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Luxembourg Insights

Fall 2023

Simmons & Simmons Luxembourg LLP



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Asset Management &
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CSSF Thematic Review on the implementation of sustainability

On 3 August 2023, the CSSF issued a [thematic review](#) covering the implementation of the SFDR, Taxonomy and the AIFMD and the UCITS Directive in relation to the integration of sustainability risks in the investment fund industry, based on inspections conducted on 6 April 2023.

The objective of this review is to inform the investment fund industry of identified weaknesses, to remind the relevant parties of their obligations and to clarify the requirements under the SFDR and Taxonomy. In this context, the CSSF provided observations and expectations regarding the organisational arrangement of IFMs, pre-contractual disclosures, website disclosures, periodic disclosures, fund documents and marketing communications and portfolio analysis.

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



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Asset Management &
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CSSF FAQ on virtual asset service providers

On 17 August 2023, the CSSF published its [FAQ](#) on virtual asset service providers ("VASPs").

In respect of AIFs investing directly or indirectly in virtual assets (noting specific conditions apply for funds-of-fund strategy), the CSSF requires the AIFM to obtain prior authorisation from the CSSF for the strategy "Other-Other Fund-Virtual assets" as VASP.

As defined in Article 1 (20c) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing (as amended) (the "AML/CTF Law"), VASPs are subject to AML/CTF obligations, in particular the performance of a ML/TF risk assessment covering at least the following risks factors: the customers, the countries or geographic areas, the products (including without being limited to the virtual assets), services, transactions and the delivery channels.

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



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Asset Management &
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CBDP observations for the period 2021-2023 on marketing communications

In 2022, the CSSF launched a thematic review on the content and use of marketing communications (“MCs”) by Luxembourg investment fund managers to verify their compliance with the applicable requirements under Article 4 of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the “CBDF Regulation”) during the period from 1 April 2021 to 31 March 2023.

The objective of this review is to inform the investment fund industry of identified weaknesses, to remind the relevant parties of their obligations and to clarify the requirements under the Article 4 of the CBDF Regulation. In this context, the CSSF provided the observations and expectations regarding the identification of MCs, consistency with fund’s documents, suitability of the MC for the target investors or potential investors, mandatory references to the availability of fund’s documents, information on risks and rewards, information on costs, information on performance and benchmarks, information on sustainability-related aspects.

The following key weaknesses were in particular identified by the CSSF:

- The MC was not flagged at all as a MC or only with a disclaimer at the end of the document among other information;
- Lack of consistency between MCs and fund’s documentation;
- Difficult-to-read disclaimer sections containing most of the legal information, where the text was too small, and/or the information was presented in a block of text without spaces, sometimes over several pages;
- The link provided in the MC refers to generic information on the sustainability-related aspects (i.e. not in relation to the fund/sub-fund promoted).

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



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Asset Management &
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AIFM reporting – Technical Guidance

On 22 September 2023, the CSSF published technical guidance on AIFM Reporting. The document provides guidance on topics such as:

- specifications of the reporting files, further defined in the AIFMD Reporting – XML documents published by ESMA;
- the transmission of the AIFM and AIF reporting files to the CSSF;
- CSSF return files;
- the procedure to register as a sender;
- contact information; and
- a description of controls, error codes and error messages received in the return files to an AIFM or AIF reporting file.

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



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Asset Management &
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Circular 23/843

On 16 October 2023, the CSSF published Circular CSSF 23/843 on the adoption of the EBA guidelines on policies and controls for the effective management of money laundering and terrorist financing factors when providing access to financial services.

The CSSF Circular 23/843 is applicable to all credit and financial institutions, as defined in Article 1(3) and (3a) of the AML/CTF Law.

The EBA guidelines include key information for credit and financial institutions on the steps that should be taken to facilitate access to financial services by those categories of consumers highlighted as particularly vulnerable to unwarranted “de-risking” (i.e. decisions taken by credit or financial institutions not to provide services to customers in certain risk categories).

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



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Asset Management &
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Communiqué UCITS marketing notifications

On 15 November 2023, the CSSF published a [Communiqué](#) on UCITS marketing notifications in connection to Circular CSSF 22/810 on 12 May 2022, whereby the CSSF informs Luxembourg UCITS wishing to notify or de-notify arrangements for marketing of shares in another Member State in accordance with Article 6 of the 2010 Law, that they must comply with the marketing notification and de-notification procedures, which will be available via the eDesk Portal as of 2 January 2024.

As of 2 January 2024, Circular 11/509 on UCITS notification procedures shall be repealed with more details to be provided in December with the publication of a new version of the user guide.

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Asset Management &
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Updates to the FAQ concerning SIFs and SICARs that do not qualify as AIFs, the SICAR FAQ and the FAQ concerning the Law of 28 July 2014 regarding immobilisation of bearer shares and units

On 17 November 2023, the CSSF published an update to the FAQ concerning SIFs and SICARs that do not qualify as AIFs.

The update aims at replacing the term “Central Administration” and other linked functions by “UCI administrator” in line with CSSF Circular 22/811 on UCI administrator.

More information: [FAQ on SICARs](#), [FAQ concerning SIFs and SICARs that do not qualify as AIFs](#), [FAQ on the Law of 28 July 2014 regarding immobilisation of bearer shares and units](#)

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Asset Management &
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CSSF FAQ - Submission of closing documents and financial information by investment fund managers

Circular CSSF 19/708 clarified the procedures for the electronic transmission of specific documents to the CSSF using a secure infrastructure accepted by the CSSF.

