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Luxembourg Insights

April 2023

Simmons & Simmons Luxembourg LLP

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The CSSF extends initial submission deadline for SFDR data collection exercise

On 24 March 2023, the CSSF published a [communiqué](#) informing industry participants of the launching of a data collection exercise relating to SFDR and TR with the aim of gathering, in digital format, information contained in precontractual disclosure documents/templates. The deadline for submissions was initially set at 15 June 2023.

The [new communiqué](#) supplements the above to clarify that financial market participants (**FMPs**) are requested to provide the relevant information on a best efforts basis by 15 June 2023 and in any event by 31 October 2023.

The CSSF clarified that following their initial declaration, FMPs remain responsible for ensuring that the data reported is being kept up to date and that subsequent declarations must be transmitted in case of changes to the relevant precontractual documents/templates.

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The CSSF extends initial submission deadline for SFDR data collection exercise

As a reminder, the following FMPs are required to participate to the above data collection exercise:

1. UCITS management companies, based in Luxembourg or in another Member State of the EU, in relation to all Luxembourg-domiciled UCITS they manage;
2. Authorised AIFMs based in Luxembourg in relation to all Luxembourg-domiciled regulated and unregulated AIFs (including ELTIFs) they manage;
3. Authorised AIFMs, based in another Member State of the European Union, in relation to all Luxembourg-domiciled regulated AIFs, as well as Luxembourg-domiciled unregulated AIFs (only when they qualify as ELTIFs) they manage;
4. Registered AIFMs, based in Luxembourg or in another Member State of the European Union, in relation to all Luxembourg-domiciled regulated AIFs they manage; and
5. IORPs, subject to the Law of 13 July 2005.

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Asset Management &
Investment Funds



CSSF communication on Liability Driven Investment Funds

On 3 April 2023, the CSSF published a [communiqué](#) on liability driven investment (LDI) funds declaring its commitment to improve the resilience of LDI funds denominated in GBP alongside the IFMs managing them.

The declaration follows a period of high volatility in UK government bond yields which occurred in September 2022 and its subsequent impact on LDI funds.

The CSSF drew attention to the [Bank of England staff paper](#) published on 29 March 2023 regarding recommendations on LDI minimum resilience and explained that it expects IFMs managing LDI funds denominated in GBP to maintain the Yield Buffer at 300-400 basis points while in relation to LDI funds denominated in other currencies, a sufficient level of resilience enabling them to absorb severe market shocks should be observed.

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The CSSF updates its FAQ on Virtual Assets

On 6 April 2023, the CSSF updated its FAQ on virtual assets for UCIs stating that Luxembourg IFMs do not need to obtain a license extension to manage virtual assets in relation to AIFs which indirectly invest in such assets through one or more target funds (TFs).

The CSSF clarified that if, however, an AIF invests more than 20% of its NAV in TFs with virtual assets as their main exposure, the IFM needs to be licensed for a “fund-of-funds” strategy.

As per the FAQ, it is the responsibility of the IFM to determine whether a TF has virtual assets as its main underlying exposure. The CSSF requires that in relation to each such TF, the IFM undertakes an assessment of the ability of the TF’s manager to identify and manage the risks pertaining to investments in virtual assets – the results of which should be made available to the CSSF upon request.

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



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Asset Management &
Investment Funds



The CSSF issues supervisory priorities in the area of sustainable finance

The CSSF published on 6 April 2023 a [communiqué](#) outlining its supervisory priorities in the areas of sustainable finance in line with its ambition to accompany the transition of the financial sector towards the implementation of a sustainable finance framework.

In particular the CSSF clarified that in its monitoring of the asset management industry, it intends to focus on the following priority areas:

1. **Verification of organisational arrangements of IFMs** and their integration of sustainability risks in terms of human resources and governance, investment decision or advice processes, remuneration and risk management processes and policies and management of conflicts of interest as required under SFDR;
2. **Verification of the compliance of pre-contractual and periodic disclosures** with the transparency requirements laid down in the SFDR, SFDR RTS and the Taxonomy Regulation;
3. **Verification of the consistency of information in fund documentation and marketing material;**
4. **Verification of the compliance of product website disclosures;** and
5. **Portfolio analysis** to ensure that fund portfolios reflect the name, investment objective, strategy, and characteristics set out in their documentation to investors. In this respect, the CSSF launched the above-mentioned SFDR data collection exercise.

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Asset Management &
Investment Funds



ESAs propose amendments to extend and simplify sustainability disclosures

On 12 April 2023, the ESAs published a joint consultation paper on the draft RTS with regard to the content, methodologies and presentation of sustainability disclosures pursuant to Articles 2a(3), 4(6), 4(7), 8(3), 8(4), 9(5), 9(6), 10(2), 11(4) and 11(5) of SFDR with the following changes being proposed:

On 12 April 2023, the ESAs published a joint consultation paper on the draft RTS with regard to the content, methodologies and presentation of sustainability disclosures pursuant to Articles 2a(3), 4(6), 4(7), 8(3), 8(4), 9(5), 9(6), 10(2), 11(4) and 11(5) of SFDR with the following changes being proposed:

- Extension of the list of social indicators for principal adverse impacts to include indicators which would be relevant from both EU and international perspectives (such as tax avoidance);
- Revision of the PAI framework;
- Amendments regarding decarbonisation targets;
- DNSH disclosure design options; and
- Simplification of templates.

