

June 2023

EUROPEAN UNION

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SUSTAINABLE FINANCE / GREEN FINANCE

- ESAs put forward common understanding of greenwashing and warn on risks
- EC publishes sustainable finance package

FRANCE

CCPS RECOVERY AND RESOLUTION REGULATION (CCPRRR)

- ACPR adopts ESMA guidelines on recovery plans for CCPs pursuant to Article 9 of CCPRR Regulation / L'ACPR adopte les lignes directrices de l'ESMA sur les plans de redressement des contreparties centrales en application de l'article 9 du règlement CCPRR

INVESTOR PROTECTION / CONSUMER PROTECTION

- France publishes Decree No.2023-417 on technical modalities for terminating contracts electronically / La France publie le décret n° 2023-417 relatif aux modalités techniques de résiliation des contrats par voie électronique

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MiFID II / MiFIR)

- AMF adopts ESMA Guidelines on certain aspects of the MiFID II suitability requirements / L'AMF adopte les lignes directrices de l'ESMA sur certains aspects des exigences d'adéquation client de MiFID II

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

- France publishes Decree No.2023-421 adapting securities law to the European "pilot regime" regulation / La France publie le décret n°2023-421 portant adaptation du droit des valeurs mobilières au règlement européen « régime pilote »

SUSTAINABLE FINANCE / GREEN FINANCE

- AMF publishes summary of SPOT controls on contractual extra-financial commitments of asset management companies / L'AMF publie la synthèse des contrôles SPOT sur les engagements extra-financiers contractuels des gestionnaires d'actifs

BELGIUM

GOVERNANCE

- FSMA publishes questionnaires concerning the good repute and adequate expertise of candidates for regulated office

RISK MANAGEMENT

- NBB publishes Circular NBB_2023_07 / Guidance on sound management practices and reporting of interest rate risk and credit spread risk related to non-trading activities

GERMANY

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

- BVI publishes its position on the Joint European Supervisory Authority discussion paper on DORA

RISK MANAGEMENT

- BaFin publishes Circular on minimum requirements for risk management

HONG KONG

INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

- Cross-Agency Steering Group welcomes publication of IFRS Sustainability Disclosure Standards

SECURITIES TRADING

- SFC updates guidance to prepare for HKD-RMB Dual Counter Model
- SFC updates Guidance note and FAQ on Short Selling Reporting and Stock Lending Record Keeping requirements (6/6/2023)
- HKEX launches HKD-RMB Dual Counter Model and Dual Counter Market Making Programme

IRELAND

FINANCIAL SYSTEM STABILITY

- Ireland issues Statement of Strategy 2023-2025

ITALY

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

- Banca d'Italia amends KYC Regulations in light of EBA Guidelines on due diligence under AMLD4

BANKING SUPERVISION

- CONSOB publishes MoU on crowdfunding

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

- CONSOB publishes notice on ESMA Guidelines on certain aspects of MiFID II remuneration requirements

LUXEMBOURG

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

- CSSF updates Annex of Circular CSSF 22/822 / Le CSSF met à jour l'annexe de la circulaire CSSF 22/822
- Luxembourg Ministry of Justice updates on FAFT Final report on Luxembourg / Le ministère luxembourgeois de la Justice informe sur le Rapport final du GAFI sur le Luxembourg
- CSSF updates FAQ on AML/CFT Market Entry Form (Funds and IFMs) / La CSSF met à jour la FAQ sur le formulaire d'entrée sur le marché AML/CFT (Fonds et GFI)
- ABL informs on the new EU Regulation on information accompanying fund transfers and crypto-assets / L'ABBL informe sur le nouveau règlement européen sur les informations accompagnant les transferts de fonds et les crypto-actifs

FINANCIAL SYSTEM STABILITY

- Luxembourg publishes CSSF Regulation No.23-02 on setting the countercyclical buffer rate for Q3 2023 / Le Luxembourg publie le règlement CSSF n°23-02 relatif à la fixation du taux de coussin contracyclique pour le troisième trimestre 2023

GOVERNANCE

- CSSF publishes outcomes of self-assessment exercise 2022 related to Circular CSSF 21/773 / La CSSF publie les résultats de l'exercice d'auto-évaluation 2022 liés à la circulaire CSSF 21/773

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

- CSSF publishes thematic review on UCITS Value-at-Risk models validation for global exposure calculation / La CSSF publie sa revue thématique sur la validation des modèles Value-at-Risk des OPCVM pour le calcul de l'exposition globale
- ChD adopts Draft Law No.7885 on the screening of foreign direct investments that undermine national security / La ChD adopte le projet de loi n°7885 sur le filtrage des investissements directs étrangers portant atteinte à la sécurité nationale
- CSSF publishes UCI Administrator Annual Reporting – Practical and technical guidance / La CSSF publie le rapport annuel de l'administrateur de l'OPC – Guide pratique et technique
- CSSF updates document summarizing national provisions governing marketing requirements for AIFs / La CSSF met à jour le document résumant les dispositions nationales régissant les exigences de commercialisation des FIA

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

- ALFI responds to ESAs Consultation on DORA / L'ALFI répond à la consultation des AES sur DORA

SUSTAINABLE FINANCE / GREEN FINANCE

- CSSF advises on SFDR data collection exercise relating to sustainability disclosures in the periodic reports / La CSSF donne son avis sur l'exercice de collecte de données SFDR relatif aux informations sur la durabilité dans les rapports périodiques

ACCOUNTING

- CSSF publishes CNC Q&As / La CSSF publie les questions/réponses de la CNC

SWITZERLAND

DIGITAL ECONOMY

- SBA announces Swiss banks exploring a digital Swiss franc together / L'ASB annonce que les banques suisses explorent ensemble un franc suisse numérique

NETHERLANDS

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

- The Netherlands publishes Amendment of the Money Laundering and Terrorist Financing Prevention Act in related to the ban on cash payments for goods from 3,000 euros

DIRECTIVE ON CREDIT SERVICERS AND CREDIT PURCHASERS

- The Netherlands implements Act on the Directive on Credit Servicers and Credit Purchasers

SPAIN

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

- Spain publishes Royal Decree-Law 5/2023, which, among other issues, amends Law 10/2010 on the registration of beneficial ownership

CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

- CNMV implements EBA's guidelines related to the revision process and supervisory evaluation (SREP)

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

- CNMV adopts the ESMA guidelines on suitability requirements under MiFID II

SECURITIES TRADING

- CNMV publishes a press release on a new system related to the admission of fixed-income securities to trading in Spanish regulated markets

UNITED KINGDOM

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- UK Legislation publishes the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023
- FCA introduces tough new rules for marketing cryptoassets

DEPOSITOR PROTECTION RULES

- PRA publishes a statement of policy on deposit guarantee scheme

FINANCIAL SUPERVISION

- PRA publishes a consultation paper on the review of rules
- FCA updates the FCA Handbook (6/30/2023)

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

- FCA publishes a policy statement on broadening retail access to LTAFs

UK FINANCIAL SERVICES ACT

- UK Government grants the Financial Services and Markets Bill Royal Assent

BRAZIL

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- CVM publishes Decree on Virtual Assets

INTERNATIONAL

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

- FATF publishes a press release on plenary week in June 2023

SUSTAINABLE FINANCE / GREEN FINANCE

- ISSB issues inaugural global sustainability disclosure standards

CONTACTS

EUROPEAN UNION

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

EU publishes Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets

On June 9 2023, the European Union published the Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets and amending the Directive (EU) 2015/849.

This Regulation establishes guidelines regarding the information required for payers and payees during fund transfers in any currency. It also addresses the information needed for originators and beneficiaries during the transfer of crypto-assets. The primary objective is to prevent, detect, and investigate money laundering and terrorist financing. These rules apply when at least one of the payment service providers or crypto-asset service providers involved in the transfer is based in the European Union. Additionally, the Regulation includes provisions for internal policies, procedures, and controls to ensure the implementation of restrictive measures when any of the involved payment service providers or crypto-asset service providers are established in the Union.

The amendments to the Directive (EU) 2015/849 introduce several changes. Firstly, points (g) and (h) are removed from Article 2(1), point (3). Article 3 is modified to include a new point (g) for "crypto-asset service providers" and to redefine "correspondent relationship" in point (8). Points 18 and 19 are replaced with new definitions of "crypto-asset" and "crypto-asset service provider." Additionally, a new point (20) is added to define "self-hosted address." Article 18 is expanded to include guidelines on risk variables and enhanced due diligence measures for crypto-asset service providers. Article 19a requires crypto-asset service providers to assess money laundering and terrorist financing risks associated with transfers involving self-hosted addresses. Article 19b establishes due diligence measures for cross-border correspondent relationships involving crypto-asset services. Article 24a mandates guidelines on enhanced customer due diligence measures for crypto-asset services and transfers of crypto-assets. Amendments are made to Article 45 regarding the appointment of a central contact point, and Article 47 regarding the licensing or registration of certain entities. Member States are required to adopt the necessary measures to comply with these amendments by December 30 2024. These changes aim to address various aspects related to crypto-assets and strengthen anti-money laundering and counter-terrorist financing measures.

This Regulation became effective on June 29 2023. Its application will commence on December 30 2024.

ARTIFICIAL INTELLIGENCE ACT (AIA)

EP adopts its position on the Artificial Intelligence Act

On June 14 2023, the European Parliament approved amendments to the proposal for a regulation on harmonized rules for artificial intelligence (Artificial Intelligence Act) and made revisions to certain legislative acts of the European Union. The proposal was originally presented as COM(2021)0206 – C9-0146/2021 – 2021/0106(COD).