The annex to this new CSSF circular lists the documents that must now be transmitted exclusively by electronic means, document types and the required nomenclature.

The CSSF provides further clarification regarding the closing documents to be transmitted as mentioned in point 3 of Annex 2 of Circular CSSF 18/698.

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Asset Management &
Investment Funds



Reports foreseen by Circulars CSSF 21/788, 21/789 and 21/790, applicable as from year-end 31 December 2023, now available in eDesk and information on main updates

The CSSF has published Circulars CSSF 21/788, 21/789, and 21/790, introducing new reports for improved risk-based supervision of investment fund managers (IFMs) and undertakings for collective investment (UCIs) for both prudential and AML/CFT purposes.

The new reports are available in the CISERO module on the CSSF eDesk Portal as of 15 November 2023 for IFMs and UCIs with a financial year-end 31 December 2023 and 31 January 2024. The reports with a financial year-end after 31 January 2024, will be made available three months before the respective year-end.

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



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Asset Management &
Investment Funds



FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment

By means of reminder, the CSSF clarified on 3 November 2021 that UCITS' ancillary liquid assets should be limited to bank deposits as sight such as cash held in current accounts with a bank accessible at any time and the holding of such assets should be limited to 20% of the net assets of a UCITS.

In the context of article 77 (2) (a) of the Law of 2010 applicable to feeder UCITS, the CSSF further elaborated that ancillary liquid assets of feeder UCITS may include highly liquid assets such as deposits with a credit institution, money market instruments and money market funds in addition to bank deposits as sight mentioned above.

Pursuant to article 77 (2) of the Law of 2010, a feeder UCITS may hold up to 15% of its assets in such ancillary liquid assets.

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Banking



The CSSF published a report on profit and loss accounts of credit institutions

On 4 October 2023, the CSSF has published a report on the profit and loss accounts of credit institutions as at 30 June 2023. The Luxembourg banking sector has seen its profit before provisions and taxes rise to EUR 4,361.8 million in the first six months of 2023, a remarkable growth of 43.4% compared to the same period in 2022. Net interest income, which increased for 82% of banks, has been the main driver of this performance, with a surge of 67.2% compared to the same period in 2022. This report provides that this was due to the overall increase in interest rates. As a result, the average cost-to-income ratio improved from 57% in the first half of 2022 to 49% in the first half of 2023.

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



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Banking



The CSSF published a report on diversity in the Luxembourg banking sector

On 10 October 2023, the CSSF published a report on the results of a survey launched in April 2023 on diversity within the management bodies of less significant credit institutions (the “LSIs”) of the financial sector. A general observation reveals that within the credit institutions, investment firms, and payment institutions/electronic money institutions of the financial sector, women held approximately 16.3% of management positions. They comprised 16.4% of management roles in supervisory functions and 16.2% in management functions. It's worth noting that nearly a quarter of LSIs had not implemented any diversity policies as of December 31, 2022. Furthermore, close to 97% of LSIs predominantly had male-dominated management bodies. Approximately 25% of LSIs had no female members in their management bodies by the end of 2022. Therefore, the CSSF observed that the progress in terms of diversity in the market is relatively slow.

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



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Banking



Dissolution of Fortuna Banque s.c.

On 12 October 2023, the CSSF published a press release concerning the dissolution of Fortuna Banque s.c. The Luxembourg Tribunal d'arrondissement (District Court) for commercial matters has decided, on 12 October 2023, to dissolve and liquidate the Luxembourg-based credit institution Fortuna Banque s.c.. This judgement is related to the termination of banking activities of Fortuna Banque s.c., which was publicly announced in August 2022. As a consequence, the SIIL, the investor compensation scheme of Luxembourg, has been triggered.

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



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Banking



New law on the preservation of businesses and modernisation of insolvency law

On 1 November 2023, the new Luxembourg law on the preservation of businesses and modernisation of insolvency law, derived from Draft Bill No. 6539A, entered into force (the “Law”). The Law was adopted on 19 July 2023 in order to modernise the existing insolvency framework, implementing the EU Directive 2019/1023 of the European Parliament and the Council of 20 June 2019 on preventive restructuring frameworks. The Law applies to all commercial companies, including special limited partnerships, traders, artisans and civil companies. Importantly, it excludes specific entities like credit institutions, investment firms, regulated securitisation vehicles, insurance and reinsurance companies, a majority of financial sector companies (including investment funds), pension funds and law firms from its scope.

The Law introduces two reorganization procedures:

- an extrajudicial procedure based on mutual agreement; and
- a judicial procedure.

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



In particular, the judicial reorganisation procedure aims to preserve and oversee the continuity of a company's assets or activities. It can be initiated to secure a stay for amicable agreement, obtain creditor approval for a reorganisation plan, or facilitate court-ordered transfer of assets. The application for this procedure may have specific objectives tailored to each business or segment. Both these procedures serve as modern alternatives, supplanting outdated approaches such as composition with creditors, controlled management, and the moratorium or suspension of payments.

