REGWATCH

CACEIS Regulatory Watch Newsletter

July August 2023

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PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

- EU publishes Regulation (EU) 2023/1651 supplementing Directive (EU) 2019/2034 on RTS for specific liquidity measurement of investment firms under Article 42(6) of that Directive

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- ESMA publishes Annexes I and II for the template register of information

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- EBA encourages timely preparatory steps towards the application of MiCAR to asset-referenced and electronic money tokens

SECURITISATION REGULATION

- ESMA publishes Q&A on securitisation regulation (13/7/2023)

SHAREHOLDERS' RIGHTS DIRECTIVE (SRD II)

- EBA and ESMA assess the implementation of the revised Shareholder Rights Directive and identify areas of progress

SUSTAINABLE FINANCE / GREEN FINANCE

- ESMA and NCAs launch a common supervisory action (CSA) to assess disclosures and sustainability risks in the investment fund sector
- EC adopts the European Sustainability Reporting Standards
- EBA publishes the Decision on an ad hoc data collection of institutions' ESG data
- ESMA publishes sustainable finance implementation timeline (12/7/2023)
- EU publishes Commission Recommendation (EU) 2023/1425 of 27 June 2023 on facilitating finance for the transition to a sustainable economy

FRANCE

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- AMF amends its policy on DASPs to clarify the transition to "enhanced" DASP registration / L'AMF modifie sa politique sur les DASP pour clarifier le passage à l'enregistrement des PSAN « amélioré »

FINANCIAL SUPERVISION

- France publishes Decree amending AMF General Regulation on AIF loan supervision and the enhanced DASP registration / La France publie un décret modifiant le règlement général de l'AMF sur le contrôle des prêts des FIA et à l'enregistrement amélioré des PS

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- AMF updates its policy on the information to be provided by collective investment schemes incorporating non-financial approaches / L'AMF met à jour sa politique relative à l'information à fournir par les OPC intégrant des approches extra-financières

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- France publishes Decree of 22 August 2023 on the definition of investment services / La France publie le décret du 22 août 2023 portant définition des services d'investissement

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- France publishes Decree No. 2023-787 on the enhanced registration for VASPs and AMF amends General Regulation / La France publie le décret n° 2023-787 relatif à la mise en œuvre de l'enregistrement amelioré des SPAN et l'AMF modifie son règlement général

UCITS V / ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD)

- AMF analyses the valuation arrangements for illiquid assets of UCITS and AIFs / L'AMF analyse les modalités de valorisation des actifs illiquides des OPCVM et FIA

GERMANY

EU RETAIL INVESTMENT PACKAGE

- BVI publishes remarks on Retail Investment Package

FINANCIAL SUPERVISION

- BaFin publishes notification of persons according to the KWG

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- BaFin issues General Decree on Remuneration Notifications for Investment Firms
- Bundesregierung adopts Draft 362/23 of a law on the financing of future-proof investments (Future Financing Act - ZuFinG)

WHISTLEBLOWER PROTECTION

- Bundesregierung enables better legal protection for whistleblowers

HONG KONG

FINANCIAL SUPERVISION

- HKMA publishes a circular on the streamlined approach for suitability compliance with sophisticated professional investors

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- HKMA publishes circular on Depositaries of SFC-authorized Collective Investment Schemes (Type 13 Regulated Activity)

OVER-THE-COUNTER DERIVATIVES (OTC)

- SFC reminds intermediaries of the OTCR entry into force on 25/09/2023

IRELAND

DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

- Ireland issues S.I. No. 375/2023 - European Union (Protection of Persons Who Report Breaches of Union Law) Regulations 2023

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CBI updates confirmation required within QIAIF Application and Post Authorization Application Forms
- CBI invites feedback on discussion paper for macroprudential policy for investment funds
- Ireland lays Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2023 (S.I. No. 351 of 2023)

INVESTOR PROTECTION / CONSUMER PROTECTION

- CBI publishes updated Guidance on Client Asset Requirements and Investor Money Requirements

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- CBI advises on Dear CEO Letter on Targeted Reviews on Control Frameworks and Risk Appetite Statements in MiFID Investment Firms & Market Operators

ITALY

FINANCIAL SUPERVISION

- Banca d'Italia publishes a public consultation on supervisory reports of banks and supervised intermediaries

PROSPECTUS REGULATION

- CONSOB publishes press release on guidelines for the simplification of prospectuses

LUXEMBOURG

ACCOUNTING

- CdD introduces Draft law on accounting, annual financial statements and consolidated financial statements of enterprises / Le CdD présente un projet de loi sur la comptabilité, les comptes annuels et les comptes consolidés des entreprises

BANKRUPTCY

- Luxembourg publishes the Law relating to the preservation of businesses and modernizing the bankruptcy law / Le Luxembourg publie la Loi relative à la préservation des entreprises et portant modernisation du droit de la faillite

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- CSSF publishes FAQ on Virtual Asset Service Providers (08/17/2023) / La CSSF publie une FAQ sur les prestataires de services sur actifs virtuels (17/08/2023)

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

- Luxembourg amends Law on joint investigation teams to comply with personal data protection rules / Le Luxembourg modifie la loi sur les équipes d'enquête pour se conformer aux règles de protection des données personnelles

DEPOSIT GUARANTEE SCHEME DIRECTIVE (DGSD)

- CSSF publishes Circular CSSF-CPDI 23/37 on amount of covered deposits survey / La CSSF publie la Circulaire CSSF-CPDI 23/37 relative à l'enquête sur le montant des dépôts garantis

FINANCIAL SUPERVISION

- CSSF publishes contact repository for specific purposes (only in French) and informs of the discontinuation of fax services / La CSSF publie un référentiel de contacts à des fins spécifiques et informe sur l'arrêt de ses services de fax

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- CSSF publishes Communication on MiCA and Regulation on information accompanying transfers of funds / La CSSF publie la Communication sur MiCA et le Règlement sur les informations accompagnant les transferts de fonds

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CSSF publishes a view on processing time of initial authorisations of regulated investment vehicles / La CSSF publie un avis sur les délais de traitement des autorisations initiales des véhicules d'investissement réglementés
- CSSF updates FAQ on submission of closing documents and financial information by managers / La CSSF met à jour la FAQ sur la soumission des documents de clôture et des informations financières par les dirigeants
- CSSF publishes Circular CSSF 23/839 updating Circular CSSF 21/789 on IFMs / La CSSF publie la Circulaire CSSF 23/839 mettant à jour la Circulaire CSSF 21/789 relative aux GFI
- Luxembourg publishes Law amending the SICAR, SIFs, UCIs, AIFMs, and RAIFs regimes / Le Luxembourg publie une loi modifiant les régimes des fonds SICAR, FIS, OPC, AIFM et RAIF
- CSSF publishes 2021-2023 Marketing communications Guidance under the regulation on cross-border distribution of funds / La CSSF publie le Guide de communication marketing 2021-2023 dans le cadre du règlement sur la distribution transfrontalière des fonds
- CSSF launches a Standardized Model Articles of Incorporation for UCITS / La CSSF lance un modèle de statuts standardisé pour les OPCVM

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- CSSF informs on CNMV product intervention measures on financial contracts for differences (CFDs) / La CSSF informe sur les mesures d'intervention sur les produits de CNMV sur les contrats financiers sur différences (CFD)

MERGERS & ACQUISITIONS (M&A)

- Luxembourg published draft law introducing merger control regime / Le Luxembourg a publié un projet de loi introduisant un régime de contrôle des fusions

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- Luxembourg publishes Draft Law on the digital operational resilience of the financial sector / Le Luxembourg publie un projet de loi sur la résilience opérationnelle numérique du secteur financier

REGULATION ON SCREENING OF FOREIGN DIRECT INVESTMENTS (FDI SCREENING REGULATION)

- Luxembourg publishes Law establishing a national screening mechanism for foreign direct investments

REGULATION ON THE COLLECTION OF GRANULAR CREDIT DATA AND CREDIT RISK DATA (ANACREDIT REGULATION)

- CBL updates AnaCredit Reporting instructions / CBL met à jour les instructions de Reporting AnaCredit

SUSTAINABLE FINANCE / GREEN FINANCE

- CSSF publishes thematic review on the implementation of sustainability-related provisions by investment funds / La CSSF publie une évaluation thématique sur la mise en œuvre des dispositions liées à la durabilité par les fonds d'investissement

NETHERLANDS

DIGITAL ECONOMY

- Overheid publishes Digital Services Regulation Implementation Act

FINANCIAL MARKET INFRASTRUCTURE (FMI)

- Overheid publishes Regulation of the Minister of Finance of 18 August 2023 on the management of Financial Markets

GLOBAL SYSTEMICALLY IMPORTANT INSTITUTIONS (G-SIIS) / OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS (O-SIIS)

- Overheid implements Article 2(1) and (3) of Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending of Regulation (EU) No 575/2013 and Directive 2014/59/EU

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- The Netherlands publishes Amendment of the Financial Supervision Act implementing MiCA

RISK MANAGEMENT

- NVB publishes two new Standards for risk-based customer research

SPAIN

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- Spain approves Royal Decree 609/2023 creating the Central Register of Beneficial Ownership

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- CNMV restricts CFDs advertising and limits operations of leveraged instruments to retail

REGULATION ON SCREENING OF FOREIGN DIRECT INVESTMENTS (FDI SCREENING REGULATION)

- Spain publishes regulation for foreign investments

UNITED KINGDOM

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- FCA publishes expectations for UK crypto asset businesses complying with the Travel Rule

CLEARING OBLIGATIONS

- BoE publishes consultation paper on ensuring continuity of critical clearing services

CONSUMER PROTECTION

- FCA updates webpage on advice guidance boundary review

FINANCIAL REPORTING

- FCA publishes a technical note on the preparation and publication of annual financial reports

FINANCIAL SERVICES

- UK sets out the next phase of the UK's vision for financial markets

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- FCA publishes the results of its review on Authorised fund managers' assessments of fund value 2023

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- FCA publishes a statement on UK MiFIR transaction reports
- FCA updates statements of policy on the operation of the MiFID transparency regime (29/8/2023)
- FCA revokes its transitional direction on the share trading obligation

SECURITIES FINANCING TRANSACTIONS REGULATION (SFTR)

- FCA publishes updated UK SFTR Validation Rules and XML Schemas

SUSTAINABLE FINANCE / GREEN FINANCE

- UK Government issues guidance on UK Sustainability Disclosure Standards

UK FINANCIAL SERVICES ACT

- UK Legislation publishes Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023
- UK publishes Financial Services and Markets Act 2023 (Commencement No. 3) (Amendment) Regulations 2023

MONACO

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- Monaco publishes Law No. 1.549 of 6 July 2023 adapting legislative provisions on AML/CFT and the proliferation of weapons of mass destruction (Part I)

BRAZIL

FINANCIAL SUPERVISION

- CVM releases CVM/SRE Circular Letter 8/2023 containing new Guidelines on registration procedures for Public Offerings for the distribution of securities

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- CVM publishes CVM/SSE Circular Letter 6/202 3 (OC 6/23) complementing clarifications on characterization of receivables tokens and fixed income tokens as securities

MALAYSIA

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- SC widens access and offer in fund management

RISK MANAGEMENT

- SC Malaysia issues Guidelines to strengthen technology risk management of capital market entities

GUERNSEY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- GFSC issues final draft of AML/CFT guidance for registered directors

INTERNATIONAL

SUSTAINABLE FINANCE / GREEN FINANCE

- IFRS Foundation releases updated educational material to assist companies in incorporating climate-related matters into their financial statements using IFRS Accounting Standards

CONTACTS

EUROPEAN UNION

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

EC adopts new adequacy decision for safe and trusted EU-US data flows

BACKGROUND

Adequacy decision is a tool allowing the transfer of personal data from the EU to these third countries whose level of personal data protection is comparable to the EU.

Adopting the adequacy decision is a result of the United States government's implementation of the Executive Order on "Enhancing Safeguards for United States Signals Intelligence Activities." This Executive Order established a set of new safeguards coming from the Schrems II decision, for instance obliging US Intelligence agencies to comply with the necessity and proportionality principle in terms of data access. As of this writing, the US joins Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, the UK, and Uruguay in providing adequate protection.

WHAT'S NEW?

On July 10 2023, the European Commission adopted a new adequacy decision for safe and trusted EU-US data flows.

The EU issued an adequacy decision stating that the United States provides a level of protection for personal data transferred from the EU to US companies that is comparable to the standards in the EU. This decision allows for the safe flow of personal data from the EU to US companies participating in the Framework without additional data protection measures.

The EU-U.S. Data Privacy Framework addresses concerns raised by the European Court of Justice by introducing new binding safeguards. These safeguards include limiting access to EU data by US intelligence services, establishing a Data Protection Review Court for EU individuals, and granting the court the authority to order data deletion if collected in violation of safeguards. US companies must commit to a detailed set of privacy obligations to join the framework.

As of July 10 2023, the European organisations can transfer personal data to entities in the United States, that participate in the EU-U.S. Data Privacy Framework, without any additional preventive measures. The data subjects whose data is transferred from the EU to the US are eligible to a new set of rights, that were not available before, such as the right to access, correction or erasure of data. Moreover, the EU individuals can benefit from complimentary dispute resolution mechanisms and arbitration panel. The Framework introduces new rules about security of data and its sharing with third parties, as well as implements purpose limitation, data minimisation and data retention principles.

WHAT'S NEXT?

EU individuals have various avenues for redress if their data is mishandled, including independent dispute resolution mechanisms and an arbitration panel. The US legal framework also includes safeguards for access to data by US public authorities for national security and criminal law enforcement purposes. The EU-U.S. Data Privacy Framework applies to data transfers between EU and US companies certified by the US Department of Commerce. US companies will be able to join the EU-US Framework by committing to comply with a detailed set of privacy obligations ("self-certifying").

Every year the decision will be reviewed by the European Commission according to the newest developments in the US law. The first review will be performed in July 2024 with a purpose to verify whether all the safeguards are effectively implemented by the Framework. Based on the results of the first review, the European Commission will consult with the EU Member States the future reviews that will happen at least every four years.

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

EBA publishes final draft RTS on Initial Margin Model Validation under EMIR

On July 3 2023, the European Banking Authority (EBA) published its final draft Regulatory Technical Standards (RTS) on Initial Margin Model Validation (IMMV) under the European Markets Infrastructure Regulation (EMIR).

In order to enhance compliance with the margin framework for non-cleared over-the-counter derivatives laid down by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO), the final draft RTS on IMMV sets out the supervisory procedures for the validation of initial margin (IM) models applied for the exchange of IM.

Furthermore, the final draft RTS on IMMV envisage a proportionate application of supervisory procedures, this entails:

- A Standard supervisory procedure to ensure an in-depth validation of the largest banking counterparties.
- A Pragmatic and simplified approach applied to smaller counterparties.

In addition, jointly with the RTS, the EBA has published an Opinion on IMMV, calling on the co-legislators and the European Commission to consider the establishment of a centralised validation function at the EBA to ease the coordination issues linked to the validation of IM models that have industry-wide application. The Opinion also suggests that the scope of entities subject to the RTS should be reconsidered so as to apply only to the most significant counterparties.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

ESMA publishes second overview of national rules governing fund marketing

On July 3 2023, the European Securities and Markets Authority (ESMA) published a report on the marketing requirements and marketing communications under the Regulation on the cross-border distribution of funds.

The Regulation on facilitating cross-border distribution of collective investment undertakings requires ESMA to submit a report every two years to the European Parliament, the European Council, and the European Commission. This report provides an overview of marketing requirements in all Member States and analyzes the impact of national laws, regulations, and administrative provisions on marketing communications. ESMA already submitted its first report on June 30, 2021, making this report the second one under the Regulation.

The report includes a methodology section, an overview of marketing requirements in all Member States, and an analysis of the effects of national laws on marketing communications. Annexes contain the legislative mandate, questionnaires sent to national competent authorities (NCAs), and the responses received. The next report will be submitted in two years to the European Parliament, the European Council, and the European Commission.

Alliance of real estate associations launches first global diversified core open fund index

On July 12 2023, the European Association for Investors in Non-Listed Real Estate Vehicles (INREV), ANREV, and NCREIF launched the first Global ODCE Index, which is the latest in a suite of global indices aimed at enhancing the transparency of the non-listed real estate investment industry. The new index focuses on open-end diversified core equity funds across all three global regions.

As a subset of the Global Real Estate Fund Index (GREFI), the Global ODCE Index includes only non-listed real estate funds of ANREV, INREV and NCREIF ODCE indices, combined on an equally weighted basis. It measures the performance of 50 funds, 8 from Asia-Pacific, 16 from Europe and 26 from the US, with a combined total gross asset value of $403 billion.

Launching at the NCREIF Summer Conference in Chicago, the Global ODCE Index reflects the growing need for data on a global scale as investor appetite for globally diversified real estate portfolios gathers momentum. The consultation release measures the net asset value quarterly performance, net of fees and other costs, with a near-term plan to report gross of fees performance.

The index will aid all aspects of real estate investment decision making, from asset allocation to portfolio measurement and comparison, providing greater information flow, and more in-depth analytics. The latest release strengthens and supports the ODCE as a product and brand – a recognised index with over 40 years of rich data history in the US and rapidly evolving Asian Pacific and European ODCE Indices. Global ODCE is the next logical step in understanding the global real estate market with a clear core peer-set for all three regions.

Ultimately, the new index will improve data provision and transparency, helping to accelerate capital flows into the asset class. It will be of particular value to investors operating on a global scale and will aid better understanding of global core returns as well as to investors for whom the relative illiquidity of real estate has proven an obstacle, historically.

EFAMA publishes report on open-ended funds

On July 5 2023, the European Fund and Asset Management Association (EFAMA) published a report on the open-ended funds asking macro-prudential supervisors to rethink investment fund risk.

The position paper emphasizes that the investment fund industry is not a weak link in the non-bank financing chain and is not systemically important. While liquidity risk management is important, the paper challenges the notion of "structural liquidity mismatches" as a significant issue for investment funds. It suggests that investment funds do not need to perfectly match asset and liability liquidity and can utilize liquidity management tools. The likelihood of spillover from the fund sector to other financial sectors is deemed low, given investor awareness and the capital requirements of banks and insurance companies. However, certain subsets of funds, such as those using derivatives without sufficient margin provisioning or investing heavily in illiquid assets while offering daily redemption, may pose systemic risks.

The paper advocates for a comprehensive macro-prudential supervisory approach and urges supervisors to consider the broader context when using risk metrics. It also emphasizes the importance of analyzing real market events rather than relying solely on hypothetical scenarios. The need for substantive evidence before implementing further regulatory reforms, such as macro-prudential measures, is highlighted. Additionally, the paper calls for regular exchanges between macro-prudential supervisors and stakeholders to ensure a well-rounded perspective and suggests sharing supervisory data with a broader group of stakeholders for testing and enhancing existing approaches.

ESMA publishes 2022 UCITS and AIFMD sanction reports

On July 18 2023, the European Securities and Markets Authority (ESMA) published the 2022 UCITS and AIFMD sanction reports.

The reports highlight a consistent pattern over the years, with only a few NCAs imposing an increasing number of sanctions, while the overall level of sanctions at the national level remains stable and relatively low, particularly in terms of penalties.

In 2022, 9 NCAs imposed a total of 38 penalties under the UCITS Directive, a decrease from the 61 penalties imposed by 12 NCAs in 2021. The majority of penalties, 98%, were imposed by a single NCA. Similarly, in the case of AIFMD, 10 NCAs issued penalties amounting to €2.5 million in 2022, compared to €42.9 million in 2021, with 60% of the total penalties imposed by a single NCA. It is worth noting that 16 NCAs did not impose any sanctions under either directive during the reporting period.

The reports provide an overview of the legal framework and detail the penalties and measures imposed by NCAs from January 1, 2022, to December 31, 2022. The data collected from NCAs forms the basis of the annual aggregated report.

Moving forward, ESMA will continue its efforts to promote supervisory convergence in the application of the UCITS and AIFMD directives and contribute to the development of a unified supervisory and enforcement culture in the EU. Separate reports will be issued annually for future reporting periods.

EU legislators reach deal on the new AIFMD and UCITS Directive

On July 20 2023, the European Parliament strucked a deal on updated rules for hedge fund and retail fund managers.

The updates will strengthen investors protection, improve companies' access to finance from sources other than banks, better tackle greenwashing, and help complete the customs market union by limiting national approaches, when it comes to the marketing of alternative investment funds (AIFs).

The updated legislation (AIFMD, UCITSD) contributes to the agenda of completing the capital markets union, in that it removes provisions which allowed member states to adopt their own rules, leading to discrepancies across the EU. For example, MEPs insisted and secured that the rules on funds that make loans should apply differently for funds that part-own the companies in question – so-called shareholder loans. This will ensure a uniform exemption across the EU. MEPs also secured harmonised rules regarding the notifications to be made concerning the use of liquidity management tools.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

ESMA highlights areas for improvement in firms' disclosure of cost and charges under MIFID

On July 6 2023, the European Securities and Markets Authority (ESMA) announced the results of the 2022 Common Supervisory Action (CSA) and mystery shopper exercise on MiFID II requirements on information on costs and charges.

The statement sets forth that, overall, firms comply with most of the elements of the ex-post cost and charges requirements under MiFID II. This level of compliance varies across Member States. The CSA exercise revealed certain shortcomings in information provided to retail clients and suggests areas for improvement regarding both disclosure and format content.

The significant shortcomings concern:

- Significant differences across firms and Member States in the format and content of ex-post disclosures.
- Differing practices and sometimes no disclosure information on inducements.
- Lack of disclosure of implicit costs to clients.
- Lack of consistency in the ways firms illustrate the cumulative impact of the costs and charges on the return of the investment.
- Disclosing cost figures only in nominal amounts and not also the corresponding percentages.

Furthermore, ESMA also ran its first mystery shopping exercise on the ex-ante cost and charges information provided to retail clients. In most cases, mystery shoppers received information about costs and charges before the investment service was provided, however the quality and the timing of the information provided differed between firms.

Based on the insights from the CSA and the mystery shopping exercise, ESMA will focus its convergence effort on the review and development of new Q&As as well as working on a possible standardised EU format for the provision of information about costs and charges to clients. In addition, where required, Member State competent authorities will undertake follow-up actions on individual cases that involve regulatory breaches as well as other shortcomings.

ESMA publishes report on sanctions and measures imposed under MiFID II in 2022

On July 7 2023, the European Securities and Markets Authority (ESMA) published its report on sanctions and measures imposed under MiFID II in 2022.

The Report provides an overview of the applicable legal framework and the sanctions and measures imposed by national competent authorities (NCAs) under the MiFID II framework in 2022. The data reported for 2022, and included in this Report, shows that NCAs' activity on imposing sanctions and measures under MiFID II has decreased compared to the previous year.

ESMA publishes a new Manual on post-trade transparency under MiFIR

On July 10 2023, the European Securities and Markets Authority (ESMA) published a Final Report on the Manual on post-trade transparency under MiFID II/ MiFIR.

The Commission Delegated Regulations (EU) 2017/587 (RTS 1) and 2017/583 (RTS 2) provide detailed specifications for the pre- and post-trade transparency requirements of equity and non-equity instruments under MiFIR. After reviewing the provisions of MiFID II/MiFIR and the related Level 2 provisions, ESMA submitted draft RTS proposing amendments. These revised RTS were adopted by the European Commission and entered into force in June 2023. ESMA also identified areas that required further guidance, resulting in the publication of a consultation paper proposing Level 3 guidance on post-trade transparency fields. This Final Report presents ESMA's analysis of feedback received and outlines the proposed way forward, along with the link to the published Manual.

The Manual serves as a tool for promoting common approaches and practices in the areas of post-trade transparency and transparency calculations. It provides information on the legal background and purpose of the document, as well as details on post-trade transparency for equity and non-equity instruments, and transparency calculations for both types of instruments. The Manual is expected to be updated in the future in response to the MiFID II/MiFIR review, as well as any legislative or legal changes that may affect its content. It will also be regularly updated to address new questions from market participants, similar to Q&A documents.

ESMA publishes final report on review of technical standards on passporting under Article 34 of MiFID II

On July 11 2023, the European Securities and Markets Authority (ESMA) published a final report on the review of technical standards on passporting under Article 34 of MiFID II.

This Final Report contains draft technical standards (i) specifying the information to be notified by, inter alia, investment firms wishing to provide cross-border services without the establishment of a branch and (ii) establishing standard forms, templates and procedures for the transmission of information in this respect.

In accordance with Article 34(5) of Directive 2014/65/EU, credit institutions wishing to provide investment services or activities as well as ancillary services on a cross-border basis through tied agents established in their home Member States should notify the home national competent authorities with the identity of the tied agent as well as the investment services or activities, ancillary services and financial instruments to be provided by the latter. Other information required to be

notified by investment firms wishing to provide investment services and activities on a cross-border basis are not required from credit institutions. The further information required from investment firms will therefore not affect credit institutions.

ESMA updates its guidance on the definition of advice in a supervisory briefing

On July 11 2023, the European Securities and Markets Authority (ESMA) published a supervisory briefing on understanding the definition of advice under MiFID II.

The supervisory briefing contains a diagram which illustrates the key tests and hence the thought process that a firm needs to go through to determine whether its services constitute investment advice.

The supervisory briefing, among other topics, covers:

- The provision of personal recommendations and whether other forms of information such as investment research could constitute investment advice.
- The presentation of a recommendation as suitable for a client or based on the client's circumstances.
- Perimeter issues around the definition of personal recommendation.
- Issues around the form of communication, including use of social media posts.

PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

EU publishes Regulation (EU) 2023/1651 supplementing Directive (EU) 2019/2034 on RTS for specific liquidity measurement of investment firms under Article 42(6) of that Directive

On August 23 2023, the EU published the Commission Delegated Regulation (EU) 2023/1651 of May 17 2023 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards for the specific liquidity measurement of investment firms under Article 42(6) of that Directive.

The Delegated Regulation will enter into force on September 12 2023.

Regulation refers to the following articles:

- Assessment of liquidity risk and elements of liquidity risk justifying specific liquidity requirements
- Assessment of liquidity risk stemming from the investment services and activities and ancillary services
- Assessment of liquidity risk stemming from funding
- Assessment of external events affecting liquidity
- Assessment of operational risk affecting liquidity
- Assessment of reputational risk affecting liquidity
- Assessment of the sound management and controls of liquidity risk
- Assessment of the group structure relevant to liquidity risk.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

ESMA publishes Annexes I and II for the template register of information

On July 17 2023, the European Securities and Markets Authority (ESMA) published Annex I for the template register of information at Entity level and Annex II for the template register of information at (sub)consolidated level.

The annex I contains ten templates (worksheets).

The annex II contains 14 templates (worksheets).

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

EBA encourages timely preparatory steps towards the application of MiCAR to asset-referenced and electronic money tokens

On July 12 2023, the European Banking Authority (EBA) published a statement for the attention of financial institutions and other undertakings who intend to commence, or have commenced, asset-referenced token (ART) or electronic money token (EMT) activities prior to June 30 2024 (the application date for the relevant provisions of the Markets in Crypto-assets Regulation - MiCAR) and for competent authorities.

The statement is intended to encourage timely preparatory actions to MiCAR application, with the objectives to reduce the risks of potentially disruptive and sharp business model adjustments at a later stage, to foster supervisory convergence, and to facilitate the protection of consumers.

The statement includes 'guiding principles' to which financial institutions (and other undertakings) carrying out ART/EMT activities are encouraged to have regard until the application date. These guiding principles encompass: (i) disclosures to, and fair treatment of, potential acquirers and holders of ARTs and EMTs, (ii) the business model, (iii) sound governance, including effective risk management, (iv) reserve, recovery and redemption arrangements, and (v) communications with the relevant competent authority.

The statement is accompanied by a template that financial institutions (and other undertakings) intending to carry out, or carrying out, ART/EMT activities, are encouraged to communicate, on a timely basis, to the relevant competent authority.

SECURITISATION REGULATION

ESMA publishes Q&A on securitisation regulation (13/7/2023)

On July 13 2023, the European Securities and Markets Authority (ESMA) published a Q&A on securitisation regulation.

The objective of this document is to encourage consistent and harmonized supervision in the application of the Securitisation Regulation (Regulation 2017/2402). It achieves this by providing answers to inquiries from the public, financial market participants, regulatory authorities, and other stakeholders. The question and answer (Q&A) tool serves as a practical means to promote uniform supervisory approaches as outlined in Article 16b of the ESMA Regulation. ESMA plans to regularly update this document and has included the initial publication date and any subsequent amendments for each question. Stakeholders can submit additional questions related to the Securitisation Regulation through ESMA's Q&A tool on its website, and it is advised to consult the available guidance before submitting inquiries.

SHAREHOLDERS' RIGHTS DIRECTIVE (SRD II)

EBA and ESMA assess the implementation of the revised Shareholder Rights Directive and identify areas of progress

On July 27 2023, the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) published a Report assessing the implementation of the Shareholder Rights Directive 2 (SRD2).

In the Report the EBA analyses the implementation of certain provisions in the SRD2 in relation to the charges applied by intermediaries and the practices of third country intermediaries.

In particular, the level of disclosure and comparability of costs charged by intermediaries remain limited across the EU, mainly due to a lack of harmonisation of the types of fees or services and of detailed disclosure requirements. The EBA notes that on these aspects there is room for improvement to increase competition among players and reduce the negative impact of costs on investors' engagement.

Moreover, differences in the practices followed by third-country intermediaries are identified compared to European intermediaries, mainly for small local third-country intermediaries, which may also be due to the lack of standardised processes among European Member States. The EBA notes that a higher standardisation would benefit non-EU and EU entities alike.

SUSTAINABLE FINANCE / GREEN FINANCE

ESMA and NCAs launch a common supervisory action (CSA) to assess disclosures and sustainability risks in the investment fund sector

On July 6 2023, the European Securities and Markets Authority (ESMA), together with National Competent Authorities (NCAs), launched a Common Supervisory Action (CSA) on sustainability-related disclosures and the integration of sustainability risks.

The objective is to evaluate the compliance of supervised asset managers with relevant regulations and provisions related to sustainability disclosure, including the Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation, and implementing measures under the UCITS and AIFMD acts.