The Act aims to ensure that AI developed and utilized in Europe adheres to EU rights and values, including human oversight, safety, privacy, transparency, non-discrimination, and social and environmental well-being.

Under the proposed rules, AI practices with an unacceptable level of risk to people's safety would be prohibited. This includes the use of AI for social scoring and bans on intrusive and discriminatory uses of AI. Examples of prohibited practices include real-time remote biometric identification systems in public spaces, predictive policing systems based on profiling or past criminal behavior, and emotion recognition systems in various contexts.

High-risk AI applications would be subject to additional obligations. This category now includes AI systems that pose significant harm to people's health, safety, fundamental rights, or the environment. This includes AI systems used to influence elections and recommender systems employed by large social media platforms.

The Act also imposes obligations on providers of general-purpose AI, particularly foundation models. These providers would need to assess and mitigate risks, register their models in the EU database before market release, comply with transparency requirements for AI-generated content, and ensure safeguards against generating illegal content. Detailed summaries of the copyrighted data used for training AI systems would also need to be made public.

To support innovation and protect citizens' rights, the Act includes exemptions for research activities and AI components provided under open-source licenses. It also encourages the establishment of regulatory sandboxes to test AI before deployment.

Additionally, the Act aims to enhance citizens' rights by enabling them to file complaints about AI systems and receive explanations of decisions made by high-risk AI systems that significantly impact their fundamental rights. The role of the EU AI Office would be reformed to oversee the implementation of the AI rulebook.

CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

Council of the EU and EP reach a provisional agreement on the implementation of Basel III reforms

On June 27 2023, the Council of the European Union and the European Parliament reached a provisional agreement on amendments to the Capital Requirements Regulation and the Capital Requirements Directive.

The EU is nearing the completion of implementing the Basel III international agreements into EU law. Basel III is an agreement between the EU and its G20 partners in the Basel Committee on Banking Supervision, aimed at strengthening banks' resilience to potential economic shocks. The implementation of Basel III involves various measures to enhance prudential regulatory standards, supervision, and risk management in response to the Global Financial Crisis of 2007/2008.

On October 27 2021, the European Commission presented its proposals for a review of the Capital Requirements Regulation and the Capital Requirements Directive. These proposals not only include amendments to implement the Basel III standards but also encompass several measures related to the supervisory framework. The Council reached its General Approach on November 8 2022. Trilogue discussions with the European Parliament began on March 9 2023 and concluded with the provisional agreement reached recently.

After intense negotiations, an agreement has been reached on updated rules aimed at strengthening the resilience of banks operating in the European Union. The agreement is seen as a major step forward in ensuring the ability of European banks to withstand external shocks and crises. It also demonstrates the EU's commitment to international cooperation and multilateralism by swiftly implementing global standards.

The agreement represents the culmination of a long process to reform EU banking rules following the financial crisis. The new rules will enhance the resilience of the banking sector, enabling it to weather challenges such as the COVID-19 pandemic and the economic impact of the conflict in Ukraine. Additionally, the rules will support the green and digital transitions by facilitating funding to the real economy and individuals.

The provisional agreement covers various aspects, including the implementation of an 'output floor' to limit variability in capital levels computed using internal models. Transitional arrangements have been agreed upon to provide sufficient time for market players to adapt. The agreement also addresses credit risk, market risk, operational risk, and proportionality considerations for small and non-complex institutions.

Furthermore, harmonized frameworks have been established for assessing the suitability of management members and key function holders, safeguarding supervisory independence, and managing ESG (Environmental, Social, and Governance) risks. A transitional prudential regime for crypto assets and provisions for branches of third-country banks and their supervision in the EU have also been agreed upon.

It's important to note that the agreement is provisional and must be confirmed by the Council and the Parliament before formal adoption.

DIGITAL EURO

EC publishes a "Single Currency Package"

On June 28 2023, the European Commission published new proposals to support the use of cash and to propose a framework for a digital euro and a Q&A on the Single Currency Package.

The Commission has proposed two mutually supportive sets of measures to ensure that people have both payment options, cash and digital when they want to pay with central bank money:

- A legislative proposal on the legal tender of euro cash to safeguard the role of cash, ensure it is widely accepted as a means of payment and remains easily accessible for people and businesses across the euro area.
- A legislative proposal establishing the legal framework for a possible digital euro as a complement to euro banknotes and coins. It would ensure that people and businesses have an additional choice – on top of current private options – that allows them to pay digitally with a widely accepted, cheap, secure and resilient form of public money in the euro area (complementing the private solutions that exist today). While today's proposal – once adopted by the European Parliament and Council – would establish the legal framework for the digital euro, it will ultimately be for the European Central Bank to decide if and when to issue the digital euro.

EUROPEAN DIGITAL IDENTITY REGULATION (EDIR)

Council and EP strike a deal on a European Digital Identity (eID)

On June 29 2023, the Council of the European Union and the European Parliament reached a provisional political agreement on the core elements of a new framework for a European digital identity (eID).

The revised regulation constitutes a clear paradigm shift for digital identity in Europe aiming to ensure universal access for people and businesses to secure and trustworthy electronic identification and authentication by means of a personal digital wallet on a mobile phone.

The revised regulation on the eID aims to provide citizens and residents with a harmonized digital identity means known as the European digital identity wallet. The wallet will serve as an electronic identification means and will be issued under national schemes while adhering to a high level of trust and assurance. The regulation expands the list of trust services, including the provision of electronic ledgers and remote electronic signature and seal creation devices. It also promotes a harmonized approach to security, allowing online service providers to accept digital identity solutions regardless of their country of issuance. The regulation aligns with existing cybersecurity legislation and leverages relevant certification schemes. It introduces the issuance of electronic attestation of attributes by qualified providers and emphasizes cross-border identity matching for services. The technical work is ongoing, and the final text will be submitted for endorsement before its formal adoption by the Parliament and the Council. The proposal builds upon the 2014 eIDAS regulation and seeks to create a secure and interoperable framework for accessing public services and conducting online transactions in the EU.

FINANCIAL DATA ACCESS REGULATION (FDAR)

EC publishes proposal on Financial Data Access Regulation

On June 28 2023, the European Commission published a proposal on Financial Data Access Regulation.

This framework will establish clear rights and obligations to manage customer data sharing in the financial sector beyond payment accounts. In practice, this will lead to more innovative financial products and services for users and will stimulate competition in the financial sector. This Regulation establishes rules on the access, sharing and use of certain categories of customer data in financial services and establishes rules concerning the authorisation and operation of financial information service providers. The data holder shall, upon request from a customer submitted by electronic means, make the data listed in Article 2(1) available to the customer without undue delay, free of charge, continuously and in real-time. A data holder may claim compensation from a data user for making customer data available pursuant to paragraph 1 only if the customer data is made available to a data user in accordance with the rules and modalities of a financial data sharing scheme, as provided in Articles 9 and 10, or if it is made available pursuant to Article 11. A data user shall only be eligible to access customer data pursuant to Article 5(1) if that data user is subject to prior authorisation by a competent authority as a financial institution or is a financial information service provider pursuant to Article 14. A data user shall only access customer data made available under Article 5(1) for the purposes and under the conditions for which the customer has granted its permission. A data user shall delete customer data when it is no longer necessary for the purposes for which the permission has been granted by a

customer. Within 18 months from the entry into force of this Regulation, data holders and data users shall become members of a financial data sharing scheme governing access to the customer data in compliance with Article 10. A financial information service provider shall be eligible to access customer data under Article 5(1) if it is authorised by the competent authority of a Member State.

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

ESMA updates AIFMD reporting IT technical guidance

On June 8 2023, the European Securities and Markets Authority (ESMA) updated AIFMD reporting IT technical guidance.

The IT technical guidance (2013/1358) contains the following set of documents:

- IT technical guidance in which is included the description of changes performed on the technical guidance and/or XSD documents in sheet "change history",
- XML samples for AIFM and AIF reports,
- Excel version of Annex III – "Table of geographical areas",
- Excel version of Annex II – Tables 1-10,
- Current version of XSD documents (Version 1.2)

The new IT technical guidance revision 6 will be effective from November 2023, with the exact date to be announced later.

Revision 6 of the IT technical guidance introduces new validation rules that make certain fields mandatory or have stricter requirements in order to enhance data quality. The details of these changes are specified in the "change history" tab of the Excel document. Reporting entities should utilize revision 6 for submitting reports required under Articles 3(3)(d) and 24(1), (2), and (4) of AIFMD by November 2023. The reference period for the initial reporting is Y1, H2, Q4 or X2 2023.

Revision 6 of the IT technical guidance supersedes revision 5, which was published in January 2023.

ESMA updates Q&A on the application of the UCITS Directive (06/0142023)

On June 14 2023, the European Securities and Markets Authority (ESMA) updated the Q&A on the application of the UCITS Directive.

The Q&As have been updated to include new sections on the following questions:

- Question 8: Management of AIFs and pension schemes by UCITS management companies
- Question 9: De-notification of marketing arrangements for UCITS
- Question 10: Scope of activities passported by UCITS management companies

Question 8a: The European Commission confirms that UCITS management companies are allowed to manage Alternative Investment Funds (AIFs) as registered Alternative Investment Fund Managers (AIFMs) under the AIFMD. This is in accordance with Article 6(2) of the UCITS Directive, which allows management companies to manage other collective investment vehicles subject to prudential supervision. Registered AIFMs are subject to prudential supervision under the AIFMD, considering their complexity and systemic relevance.