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Banking



Publication of a new guide on blue-themed bonds

On 6 September 2023, ICMA (the International Capital Market Association) together with the International Finance Corporation (the “IFC”), United Nations Global Compact (the “UN Global Compact”), United Nations Environment Programme Finance Initiative (the “UNEP FI”), and the Asian Development Bank (the “ADB”) released a global practitioner's guide for bonds to finance the sustainable blue economy.

The Guidance is built upon established market standards that serve as the foundation for the global sustainable bond markets, including the Green Bond Principles, and it incorporates existing specialised guidance related to sustainable ocean finance, including UNEP FI's Sustainable Blue Economy Finance Principles and associated Blue Finance Guidance, the UN Global Compact's Practical Guidance to Issue a Blue Bonds and Sustainable Ocean Principles, the Asian Development Bank's Ocean Finance Framework and Green and Blue Bond Framework, as well as the IFC's Guidelines for Blue Finance.

This voluntary guidance offers market participants clear criteria, practices, and examples for the issuance and lending of "blue bonds." Developed from inputs from financial market, the ocean industry and global institutions, it gives insights into the essential components of launching a credible "blue bond," how to assess the environmental impact of "blue projects", and the necessary steps to facilitate transactions that uphold the market's integrity.

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



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Banking



ESMA launched a Call for Evidence on the shortening of the settlement cycle

On 5 October 2023, the ESMA launched a Call for Evidence (the “CfE”) on the shortening of the settlement cycle. The CfE is aimed at assisting ESMA in evaluating the potential advantages and drawbacks of reducing the settlement cycle in the EU. It also aims to determine whether any regulatory measures are necessary to mitigate the impact on EU market participants due to the planned shortening of the settlement cycle to T+1 in other states, such as the United States. ESMA is actively seeking input, including quantitative data, from all stakeholders engaged in financial markets, not limited to those within financial market infrastructures. Stakeholders are invited to provide their input by 15 December 2023.

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



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Banking



New regulation on European Green Bond Standard

On 23 October 2023, the European Council approved a regulation establishing the 'European green bond standard' to set uniform criteria for environmentally sustainable bonds. This supports the EU's strategy for financing sustainable growth and a climate-neutral economy, promoting consistency in the green bond market. The regulation includes a registration system and supervisory framework for external reviewers. To prevent greenwashing, voluntary disclosure requirements are extended to other environmentally sustainable and sustainability-linked bonds in the EU. Proceeds from European green bonds must align with the EU Taxonomy for sustainable activities, with a 15% flexibility allowance for uncovered sectors. The use of this allowance will be reassessed as Europe progresses toward climate neutrality and more green investment opportunities emerge.

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



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Banking



The Luxembourg Capital Market Association published a guidance note for board members on direct lending with securitisation vehicle as originator

On 9 November 2023, the Luxembourg Capital Market Association (the “LuxCMA”) published a guidance note for board members focusing on direct lending with securitisation vehicle as originator. In Luxembourg, a securitisation vehicle is able to originate loans without requiring a specific license. The guidance note illustrates the key elements, the common reporting, the parties and the lending process in a direct lending structure. In particular, the key elements and the parties remain consistent with other securitization forms, with minor variations observed primarily in terms of risk management and the approval process for borrowers.

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



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Corporate



Law of 7 July 2023 on the use of digital tools and processes in corporate law

On 18 July 2023, the Luxembourg Official Gazette published information on the new law of 7 July 2023 (the Law), transposing Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in corporate law. The Law, which will come into force on 1 August 2023, will also amend existing Luxembourg legislations, particularly:

- the Civil code, notably allowing for the creation of authentic electronic instruments and deeds, subject to specific conditions ensuring identification, content integrity, and human-readable representation;
- the amended law of 9 December 1976 on the organisation of notaries, including provisions for electronic signatures, remote identification, and the establishment of an electronic exchange platform;
- the amended law of 10 August 1915 on commercial companies, addressing online incorporation procedures; and,
- the amended law of 19 December 2002 on the Trade and Companies' register (Registre de Commerce et des Sociétés) and the accounting and annual accounts of undertakings, emphasizing electronic filing and advanced electronic signatures for integrity and origin assurance, as regards the registration of branches created in Luxembourg and other EU Member States.

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



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Corporate



Amendments to Luxembourg legislations

Various amendments to Luxembourg legislations were published in the Luxembourg Official Gazette at the beginning of August 2023.

On 7 August 2023, publication n°515/2023 instructed amendments to the following laws, further to the decision of the Chamber of Deputies of 19 July 2023 and that of the Council of State of 21 July 2023:

- the law of 10 August 1915 on commercial companies, as amended (the 1915 Law), amongst others in relation to the quorum and majority calculations in shareholder meetings;
- the law of 19 December 2002 on the Trade and Companies' register (Registre de Commerce et des Sociétés) and the accounting and annual accounts of undertakings, as amended (the 2002 Law), amongst others the insertion of a new definitions section as article 24bis;
- the law of 24 May 2011 relating to the exercise of shareholders' rights in shareholders' meetings of listed companies (the 2011 Law), amongst others article 1 in relation to certain shareholders' rights in such meetings; and
- the Civil Code with respect to the correction of a typo.