To achieve this, NCAs will utilize a common methodology developed by ESMA. They will exchange information and best practices to promote consistency in supervising sustainability-related disclosures. The main goals include:

- Assessing the adherence of market participants to applicable rules and standards in practice.
- Gathering additional information on the risks of greenwashing in the investment management sector.
- Identifying necessary supervisory and regulatory interventions to address these issues.

Ensuring greater consistency in supervising risks associated with inaccurate and misleading disclosures is crucial for enhancing transparency and is recognized as one of the key priorities for NCAs. The Capital Markets Union Strategic Supervisory Priorities for NCAs prioritize this goal. The CSA aims to improve the clarity of environmental, social, and governance (ESG) disclosures made by asset managers across various segments of the sustainable finance value chain. Additionally, the initial findings regarding greenwashing risks at both the entity and product levels will contribute to ESMA's Final Report on greenwashing.

The next steps involve NCAs conducting their supervisory activities and collaborating through ESMA until the third quarter of 2024. The objective is to promote convergence in the supervision of sustainability-related disclosures and the integration of sustainability risks by asset managers.

EU publishes Commission Recommendation (EU) 2023/1425 of 27 June 2023 on facilitating finance for the transition to a sustainable economy

On July 7 2023, the EU published the Commission Recommendation (EU) 2023/1425 of June 27 2023 on facilitating finance for the transition to a sustainable economy.

This Recommendation follows up on the Commission Communication on a 'Strategy for Financing the Transition to a Sustainable Economy'.

It is addressed to undertakings that want to contribute to the transition to climate neutrality and environmental sustainability, while enhancing their competitiveness and are seeking finance for investments for this purpose. It aims to explain the use of sustainable finance tools for this purpose. Transition financing and green financing (24) can be distinguished from general financing, which does not have sustainability objectives.

It is also addressed to:

- financial intermediaries and investors that are willing to provide transition finance to undertakings;
- Member States and financial supervisory authorities, to raise awareness of the topic and provide technical assistance, to encourage the uptake and provision of transition finance to the real economy.

ESMA publishes sustainable finance implementation timeline (12/7/2023)

On July 12 2023, the European Securities and Markets Authority (ESMA) published a sustainable finance implementation timeline for the SFDR, TR, CSRD, MiFID, IDD, UCITS and AIFMD.

EBA publishes the Decision on an ad hoc data collection of institutions' ESG data

On July 18 2023, the European Banking Authority (EBA) published the Decision on an ad hoc data collection of institutions' ESG data. The Decision will provide competent authorities and the EBA with the necessary data and tools to fulfill monitoring functions and ESG-related mandates by collecting the information that is already available to institutions as part of their Pillar 3 disclosure obligations with respect to ESG risks.

The EBA will gather environmental, social, and governance (ESG) data from large, publicly traded institutions through their quantitative disclosures on ESG risks. This data collection will enable competent authorities to monitor ESG risks and assist the EBA in fulfilling its ESG responsibilities, such as establishing a risk monitoring framework and supporting the European Commission's Strategy for financing the transition to a sustainable economy. The collection of data is temporary and will cease once a supervisory reporting framework on ESG risks is implemented.

The Decision EBA/DC/498, developed in accordance with Regulation (EU) No 1093/2010, establishes the tasks of the European Banking Authority (EBA), including Article 29(1)(f), Article 32, and Article 35. It amends Decision EBA/DC/2020/335 related to the European Centralised Infrastructure of Data. Additionally, large institutions with securities traded on regulated markets are required to disclose information on ESG risks under Article 449a of Regulation (EU) No. 575/2013 (CRR), with specific disclosure formats and instructions provided in Implementing Regulation (EU) 2021/637, Article 18a. The first submission for ESG data is due by 31 December 2023, with Competent Authorities submitting institutions' data to the EBA by June 2024. The first semi-annual submission is due on 30 June 2024, with data to be submitted by 31 December 2024. The technical package supporting the ESG ad-hoc collection has been made available on the EBA website in June 2023 as part of reporting framework 3.3.

EC adopts the European Sustainability Reporting Standards

On July 31 2023, the European Commission adopted the Commission Delegated Regulation supplementing the Directive 2013/34/EU as regards sustainability reporting standards to address the deficiencies in the current sustainability reporting practices of companies.

Large companies and listed companies (excluding listed micro-enterprises) are required by EU law to disclose information on social and environmental risks and impacts. However, the information reported is often inadequate and hard to compare, leading to an accountability gap.

The ESRS aim to provide a common framework for companies to report their sustainability performance more effectively, facilitating access to sustainable finance. The standards have been developed based on technical advice from the European Financial Reporting Advisory Group (EFRAG), with input from various stakeholders.

The ESRS require companies to report on both their impacts on people and the environment and how social and environmental issues create financial risks and opportunities. There are 12 ESRS covering a wide range of sustainability issues, and companies must perform a materiality assessment to report only relevant information. The ESRS have been modified by the Commission to introduce phase-in provisions for certain reporting requirements, allow more flexibility for companies to decide relevant information, and make some reporting requirements voluntary instead of mandatory.

The ESRS are also aligned with global standards, particularly those of the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI). Companies will have to start reporting under the ESRS according to a phased timetable, with different deadlines for different types of companies.

For further guidance on the application of ESRS, companies can refer to EFRAG, which will publish non-binding technical guidance periodically. EFRAG is prioritizing guidance on materiality assessment and reporting regarding value chains. The ESRS will be formally transmitted to the European Parliament and the Council for scrutiny, and the reporting requirements will start according to the phased timetable mentioned above.

This Regulation will become effective three days after its publication in the Official Journal of the European Union. It will be applicable from January 1 2024 for financial years starting on or after January 1 2024. This Regulation is binding and automatically enforceable in all Member States.

FRANCE

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

AMF amends its policy on DASPs to clarify the transition to "enhanced" DASP registration / L'AMF modifie sa politique sur les DASP pour clarifier le passage à l'enregistrement des PSAN « amélioré »

On July 19 2023, the Autorité des marchés financiers (AMF) changed its doctrine on the regime for digital asset service providers (DASP) in order to take into account the changes resulting from the DDADUE law introducing a reinforced DASP registration applicable from January 1 2024.

The Law of March 9 2023 (DDADUE) on various provisions for adaptation to European Union law, introduced an "enhanced" registration regime that will be mandatory from 1 January 2024 for new players wishing to provide the four digital asset services subject to mandatory registration (custody, buying/selling for legal tender, trading of digital assets for other digital assets, operation of a trading platform for digital assets). The AMF has updated its Position-Recommendation DOC-2020-07 (Questions and Answers on the DASP regime) to clarify the transitional provisions relating to this new regime.

It should be noted that DASPs that have already obtained "simple" registration before January 1 2024 will continue to be subject to the registration requirements applicable prior to January 1 2024.e or complete it to move towards enhanced registration.

In its updated policy, the AMF sets out the transitional provisions provided for under Article 8 of the DDADUE Law (questions 3.1 and 3.2).

DASPs that file an application for registration before July 1 2023, which the AMF deems to be complete, will be subject to a "simple" registration procedure. The application is considered complete if all the required documents have been provided, and if the information is accurate and of high quality.

Persons who have not submitted a registration file deemed complete by the AMF by July 1 2023 must complete and update their file to comply with the provisions of the "enhanced" DASP registration.

It should also be noted that a DASP that has already been registered as a simple DASP applying for an extension to a new service on or after July 1 2023 will be subject to the provisions of "enhanced" registration for all the services it provides, including those for which it already had simple registration.

The DASP Q&A also clarifies certain points concerning portfolio asset management companies. A portfolio asset management company may carry on, as an extension to its management activity, an ancillary activity involving digital assets, within the limits of the services that it is otherwise authorised to provide in connection with financial instruments.

A portfolio asset management company may decide, for the purposes of managing its collective investments, to invest in digital assets and place orders to buy, sell or trade digital assets. Such activity does not require mandatory registration for the services of buying or selling digital assets in a currency that is legal tender or trading digital assets for other digital assets.

The circumstances under which a portfolio asset management company may engage in this activity are set out in AMF Position-Recommendation DOC-2012-19 "Guide to preparing the programme of operations for asset management companies and self-managed collective investments".

In addition, the AMF will shortly be amending the provisions of its General Regulation and Instructions DOC-2019-23 (compiling a registration and authorisation file) and DOC-2019-24 (cybersecurity requirements) to incorporate the enhanced registration regime and anticipate the transition to the European Regulation on markets in crypto-assets (MiCA). These changes will need to be taken into account by service providers who have to submit a registration file or complete it in order to move towards "enhanced" registration.

Version française

Le 19 juillet 2023, l'Autorité des marchés financiers (AMF) a fait évoluer sa doctrine sur le régime des prestataires de services sur actifs numériques (PSAN) afin de prendre en compte les évolutions résultant de la loi DDADUE qui introduit un enregistrement PSAN renforcé applicable à compter du 1er janvier 2024.

La loi du 9 mars 2023 (DDADUE) portant diverses dispositions d'adaptation au droit de l'Union européenne, a instauré un régime d'enregistrement « ameliorée » qui sera obligatoire à partir du 1er janvier 2024 pour les nouveaux acteurs souhaitant fournir les quatre services sur actifs numériques soumis à enregistrement obligatoire (conservation, achat/vente contre cours légal, échange d'actifs numériques contre d'autres actifs numériques, exploitation d'une plateforme de négociation d'actifs numériques). L'AMF a mis à jour sa Position-Recommandation DOC-2020-07 (Questions et réponses sur le régime PSAN) afin de clarifier les dispositions transitoires relatives à ce nouveau régime.

A noter que les PSAN ayant déjà obtenu l'inscription « simple » avant le 1er janvier 2024 bénéficient d'une clause de droits acquis et continueront d'être soumis aux exigences d'inscription applicables avant le 1er janvier 2024 ou la compléteront pour évoluer vers une inscription renforcée.

Dans sa politique actualisée, l'AMF précise les dispositions transitoires prévues à l'article 8 de la loi DDADUE (questions 3.1 et 3.2).

Les PSAN qui déposeront avant le 1er juillet 2023 une demande d'inscription, que l'AMF estime complète, seront soumis à une procédure d'inscription « simple ». La candidature est considérée comme complète si tous les documents requis ont été fournis et si les informations sont exactes et de haute qualité.

Les personnes n'ayant pas déposé de dossier d'inscription réputé complet par l'AMF au 1er juillet 2023 devront compléter et mettre à jour leur dossier pour respecter les dispositions de l'inscription PSAN « ameliorée ». A noter également qu'un PSAN déjà enregistré comme simple PSAN demandant une extension à un nouveau service à compter du 1er juillet 2023 sera soumis aux dispositions d'enregistrement « amélioré » pour tous les services qu'il fournit, y compris ceux pour lesquels il disposait déjà d'une simple inscription.

Le Q&A PSAN précise également certains points concernant les sociétés de gestion de portefeuille qui peut exercer, en prolongement de son activité de gestion, une activité accessoire portant sur des actifs numériques, dans la limite des services qu'elle est par ailleurs autorisée à fournir en matière d'instruments financiers.

Une société de gestion de portefeuille peut décider, aux fins de la gestion de ses placements collectifs, d'investir dans des actifs numériques et de passer des ordres d'achat, de vente ou d'échange d'actifs numériques. Une telle activité ne nécessite pas d'enregistrement obligatoire pour les services d'achat ou de vente d'actifs numériques dans une devise ayant cours légal ou d'échange d'actifs numériques contre d'autres actifs numériques.

Les conditions dans lesquelles une société de gestion de portefeuille peut exercer cette activité sont précisées dans la position-recommandation AMF DOC-2012-19 « Guide d'élaboration du programme d'opérations des sociétés de gestion de portefeuille et des placements collectifs autogérés ».

Par ailleurs, l'AMF modifiera prochainement les dispositions de son règlement général et de ses instructions DOC-2019-23 (constitution d'un dossier d'enregistrement et d'autorisation) et DOC-2019-24 (exigences en matière de cybersécurité) pour intégrer le régime d'enregistrement renforcé et anticiper la transition au Règlement européen sur les marchés de crypto-actifs (MiCA). Ces changements devront être pris en compte par les prestataires qui devront déposer un dossier d'inscription ou le compléter pour évoluer vers une inscription « ameliorée ».

FINANCIAL SUPERVISION

France publishes Decree amending AMF General Regulation on AIF loan supervision and the enhanced DASP registration / La France publie un décret modifiant le règlement général de l'AMF sur le contrôle des prêts des FIA et à l'enregistrement amélioré des PS

On July 21 2023, France published the Decree of July 21 2023 approving amendments to the General Regulation of the Autorité des marchés financiers (AMF).

The Decree introduces amendments to Books III, IV and VII of the General Regulation of the AML, in particular:

- Art. 319-26 on information about AIF management;
- Art. 421-38 on reporting rules for AIFs (reporting to the AMF);
- Art. 721-1, 721-1-1, 721-1-2, 721-1-3 on registration/licence requirements for digital assets service providers;
- Art. 722-1-1, 722-2 on the service of custody of digital assets on behalf of third parties;
- Art. 722-14-1, 722-15-1, 722-15-2 on the operations of a trading platform for digital assets.

More specifically, the amendments to Books III and IV aim to improve the supervision of loans granted by AIFs by changing the information transmitted quarterly to the AMF and by extending the scope of this information to foreign management companies managing French AIFs granting loans and authorised in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council of April 29 2015 on European long-term investment funds (ELTIF Regulation).

The amendments to Book VII aim, on the one hand, to incorporate provisions relating to the so-called "enhanced" registration of digital asset service providers (DASPs) pursuant to Article 8 of Law No. 2023-171 of March 9 2023 on various provisions for adaptation to European Union law in the fields of the economy, Health, Labour, Transport and Agriculture (DDADUE Law) and, on the other hand, to adapt the provisions of the AMF General Regulation relating to approved PSANs to Regulation (EU) 2023/1114 of the European Parliament and of the Council of May 31 2023 on crypto-asset markets (MICA Regulation). These changes will come into force on January 1 2024.

Version française

Le 21 juillet 2023, la France a publié le décret du 21 juillet 2023 approuvant les modifications du règlement général de l'Autorité des marchés financiers (AMF).

Le décret introduit des modifications aux livres III, IV et VII du règlement général de l'AML, notamment :

- *Art. 319-26 relatif à l'information sur la gestion des FIA ;*
- *Art. 421-38 relatif aux règles de déclaration des FIA (déclaration à l'AMF) ;*
- *Art. 721-1, 721-1-1, 721-1-2, 721-1-3 sur les exigences d'enregistrement/de licence pour les fournisseurs de services d'actifs numériques ;*
- *Art. 722-1-1, 722-2 relatif au service de conservation d'actifs numériques pour le compte de tiers ;*
- *Art. 722-14-1, 722-15-1, 722-15-2 sur les opérations d'une plateforme de négociation d'actifs numériques.*

Plus précisément, les modifications des livres III et IV visent à améliorer le contrôle des prêts accordés par les FIA en faisant évoluer l'information transmise trimestriellement à l'AMF et en étendant le champ de cette information aux sociétés de gestion étrangères gérant des FIA français accordant des prêts et agréés conformément au Règlement (UE) 2015/760 du Parlement européen et du Conseil du 29 avril 2015 relatif aux fonds européens d'investissement à long terme (Règlement ELTIF).

Les modifications du livre VII visent, d'une part, à intégrer des dispositions relatives à l'enregistrement dit « amélioré » des prestataires de services sur actifs numériques (PSAN) en application de l'article 8 de la loi n° 2023-171 du 9 mars 2023 relative à divers dispositions d'adaptation au droit de l'Union européenne dans les domaines de l'économie, de la santé, du travail, des transports et de l'agriculture (loi DDADUE) et, d'autre part, d'adapter les dispositions du règlement général de l'AMF relatives aux PSAN agréés au règlement (UE) 2023/1114 du Parlement européen et du Conseil du 31 mai 2023 relatif aux marchés de crypto-actifs (Règlement MiCA). Ces changements entreront en vigueur le 1er janvier 2024.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

AMF updates its policy on the information to be provided by collective investment schemes incorporating non-financial approaches / L'AMF met à jour sa politique relative à l'information à fournir par les OPC intégrant des approches extra-financières

On August 2 2023, the Autorité des marchés financiers (AMF) updated its position-recommendation DOC-2020-03 which defines the information to be provided by collective investment schemes integrating extra-financial approaches. This update extends its scope to include French and foreign European Long-Term Investment Funds (ELTIFs) marketed to non-professional clients in France.

Obligations concerning the disclosure of non-financial characteristics:

- position-recommendation DOC-2020-03 details the information related to the consideration of extra-financial criteria that may be communicated by French collective investment schemes and foreign UCITS marketed in France to non-professional clients. These provisions are set out in the various regulatory

documents (key investor information documents, prospectuses) and commercial documents;
- ELTIFs domiciled in France constituted in the form of collective investment schemes already accessible to non-professional clients were therefore subject to it, unlike foreign ELTIFs, which are not explicitly covered by that doctrine.

Revision of the ELTIF Regulation:

- alternative investment funds (AIFs) authorised under the ELTIF Regulation may be marketed to retail clients under the conditions of that Regulation. The conditions for such marketing have been relaxed under Regulation (EU) 2023/606 amending the original Regulation, which enters into force on January 10 2024.

Extension of doctrine to retail ELTIFs:

- the AMF thus extends the scope of position-recommendation DOC-2020-03 to ELTIFs, whether French or foreign, as long as they are marketed to non-professional clients when they wish to be able to communicate centrally or to a reduced extent on their extra-financial characteristics. This extension of the scope of the doctrine aims to ensure consistency on the expectations applicable in terms of extra-financial communications of ELTIFs marketed to French non-professional customers, regardless of their legal envelope or domicile.

Version française

Le 2 août 2023, l'Autorité des marchés financiers (AMF) a mis à jour sa position-recommandation DOC-2020-03 qui définit les informations que doivent fournir les organismes de placement collectif intégrant des approches extra-financières. Cette mise à jour étend son champ d'application aux Fonds Européens d'Investissement de Long Terme (ELTIF) français et étrangers commercialisés auprès d'une clientèle non professionnelle en France.

Obligations concernant la divulgation des caractéristiques extra-financières :

- *la position-recommandation DOC-2020-03 détaille les informations liées à la prise en compte des critères extra-financiers qui peuvent être communiquées par les organismes de placement collectif français et les OPCVM étrangers commercialisés en France à une clientèle non professionnelle. Ces dispositions sont précisées dans les différents documents réglementaires (documents d'informations clés pour l'investisseur, prospectus) et commerciaux ;*
- *Les ELTIF domiciliés en France constitués sous forme d'OPCVM déjà accessibles aux clients non professionnels y étaient donc soumis, contrairement aux ELTIF étrangers, qui ne sont pas explicitement couverts par cette doctrine.*

Révision du Règlement ELTIF :

- *les fonds d'investissement alternatifs (FIA) agréés au titre du règlement ELTIF peuvent être commercialisés auprès de la clientèle de détail dans les conditions dudit règlement. Les conditions d'une telle commercialisation ont été assouplies en vertu du règlement (UE) 2023/606 modifiant le règlement initial, qui entre en vigueur le 10 janvier 2024.*

Extension de la doctrine aux ELTIF de détail :

- *l'AMF étend ainsi le champ d'application de la position-recommandation DOC-2020-03 aux ELTIF, qu'ils soient français ou étrangers, pour autant qu'ils soient commercialisés auprès de clients non professionnels lorsqu'ils souhaitent pouvoir communiquer de manière centralisée ou dans une mesure réduite sur leurs caractéristiques extra-financières. Cette extension du champ d'application de la doctrine vise à assurer une cohérence sur les attentes applicables en matière de communications extra-financières des ELTIF commercialisés auprès des clients non professionnels français, quelle que soit leur enveloppe juridique ou leur domicile.*

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

France publishes Decree of 22 August 2023 on the definition of investment services / La France publie le décret du 22 août 2023 portant définition des services d'investissement

On August 24 2023, France published the Decree No. 2023-813 of August 22 2023 on the definition of investment services.

This decree modifies the French definition of the investment service of "reception and transmission of orders in relation to one or more financial instruments" (RTO) specified in the Monetary and Financial Code.

The main amendment is to remove the condition that the order must be transmitted to an investment firm or to an entity with equivalent status in a country that is not a member of the European Union or a party to the Agreement on the European Economic Area. This condition was a French specificity.

The amendment aims to:

- adapt the definition of this service to the entry into application on November 10 2021 of the Regulation on European crowdfunding service providers for business (Crowdfunding Regulation), as the entities subjected to this text provide the RTO service even though they transmit the order to an entity that is not an investment firm (for example, to an issuer or a project owner) ;
- foster alignment of the French definition of the RTO service with those of other European countries, in the absence of a harmonized definition of this service under MiFID 2.

The AMF therefore draws attention to the fact that receiving an order from a third party and then transmitting it to another entity with a view to executing a transaction now constitutes an RTO service, regardless of the quality of the entity to which the order is transmitted. Accordingly, this activity requires the

corresponding authorisation if it is carried out on a regular basis and does not fall within one of the exceptions envisaged by applicable provisions.

The Decree came into force on September 1 2023.

Version française

Le 24 août 2023, la France a publié le décret n° 2023-813 du 22 août 2023 portant définition des services d'investissement.

Ce décret modifie la définition française du service d'investissement de « réception et transmission d'ordres portant sur un ou plusieurs instruments financiers » (RTO) précisée dans le Code monétaire et financier.

Le principal amendement consiste à supprimer la condition selon laquelle l'ordre doit être transmis à une entreprise d'investissement ou à une entité de statut équivalent dans un pays non membre de l'Union européenne ou partie à l'accord sur l'Espace économique européen. Cette condition était une spécificité française.

L'amendement vise à :

- *adapter la définition de ce service à l'entrée en application le 10 novembre 2021 du Règlement relatif aux prestataires européens de services de financement participatif pour les entreprises (Règlement Crowdfunding), dans la mesure où les entités soumises à ce texte fournissent le service RTO même si elles transmettent l'ordre à un entité qui n'est pas une entreprise d'investissement (par exemple, à un émetteur ou à un porteur de projet) ;*
- *favoriser l'alignement de la définition française du service RTO avec celles des autres pays européens, en l'absence d'une définition harmonisée de ce service dans le cadre de MiFID 2.*

L'AMF attire ainsi l'attention sur le fait que recevoir un ordre d'un tiers puis le transmettre à une autre entité en vue d'exécuter une opération constitue désormais une prestation de RTO, quelle que soit la qualité de l'entité à laquelle l'ordre est transmis. Ainsi, cette activité nécessite l'autorisation correspondante si elle est exercée de manière régulière et ne relève pas d'une des exceptions prévues par les dispositions applicables.

Le décret est entré en vigueur le 1er septembre 2023.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

France publishes Decree No. 2023-787 on the enhanced registration for VASPs and AMF amends General Regulation / La France publie le décret n° 2023-787 relatif à la mise en œuvre de l'enregistrement amelioré des SPAN et l'AMF modifie son règlement général

On August 19 2023, France published the Decree No. 2023-787 of August 17 2023 on the implementation of enhanced registration for digital asset service providers (DASP).

This Decree makes editorial changees to the regulatory part of of the Monetary and Financial Code resulting from Article 8 of Law No. 2023-171 of March 9 2023 on various provisions for adaptation to European Union law in the fields of the economy, Health, Labour, Transport and Agriculture (DDADUE Act), which notably strengthens the registration obligations applicable to DASPs.

The text enters into force on January 1 2024.

On August 10 2023, the Autorité des marchés financiers (AMF) also amended the provisions of its General Regulation and its doctrine relating to the regime of digital asset service providers (DASPs) in order to take into account the "enhanced" registration introduced by the DDADUE law. These developments, applicable from January 1 2024, also aim to anticipate the transition to the European Regulation on Crypto-Asset Markets (MiCA) by adjusting the provisions relating to approved VASPs.

The changes adopted by the AMF pursue two main objectives:

- integrate into the General Regulation and its doctrine the provisions applicable to DASPs subject to so-called "enhanced" registration. This regime becomes mandatory from January 1 2024 for new players wishing to provide the four services subject to mandatory registration;
- align the requirements of the DASPauthorisation with those of the authorisation of crypto-asset service providers (VASP) resulting from the MiCA Regulation, and allow the implementation of a simplified procedure towards the VASP authorisation.

More incidentally, the changes to the doctrine applicable to DASP aim to enrich it to take into account new issues of actors and changes in business models.

Version française

Le 19 août 2023, la France a publié le décret n° 2023-787 du 17 août 2023 relatif à la mise en œuvre de l'enregistrement renforcé des prestataires de services sur actifs numériques (PSAN).

Le présent décret apporte des modifications rédactionnelles à la partie réglementaire du code monétaire et financier résultant de l'article 8 de la loi n° 2023-171 du 9 mars 2023 portant diverses dispositions d'adaptation au droit de l'Union européenne dans les domaines de l'économie, de la santé, du travail, des transports et agriculture (Loi DDADUE), qui renforce notamment les obligations d'immatriculation applicables aux PSAN.

Le texte entre en vigueur le 1er janvier 2024.

Le 10 août 2023, l'Autorité des marchés financiers (AMF) a également modifié les dispositions de son règlement général et sa doctrine relative au régime des prestataires de services sur actifs numériques (PSAN) afin de prendre en compte l'enregistrement « amelioré » introduit par la loi DDADUE. Ces évolutions, applicables à compter du 1er janvier 2024, visent également à anticiper la transition vers le Règlement européen sur les marchés de crypto-actifs (MiCA) en aménageant les dispositions relatives aux PSAN agréés.

Les modifications adoptées par l'AMF poursuivent deux objectifs principaux :

- *intégrer dans le Règlement Général et sa doctrine les dispositions applicables aux PSAN soumises à un enregistrement dit « amelioré ». Ce régime devient obligatoire à compter du 1er janvier 2024 pour les nouveaux acteurs souhaitant fournir les quatre services soumis à inscription obligatoire ;*
- *aligner les exigences de l'agrément PSAN avec celles de l'agrément des prestataires de services sur crypto-actifs (VASP) résultant du Règlement MiCA, et permettre la mise en œuvre d'une procédure simplifiée vers l'agrément PSAN.*

Plus incidemment, les évolutions de la doctrine applicable à un PSAN visent à l'enrichir pour prendre en compte les nouvelles problématiques d'acteurs et les évolutions des modèles économiques.

UCITS V / ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD)

AMF analyses the valuation arrangements for illiquid assets of UCITS and AIFs / L'AMF analyse les modalités de valorisation des actifs illiquides des OPCVM et FIA

On July 4 2023, the Autorité des marchés financiers (AMF) analysed the valuation arrangements for illiquid assets of UCITS and AIFs.

During a coordinated supervisory exercise at European level, the Autorité des marchés financiers (AMF) questioned management companies on how they value illiquid assets in their portfolios. For 10 of them, invested in real estate assets or corporate bonds, the AMF carried out checks. In a synthesis paper, she draws lessons from this review. The objective of this exercise was for regulators to ensure the correct valuation of assets under management in normal times as well as in times of crisis.

As a first step, the AMF analysed the responses to a questionnaire sent in the second quarter of 2022 to some thirty asset management companies. It then carried out two sets of short thematic checks (SPOT checks) to focus its review on 10 of these companies managing alternative investment funds (AIFs) and/or UCITS. Five institutions were selected for their specialization in the management of real estate funds, the other 5 for their significant investments in debt issued by non-financial companies. Nine of the controlled companies cater to both professional and private clients, and the tenth to exclusively professional clients.

On the occasion of this review of the valuation mechanisms for illiquid assets over the period January 2019-July 2022, the AMF focused its attention on:

- the organization and governance of these schemes;
- written procedures;
- the implementation of these devices;
- the internal control exercised over these devices.

The summary, which draws lessons from questionnaire responses and SPOT checks, highlights very different organisations across asset managers. These vary depending on the size of the company and the nature of the assets under management.

Managers investing in non-financial corporate bonds generally rely on the external valuations of the funds and intervene in the verification and validation of the net asset value proposed by the external valuer. For their part, property management companies have, for the most part, set up valuation committees including several members of their teams (risks, management, compliance, management, etc.) and the independent (internal) valuator, these valuation committees integrating data sent by external valuation experts. In most management companies investing in unlisted shares (private equity), a collegial approach is preferred to decide on valuation (via valuation committees for example). In all cases, the final decision rests with the independent evaluator.

In its review of the written procedures, the AMF identified descriptions that were too generic and not very detailed, in particular with regard to the valuation methods or sources to be used.

Regarding the operational implementation of valuation systems within the management companies studied, the valuation of real estate assets relies largely on external experts, with an uneven level in the traceability of valuation work, particularly with regard to the due diligence carried out by the internal valuator. In particular, the AMF found formalization deficiencies in the event of a change in the valuation method. For some, valuations tend to be very stable because the methods used are based on forward-looking data that does not always specifically take into account the current state of the market or on past data. The AMF also highlights the lack of detailed information on the valuation process and methods used in the various investor information media.

With regard to fund managers exposed to corporate debt, the AMF observed that the sources chosen for prices were not indicated in the funds' prospectuses or annual reports. For 4 of the 5 establishments inspected, sources not listed in the pricing policies were used without sufficiently formalised justification with the exception of one of them. Only 2 of the 5 audited entities used an internal model to value corporate bonds.

With regard to private equity fund managers, the AMF has identified situations in which management companies have not been sufficiently proactive in seeking elements to update the valuation of the securities in the portfolio. The funds then exhibit periods of almost complete absence of volatility and valuation jumps on specific dates, particularly at the end of the quarter or half-year.

In most cases over the AMF's review period, the control of the valuation of the assets held is indeed included in the compliance and internal control plans. However, shortcomings could be noted in carrying out this control for some of the companies, including the absence of effective control, failure to comply with the planned frequency of control, a review of the valuation procedure consisting merely of verification of its existence, failure to compare the transfer prices with the upgrading price, issues of representativeness of control samples.

Version française

Le 4 juillet 2023, l'Autorité des marchés financiers (AMF) a analysé les modalités de valorisation des actifs illiquides des OPCVM et FIA.