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



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Asset Management &
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Delegated Acts relating to the EU Taxonomy Regulation

The European Commission published two draft delegated acts relating to the Taxonomy Regulation adding and complementing technical screening criteria

The purpose of the [first draft delegated act](#) is to specify the technical screening criteria under which certain economic activities in the sectors of manufacturing, water supply, sewerage, waste management and remediation, construction, civil engineering, disaster risk management, information and communication, environmental protection and restoration and accommodation activities, qualify as contributing substantially to: (i) the sustainable use and protection of water and marine resources; (ii) the transition to a circular economy; (iii) pollution prevention and control; or (iv) the protection and restoration of biodiversity and ecosystems. The delegated act aims to further clarify criteria for determining whether those economic activities cause significant harm to any of the other environmental objectives.

The [second draft delegated act](#) seeks to amend the Taxonomy Climate Delegated Act by adding technical screening criteria for climate change mitigation and climate change adaptation for economic activities not yet included therein. It concerns in particular manufacturing activities in relation to key components for low carbon transport and electrical equipment as well as transitional activities in the waterborne and air transport sectors where zero-carbon solutions are not sufficiently advanced.

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Asset Management &
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Commission's new Q&As on interpreting the SFDR

A third set of Q&As on the interpretation of SFDR has been adopted by the European Commission and published by the ESAs on 14 April 2023.

The Q&A covers amongst others:

- 1) The definition of “sustainable investments” as applied to investments in funding instruments that do not specify the use of proceeds, such as the general equity or debt of an investee company;
- 2) The interpretation of “investment in an economic activity that contributes to an environmental objective” or “investment in an economic activity that contributes to a social objective”;
- 3) Whether financial products that have an Article 9(3) objective of reduction in carbon emissions can be products with either a passive or active investment strategy;
- 4) Whether a financial product can “promote” carbon emissions reduction as an “environmental characteristic”, as opposed to having it as an “objective”, thus falling under Article 8 SFDR;
- 5) The meaning of the term “consider” in Article 7(1)(a) of SFDR and whether PAI “consideration” means that a financial product only discloses the relevant PAI or requires the disclosure of the action taken by the financial market participant to address such PAI.

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



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Corporate



Bill of law number 8158/02

On 7 April 2023, the bill of law n°8158/02 was deposited and concerns publication of company information.

Bill n°8158/02 amends:

- The law of 19 December 2002 concerning the register of commerce and companies as well as the accounting and annual accounts of companies;
- The law of August 10, 1915 concerning commercial companies; with a view to transposing Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards the communication, by certain undertakings and branches, of information relating to the corporate income tax.

The bill provides:

- **Authorisation to temporarily omit the publication of certain information which would seriously damage the commercial position of the company.** However, any omission must be clearly indicated in the declaration and be duly motivated and the omitted information must be made public in a subsequent declaration on information relating to corporate income tax within a maximum period of 5 years from the date of the initial omission ;
- **Exemption from the obligation to publish on the company's website the declaration on information relating to corporate income tax if it is made public on the website of the trade register.** The website of companies and branches must then contain information on the exemption and refer to the website of the relevant commercial register.

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



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Corporate



The House of Sustainability : an initiative to facilitate and accelerate the sustainable transition of companies

On 21 April 2023, the launch conference of the House of Sustainability platform took place, an initiative aimed at guiding Luxembourg companies to integrate sustainability issues into their development strategies.

The House of Sustainability is an initiative led by the Chamber of Commerce and the Chamber of Skilled Trades and Crafts, and is aimed at large, medium and small Luxembourg companies from all sectors and interested in sustainable transition.

It proposes a range of services in collaboration with its partners, including training, awareness-raising and tailored support, to enable businesses to take action around the ten principles of sustainable development.

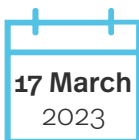
For more information, please click [here](#).



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Regulatory

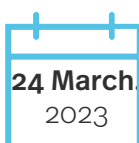


Blockchain III Law enters into force

On 17 March 2023, the Blockchain III Law entered into force, amending notably the 1993 Financial Sector Law and the 2005 Financial Collateral Law.

The new law, building on the Blockchain I & II law, mainly implements the EU DLT Pilot Regime Regulation and specifies that the definition of financial instruments in the 1993 Financial Sector Law also include DLT financial instruments. The law also clarified that DLT financial instruments can be used as financial collateral under the 2005 Financial Collateral law.

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



New draft bill on the transfer of non-performing loans

On 24 March 2023, the Minister of Finance introduced into parliament a new draft bill transposing EU Directive 2021/2167 on credit servicers and credit purchasers into Luxembourg law. The Directive, that is faithfully transposed by the bill, establishes a framework enabling credit institutions, if their outstanding loans become too high, to sell these loans on the secondary market to other operators with the necessary expertise to manage them

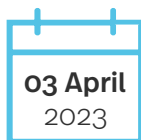
For more information, please click [here](#).