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Corporate



Amendments to Luxembourg legislations

On 15 August 2023, publication n°532/2023 then instructed, amongst others, the following amendments which are intended to apply from the opening date of the first financial year commencing on or after 22 June 2024:

- a new chapter II quater in the 2002 Law, relating to the declaration of information on the corporate income tax return; and
- a new point 11° within article 1500-2 of the 1915 Law, relating to the sanctions imposed to managers or directors having failed to disclose the abovementioned information within a period of twelve months following the end of the financial year of a company.

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



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Corporate



Law of 7 August 2023 on business preservation and modernisation of bankruptcy law

On 18 August 2023, the Luxembourg Official Gazette published information on the new law of 7 August 2023 on business preservation and modernisation of bankruptcy law (the Law). The Law, which will come into force on 1 November 2023, will also modify existing Luxembourg legislations, amongst others the law of 10 August 1915 on commercial companies, as amended, and the law of 19 December 2002 on the Trade and Companies' register (Registre de Commerce et des Sociétés) and the accounting and annual accounts of undertakings, as amended.

The Law intends to prevent the bankruptcy of Luxembourg companies, notably through the reorganisation of all or part of a company's assets and activities, with or without the assistance of a corporate conciliator (the Reorganisation). The Reorganisation can either be made amicably, as indicated in article 11 of the Law, or be a judicial reorganisation pursuant to articles 12 and following.

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



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Corporate



Draft bill of law number 8296

On 23 August 2023, the draft bill of law number 8296 (the Bill) was submitted to the Committee on the Economy, Consumer Protection and the Internal Market in order to introduce a merger control regime into Luxembourg law (the Merger Control). The Merger Control, which ensures transparency in corporate mergers and acquisitions and aims to prevent negative impacts on competition as a result of mergers, shall be carried out by the Luxembourg competition authority (Autorité de la concurrence) (the Authority).

As per the Bill, the Merger Control would apply for specific turnover thresholds and on a case-by-case basis, and be carried out in a two-phase procedure as follows:

- Phase I consists in a first examination of the notification by the Authority. In this phase, the Authority analyses, within 25 business days, whether a Merger Control shall apply; and
- Phase II, if applicable, consists in a detailed examination. In this phase, the Authority carries out the Merger Control and submits its decision to the relevant parties within 90 business days.

Based on the foregoing, the Bill proposes amendments to four different Luxembourg laws, including the law of 10 August 1915 on commercial companies, as amended (the Law), and more specifically article 1020-1.

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



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Corporate



Law of 26 July 2023 on the business license

On 28 August 2023, the Luxembourg Official Gazette published information on the new law of 26 July 2023 amending the law of 2 September 2011 regulating access to the professions of craftsman, trader, industrialist and certain liberal professions (the Law). The Law, which will come into force on 1 September 2023, modernises the business license, notably through the dematerialisation of the application, new requirements for the business license holder, the simplification of administrative procedures and access to certain craft professions and, finally, the principle of new chance after bankruptcy.

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



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Corporate



Draft bill of law number 8309

On 14 September 2023, the draft bill of law number 8309 (the Bill), implementing Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services, and amending Directive 2000/31/EC (Digital Services Act), was submitted. The Bill notably proposes to amend the law of 30 November 2022 on competition (the Law), as amended, in relation to the Luxembourg Register of Beneficial Owners (the RBO).

The competition authority (Autorité de la concurrence) (the Authority) was in fact designated the role of “digital services coordinator” on 3 February 2023 and, in this context, the Bill notably proposes the amendment of article 29 of the Law in line with the law of 13 January 2019 establishing the Beneficial Owner Register. It is proposed to grant the Authority access to the RBO in the context of carrying out its daily activities, giving it full access to public information about Luxembourg companies to ensure the proper functioning of markets from a competitive point of view.

By way of reminder, since the European Court of Justice’s decision from 22 November 2022, access to the RBO had been limited significantly for data protection reasons and has, since, been restricted to professionals within the meaning of article 2 of the amended Act of 12 November 2004 on the fight against money laundering and terrorist financing.

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





Law of 7 August 2023 on non-profit organisations and foundations

On 19 September 2023, the Luxembourg Official Gazette published information on the new law of 7 August 2023 on non-profit organisations and foundations (the Law). The Law, which came into force on 23 September 2023, repeals the amended law of 21 April 1928 on non-profit associations and foundations and intends to enhance the efficiency and effectiveness of non-profit organisations and foundations in Luxembourg (the ASBLs), making it easier for them to operate and fulfil their respective missions while ensuring compliance with regulatory requirements.

Principal changes aim to modernise the legal framework and notably include:

- streamlined administrative procedures;
- a modernised governance;
- a tailor-made accounting system;
- new restructuring tools for transformation and merger;
- the adaptation of the initial endowment of a foundation to the economic context; and
- the procedure for administrative dissolution without liquidation.

The full text of the Law can be found [here](#) with a minor rectification to its wording, published on 3 October 2023, available [here](#).

On 25 September 2023, the Luxembourg Business Registers (the **LBR**) also published support on the data that ASBLs have to file with the LBR during their life. The information can be found [here](#).

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Corporate



Ministerial Regulation of 20 September 2023 on the presentation of documents for publication in the Electronic Register of Companies and Associations

On 25 September 2023, the Luxembourg Official Gazette published information on the new Ministerial Regulation of 20 September 2023 amending the Ministerial Regulation of 27 May 2016 laying down the criteria for the presentation and form of documents intended for publication in the Electronic Register of Companies and Associations (the Regulation).