Lors d'un exercice de surveillance coordonné au niveau européen, l'Autorité des marchés financiers (AMF) a interrogé les sociétés de gestion sur la manière dont elles valorisent les actifs illiquides de leurs portefeuilles. Pour 10 d'entre eux, investis en actifs immobiliers ou en obligations d'entreprises, l'AMF a procédé à des contrôles. Dans un document de synthèse, elle tire les enseignements de cette revue. L'objectif de cet exercice était que les régulateurs s'assurent de la correcte valorisation des actifs sous gestion en temps normal comme en temps de crise.

Dans un premier temps, l'AMF a analysé les réponses à un questionnaire adressé au deuxième trimestre 2022 à une trentaine de sociétés de gestion de portefeuille. Elle a ensuite procédé à deux séries de contrôles thématiques courts (contrôles SPOT) pour concentrer son examen sur 10 de ces sociétés gérant des fonds d'investissement alternatifs (FIA) et/ou des OPCVM. Cinq établissements ont été sélectionnés pour leur spécialisation dans la gestion de fonds immobiliers, les 5 autres pour leurs investissements importants en dette émise par des sociétés non financières. Neuf des sociétés contrôlées s'adressent à la fois à une clientèle professionnelle et privée, et la dixième à une clientèle exclusivement professionnelle.

A l'occasion de cet examen des mécanismes de valorisation des actifs illiquides sur la période janvier 2019-juillet 2022, l'AMF a porté son attention sur :

- *l'organisation et la gouvernance de ces régimes ;*
- *des procédures écrites ;*
- *la mise en œuvre de ces dispositifs ;*
- *le contrôle interne exercé sur ces dispositifs.*

La synthèse, qui tire les enseignements des réponses aux questionnaires et des contrôles SPOT, met en évidence des organisations très différentes au sein des gestionnaires d'actifs. Ceux-ci varient en fonction de la taille de l'entreprise et de la nature des actifs sous gestion.

Les gérants investissant en obligations d'entreprises non financières s'appuient généralement sur les valorisations externes des fonds et interviennent dans la vérification et la validation de la valeur liquidative proposée par l'évaluateur externe. De leur côté, les entreprises de gestion des fonds immobiliers ont, pour la plupart des cas, mis en place des comités d'évaluation comprenant plusieurs membres de leurs équipes (risques, gestion, conformité, gestion, etc.) et l'évaluateur (interne) indépendant; ces comités d'évaluation intégrant les données transmises par des experts en évaluation externes. Dans la plupart des sociétés de gestion investissant dans des actions non cotées (private equity), une approche collégiale est privilégiée pour décider de la valorisation (par exemple via des comités de valorisation). Dans tous les cas, la décision finale appartient à l'évaluateur indépendant.

Lors de son examen des procédures écrites, l'AMF a identifié des descriptions trop génériques et peu détaillées, notamment en ce qui concerne les méthodes ou sources de valorisation à utiliser.

Concernant la mise en œuvre opérationnelle des systèmes de valorisation au sein des sociétés de gestion étudiées, la valorisation des actifs immobiliers s'appuie en grande partie sur des experts externes, avec un niveau inégal dans la traçabilité des travaux de valorisation, notamment au regard des due diligences réalisées par l'évaluateur interne. L'AMF a notamment constaté des défauts de formalisation en cas de changement de méthode de valorisation. Pour certains, les valorisations ont tendance à être très stables car les méthodes utilisées sont basées sur des données prospectives qui ne tiennent pas toujours compte spécifiquement de l'état actuel du marché ou sur des données passées. L'AMF souligne également le manque d'informations détaillées sur le processus et les méthodes de valorisation utilisées dans les différents supports d'information des investisseurs.

Concernant les gestionnaires de fonds exposés à la dette d'entreprises, l'AMF a constaté que les sources choisies pour les prix n'étaient indiquées ni dans les prospectus ni dans les rapports annuels des fonds. Pour 4 des 5 établissements inspectés, des sources non répertoriées dans les politiques tarifaires ont été utilisées sans justification suffisamment formalisée. Seules 2 des 5 entités auditées ont utilisé un modèle interne pour évaluer les obligations d'entreprises.

Concernant les gestionnaires de fonds d'investissement de capitaux, l'AMF a identifié des situations dans lesquelles les sociétés de gestion n'ont pas été suffisamment proactives dans la recherche d'éléments permettant d'actualiser la valorisation des titres en portefeuille. Les fonds présentent alors des périodes d'absence quasi totale de volatilité et de sauts de valorisation à des dates précises, notamment en fin de trimestre ou de semestre.

Dans la plupart des cas sur la période d'examen de l'AMF, le contrôle de la valorisation des actifs détenus est effectivement inscrit dans les plans de conformité et de contrôle interne. Toutefois, des insuffisances ont pu être constatées dans la réalisation de ce contrôle pour certaines sociétés, parmi lesquelles l'absence de contrôle effectif, le non-respect de la périodicité prévue des contrôles, une révision de la procédure d'évaluation consistant uniquement à vérifier son existence, le non-respect de la comparaison des prix de transfert avec le prix de revalorisation, questions de représentativité des échantillons de contrôle.

GERMANY

EU RETAIL INVESTMENT PACKAGE

BVI publishes remarks on Retail Investment Package

On August 28 2023, the Bundesverband Investment (BVI) published remarks on the Retail Investment Package.

The BVI supports the Commission's stated goal of broader participation of retail clients in the capital markets. Especially with regard to private pension planning, it is essential to encourage private investors to benefit from the opportunities of the capital markets. However, the BVI feels that many of the proposals are not helpful for achieving this goal, while some others are probably outright counterproductive.

The BVI believes that many of the targeted improvements have already been triggered by MiFID II and other EU Directives which are the subject of the draft Omnibus Directive. Instead of burdening market participants with new requirements, the existing ones should be better enforced and, if necessary, further specified. Especially MiFID II already contains comprehensive requirements for the goals of the Commission and is increasingly proving its effectiveness, as the BVI will show in its specific comments.

FINANCIAL SUPERVISION

BaFin publishes notification of persons according to the KWG

On July 1 2023, the Federal Financial Supervisory Authority (BaFin) published the notification of persons according to the KWG.

According to the KWG, holders of significant shareholdings and managing directors, administrative or supervisory board members of supervised entities are subject to special supervisory requirements. These include, among other things, the reliability of the people. In the case of managing directors and members of the administrative or supervisory board, the requirement for professional suitability or expertise also plays a central role and is also collectively referred to as "fit and proper" (FAP) requirements.

Pursuant to Section 1 (4) of the Ordinance on Notifications and the Submission of Documents under the German Banking Act (Notification Ordinance - AnzV), as of 01.07.2023, all companies for which the European Central Bank is considered the supervisory authority pursuant to Section 1 (5) No. 1 KWG have the ECB IMAS Portal to be used for the following displays:

- the intention to appoint a managing director and the intention to authorise a person to represent an institution individually in its entire business area in accordance with Section 24 (1) No. 1 KWG;
- the intention to appoint a person who is actually to manage the business of a financial holding company or a mixed financial holding company in accordance with Section 24 (3a) sentence 1 no. 1 KWG, also in conjunction with the German Banking Act. Sentence 5 KWG;
- the appointment of a member and alternate members of the administrative or supervisory body pursuant to Section 24 (1) No. 15 KWG;
- the appointment of a member and alternate members of the administrative or supervisory body in accordance with Section 24 (3a) sentence 1 no. 4 KWG, also in conjunction with the German Banking Act. Sentence 5 KWG.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

BaFin issues General Decree on Remuneration Notifications for Investment Firms

On August 2 2023, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) issued a General Decree on the Remuneration Notifications for Investment Firms as of the reporting date of December 31 2022.

The background to this is the fundamentally revised guidelines of the European Banking Authority.

Since June 2021, the disclosure obligations of investment firms regarding remuneration have been regulated in the Investment Firm Directive (IFD) and are implemented in the German Securities Institutions Act (WpIG). Among other things, this involves the annual display of data on employees of investment firms who are income millionaires and who must be reported to the Deutsche Bundesbank.

The European Banking Authority (EBA) specifies the disclosure obligations regulated in the IFD in its guidelines on remuneration issued on December 31 2022. Large and medium-sized investment firms as well as supervisory authorities must then apply the following different EBA guidelines:

1. Large investment firms: the 'Guidelines on the comparison of remuneration practices, the gender pay gap and the approved higher maximum ratio values under Directive 2013/36/EU' (EBA/GL/2022/06). These guidelines replace the previous guidelines for the comparison of remuneration (EBA/GL/2014/08).
2. Medium-sized investment firms: the 'Guidelines on the comparison of remuneration practices and the gender pay gap under Directive (EU) 2019/2034' (EBA/GL/2022/07).
3. Large and medium-sized investment firms: the 'Guidelines on the collection of data for high-income persons in accordance with Directive 2013/36/EU and Directive (EU) 2019/2034' (EBA/GL/2022/08). These replace the previously valid guidelines (EBA/GL/2014/07).

Small investment firms are not affected by the reporting obligations and the general ruling.

National supervisory authorities are required to collect the information referred to in the guidelines from investment firms by August 31 2023 and to share it with EBA by October 31 2023.

With the exception of the exceptions below, the reports shall be submitted by investment firms in the Extensible Business Reporting Language (XBRL) format. Information on the submission and the currently applicable EBA Taxonomy 3.2 can be found on the Website of the Deutsche Bundesbank.

For medium-sized investment firms with their own reporting obligation on persons with high incomes, an Excel-based submission is provided as an exception and optional. Information and forms have been published by the Deutsche Bundesbank on its website as well.

Bundesregierung adopts Draft 362/23 of a law on the financing of future-proof investments (Future Financing Act - ZuFinG)

On August 18 2023, the Bundesregierung adopted the Draft 362/23 of a law on the financing of future-proof investments (Future Financing Act - ZuFinG).

The Cabinet is proposing tax, capital market and corporate law measures to make the capital market more efficient and to make Germany more attractive as a financial centre.

The planned adjustment of the maximum amount of subsidised capital-forming benefits has been cancelled.

The government allows multiple voting shares for the IPOs of all companies.

ETFs that track indices are thus forced to invest more in companies that curtail shareholder rights.

The VAT exemption for the management of all investment funds in the future is also provided.

Infrastructure and open-ended real estate funds are now allowed to invest more in renewable energy plants allowing German funds to play an active role in the transformation of the energy sector.

Last but not least, it will also become possible to submit applications and administrative forms relevant to international market participants in English.

WHISTLEBLOWER PROTECTION

Bundesregierung enables better legal protection for whistleblowers

On July 2 2023, the Bundesregierung enabled better legal protection for whistleblowers.

The Federal Government has launched a draft for better whistleblower protection.

According to this, the planned reporting points for whistleblowers will not have to follow up on anonymous reports. In the case of fines, the upper limit of 100,000 euros is reduced to 50,000 euros.

Main objectives are the following:

- Legal protection for all whistleblowers
- Protection of legitimate expectations through discreet treatment of the identity and reporting of whistleblowers
- Prohibition of unjustified discrimination such as dismissal, warning, refusal of promotion or bullying
- Establishment of internal and external reporting offices to which whistleblowers can turn in order to obtain legal protection
- Avoidance of liability claims and damage to the image of companies and authorities.

HONG KONG

FINANCIAL SUPERVISION

HKMA publishes a circular on the streamlined approach for suitability compliance with sophisticated professional investors

On July 28 2023, the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) addressed concerns from intermediaries regarding suitability obligations when dealing with sophisticated professional investors (SPIs) who possess higher levels of net worth and knowledge. The circular aims to provide further guidance on a Streamlined Approach to be applied in such cases.

The Streamlined Approach allows intermediaries to simplify their point-of-sale procedures for SPIs based on information obtained during onboarding or know-your-client reviews. If an intermediary is reasonably satisfied that the client qualifies as an SPI, they may allow the SPI to invest in a portfolio of investment products with various risk profiles, including high-risk products. The intermediary is not required to match the SPI's risk tolerance, investment objectives, or assess their knowledge and experience at the transaction level. Instead, they may provide upfront information about product characteristics and risks.

Intermediaries must maintain appropriate conduct standards and manage risks associated with their operations when applying the Streamlined Approach. Effective systems and controls should be in place to prevent misuse and detect potential red-flags.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

HKMA publishes circular on Depositaries of SFC-authorized Collective Investment Schemes (Type 13 Regulated Activity)

On July 27 2023, the Hong Kong Monetary Authority (HKMA) published a circular on the commencement of the regulatory regime for depositaries of SFC-authorized Collective Investment Schemes (Type 13 Regulated Activity).

The circular informs all authorized institutions about the commencement of the regulatory regime for depositaries of SFC-authorized Collective Investment Schemes (Type 13 Regulated Activity) starting from October 2 2024. It provides guidance on licensing and registration for depositaries and outlines the requirements and transitional arrangements. Authorized institutions offering depositary services should review the circular and ensure proper registration. Individuals seeking to engage in RA 13 activities should be submitted to the HKMA for inclusion in the register. Registered institutions must comply with all relevant statutory and regulatory requirements, with the HKMA supervising RA 13 activities.

OVER-THE-COUNTER DERIVATIVES (OTC)

SFC reminds intermediaries of the OTCR entry into force on 25/09/2023

On August 25 2023, the Securities and Futures Commission (SFC) published a Circular to Intermediaries titled "Reminder on the Over-the-counter Securities Transactions Reporting Regime (OTCR)."

Relevant Regulated Intermediaries are reminded that the OTCR will become effective on September 25 2023. Those that have not yet completed the testing and preparation for reporting under the OTCR are urged to do so before the effective date.

IRELAND

DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

Ireland issues S.I. No. 375/2023 - European Union (Protection of Persons Who Report Breaches of Union Law) Regulations 2023

On July 19 2023, Ireland issued the S.I. No. 375/2023 - European Union (Protection of Persons Who Report Breaches of Union Law) Regulations 2023 for the purpose of giving further effect to Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23 2019.

These Regulations may be cited as the European Union (Protection of Persons Who Report Breaches of Union Law) Regulations 2023.

These Regulations came into operation on July 22 2023.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CBI updates confirmation required within QIAIF Application and Post Authorization Application Forms

On July 3 2023, the Central Bank of Ireland (CBI) updated the confirmation required within the QIAIF Application and Post Authorization Application Forms.

Ireland lays Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2023 (S.I. No. 351 of 2023)

On July 5 2023, Ireland laid the Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2023 (S.I. No. 351 of 2023) before the Houses of the Oireachtas (Ireland's National Parliament).

The purpose of these Regulations is to amend the Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) Regulations 2021 (S.I. No. 335 of 2021). The Principal Regulations are amended by substituting for the Schedule the following: Investment Limited Partnerships, Common Contractual Funds, Irish Collective Asset Management Vehicles, Unit Trusts and Credit Unions to pay a levy contribution at 953€.

CBI invites feedback on discussion paper for macroprudential policy for investment funds

On July 18 2023, the Central Bank of Ireland (CBI) invited feedback on the discussion paper for macroprudential policy for investment funds.

The issues include:

- The channels through which investment funds can generate systemic risk
- The current regulatory framework for investment funds
- The key proposed objectives and principles of macroprudential policy for investment funds
- The design and deployment of macroprudential tools for investment funds
- Key considerations for operationalising a macroprudential framework for investment funds

The publication aims to advance the ongoing international and European discussions on how a macroprudential perspective in the regulation of the funds sector could be achieved. A macroprudential framework for the funds sector would take a system-wide perspective and aim to ensure that this growing segment of the financial sector is more resilient to stresses and less likely to amplify adverse shocks. In turn, this would better equip the sector to serve as a resilient form of financing, supporting broader economic activity.

The investment fund sector now represents approximately 17 per cent of all global financial assets in 2021. The investment fund sector grew from just over €18 trillion in 2008 to €72 trillion in 2021.Total assets of the NBFI sector in Ireland were €6.3 trillion as of end-2021, from €1.5 trillion in 2008. Investment funds accounted for around 80 per cent of that growth. Ireland hosts the largest money market fund (MMF) sector in Europe, with assets totalling over €700 billion in the fourth quarter of 2022. Ireland is also host to the largest exchange traded fund (ETF) sector in Europe with total assets of over €900 billion.

While macroprudential policy is well developed in the banking sector, it remains nascent beyond banks, including the funds sector. This is despite the growing role of the funds sector in global financial intermediation and recent episodes, including the COVID-19 shock and last year's Gilt market disruption, highlighting the potential for the funds sector globally to amplify shocks in the face of financial vulnerabilities.

A macroprudential perspective in the regulation of the funds sector would complement the existing investor protection perspective. The CBI recognises that international co-ordination is needed to develop and operationalise a macroprudential framework for the funds sector. Typically, it is the collective actions of investment funds (fund cohorts) that has the potential to generate systemic risk. The materialisation of systemic risk arises from a shock and the interplay between leverage and liquidity mismatch, and the interconnectedness of the fund cohorts. While the current investor protection-focused regulatory framework for the funds sector can help to address some funds-specific elements of systemic risk, it does not fully address them all. The objective of macroprudential policy for the funds sector would be to ensure that this growing segment of the financial sector is more resilient and less likely to amplify adverse shocks. Macroprudential tools for the funds sector could target vulnerabilities such as liquidity mismatch and leverage of fund cohorts as well as the spillover and contagion risk generated by their interconnectedness. This could include the re-purposing of existing tools or potentially the development of new, bespoke macroprudential tools. The macroprudential framework for funds would ideally have a high degree of consistency internationally, including a reciprocation framework, and be based on a more consistent international data framework.

Question 1: Do you agree with the above assessment of the potential channels through which investment funds can generate systemic risk?

Question 2: Do you agree with the assessment in this Discussion Paper that it is primarily the collective actions of investment funds that can generate systemic risks?

Question 3: Do you agree that the current regulatory framework for funds - which has primarily been designed at a global level from an investor protection perspective – has not been sufficient to reduce the propensity of certain fund cohorts to amplify shocks?

Question 4: Do you agree with the key proposed objectives and principles of macroprudential policy for funds as set out in this Discussion Paper? Are there additional principles, which need to be considered?

Question 5: Do you agree with the analysis and the issues highlighted pertaining to the design of potential specific macroprudential tools for the funds sector? Are there are additional potential tools that could be explored?

Question 6: Do you agree that tools could target the interconnectedness of funds as well as/instead of their vulnerabilities?

Question 7: Do you agree with the governance and data considerations highlighted in this Discussion Paper when operationalising macroprudential policy for funds?

Question 8: Beyond governance and data considerations, are there additional issues that need to be considered when operationalising macroprudential policy for funds?

Feedback can be provided via a survey by November 15 2023. The Central Bank will consider the feedback received and will publish a feedback statement next year.

INVESTOR PROTECTION / CONSUMER PROTECTION

CBI publishes updated Guidance on Client Asset Requirements and Investor Money Requirements

On July 3 2023, the Central Bank of Ireland (CBI) published updated the Guidance on Client Asset Requirements and Investor Money Requirements to coincide with the revised Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firm) Regulations 2023.

The primary purpose of this Guidance is to assist fund service providers in complying with the Investor Money Requirements.

The revised Client Asset Requirements (CAR) set out in Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 (S.I. No. 10 of 2023) (the Regulations) became applicable to investment firms on July 1 2023. The revised CAR will become applicable to credit institutions from January 1 2024. The protection of client assets is a key priority for the Central Bank and the enhancements to the CAR aim to ensure that client assets held by investment firms and credit institutions, authorised by the Central Bank, remain appropriately safeguarded.

The Central Bank published updated Guidance on the CAR, and on the Investor Money Requirements (IMR), as contained in Part 7 of Regulations. The Guidance is intended to be read in conjunction with the CAR and IMR and its primary purpose is to assist investment firms, credit institutions subject to the CAR and fund service providers subject to the IMR in complying with the Regulations.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

CBI advises on Dear CEO Letter on Targeted Reviews on Control Frameworks and Risk Appetite Statements in MiFID Investment Firms & Market Operators

On July 3 2023, the Central Bank of Ireland (CBI) advised on the Dear CEO Letter on Targeted Reviews on Control Frameworks and Risk Appetite Statements in MiFID Investment Firms & Market Operators.

On March 29 2023 the Central Bank issued a Dear CEO letter to MiFID investment firms and market operators following a targeted review of the Control Frameworks and Risk Appetite Statements in a sample of firms.

As recently highlighted in both the Consumer Protection Outlook Report and the Securities Markets Risk Outlook Report the changing financial landscape is creating new challenges for consumers. This is why it is important that firms have robust frameworks in place to support their customers and ensure they are acting in their best interests.

The Central Bank engaged with firms on the importance of managing risks to consumers and while some good practices were identified, the CBI identified deficiencies in the areas of:

- Risk Management Frameworks and Governance
- Board Oversight of Risk and Compliance Matters
- Application of Risk Appetite Statement as a Risk Management Tool
- Poor Risk Appetite Statement Design
- Risk Appetite Reporting to the Risk Committee and Board
- Cascading of Risk Appetite through the Organisation

ITALY

FINANCIAL SUPERVISION

Banca d'Italia publishes a public consultation on supervisory reports of banks and supervised intermediaries

On July 11 2023, the Banca d'Italia published a public consultation on the supervisory reports of banks and supervised intermediaries.

The public consultation concerns the update of the Circulars nos. 272, 115, 217, 189, 148, 286 and 154 of the Banca d'Italia which regulate the supervisory reporting of banks, financial intermediaries, payment institutions and institutions of electronic money, securities firms and collective investment undertakings.

The consultation is open until October 9 2023.

PROSPECTUS REGULATION

CONSOB publishes press release on guidelines for the simplification of prospectuses

On July 26 2023, the Commissione Nazionale per le Societa e la Borsa (CONSOB) published a press release on the guidelines for the simplification of prospectuses.

The new guidelines promote a simpler and clearer representation of certain specific information that, according to European legislation, must be included in prospectuses for offers to the public and admission to trading on regulated markets, in order to standardize their content, aligning it with the practices of other Member States of the European Union, and facilitate their understanding, also in the voting phase by Consob.

The document - prepared by a special Working Table of the Comi in which the structures of Consob also participated - collects a series of best practices in the preparation of prospectuses. CONSOB, therefore, supports its adoption by the largest possible number of operators, on the assumption that these guidelines can simplify the comparison between operators and the Authority during the scrutiny of prospectuses, helping to speed up approval times.

The objective is in line with the aims of the Green Paper published by the Ministry of Economy and Finance and with the government's legislative initiatives aimed at promoting business access to the capital market.

To ensure the widest dissemination of the guidelines adopted by the Comi, starting from September one or more meetings will be held open to operators in the sector, aimed at illustrating the content of the initiative and stimulating debate on best practices in drafting prospectuses.

LUXEMBOURG

ACCOUNTING

CdD introduces Draft law on accounting, annual financial statements and consolidated financial statements of enterprises / Le CdD présente un projet de loi sur la comptabilité, les comptes annuels et les comptes consolidés des entreprises

BACKGROUND

The purpose of this draft law is to modernise the Luxembourg accounting law applicable to companies. The new Luxembourg accounting law, while remaining based on European accounting law and its directive 2013/34/EU also seeks to adapt to national specificities.

The provisions of accounting law applicable to companies are today dispersed within several texts. This scattering of accounting provisions results in a weak readability of Luxembourg accounting law, detrimental to all interested parties: preparers of accounts, auditors and account users.

This bill proposes, first of all, a grouping of texts relating to accounting law. For essentially practical reasons, it is proposed to limit this grouping to only texts of common law ("lex generalis"), namely (i) the provisions of the Commercial Code relating to the accounts and the annual inventory, (ii) the provisions of the amended law of 2002 relating to annual accounts and related reports and (iii) the provisions of the amended law of 1915 relating to the account statements and related reports.

In order to improve the readability of Luxembourg accounting law, it is necessary to take up the ascending structure "bottom up" introduced by Directive 2013/34/EU by including micro-enterprises. Following this structure, the "small business" regime constitutes the common basis applicable to all businesses (except from micro-enterprises). For medium and large companies as well as for entities of public interest, additional obligations are added to this basic regime. In addition, considering the scope of accounting law (e.g. bookkeeping, annual accounts, accounts statements, related reports) and Luxembourg specificities (e.g. standardized chart of accounts (PCN), administrative filing vs public filing), it is proposed to clarify the scope relating to the different accounting obligations through the use of exhaustive lists enumerating the forms and categories of companies. These bottom-up structure and list approach should thus allow greater readability of the common accounting law, a source of legal certainty.

It should be noted that Directive 2013/34/EU explicitly introduced in its article 3, paragraph 12, the possibility for Member States to require the inclusion of products from other sources (e.g., financial products) for companies for which the "net turnover" is not relevant. The Directive also allows parent companies to be required to calculate – for categorization purposes – their thresholds on a consolidated basis rather than on an individual basis.

WHAT'S NEW?

On July 28 2023, the Chambre des députés de Luxembourg introduced a Draft law on accounting, annual financial statements and consolidated financial statements of enterprises and related reports and repealing the office of company law commissioner.

The system for preparing annual accounts applicable to holding companies – regardless of their balance sheet total – remains that the small business regime is excepted from the additional obligation to mention in the appendix information relating to the companies in which they hold a stake. As for the large holding companies whose balance sheet total exceeds EUR 500 million, they will now be subject to an obligation to audit their annual accounts.

With the removal of the historical anchoring of accounting law in the Commercial Code, it now becomes possible to extend the scope of common accounting law to companies carrying out economic, financial or commercial activities without having a commercial form.

The bill incorporates certain elements on which Directive 2013/34/EU is silent (e.g. currency accounts, duration of the accounting year, adaptation of accounting principles in the event of discontinuity of exploitation) and adapts the structure of the European text in particular in order to dissociate the concept of deposit from that of publication in the case of the annual accounts.

Title XI of the amended law of August 10, 1915 is modernized in order to be consistent with the provisions of Title III of this bill and to specify the obligations for the preparation, filing and publication of statements for financial instruments at two distinct moments of the liquidation, namely: at each annual closing and in the absence of closing of the liquidation, and at the closure of the liquidation.

It is specified in Title III that common accounting law continues to apply – with adaptations – to companies that are in a situation of discontinuity both before and after their liquidation. To this end, article 321-2, paragraph 5, provides that when the company is no longer able to continue its activities or no longer intends to continue its activities, general principles, accounting methods and valuation methods are adapted to reflect the situation of discontinuity of operation of the company. This provision is applicable to dissolved and liquidated companies. These adapted principles are intended to enable the preparation of financial statements which list the assets to be realized and the liabilities to be cleared by accounting for them and valuing them in an adequate way. Articles 370-1, paragraph 4, and 370-5, paragraph 2, relating to the filing and publication of financial statements specify that, unlike the annual financial statements of companies in a situation of continuity of operation, the annual financial statements of a company dissolved in liquidation are not subject to approval by the general meeting and are therefore filed with the RCS and published in the RESA after being simply presented to the general meeting (and not after having been approved by the latter, only the statements closing financial statements subject to approval by the general meeting.

In brief, the main proposed changes include:

- A new audit requirement for large holding companies (with a total balance sheet exceeding €500 million);
- Increased thresholds for small-sized entities and groups as well as the introduction of a new "micro-entities" category;
- New Lux GAAP measurement option for intangible assets with indefinite useful life;
- A filing requirement for special limited partnership (SCSp);
- The incorporation of certain Q&As released by the Commission des Normes Comptables into the Accounting Law; and
- The abolition of the function of "Commissaire"

WHAT'S NEXT?

In order to facilitate the transition by practitioners from the old texts to the new accounting law, it is proposed to publish a concordance table in appendix 6 of this bill. Likewise, it is suggested to publish a summary of the text of the law in the form of an appendix 5. In addition, it is also proposed to repatriate within the accounting law (Appendices 1 to 4), the models of balance sheet, abbreviated balance sheet as well as profit and loss account and abbreviated profit and loss account, the layouts of which are laid down by Grand-Ducal regulation since 2015.

Version française

BACKGROUND

Ce projet de loi a pour objectif de moderniser le droit comptable luxembourgeois applicable aux sociétés. Le nouveau droit comptable luxembourgeois, tout en restant basé sur le droit comptable européen et sa directive 2013/34/UE cherche également à s'adapter aux spécificités nationales.

Les dispositions du droit comptable applicable aux sociétés sont aujourd'hui dispersées au sein de plusieurs textes. Cette dispersion des dispositions comptables se traduit par une faible lisibilité du droit comptable luxembourgeois, préjudiciable à toutes les parties intéressées : préparateurs de comptes, commissaires aux comptes et utilisateurs des comptes.

Ce projet de loi propose tout d'abord un regroupement de textes relatifs au droit comptable. Pour des raisons essentiellement pratiques, il est proposé de limiter ce regroupement aux seuls textes de droit commun (« lex generalis »), à savoir (i) les dispositions du Code de commerce relatives aux comptes et à l'inventaire annuel, (ii) les dispositions du la loi modifiée de 2002 relative aux comptes annuels et aux rapports y afférents et (iii) les dispositions de la loi modifiée de 1915 relative aux extraits de compte et aux rapports y afférents.

Afin d'améliorer la lisibilité du droit comptable luxembourgeois, il est nécessaire de reprendre la structure ascendante « bottom up » introduite par la directive 2013/34/UE en incluant les micro-entreprises. Suivant cette structure, le régime « petites entreprises » constitue le socle commun applicable à toutes les entreprises (à l'exception des micro-entreprises). Pour les moyennes et grandes entreprises ainsi que pour les entités d'intérêt public, des obligations supplémentaires s'ajoutent à ce régime de base. En outre, compte tenu du champ d'application du droit comptable (par exemple, tenue de livres, comptes annuels, états de comptes, rapports associés) et des spécificités luxembourgeoises (par exemple, plan comptable standardisé (PCN), dépôt administratif vs dépôt public), il est proposé de clarifier le champ d'application relatif au droit comptable. aux différentes obligations comptables par l'utilisation de listes exhaustives énumérant les formes et catégories de sociétés. Cette structure ascendante et cette approche par liste devraient ainsi permettre une plus grande lisibilité du droit comptable commun, source de sécurité juridique.

Il convient de noter que la directive 2013/34/UE a explicitement introduit dans son article 3, paragraphe 12, la possibilité pour les États membres d'exiger l'inclusion de produits provenant d'autres sources (par exemple, des produits financiers) pour les entreprises dont le « chiffre d'affaires net » n'est pas pertinent. La directive permet également d'exiger que les sociétés mères calculent – à des fins de catégorisation – leurs seuils sur une base consolidée plutôt que sur une base individuelle.