Question 8b: The European Commission states that UCITS management companies can manage pension schemes under Directive (EU) 2016/2341, provided it is authorized by national legislation implementing the UCITS Directive. The UCITS license allows management companies to undertake the management of UCITS as core services. However, Article 6(3), point (a), of the UCITS Directive allows Member States to authorize UCITS management companies to provide discretionary management services for pension funds' portfolios, where such portfolios include instruments listed in Directive 2004/39/EC. In this case, the management companies act as service providers, not investment managers of the pension funds.

Question 9:

If a UCITS (Undertakings for Collective Investments in Transferable Securities) wishes to de-notify the marketing arrangements for its units in a host Member State where there are no investors, it is still required to comply with all the obligations set out in Article 93a(1) of the UCITS Directive. This includes ensuring that no investors are uninformed about the UCITS' market exit, publicly terminating all marketing activities, and terminating or modifying any marketing arrangements with third parties to prevent further marketing of the de-notified UCITS.

Question 10:

When a management company is authorized to pursue activities in a host Member State under the UCITS Directive, it cannot passport only the administration or marketing functions without also passporting investment management functions. The UCITS passporting regime is specifically linked to the management of UCITS by UCITS management companies on a cross-border basis. According to the UCITS Directive, UCITS management companies are authorized to manage collective investment undertakings and perform activities listed in Annex II of the Directive. Therefore, when a UCITS management company intends to manage UCITS established in another Member State, it must communicate its program of operations, which primarily refers to investment management services, to the competent authorities. Auxiliary services are considered secondary and should only be performed in relation to the management of a UCITS.

ESMA updates Q&A on the Application of the AIFMD (06/14/2023)

On June 14 2023, the European Securities and Markets Authority (ESMA) updated the Q&A on the application of the AIFMD.

The Q&As have been updated to include new sections on the:

Notification of AIFs

The AIFMD requires additional information under Annex IV, and new notification procedures are necessary for AIFMs wishing to market new investment compartments of AIFs in a previously notified Member State. Additional fund units offered exclusively to existing investors do not require a new notification. There

is no distinction in Article 31 of the AIFMD for marketing EU AIFs based on their domicile. Marketing an EU feeder AIF with a non-EU master AIF falls under different provisions. Creating a new share class within a notified fund does not require a new notification. The AIF marketing passport is limited to professional investors, while marketing to other categories must comply with national legislation. Third-party fund initiators are subject to Article 30a obligations, including pre-marketing requirements. Registered AIFMs under Article 3(2) are generally not obligated to notify pre-marketing. De-notifying marketing arrangements must comply with Article 32a, with exemptions for specific funds.

Notification of AIFMs

An AIFM can manage an AIF in a host Member State under Article 33 of the AIFMD without prior identification of existing AIFs. Notification to the competent authority is typically required before creating the first AIF. When managing an AIF for the first time in a host Member State, specifying the AIFs' strategy types and providing a program of operations is sufficient. An AIFM already managing AIFs in a host Member State does not need a new notification for each new AIF but should update under Article 33(6) for each new AIF, especially if it's a different type. When managing AIFs domiciled in another Member State, the AIFM can identify them by investment strategy if specific AIFs are not identified during notification. For managing an EU umbrella AIF cross-border, the AIFM must identify the umbrella AIF and compartments in the notification, and any changes in composition must be notified. An AIFM providing authorized activities in a host Member State cannot passport only ancillary functions without also passporting investment management functions.

Calculation of leverage

An AIFM should include debt raised at the level of a financial structure controlled by an AIF in the AIF's exposure calculation if the structure is set up to increase the AIF's exposure. However, if the AIF does not bear losses beyond its investment in non-listed companies, the debt raised by those companies does not need to be included. Cash held in the base currency of the AIF should be excluded from the exposure calculation. AIFMs should consider all positions, including derivative instruments, valued according to specified methodologies, when calculating exposure. The duration of a short-term interest rate future should not be adjusted in the leverage exposure calculation. AIFMs should calculate leverage as often as necessary to comply with limits. For AIFs focused on real estate, exposure from financial or legal structures controlled by the AIF must be included in the leverage calculation if they are specifically set up to increase the AIF's exposure.

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

ESMA updates Q&A on DLT Pilot Regime Regulation (6/2/2023)

On June 2 2023, the European Securities and Markets Authority (ESMA) updated the Q&A on the implementation of the Regulation (EU) 2022/858 of the European Parliament and of the Council of May 30 2022 on a pilot regime for market infrastructures based on distributed ledger technology (DLT).

The update refers to the following questions:

- Are both of the modalities of issuing DLT financial instruments described below allowed under the DLTR?

- 1) Direct issuance of financial instruments on DLT, whereby financial instruments are initially and directly issued, recorded, transferred and stored using a DLT;
- 2) Issuance of existing non-DLT financial instruments in the form of DLT financial instruments as described in recital 3 of the DLTR.

Are other issuance modalities of DLT financial instruments possible under the DLTR?

- Is partial tokenisation allowed under the DLTR? Does the DLTR apply to situations where not the entirety of an issuance of financial instruments is tokenised, but where, for example, only part of an issuance is registered with a DLT SS/TSS? In other terms, can financial instruments which have been regularly issued and subsequently partially tokenised be registered with a traditional CSD in their entirety, and be partially registered with a DLT SS/TSS for the tokenised portion?

Can the tokenised part be issued by another party than the issuer of the original financial instruments?

Can a financial instrument recorded in a traditional CSD be fungible with one recorded in a DLT SS/TSS (having both the same rights and obligations)?

For bonds, can one option be to consider the tokenised financial instrument as different from the original underlying financial instrument, similar to the "depository receipts" model, in accordance with Article 3(1), point (b), of the DLTR?

- Does Article 3(1), point (c), of the DLTR require that a UCITS fund should be an ETF in order to be eligible?

- Should ETFs or other collective investment undertakings represented by shares be considered as units in collective investment undertakings, rather than shares (transferable securities), thus falling into the bucket specified in Article 3(1), point (c), DLTR, and hence assessed against the criteria in Article 25(4), point (a), of MiFID II?

- Are SFT transactions (SFTs) admissible on a DLT MTF/TSS? In particular, should Article 3(1), point (b), DLTR, which excludes instruments "that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved" be read as also excluding complex transactions like SFTs?

- Are DLT MTFs permitted to organise trading off-chain in relation to DLT financial instruments? Should it be mandatory for a DLT MTF to operate its matching engine with a DLT technology?

- Should an entity that applies for a permission to operate a DLT TSS provide both the DLT MTF and DLT SS services? Under which circumstances can an entity apply for the permission to operate a DLT MTF, without the need to operate a DLT TSS? Who can perform the settlement of transactions in DLT financial instruments, together with the initial recording of DLT financial instruments or the safekeeping services in relation to DLT financial instruments, in case an entity applies for the permission to operate a DLT MTF and not a DLT TSS?

- Should 'e-money tokens' under the DLTR be interpreted under the MiCA definition of 'e-money tokens'? Could settlement in e-money tokens be used by DLT MI operators even before MiCA starts applying?

Does the issuer of the e-money tokens have to be authorised under EMD? Is it correct that a DLT SS/TSS operator does not need an authorisation as a credit institution or payment services institution if it uses e-money tokens for cash settlement that are issued by a duly authorised institution? Would e-money tokens used for settlement on a DLT market infrastructure be allowed to be issued on a distributed ledger other than that used by the DLT market infrastructure?

- Do the applicants to the DLT SS/DTL TSS status need to apply for the exemption from the application of Article 40 of CSDR, as set out in Article 5(8) of DLTR, whenever they use tokenised money, independently of whether it is central bank tokenised money or commercial bank tokenised money?

- Are DLT SS or DLT TSS and their participants exempted from the provisions of Article 9 of CSDR on internalised settlement regarding transactions settled on a DLT SS or a DLT TSS duly authorised under DLTR?

- Would a DLT financial instrument traded on a DLT MTF be subject to the book-entry form obligation under Article 3 of CSDR unless it is registered in DLT form with a DLT SS/TSS that has applied for the exemption from that Article?

REGULATION ON MARKETS IN CRYPTO-ASSETS (MiCA)

EU publishes Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA) in the OJ

On June 9 2023, the European Union published the Regulation (EU) 2023/1114 on markets in crypto-assets, and amending the Regulations (EU) 1093/2010 and (EU) 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.

The regulation encompasses the following areas: authorization for offering and trading asset-referenced tokens, requirements for e-money token issuers, regulations for significant e-money and crypto-asset tokens, reserve of assets, acquisitions of token issuers, obligations for crypto-asset services, acquisition of service providers, recovery and redemption plans, powers and cooperation between authorities, establishment of ESMA register, administrative penalties, and supervisory responsibilities of EBA for significant tokens.

This Regulation came into effect on June 29 2023 and will be applicable from December 30 2024.

SUSTAINABLE FINANCE / GREEN FINANCE

ESAs put forward common understanding of greenwashing and warn on risks

On June 1 2023, the European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) published their progress Reports on greenwashing in the financial sector.

In these Reports, the ESAs put forward a common high-level understanding of greenwashing applicable to market participants across their respective remits – financial markets, banking, and insurance and pensions.

The ESAs understand greenwashing as a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.

The ESAs also highlight that sustainability-related misleading claims can occur and spread either intentionally or unintentionally and in relation to entities and products that are either under or outside the remit of the EU regulatory framework.

The National Competent Authorities (NCAs) and the ESAs are, therefore, working to meet expectations from stakeholders to ensure consumer and investor protection and market integrity and maintain a trusted environment for sustainable finance. Given the integrated nature of the financial system, the ESAs will be working in a coordinated manner to address greenwashing.

A final report with definitive conclusions will be finalised in May 2024.