The Regulation, which came into force on 25 September 2023, aims to modernize and streamline document submission procedures, making the process more efficient and aligned with contemporary digital standards. The specific modifications outline requirements for document format, fonts, and layout, as well as introduce the possibility of submitting certain documents in a machine-readable format. Additionally, they align legal references for consistency.

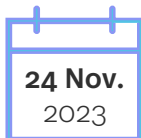
For more information, please click [here](#).



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Corporate



Draft bill of law number 8342

On 24 November 2023, the draft bill of law number 8342 (the Bill), implementing Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 (the Directive) on amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in corporate law, and amending the amended law of 19 December 2002 on the Trade and Companies' register (*Registre de Commerce et des Sociétés*) and the accounting and annual accounts of undertakings (the Law), was submitted.

Aligning with the Directive, the Bill notably proposes amendments to the Law, introducing measures for managing director disqualifications in Luxembourg that allows Member States to verify proposed directors' potential management bans in other EU states using the register interconnection system.

By way of reminder, the Directive was already partially transposed by the law of 7 July 2023, focusing on critical amendments to the Civil Code, laws on notaries, commercial companies, and the Trade and Companies' register (*Registre de Commerce et des Sociétés*).

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



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Corporate



New proposal on artificial intelligence (Artificial Intelligence Draft Act) for upcoming fourth political trilogue

On 17 October 2023, just days before the crucial fourth political trilogue scheduled for 24 October 2023, the Council of the European Union (EU Presidency) has unveiled the following new proposals for the Artificial Intelligence Draft Act (AI Draft Act):

The harmonization of data transfer rules across borders, by giving regulatory bodies greater authority to monitor and enforce compliance with AI regulations.

Stricter guidelines for the use of AI in high-risk sectors and a particular emphasis on foundation models and general-purpose AI (GPAI) systems. It introduces a robust ethical and liability framework that underscores the need for transparency and accountability throughout their development and deployment. To that effect, developers will be required to detail the decision-making processes of their AI models and to implement anti-bias mechanisms.

The requirement for providers of foundation models to respect and uphold copyright regulations, acknowledging the intellectual property rights of content creators and innovators whose work is incorporated into AI applications.

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



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Regulatory



EBA published a statement on timely preparatory steps towards the application of MiCAR to asset-referenced and e-money tokens

On 12 July 2023, EBA published a statement on timely preparatory steps towards the application of the Markets in Crypto-assets Regulation (the “MiCA Regulation”) to asset-referenced and e-money tokens. The statement aims to guide financial institutions and other undertakings who intend to offer asset-referenced tokens (ARTs) or electronic money tokens (EMTs) before the MiCA Regulation becomes applicable on 30 June 2024.

It also provides some principles that these entities should follow in order to reduce the risks of abrupt and disruptive changes in their business models and to protect consumers. The principles cover aspects such as disclosures, fair treatment, governance, risk management, reserve, recovery and redemption arrangements and communication with the competent authorities. The statement reminds consumers that ARTs and EMTs are not regulated by MiCA until the application date and advises them to be cautious and check the joint-ESA warning before acquiring crypto-assets.

EBA also published a template for the transmission of information to the relevant authority to be used in the transition period from the entry into force of MiCA to the application date, i.e. 12 months from the entry into force. This template can be found in the following link: [Template-Statement-on-timely-preparatory-steps-towards-the-application-of-MiCAR.pdf \(cssf.lu\)](#)

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



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Regulatory



Bill on the issuance of debt securities by the European Commission published as part of the diversified financing strategy

On 4 August 2023, Luxembourg Parliament published a law proposal on the issuance of debt securities by the European Commission as part of the diversified financing strategy. The proposed law aims at making the operations of borrowing and debt management more efficient in the context of financing EU and European Atomic Energy Community (the “Euratom”) programmes and instruments. It clarifies the procedures for issuing securities of the EU or the Euratom under Luxembourg law, without delivery to a third party and without compensation at the time of their creation.

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



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DORA bill published

On 4 August 2023, the Luxembourg Parliament published a law proposal on digital operational resilience in the financial sector. The proposed law has a dual purpose. It aims, on the one hand, to implement DORA (Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience in the financial sector) and, on the other hand, to transpose Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 with regard to digital operational resilience in the financial sector.

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



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Regulatory



The CSSF stopped using fax to send and receive documents and published telephone numbers and e-mail addresses for specific matters

On 04 August 2023, the CSSF communicated that it will no longer use fax to send and receive documents and all other contact details remain the same. It also published a list of telephone numbers and email addresses for specific matters. For other filings the CSSF has gradually move to its own electronic platform, e-Desk.).

For more information please see the publication [here](#) and [here](#).





The CSSF published a FAQ on Virtual Asset Service Providers (the “VASPs”)

On 17 August 2023, the CSSF published the answers to some frequently asked questions on VASPs as defined in the Law of 12 November 2004 on the fight against money laundering and terrorist financing (the “AML/CTF Law”). After giving a definition of virtual asset (the “VA”), which by way of reminder is “xxx”, the CSSF specified the type of service providers which could be subject to registration as VASPs. In particular, any natural or legal person established in Luxembourg or that offers VA-related services on the Luxembourg market on behalf of customers or for its customers, must register as a VASP in the CSSF register.