WHAT'S NEW?

Le 28 juillet 2023, la Chambre des députés de Luxembourg a déposé un projet de loi relative à la comptabilité, aux comptes annuels et aux comptes consolidés des entreprises et aux rapports y afférents et abrogeant la fonction de commissaire au droit des sociétés.

Le régime d'établissement des comptes annuels applicable aux sociétés holding – quel que soit leur total de bilan – reste que les petites entreprises sont exemptées de l'obligation supplémentaire de mentionner en annexe les informations relatives aux sociétés dans lesquelles elles détiennent une participation. Quant aux grandes sociétés holding dont le total de bilan dépasse 500 millions d'euros, elles seront désormais soumises à l'obligation de auditer leurs comptes annuels.

Avec la suppression de l'ancrage historique du droit comptable dans le Code de commerce, il devient désormais possible d'étendre le champ d'application du droit comptable commun aux sociétés exerçant des activités économiques, financières ou commerciales sans avoir de forme commerciale.

Le projet de loi reprend certains éléments sur lesquels la directive 2013/34/UE reste muette (par exemple comptes en devises, durée de l'exercice comptable, adaptation des principes comptables en cas de discontinuité d'exploitation) et adapte la structure du texte européen notamment afin de dissocier la notion de dépôt de celle de publication dans le cas des comptes annuels.

Le titre XI de la loi modifiée du 10 août 1915 est modernisé afin d'être conforme aux dispositions du titre III de ce projet de loi et de préciser les obligations d'établissement, de dépôt et de publication des relevés des instruments financiers à deux moments distincts de la liquidation, à savoir : à chaque clôture annuelle et à défaut de clôture de la liquidation, et à la clôture de la liquidation.

Il est précisé au titre III que le droit comptable commun continue de s'appliquer – avec des adaptations – aux sociétés qui se trouvent en situation de discontinuité tant avant qu'après leur liquidation. A cet effet, l'article 321-2, alinéa 5, prévoit que lorsque la société n'est plus en mesure de poursuivre ses activités ou n'entend plus poursuivre ses activités, les principes généraux, les méthodes comptables et les méthodes d'évaluation sont adaptées pour tenir compte de la situation de discontinuité. de fonctionnement de l'entreprise. Cette disposition est applicable aux sociétés dissoutes et liquidées. Ces principes adaptés sont destinés à permettre l'établissement d'états financiers répertoriant les actifs à réaliser et les passifs à apurer en les comptabilisant et en les valorisant de manière adéquate. Les articles 370-1, alinéa 4, et 370-5, alinéa 2, relatifs au dépôt et à la publication des comptes précisent que, à la différence des comptes annuels des sociétés en situation de continuité d'exploitation, les comptes annuels d'une société dissoutes en liquidation ne sont pas soumises à l'approbation de l'assemblée générale et sont donc déposées au RCS et publiées au RESA après avoir été simplement présentées à l'assemblée générale (et non après avoir été approuvées par celle-ci, seuls les états financiers de clôture étant soumis à l'approbation de l'assemblée générale.

WHAT'S NEXT?

Afin de faciliter la transition des praticiens des anciens textes vers le nouveau droit comptable, il est proposé de publier une table de concordance en annexe 6 de ce projet de loi. De même, il est proposé de publier une synthèse du texte de loi sous forme d'annexe 5. Par ailleurs, il est également proposé de rapatrier au sein de la loi comptable (Annexes 1 à 4), les modèles de bilan, en abrégé bilan ainsi que le compte de profits et pertes et le compte de profits et pertes abrégé, dont les modalités sont fixées par règlement grand-ducal depuis 2015.

BANKRUPTCY

Luxembourg publishes the Law relating to the preservation of businesses and modernizing the bankruptcy law / Le Luxembourg publie la Loi relative à la préservation des entreprises et portant modernisation du droit de la faillite

On 18 August 2023, Luxembourg published the Law of August 7, 2023 relating to the preservation of businesses and modernizing the bankruptcy law.

The law modifies several codes and laws to better protect businesses and improve bankruptcy management.

Article 710-12 of the Corporate Law stipulates that the transfer of shares of a SARL to third parties can only be approved by shareholders representing at least three quarters of the share capital and clarifies that only shareholders are involved in the approval process.

It is no longer required to have a statutory double majority for the opening of a liquidation of a SARL. The approval of shareholders holding three quarters of the share capital will be adequate to initiate the liquidation of a SARL.

Luxembourg companies, including SAs, now have the option to disregard the statutory bond issuance regime when issuing bonds, regardless of whether they are governed by Luxembourg or foreign law.

Version française

Le 18 août 2023, le Luxembourg a publié la loi du 7 août 2023 relative à la préservation des entreprises et modernisant le droit des faillites.

La loi modifie plusieurs codes et lois pour mieux protéger les entreprises et améliorer la gestion des faillites.

L'article 710-12 du Code des Sociétés précise que le transfert des actions d'une SARL à des tiers ne peut être approuvé que par des actionnaires représentant au moins les trois quarts du capital social et précise que seuls les actionnaires sont impliqués dans le processus d'approbation.

Il n'est plus nécessaire d'avoir une double majorité légale pour l'ouverture d'une liquidation d'une SARL. L'approbation des actionnaires détenant les trois quarts du capital social sera suffisante pour déclencher la liquidation d'une SARL.

Les entreprises luxembourgeoises, y compris les SA, ont désormais la possibilité de ne pas tenir compte du régime légal d'émission d'obligations lors de l'émission d'obligations, qu'elles soient régies par le droit luxembourgeois ou étranger.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

CSSF publishes FAQ on Virtual Asset Service Providers (08/17/2023) / La CSSF publie une FAQ sur les prestataires de services sur actifs virtuels (17/08/2023)

On August 17 2023, the Commission de Surveillance du secteur financier (CSSF) published a FAQ on Virtual Asset Service Providers.

This document is of interest for entities being already registered in the CSSF register as a virtual asset service provider ("VASP"), as defined in Article 1 (20c) of the Law of November 12 2004 on the fight against money laundering and terrorist financing, as amended (the "AML/CTF Law"), or willing either to be established or to offer virtual asset ("VA") services in Luxembourg.

Answers to the below questions can be found:

Question 1: What is a virtual asset?

Question 2: Who must register with the CSSF as a VASP?

Question 3: When must a non-Luxembourg established entity, which provides VA services in Luxembourg, be registered as VASP?

Question 4: When should the registration as a VASP take place?

Question 5: Can a VASP registered with the CSSF passport its services to other European Member States?

Question 6: How to proceed with the registration as a VASP?

Question 7: When will a VASP appear in the CSSF register?

Question 8 What are the main legal texts applicable to VASPs?

Question 9: Must providers which solely offer the technology to support VA services register as VASP?

Question 10: Can a credit institution established in Luxembourg offer VA services?

Question 11: What is the regime applicable to undertakings for collective investment?

Question 12: What is expected as regards the understanding of ML/TF risks to which VASPs are exposed to?

Question 13: What level of information is expected for the ML/TF risk assessment to be submitted as part of the registration file for a VASP?

Question 14: What is expected in terms of AML/CTF policies and procedures?

Question 15: What is expected in terms of monitoring of the transactions?

Question 16: What is expected for the reporting of suspicious activities or transactions to the Financial Intelligence Unit?

Question 17: What is the applicable legal framework related to international financial sanctions and what are the obligations of VASPs?

Question 18: Is a registered VASP subject to any supervisory fees?

Question 19: What is the role of the CSSF as regards VASPs?

Question 20: What are the powers of the CSSF in the context of its supervision related to VASP?

Version française

Le 17 août 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une FAQ sur les prestataires de services sur actifs numériques.

Ce document intéresse les entités déjà inscrites au registre de la CSSF en tant que prestataire de services sur actifs numériques (« VASP/PSAN »), tel que défini à l'article 1 (20c) de la loi du 12 novembre 2004 relative à la lutte contre le blanchiment d'argent et le financement du terrorisme telle que modifiée (la « Loi AML/CTF »), ou disposé à s'établir ou à offrir des services d'actifs virtuels (« VA ») au Luxembourg.

Les réponses aux questions ci-dessous peuvent être trouvées dans le document :

Question 1 : Qu'est-ce qu'un actif virtuel ?

Question 2 : Qui doit s'inscrire auprès de la CSSF en tant que VASP ?

Question 3 : Quand une entité établie non luxembourgeoise, qui fournit des services VA au Luxembourg, doit-elle être enregistrée en tant que VASP ?

Question 4 : Quand doit avoir lieu l'inscription en tant que VASP ?

Question 5 : Un VASP enregistré auprès de la CSSF peut-il passeporter ses services vers d'autres États membres européens ?

Question 6 : Comment procéder à l'inscription en tant que VASP ?

Question 7 : Quand un VASP apparaîtra-t-il dans le registre CSSF ?

Question 8 : Quels sont les principaux textes juridiques applicables aux VASP ?

Question 9 : Les fournisseurs qui proposent uniquement la technologie pour prendre en charge les services VA doivent-ils s'inscrire en tant que VASP ?

Question 10 : Un établissement de crédit établi au Luxembourg peut-il proposer des services VA ?

Question 11 : Quel est le régime applicable aux organismes de placement collectif ?

Question 12 : Qu'est-ce qui est attendu en matière de compréhension des risques de BC/FT auxquels les VASP sont exposés ?

Question 13 : Quel niveau d'information est attendu pour l'évaluation des risques de BC/FT qui doit être soumise dans le cadre du dossier d'enregistrement d'un VASP ?

Question 14 : Qu'est-ce qui est attendu en termes de politiques et procédures de LBC/FT ?

Question 15 : Qu'est-ce qui est attendu en termes de suivi des transactions ?

Question 16 : Qu'est-ce qui est attendu en matière de déclaration d'activités ou de transactions suspectes à la cellule de renseignement financier ?

Question 17 : Quel est le cadre juridique applicable lié aux sanctions financières internationales et quelles sont les obligations des VASP ?

Question 18 : Un VASP enregistré est-il soumis à des frais de surveillance ?

Question 19 : Quel est le rôle de la CSSF à l'égard des VASP ?

Question 20 : Quels sont les pouvoirs de la CSSF dans le cadre de sa surveillance liée aux VASP ?

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

Luxembourg amends Law on joint investigation teams to comply with personal data protection rules / Le Luxembourg modifie la loi sur les équipes d'enquête pour se conformer aux règles de protection des données personnelles

On 25 July 2023, Luxembourg published the Law of 20 July 2023 amending the Law of 21 March 2006 on joint investigation teams for the purpose of transposing Directive (EU) 2022/211 of the European Parliament and of the Council of 16 February 2022 amending Framework Decision 2002/465/JHA as regards its compliance with Union rules on the protection of personal data in the Legilux (Journal Officiel du Grand-Duché de Luxembourg).

In article 5 of the Act of 21 March 2006 on joint investigation teams, a new paragraph 3 is added to read as follows:

3. To the extent that the information used for the purposes referred to in points (b), (c) and (d) of paragraph 1 and points (b), (c) and (d) of paragraph 2 includes personal data, it shall only be processed in accordance with the Law of 1 August 2018 on the protection of individuals with regard to the processing of personal data in criminal matters and in matters of national security, and in particular Article 3(2) and Article 8(1) and (3) thereof.

Version française

Le 25 juillet 2023, le Luxembourg a publié la loi du 20 juillet 2023 modifiant la loi du 21 mars 2006 relative aux équipes d'enquête en vue de transposer la directive (UE) 2022/211 du Parlement européen et du Conseil du 16 février 2022 modifiant la Décision 2002/465/JAI relative à sa conformité aux règles de l'Union en matière de protection

des données personnelles dans Legilux (Journal Officiel du Grand-Duché de Luxembourg).

À l'article 5 de la loi du 21 mars 2006 relative aux équipes communes d'enquête, un nouvel alinéa 3 est ajouté :

3. Dans la mesure où les informations utilisées aux fins visées au paragraphe 1, points b), c) et d), et au paragraphe 2, points b), c) et d), comprennent des données à caractère personnel, ceux-ci ne sont traités que conformément à la loi du 1er août 2018 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel en matière pénale et en matière de sécurité nationale, et notamment l'article 3, paragraphe 2, et l'article 8, paragraphe 1.) et (3).

DEPOSIT GUARANTEE SCHEME DIRECTIVE (DGSD)

CSSF publishes Circular CSSF-CPDI 23/37 on amount of covered deposits survey / La CSSF publie la Circulaire CSSF-CPDI 23/37 relative à l'enquête sur le montant des dépôts garantis

On July 18 2023, the Commission de Surveillance du secteur financier (CSSF) published the Circular CSSF-CPDI 23/37 on the survey on the amount of covered deposits held on June 30 2023.

The aim of this circular is to carry out the regular survey on covered deposits, as held by credit institutions incorporated under Luxembourg law and Luxembourg branches of credit institutions having their head office in a third country as at June 30 2023.

The provisions of Circular CSSF-CPDI 16/02 as amended by Circular CSSF-CPDI 23/35 shall be taken into account, in particular with regard to the exclusions of structures assimilated to financial institutions, as well as the treatment of accounts whose holder is not absolutely entitled to the sums in the account (omnibus accounts, accounts of fiduciaries, accounts held by trusts, third-party accounts, sub-accounts, segregated accounts, etc.). In case the account holder differs from the persons that are absolutely entitled to the sums in the account, the FGDL members shall take reasonable measures to regularly obtain information on the number of identifiable and eligible persons entitled to the sums in the account as well as on the amounts to which each of them is entitled, so as to accurately report the amount of covered deposits and covered claims to the CPDI. In the absence of a reliable and up to-date estimate of the above-mentioned information, the FGDL members report the total amount of omnibus accounts opened in their books. Accounts denominated in units of precious metals, such as gold (XAU) or silver (XAG) and in virtual currencies, such as Bitcoin or Ether, do not constitute eligible deposits for the purpose of the FGDL guarantee.

FGDL members are requested to provide the data at the level of their legal entity, comprising data from branches located within other Member States, by 25 August 2023. In order to transmit the data, institutions are kindly requested to complete the table attached to this circular.

Version française

Le 18 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a publié la Circulaire CSSF-CPDI 23/37 relative à l'enquête sur le montant des dépôts garantis détenus au 30 juin 2023.

L'objet de la présente circulaire est de réaliser l'enquête régulière sur les dépôts garantis, tels que détenus par les établissements de crédit de droit luxembourgeois et les succursales luxembourgeoises d'établissements de crédit ayant leur siège social dans un pays tiers au 30 juin 2023.

Les dispositions de la circulaire CSSF-CPDI 16/02 telle que modifiée par la circulaire CSSF-CPDI 23/35 seront prises en compte, notamment en ce qui concerne les exclusions des structures assimilées aux établissements financiers, ainsi que le traitement des comptes dont le titulaire n'a pas absolument droit aux sommes du compte (comptes omnibus, comptes de fiduciaires, comptes détenus par des trusts, comptes de tiers, sous-comptes, comptes ségrégués, etc.). Dans le cas où le titulaire du compte diffère de ceux ayant droit absolu aux sommes du compte, les membres du FGDL prendront les mesures raisonnables pour obtenir régulièrement des informations sur le nombre de personnes identifiables et éligibles ayant droit aux sommes du compte ainsi que sur les montants auxquels chacun d'eux a droit, de manière à déclarer avec exactitude le montant des dépôts couverts et des créances couvertes au CPDI. En l'absence d'estimation fiable et à jour des informations susvisées, les membres du FGDL déclarent le montant total des comptes omnibus ouverts dans leurs livres. Les comptes libellés en unités de métaux précieux, comme l'or (XAU) ou l'argent (XAG) et en monnaies virtuelles, comme le Bitcoin ou l'Ether, ne constituent pas des dépôts éligibles au sens de la garantie FGDL.

Les membres du FGDL sont priés de fournir les données au niveau de leur personne morale, comprenant les données des succursales situées dans d'autres États membres, avant le 25 août 2023. Afin de transmettre les données, les établissements sont priés de bien vouloir compléter le tableau annexé à cette circulaire.

FINANCIAL SUPERVISION

CSSF publishes contact repository for specific purposes (only in French) and informs of the discontinuation of fax services / La CSSF publie un référentiel de contacts à des fins spécifiques et informe sur l'arrêt de ses services de fax

On August 4 2023, the Commission de Surveillance du secteur financier (CSSF) published a contact repository for specific purposes and informed of the discontinuation of its fax services.

Version française

Le 4 août 2023, la Commission de Surveillance du secteur financier (CSSF) a publié un référentiel de contacts à des fins spécifiques et a informé de l'arrêt de ses services de fax.

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

CSSF publishes Communication on MiCA and Regulation on information accompanying transfers of funds / La CSSF publie la Communication sur MiCA et le Règlement sur les informations accompagnant les transferts de fonds

On July 6 2023, the Commission de Surveillance du secteur financier (CSSF) published a Communication on the Regulation on Markets in Crypto-Assets (MiCA) and the Regulation on information accompanying transfers of funds and certain crypto-assets.

With MiCA (Regulation (EU) 2023/1114), the European Union is adopting for the first time a harmonised regulatory framework for the crypto-asset market which applies to both traditional institutions of the financial sector and new players emerging in the crypto ecosystem that are engaged in the issuance, offer to the public and admission to trading of crypto-assets or that provide services related to crypto-assets in the EU. These institutions must meet a set of specific requirements to benefit from a regulated status recognised at Union level, thereby permitting the passporting of these services across the EU market.

By adopting MiCA, the EU aims to bring legal certainty to the crypto-asset ecosystem and support innovation while safeguarding consumer protection, markets integrity and financial stability. MiCA will come into full application from December 30 2024, except for Titles III and IV (the framework for asset-referenced tokens (ART) and e-money tokens (EMT) issuers) which will apply from June 30 2024.

The recast Transfer of Funds Regulation (Regulation (EU) 2023/1113) (TFR) complements the implementation of recommendation R.15 from the Financial Action Task Force (FATF) with regard to the money laundering and terrorist financing risks linked to virtual assets, by extending the existing rules on information accompanying the transfers of funds to transfers of crypto-assets (the so-called "travel rule") within the entire European Union. The definition of "crypto-asset" in the TFR is aligned with MiCA and covers the same categories of crypto assets in scope of MiCA.

The TFR requires crypto-assets transfers carried out with the involvement of a crypto-asset service provider (CASP) having its registered office in the European Union to be accompanied with information on the originators and beneficiaries of those transfers, with the purpose of facilitating the traceability of transfers of crypto-assets and therefore the prevention, detection and investigation of money laundering and terrorist financing. CASPs will be required to obtain, hold and share, in a secure manner, that information with their counterpart on the other end of the crypto-asset transfer, and this in advance of, or simultaneously or concurrently with the transfer and make it available on request to competent authorities. The TFR will also apply to transfers of crypto-assets executed by means of crypto-ATMs and will apply from December 30 2024.

Version française

Le 6 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une communication relative au Règlement des Marchés de Crypto-Actifs (MiCA) et au Règlement relatif aux informations accompagnant les transferts de fonds et de certains crypto-actifs.

Avec le MiCA (Règlement (UE) 2023/1114), l'Union européenne adopte pour la première fois un cadre réglementaire harmonisé pour le marché des crypto-actifs qui s'applique aussi bien aux institutions traditionnelles du secteur financier qu'aux nouveaux acteurs émergents de l'écosystème crypto qui sont engagés dans l'émission, l'offre au public et l'admission à la négociation de crypto-actifs ou qui fournissent des services liés aux crypto-actifs dans l'UE. Ces institutions doivent répondre à un ensemble d'exigences spécifiques pour bénéficier d'un statut réglementé reconnu au niveau de l'Union, permettant ainsi la passeportisation de ces services sur le marché de l'UE.

En adoptant MiCA, l'UE vise à apporter une sécurité juridique à l'écosystème des crypto-actifs et à soutenir l'innovation tout en préservant la protection des consommateurs, l'intégrité des marchés et la stabilité financière. MiCA entrera en pleine application à partir du 30 décembre 2024, à l'exception des titres III et IV (le cadre pour les émetteurs de jetons référencés par des actifs (ART) et de jetons de monnaie électronique (EMT)) qui s'appliqueront à partir du 30 juin 2024.

La refonte du Règlement sur les transferts de fonds (Règlement (UE) 2023/1113) (TFR) complète la mise en œuvre de la recommandation R.15 du Groupe d'action financière (GAFI) au regard des risques de blanchiment d'argent et de financement du terrorisme liés aux actifs virtuels, en étendant les règles existantes en matière d'informations accompagnant les transferts de fonds aux transferts de crypto-actifs (dites « règle de voyage ») au sein de l'ensemble de l'Union européenne. La définition de « crypto-actif » dans le TFR est alignée sur celle de MiCA et couvre les mêmes catégories d'actifs cryptographiques dans le champ d'application de MiCA.

Le TFR impose que les transferts de crypto-actifs effectués avec la participation d'un prestataire de services sur crypto-actifs (CASP) ayant son siège social dans l'Union européenne soient accompagnés d'informations sur les initiateurs et les bénéficiaires de ces transferts, dans le but de faciliter la la traçabilité des transferts de crypto-actifs et donc la prévention, la détection et l'investigation du blanchiment d'argent et du financement du terrorisme. Les CASP seront tenus d'obtenir, de détenir et de partager, de manière sécurisée, ces informations avec leur homologue à l'autre bout du transfert de crypto-actifs, et ce avant, ou simultanément ou concomitamment au transfert, et de les rendre disponibles sur demande aux autorités compétentes. Le TFR s'appliquera également aux transferts de crypto-actifs effectués au moyen de crypto-ATM et s'appliquera à compter du 30 décembre 2024.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CSSF publishes a view on processing time of initial authorisations of regulated investment vehicles / La CSSF publie un avis sur les délais de traitement des autorisations initiales des véhicules d'investissement réglementés

On July 14 2023, the Commission de Surveillance du secteur financier (CSSF) advised on the processing time of the initial authorisations of regulated investment vehicles.

The processing time between the date of receipt of an application by the CSSF and the date of CSSF authorisation/refusal decision is being measured.

What is in scope?

- Initial authorisations of investment vehicles completed since 01/01/2020
- Investment vehicles include UCITS funds and non-UCITS, i.e. SIF and PII L10

The CSSF's intervention is to be understood as a service rendered in the public interest that goes beyond an administrative exercise, hence implying an in-depth assessment of applications by case officers. When an application is submitted, the underlying project is supposed to be economically viable in the interest of investors and launched shortly after CSSF authorisation. All applications must be submitted to the CSSF in accordance with the UCI guidelines.

For ease of review, draft prospectuses and other documents modified during the examination shall be forwarded in marked up version and duly supported by mapping sheets where required. An application must be based on a real underlying project, definitive in scope and complete in content. Hence substantial changes and insertions of new features during the examination phase would be considered as a new project and require the submission of a new application file.

A timeframe up to 1 month after the date of the end of examination letter (avis de fin d'examen) is deemed reasonable. The CSSF reserves the right to consider an application request as abandoned if final documents are not submitted in a timely manner.

In order to be CSSF visa-stamped, the final prospectus submitted must be strictly identical to the draft version validated by the CSSF for release to investors. Any change to the version validated by the CSSF without prior notice is strictly prohibited and invalidates the authorisation granted.

Version française

Le 14 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a rendu son avis sur les délais de traitement des premières autorisations des véhicules d'investissement réglementés.

Le délai de traitement entre la date de réception d'une demande par la CSSF et la date de décision d'autorisation/refus de la CSSF est en cours de mesure.

Qu'est-ce qui est concerné ?

- *Premières autorisations de véhicules d'investissement réalisées depuis le 01/01/2020*
- *Les véhicules d'investissement comprennent les fonds OPCVM et non OPCVM, à savoir les FIS et PII L10*

L'intervention de la CSSF s'entend comme un service rendu d'intérêt général qui va au-delà d'un simple exercice administratif, impliquant donc une évaluation approfondie des demandes par les chargés de dossier. Lors du dépôt d'une demande, le projet sous-jacent est censé être économiquement viable dans l'intérêt des investisseurs et lancé peu de temps après l'autorisation de la CSSF. Toutes les demandes doivent être soumises à la CSSF conformément aux lignes directrices de l'UCI.

Pour faciliter la révision, les projets de prospectus et autres documents modifiés au cours de l'examen seront transmis en version annotée et dûment appuyés par des fiches de cartographie le cas échéant. Une candidature doit être basée sur un projet sous-jacent réel, définitif dans sa portée et complet dans son contenu. Ainsi, les modifications substantielles et l'insertion de nouvelles fonctionnalités lors de la phase d'examen seraient considérées comme un nouveau projet et nécessiteraient le dépôt d'un nouveau dossier de candidature.

Un délai allant jusqu'à 1 mois après la date de l'avis de fin d'examen est jugé raisonnable. La CSSF se réserve le droit de considérer une demande de candidature comme abandonnée si les documents finaux ne sont pas soumis dans les délais.

Pour être visé par la CSSF, le prospectus définitif soumis doit être strictement identique au projet de version validé par la CSSF pour etre communiqué aux investisseurs. Toute modification de la version validée par la CSSF sans préavis est strictement interdite et invalide l'autorisation accordée.

Luxembourg publishes Law amending the SICAR, SIFs, UCIs, AIFMs, and RAIFs regimes / Le Luxembourg publie une loi modifiant les régimes des fonds SICAR, FIS, OPC, AIFM et RAIF

BACKGROUND

These amendments hold important implications for fund managers within SICAR, SIF, UCI, AIFM, and RAIF frameworks.

Such modernization of Luxembourg's investment fund toolbox brings about significant enhancements and improvements to the fund industry.

The Law improves the Luxembourg toolbox for investment funds and managers by increasing consistency among product Laws, to increase competitiveness and adapt to the "retailisation" of alternative investment funds, also in light of the new European Long Term Investment Fund (ELTIF) regime.

WHAT'S NEW?

On July 24 2023, Luxembourg published the Law of July 21 2023 amending the SICAR, SIFs, UCIs, AIFMs, and RAIFs regimes in the Legilux (Journal Officiel du Grand-Duché de Luxembourg).

The Law of July 21 2023 amends:

1. the amended law of 15 June 2004 on venture capital investment companies (SICAR);
2. the amended law of 13 February 2007 on specialised investment funds (SIF);
3. the amended law of 17 December 2010 on undertakings for collective investment (UCI);
4. the amended law of 12 July 2013 on alternative investment fund managers (AIFM);
5. the amended law of 23 July 2016 on reserved alternative investment funds (RAIF).

The law introduces the possibility for SICAVs subject to part II of the UCI law of adopting, alongside the form of public limited company (SA), the form of a partnership limited by shares (SCA), in simple commandite (SCS), special commandite (SCSp), limited liability (Sàrl), or a cooperative in the form of a public limited company.

Then, the law modifies the definition of "informed investor" included respectively in the SICAR, SIF and RAIF laws to align the Luxembourg regime with the European standard by reducing the minimum investment threshold from 125,000 euros to 100,000 euros for investors who are not professional or institutional.

In addition, the law extends the period during which the minimum capital must be constituted for SICAR, SIF and RAIF funds from 12 to 24 months. The law also extends the period from 6 to 12 months for part II of the UCI law in order to adapt these laws to the needs of the market.

The law also provides for an exemption from the subscription tax for ELTIF funds as well as for savers in a PEEP and introduces the possibility for AIFMs to appoint so-called tied agents, thus aligning the legal framework applicable to them with that UCITS management companies.

WHAT'S NEXT?

The Law came into effect on July 28 2023.

Version française

BACKGROUND

Ces modifications de la loi luxembourgeoise ont des implications importantes pour les gestionnaires de fonds dans les cadres SICAR, SIF, UCI, AIFM et RAIF. ?

Une telle modernisation de la boîte à outils des fonds d'investissement luxembourgeois apporte des améliorations et des améliorations significatives au secteur des fonds.?

La loi améliore la boîte à outils luxembourgeoise pour les fonds d'investissement et les gestionnaires en augmentant la cohérence entre les lois sur les produits, afin d'accroître la compétitivité et de s'adapter à la « retailisation » des fonds d'investissement alternatifs, également à la lumière du nouveau régime des fonds européens d'investissement à long terme (ELTIF).?

WHAT'S NEW?

Le 24 juillet 2023, le Luxembourg a publié au Legilux (Journal Officiel du Grand-Duché de Luxembourg) la loi du 21 juillet 2023 modifiant les régimes des SICAR, FIS, OPC, AIFM et RAIF.

La loi du 21 juillet 2023 modifie :

1. *la loi modifiée du 15 juin 2004 relative aux sociétés de placement à capital risque (SICAR) ;*
2. *la loi modifiée du 13 février 2007 relative aux fonds d'investissement spécialisés (FIS) ;*
3. *la loi modifiée du 17 décembre 2010 relative aux organismes de placement collectif (OPC) ;*
4. *la loi modifiée du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs (AIFM) ;*
5. *la loi modifiée du 23 juillet 2016 relative aux fonds d'investissement alternatifs réservés (RAIF).*

La loi introduit la possibilité pour les SICAV soumises à la partie II de la loi OPC d'adopter, à côté de la forme de société anonyme (SA), la forme d'une société en commandite par actions (SCA), en commandite simple (SCS), en commandite spéciale (SCSp), à responsabilité limitée (Sàrl), ou d'une coopérative sous forme de société anonyme.

Ensuite, la loi modifie la définition d'« investisseur informé » incluse respectivement dans les lois SICAR, SIF et RAIF pour aligner le régime luxembourgeois sur la norme européenne en diminuant le seuil d'investissement minimum de 125.000 euros à 100.000 euros pour les investisseurs qui ne sont pas professionnels ou institutionnels.

Par ailleurs, la loi étend la période pendant laquelle le capital minimum doit être constitué pour les fonds SICAR, SIF ainsi que RAIF de 12 à 24 mois. La loi étend également la période de 6 à 12 mois pour la partie II de la loi OPC afin d'adapter ces lois aux besoins du marché.

La loi prévoit aussi une exonération de la taxe d'abonnement pour les fonds ELTIF ainsi que pour les épargnants d'une PEEP et introduit la possibilité pour les GFIA de désigner des agents dits liés, alignant ainsi le cadre juridique qui leur est applicable sur celui des sociétés de gestion d'OPCVM.