EC publishes sustainable finance package

BACKGROUND

The package contains measures to build on and strengthen the foundations of the EU sustainable finance framework. The aim of the package is to ensure that the EU sustainable finance framework continues to support companies and the financial sector, while encouraging the private funding of transition projects and technologies. Specifically, the Commission is adding activities to the EU Taxonomy and proposing new rules for Environmental, Social and Governance (ESG) rating providers, which will increase transparency on the market for sustainable investments. Furthermore, the package aims to ensure that the sustainable finance framework works for companies that want to invest in their transition to sustainability. In addition, the package aims to make the sustainable finance framework easier to use, thereby continuing to contribute effectively to the European Green Deal objectives.

WHAT'S NEW?

On June 13 2023, the European Commission published a sustainable finance package. The package includes:

- Targeted amendments to the EU Taxonomy Climate Delegated Act, which expand on economic activities contributing to climate change mitigation and adaptation not included so far – in particular in the manufacturing and transport sectors. The Commission has also adopted amendments to the EU Taxonomy Disclosures Delegated Act, to clarify the disclosure obligations for the additional activities.
- A Commission Recommendation which illustrates how the sustainable finance framework encompasses transition finance and explains how companies, investors and financial intermediaries can voluntarily use the current sustainable finance framework to finance their transition to a climate neutral and sustainable economy, while enhancing their competitiveness, with practical examples and explanations.
- Staff working document on the usability of the EU Taxonomy and the wider EU sustainable finance framework provides an overview of the key pillars of the framework now in place, and takes stock of recently adopted usability.

WHAT'S NEXT?

The package also includes a proposal for a Regulation on the transparency and integrity of ESG rating activities. The key aim of the draft Regulation is to increase transparency on ESG ratings methodologies, objectives, characteristics and data sources. It also aims to increase clarity on the operations of ESG rating providers, in particular to prevent and mitigate potential risks associated with conflicts of interest. The draft Regulation is based on the recommendations for ESG rating providers and regulators published by the International Organization of Securities Commissions in November 2021. It provides for the authorisation and supervision of ESG rating providers by the European Securities and Markets Authority. It also provides requirements on disclosures around their methodologies and objectives of ratings, and introduces principle-based organisational requirements on their activities.

FRANCE

CCPS RECOVERY AND RESOLUTION REGULATION (CCPRRR)

[ACPR adopts ESMA guidelines on recovery plans for CCPs pursuant to Article 9 of CCPRR Regulation / L'ACPR adopte les lignes directrices de l'ESMA sur les plans de redressement des contreparties centrales en application de l'article 9 du règlement CCPRR](#)

On June 2 2023, the Autorité de contrôle prudentiel et de résolution (ACPR) adopted the European Securities and Markets Authority (ESMA) guidance on scenarios and indicators for recovery plans for central counterparties (CCPs) pursuant to Article 9(5) and (12) of Regulation (EU) No 2021/23 (CCPRR) (ESMA91-372-1702 and ESMA91-372-1701).

In accordance with CCRRR, each CCP must now produce an annual recovery plan detailing the measures to be taken in the event of losses resulting from defaults, events other than defaults or a combination of the two, in order to restore its financial and operational health. ESMA guidelines ESMA91-372-1702 and ESMA91-372-1701 provide details on the types of scenarios that CCPs must develop as part of these plans, as well as their characteristics and the frequency with which they must be updated. They also provide a minimum list of qualitative and quantitative indicators to be included in the plans and the procedures for taking these indicators into account by CCPs.

The guidelines are applicable by CCPs authorised in France, which must make every effort to comply with them, in accordance with the provisions of Article 16 of Regulation (EU) 1095/2010 establishing ESMA.

The guidelines apply as of May 24 2023.

Version française

Le 2 juin 2023, l'Autorité de contrôle prudentiel et de résolution (ACPR) a adopté les orientations de l'Autorité européenne des marchés financiers (AEMF) sur les scénarios et indicateurs des plans de redressement des contreparties centrales (CCP) en application de l'article 9(5) et (12) du règlement (UE) n° 2021/23 (CCPRR) (ESMA91-372-1702 et ESMA91-372-1701).

Conformément au CCRRR, chaque CCP doit désormais produire un plan de redressement annuel détaillant les mesures à prendre en cas de pertes résultant de défauts, d'événements autres que des défauts ou d'une combinaison des deux, afin de restaurer sa santé financière et opérationnelle. Les orientations ESMA91-372-1702 et ESMA91-372-1701 détaillent les types de scénarios que les CCP doivent développer dans le cadre de ces plans, ainsi que leurs caractéristiques et la fréquence à laquelle ils doivent être mis à jour. Ils prévoient également une liste minimale d'indicateurs qualitatifs et quantitatifs à inclure dans les plans et les modalités de prise en compte de ces indicateurs par les CCP.

Les orientations sont applicables par les contreparties centrales agréées en France, qui doivent s'efforcer de les respecter, conformément aux dispositions de l'article 16 du règlement (UE) 1095/2010 instituant l'AEMF.

Les lignes directrices s'appliquent à compter du 24 mai 2023.

INVESTOR PROTECTION / CONSUMER PROTECTION

[France publishes Decree No.2023-417 on technical modalities for terminating contracts electronically / La France publie le décret n° 2023-417 relatif aux modalités techniques de résiliation des contrats par voie électronique](#)

On June 1 2023, France published Decree No. 2023-417 of May 31 2023 on the technical modalities for terminating contracts electronically.

The decree ensures the possibility for consumers and non-professionals to notify the professional of the termination of a contract in a few validations or "clicks", guaranteeing them quick, easy, direct and permanent access to the functionality provided for by law.

Thus, from the online interface (in particular the website or mobile application) allowing the conclusion of contracts with a professional, the consumer has direct and easy access to the cancellation functionality. The functionality may include information about the conditions for termination of contracts (such as cases in which breach of contract results in the obligation to pay compensation or compliance with a notice period), as well as the consequences of termination.

The consumer is then required to fill in or confirm the information mentioned by this decree to identify themselves and designate the contract to be terminated. For the very specific case where the consumer terminates the contract early, the decree provides specific conditions for the implementation of the termination which depends on the existence of a legitimate reason. The consumer is informed of the supporting documents to be communicated to the professional and has a section to specify the legitimate reason for termination, as well as a postal address and an email address or functionality to send the professional proof of this legitimate reason.

This will allow, for example:

- consumers to benefit more easily from the option of terminating an electronic communications contract without being required to pay the unexpired portion of the period running until the end of the contractual commitment or the sums due for early termination, pursuant to Article L. 224-37-1 of the Consumer Code when they are in a situation of over-indebtedness, and in application of the case law in force in the case, in particular, of dismissal for an employment contract of indefinite duration, force majeure, or moving abroad;
- consumers, holders of a contract for the provision of a television service within the meaning of Article 2 of Law No 86-1067 of September 30, 1986 on freedom of communication and a contract for the provision of on-demand audiovisual media services, to terminate the contract free of charge, at any time from the first renewal, pursuant to the last paragraph of Article L. 215-1 of the Consumer Code as soon as they change domicile or their tax household changes.

Finally, the decree provides that the consumer is then directed to a final summary page of the information provided from which he notifies his termination.

Version française

Le 1er juin 2023, la France a publié le décret n° 2023-417 du 31 mai 2023 relatif aux modalités techniques de résiliation des contrats par voie électronique.

Le décret assure la possibilité pour les consommateurs et les non-professionnels de notifier au professionnel la résiliation d'un contrat en quelques validations ou "clics", leur garantissant un accès rapide, facile, direct et permanent à la fonctionnalité prévue par la loi.

Ainsi, depuis l'interface en ligne (notamment le site internet ou l'application mobile) permettant de conclure des contrats avec un professionnel, le consommateur accède directement et facilement à la fonctionnalité de rétractation. La fonctionnalité peut inclure des informations sur les conditions de résiliation des contrats (par exemple, les cas où la rupture de contrat entraîne l'obligation de verser une indemnité ou le respect d'un délai de préavis), ainsi que sur les conséquences de la résiliation.

Le consommateur est alors tenu de renseigner ou confirmer les informations mentionnées par le présent décret pour s'identifier et désigner le contrat à résilier. Pour le cas très particulier où le consommateur résilie le contrat par anticipation, le décret prévoit des conditions particulières de mise en œuvre de la résiliation qui dépendent de l'existence d'un motif légitime. Le consommateur est informé des pièces justificatives à communiquer au professionnel et dispose d'une rubrique pour préciser le motif légitime de résiliation, ainsi que d'une adresse postale et d'une adresse email ou fonctionnalité pour envoyer le justificatif professionnel de ce motif légitime.

Cela permettra par exemple :

- les consommateurs de bénéficier plus facilement de la possibilité de résilier un contrat de communications électroniques sans être tenus au paiement de la partie non écoulée du délai courant jusqu'à la fin de l'engagement contractuel ou des sommes dues pour résiliation anticipée, en application de l'article L. 224-37-1 du Code de la consommation lorsqu'ils sont en situation de surendettement, et en application de la jurisprudence en vigueur en cas, notamment, de licenciement pour un contrat de travail à durée indéterminée, de force majeure, ou de déménagement à l'étranger ;
- les consommateurs, titulaires d'un contrat de fourniture d'un service de télévision au sens de l'article 2 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et d'un contrat de fourniture de services de médias audiovisuels à la demande, à résilier le contrat sans frais, à tout moment à compter du premier renouvellement, en application du dernier alinéa de l'article L. 215-1 du Code de la consommation dès qu'il change de domicile ou de foyer fiscal.