The CSSF provides a non-exhaustive list of VA-services that requires registration, such as:

- the exchange between VAs and fiat currencies, including the service of exchange between virtual currencies and fiat currencies,
- the exchange between one or more forms of VA.
- the transfer of VAs,
- the safekeeping or administration of VAs or instruments enabling control over VAs, including custodian wallet service, and
- the participation in and provision of financial services related to an issuer’s offer or sale of VAs.

It also includes credit institutions that provide these services but excludes the entities who provide solely either the hardware or the software to design and support the offering of VA services.

The CSSF highlighted that VASPs must apply enhanced measures to mitigate the highest risks related to money laundering and terrorism financing and that they must implement and adapt a Risk-Based Approach to these risks. It referred to CSSF Circular 11/529 for the requirements to be considered by VASPs in their AML/CFT risk assessment such as the customers, the countries or geographic areas, the products, the services, the transactions and the delivery channels.



Swipe to continue →



Regulatory



The European Commission launched two consultations on SFDR

On 14 September 2023, the European Commission launched a targeted consultation and a public consultation to seek feedback on SFDR (the Sustainable Finance Disclosure Regulation). The Commission is primarily soliciting input through a set of open-ended questions. Respondents have the opportunity to provide their perspectives by rating on a scale from 1 to 5, with an additional text box available for more detailed comments. The targeted consultation is a focused consultation designed to pinpoint any deficiencies in the regulation and to explore potential avenues for enhancing the framework. On the other hand, the public consultation concerns the practical effectiveness of the SFDR and the potential challenges that stakeholders could encounter while putting it into practice, specifically in its relationship with other sustainable finance regulations. In each case, the consultation period is open until 15 December 2023.

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



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Regulatory



The CSSF published circular on ESMA's MiFID II product governance requirements guidelines

On 15 September 2023, the CSSF published Circular CSSF 23/840 on the application of ESMA's MiFID II product governance requirements guidelines. This text aims to provide guidance on how to apply some of the MiFID II product governance requirements in a consistent and harmonised way across the EU. The rules in question are those related to: the management body, the organisational requirements, the general principles and information to clients, the product governance obligations for investment firms manufacturing financial instruments and the product governance obligations for distributors as set in MiFID II and in the MiFID II Delegated Directive.

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



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Regulatory



The FATF published the mutual evaluation report of Luxembourg

On 27 September 2023, the FATF published the mutual evaluation report of Luxembourg carried out as part of its 4th cycle of mutual evaluations. FATF acknowledges the high standard of Luxembourg's existing framework regarding the fight against money laundering and terrorist financing (the “AML/CFT”) and also provides some suggestions to enhance the effectiveness of the system. Therefore, Luxembourg has been placed under regular monitoring by FATF, which is the best possible outcome after a mutual evaluation. The FATF report highlights the maturity of Luxembourg's AML/CFT supervisory regime, the robustness of the market-entry controls performed by the supervisors when licensing and registering professionals, and the increasing targeting of supervisory tools and on-site controls. The CSSF is praised by FATF for its well-designed and risk-based AML/CFT supervisory approach.

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



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Regulatory



ESMA announced the launch of a Common Supervisory Action

On 3 October 2023, ESMA announced the launch of a Common Supervisory Action (the “CSA”) with National Competent Authorities (the “NCAs”) on the integration of sustainability into companies’ suitability assessment and product governance processes and procedures in 2024. The aim of the CSA is to evaluate the progress made by financial intermediaries in implementing the critical sustainability requirements that became effective in 2022, subsequent to the revisions made to the MiFID II Delegated Acts.

Swipe to continue →



Regulatory



ESMA publishes the second consultation on crypto market rules

On 5 October 2023, ESMA published a second consultation package under MiCA (the Markets in Crypto-Assets Regulation). Through this, ESMA is asking for feedback on five draft rules, which address: sustainability indicators for distributed ledgers; how to disclose inside information; technical requirements for white papers; how to ensure trade transparency and record-keeping and business continuity requirements for crypto-asset service providers. Stakeholders should provide their feedback by 14 December 2023.

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



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Regulatory



The CSSF adopted EBA guidelines on money laundering and terrorist financing risk factors

On 16 October 2023, the CSSF published two circulars adopting the EBA guidelines on money laundering and terrorist financing (the “ML/TF”) risk factors. With Circular 23/842, the CSSF applies the EBA guidelines amending the previous guidelines of 2021 and introducing an annex that sets out factors credit and financial institutions should consider when assessing the ML/TF risks associated with a business relationship with customers that are not-for-profit organisations (the “NPOs”). Through Circular 23/843, the CSSF applies the EBA Guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services. These guidelines further specify the policies, procedures and controls credit and financial institutions should have in place to mitigate and effectively manage ML/TF risks, for instance, the Guidelines state that the professionals should record any decision to reject or end a business relationship.

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



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Regulatory



Adoption of the new EU Consumer Credit Directive

On 18 October 2023, the new Directive (EU) 2023/2225 of the European Parliament and of the Council on credit agreements for consumers, repealing the previous Directive 2008/48/EC, was adopted and was published in the Official Journal of the European Union on 30 October 2023. The Directive aims to strengthen consumer protection by updating the existing legal framework to align with the evolving consumer credit market. This includes the digitalization of consumer credit services, changes in consumer behaviour, and the introduction of new market participants and products. Expanding its coverage, the Directive now includes credit agreements up to €100,000, eliminating the previous exclusion of loans below €200, and incorporates various types of loans. Among others, the primary focus of the Directive is to safeguard consumers from deceptive practices and uphold advertising standards, particularly for individuals seeking short-term high-cost credit. Member States will have to transpose the Directive into their national legislation by 20 November 2025 and the Directive will be applicable from 26 November 2026.