WHAT'S NEXT?

La loi est entrée en vigueur le 28 juillet 2023.

CSSF publishes Circular CSSF 23/839 updating Circular CSSF 21/789 on IFMs / La CSSF publie la Circulaire CSSF 23/839 mettant à jour la Circulaire CSSF 21/789 relative aux GFI

On July 26 2023, the Commission de Surveillance du secteur financier (CSSF) published the Circular CSSF 23/839 updating the Circular CSSF 21/789.

This circular amends the Circular CSSF 21/789 by specifying:

a. the scope of application of the circular for management companies subject to Article 125-1 of Chapter 16 of the UCI Law

b. the repeal of Circulars CSSF 18/698 and 19/708 as regards the procedures for the transmission of the management letter

The Circular CSSF 21/789 is amended in accordance with the annex to this circular which includes the amendments brought to the Circular CSSF 21/789 in tracked changes in order to facilitate reading and understanding.

The provisions of this circular do not apply to:

- management companies subject to Article 125-1 of Chapter 16 of the UCI Law (except for points 4.1. and 4.2. of this circular regarding the statutory audit of an IFM and the management letter, respectively);
- management companies referred to in Chapter 18 of the UCI Law; and
- the entities referred to in Article 3 of the AIFM Law and not included in the above definitions of IFMs.

The circular maintains the self-assessment questionnaire to be completed on an annual basis by IFMs. This circular also maintains the new separate report to be completed by the IFMs' REAs, for each year or period for which a self-assessment questionnaire has been submitted by the IFM. The purpose of this new separate report is notably to ensure the reliability of the answers provided by the IFM in the self-assessment questionnaire and to provide answers to a set of questions determined by the CSSF.

Pursuant to Article 33 of the Law of 23 July 2016 concerning the audit profession, the statutory audit of an IFM must be performed in compliance with the international auditing standards as adopted by the European Commission and the standards issued by the CSSF. On this basis, the REA must present the results of the statutory audit in an audit report which includes its audit opinion.

The instructions laid down in this circular must be complied with in their entirety for the financial years ending on or after 31 December 2021 (first year of application). All financial years closing as from that date will thus fall within the scope of this circular.

Version française

Le 26 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a publié la Circulaire CSSF 23/839 mettant à jour la Circulaire CSSF 21/789 sur les gestionnaires des fonds d'investissement (GFI).

Cette circulaire modifie la Circulaire CSSF 21/789 en précisant :

a. le champ d'application de la circulaire pour les sociétés de gestion soumises à l'article 125-1 du chapitre 16 de la loi OPC

b. l'abrogation des circulaires CSSF 18/698 et 19/708 en ce qui concerne les modalités de transmission de la lettre de recommandation

La Circulaire CSSF 21/789 est modifiée conformément à l'annexe de la présente circulaire qui reprend les modifications apportées à la Circulaire CSSF 21/789 en modifications suivies afin d'en faciliter la lecture et la compréhension.

Les dispositions de la présente circulaire ne s'appliquent pas :

- *les sociétés de gestion soumises à l'article 125-1 du chapitre 16 de la loi OPC (à l'exception respectivement des points 4.1. et 4.2. de la présente circulaire relatifs au contrôle légal d'un GFI et à la lettre de recommandation) ;*
- *les sociétés de gestion mentionnées au chapitre 18 de la loi OPC ; et*
- *les entités mentionnées à l'article 3 de la Loi AIFM et non comprises dans les définitions ci-dessus des GFI.*

La circulaire maintient le questionnaire d'auto-évaluation à remplir annuellement par les GFI. Cette circulaire maintient également le nouveau rapport distinct à remplir par les REA des GFI, pour chaque année ou période pour laquelle un questionnaire d'auto-évaluation a été soumis par le GFI. L'objectif de ce nouveau rapport séparé est notamment de s'assurer de la fiabilité des réponses fournies par le GFI au questionnaire d'auto-évaluation et de répondre à un ensemble de questions déterminées par la CSSF.

Conformément à l'article 33 de la loi du 23 juillet 2016 relative à la profession d'audit, le contrôle légal des comptes d'un GFI doit être effectué dans le respect des normes internationales d'audit telles qu'adoptées par la Commission européenne et des normes émises par la CSSF. Sur cette base, la REA doit présenter les résultats du contrôle légal des comptes dans un rapport d'audit qui comprend son opinion d'audit.

Les instructions prévues dans la présente circulaire doivent être respectées dans leur intégralité pour les exercices clos à compter du 31 décembre 2021 (première année d'application). Tous les exercices clos à compter de cette date entreront ainsi dans le champ d'application de la présente circulaire.

CSSF updates FAQ on submission of closing documents and financial information by managers / La CSSF met à jour la FAQ sur la soumission des documents de clôture et des informations financières par les dirigeants

On July 28 2023, the Commission de Surveillance du secteur financier (CSSF) updated its FAQ on the submission of closing documents and financial information by managers.

The closing documents to be transmitted are listed in point 3 of appendix 2 of circular CSSF 18/698. However, for managers having an accounting close on December 31, 2021 and subsequent, the terms of transmission of the management letter to be respected are now those included in CSSF circular 21/789. Also included are the methods of transmission by the managers of the self-assessment questionnaire as well as the separate report. The organization chart of the group to be submitted is that referred to in point 10 of CSSF circular 18/698.

The CSSF circular 21/789 introduces two additional reports to be submitted to the CSSF, namely the self-assessment questionnaire as well as the separate report. This circular is now also applicable with regard to the terms of

submission of the letter of recommendation/non-recommendation effective from the accounting close to December 31, 2021 and after. The following 3 documents are also to be submitted to the CSSF (although listed only in the appendix to

circular CSSF 19/708 and not in point 3 of appendix 2 of circular CSSF 18/698): the minutes of the meetings of the governing body / the minutes of the management committee during the year and during which the subjects AML/CFT have been discussed / evidence that all conducting officers, managers / directors have taken AML/CFT training.

It is imperative that the documents transmitted through the same procedure have the same date indicated in the nomenclature of the said documents. Point 4.3 of the Circular CSSF 21/789 refers to the deadlines to be respected for the submission of the self-assessment questionnaire and the separate report.

Item B-2 “Interest and commission paid” must include commissions retroceded, for example, fees paid classified as shared commissions and remuneration according to article 34ter 2 of the regulation 488/2015, fees, brokerage and other charges paid on trade execution grounds, recording or clearing according to Article 34ter 2e of the Regulation 488/2015, remuneration to tied agents according to article 34ter 2f of the same regulation.

Item C3-10 “Equity of the management company” must comply with the legal provisions as specified in CSSF circular 18/698 points 40 to 42, in order to correspond to the eligible own funds. Therefore, the amount of own funds mentioned in item C3-10 may differ from the amount of equity included in item A2-1 “Equity”. In this context, the "receivables" are not to be considered as liquid assets for the purposes of applying capital rules.

Version française

Le 28 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a mis à jour sa FAQ sur la transmission des documents de clôture et des informations financières par les dirigeants.

Les documents de clôture à transmettre sont énumérés au point 3 de l'annexe 2 de la circulaire CSSF 18/698. Toutefois, pour les gérants ayant une clôture comptable au 31 décembre 2021 et après, les modalités de transmission de la lettre de recommandation à respecter sont désormais celles incluses dans la circulaire CSSF 21/789. Sont également inclus les modalités de transmission par les gestionnaires du questionnaire d'auto-évaluation ainsi que du rapport séparé. L'organigramme du groupe à soumettre est celui visé au point 10 de la circulaire CSSF 18/698.

La circulaire CSSF 21/789 introduit deux rapports supplémentaires à soumettre à la CSSF, à savoir le questionnaire d'auto-évaluation ainsi que le rapport séparé. Cette circulaire est désormais également applicable en ce qui concerne les modalités de remise de la lettre de recommandation/non-recommandation effective à compter de la clôture comptable à partir du 31 décembre 2021. Les 3 documents suivants sont également à soumettre à la CSSF (bien que répertoriés uniquement en annexe à la circulaire CSSF 19/708 et non au point 3 de l'annexe 2 de la circulaire CSSF 18/698) : les procès-verbaux des réunions de l'organe de direction / les procès-verbaux du comité de direction au cours de l'année et au cours de laquelle les sujets LBC/FT ont été discutés / que tous les dirigeants, gestionnaires/directeurs ont suivi une formation LBC/FT.

Il est impératif que les documents transmis selon la même procédure portent la même date indiquée dans la nomenclature desdits documents. Le point 4.3 de la circulaire CSSF 21/789 fait référence aux délais à respecter pour la soumission du questionnaire d'auto-évaluation et du rapport séparé.

Le poste B-2 « Intérêts et commissions payés » doit comprendre les commissions rétrocédées, par exemple les frais payés classés en commissions partagées et rémunérations selon l'article 34ter 2 du règlement 488/2015, les frais, courtages et autres frais payés au titre de l'exécution des transactions, enregistrement ou compensation selon l'article 34ter 2e du règlement 488/2015, rémunération des agents liés selon l'article 34ter 2f du même règlement.

La rubrique C3-10 « Capitaux propres de la société de gestion » doit respecter les dispositions légales telles que précisées dans la circulaire CSSF 18/698 points 40 à 42, afin de correspondre aux fonds propres éligibles. Ainsi, le montant des fonds propres mentionné au poste C3-10 peut différer du montant des capitaux propres inclus au poste A2-1 « Capitaux propres ». Dans ce contexte, les « créances » ne doivent pas être considérées comme des liquidités aux fins de l'application des règles en matière de capital.

CSSF launches a Standardized Model Articles of Incorporation for UCITS / La CSSF lance un modèle de statuts standardisé pour les OPCVM

On August 1 2023, the Commission de Surveillance du secteur financier (CSSF) launched a Standardised Model Articles of Incorporation for UCITS, that constitutes an additional model template to support the examination of an application for approval of a new UCITS.

Further to the implementation of a Standardised Model Prospectus (communication on November 17 2022), the CSSF announces the availability of the Standardised Model Articles of Incorporation that applicants can use when submitting an application for approval of a new UCITS set up in corporate form (SICAV).

The Model Articles of Incorporation has been developed with the aim to facilitate the drafting of Articles of Incorporation for a SICAV project of average complexity and to facilitate through standardisation its examination by the CSSF during the processing of the application file.

The Standardised Model Articles of Incorporation is not a new regulatory requirement nor a guarantee for approval. The current authorisation process, from the submission of a request, the exchange of comments where relevant and the approval process of a UCITS, remains unchanged as described on the webpage "Authorisation of a UCITS".

While the Model Articles of Incorporation is set up to reflect current and up-to-date practice, the content is composed of information of a universal nature and may need customisation to suit the context and circumstances of any specific SICAV project. The Standardised Model Articles of Incorporation provides certain freedom to add or alter text, however limited to the extent to not override the benefit of standardisation.

Version française

Le 1er août 2023, la Commission de Surveillance du secteur financier (CSSF) a lancé un modèle standardisé de statuts pour les OPCVM, qui constitue un modèle supplémentaire pour soutenir l'examen d'une demande d'agrément d'un nouvel OPCVM.

Suite à la mise en place d'un Modèle Standardisé de Prospectus (communication du 17 novembre 2022), la CSSF annonce la mise à disposition de Statuts Modèle Standardisés que les demandeurs peuvent utiliser lors du dépôt d'une demande d'agrément d'un nouvel OPCVM constitué sous forme de société (SICAV).

Les Statuts Modèles ont été élaborés dans le but de faciliter la rédaction des statuts d'un projet de SICAV de complexité moyenne et de faciliter par la standardisation son examen par la CSSF lors du traitement du dossier de candidature.

Les statuts types standardisés ne constituent pas de nouvelle exigence réglementaire ni une garantie d'approbation. Le processus d'autorisation actuel, depuis le dépôt d'une demande, l'échange de commentaires le cas échéant et le processus d'approbation d'un OPCVM, reste inchangé tel que décrit sur la page Internet Agrément d'un OPCVM.

Bien que les statuts types soient établis pour refléter les pratiques actuelles et à jour, le contenu est composé d'informations de nature universelle et peut nécessiter une personnalisation pour s'adapter au contexte et aux circonstances de tout projet SICAV spécifique. Les statuts types standardisés offrent une certaine liberté pour ajouter ou modifier du texte, toutefois limitée dans la mesure où elle ne remplace pas les avantages de la standardisation.

CSSF publishes 2021-2023 Marketing communications Guidance under the regulation on cross-border distribution of funds / La CSSF publie le Guide de communication marketing 2021-2023 dans le cadre du règlement sur la distribution transfrontalière des fonds

On August 23 2023, the Commission de Surveillance du secteur financier (CSSF) published the 2021-2023 Marketing communications Guidance under the regulation on cross-border distribution of funds.

As mentioned in Section 2 of Circular CSSF 22/795 on the application of the Guidelines of the European Securities and Market Authority on marketing communications (ESMA 34-45-1272) under Regulation (EU) 2019/1156 (CBDF

Regulation), the CSSF considers that the IFMs shall assess, on the basis of the examples mentioned in the Guidelines, whether or not a certain message or communication addressed to investors or potential investors qualifies as "marketing communication" (MC).

From these examples, the CSSF retains that "corporate communications broadcast by the fund manager […] which do not refer to a specific UCITS or AIF or a group of UCITS or AIFs, unless the activities of the fund managers are limited to one fund or a small number of funds which are implicitly identified in such corporate communication" should not be considered as MCs.

A marketing communication should be deemed to be identified as such when it includes a prominent disclosure of the terms "marketing communication" (even when preceded by the # symbol when the use of that symbol accentuates

the text which it precedes in the case of on-line marketing communications), such that any person looking at it, or listening to it, can identify it as a marketing communication. The main weakness observed by the CSSF is that the indication of the commercial character of the document was only displayed in a disclaimer at the end of the document among other information. Another current element of non-compliance is that the relevant message was not flagged at all as a marketing communication. The CSSF expects that all MCs are identified as such by means of a prominent disclosure of the terms "marketing communication" even if the support is a website or a social media platform.

Consistency between the marketing communication and the legal and regulatory documents does not mean that all relevant information which is necessary to make an investment decision should be embedded in the marketing communication. However, the wording or the presentation used in the marketing communication should not be inconsistent with, add to, diminish or contradict any information mentioned in the legal or regulatory documents of the promoted fund." In relation to this "consistency" requirement, the CSSF observed weaknesses or areas of improvement in relation to almost all the elements mentioned in the ESMA Guidelines. The data in the MCs are either not in line with the content of the fund documents or do not include sufficient information for the target investors/potential investors to understand the key elements of those features (e.g. leverage, type of eligible assets, recommended holding period, etc.). The CSSF expects that the wording and indicators used in the MC, the KID or KIID, the prospectus or equivalent, and the SFDR required disclosures are consistent.

The CSSF observed difficult-to-read disclaimer sections containing most of the legal information such as requirements of Articles 4(2), 4(3) and 4(5) of the CBDF Regulation. Either the text size was too small, and/or the information was presented in a block of text without spaces, sometimes over several pages. The CSSF also noted that sometimes the vocabulary and/or the indicators used did not allow for easy reading and understanding of the MC, especially when addressed to retail investors. The CSSF expects that all information contained in a MC is easily readable, that all acronyms and all terms describing the investment used in the MC are properly defined and understandable by the target investors. The CSSF also expects that information in notes or disclaimers is easy to find and to read. In addition, the CSSF recommends that the MC clearly identifies the type of investors targeted. This is even more advisable when the MC only targets one type of investor while the fund/sub-fund is open to both retail and professional investors.

Also, when the MC displays a label, a certification or ratings, the CSSF expects that, firstly, the information is sufficiently precise concerning the fund/sub-fund rewards and the year concerned (where applicable); and secondly, that there is a reference to the entity that granted this label (etc.), i.e. that there is at least a hyperlink to a website where an investor/potential investor can find further information.

All marketing communications (of UCITS and respectively AIFs which publish a prospectus or have a KID) must indicate that a prospectus exists and that the key investor information is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information and shall provide hyperlinks to or website addresses for those documents. Article 4(3) states that MCs of UCITS "shall specify where, how and in which language investors or potential investors can obtain a summary of investor rights and shall provide a hyperlink to such a summary" and that "such marketing communications shall also contain clear information that the manager or management company […] may decide to terminate the arrangements made for the marketing of its collective investment undertakings in accordance with Article 93a of Directive 2009/65/EC and Article 32a of Directive 2011/61/EU." In relation to these requirements, the CSSF observed that either the required references were not included at all, or that they were only partially displayed, e.g. there was a reference to the existence of the fund's documents but there was no indication in which language they are available nor where to obtain them. The CSSF expects that the information mentioned in this sub-chapter is, in principle, included in the MC.

For the MCs tested that disclosed risks and rewards, the main weaknesses and points of improvement observed by the CSSF concern the lack of consistency of information disclosed with the fund's documents and the lack of indication on where to find complete information on risks. Accordingly, the CSSF expects that sections related to risks are properly tailored to the fund/sub-fund promoted (e.g. the risks for equity or bond sub-funds should not be the same) and that a prominent indication on where to find complete information on risks is disclosed even for MCs addressed to professional investors only.

The CSSF is of the view that to be fair, clear and not misleading, a MC that presents costs should display the periodicity of these costs as well as a prominent indication that NOT all costs are presented, and that further information can be found in the prospectus or equivalent.

Past performance information should be based on complete 12-month periods but this information may be supplemented with performance for the current year updated at the end of the most recent quarter. Any change that significantly affected the past performance of the promoted fund should be prominently disclosed.

When information on past performance is presented, this information should be preceded by the following statement: "Past performance does not predict future returns". For funds recently set up and for which no past performance records are available, the reward profile may be represented only by reference to the benchmark's past performance or to the objective return, when a benchmark or objective return are envisaged in the legal and regulatory documents of the

promoted fund. In addition, regarding benchmarks, point 28 of the ESMA Guidelines specifies that "When marketing communications describe the investment policy of the promoted fund, in order to assist investors' understanding, the following is recommended practice: […] Active funds which are managed in reference to an index should provide additional disclosure on the use of the benchmark index and indicate the degree of freedom from the benchmark. Active funds which are not managed in reference to any benchmark index should also make this clear to investors." The most frequent elements of non-compliance and areas of improvement observed by the CSSF in the areas above are the following:

(i) The reference period chosen to disclose performance is not the required 10-year period for funds establishing a KIID/KID or 5 years for other funds.

(ii) The performance for the current year is not updated at the end of the most recent quarter but at the end of the most recent month.

(iii) For newly launched funds, no performance data is disclosed in the KIID/KID, but performance data based on a related group strategy (or equivalent) is displayed.

(iv) For funds resulting from a merger or a contribution in kind, this event is not properly displayed in the marketing communication while performance data is displayed for the period before the creation of the fund.

(v) Details on the use of the benchmark are not sufficient and/or not prominently disclosed.

The CSSF expects that:

(i) The periodicity criteria are respected.

(ii) The consistency with fund's documents is ensured.

(iii) Any changes significantly affecting the past performance of the promoted fund is prominently disclosed.

In addition, more transparency on the use of a benchmark is required. The CSSF recommends including the same information in the MC as in the fund's documents.

The CSSF observed on one hand that the link provided in the MC points to generic information on the sustainability-related aspects (i.e. not in relation to the fund/sub-fund promoted), and on the other hand, that in some cases the MC was only focused on sustainability-related aspects. Accordingly, and as previously mentioned, the CSSF expects that a link to a given website points to information related to the specific fund/sub-fund promoted. The CSSF also expects a good balance between disclosures on sustainability-related aspects and other aspects of the investment strategy of the promoted fund/sub-fund.

Point 31 of the ESMA Guidelines provides that: "In the case of short marketing communications, such as messages on social media, the marketing communication should be as neutral as possible, also it should indicate where more detailed

information is available, in particular by using a link to the relevant webpage where the information documents of the fund are available". In very rare cases, the CSSF noted a MC that is not neutral. The CSSF also observed that the required link did not point to a webpage where the information documents of the fund/sub-fund are available but rather to the homepage of the investment fund manager. Again, the CSSF expects that hyperlinks used in MCs refer to webpage(s) where the actual information documents of the fund/sub-fund are available.

Version française

Le 23 août 2023, la Commission de Surveillance du secteur financier (CSSF) a publié le Guide de communication marketing 2021-2023 dans le cadre du règlement sur la distribution transfrontalière des fonds.

Comme mentionné à la section 2 de la circulaire CSSF 22/795 relative à l'application des lignes directrices de l'Autorité européenne des marchés financiers sur les communications marketing (ESMA 34-45-1272) au titre du règlement (UE) 2019/1156 (CBDF Règlement), la CSSF considère que les GFI doivent évaluer, sur la base des exemples mentionnés dans les Orientations, si un certain message ou communication adressé aux investisseurs ou investisseurs potentiels est qualifié ou non de « communication marketing » (MC).

De ces exemples, la CSSF retient que « les communications corporate diffusées par le gestionnaire du fonds […] qui ne font pas référence à un OPCVM ou FIA spécifique ou à un groupe d'OPCVM ou de FIA, sauf si les activités des gestionnaires du fonds sont limitées à un fonds ou un petit nombre de fonds qui sont implicitement identifiés dans une telle communication d'entreprise » ne doivent pas être considérés comme des MC.

Une communication marketing doit être considérée comme identifiée comme telle lorsqu'elle comprend une mention bien visible des termes « communication marketing » (même lorsqu'elle est précédée du symbole # lorsque l'utilisation de ce symbole accentue dans le texte qu'il précède dans le cas de communications marketing en ligne), de telle sorte que toute personne qui le regarde ou l'écoute puisse l'identifier comme une communication marketing. La principale faiblesse constatée par la CSSF est que l'indication du caractère commercial du document n'était affichée que dans un disclaimer en fin de document parmi d'autres informations. Un autre élément de non-conformité actuel réside dans le fait que le message concerné n'a pas du tout été signalé comme une communication marketing. La CSSF attend que tous les MC soient identifiés comme tels au moyen d'une mention bien visible des termes « communication marketing », même si le support est un site Internet ou une plateforme de médias sociaux.

La cohérence entre la communication marketing et les documents légaux et réglementaires ne signifie pas que toutes les informations pertinentes nécessaires à la prise d'une décision d'investissement doivent être intégrées dans la communication marketing. Toutefois, la formulation ou la présentation utilisée dans la communication commerciale ne doit pas être incompatible, compléter, diminuer ou contredire toute information mentionnée dans les documents légaux ou réglementaires du fonds promu. Par rapport à cette exigence de « cohérence », la CSSF a observé des faiblesses ou des axes d'amélioration par rapport à la quasi-totalité des éléments mentionnés dans les orientations de l'ESMA. Les données contenues dans les MC ne correspondent pas au contenu des documents du fonds ou n'incluent pas suffisamment d'informations pour permettre aux investisseurs cibles/investisseurs potentiels de comprendre les éléments clés de ces caractéristiques (par exemple, effet de levier, type d'actifs éligibles, période de détention recommandée). , etc.). La CSSF attend que la formulation et les indicateurs utilisés dans le MC, le KID ou KIID, le prospectus ou équivalent et les informations requises par le SFDR soient cohérents.

La CSSF a observé des sections de clause de non-responsabilité difficiles à lire contenant la plupart des informations juridiques telles que les exigences des articles 4(2), 4(3) et 4(5) du règlement CBDF. Soit la taille du texte était trop petite, et/ou les informations étaient présentées dans un bloc de texte sans espaces, parfois sur plusieurs pages. La CSSF a également constaté que parfois le vocabulaire et/ou les indicateurs utilisés ne permettaient pas une lecture et une compréhension aisées du MC, notamment lorsqu'il s'adressait aux investisseurs particuliers. La CSSF attend que toutes les informations contenues dans un MC soient facilement lisibles, que tous les acronymes et tous les termes décrivant l'investissement utilisés dans le MC soient correctement définis et compréhensibles par les investisseurs cibles. La CSSF attend également que les informations contenues dans les notes ou les clauses de non-responsabilité soient faciles à trouver et à lire. Par ailleurs, la CSSF recommande au MC d'identifier clairement le type d'investisseurs ciblés. Ceci est d'autant plus judicieux que le MC ne cible qu'un seul type d'investisseur alors que le fonds/compartiment est ouvert aussi bien aux investisseurs particuliers qu'aux professionnels.

Aussi, lorsque le MC affiche un label, une certification ou des notations, la CSSF attend que, d'une part, les informations soient suffisamment précises concernant les récompenses du fonds/compartiment et l'année concernée (le cas échéant) ; et deuxièmement, qu'il y ait une référence à l'entité qui a accordé ce label (etc.), c'est-à-dire qu'il y ait au moins un hyperlien vers un site Internet où un investisseur/investisseur potentiel peut trouver de plus amples informations.

Toute communication commerciale (des OPCVM et respectivement des FIA publiant un prospectus ou disposant d'un KID) doit indiquer qu'un prospectus existe et que les informations clés pour l'investisseur sont disponibles. Ces communications marketing préciseront où, comment et dans quelle langue les investisseurs ou investisseurs potentiels peuvent obtenir le prospectus et les informations clés pour l'investisseur et fourniront des hyperliens vers ou des adresses Internet pour ces documents. L'article 4(3) stipule que les MC des OPCVM « doivent préciser où, comment et dans quelle langue les investisseurs ou les investisseurs potentiels peuvent obtenir un résumé des droits des investisseurs et doivent fournir un hyperlien vers un tel résumé » et que « ces communications marketing doivent également contenir une information claire que le gestionnaire ou la société de gestion […] peut décider de mettre fin au dispositif de commercialisation de ses organismes de placement collectif conformément à l'article 93 bis de la directive 2009/65/CE et à l'article 32 bis de la directive 2011/61/UE. Par rapport à ces exigences, la CSSF a observé que soit les références requises n'étaient pas du tout incluses, soit qu'elles n'étaient que partiellement affichées, par ex. il y a une référence à l'existence des documents du fonds mais aucune indication n'est donnée dans quelle langue ils sont disponibles ni où les obtenir. La CSSF attend que les informations mentionnées dans ce sous-chapitre soient, en principe, incluses dans le MC.

Pour les MC testés publiant des risques et des avantages, les principales faiblesses et points d'amélioration observés par la CSSF concernent le manque de cohérence des informations publiées avec les documents du fonds et le manque d'indication sur les risques et les avantages, ainsi qu'où trouver des informations complètes sur les risques. En conséquence, la CSSF attend que les sections relatives aux risques soient correctement adaptées au fonds/compartiment promu (par exemple, les risques pour les compartiments actions ou obligations ne doivent pas être les mêmes) et qu'une indication bien visible indiquant où trouver des informations complètes sur les risques sont divulgués même pour les MC adressés uniquement aux investisseurs professionnels.

La CSSF estime que pour être juste, clair et non trompeur, un MC qui présente des coûts devrait afficher la périodicité de ces coûts ainsi qu'une indication bien visible que tous les coûts ne sont pas présentés et que des informations complémentaires peuvent être trouvées dans le prospectus ou équivalent.

Les informations sur les performances passées doivent être basées sur des périodes complètes de 12 mois, mais ces informations peuvent être complétées par les performances de l'année en cours mises à jour à la fin du trimestre le plus récent. Tout changement affectant de manière significative la performance passée du fonds promu doit être divulgué de manière visible.

Lorsque des informations sur les performances passées sont présentées, ces informations doivent être précédées de la mention suivante : « Les performances passées ne présagent pas des rendements futurs ». Pour les fonds récemment créés et pour lesquels aucun historique de performance passée n'est disponible, le profil de rémunération ne peut être représenté que par référence à la performance passée de l'indice ou au rendement objectif, lorsqu'un indice de référence ou un rendement objectif sont prévus dans les documents légaux et réglementaires du fonds promu. Par ailleurs, concernant les indices de référence, le point 28 des orientations de l'ESMA précise que « Lorsque les communications marketing décrivent la politique d'investissement du fonds promu, afin d'aider les investisseurs à comprendre, les pratiques recommandées sont les suivantes : […] Les fonds actifs qui sont gérés dans la référence à un indice devrait fournir des informations supplémentaires sur l'utilisation de l'indice de référence et indiquer le degré de liberté par rapport à l'indice de référence. Les fonds actifs qui ne sont pas gérés en référence à un indice de référence doivent également le faire savoir clairement aux investisseurs. Les éléments de non-conformité et axes d'amélioration les plus fréquents observés par la CSSF dans les domaines ci-dessus sont les suivants :

(i) La période de référence choisie pour divulguer la performance n'est pas la période requise de 10 ans pour les fonds établissant un KIID/KID ou de 5 ans pour les autres fonds.

(ii) La performance de l'année en cours n'est pas mise à jour à la fin du trimestre le plus récent mais à la fin du mois le plus récent.

(iii) Pour les fonds nouvellement lancés, aucune donnée de performance n'est divulguée dans le KIID/KID, mais les données de performance basées sur une stratégie de groupe associée (ou équivalente) sont affichées.

(iv) Pour les fonds issus d'une fusion ou d'un apport en nature, cet événement n'est pas correctement affiché dans la communication marketing alors que les données de performance sont affichées pour la période précédant la création du fonds.

(v) Les détails sur l'utilisation de l'indice de référence ne sont pas suffisants et/ou ne sont pas divulgués de manière visible.

La CSSF attend que :

(i) Les critères de périodicité sont respectés.

(ii) La cohérence avec les documents du fonds est assurée.

(iii) Tout changement affectant de manière significative la performance passée du fonds promu est divulgué de manière visible.

En outre, davantage de transparence sur l'utilisation d'un indice de référence est requise. La CSSF recommande d'inclure dans la MC les mêmes informations que dans les documents du fonds.

La CSSF a observé d'une part que le lien fourni dans la CM pointe vers des informations génériques sur les aspects liés à la durabilité (c'est-à-dire pas en relation avec le fonds/compartiment promu), et d'autre part, que dans certains cas le CM était uniquement axé sur les aspects liés à la durabilité. En conséquence, et comme mentionné précédemment, la CSSF attend qu'un lien vers un site internet donné pointe vers des informations relatives au fonds/compartiment spécifique promu. La CSSF attend également un bon équilibre entre les informations fournies sur les aspects liés au développement durable et d'autres aspects de la stratégie d'investissement du fonds/compartiment promu.