Enfin, le décret prévoit que le consommateur est ensuite dirigé vers une dernière page récapitulative des informations fournies à partir de laquelle il notifie sa résiliation.

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

AMF adopts ESMA Guidelines on certain aspects of the MiFID II suitability requirements / L'AMF adopte les lignes directrices de l'ESMA sur certains aspects des exigences d'adéquation client de MiFID II

On June 2 2023, the Autorité des marchés financiers (AMF) published an update to its position DOC-2019-03 to incorporate updates to the guidance of the European Securities and Markets Authority (ESMA) on certain aspects relating to the suitability requirements of Markets in Financial Instruments Directive (MiFID) II. The AMF is also updating its position-recommendation DOC-2006-23 to extend the scope of these revised guidelines to financial investment advisors (FIAs). Updates to these positions will come into effect on October 3 2023.

At the end of 2021, ESMA launched a project to update its guidance on suitability assessment in the context of providing investment advice or portfolio management services on behalf of third parties to take into account:

- the publication of Delegated Regulation (EU) 2021/1253, which entered into force on August 2 2022, requiring in particular the collection of any sustainability preferences of the customer with a view to carrying out the suitability assessment;
- implementation issues identified in particular during the 2020 Joint Supervision Action on this subject.

ESMA's final report on this update was published on September 27 2022. The translated versions of the revised guidance were published on April 3 2023.

The AMF has incorporated into the update of its position DOC-2019-03 the new version of ESMA's guidance on certain aspects relating to the adequacy requirements of MiFID 2.

These revised guidelines, applicable from October 3 2023, aim to clarify the application of those requirements and aim to foster greater convergence in their interpretation and supervision. They will therefore strengthen investor protection.

In particular, ESMA clarifies the obligation to take into account clients' possible sustainability preferences in the following guidelines:

- information provided to clients on the purpose and scope of the suitability assessment;
- arrangements necessary to understand customers;
- updating customer information;
- arrangements necessary to understand investment products;
- necessary arrangements to ensure the suitability of an investment.

This heading DOC-2019-03 is applicable to investment firms, credit institutions and asset management companies that provide the investment advisory and/or portfolio management service.

As FIAs obey a national regime, ESMA's guidelines are not directly applicable to them. However, they are subject in the AMF General Regulation to rules similar to those of investment service providers on the adequacy of investment advice, including any sustainability preferences of their clients. In this context, the AMF has decided to extend the application of these updated guidelines to FIAs. The update of position-recommendation DOC-2006-23 made for this purpose will also be applicable from October 3 2023.

Version française

Le 2 juin 2023, l'Autorité des marchés financiers (AMF) a publié une mise à jour de sa position DOC-2019-03 afin d'intégrer des mises à jour des orientations de l'Autorité européenne des marchés financiers (AEMF) sur certains aspects relatifs aux exigences d'adéquation des marchés dans la directive sur les instruments financiers (MiFID) II. L'AMF met également à jour sa position-recommandation DOC-2006-23 pour étendre le champ d'application de ces lignes directrices révisées aux conseillers en investissements financiers (CIF). Les mises à jour de ces postes entreront en vigueur le 3 octobre 2023.

Fin 2021, l'AEMF a lancé un projet de mise à jour de ses orientations sur l'évaluation de l'adéquation dans le cadre de la fourniture de services de conseil en investissement ou de gestion de portefeuille pour le compte de tiers afin de prendre en compte :

- la publication du règlement délégué (UE) 2021/1253, entré en vigueur le 2 août 2022, imposant notamment le recueil des éventuelles préférences en matière de développement durable du client en vue de la réalisation de l'évaluation de l'adéquation ;
- les problèmes de mise en œuvre identifiés notamment lors de l'action de tutelle conjointe 2020 sur ce sujet.

Le rapport final de l'AEMF sur cette mise à jour a été publié le 27 septembre 2022. Les versions traduites des orientations révisées ont été publiées le 3 avril 2023.

L'AMF a intégré dans la mise à jour de sa position DOC-2019-03 la nouvelle version des orientations de l'AEMF sur certains aspects relatifs aux exigences d'adéquation de MiFID II.

Ces lignes directrices révisées, applicables à partir du 3 octobre 2023, visent à clarifier l'application de ces exigences et visent à favoriser une plus grande convergence dans leur interprétation et leur surveillance. Ils renforceront donc la protection des investisseurs.

En particulier, l'AEMF clarifie l'obligation de prendre en compte les éventuelles préférences des clients en matière de durabilité dans les lignes directrices suivantes :

- les informations fournies aux clients sur l'objet et la portée de l'évaluation de l'adéquation ;
- les dispositions nécessaires pour comprendre les clients ;
- mise à jour des informations clients ;
- dispositions nécessaires à la compréhension des produits d'investissement ;
- les dispositions nécessaires pour garantir la pertinence d'un investissement.

Cette rubrique DOC-2019-03 est applicable aux entreprises d'investissement, aux établissements de crédit et aux sociétés de gestion de portefeuille qui fournissent le service de conseil en investissement et/ou de gestion de portefeuille.

Les AIF obéissant à un régime national, les lignes directrices de l'AEMF ne leur sont pas directement applicables. Cependant, ils sont soumis dans le règlement général de l'AMF à des règles similaires à celles des prestataires de services d'investissement sur l'adéquation du conseil en investissement, y compris les éventuelles préférences en matière de développement durable de leurs clients. Dans ce contexte, l'AMF a décidé d'étendre l'application de ces lignes directrices actualisées aux CIF. La mise à jour de la position-recommandation DOC-2006-23 faite à cet effet sera également applicable à partir du 3 octobre 2023.

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

[France publishes Decree No.2023-421 adapting securities law to the European "pilot regime" regulation / La France publie le décret n°2023-421 portant adaptation du droit des valeurs mobilières au règlement européen « régime pilote »](#)

On June 2 2023, France published Decree No. 2023-421 of May 31 2023 adapting securities law to the European "pilot regime" regulation.

The text makes amendments to the regulatory part of the Commercial Code and the Monetary and Financial Code in line with the legislative amendments made in Law No. 2023-171 of March 9 2023 on various provisions for adaptation to European Union law in the fields of economy, health, labour, transport and agriculture and with a view to ensuring the conformity of national law with the European regime established by 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 with a view to its entry into application on March 23 2023.

The text entered into force on June 3 2023.

Version française

Le 2 juin 2023, la France a publié le décret n° 2023-421 du 31 mai 2023 portant adaptation du droit boursier au règlement européen « régime pilote ».

Le texte apporte des modifications à la partie réglementaire du Code de commerce et du Code monétaire et financier conformément aux modifications législatives apportées par 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, la santé, le travail, les transports et l'agriculture et en vue d'assurer la conformité du droit national avec le régime européen établi par le règlement (UE) 2022/858 du Parlement européen et du Conseil du 30 mai 2022 relatif à un programme pilote d'infrastructures de marché basées sur la technologie des registres distribués en vue de son entrée en application le 23 mars 2023.

Le texte est entré en vigueur le 3 juin 2023.

SUSTAINABLE FINANCE / GREEN FINANCE

[AMF publishes summary of SPOT controls on contractual extra-financial commitments of asset management companies / L'AMF publie la synthèse des contrôles SPOT sur les engagements extra-financiers contractuels des gestionnaires d'actifs](#)

On 12 June 2023, the Autorité des marchés financiers (AMF) published a summary of SPOT controls on compliance with contractual extra-financial commitments of asset management companies.

The study concerns an analysis of the responses to a detailed questionnaire by 176 generalist asset management companies (AMCs) with at least one contractual extra-financial commitment to at least one of their funds. The monitoring campaign targeted five of these 176 AMCs whose ESG (integrating environmental, social

and governance criteria) or socially responsible investment (SRI) funds represent between 20% and 90% of total assets under collective management. This publication highlights good and bad practices.

The AMF notes that the five institutions audited have put in place significant and increasing human and technical resources for the definition, review, management and control of non-financial contractual commitments. In addition, ESG rating systems, although frequently developed by AMCs themselves, remain dependent on external ESG data providers. However, only one in five AMCs checks the quality of this extra-financial data before it is integrated into the ESG rating algorithm.

The synthesis highlights a lack of ongoing monitoring work targeting the justification of corrections to ESG scores calculated by the scoring algorithm (so-called forcing). Only 40% of the AMCs in the SPOT panel perform these due diligence satisfactorily.

As for the construction and review of the investment universe of ESG / SRI funds, the AMF has identified that they are carried out by a team independent of management for the five AMCs audited. This practice is less common among the 176 GSPs in the questionnaire. In addition, the AMF found that only two of the five AMCs on the SPOT panel subsequently check the consistency of investment universes with the funds' ESG policy. A similar observation is made on the basis of the questionnaire (50% of the AMCs interviewed deployed a control of this type).

The summary also details the checks on compliance with commitments before and after investments. Of the 176 GSPs that responded to the questionnaire, 77% implemented manual controls and 74% automatic controls (65% blocking). However, the combination of these two types of controls is not generalized. On the other hand, the AMF found that there was a robust audit trail for the controls carried out for four of the AMCs in the SPOT panel.

This note also addresses two types of non-compliance with contractual extra-financial commitments: active non-compliance, which is a voluntary decision of management, and passive non-compliance related to developments external to the AMC. Of the 176 GSPs in the questionnaire, 55% of them did not identify any such non-conformities in 2020 and 2021. In addition, the volume of non-financial non-compliances reported to the AMF between January 2021 and March 2022 was only 0.4% of the total volume of non-compliances (financial and extra-financial) reported. The AMF reiterates the need to continuously strengthen the process of monitoring extra-financial commitments, particularly in a context of tightening regulatory requirements, taking into account the risk of misleading promises to investors if these commitments are not respected.