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



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Regulatory



The Luxembourg Banker's Association published a letter on the European Market Infrastructure Regulation

On 9 November 2023, the Luxembourg Banker's Association (the “ABBL”) published the first of a series of letters on EMIR (European Market Infrastructure Regulation). This first letter gives an overview of EMIR and the status of the regulation. EMIR, in force since 16 August 2012, mandates obligations for derivatives contract counterparties and sets uniform requirements for trade repositories and central counterparties. The European Commission's assessment in 2015 led to the adoption of Regulation (EU) 2019/834 (the “EMIR ReFIT”) in 2020, complementing EMIR. In the next two letters, the ABBL will illustrate the recent developments in the EMIR area with EMIR ReFIT and the new technical reporting standards applicable from April 2024. It will also give an overview of the Digital Regulatory Reporting (the “DRR”) in cooperation with the International Swaps and Derivatives Association. The ABBL, together with the Luxembourg Capital Market Association (the “LuxCMA”), held a conference on the subject on 23 November 2023.

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





Luxembourg Proposes Draft Law for Global Minimum Tax Implementation

On 4 August 2023, the Luxembourg government unveiled a draft law (no. 8292) aimed at implementing the Global Minimum Tax, aligning with EU Council Directive 2022/2553 of 15 December 2022 for consistent taxation standards across multinational enterprise (MNE) groups and large domestic groups within the EU. The proposed law will apply to groups with a yearly revenue of at least EUR 750 million over two of the past four fiscal years leading up to the assessed fiscal year.

For MNE groups and large domestic groups falling under these criteria, there will be an additional tax requirement if the effective tax rate (ETR) of their individual entities in different jurisdictions falls below a minimum rate of 15%.

The additional tax, referred to as a "top-up tax," will be implemented through two mechanisms:

- an income inclusion rule (IIR): the parent entity will have to include an amount related to the top-up tax to ensure that low-taxed entities contribute their fair share of tax.
- an undertaxed profit rule (UTPR): acts as a fallback measure if there is still some remaining amount of top-up tax that has not been fully collected through the IIR.

In essence, these regulations are designed to ensure that MNE groups and large domestic groups with significant revenue do not exploit lower tax rates in certain jurisdictions, and that they contribute a fair minimum level of taxes to the appropriate authorities.

The IIR and the QDMTT are set to take effect for fiscal years commencing on or after 31 December 2023. The UTPR, on the other hand, will come into play one year later, applying to fiscal years beginning on or after 31 December 2024.

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



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Tax



European Commission proposes BEFIT Directive

On 12 September 2023, the European Commission unveiled the “Business in Europe Framework for Income Taxation” (BEFIT) proposal.

BEFIT aims at establishing a common corporate income tax framework for EU-based groups, impacting companies with annual revenues over EUR 750 million.

Key features include tax base calculation based on consolidated financial accounts, cross-border loss relief, and streamlined BEFIT information filing.

BEFIT’s Impact on Multinationals

- BEFIT mandates tax rules groups with at least 75% ownership rights among subsidiaries.
- It introduces adjustments for profit distributions and non-deductible borrowing costs.
- BEFIT group tax base is allocated among members via a transitional rule. Member States may apply deductions or incentives, adhering to Pillar 2 Directive.

Administrative Aspects

- A BEFIT team will handle filing obligations, with the EU-based ultimate parent as the filing entity
- Each BEFIT group member still files local tax returns subject to individual tax assessments per Member States laws

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

If approved, BEFIT will require implementation by Member States by 1 January 2028.



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Tax



EU proposes a Transfer Pricing Directive

The EU is gearing up for a Transfer Pricing Directive set to launch on 1 January 2026. This draft directive aims at streamlining transfer pricing practices across Member States using OECD guidelines. Notably, it introduces a 25% participation threshold for "associated enterprises", which differs from most national thresholds. Additionally, it requires prompt action on corresponding adjustments to prevent double taxation, with a 180-day window for resolution. The draft directive also outlines conditions for accepting compensating adjustments, ensuring uniformity and explanation in taxpayer reporting.

Furthermore, it covers various aspects, from defining commercial relations to documentation requirements.

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



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Tax



DAC 8 Adopted

On 13 September 2023, the EU Council has approved the adoption of DAC8, which will amend EU regulations on administrative cooperation and the reporting and automatic exchange of information related to crypto-asset transactions.

These rules, set to take effect in 2026, will impose tax transparency requirements on all service providers facilitating crypto-asset transactions for EU residents. This directive will extend reporting obligations to both domestic and cross-border transactions, including non-fungible tokens , and require financial institutions to report e-money and central bank digital currencies.

DAC8 aims at enhancing the EU's ability to monitor and collect taxes on crypto-asset transactions in a consistent manner across the EU and is designed to complement the Markets in Crypto-assets Regulation and anti-money laundering rules.