Le point 31 des lignes directrices de l'ESMA prévoit que : « Dans le cas de communications marketing courtes, telles que les messages sur les réseaux sociaux, la communication marketing doit être aussi neutre que possible et doit également indiquer les endroits où des informations plus détaillées sont fournies, notamment en utilisant un lien vers la page web pertinente où les documents d'information du fonds sont disponibles ». Dans de très rares cas, la CSSF a constaté qu'une CM n'est pas neutre. La CSSF a également observé que le lien requis ne renvoyait pas vers une page web où les documents d'information du fonds/compartiment sont disponibles mais plutôt vers la page d'accueil du gestionnaire du fonds d'investissement. Là encore, la CSSF attend que les hyperliens utilisés dans les CMs renvoient vers des pages web sur lesquelles les documents d'information proprement dits du fonds/compartiment sont disponibles.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

CSSF informs on CNMV product intervention measures on financial contracts for differences (CFDs) / La CSSF informe sur les mesures d'intervention sur les produits de CNMV sur les contrats financiers sur différences (CFD)

On July 31 2023, the Commission de Surveillance du secteur financier (CSSF) informed on CNMV product intervention measures relating to financial contracts for differences (CFDs) and other leveraged products.

The CSSF would like to draw the attention of supervised entities to the following product intervention measures related to the marketing, distribution or sale of financial contracts for differences (CFDs) and other leveraged instruments to retail investors, taken by Spain's "Comisión Nacional del Mercado de Valores" (CNMV), and published on its website on July 12 2023 ("the CNMV Resolution").

The measure is based on Article 42 "Product intervention by competent authorities" of Regulation (EU) No 600/2014 of the European parliament and of the Council of May 15 2014 on markets in financial instruments (MiFIR).

As a consequence of this measure, when marketing, distributing or selling CFDs to retail investors in Spain, entities supervised by the CSSF are prohibited from using advertisements, sponsoring events or organisations, engaging in brand advertising, and using certain marketing practices. When marketing, distributing or selling other leveraged instruments (such as futures and options), whose maximum risk is not known upon subscription or whose risk of loss is greater than the amount of the initial financial contribution, to retail investors in Spain, specific investor protection requirements are to be complied with.

Reference is made to the CNMV Resolution for the precise scope of the product intervention measures. The measures are effective from August 3 2023.

These new product intervention measures from the CNMV should be read in conjunction with the existing measures for binary options and financial contracts for differences already applicable in Spain.

The CSSF further reminds supervised entities of the measures restricting the marketing, distribution or sale of CFDs and binary options currently applicable in Luxembourg.

Version française

Le 31 juillet 2023, la Commission de Surveillance du secteur financier (CSSF) a informé sur des mesures d'intervention de la CNMV sur les produits relatifs aux contrats financiers sur différences (CFD) et autres produits à effet de levier.

La CSSF souhaite attirer l'attention des entités surveillées sur les mesures d'intervention sur les produits suivantes liées à la commercialisation, à la distribution ou à la vente de contrats financiers sur différences (CFD) et d'autres instruments à effet de levier aux investisseurs particuliers, prises par la « Comisión Nacional del Mercado de Valores » (CNMV) espagnole, et publiée sur son site internet le 12 juillet 2023 (« la Résolution CNMV »).

La mesure est basée sur l'article 42 « Intervention sur les produits par les autorités compétentes » du règlement (UE) n° 600/2014 du Parlement européen et du Conseil du 15 mai 2014 relatif aux marchés d'instruments financiers (MiFIR).

En conséquence de cette mesure, lors de la commercialisation, de la distribution ou de la vente de CFD à des investisseurs particuliers en Espagne, il est interdit aux entités supervisées par la CSSF d'utiliser des publicités, de sponsoriser des événements ou des organisations, de faire de la publicité pour une marque et d'utiliser certaines pratiques de marketing. Lors de la commercialisation, de la distribution ou de la vente d'autres instruments à effet de levier (tels que des contrats à terme et des options), dont le risque maximum n'est pas connu au moment de la souscription ou dont le risque de perte est supérieur au montant de l'apport financier initial, à des investisseurs particuliers en Espagne, des exigences spécifiques sur la protection des investisseurs doivent être respectées.

Une référence est faite à la Résolution CNMV pour connaître la portée précise des mesures d'intervention sur les produits. Les mesures ont entré en vigueur le 3 août 2023. Ces nouvelles mesures d'intervention de la CNMV sur les produits doivent être lues en conjonction avec les mesures existantes pour les options binaires et les contrats financiers pour différences déjà applicables en Espagne.

La CSSF rappelle par ailleurs aux entités surveillées les mesures restreignant la commercialisation, la distribution ou la vente de CFD et d'options binaires actuellement applicables au Luxembourg.

MERGERS & ACQUISITIONS (M&A)

Luxembourg published draft law introducing merger control regime / Le Luxembourg a publié un projet de loi introduisant un régime de contrôle des fusions

On August 23 2023, Luxembourg publisheda Draft law on the control of concentrations between companies and amending:

1. the amended law of August 10 1915 concerning commercial companies;
2. the amended law of December 23 1998 establishing a commission for the supervision of the financial sector;
3. the amended law of December 7 2015 on the insurance sector;
4. the amended law of November 30 2022 on competition.

The bill aims at introducing into Luxembourg law a system of control of concentrations between undertakings. Luxembourg is the only state in the European Union that does not have such a body of rules which are nevertheless part of the essential tools for protecting competition and consumers.

Unlike antitrust law, merger control, other pillar of competition law, is intended to be preventive and not punitive. This instrument aims to protect the competition, for the benefit of the consumer, by providing the Competition Authority the power to control certain business merging projects. Indeed, if most of these acquisitions, mergers or creations of companies - are beneficial for the economy, some operations can however affect competition. Thus, by merging, two companies can reduce their production costs or even develop new products more efficiently. However, a merger can also mean less choice, less quality or less innovation for the consumer derived from the disappearance of a player on the market or from a price increase risk, especially if the newly created player acquires a dominant position. The objective of the control is to prevent such negative effects on the competition. It also offers predictability and legal certainty for companies and allows third parties to put forward their points of view.

Subject to the provisions of this law are the operations of concentration not entering within the scope of Council Regulation (EC) No 139/2004 of January 20 2004 on the control of concentrations between undertakings, in one of the following two cases:

1) the following two thresholds are crossed:

a) the total turnover excluding tax achieved in Luxembourg by all the companies or groups of natural or legal persons concerned is greater than €60 million; And

b) the total turnover excluding tax achieved individually in Luxembourg by at least at least two of the companies or groups of natural or legal persons concerned is greater than 15 million euros;

2) a concentration for which the Autority has self-requested in accordance with the terms of Article 6.

With regard to insurance and reinsurance companies, the turnover achieved in Luxembourg is assessed on the basis of the gross premiums paid by persons residing or established in Luxembourg.

With regard to credit institutions and other financial institutions, the turnover carried out in Luxembourg is assessed on the basis of the products sold and the services provided to customers and end investors residing or established in Luxembourg.

Apart from investment capital transactions, acquisition transactions carried out by investment funds, securitization funds, securitization vehicles or pension funds do not fall within the scope of this law. Investment capital operation consists of an acquisition of assets or the acquisition of a direct or indirect stake in the capital of a company resulting in a lasting change of control within the meaning of Article 2, in which the assets represent an activity resulting directly or indirectly through a presence in the market and to which can be attached a turnover in Luxembourg for the purposes of paragraph 2, point 10; And is aimed at generating a profit from the assets acquired, with a view to resale with capital gain.

Control derives from rights, contracts or other means which confer, alone or jointly and taking into account the factual or legal circumstances, the possibility of exercising decisive influence on the activity of a company, and in particular:

1) rights of ownership or enjoyment of all or part of a company's assets;

2) rights or contracts which confer a decisive influence on the composition, the deliberations or decisions of the bodies of a company.

Control is acquired by the person or persons or companies:

1° who are the holders of these rights or beneficiaries of these contracts; Or

2° who, not being holders of these rights or beneficiaries of these contracts, have the power

to exercise the rights deriving therefrom.

The creation of a joint enterprise carrying out in a sustainable manner all the functions of an autonomous economic entity constitutes a concentration within the meaning of paragraph 1", point 2°.

Any concentration operation must be notified to the Authority before its realization. The actual carrying out of a concentration operation can only take place after a decision of the Autority authorizing the concentration operation.

The Autority may examine a concentration which does not reach the thresholds referred to in Article l, where it considers that the concentration may have an adverse restrictive effect of competition on a market for goods or services in Luxembourg, or a part of it.

Version française

Le 23 août 2023, le Luxembourg a publié un Projet de loi relatif au contrôle des concentrations entre sociétés et modifiant :

1. *la loi modifiée du 10 août 1915 concernant les sociétés commerciales ;*
2. *la loi modifiée du 23 décembre 1998 instituant une commission de surveillance du secteur financier ;*
3. *la loi modifiée du 7 décembre 2015 relative au secteur des assurances ;*
4. *la loi modifiée du 30 novembre 2022 relative à la concurrence.*

Le projet de loi vise à introduire dans le droit luxembourgeois un système de contrôle des concentrations entre entreprises. Le Luxembourg est le seul État de l'Union européenne à ne pas disposer d'un tel corpus de règles qui font pourtant partie des outils essentiels de protection de la concurrence et des consommateurs.

Contrairement au droit antitrust, le contrôle des fusions, autre pilier du droit de la concurrence, se veut préventif et non punitif. Cet instrument vise à protéger la concurrence, au bénéfice du consommateur, en conférant à l'Autorité de la concurrence le pouvoir de contrôler certains projets de fusion d'entreprises. En effet, si la plupart de ces acquisitions, fusions ou créations d'entreprises - sont bénéfiques pour l'économie, certaines opérations peuvent toutefois affecter la concurrence. Ainsi, en fusionnant, deux entreprises peuvent réduire leurs coûts de production ou même développer plus efficacement de nouveaux produits. Cependant, une fusion peut aussi signifier moins de choix, moins de qualité ou moins d'innovation pour le consommateur du fait de la disparition d'un acteur sur le marché ou d'un risque d'augmentation des prix, surtout si l'acteur nouvellement créé acquiert une position dominante. L'objectif du contrôle est d'éviter de tels effets négatifs sur la concurrence. Il offre également prévisibilité et sécurité juridique aux entreprises et permet aux tiers de faire valoir leur point de vue.

Sont soumises aux dispositions de la présente loi les opérations de concentration n'entrant pas dans le champ d'application du règlement (CE) n° 139/2004 du Conseil du 20 janvier 2004 relatif au contrôle des concentrations entre entreprises, dans l'un des deux cas suivants :

1) les deux seuils suivants sont franchis :

a) le chiffre d'affaires total hors taxe réalisé au Luxembourg par l'ensemble des sociétés ou groupes de personnes physiques ou morales concernés est supérieur à 60 millions d'euros ; Et

b) le chiffre d'affaires total hors taxe réalisé individuellement au Luxembourg par au moins deux des sociétés ou groupes de personnes physiques ou morales concernés est supérieur à 15 millions d'euros ;

2) une concentration pour laquelle l'Autorité a elle-même demandé conformément aux termes de l'article 6.

En ce qui concerne les entreprises d'assurance et de réassurance, le chiffre d'affaires réalisé au Luxembourg est apprécié sur la base des primes brutes payées par les personnes résidant ou établies au Luxembourg.

S'agissant des établissements de crédit et autres établissements financiers, le chiffre d'affaires réalisé au Luxembourg est apprécié sur la base des produits vendus et des services rendus aux clients et investisseurs finaux résidant ou établis au Luxembourg.

Hormis les opérations en capital d'investissement, les opérations d'acquisition réalisées par des fonds d'investissement, des fonds de titrisation, des véhicules de titrisation ou des fonds de pension ne rentrent pas dans le champ d'application de cette loi. Une opération de capital investissement consiste en une acquisition d'actifs ou une prise de participation directe ou indirecte dans le capital d'une société entraînant un changement durable de contrôle au sens de l'article 2, dont les actifs représentent une activité résultant directement ou indirectement de une présence sur le marché et à laquelle peut être rattaché un chiffre d'affaires au Luxembourg au sens du paragraphe 2, point 10 ; Et vise à rentabiliser les actifs acquis, en vue d'une revente avec plus-value.

Le contrôle découle de droits, contrats ou autres moyens qui confèrent, seuls ou conjointement et compte tenu des circonstances de fait ou de droit, la possibilité d'exercer une influence déterminante sur l'activité d'une entreprise, et notamment :

1) les droits de propriété ou de jouissance sur tout ou partie des actifs d'une société ;

2) les droits ou contrats qui confèrent une influence déterminante sur la composition, les délibérations ou les décisions des organes d'une société.

Le contrôle est acquis par la ou les personnes ou sociétés :

1° qui sont les titulaires de ces droits ou les bénéficiaires de ces contrats ; Ou

2° qui, n'étant pas titulaires de ces droits ou bénéficiaires de ces contrats, ont le pouvoir d'exercer les droits qui en découlent.

La création d'une entreprise commune exerçant de manière durable toutes les fonctions d'une entité économique autonome constitue une concentration au sens de l'alinéa 1°, du 2°.

Toute opération de concentration doit être notifiée à l'Autorité avant sa réalisation. La réalisation effective d'une opération de concentration ne peut avoir lieu qu'après une décision de l'Autorité autorisant l'opération de concentration.

L'Autorité peut examiner une concentration qui n'atteint pas les seuils visés à l'article I, lorsqu'elle estime que la concentration est susceptible d'avoir un effet restrictif défavorable de la concurrence sur un marché de biens ou de services au Luxembourg, ou sur une partie de celui-ci.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

Luxembourg publishes Draft Law on the digital operational resilience of the financial sector / Le Luxembourg publie un projet de loi sur la résilience opérationnelle numérique du secteur financier

BACKGROUND

The financial sector is increasingly dependent on IT technologies and digital processes. The large-scale transition to digital has also strengthened interconnections and dependencies within the financial sector and with third-party providers of

ICT infrastructure and services. However, the requirements for financial sector entities to address ICT-related risks are, to date, fragmented, sometimes incomplete and split between different EU sectoral legal acts.

The consolidation and further harmonisation of key digital operational resilience requirements are part of the objective to foster innovation and the adoption of new technologies within the financial sector, while ensuring financial stability and the protection of investors and consumers. Consequently, in addition to making Regulation (EU) 2022/2554 operational, the draft law aims to transpose into Luxembourg law these specific amendments made to the European financial directives

and relating to digital resilience and ICT security. The draft law thus makes a targeted adaptation of a series of national laws relating to the financial sector.

WHAT'S NEW?

On August 4 2023, the Chambre des députés of Luxembourg published the Draft Law on the digital operational resilience of the financial sector.

The Draft Law aims to:

- implement Regulation (EU) 2022/2554 of December 14 2022 on on the digital operational resilience of the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011
- transpose Directive (EU) 2022/2556 of the European Parliament and of the Council of December 14 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards the digital operational resilience of the financial sector
- introduce amendments to: a) the amended law of April 5 1993 on the financial sector; b) the amended law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs; c) the amended law of November 10 2009 on payment services; d) the amended law of December

17 2010 on undertakings for collective investment; e) the amended law of July 12 2013 on alternative investment fund managers ; f) the amended law of December 7 2015 on the insurance sector; g) the amended law of December 18 2015 on the insolvency of credit institutions and certain investment firms; h) the amended law of May 30 2018 on markets in financial instruments; i) the amended law of July 16 2019 on the implementation of European regulations in the field of financial services.

The main objective of the Bill is to grant national competent authorities the necessary supervisory and investigative powers to carry out their duties within the limits set by DORA, and to establish a system of penalties.

WHAT'S NEXT?

Article 26 of the draft law sets the date of application of the draft law in accordance with Article 9, paragraph 1, subparagraph 1, of Directive (EU) 2022/2256 and Article 64, subparagraph 2, of Regulation (EU) 2022/2254. The draft law will come into force on January 17 2025.

Version française

BACKGROUND

Le secteur financier est de plus en plus dépendant des technologies informatiques et des processus numériques. La transition à grande échelle vers le numérique a également renforcé les interconnexions et les dépendances au sein du secteur financier et avec les fournisseurs tiers de services et infrastructures TIC. Toutefois, les exigences imposées aux entités du secteur financier pour faire face aux risques liés aux TIC sont, à ce jour, fragmentées, parfois incomplètes et réparties entre différents actes juridiques sectoriels de l'UE.

La consolidation et la poursuite de l'harmonisation des principales exigences en matière de résilience opérationnelle numérique font partie de l'objectif visant à favoriser l'innovation et l'adoption de nouvelles technologies au sein du secteur financier, tout en garantissant la stabilité financière et la protection des investisseurs et des consommateurs. Ainsi, en plus de rendre opérationnel le règlement (UE) 2022/2554, le projet de loi vise à transposer en droit luxembourgeois ces modifications spécifiques apportées aux directives européennes du secteur financier et liées à la résilience numérique et à la sécurité des TIC. Le projet de loi réalise ainsi une adaptation ciblée d'une série de lois nationales relatives au secteur financier.

WHAT'S NEW?

Le 4 août 2023, la Chambre des députés de Luxembourg a publié le Projet de loi relatif à la résilience opérationnelle numérique du secteur financier.

Le projet de loi vise à :

- *mettre en œuvre le règlement (UE) 2022/2554 du 14 décembre 2022 relatif à la résilience opérationnelle numérique du secteur financier et modifiant les règlements (CE) n° 1060/2009, (UE) n° 648/2012, (UE) n° 600/2014, (UE) n° 909/2014 et (UE) 2016/1011*
- *transposer la Directive (UE) 2022/2556 du Parlement européen et du Conseil du 14 décembre 2022 modifiant les directives 2009/65/CE, 2009/138/CE, 2011/61/UE, 2013/36/UE, 2014/59 /UE, 2014/65/UE, (UE) 2015/2366 et (UE) 2016/2341 en ce qui concerne la résilience opérationnelle numérique du secteur financier*
- *apporter des modifications à : a) la loi modifiée du 5 avril 1993 relative au secteur financier ; b) la loi modifiée du 13 juillet 2005 relative aux institutions de retraite professionnelle sous forme de SEPCAV et d'ASSEP ; c) la loi modifiée du 10 novembre 2009 relative aux services de paiement ; d) la loi modifiée du 17 décembre 2010 relative aux organismes de placement collectif ; e) la loi modifiée du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs ; f) la loi modifiée du 7 décembre 2015 relative au secteur des assurances ; g) la loi modifiée du 18 décembre 2015 relative à l'insolvabilité des établissements de crédit et de certaines entreprises d'investissement ; h) la loi modifiée du 30 mai 2018 relative aux marchés d'instruments financiers ; i) la loi modifiée du 16 juillet 2019 portant mise en œuvre de la réglementation européenne dans le domaine des services financiers.*

L'objectif principal du projet de loi est d'accorder aux autorités nationales compétentes les pouvoirs de surveillance et d'enquête nécessaires pour exercer leurs fonctions dans les limites fixées par DORA, et d'établir un système de sanctions.

WHAT'S NEXT?

L'article 26 du projet de loi fixe la date d'application du projet de loi conformément à l'article 9, paragraphe 1, alinéa 1, de la directive (UE) 2022/2256 et à l'article 64, alinéa 2, du règlement (UE) 2022/2254.

Le projet de loi entrera en vigueur le 17 janvier 2025.

REGULATION ON SCREENING OF FOREIGN DIRECT INVESTMENTS (FDI SCREENING REGULATION)

Luxembourg publishes Law establishing a national screening mechanism for foreign direct investments

BACKGROUND

The Law serves the purpose of implementing the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, as amended.

WHAT'S NEW?

On July 18 2023, Luxembourg published the Law of 14 July 2023 establishing a national screening mechanism for foreign direct investments likely to undermine security or public order in the Legilux (Journal Officiel du Grand-Duché de Luxembourg).

The national screening mechanism applies to foreign direct investments, apart from portfolio investments, which may undermine security or public order, in an entity governed by Luxembourg law carrying out critical activities in Luxembourg.

The following activities are considered critical activities under this Act:

1. the development, exploitation of and trade in dual-use items;
2. electricity generation and distribution, gas conditioning and distribution, and oil storage and trading; quantum and nuclear technologies;
3. land, water and air transport;
4. water collection, treatment and distribution, wastewater collection and treatment, and waste collection, treatment and disposal;
5. activities related to health care and medical analysis laboratories; nanotechnology and biotechnology;
6. wireline and wireless telecommunications, satellite telecommunications and postal and courier services;
7. IT facilities for data processing, hosting of information services and Internet portals; technologies concerning artificial intelligence, semiconductors, cybersecurity;
8. space operations and exploitation of space resources;
9. activities related to national defence; the production of and trade in arms, ammunition, explosive powders and substances intended for military purposes or war materials;
10. the activities of the central bank as well as the infrastructures and systems for the exchange, payment and settlement of financial instruments;
11. publishing, audiovisual and broadcasting activities;
12. activities related to food security.
13. research activities directly related to the above activities;
14. production activities directly related to the above activities;
15. related activities that may allow access to sensitive information, including personal data, directly related to the above activities;
16. related activities that may allow access to the places where the above activities are carried out.

Foreign direct investments shall be subject to notification to the Minister responsible for the economy. Notifications must be made by the foreign investor prior to the completion of the foreign direct investment.

The foreign investor has a period of fifteen calendar days in the event that he crosses the threshold of 25% holding the voting rights of an entity governed by Luxembourg law following events modifying the distribution of capital. The Minister acknowledges receipt of the notification to the foreign investor.

As part of the notification, the foreign investor shall provide the Minister with the following information:

1. the ownership structure of the foreign investor and the entity governed by Luxembourg law before the foreign direct investment was carried out or following events that changed the distribution of capital;
2. the approximate value of foreign direct investment;
3. the products, services and business operations of the foreign investor and the entity governed by Luxembourg law;
4. the countries in which the foreign investor and the entity governed by Luxembourg law conduct business activities;
5. financing of foreign direct investment and its source;
6. the date on which the foreign direct investment is planned or has been completed.

If the foreign investor has not provided the information, a request to provide the missing information without undue delay shall be addressed to him.

The Minister shall decide whether or not the foreign direct investment should be subject to a screening procedure. The decision shall be notified to the foreign investor within two months of the date of the acknowledgement of receipt. The duration of the filtering procedure may not exceed sixty calendar days after its triggering. If the screening procedure is triggered, the foreign direct investment may not be made until a screening decision authorising the foreign direct investment in question has been taken.

WHAT'S NEXT?

If a foreign direct investment has been made without notification or authorization obtained under the screening decision, the Minister may suspend the exercise of voting rights related to foreign direct investment attached to securities held, directly or indirectly, by the foreign investor exceeding the threshold of 25% of the voting rights of the entity governed by Luxembourg law until the situation has been rectified and may order the foreign investor to modify the operation or to have the previous situation restored at his own expense. Except in the case of imminent breach of security or public order, the Minister shall inform the foreign investor in advance in writing of the facts found and alleged against him and shall warn him that he intends to adopt these measures. The foreign investor has a period of fifteen calendar days to make its observations known in writing. He may also, within the same period, request to be heard and, where appropriate, be assisted by a defence counsel of his choice. If the foreign investor fails to comply with the order within one month of notification, the Minister may impose a fine of up to EUR 1 000 000 if the foreign investor is a natural person and up to EUR 5 000 000 if it is a legal entity. Administrative fines shall be paid within thirty days of the date of notification of the decision. After this period, a reminder is sent by registered letter. The reminder gives rise to default interest calculated at the legal rate.Where a screening procedure is launched, the Foreign and European Affairs Minister shall notify the other Member States and the European Commission by providing the information referred to in Article 9(2) of Regulation (EU) 2019/452. If a foreign direct investment planned or carried out in another Member State is likely to undermine the security or public order of the Grand Duchy of Luxembourg, the Foreign and European Affairs Minister may request information from the Member State in which the foreign direct investment is planned or has been made.This Law shall enter into force on 1 September 2023.

Version française

BACKGROUND

La loi vise à mettre en œuvre le règlement (UE) 2019/452 du Parlement européen et du Conseil du 19 mars 2019 établissant un cadre pour le filtrage des investissements directs étrangers dans l'Union, tel que modifié.

WHAT'S NEW?

Le 18 juillet 2023, le Luxembourg a publié la loi du 14 juillet 2023 instituant un mécanisme national de filtrage des investissements directs étrangers susceptibles de porter atteinte à la sécurité ou à l'ordre public au Legilux (Journal Officiel du Grand-Duché de Luxembourg).

Le mécanisme national de filtrage s'applique aux investissements directs étrangers, à l'exception des investissements de portefeuille, susceptibles de porter atteinte à la sécurité ou à l'ordre public, dans une entité de droit luxembourgeois exerçant des activités critiques au Luxembourg.

Les activités suivantes sont considérées comme des activités critiques en vertu de cette loi :

1. *le développement, l'exploitation et le commerce de biens à double usage ;*
2. *la production et la distribution d'électricité, le conditionnement et la distribution de gaz, ainsi que le stockage et le négoce de pétrole ; technologies quantiques et nucléaires;*
3. *les transports terrestres, fluviaux et aériens ;*
4. *la collecte, le traitement et la distribution des eaux, la collecte et le traitement des eaux usées ainsi que la collecte, le traitement et l'élimination des déchets ;*
5. *les activités liées aux laboratoires de soins de santé et d'analyses médicales ; nanotechnologie et biotechnologie;*
6. *les télécommunications filaires et sans fil, les télécommunications par satellite et les services postaux et de messagerie ;*
7. *Les installations informatiques pour le traitement des données, l'hébergement de services d'information et de portails Internet ; technologies concernant l'intelligence artificielle, les semi-conducteurs, la cybersécurité ;*
8. *les opérations spatiales et l'exploitation des ressources spatiales ;*
9. *les activités liées à la défense nationale ; la production et le commerce d'armes, de munitions, de poudres et substances explosives destinées à des fins militaires ou de matériel de guerre ;*
10. *les activités de la banque centrale ainsi que les infrastructures et systèmes d'échange, de paiement et de règlement des instruments financiers ;*
11. *les activités d'édition, d'audiovisuel et de radiodiffusion ;*
12. *les activités liées à la sécurité alimentaire.*
13. *les activités de recherche directement liées aux activités ci-dessus ;*
14. *les activités de production directement liées aux activités ci-dessus ;*
15. *les activités connexes pouvant permettre l'accès à des informations sensibles, y compris des données personnelles, directement liées aux activités ci-dessus ;*
16. *les activités connexes pouvant permettre l'accès aux lieux où s'exercent les activités ci-dessus.*

Les investissements directs étrangers font l'objet d'une notification au Ministre chargé de l'économie. Les notifications doivent être faites par l'investisseur étranger avant la réalisation de l'investissement direct étranger.

L'investisseur étranger dispose d'un délai de quinze jours calendaires dans le cas où il franchirait le seuil de 25% détenant les droits de vote d'une entité de droit luxembourgeois suite à des événements modifiant la répartition du capital. Le Ministre accuse réception de la notification à l'investisseur étranger.

Dans le cadre de la notification, l'investisseur étranger devra fournir au Ministre les informations suivantes :

1. *la structure de propriété de l'investisseur étranger et de l'entité de droit luxembourgeois avant la réalisation de l'investissement direct étranger ou à la suite d'événements ayant modifié la répartition du capital ;*
2. *la valeur approximative des investissements directs étrangers ;*
3. *les produits, services et opérations commerciales de l'investisseur étranger et de l'entité de droit luxembourgeois ;*
4. *les pays dans lesquels l'investisseur étranger et l'entité de droit luxembourgeois exercent des activités commerciales ;*
5. *le financement des investissements directs étrangers et leur source ;*
6. *la date à laquelle l'investissement direct étranger est prévu ou a été réalisé.*

Si l'investisseur étranger n'a pas fourni les informations, une demande de communication des informations manquantes dans les meilleurs délais lui sera adressée.

Le ministre décide si l'investissement direct étranger doit ou non être soumis à une procédure de sélection. La décision sera notifiée à l'investisseur étranger dans un délai de deux mois à compter de la date de l'accusé de réception. La durée de la procédure de filtrage ne peut excéder soixante jours calendaires après son déclenchement. Si la procédure de filtrage est déclenchée, l'investissement direct étranger ne pourra être réalisé qu'après qu'une décision de filtrage autorisant l'investissement direct étranger en question ait été prise.

WHAT'S NEXT?

Si un investissement direct étranger a été réalisé sans notification ni autorisation obtenue au titre de la décision d'examen préalable, le Ministre peut suspendre l'exercice des droits de vote liés à l'investissement direct étranger attaché aux titres détenus, directement ou indirectement, par l'investisseur étranger dépassant le seuil de 25% des droits de vote de l'entité de droit luxembourgeois jusqu'à ce que la situation soit régularisée et peut ordonner à l'investisseur étranger de modifier l'opération ou de faire rétablir à ses frais la situation antérieure. Sauf en cas d'atteinte imminente à la sécurité ou à l'ordre public, le Ministre informe préalablement par écrit l'investisseur étranger des faits constatés et allégués contre lui et l'avertit de son intention de prendre ces mesures. L'investisseur étranger dispose d'un délai de quinze jours calendaires pour faire connaître ses observations par écrit. Il peut également, dans le même délai, demander à être entendu et, le cas échéant, être assisté par un défenseur de son choix. Si l'investisseur étranger ne se conforme pas à l'arrêté dans le mois suivant la notification, le ministre peut lui infliger une amende pouvant aller jusqu'à 1 000 000 EUR si l'investisseur étranger est une personne physique et jusqu'à 5 000 000 EUR s'il s'agit d'une personne morale. Les amendes administratives sont payées dans les trente jours à compter de la date de notification de la décision. Passé ce délai, un rappel est adressé par lettre recommandée. Le rappel donne lieu à des intérêts moratoires calculés au taux légal.Lorsqu'une procédure de filtrage est lancée, le ministre des Affaires étrangères et européennes en informe les autres États membres et la Commission européenne en fournissant les informations visées à l'article 9, paragraphe 2, du règlement (UE) 2019/452. Si un investissement direct étranger projeté ou réalisé dans un autre État membre est susceptible de porter atteinte à la sécurité ou à l'ordre public

du Grand-Duché de Luxembourg, le ministre des Affaires étrangères et européennes peut demander des informations à l'État membre dans lequel l'investissement direct étranger est projeté. ou a été fait.La présente loi entrera en vigueur le 1er septembre 2023.