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Regulatory



New ESMA guidelines on certain aspects of the MiFID II suitability and remuneration requirements

On 03 April 2023, ESMA issued new guidelines to competent authorities and MiFID firms clarifying the remuneration requirements, conflict of interest rules and remuneration governance requirements set out in MiFID II and MiFID II Delegated Regulation.

On the same day ESMA also issued new guidelines regarding the suitability of certain services to retail clients under MiFID II and MiFID II Delegated Regulation.

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



Application by the CSSF of the ESMA Guidelines on standard forms, formats and templates to apply for permission to operate a DLT Market Infrastructure

On 5 April 2023, the CSSF issued Circular CSSF 23/832 informing market participants that in its capacity as competent authority under Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology, it would apply ESMA guidelines on standard forms, formats and templates to apply for permission to operate a DLT Market Infrastructure.

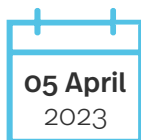
For more information, please click [here](#).



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Regulatory

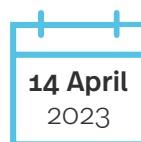


New delegated acts relating to the EU Taxonomy Regulation

On 5 April 2023, the European Commission published two draft delegated acts relating to the EU Taxonomy Regulation.

The first draft delegated act contains new screening criteria for four environmental objectives laid out in Article 9 of the Regulation, while the second draft delegated act adds and complements the technical screening criteria for climate change mitigation for certain economic activities in the transport and manufacturing sectors.

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



New Q&A on the interpretation of SFDR

On 14 April 2023, the European Supervisory Authorities (ESAs) published a new Q&A by the Commission on the interpretation of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

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



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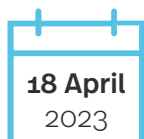
Regulatory



EU Parliament ready to for negotiations to reform EU AML/CFT rules

On 17 April 2023, the European Parliament has approved negotiating mandates for proposals reforming the EU's policies on anti-money laundering and countering the financing of terrorism (AML/CFT). The draft laws foresee new due diligence rules for businesses, broader access to the beneficial ownership registers and the creation of a European Anti-Money Laundering Authority with supervisory and investigative powers.

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



New CSSF FAQ on the revised long form report framework introduced by Circulars 22/821 and 22/827

On 18 April 2023, the CSSF published an FAQ on the revised long form report framework aiming to clarify certain elements of the self-assessment questionnaire (SAQ) to be submitted annually to the CSSF by Luxembourg credit institutions and Luxembourg branches of non-EU credit institutions (under Circular 22/821) and by Luxembourg branches of EU credit institutions (under Circular 22/827), as well as other aspects of the new framework.

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



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Regulatory



MiCA adopted by EU Parliament

On 20 April 2023, the European Parliament adopted the EU regulation on markets in crypto assets (MiCA).

Pending final approval by the Council, which is expected in the coming weeks, MiCA will be the first uniform legal framework for crypto-assets markets in the EU. The text aims to ensure that crypto transfers can be traced and suspicious transactions blocked, as is already the case with traditional financial operations. The regulation also contains provisions aiming to protect consumers and prevent market manipulation.

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



Sanction imposed on the investment fund manager Luxcellence Management Company S.A.

On 25 November 2022, the CSSF imposed an administrative fine for a total amount of 115.600 EUR on investment fund manager Luxcellence Management Company S.A. for failure to comply with some parts of the 2013 Law on alternative investment fund managers.

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



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Banking

12 April
2023

LMA letter on proposed Corporate Sustainability Due Diligence Directive

On 12 April 2023, the Loan Market Association (LMA) has published a letter highlighting possible amendments to the proposed Directive on corporate sustainability due diligence that would avoid disruptions to syndicated loan market.

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



26 April
2023

FDGL - Modification of the method for calculating ex-ante contributions laid down in Circular CSSF-CPDI 20/21

On 26 April 2023, the CSSF issued a new circular adjusting the method for calculating the annual contributions paid by Fonds de garantie des dépôts Luxembourg (FGDL) member institutions in case of mergers between FGDL member institutions or in case of transfers of liabilities between FGDL member institutions.

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



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Sanctions



Update on the recent provisional agreement on the Regulation for European green bonds

On 5 April 2023, the International Capital Markets Association (ICMA) issued an update on the recent provisional agreement on the regulation for European green bonds (EU GBS). Highlighting a few key point from the agreement:

- the voluntary nature of the EU GBS label;
- the inclusion of a 15% flexibility pocket on Technical Screening Criteria (TSC) alignment;
- the possibility of grandfathering the TSC alignment for 7 years; and
- the registration and supervision by ESMA of external reviewers of EU GBS.

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



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Sanctions



New LuxCMA guidance note on the securitisation of receivables

On 17 April 2023, the Luxembourg Capital Markets Association (LuxCMA) published a new guidance note for board members destined to help board members when confronted to the securitisation of receivables.

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



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Banking, Capital Markets, Regulatory



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