As part of the efforts to ensure tax compliance, DAC8 will require crypto-asset service providers, regardless of their location or size, to report extensive information on transactions and users, even if they are not based in the EU but serve EU customers.

This directive also expands the scope of the automatic exchange of information regarding advance cross-border tax rulings, including those involving high net worth individuals.

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



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Tax



Luxembourg Administrative Court takes position on Total Return Swaps schemes

On 26 September 2023, the Luxembourg Administrative Court (TA 48281C) handed down a ruling in favour of the State in a dispute involving a company accused of engaging in concealed profit distributions through a Total Return Swap (TRS) scheme.

The State argued that these payments should be treated as hidden profit distributions. The court supported this position, concluding that the TRS essentially amounted to an advance distribution of profits subject to tax.

As a result, the company's appeal was rejected, confirming therefore the initial decision of the authorities. We note though the specific factual background of the case at hand regarding the use of TRS.

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



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Tax



Luxembourg Administrative tribunal nullifies a tax ruling and the related recognition of a foreign permanent establishment

On 29 September 2023, the Luxembourg Administrative Tribunal (TA 46470) upheld the Luxembourg tax authorities' denial of recognising a foreign permanent establishment (PE) for a Luxembourg-based.

The dispute revolved around the existence of a PE in the United States, impacting the tax exemption for profits and wealth allocated to it.

Despite the taxpayer's earlier tax ruling, the Luxembourg tribunal ruled that the evidence presented did not align with the original description in the ruling, emphasizing the importance of robust legal documentation in such cases.

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



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Tax



OECD publishes Amount A Multilateral Convention

On 11 October 2023, the OECD published the Multilateral Convention (MLC) to implement the Amount A aspect of Pillar One of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economic, which aims at redistributing taxing rights to market jurisdictions for the largest multinational enterprises (MNEs).

The MLC, which comes into effect after ratification by at least 30 States representing at least 60% of ultimate parent entities of in-scope MNEs, is a complex framework designed to address the digital economy's international tax challenges and reallocate profits to market jurisdictions.

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



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Tax



Update of the EU list of non-cooperative jurisdictions

On 17 October 2023, the EU Council updated its list of non-cooperative jurisdictions for tax purposes.

In this latest revision, three new jurisdictions, Antigua and Barbuda, Belize, and Seychelles, have been added to the blacklist, while three others, namely the British Virgin Islands, Costa Rica, and Marshall Islands, have been removed. This adjustment brings the total number of jurisdictions on the blacklist to sixteen.

Additionally, the grey list, which includes jurisdictions that have committed to improving their tax systems, saw the removal of four jurisdictions: Jordan, Qatar, Montserrat, and Thailand.

In response to ongoing efforts to promote good governance and tax transparency, the EU will continue to update the blacklist at least twice a year, with the next revision scheduled for February 2024.

Jurisdictions on the blacklist face various consequences, including the denial of EU financing and potential additional defensive measures, while those on the grey list are monitored for compliance with their commitments.

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



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Tax



Luxembourg court decision related to the constitutionality of the minimum NWT

On 18 April 2023, the Luxembourg Administrative Tribunal delivered an important decision (TA 45910) on the constitutionality of differential treatment related to the application of the minimum net wealth tax for certain holding companies compared to other Luxembourg entities.

Currently, Luxembourg companies are subject to a minimum net wealth tax, with rates ranging from EUR 535 to EUR 32,000 based on their balance sheet size. However, holding companies, are subject to a flat tax of EUR 4,815 under certain conditions.

In the case under analysis, a Luxembourg entity argued that penalizing companies solely based on their balance sheet composition contradicted Article 10bis, Paragraph 1 of the Luxembourg Constitution.

The Luxembourg tribunal concurred with this argumentation, noting the disparity in treatment between similarly sized entities based on their balance sheet composition, without a government-provided justification.

Consequently, the case was referred to the Constitutional Court, which will have to make a decisive ruling.

If the current tax treatment is deemed unconstitutional, it could lead to a transformation of Luxembourg's tax framework, particularly impacting holding structures in the country.

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



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Tax



Luxembourg Constitutional Court Declares Minimum Net Wealth Tax on SOPARFI Unconstitutional

On a decision (n° 00185) on the constitutionality of Luxembourg tax provisions dated 10 November 2023, the Luxembourg Constitutional Court declared the fixed minimum net wealth tax of €4,815 levied on Société de Participations Financières (SOPARFI) to be unconstitutional.

The Constitutional Court found that the fixed minimum net wealth tax violates the fundamental principle of equality before the law: the Court ruled that the fixed tax, which is a derogation to the standard progressive rules on the levying of the minimum net wealth tax, is discriminating against taxpayers being in comparatively similar situations (i.e. taxpayers which would have been subject to an inferior amount of minimum net wealth tax if not solely due the composition of their balance sheet). The Court ruled that, absent a reason for the different treatment, the provision does not take into account the principle of fair contribution to taxes based on a taxpayer's financial capacity and hence violates the constitutional principle of equality.

This ruling represents a landmark decision through which the Luxembourg Constitutional Court interpreted provisions of Luxembourg tax law in favour of taxpayers. A reform of the fixed minimum net wealth tax is hence to be expected to address the question of unconstitutionality raised by the Constitutional Court.

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



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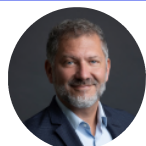
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