD 3

On 12 May 2022, the European Parliament published a draft report on the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes, known as ATAD 3. The draft report provides amendments aiming at clarifying certain aspects of the current draft directive.

To access the draft report, please click [here](#).



Swipe to continue →



Tax



## Guidelines on the interpretation of the DAC6 law

**On 31 May 2022, the Luxembourg tax administration released a circular n° 168/2 with further guidelines regarding the defensive measures against non-cooperative countries and territories for tax purposes (the EU Black List).**

The EU Black List contains the jurisdictions which are deemed non-cooperative based on EU criteria which are set out in the Council's conclusions, updated regularly, and covering compliance with international standards of tax transparency, fair taxation and implementation of anti-BEPS measures.

Member States applied additional administrative measures for tax purposes to transactions or structures involving jurisdictions on the EU Black List and this circular further explains the Luxembourg measures already in place since tax year 2018.

To access the circular (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](#).



Swipe to continue →



Articles Published



## Articles published in May 2022

| Date   | Article  | Link                 |
|--------|--|----------------------|
| 05 May | <b>Clock ticking for firms to meet new outsourcing rules</b>                                       | <a href="#">Link</a> |
| 24 May | <b>Evolving UCI and IFM marketing notification procedures</b>                                      | <a href="#">Link</a> |
| 25 May | <b>New CSSF Circular on UCI Administrator</b>  | <a href="#">Link</a> |
| 25 May | <b>L'attractivité du secteur des fonds d'investissement à l'épreuve de la fiscalité européenne</b> | <a href="#">Link</a> |

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