The AMF notes that the role of depositaries in the process of monitoring compliance with contractual extra-financial commitments remains limited because only 30% of the 176 AMCs indicate that they have exchanged views on the subject with the custodians of the funds managed. On the SPOT panel, only one of the six depositaries concerned is involved in the a posteriori control of certain extra-financial commitments of these funds. The AMF reminds depositaries of their responsibilities in monitoring compliance with these commitments and AMCs of the need to provide depositaries with the data necessary for these controls.

Version française

Le 12 juin 2023, l'Autorité des marchés financiers (AMF) a publié une synthèse des contrôles SPOT sur le respect des engagements extra-financiers contractuels des sociétés de gestion de portefeuille.

L'étude porte sur l'analyse des réponses à un questionnaire détaillé de 176 sociétés de gestion de portefeuille (SGP) généralistes ayant au moins un engagement contractuel extra-financier envers au moins un de leurs fonds. La campagne de veille a ciblé cinq de ces 176 SGP dont les fonds ESG (intégrant des critères environnementaux, sociaux et de gouvernance) ou d'investissement socialement responsable (ISR) représentent entre 20% et 90% du total des actifs sous gestion collective. Cette publication met en lumière les bonnes et les mauvaises pratiques.

L'AMF constate que les cinq établissements audités ont mis en place des moyens humains et techniques importants et croissants pour la définition, la revue, la gestion et le contrôle des engagements contractuels non financiers. De plus, les systèmes de notation ESG, bien que fréquemment développés par les SGP eux-mêmes, restent dépendants de fournisseurs de données ESG externes. Cependant, seule une SGP sur cinq vérifie la qualité de ces données extra-financières avant leur intégration dans l'algorithme de notation ESG.

La synthèse met en évidence un manque de travail de veille en cours ciblant la justification des corrections des notes ESG calculées par l'algorithme de notation (ce que l'on appelle le forçage). Seuls 40% des SGP du panel SPOT réalisent ces due diligences de manière satisfaisante.

Quant à la construction et la revue de l'univers d'investissement des fonds ESG/ISR, l'AMF a identifié qu'elles sont réalisées par une équipe indépendante de la direction pour les cinq SGP auditées. Cette pratique est moins courante parmi les 176 GSP du questionnaire. Par ailleurs, l'AMF a constaté que seules deux des cinq SGP du panel SPOT vérifient a posteriori la cohérence des univers d'investissement avec la politique ESG des fonds. Un constat similaire est fait sur la base du questionnaire (50% des SGP interrogées ont déployé un contrôle de ce type).

La synthèse détaille également les contrôles du respect des engagements avant et après investissements. Sur les 176 GSP ayant répondu au questionnaire, 77% ont mis en place des contrôles manuels et 74% des contrôles automatiques (65% bloquants). Cependant, la combinaison de ces deux types de contrôles n'est pas généralisée. En revanche, l'AMF a constaté l'existence d'une piste d'audit solide des contrôles effectués pour quatre des SGP du panel SPOT.

Cette note traite également de deux types de non-respect des engagements extra-financiers contractuels : le non-respect actif, qui est une décision volontaire de la direction, et le non-respect passif lié à des développements extérieurs à la SGP. Sur les 176 GSP du questionnaire, 55% d'entre eux n'ont pas relevé de telles non-conformités en 2020 et 2021. De plus, le volume de non-conformités extra-financières signalées à l'AMF entre janvier 2021 et mars 2022 n'était que de 0,4 % du volume total des non-conformités (financières et extra-financières) signalées. L'AMF rappelle la nécessité de renforcer en permanence le processus de suivi des engagements extra-financiers, notamment dans un contexte de durcissement des exigences réglementaires, compte tenu du risque de promesses trompeuses faites aux investisseurs si ces engagements ne sont pas respectés.

L'AMF note que le rôle des dépositaires dans le processus de contrôle du respect des engagements extra-financiers contractuels reste limité puisque seulement 30 % des 176 SGP indiquent avoir échangé sur le sujet avec les dépositaires des fonds gérés. Au sein du panel SPOT, un seul des six dépositaires concernés est impliqué dans le contrôle a posteriori de certains engagements extra-financiers de ces fonds. L'AMF rappelle aux dépositaires leurs responsabilités dans le contrôle du respect de ces engagements et aux SGP la nécessité de fournir aux dépositaires les données nécessaires à ces contrôles.

BELGIUM

GOVERNANCE

FSMA publishes questionnaires concerning the good repute and adequate expertise of candidates for regulated office

On June 6 2023, the Financial Services and Markets Authority (FSMA) published an update of the FSMA_2019_27 and FSMA_2019_30 communications.

Changes have been made to the existing questionnaires for asset management and investment advisory companies, UCI(A) management companies and investment companies and, in addition, new questionnaires have been prepared.

From now on, in-scope entities must use these questionnaires for any new file.

RISK MANAGEMENT

NBB publishes Circular NBB_2023_07 / Guidance on sound management practices and reporting of interest rate risk and credit spread risk related to non-trading activities

On June 27 2023, the National Bank of Belgium (NBB) published the Circular NBB_2023_07 / Guidance on sound management practices and reporting of interest rate risk and credit spread risk related to non-trading activities.

This circular applies to credit institutions governed by Belgian law, to financial companies and mixed financial companies approved or designated under Belgian law, to stockbroking companies large size referred to in Article 3, 5° of the law on brokerage companies, to holding companies and mixed financial companies governed by Belgian law included in the control on the basis of consolidation of a group of investment firms operated by the Bank, when said group includes a large brokerage firm. The principles and criteria set out here regarding the monitoring and evaluation process apply in principle both on a consolidated basis and on a social basis.

This circular replaces, as of June 30, 2023, circular NBB_2019_18 on sound practices in management and reporting of interest rate risk related to non-trading activities, and transposes into the Belgian prudential context the guidelines of the European Banking Authority (EBA) of October 20, 2022 specifying the criteria for detecting, evaluating, managing and mitigating risks arising from possible changes in interest rates and the assessment and monitoring of credit spread risk.

credit of activities outside institutions' trading books.

GERMANY

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

BVI publishes its position on the Joint European Supervisory Authority discussion paper on DORA

On June 23 2023, the Bundesverband Investment (BVI) published its position on the Joint European Supervisory Authority discussion paper on Digital Operational Resilience Act (DORA).

The BVI generally supports the proposed approach of supplementing quantitative and qualitative indicators for each of the criteria specified in Article 31(2) DORA Regulation according to a two-step approach. In the first step, the critical providers are to be preselected on the basis of minimum relevance thresholds, and in a second step they are to be assessed in more detail on the basis of additional criticality indicators. In this context, the BVI requests to clarify that these criteria can only cumulatively lead to an ICT third-party service provider being classified as critical.

The statements listed under the section 'related issues' on the classification of ICT TPP as part of a group are basically in line with the requirements of the DORA regulation. BVI does not fully understand the approach in paragraph 27 on sub-contractors which should be appropriately captured to be assessed during the designation exercise. It is not clear by whom the subcontractors should be captured. This requirement must not lead to financial entities being obliged to track and document in their registers every subcontractor in the provider chain for all ICT third-party providers used. Rather, BVI only understands the requirements for identifying the CTPP to mean that they should be designated on the basis of their contractual relationship with the financial companies at the first level only.

RISK MANAGEMENT

BaFin publishes Circular on minimum requirements for risk management

On June 29 2023, the Federal Financial Supervisory Authority (BaFin) published a circular on minimum requirements for risk management.

This circular provides a flexible and practical framework for the design of the risk management of institutions. It also specifies the requirements of Section 25a (3) of the German Banking Act (KWG) (risk management at Group level) and Section 25b of the German Banking Act (outsourcing).

The Circular also provides a qualitative framework for the implementation of relevant articles of Directive 2013/36/EU (Banking Directive - "CRD IV") on the organisation and risk management of institutions.

The circular also implements Article 80 of Directive 1/25/EU (Markets in Financial Instruments Directive) via Section 1 (16) of the German Securities Trading Act (WpHG) in conjunction with Section 2014a (65) of the German Banking Act, insofar as this applies equally to credit institutions and financial services institutions.

The circular takes into account the heterogeneous structure of the institution and the diversity of its business activities. It contains numerous opening clauses that allow for simplified implementation depending on the size of the institutions, the business priorities and the risk situation. In this respect, it can also be implemented flexibly, especially by smaller institutions.

HONG KONG

INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

Cross-Agency Steering Group welcomes publication of IFRS Sustainability Disclosure Standards

On June 27 2023, the Hong Kong Monetary Authority (HKMA) published a press release on Cross-Agency Steering Group welcoming publication of IFRS Sustainability Disclosure Standards.

These standards aim at becoming the global baseline for corporate disclosure of climate and sustainability-related information.

The Steering Group also welcomes the reliefs built into the ISSB standards that would allow jurisdictions to scale and phase in the requirements. Relevant authorities in Hong Kong will consider alignment of the local requirements with this global baseline in a proportionate approach.

SECURITIES TRADING

SFC updates guidance to prepare for HKD-RMB Dual Counter Model

On June 6 2023, the Securities and Futures Commission (SFC) published revised guidance on short selling reporting and stock lending record keeping to prepare for the launch of the HKD-RMB Dual Counter Model in the Hong Kong securities market on June 19 2023.

The Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements has been updated to cover inter-counter transactions of securities under the Dual Counter Model.