REGULATION ON THE COLLECTION OF GRANULAR CREDIT DATA AND CREDIT RISK DATA (ANACREDIT REGULATION)

CBL updates AnaCredit Reporting instructions / CBL met à jour les instructions de Reporting AnaCredit

On July 13 2023, the Central Bank of Luxembourg (CBL) updated its AnaCredit Reporting instructions.

Version française

Le 13 juillet 2023, la Banque Centrale du Luxembourg (CBL) a mis à jour ses instructions pour le reporting AnaCredit.

SUSTAINABLE FINANCE / GREEN FINANCE

CSSF publishes thematic review on the implementation of sustainability-related provisions by investment funds / La CSSF publie une évaluation thématique sur la mise en œuvre des dispositions liées à la durabilité par les fonds d'investissement

On August 3 2023, the Commission de Surveillance du secteur financier (CSSF) published a Thematic Review on the implementation of sustainability-related provisions in the investment fund industry.

The objective of this report is to inform the industry about the main observations that the CSSF has made in the context of this supervisory work and about the related recommendations for improvements in view of the applicable regulatory requirements.

Organisational arrangements of IFMs

IFMs remain entirely responsible for ensuring compliance with sustainability-related provisions that apply to them. Article 110(2) of the 2010 Law and Article 18(3) of the 2013 Law set forth that the IFM's liability is not affected by the delegation of any function to third parties. Point 416 of Circular CSSF 18/698 also includes this principle. Along the same lines, as specified in Question 3 of the CSSF FAQ on SFDR, the CSSF reminds IFMs that, "delegation of portfolio management by the IFM has no impact on the accountability and responsibility of the delegator, i.e. the IFM".

IFMs shall ensure that all relevant information pursuant to Article 10 of SFDR is made available on their website or on another website, for example the website where fund-related documentation is usually made available to investors (such as the financial product's own website, the website of its initiator or that of the PM). In any case, as regards its financial products, cross references must be made from the IFM's website to the relevant website where all relevant information pursuant to Article 10 of SFDR is made available. The CSSF also reminds IFMs that, in line with the requirements of Article 26 of CSSF Regulation No 10-4, Article 18 of the 2013 Law and Section 6.2.3 of Circular CSSF 18/698, delegation to third parties must be subject to proper written initial due diligence and ongoing monitoring by the IFM. It is the responsibility of IFMs to ensure that the due diligence performed on third parties takes due account of the sustainability-related obligations.

IFMs shall notably obtain the full documentation (i.e. on the methodology or model used) explaining how PMs embed sustainability-related provisions in their investment decisions. The CSSF further specifies that IFMs shall ensure that the KPIs provided by the delegated PM are comprehensive and complete, so as to allow an independent and in-depth review of the performance of the methodology/model used by the PM for the investment selection. Those KPIs shall also be established at appropriate frequency, giving due account to the periodicity of the fund's net asset value calculation.

The CSSF expects IFMs to address and cover in their risk management and internal governance processes all relevant sustainability risks that, in accordance with Article 2(22) of SFDR, could cause an actual or a potential material negative impact on the value of an investment. Sustainability risks may be relevant for all funds managed by an IFM, including those not disclosing under Article 8 or 9 of SFDR. As a result, IFMs shall establish, implement and maintain processes that provide, as of the product design phase and continuing throughout the entire product life cycle, for the identification and the management of the relevant sustainability risks for each fund under management. A sustainability risk management process notably involves, amongst others, reflecting the relevant sustainability risks, with the corresponding sustainability risk indicators, in the fund's risk profile, the risk limitation system and the corresponding reporting to the senior management and the board of directors. This also includes, where relevant, the implementation of stress tests and scenario analyses specifically designed towards the relevant sustainability risks for the funds under management. As a result of the above, it is important to specify that the integration of sustainability risks in the risk management processes is not limited to verifying on an ongoing basis the compliance of the investment portfolios of the funds managed with the ESG-related investment restrictions laid down in precontractual disclosures (e.g. minimum share of sustainable investments for funds disclosing under Article 9 of SFDR, the degree of taxonomy alignment of funds disclosing under Article 8 or 9 of SFDR).

Regarding investment compliance, the CSSF wishes to point out that IFMs shall have adequate checks/controls in place to monitor the compliance of all ESG-related restrictions laid down in precontractual disclosures.

Statement by IFMs that they do consider PAI of their investment decisions on sustainability factors

As from the entry into force of the SFDR RTS on 1 January 2023, where IFMs consider PAI of investment decisions on sustainability factors, they are required under Article 4 of the SFDR RTS to publish, by June 30 each year, a statement in the format of the template set out in Table 1 of Annex 1 of the SFDR RTS. Pursuant to Article 4(1) of the SFDR RTS, this statement shall be published on the IFM's website, in a separate section titled "Statement on principal adverse impacts of investment decisions on sustainability factors" in the website section "Sustainability-related disclosures" referred to in Article 23 of the SFDR RTS and shall cover the period of January 1 until December 31 of the preceding year, except for IFMs that publish the statement for the first time, as further specified under Article 4(3) of the SFDR RTS.

Compliance of precontractual disclosures, including product website disclosures

The CSSF expects IFMs to provide in precontractual disclosures sufficient details regarding the environmental/social characteristics or sustainable objectives pursued by a given fund. The description shall not be too general but shall be clearly stated and sufficiently explained so that investors are reasonably able to

understand the characteristics or objectives of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

The CSSF expects IFMs, whether they are disclosing under Article 6, 8 or 9 of SFDR, to use fund names that are aligned with the relevant fund's investment objective and policy and with the relevant principles-based guidance on fund names in the Supervisory Briefing. Finally, the CSSF expects IFMs to take due consideration of any future developments on that topic at European level.

The CSSF expects IFMs, after having carried out their own assessment of sustainable investments, to disclose the underlying assumptions used, in line with the requirements set out above and outlined by the European Commission. The CSSF considers that this information is particularly important to allow investors to make an informed decision of the investment proposed and to ensure adequate comparability between funds. The CSSF expects this information to be provided by IFMs as part of the precontractual disclosures and/or product website disclosures under Article 10 of SFDR. This information shall be sufficiently detailed and easily accessible, so that it can be considered as being comprehensible, clear and not misleading for investors.

IFMs are required to summarise in the "Summary" website section the information contained in the different sections referred to in Article 24 of the SFDR RTS for funds disclosing under Article 8 of SFDR and in Article 37 of the SFDR RTS for funds disclosing under Article 9 of SFDR. The summary section shall have a maximum length of two-sides of A4-sized paper when printed.

The CSSF reminds IFMs to comply with the requirements of Articles 32 and 45 of the SFDR RTS for the description in the "Data sources and processing" website section for funds disclosing under Article 8 or 9 of SFDR, respectively. In the "Data sources and processing" website section, IFMs shall describe all the following:

(a) the data sources used to attain the sustainable investment objective of the financial product (for funds disclosing under Article 9 of SFDR) or to attain each of the environmental or social characteristics promoted by the financial product (for funds disclosing under Article 8 of SFDR);

(b) the measures taken to ensure data quality;

(c) how data are processed; and

(d) the proportion of data that are estimated.

The CSSF expects IFMs to provide a relevant and sufficiently detailed description, in plain language, to allow investors to make an informed judgement about data sources, how data are processed and the proportion of estimated data. A good practice of clear and comprehensive description for investors the CSSF has observed is IFMs presenting data sources in tabular form with, amongst others, ESG metrics, definitions and data sources.

In addition, IFMs shall ensure consistency between (a) environmental/social characteristics or sustainable objectives, (b) indicators to measure the level of attainment of such characteristics or sustainable objectives and (c) the binding elements of the investment strategy, complemented with appropriate ESG metrics and data sources available, described in the product website disclosures.

The CSSF expects the periodic disclosure to present the performance of the sustainability indicators used to measure how each of these environmental/social characteristics were met for funds disclosing under Article 8 of SFDR, or the overall sustainability?related impact of the financial product by means of relevant sustainability indicators for funds disclosing under Article 9 of SFDR, respectively. IFMs should also provide in that context information on the sustainability indicators

used, the limitations defined in precontractual disclosures for these indicators (if any) and a quantitative assessment of these indicators realised during the period. When using a specific internal methodology (e.g. scoring methodology), the disclosures should provide adequate transparency on the methodology, together with the underlying assumptions.

The CSSF expects that, when IFMs refer to product credentials in the marketing communications, a clear reference to the entity having granted the credential is being made. Investors also need to be able to clearly identify the fund which has been granted the credential as well as the date on which such credential was granted. Good practices observed by the CSSF include the addition of a clear and visible reference in the fund marketing communications, providing information and a short description of the entity having granted the credential as well as the hyperlink to the website where further information on the credential can be found. The CSSF also expects the use of hyperlinks in the marketing communications to be limited. In line with point 28 of the ESMA Supervisory Briefing, IFMs are required to ensure that hyperlinks in the marketing communications direct to the exact location where the relevant information may be found, without having investors search for the required information in the volume of general information provided. Finally, IFMs are asked to maintain hyperlinks over time so as to ensure that investors have access to the required information at all times. A good practice is for IFMs either to indicate in the marketing communications one hyperlink which points to all the sustainability-related information (e.g. fund documentation, marketing communications) of the fund or, for the hyperlink, to direct to the fund's webpage. Investors should then be able to easily find the fund-specific sustainability-related information, by only indicating the name of that fund.

When exclusion policies are set forth as a binding element in the precontractual disclosures, IFMs shall ensure, firstly, that the portfolio holdings comply at all times with the exclusion criteria contained in the precontractual disclosures and, secondly, that the design of such exclusion policies is consistent with the sustainable objective pursued by funds disclosing under Article 9 of SFDR, or the promotion of environmental and/or social characteristics of funds disclosing under Article 8 of SFDR, respectively.

Version française

Le 3 août 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une revue thématique sur la mise en œuvre des dispositions liées à la durabilité dans le secteur des fonds d'investissement.

L'objectif de ce rapport est d'informer l'industrie sur les principales observations formulées par la CSSF dans le cadre de ces travaux de surveillance et sur les recommandations d'amélioration y afférentes au regard des exigences réglementaires applicables.

Dispositions organisationnelles des GFI

Les GFI restent entièrement responsables du respect des dispositions en matière de développement durable qui leur sont applicables. L'article 110(2) de la Loi de 2010 et l'article 18(3) de la Loi de 2013 prévoient que la responsabilité du GFI n'est pas affectée par la délégation d'une quelconque fonction à des tiers. Le point 416 de la circulaire CSSF 18/698 reprend également ce principe. Dans le même esprit, comme précisée dans la Question 3 de la FAQ CSSF sur le SFDR, la CSSF rappelle aux GFI que « la délégation de la gestion de portefeuille par le GFI n'a aucun impact sur l'imputabilité et la responsabilité du délégant, c'est-à-dire le GFI ».

Les GFI doivent veiller à ce que toutes les informations pertinentes au sens de l'article 10 du SFDR soient mises à disposition sur leur site Internet ou sur un autre site Internet, par exemple le site Internet sur lequel la documentation relative au fonds est habituellement mise à la disposition des investisseurs (tel que le site Internet du produit financier, le site Internet de son initiateur ou celui du PM). En tout état de cause, s'agissant de ses produits financiers, des références croisées doivent être faites depuis le site Internet du GFI vers le site Internet concerné où sont mises à disposition toutes les informations pertinentes au sens de l'article 10 du SFDR. La CSSF rappelle également aux GFI que, conformément aux exigences de l'article 26 du règlement CSSF n° 10-4, de l'article 18 de la loi 2013 et de la section 6.2.3 de la circulaire CSSF 18/698, la délégation à des tiers doit faire l'objet d'une réglementation appropriée. due diligence initiale écrite et suivi permanent par le GFI. Il est de la responsabilité des GFI de s'assurer que les due diligences exercées à l'égard des tiers tiennent dûment compte des obligations liées au développement durable.

Les GFI doivent notamment obtenir la documentation complète (c'est-à-dire sur la méthodologie ou le modèle utilisé) expliquant comment les gestionnaires de fonds intègrent des dispositions liées à la durabilité dans leurs décisions d'investissement. La CSSF précise en outre que les GFI doivent s'assurer que les KPI fournis par le PM délégué sont complets et exhaustifs, de manière à permettre un examen indépendant et approfondi de la performance de la méthodologie/modèle utilisé par le PM délégué pour la sélection des investissements. Ces KPI seront également établis à une fréquence appropriée, en tenant dûment compte de la périodicité de calcul de la valeur liquidative du fonds.

La CSSF attend des GFI qu'ils abordent et couvrent dans leurs processus de gestion des risques et de gouvernance interne tous les risques pertinents en matière de durabilité qui, conformément à l'article 2, paragraphe 22, du SFDR, pourraient avoir un impact négatif matériel, réel ou potentiel, sur la valeur d'un investissement. Les risques de durabilité peuvent être pertinents pour tous les fonds gérés par un GFI, y compris ceux qui ne publient pas d'informations au titre de l'article 8 ou 9 du SFDR. En conséquence, les GFI doivent établir, mettre en œuvre et maintenir des processus qui assurent, dès la phase de conception du produit et tout au long du cycle de vie du produit, l'identification et la gestion des risques de durabilité pertinents pour chaque fonds sous gestion. Un processus de gestion des risques de durabilité implique notamment, entre autres, de refléter les risques de durabilité pertinents, avec les indicateurs de risque de durabilité correspondants, dans le profil de risque du fonds, le système de limitation des risques et le reporting correspondant à la direction générale et au conseil d'administration. Cela comprend également, le cas échéant, la mise en œuvre de tests de résistance et d'analyses de scénarios spécifiquement conçus en fonction des risques de durabilité pertinents pour les fonds sous gestion. En conséquence de ce qui précède, il est important de préciser que l'intégration des risques de durabilité dans les processus de gestion des risques ne se limite pas à vérifier en permanence la conformité des portefeuilles d'investissement des fonds gérés avec les restrictions d'investissement imposées en matière ESG. dans les informations précontractuelles (par exemple, la part minimale d'investissements durables pour les fonds déclarant au titre de l'article 9 du SFDR, le degré d'alignement taxonomique des fonds déclarant au titre de l'article 8 ou 9 du SFDR).

Concernant la conformité des investissements, la CSSF souhaite souligner que les GFI doivent mettre en place des contrôles adéquats pour contrôler le respect de toutes les restrictions liées à l'ESG énoncées dans les informations précontractuelles.

Déclaration des GFI selon laquelle ils tiennent compte du PAI dans leurs décisions d'investissement en fonction des facteurs de durabilité

À compter de l'entrée en vigueur du SFDR RTS le 1er janvier 2023, où les GFI examinent le PAI des décisions d'investissement sur les facteurs de durabilité, ils sont tenus en vertu de l'article 4 du SFDR RTS de publier, avant le 30 juin de chaque année, une déclaration au format du modèle présenté dans le tableau 1 de l'annexe 1 du SFDR RTS. Conformément à l'article 4(1) du SFDR RTS, cette déclaration sera publiée sur le site Internet du GFI, dans une section distincte intitulée « Déclaration sur les principaux impacts négatifs des décisions d'investissement sur les facteurs de durabilité » dans la section « Informations liées au développement durable » du site Internet. visé à l'article 23 du SFDR RTS et couvrira la période du 1er janvier au 31 décembre de l'année précédente, à l'exception des GFI qui publient la déclaration pour la première fois, comme précisé à l'article 4(3) du SFDR RTS .

Conformité des informations précontractuelles, y compris les informations sur les sites Web des produits

La CSSF attend des GFI qu'ils fournissent dans les informations précontractuelles suffisamment de détails concernant les caractéristiques environnementales/sociales ou les objectifs durables poursuivis par un fonds donné. La description ne doit pas être trop générale mais doit être clairement énoncée et suffisamment expliquée pour que les investisseurs soient raisonnablement en mesure de comprendre les caractéristiques ou les objectifs du produit d'investissement qui leur est proposé et, par conséquent, de prendre des décisions d'investissement en toute connaissance de cause.

La CSSF attend des GFI, qu'ils publient des informations au titre de l'article 6, 8 ou 9 du SFDR, qu'ils utilisent des noms de fonds qui sont alignés sur l'objectif et la politique d'investissement du fonds concerné et sur les orientations fondées sur les principes pertinentes sur les noms de fonds dans le Briefing de Surveillance. Enfin, la CSSF attend des GFI qu'ils prennent dûment en considération toute évolution future sur ce sujet au niveau européen.

La CSSF attend des GFI, après avoir procédé à leur propre évaluation des investissements durables, qu'ils divulguent les hypothèses sous-jacentes utilisées, conformément aux exigences énoncées ci-dessus et définies par la Commission européenne. La CSSF considère que ces informations sont particulièrement importantes pour permettre aux investisseurs de prendre une décision éclairée concernant l'investissement proposé et pour garantir une comparabilité adéquate entre les fonds. La CSSF attend que ces informations soient fournies par les GFI dans le cadre des informations précontractuelles et/ou des informations sur les sites Internet des produits au titre de l'article 10 du SFDR. Ces informations sont suffisamment détaillées et facilement accessibles pour pouvoir être considérées comme compréhensibles, claires et non trompeuses pour les investisseurs.

Les GFI sont tenus de résumer dans la rubrique « Synthèse » du site Internet les informations contenues dans les différentes sections mentionnées à l'article 24 du SFDR RTS pour les fonds déclarant au titre de l'article 8 du SFDR et à l'article 37 du SFDR RTS pour les fonds déclarant au titre de l'article 9. du SFDR. La section récapitulative doit avoir une longueur maximale de deux faces de papier de format A4 une fois imprimée.

La CSSF rappelle aux GFI de respecter les exigences des articles 32 et 45 du SFDR RTS pour la description dans la rubrique « Sources et traitements des données » du site Internet pour les fonds déclarant respectivement au titre de l'article 8 ou 9 du SFDR. Dans la rubrique « Sources et traitements des données » du site Internet, le GFI décrit les éléments suivants :

(a) les sources de données utilisées pour atteindre l'objectif d'investissement durable du produit financier (pour les fonds déclarant au titre de l'article 9 du SFDR) ou pour atteindre chacune des caractéristiques environnementales ou sociales promues par le produit financier (pour les fonds déclarant au titre de l'article 8 du SFDR) SFDR);

(b) les mesures prises pour garantir la qualité des données;

(c) comment les données sont traitées ; et

(d) la proportion de données estimées.

La CSSF attend des GFI qu'ils fournissent une description pertinente et suffisamment détaillée, dans un langage simple, pour permettre aux investisseurs de porter un jugement éclairé sur les sources de données, la manière dont les données sont traitées et la proportion de données estimées. Une bonne pratique de description claire et complète pour les investisseurs observée par la CSSF consiste pour les GFI à présenter les sources de données sous forme de tableau avec, entre autres, des indicateurs ESG, des définitions et des sources de données.

En outre, les GFI doivent assurer la cohérence entre (a) les caractéristiques environnementales/sociales ou les objectifs durables, (b) les indicateurs permettant de mesurer le niveau d'atteinte de ces caractéristiques ou objectifs durables et (c) les éléments de la stratégie d'investissement, complétés par des mesures ESG appropriées et des sources de données disponibles, décrites dans les informations du site Web du produit.

La CSSF attend des informations périodiques qu'elles présentent la performance des indicateurs de durabilité utilisés pour mesurer la façon dont chacune de ces caractéristiques environnementales/sociales a été remplie pour les fonds publiant en vertu de l'article 8 du SFDR, ou l'impact global du produit financier en matière de durabilité au moyen de indicateurs de durabilité pertinents pour les fonds divulgués conformément à l'article 9 du SFDR, respectivement. Les GFI devraient également fournir dans ce contexte des informations sur les indicateurs de durabilité utilisées, les limites définies dans les informations précontractuelles pour ces indicateurs (le cas échéant) et une évaluation quantitative de ces indicateurs réalisée au cours de la période. Lorsque vous utilisez une méthodologie interne spécifique (par exemple, une méthodologie de notation), les informations fournies doivent fournir une transparence adéquate sur la méthodologie, ainsi que sur les hypothèses sous-jacentes.

La CSSF s'attend à ce que, lorsque les GFI font référence aux informations d'identification des produits dans leurs communications marketing, une référence claire à l'entité ayant accordé l'identification soit faite. Les investisseurs doivent également être en mesure d'identifier clairement le fonds qui a obtenu l'accréditation ainsi que la date à laquelle cette accréditation a été accordée. Les bonnes pratiques observées par la CSSF incluent l'ajout d'une référence claire et visible dans les communications marketing du fonds, fournissant des informations et une brève description de l'entité ayant accordé le titre ainsi que l'hyperlien vers le site Internet où de plus amples informations sur le titre peuvent être trouvées. trouvé. La CSSF attend également que l'utilisation d'hyperliens dans les communications marketing soit limitée. Conformément au point 28 du Supervisory Briefing de l'ESMA, les GFI sont tenus de veiller à ce que les hyperliens dans les communications marketing dirigent vers l'endroit exact où les informations pertinentes peuvent être trouvées, sans que les investisseurs recherchent les informations requises dans le volume d'informations générales fournies. . Enfin, il est demandé aux GFI de maintenir des liens hypertextes dans la durée afin de garantir que les investisseurs aient accès à tout moment aux informations requises. Une bonne pratique consiste pour les GFI soit à indiquer dans les communications marketing un hyperlien qui pointe vers toutes les informations liées à la durabilité (par exemple, la documentation du fonds, les communications marketing) du fonds, soit, pour l'hyperlien, à diriger vers la page Web du fonds. Les investisseurs devraient alors pouvoir trouver facilement les informations relatives à la durabilité spécifiques au fonds, en indiquant uniquement le nom de ce fonds.

Lorsque des politiques d'exclusion sont présentées comme un élément contraignant dans les informations précontractuelles, les GFI doivent s'assurer, d'une part, que les participations en portefeuille sont conformes à tout moment aux critères d'exclusion contenus dans les informations précontractuelles et, d'autre part, que la conception de ces politiques d'exclusion est cohérent avec l'objectif durable poursuivi par les fonds déclarant au titre de l'article 9 du SFDR, ou la promotion des caractéristiques environnementales et/ou sociales des fonds déclarant au titre d'Article 8 du SFDR, respectivement.

NETHERLANDS

DIGITAL ECONOMY

Overheid publishes Digital Services Regulation Implementation Act

On July 14 2023, the Overheid (Government Documents in the Netherlands) published the Digital Services Regulation Implementation Act.

On November 16 2022, the Digital Services Act (DSA) entered into force. The DSA harmonises the rules applicable to so-called providers of brokering services, including online platforms, online marketplaces, social media services and internet service providers. The DSA aims to ensure a safe, predictable and trustworthy online environment, addressing the dissemination of illegal content online and the societal risks that the spread of disinformation or other content may pose, effectively protecting fundamental rights and facilitating innovation. To this end, the DSA contains, on the one hand, a framework for the liability of providers of brokering services for information provided by their users and, on the other hand, a number of due diligence obligations that those providers must comply with when providing their services.

This bill provides for provisions to implement the DSA. The bill appoints the Netherlands Authority for Consumers and Markets (ACM) as digital services coordinator and as supervisor of most of the regulation. The bill designates the Dutch Data Protection Authority (DPA) as the other competent authority, for the supervision of two prohibitions on the use of profiling when showing advertisements on online interfaces of online platforms.

The bill contains rules on the powers for the supervision and enforcement of the regulation by these supervisors. The bill also contains provisions on cooperation and data exchange between the DPA and the ACM and on cooperation with the European Commission. Finally, the bill provides for a number of amendments to other legislation.

FINANCIAL MARKET INFRASTRUCTURE (FMI)

Overheid publishes Regulation of the Minister of Finance of 18 August 2023 on the management of Financial Markets

On August 23 2023, the Overheid (Government Documents in the Netherlands) published the Regulation of the Minister of Finance of August 18 2023 on the management of Financial Markets. The Regulation amends the Financial Supervision Funding Regulations one-off acts in connection with the performance of acts under Regulation (EU) 2022/858 on a pilot scheme for market infrastructures based on distributed ledger technology.

This regulation, together with the DLT Implementing Decree, implements the pilot regime regulation to Regulation (EU) 2022/858 of the European Parliament and of the Council of May 30 2022 on a pilot scheme 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 (OjEU 2022, L 151) ('the Regulation') and makes it by amending of the Regulation on the financing of financial supervision one-off actions possible that the Netherlands Authority for the Financial Markets (AFM) may charge a fee for work carried out under the Regulation.

The scheme sets the rates that the AFM sets for certain transactions it carries out under the regulation. To this end, a new section to Article 4, third paragraph, of the Regulation on the financing of financial supervision on a one-off basis actions added.

The EU components. A4.01, EU. A4.02 and EU. A4.03 of Article 4, third paragraph, of the Conditions of Employment make it possible for the AFM to pay a fee of € 200 per hour that it works carried out with a maximum of € 100,000 to be charged for applications from parties to grant a specific authorisation as referred to in Article 8, first paragraph, 9, first paragraph, 10, first paragraph of the Regulation and for amendments thereto.

The EU components. A4.04 and EU. A4.05 of article 4, third paragraph, of the scheme the basis for the AFM to pay a fee of € 200 per hour it performs work to be charged with a maximum of € 100,000 for applications from parties up to the granting of an exemption as referred to in the second and third paragraphs of Article 4, and 5, second to ninth paragraphs, of the Regulation and for amendments thereto.

For the amount of the fee is affiliated with the already included in the scheme Amounts for applying for authorisation under the Markets in financial instruments 2014.

As the regulation will apply from March 23 2023, the scheme will enter into force effect from the day following the date of issue of the Official Gazette in which it is placed. This deviates from the fixed moments of change for legislation in relation to the implementation of EU law.

This scheme only has financial implications for undertakings which, on the basis of of the Regulation apply for a specific authorisation or an exemption. For the vast majority of financial companies, However, this arrangement is nothing. There are no consequences for the regulatory burden, now that the amendment regulation does not introduce or modify any substantive provisions. Nor does this regulation have any consequences for the state budget.

GLOBAL SYSTEMICALLY IMPORTANT INSTITUTIONS (G-SIIS) / OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS (O-SIIS)

Overheid implements Article 2(1) and (3) of Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending of Regulation (EU) No 575/2013 and Directive 2014/59/EU

On July 14 2023, the Overheid (Government Documents in the Netherlands) implemented Article 2(1) and (3) of Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending of Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect placement of instruments eligible for compliance with the minimum requirement for own funds and eligible liabilities; (OjEU 2022, L 275).

The Minister of Finance shall share in accordance with designation 9.13 of the Directions for regulatory purposes, article 2, sections 1 and 3 of Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect placement of instruments eligible for compliance with the minimum requirement for own funds and eligible liabilities; (OjEU 2022, L 275) has been implemented through existing regulations on the manner as indicated in the correlation table annexed to this Communication is included.

The date from which the abovementioned Article of the Directive in the Netherlands rule of law applies is 15 November 2023.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

The Netherlands publishes Amendment of the Financial Supervision Act implementing MiCA

On July 14 2023, the Overheid (Government Documents in the Netherlands) published an amendment to the Financial Supervision Act, implementing Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on markets in crypto-assets (MiCA).

MiCA creates a regulatory framework for crypto service providers and crypto issuers. The regulation pursues several objectives, including: providing legal certainty within the EU, stimulating innovation, regulating consumer protection and setting rules on market integrity and ensuring financial stability.

This bill is intended to amend the Financial Supervision Act (Wft) for the implementation of Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on crypto-asset markets and to amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (PbEU 2023, L 150) (MiCA).

MiCA regulates the issuance and granting of crypto assets and crypto asset services. Crypto-assets are digital representations of values or of rights. These values are often non-intrinsic. In that case, crypto assets

not based on an underlying asset, product or service, as it is the case of financial instruments. The market value of these crypto assets is therefore subjective and based solely on what the buyer is willing to pay for it.

RISK MANAGEMENT

NVB publishes two new Standards for risk-based customer research

On July 17 2023, the Dutch Banking Association (Nederlandse Vereniging van Banken, NVB) published two new Standards for risk-based customer research.

The NVB Standard on the use of models in generating alerts and signals provides an overview of how these can be used in a reliable and responsible manner in the risk-based approach to customer research. The aim of both Standards is to reduce the impact for customers and increase efficiency.

These new Standards complement the five previously published Standards that provide clear starting points for banks to perform their role as gatekeepers proportionately and with a focus on real risks. The NVB Standards are the result of a series of roundtable discussions between banks and supervisor De Nederlandsche Bank (DNB) on a more risk-based approach by banks and supervisors to prevent abuse of the financial system.

In the coming period, the NVB will publish a total of about 10 more standards. Special attention is paid to entrepreneurs from high-risk sectors who often encounter obstacles when arranging their banking affairs due to the bank's intensive customer research. That is why we are working together with the relevant sector organisation on specific Sector Standards. The aim is to jointly determine where the real risks lie for certain sectors so that customer research by banks can be targeted at this. The NVB hopes to initially publish new Standards for non-profit organizations, sex workers and crypto companies in the coming months. Standards for automotive companies, retailers and payment institutions, among others, are expected to follow later.

SPAIN

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

Spain approves Royal Decree 609/2023 creating the Central Register of Beneficial Ownership

On July 17 2023, Spain approved the Royal Decree 609/2023 establishing the Central Register of Beneficial Ownership (CRBO) and its regulation.

The CRBO, managed by the Ministry of Justice, will be the central register for Spain, providing information about beneficial ownership for entities and structures. It will be connected to other EU Member States' registers to prevent money laundering and terrorist financing.

The CRBO will contain information about Spanish legal persons, entities without legal personality managed in Spain, and entities intending to do business or acquire real estate in Spain. Operators must verify and update their beneficial ownership information in the CRBO.