HKEX launches HKD-RMB Dual Counter Model and Dual Counter Market Making Programme

On June 19 2023, the Hong Kong Exchanges and Clearing Limited (HKEX) launched Hong Kong Exchanges and Clearing Limited (HKEX).

Under the new Model, designated shares listed in both HKD and RMB counters can be traded and settled in RMB or HKD. Dual Counter Market Makers for eligible shares offer continuous buy and sell quotes for securities in the RMB counter, providing liquidity for HKD-RMB Dual Counter securities trading and minimising any possible price discrepancies between the two counters.

The Model provides the groundwork to support the next phase of development to allow investors from Mainland China to trade Hong Kong-listed RMB securities through Southbound Stock Connect.

SFC updates Guidance note and FAQ on Short Selling Reporting and Stock Lending Record Keeping requirements (6/6/2023)

On June 6 2023, the Securities and Futures Commission (SFC) updated Guidance note and FAQ on Short Selling Reporting and Stock Lending Record Keeping requirements.

The updates are made in response to the launch of the HKD-RMB Dual Counter Model in the Hong Kong securities market on June 19 2023.

Upon the launch of the HKD-RMB Dual Counter Model by Hong Kong Exchanges and Clearing Limited, an RMB trading counter was introduced to securities of certain companies listed in Hong Kong, to allow Hong Kong investors to trade those securities in RMB, in addition to HKD. Despite the difference in trading currency, shares of the same security in the two trading counters are generally of the same class, with the same holders' rights and entitlements, and fully interchangeable between counters.

To reflect the feature of this HKD-RMB Dual Counter Model in the context of short selling reporting, the SFC updated the Guidance Note to clarify the reporting requirements for inter-counter transactions, as follows:

- when an investor buys a security at one counter first and sells at another, the sale is considered an ordinary sale, and
- when a market maker sells a security at one counter and buys it at another, the inter-counter transaction falls under the current exemption, subject to certain conditions.

The FAQs have also been updated to reflect that both the HKD and RMB counters of a security traded under the HKD-RMB Dual Counter Model are on the list of designated securities in respect of which reporting of reportable short positions is required. When determining whether there is a reportable net short position of a designated security with HKD-RMB dual trading counters, a person should (1) calculate the net short position of each counter by netting off the long positions of the other counter of the same designated security; (2) identify the counter which attributes to the aggregated short position; and (3) report the net position value of that counter separately.

IRELAND

FINANCIAL SYSTEM STABILITY

Ireland issues Statement of Strategy 2023-2025

On June 8 2023, the Irish Department of Finance issued a Statement of Strategy for 2023-2025 upon the Houses of the Oireachtas (Ireland's National Parliament).

This Statement of Strategy 2023-2025 sets the framework within which the Department will advise, design and implement Government policies to support economic advancement and to ensure fiscal sustainability in the years ahead.

The Department is working for the period 2023-2025 towards achieving the following Strategic Goals:

- Goal 1 Balanced, sustainable economic growth
- Goal 2 Sound Public Finances
- Goal 3 Well regulated, sustainable banking and financial sector
- Goal 4 International leadership in economic, fiscal and financial decision making
- Goal 5 Promoting environmentally sustainable economic progress

ITALY

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

Banca d'Italia amends KYC Regulations in light of EBA Guidelines on due diligence under AMLD4

On June 15 2023, the Banca d'Italia amended KYC Regulations in light of EBA Guidelines on due diligence under AMLD4.

In section VIII, Part Two of the Provisions of the Bank of Italy on adequate verification of 30 July 2019, the following paragraph is repealed:

"As an alternative to the provisions under a), b), c), the identification of the customer-natural person can be carried out by the recipients digitally remotely according to the audio/video recording procedure governed by Annex 3."

BANKING SUPERVISION

CONSOB publishes MoU on crowdfunding

On June 19 2023, the Commissione Nazionale per le Società e la Borsa (CONSOB) and the Bank of Italy signed a memorandum of understanding defining the areas of cooperation between the two authorities in the field of crowdfunding.

The memorandum takes into account the EU Regulation which has introduced a harmonised discipline at European level for providers of crowdfunding services to companies (Regulation 1503 of 2020) and Legislative Decree 30 of 2023, which at national level completed the primary regulatory framework on the subject, giving the Bank of Italy and Consob regulatory, information, inspection and sanctioning powers distributed according to the supervisory criteria for purposes provided for in Article 5 of the TUF.

In order to facilitate operators interested in submitting the application for authorisation, a fillable file shall be made available which can be used in the preparation of the application for authorisation. The file translates into editable format the form attached to Commission Delegated Regulation (EU) 2022/2112 of July 13 2022 and contains some operational indications to help fill it out. Operators are invited to pay attention to the completeness, clarity and consistency of the information contained in the authorization request to be transmitted to the Supervisory Authority. For the purpose of preparing the application for authorisation, operators are also invited to take into account all relevant legislation, including the delegated implementing Regulations of Regulation (EU) 2020/1503, as well as to consider the Bank of Italy's Supervisory Guidelines published for consultation on May 17 2023 (Bank of Italy - Bank of Italy Supervisory Guidelines on specialised crowdfunding service providers).

The Protocol, which also aims to minimize the burden on the providers of the related services by:

- regulating the procedures for exercising the regulatory powers of the two Authorities;
- defining the exchange of information acquired in the context of the controls for which they are responsible, as well as the procedures for cooperation in inspection matters and collaboration with other European Authorities;
- laying down provisions for the coordination of procedures for issuing authorization and revocation measures for which opinions are to be issued between the two Authorities;
- containing provisions to ensure coordination in the event of irregularities being detected and measures taken in relation to the exercise of supervisory powers.

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

CONSOB publishes notice on ESMA Guidelines on certain aspects of MiFID II remuneration requirements

On June 5 2023, the Commissione Nazionale per le Società e la Borsa (CONSOB) published its notice on ESMA Guidelines on certain aspects of MiFID II remuneration requirements.

In compliance with paragraph 3 of the aforementioned article 16 of the ESMA Regulation, CONSOB has informed the European Authority that it complies with the Guidelines in question, integrating them into its supervisory practices.

Intermediaries subject to Consob supervision are therefore required to comply with the interpretative guidelines provided by ESMA through the Guidelines covered by this notice – according to the terms established by paragraph 3 of the same Guidelines – from October 3 2023, replacing the previous ones, issued in the MiFID I regulatory framework.

For intermediaries who are also recipients of the prudential provisions on remuneration and incentives issued by the Bank of Italy pursuant to art. 53, letter a) of the Consolidated Banking Act or art. 6, paragraph 1, letter c-bis), of the Consolidated Law on Finance, the adaptation to the ESMA Guidelines is carried out within the framework of the provisions of these provisions, on which the supervision of the competent prudential authorities insists.

LUXEMBOURG

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

CSSF updates Annex of Circular CSSF 22/822 / Le CSSF met à jour l'annexe de la circulaire CSSF 22/822

On June 27 2023, the Commission de Surveillance du secteur financier (CSSF) published an Annex of Circular CSSF 22/822.

The Annex contains:

- 1) high-risk jurisdictions on which enhanced due diligence and, where appropriate, counter-measures are imposed ;
- 2) jurisdictions under increased monitoring of the FATF.

Version française

Le 27 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a publié une annexe de la circulaire CSSF 22/822.

L'annexe contient:

- 1) les juridictions à haut risque auxquelles des diligences renforcées et, le cas échéant, des contre-mesures sont imposées ;
- 2) les juridictions sous surveillance accrue du GAFI.

ABBL informs on the new EU Regulation on information accompanying fund transfers and crypto-assets / L'ABBL informe sur le nouveau règlement européen sur les informations accompagnant les transferts de fonds et les crypto-actifs

On June 12 2023, the Association des Banques et Banquiers, Luxembourg (ABBL) published a communication on the new EU Regulation on information accompanying fund transfers and crypto-assets.

The European Parliament and the Council have recently published Regulation (EU) 2023/1113, which brings forth important changes regarding the transfer of funds and certain crypto-assets. This regulation expands the obligations of Crypto-Asset Service Providers (CASPs) and Payment Service Providers (PSPs), building upon the existing framework established by Directive (EU) 2015/849. These developments are crucial for promoting transparency and combating money laundering and terrorist financing.

The revised regulation extends the requirement of identifying originators and beneficiaries to CASPs. It applies to transfers involving crypto-assets, including those facilitated through crypto ATMs, where CASPs or intermediary CASPs are registered within the EU (Article 1). Luxembourg CASPs already adhere to this obligation due to the AML/CFT Law of November 12 2004.

Chapter III of the regulation outlines the specific obligations for CASPs, following a similar logic as applied to PSPs (Articles 14 to 22). Definitions relevant to crypto-assets and CASPs are included in Article 2.

Recital 36 and Articles 14, 16, and 19 detail the information obligations for CASPs acting as originators, beneficiaries, or intermediaries. These obligations are akin to those imposed on PSPs, considering the technical nuances of CASPs. Special provisions are in place for transfers involving self-hosted addresses.

The new regulation introduces a minor change regarding the inclusion of the Legal Entity Identifier (LEI) when providing information (Article 4: PSP of the payer).

Both PSPs and CASPs must establish procedures to ensure the completeness and accuracy of payer/payee or originator/beneficiary information. The obligation to verify information accuracy applies to individual fund transfers exceeding EUR 1,000, with exceptions. PSPs and CASPs are required to retain the information for a period of five years, followed by deletion, unless national law specifies otherwise.

The European Banking Authority (EBA) is assigned the task of providing guidance on how CASPs should consider the risk factors listed in Annex III of the AML Directive. Additionally, the EBA will issue guidelines for CASPs to adhere to restrictive measures and address situations involving missing or incomplete originator/beneficiary information.