Authorized parties, including Spanish and EU authorities, notaries, registrars, and obliged entities, can access information in the CRBO based on their role and legitimate interest. Breach of declaring beneficial ownership may lead to sanctions and restrictions on registering in the Commercial Registry. The CRBO aims to enhance transparency and compliance with anti-money laundering and counter-terrorism financing regulations.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

CNMV restricts CFDs advertising and limits operations of leveraged instruments to retail

On 12 July 2023, the Comisión Nacional del Mercado de Valores (CNMV) approved a Resolution on intervention measures for the marketing, distribution, or sale of financial contracts for differences (CFD) and other leveraged instruments to retail investors.

The Resolution prohibits the advertisement of these products to retail investors and introduces restrictions on remuneration policies and sales techniques. It also establishes intervention measures for the marketing, sale, and distribution of other leveraged instruments to retailers. These measures aim to enhance investor protection by addressing certain commercial and advertising practices that had hindered the effectiveness of existing regulations and intervention measures. Furthermore, the Resolution improves guarantees for retailers against excessive leverage practices in other instruments, such as futures and certain options.

REGULATION ON SCREENING OF FOREIGN DIRECT INVESTMENTS (FDI SCREENING REGULATION)

Spain publishes regulation for foreign investments

On July 4 2023, Spain published a Regulation for foreign investments in Spain and Spanish investments abroad.

The main objective of this regulation is to modernize and streamline the declaration process for foreign investments in alignment with global standards. It also establishes a framework for monitoring foreign direct investments within the European Union based on security and public order considerations.

Specific areas of investment, such as defense and weapons, are addressed, and a simplified notification and processing procedure for certain foreign investments are introduced. The regulation follows principles of good governance, including necessity, proportionality, and transparency, to enhance investment security and efficiency while reducing administrative burdens for investors. Moreover, it complies with international agreements and the EU's trade and investment commitments.

UNITED KINGDOM

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

FCA publishes expectations for UK crypto asset businesses complying with the Travel Rule

On August 17 2023, the Financial Conduct Authority (FCA) published expectations for UK crypto asset businesses complying with the Travel Rule.

From September 1 2023, crypto asset businesses in the UK will be required to collect, verify and share information about crypto asset transfers, known as the 'Travel Rule'.

The Financial Action Task Force (FATF) has called on other jurisdictions to swiftly implement the Travel Rule, which aligns practices for crypto asset businesses sending and receiving transactions with those common in other areas of financial services. In June 2023, FATF highlighted the challenges arising from delays in adoption and different timelines for enforcement of the Travel Rule across jurisdictions.

As a result to this, the FCA expects firms to:

- Take all reasonable steps and exercise all due diligence to comply with the Travel Rule
- Firms remain responsible for achieving compliance with the Travel Rule, even when using third-party suppliers
- Fully comply with the Travel Rule when sending or receiving a crypto asset transfer to a firm that is in the UK, or any jurisdiction that has implemented the Travel Rule
- Regularly review the implementation status of the Travel Rule in other jurisdictions and adapt business processes as appropriate.

When sending a crypto asset transfer to a jurisdiction without the Travel Rule:

- Take all reasonable steps to establish whether the firm can receive the required information
- If the firm cannot receive the necessary information, the UK crypto asset business must still collect and verify the information as required by the Money Laundering Regulations (MLRs) and should store that information before making the crypto asset transfer.

When receiving a crypto asset transfer from a jurisdiction without the Travel Rule:

- If the crypto asset transfer has missing or incomplete information, UK crypto asset businesses must consider the countries in which the firm operates and the status of the Travel Rule in those countries
- The UK crypto asset business should take these factors into account when making a risk-based assessment of whether to make the crypto assets available to the beneficiary.

To further support crypto asset businesses, the FCA have been working with industry, the Joint Money Laundering Steering Group (JMLSG) and HM Treasury (HMT), on guidance to help firms comply with the Travel Rule.

Firms had until August 25 2023 to input to the guidance.

CLEARING OBLIGATIONS

BoE publishes consultation paper on ensuring continuity of critical clearing services

On August 2 2023, the Bank of England (BoE) published Consultation Paper titled "Ensuring continuity of critical clearing services: the Bank of England's approach to discretionary payments by central counterparties".

This consultation paper (CP) sets out the BoE's proposed approach to its power to temporarily restrict or prohibit discretionary payments to shareholders or employees of recognised UK central counterparties (CCP) in severe circumstances. This CP is relevant for those same CCPs, which are supervised by the Bank and could be subject to directions given by the Bank under this power. This power does not apply to third-country CCPs offering services in the UK.

The power to temporarily restrict or prohibit discretionary payments to shareholders or employees of CCPs is a new power conferred upon the Bank by the Financial Services and Markets Act 2023 (the Act), which requires the Bank to publish a statement of its policy with respect to giving directions under this power. This CP proposes and consults on the Bank's draft statement of policy (SoP) 'Ensuring continuity of critical clearing services: the Bank of England's approach to discretionary payments by central counterparties' (appendix).

The proposals set out in this CP are:

- the Bank's proposed approach to the statutory conditions for the use of the power, including circumstances for giving a direction to restrict or prohibit discretionary payments; and
- the proposed process for giving any direction under this power.

The proposed SoP seeks to clarify the types of factors the Bank may consider in assessing the statutory conditions for the use of the power, the types of circumstances that could lead to the statutory conditions being deemed to be met, and the Bank's approach to the use of the power to support its objective to protect and enhance UK financial stability through ensuring the continuity of critical clearing services.

In developing the proposals in this CP, the Bank has considered its objective to protect and enhance the financial stability of the UK, its statutory obligations and other relevant considerations, including the Bank's considerations on the costs and benefits of the proposals. The proposals in this CP seek to provide transparency and avoid circumstances where the Bank's use of the power to restrict or prohibit discretionary payments may give rise to an undue burden. The Bank considers that its proposed approach would not place an undue burden on firms and that the proposed approach is aligned with the Bank's financial stability objective.

CONSUMER PROTECTION

FCA updates webpage on advice guidance boundary review

On August 3 2023, the Financial Conduct Authority (FCA) updated its webpage on advice guidance boundary review.

This update is linked to a previous Consultation paper (CP22/24: Broadening access to financial advice for mainstream investments).

The review aims to ensure that consumers get the help they want, at the time they need it, and at a cost that is affordable, to help them make informed financial decisions.

The following key themes and insights have emerged from the early phase of this work, informed by engagement with industry and consumer groups, and which will guide the next phase of the review:

- The solution to this challenge will not be met by changes to regulated advice alone. People's needs are diverse and vary over their lifetime. We need firms to actively engage and provide flexible forms of support that can adapt to different types of financial decisions.
- To provide more support to more people it will be necessary for firms and consumers to manage risk, rather than eliminate it. This is because risk is a key driver of cost to firms and ultimately to consumers which directly impacts on the availability of support.
- Any solution will rely on support being provided on a commercial basis. The review will need to focus on outcomes and design a regulatory system where commercially viable models of support can emerge.
- This review should leverage the Consumer Duty, to set clear expectations for the support that firms provide their customers and ensure that consumer protection remains at the core of any future regime, and we will work closely with the Financial Ombudsman Service to do so.

FINANCIAL REPORTING

FCA publishes a technical note on the preparation and publication of annual financial reports

On July 28 2023, the Financial Conduct Authority (FCA) published a technical note on the preparation and publication of annual financial reports.

The Primary Market Technical Note serves as a supplementary guide for in-scope companies in meeting their obligations to prepare annual financial statements using a tagged structured digital reporting format, as outlined in DTR 4.1.16R to DTR 4.1.18R. This guidance replaces the UK version of the EU Transparency Directive's regulatory technical standard for the European Single Electronic Format (ESEF). By adhering to the rules and guidance specified in DTR 4.1.15R to DTR 4.1.23G, as well as the recommendations in this Technical Note, companies can ensure compliance with the necessary requirements for the preparation and publication of their annual financial reports.

The overarching purpose of this Technical Note is to facilitate the smooth transition of in-scope companies towards adopting the tagged structured digital reporting format for their annual financial statements. This format enables the integration of financial data in a standardized and machine-readable manner, enhancing transparency, comparability, and accessibility for stakeholders.

The Technical Note offers crucial information on "generally accepted taxonomies," including the widely recognized 'ESEF' taxonomies, which are grounded in the IFRS Accounting Taxonomy published by the IFRS Foundation and regularly updated to align with the latest IFRS Accounting Taxonomy. Companies have the flexibility to choose between using the ESEF taxonomy based on the most recent version available before the start of the relevant financial year or opting for a subsequent version that becomes accessible before the deadline for publishing the annual financial report.

To support companies in making informed decisions, the Technical Note provides detailed tables indicating the generally accepted taxonomies for specific financial years. These tables include the reporting deadlines within which companies must prepare and publish their annual financial reports, which should also be filed in the FCA's National Storage Mechanism (NSM) within four months of the financial year-end. The guidance emphasizes the importance of using the correct and up-to-date taxonomies to ensure seamless acceptance of filings in the NSM. Filings that use outdated versions of taxonomies or omit necessary taxonomies will face rejection.

Moreover, the Financial Reporting Council has developed the 'UKSEF' taxonomy, an alternative to the ESEF taxonomy, based on the ESEF taxonomy. In-scope companies can use the UKSEF taxonomy alongside the ESEF taxonomy for specific financial years, as outlined in the Technical Note.

To further assist companies in navigating the process, the FCA's website contains essential online guidance on filing ESEF (or UKSEF) reports in the NSM. Additionally, the FCA will reconfigure the NSM validation mechanisms to align with the guidance in this Technical Note.

Ultimately, by providing comprehensive and precise guidelines, the Primary Market Technical Note empowers companies to make well-informed choices regarding the structured digital reporting format for their annual financial statements, fostering greater transparency and accountability in financial reporting practices.

FINANCIAL SERVICES

UK sets out the next phase of the UK's vision for financial markets

On July 10 2023, the Chancellor set out in a speech at Mansion House the government's progress in delivering an open, green, and technologically advanced financial services sector that is globally competitive, while retaining commitment to high international standards. The following day the Government built on the foundation of the speech by issuing a series of papers: a combination of consultations, calls for evidence, reports and feedback statements.

The Chancellor's speech was in broadly two parts.

1. A new set of "Mansion House Reforms" which focus principally on the pensions market:

- announcing the "Mansion House Compact", an agreement by two thirds of the largest pension providers to commit to allocate at least 5% of defined contribution default funds to unlisted equities by 2030;
- proposing a range of consultations with the aim of delivering greater incentives/ability for pension fund consolidation; and
- placing a sharper focus on improving the return on investment of pension fund assets.

2. A range of initiatives enhancing or progressing the "Edinburgh Reforms", launched by the Chancellor last December. These proposals include:

- proposals to reform the rules governing prospectuses;
- accepting the recommendations of the Investment Research Review, with the FCA committing to work to implement recommendations around unbundling research costs;
- establishing a new "intermittent trading venue" allowing companies to access capital markets before they list;
- progressing the repeal of retained EU law, including PRIIPs and the EU Long Term Investment Fund;
- granting regulators powers to ensure payments and e-money remain regulated and subject to appropriate supervision;
- consulting on a new digital securities sandbox (previously known as the FMI sandbox);
- launching an independent review of the future of payments, led by Joe Garner, former CEO of Nationwide, to report in the Autumn.

List of all papers published:

- Reform of the Consumer Credit Act: consultation
- Digitisation Taskforce
- Consultation on the Digital Securities Sandbox
- Future of Payments Review 2023
- State of the sector: annual review of UK financial services 2023
- Options for Defined Benefit schemes: a call for evidence
- Pension trustee skills, capability and culture: a call for evidence
- Helping savers understand their pension choices: supporting individuals at the point of access
- Ending the proliferation of deferred small pension pots
- Local Government Pension Scheme (England and Wales): Next steps on investments
- Analysing the impact of private pension measures on member outcomes
- Defined benefit pension scheme consolidation
- Value for Money: A framework on metrics, standards, and disclosures
- Extending opportunities for collective defined contribution pension schemes
- UK Retail Disclosure: consultation response
- Short Selling Regulation Review: Government response
- Short Selling Regulation Consultation: sovereign debt and credit default swaps

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

FCA publishes the results of its review on Authorised fund managers' assessments of fund value 2023

On August 10 2023, the Financial Conduct Authority (FCA) published the results of its review on Authorised fund managers (AFM)' assessments of fund value 2023.

Following a review of fund managers' value assessments started in 2017, the FCA has found that while many firms have better practices in place, some still require improvement.

These findings show that many firms have now fully integrated considerations on assessment of value into their product development and fund governance processes. This greater focus has also driven changes in fees and charges, resulting in savings of costs to consumers amounting to millions of pounds.

However, there remain outliers, where action needs to be taken. This is particularly important with the Consumer Duty which came into force on July 31, where firms are expected to deliver fair value for retail consumers.

What the review found:

- Examples of good practice include moving investors to clean share classes with no trail commission or cutting funds' fees.
- Some firms' independent non-executive directors did not provide sufficient challenge, with some accepting information provided to Boards at face value without probing further.
- Significant differences between good and poor practice in how AFMs assess their funds' performance.
- Firms putting too much emphasis on comparable market rates to justify their fees, rather than conducting an assessment using the full range of value assessment considerations.
- Some firms now have better processes for allocating costs but are reaching conclusions on AFM Costs and Economies of Scale that don't take into account the information made available by that better process.

The FCA expects firms to consider these findings and to make improvements where required.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

FCA publishes a statement on UK MiFIR transaction reports

On July 27 2023, the Financial Conduct Authority (FCA) published a statement on temporary measures for the reporting of certain fields in UK MiFIR transaction reports.

These measures apply to the waiver indicator, OTC post-trade indicator, commodity derivative indicator, and securities financing transaction indicator. Until the FCA's reviews of these fields are completed, they will not take action against firms that fail to populate these fields as required.

The FCA will disable transaction reporting validation rules CON-610 and CON-640 from September 2023 to prevent transaction reports from being rejected due to inaccuracies in these fields. Additionally, the UK MiFIR transaction reporting schema will be updated to allow reporting of all alphanumeric values in the waiver indicator and OTC post-trade indicator fields, enabling firms to report new trade reporting flags.

The FCA will communicate its plan for introducing the new schema to MDP submitting entities before the implementation date of the new rules introduced in PS23/4.

FCA revokes its transitional direction on the share trading obligation

On August 29 2023, the Financial Conduct Authority (FCA) updated its statement on the share trading obligation (STO) and the UK's derivatives trading obligation (DTO) to announce that it has revoked its transitional direction for the STO and has varied its transitional direction for the DTO under the UK Markets in Financial Instruments Regulation (UK MiFIR) respectively.

The FCA explains that, with effect from August 29 2023, the STO (which is set out in Article 23 of UK MiFIR) was revoked by the commencement of provisions in the Financial Services and Markets Act 2023. As a result, the UK STO ceases to be an obligation that firms need to comply with. The FCA is therefore revoking the direction it introduced under the temporary transitional power that modified the application of the STO.

The FCA explains that, with effect from August 29 2023, the DTO (which is set out in Article 28 of UK MiFIR) was modified by the commencement of provisions in the Financial Services and Markets Act 2023. The modifications bring the scope of the DTO in line with the scope of the clearing obligation in the UK version of the European Market Infrastructure Regulation – further information is set out in the accompanying explanatory note.

FCA updates statements of policy on the operation of the MiFID transparency regime (29/8/2023)

On August 29 2023, the Financial Conduct Authority (FCA) updated its statements of policy on the operation of the MiFID transparency regime.

The section on the double volume cap (DVC) has now been deleted from the document. This reflects the removal by the Financial Services and Markets Act 2023 of Article 5 of the UK Markets in Financial Instruments Regulation (UK MiFIR), which contained provisions on the DVC mechanism.

SECURITIES FINANCING TRANSACTIONS REGULATION (SFTR)

FCA publishes updated UK SFTR Validation Rules and XML Schemas

On August 1 2023, the Financial Conduct Authority (FCA) published updated UK SFTR Validation Rules and XML Schemas.

These draft amendments to the Validation Rules and XML schemas are meant to support the ongoing reporting of securities financing transactions under the UK Securities Financing Transactions Regulation (UK SFTR).

The amendments are in response to industry feedback and to address data quality issues.

The FCA invites comments on both documents from all relevant stakeholders by September 15 2023.

To allow firms adequate time to make the relevant systems updates we are proposing a go-live date for the amended Validation Rules and XML schemas to take effect on November 4 2024.

SUSTAINABLE FINANCE / GREEN FINANCE

UK Government issues guidance on UK Sustainability Disclosure Standards

On August 2 2023, the UK Government issued a guidance on UK Sustainability Disclosure Standards.

With this guidance, the Government gives information on the UK government's framework to create UK Sustainability Disclosure Standards (UK SDS) by assessing and endorsing the global corporate reporting baseline of IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (ISSB).

The Secretary of State for Business and Trade will consider the endorsement of the IFRS Sustainability Disclosure Standards, to create UK SDS by July 2024. UK endorsed standards will only divert from the global baseline if absolutely necessary for UK specific matters.

Following endorsement, UK SDS may be referenced in any legal or regulatory requirements for UK entities. Decisions to require disclosure will be taken independently by the UK government, for UK registered companies and limited liability partnerships, and by the Financial Conduct Authority (FCA) for UK listed companies.

By using the IFRS Sustainability Disclosure Standards as a baseline, the aim is for the information companies disclose under UK SDS to be globally comparable and decision-useful for investors. The disclosures required by these standards will help investors to compare information between companies, thereby aiding decision making; supporting the efficient allocation of capital, and smooth running of the UK's capital markets.

UK FINANCIAL SERVICES ACT

UK Legislation publishes Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023

On July 10 2023, the UK Legislation published The Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023. These Regulations are the first commencement regulations made under the Financial Services and Markets Act 2023.

Regulation 2 brings into force provisions of the Act on the day after these Regulations are made. Section 1 of the Act revokes retained EU law which is referred to in Schedule 1 to the Act. Paragraph (a) brings into force section 1(1) of the Act so far as it relates to the revocation of the provisions set out in paragraphs (f) and (g). The provisions in paragraph (f) contain deadlines in Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment

of a framework to facilitate sustainable investment (EUR 2020/852). The Money Market Funds Regulations 2018 (S.I. 2018/698) are set out in paragraph (g). Paragraph (b) brings into force other provisions of section 1 dealing with the revocation of retained EU law. Paragraphs (c) to (e) bring into force interpretative provisions and a power to modify retained EU law during a transitional period.

Regulation 3 brought into force on August 29 2023 section 1(1) of the Act so far as it relates to the revocation of the retained EU law listed in the Schedule to these Regulations.

Regulation 4 brought into force on August 29 2023 provisions of the Act dealing with:

- transitional amendments relating to financial instruments, derivatives, securitisation and critical third parties (Parts 1 to 3 and 6 of Schedule 2 and the partial commencement of section 2(1));
- the power to restate and modify retained EU law which is revoked by section 1(1) and Schedule 1, the power to replace references to EU directives and provision relating to requirements on regulators where they restate retained EU law in their rules (sections 4, 5 and 6);
- designated activities (section 8 and Schedule 3);
- the definition of the Bank of England's Financial Stability Objective (section (9(6));
- rules relating to investment exchanges and data reporting service providers (section 11);
- a financial market infrastructure sandbox (sections 13 to 17 and Schedule 4);
- critical third parties (sections 18 and 19);
- a power to make regulations relating to digital settlement assets (section 23);
- FCA and PRA objectives and regulatory principles (sections 25 to 28);
- FCA and PRA powers to make rules (sections 29 to 32 and 34);
- FCA and PRA engagement (sections 35 to 39);
- the duty of the FCA and others to co-operate and consult (section 40);
- regulator panels and related policy statements (sections 41 to 47);
- the Payment Systems Regulator (partial commencement of section 51 and Schedule 7);
- consultation on rules by the PRA, FCA and Payment Systems Regulator (section 53);
- central counterparties (partial commencement of section 57 and Schedule 11);
- miscellaneous amendments to FSMA (sections 59, 63 and 65 to 69);
- credit unions (section 73 and Schedule 14);
- miscellaneous amendments to the Banking Act 2009 (section 75);
- arrangements for the investigation of complaints (section 76);
- a review relating to forest risk commodities (section 79).

Regulation 5 brings into force on January 1 2024, the section 1(1) of the Act so far as it relates to the revocation of a number of provisions of retained EU law listed in Schedule 1 to the Act.

UK publishes Financial Services and Markets Act 2023 (Commencement No. 3) (Amendment) Regulations 2023

On August 25 2023, the UK published the Financial Services and Markets Act 2023 (Commencement No. 3) (Amendment) Regulations 2023.

These Regulations are the third commencement regulations made under the Financial Services and Markets Act 2023 (the Act) and amend the Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 (S.I. 2023/779 (C. 40)) (First Commencement Regulations) to correct an error in the First Commencement Regulations.

Section 1 of the Act (revocation of retained EU law relating to financial services and markets) revokes the retained EU law which is referred to in Schedule 1 to the Act. Regulation 3 of the First Commencement Regulations commences those revocations for the statutory instruments listed in the Schedule to the First Commencement Regulations. Those revocations came into force on August 29 2023.

Regulation 2 amends the Schedule to the First Commencement Regulations to omit the reference to the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388) (CITS Regulations). As a result, the revocation of the CITS Regulations did not come into force on August 29 2023; instead that revocation will come into force on a day appointed by the Treasury in a later instrument.

MONACO

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

Monaco publishes Law No. 1.549 of 6 July 2023 adapting legislative provisions on AML/CFT and the proliferation of weapons of mass destruction (Part I)

On July 14 2023, Monaco published the Law 1.549 of July 6 2023 amending provisions of the laws on the fight against money laundering, terrorism financing and the proliferation of weapons of mass destruction.

It creates the "Autorité Monégasque de Sécurité Financière" (the "AMSF"), replacing the "Service d'Information et de Contrôle sur les Circuits Financiers" while raising the obligations of the persons subject to due diligence obligations and specifying the corresponding sanctions.

Moreover, the Law raises obligations for professionals on the following:

- the elements to take into account while establishing a risk mapping concerning a given financial transaction, or
- the elements to take into consideration for their identification. Likewise, the duty to document is extended.

In relation to the compliance control terms, the "Ultimate Beneficial Owner – companies and intercompany partnership register" and "trust register" are retained, the Ultimate Beneficial Owner definition is now fully compliant with the F.A.T.F.'s.

Access to these registers may be extended to investigations relative to other offenses than those set in the Law, as long as the conditions regarding the persons entitled to said access are met. In other words, access by an authority without proper authorization could be invalidated. However, access to these registers in the framework of an international cooperation with comparable entities to the "Direction de la Sûreté Publique" may now only be done for investigations on offenses pursuant to the Law. The sharing of intelligence between the Principality of Monaco and a foreign State is therefore limited to the provisions of international treaties binding them.

The internal control protocols of the professionals now have to be communicated to the competent authorities as soon as they are enacted or updated, with an obligation on the authority to acknowledge receipt and put a sample to the test.

Regulatory dispositions are awaited to further implement the terms of the Law, as well as its effective date, fixed for the latest on September 30 2023.

BRAZIL

FINANCIAL SUPERVISION

CVM releases CVM/SRE Circular Letter 8/2023 containing new Guidelines on registration procedures for Public Offerings for the distribution of securities

On July 18 2023, the Comissão de Valores Mobiliários (CVM) released new Guidelines on the Automatic Registration Procedure for Public Offerings for the distribution of securities.

This document addresses how the system began to operationalise the access of representatives of leading coordinators.

Changes to the system

Recently, the Offer Registration System (SRE System) has undergone adaptations as a result of the end of the transitional rule contained in the rule that deals with the registration of public offering coordinators.

In order to implement such adaptations, changes were made to the dynamics of access by representatives of institutions to the SRE System. The representatives of the institutions that access the SRE System must:

1. be the master user for that type of participant; or
2. have been delegated access/function by the master user for the specific type of participant.

The following directors have access as master users:

(i) Director Responsible for the Intermediation of Public Distribution Offerings in the case of the participant "Coordinator of securities offerings";

(ii) Director Responsible for management (marked as "master" on the CVMWeb registration update screen and who is necessarily a physical portfolio manager registered with the CVM) in the case of the participant "Provider of portfolio management services"; and

(iii) Securitisation officer in the case of "Securitisation companies".

Intermediaries that have been in the transition rule provided for in article 23 of CVM Resolution 161 and have filed, by 7/1/2023, an application for registration with ANBIMA or CVM, are considered by the System as Full Coordinators and remain with access to the SRE System as before the adaptation dealt with herein, until they obtain registration as a Coordinator of securities offerings.

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

CVM publishes CVM/SSE Circular Letter 6/202 3 (OC 6/23) complementing clarifications on characterization of receivables tokens and fixed income tokens as securities

On July 5 2023, the Comissão de Valores Mobiliários (CVM) published complemented clarifications on the characterization of receivable tokens and fixed income tokens as securities.

This document, issued by the Superintendence of Securitization Supervision (SSE) of the Brazilian Securities and Exchange Commission (CVM), complements the manifestations of the technical area contained in the CVM/SSE Circular Letter C4/2023 (OC 4/23) on receivables tokens or fixed income (TR) tokens published in April 2023.

Both CB 4/23 and OC 6/23 are intended to publicize SSE's interpretations of the possibilities of framing TRs as transferable securities and are therefore not regulations of CVM.

The document emphasizes that the purpose of OC 4/23 was to clarify that certain modalities of investment in credit rights can be characterized as securities when offered publicly, according to the understanding of the technical area of the Authority.

In addition, it seeks to disclose some essential characteristics for the possible framing of certain modalities of these tokens as securities, without the objective of detailing all the possibilities of TR.

The new letter highlights that the clarifications presented in April were based on Guidance Opinion 40, in which the CVM consolidated the understanding on the application of securities regulation to crypto assets. Moreover, it points out that Law 14,430/22 brought the possibility of securitization via Cérificate de Reecívelis and via other securitization securities, in a more simple/generic way.

MALAYSIA

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

SC widens access and offer in fund management

On August 29 2023, the Securities Commission Malaysia (SC Malaysia) widened the access and offer in fund management.

In line with measures to liberalise the fund management industry, the SC introduced the Foreign Exempt Scheme (FES) framework, providing high net worth entities and institutional investors greater onshore access to foreign investment funds.

Additionally, the SC also introduced flexibility to wholesale fund managers seeking to invest in alternative investment products beyond the current conventional assets such as securities, derivatives, money market instruments and deposits.

These measures demonstrate the SC's continuous commitment to enhance the depth and breadth of the capital market. The SC's effort also aims to ensure an effective regulatory regime that facilitate product innovation while fostering an inclusive investment environment for investors with various risk appetites and needs.

The revised guidelines relating to these measures, which will take effect on August 29 2023 include:

1. Guidelines for the Offering, Marketing, and Distribution of Foreign Funds (OMD Guidelines)
2. Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (UCMP Guidelines)

The revised OMD guidelines also allow secondary listing of non-plain vanilla foreign exchange-traded funds (ETF), promoting more investment opportunities in the Malaysian market. This is subject to five such ETFs per foreign operator.

The enhancements to the guidelines provide clarity on expectations regarding the responsibilities of submitting parties for foreign funds, ensuring a clear and streamlined process.

RISK MANAGEMENT

SC Malaysia issues Guidelines to strengthen technology risk management of capital market entities

On August 1 2023, the Securities Commission Malaysia (SC Malaysia) issued Guidelines to strengthen technology risk management of capital market entities along with a Q&A.

The Guidelines set out the SC's expectations on capital market entities when they manage their technology risk. In formulating the Guidelines, the SC has taken into account feedback received from the Public Consultation Paper on The Proposed Regulatory Framework on Technology Risk Management, which was published last year.

Among the requirements set out in the Guidelines included are the establishment and implementation of an effective technology risk framework, technology project management, technology service provider management and cyber security management by capital market entities.

The Guidelines will be applicable to all capital market entities licensed, registered, approved, recognised or authorised by the SC. To allow sufficient time for capital market entities to familiarise and meet with the requirements of the Guidelines, the Guidelines is expected to come into effect in Q3 2024.

The SC will be engaging with related capital market entities to provide guidance, where required, on the requirements of the Guidelines. Any queries on the new Guidelines may be submitted to gtrm@seccom.com.my.

GUERNSEY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

GFSC issues final draft of AML/CFT guidance for registered directors

On August 9 2023, the Guernsey Financial Services Commission (GFSC) has issued in final draft form guidance for registered directors on their anti-money laundering and counter terrorist financing (AML/CFT) obligations.

This follows the introduction in July 2023 of a director registration regime for individuals using the up to six directorships exemption from fiduciary licensing where no other exemption from registration applies.

This guidance is being issued in draft form to allow for addressing any technical issues with the guidance which could hinder or prevent a registered director complying with their AML/CFT obligations. It will be issued in final form when the AML/CFT obligations upon registered directors, contained in Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, take effect from October 1 2023.

This guidance is for registered directors only as it reflects the very limited activity they can undertake. It takes account of feedback from the consultations held late last year on the establishment of a director registration regime.

INTERNATIONAL

SUSTAINABLE FINANCE / GREEN FINANCE

IFRS Foundation releases updated educational material to assist companies in incorporating climate-related matters into their financial statements using IFRS Accounting Standards

On July 4 2023, the IFRS Foundation published an updated version of its educational material developed to help companies determine how to consider climate-related matters when preparing their financial statements applying IFRS Accounting Standards.

IFRS Accounting Standards are developed by the International Accounting Standards Board (IASB) and do not refer explicitly to climate-related matters. However, the IASB's Standards require companies to consider climate-related matters in their financial statements if the effects of those matters are material. The educational material sets out examples of situations in which companies applying the IASB's Standards might need to consider the effects of climate-related matters in their financial statements.

The educational material was first published in 2020. The IFRS Foundation is publishing this updated version in light of developments including the International Sustainability Standards Board's (ISSB) inaugural IFRS Sustainability Disclosure Standards, issued on 26 June 2023. Consideration of the ISSB's Standards, together with the educational materials, may help companies better identify matters, including climate change, that affect the financial statements and help companies apply IFRS Accounting Standards.

The IASB is also working on a project on Climate-related Risks in the Financial Statements to explore whether and how financial statements can better communicate information about climate-related risks. The IASB will consider whether to include in the scope of the project sustainability-related risks and opportunities beyond those related to climate.

Educational material is also available on how the IFRS for SMEs® Accounting Standard requires companies to consider climate-related matters that have a material effect on the financial statements.

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