By July 1 2026, the European Commission will evaluate the risks associated with self-hosted addresses, determining the necessity for additional measures. CASPs will be classified as financial institutions under the Anti-Money Laundering Directive (AMLD) (Directive (EU) 2015/849 as amended).

Effective from June 29 2023, Regulation (EU) 2023/1113 expands obligations for CASPs and PSPs in fund transfers and crypto-assets. The regulation emphasizes the importance of transparency in combating money laundering and terrorist financing. Compliance with these obligations, such as retaining information for five years and implementing robust verification procedures, is crucial for PSPs and CASPs. The EBA will provide further guidance, while the European Commission will review risks associated with self-hosted addresses. These regulatory measures contribute to the ongoing efforts to ensure the integrity of financial systems and protect against illicit activities.

Version française

Le 12 juin 2023, l'Association des Banques et Banquiers, Luxembourg (ABBL) a publié une communication sur le nouveau règlement européen sur les informations accompagnant les transferts de fonds et les crypto-actifs.

Le Parlement européen et le Conseil ont récemment publié le règlement (UE) 2023/1113, qui apporte des changements importants concernant le transfert de fonds et certains crypto-actifs. Ce règlement élargit les obligations des fournisseurs de services de crypto-actifs (CASP) et des fournisseurs de services de paiement (PSP), en s'appuyant sur le cadre existant établi par la directive (UE) 2015/849. Ces développements sont cruciaux pour promouvoir la transparence et lutter contre le blanchiment de capitaux et le financement du terrorisme.

Le règlement révisé étend l'exigence d'identification des donneurs d'ordre et des bénéficiaires aux CASP. Elle s'applique aux transferts impliquant des crypto-actifs, y compris ceux facilités par des distributeurs automatiques de billets cryptographiques, lorsque des CASP ou des CASP intermédiaires sont enregistrés dans l'UE (article 1). Les CASP luxembourgeois adhèrent déjà à cette obligation en vertu de la loi LBC/FT du 12 novembre 2004.

Le chapitre III du règlement précise les obligations spécifiques des CASP, suivant une logique similaire à celle appliquée aux PSP (articles 14 à 22). Les définitions relatives aux crypto-actifs et aux CASP sont incluses à l'article 2.

Le considérant 36 et les articles 14, 16 et 19 détaillent les obligations d'information pour les CASP agissant en tant qu'initiateurs, bénéficiaires ou intermédiaires. Ces obligations s'apparentent à celles imposées aux PSP, compte tenu des nuances techniques des CASP. Des dispositions spéciales sont en place pour les transferts impliquant des adresses auto-hébergées.

Le nouveau règlement introduit une modification mineure concernant l'inclusion de l'identifiant d'entité juridique (LEI) lors de la fourniture d'informations (article 4 : PSP du donneur d'ordre).

Les PSP et les CASP doivent établir des procédures pour garantir l'exhaustivité et l'exactitude des informations sur le payeur/bénéficiaire ou l'initiateur/bénéficiaire. L'obligation de vérifier l'exactitude des informations s'applique aux transferts de fonds individuels supérieurs à 1 000 EUR, sauf exceptions. Les PSP et les CASP sont tenus de conserver les informations pendant une période de cinq ans, suivie de leur suppression, sauf disposition contraire de la législation nationale.

L'Autorité bancaire européenne (ABE) est chargée de fournir des orientations sur la manière dont les CASP doivent tenir compte des facteurs de risque énumérés à l'annexe III de la directive LBC. En outre, l'ABE publiera des lignes directrices pour que les CASP respectent les mesures restrictives et traitent les situations impliquant des informations manquantes ou incomplètes sur le donneur d'ordre/bénéficiaire.

D'ici le 1er juillet 2026, la Commission européenne évaluera les risques associés aux adresses auto-hébergées, déterminant la nécessité de mesures supplémentaires. Les CASP seront classés comme des institutions financières en vertu de la directive anti-blanchiment (AML) (directive (UE) 2015/849 telle que modifiée).

À compter du 29 juin 2023, le règlement (UE) 2023/1113 étend les obligations des CASP et des PSP en matière de transferts de fonds et de crypto-actifs. Le règlement souligne l'importance de la transparence dans la lutte contre le blanchiment de capitaux et le financement du terrorisme. Le respect de ces obligations, telles que la conservation des informations pendant cinq ans et la mise en œuvre de procédures de vérification solides, est crucial pour les PSP et les CASP. L'ABE fournira des orientations supplémentaires, tandis que la Commission européenne examinera les risques associés aux adresses auto-hébergées. Ces mesures réglementaires contribuent aux efforts continus pour assurer l'intégrité des systèmes financiers et se protéger contre les activités illicites.

CSSF updates FAQ on AML/CFT Market Entry Form (Funds and IFMs) / La CSSF met à jour la FAQ sur le formulaire d'entrée sur le marché AML/CFT (Fonds et GFI)

On June 15 2023, the Commission de Surveillance du secteur financier (CSSF) updated its FAQ on the AML/CFT Market Entry Form (Funds and IFMs)

This publication refers to a list of questions/answers (FAQ) in relation to the completion of the AML/CFT Market Entry Form (Funds and IFMs) in eDesk, with a change in the scope for authorised IFMs in question 1.

Q1. When should a Market Entry Form be completed?

FUND:

- Set-up of a UCITS, UCI Part II, SIF, SICAR, or when asking authorisation of a label (ELTIF, EUSEF, EUVECA or MMF)
- Approval of (a) new sub-fund(s) in an existing Fund

IFM:

- Set-up of an authorised Investment Fund Manager (IFM) or the registration of an Investment Fund Manager

For authorised IFMs only:

- Approval of an additional licence or a licence extension
- Entry of a qualified shareholder in the shareholding structure of the IFM
- Merger (only if the merger leads to a change to the information provided in the Market Entry Form for the absorbing IFM)

Version française

Le 15 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a mis à jour sa FAQ sur le Formulaire d'entrée sur le marché LBC/FT (Fonds et GFI)

Cette publication fait référence à une liste de questions/réponses (FAQ) concernant le remplissage du formulaire d'entrée sur le marché LBC/FT (fonds et GFI) dans eDesk, avec une modification du champ d'application pour les GFI autorisés à la question 1.

Q1. Quand doit-on remplir un formulaire d'entrée sur le marché ?

FONDS:

- Constitution d'un OPCVM, OPC Partie II, FIS, SICAR, ou lors d'une demande d'agrément d'un label (ELTIF, EUSEF, EUVECA ou MMF)
- Approbation d'un (de) nouveau(x) compartiment(s) dans un Fonds existant

IFM:

- *Mise en place d'un Gestionnaire de Fonds d'Investissement (GFI) agréé ou enregistrement d'un Gestionnaire de Fonds d'Investissement*

Pour les GFI autorisés uniquement :

- *Approbation d'une licence supplémentaire ou d'une extension de licence*
- *Entrée d'un actionnaire qualifié dans l'actionariat du GFI*
- *Fusion (uniquement si la fusion entraîne une modification des informations fournies dans le Formulaire d'Entrée sur le Marché du GFI absorbant)*

Luxembourg Ministry of Justice updates on FATF Final report on Luxembourg / Le ministère luxembourgeois de la Justice informe sur le Rapport final du GAFI sur le Luxembourg

On June 23 2023, the Luxembourg Ministry of Justice informed on FATF's Final report on Luxembourg's compliance with AML/CFT standards.

The Plenary concluded that Luxembourg has reached a high level of technical compliance with the FATF's requirements and its AML/CFT regime is delivering good results. Luxembourg has achieved a good understanding of the money laundering and terrorist financing risks it faces, particularly important given its status as a regional and international financial centre. The country achieved robust domestic co-operation and co-ordination at both policy and operational levels, including in the use of financial intelligence and access to beneficial ownership information, and constructive cooperation with its international counterparts.

Luxembourg needs to focus on strengthening its measures in certain areas, including improving the detection, investigation and prosecution of more complex money laundering cases, in line with the country's risk profile. Luxembourg should also strengthen the risk-based supervision of its non-financial sector, further develop and disseminate its understanding of terrorist financing risks to both the public and private sectors and apply proportionate and dissuasive sanctions for non-compliance to its financial and non-financial sectors.

The FATF will publish the report by September after the FATF's quality and consistency review is completed.

Version française

Le 23 juin 2023, le ministère luxembourgeois de la Justice a fait part du rapport final du GAFI sur la conformité du Luxembourg aux normes AML/CFT.

La Plénière a conclu que le Luxembourg a atteint un niveau élevé de conformité technique avec les exigences du GAFI et que son régime de LBC/FT donne de bons résultats. Le Luxembourg a acquis une bonne compréhension des risques de blanchiment de capitaux et de financement du terrorisme auxquels il est confronté, ce qui est particulièrement important compte tenu de son statut de place financière régionale et internationale. Le pays a atteint une coopération et une coordination nationales solides aux niveaux politique et opérationnel, y compris dans l'utilisation des renseignements financiers et l'accès aux informations sur les bénéficiaires effectifs, et une coopération constructive avec ses homologues internationaux.

Le Luxembourg doit se concentrer sur le renforcement de ses mesures dans certains domaines, notamment l'amélioration de la détection, des enquêtes et des poursuites dans les affaires de blanchiment de capitaux plus complexes, conformément au profil de risque du pays. Le Luxembourg devrait également renforcer la surveillance fondée sur les risques de son secteur non financier, développer et diffuser davantage sa compréhension des risques de financement du terrorisme dans les secteurs public et privé et appliquer des sanctions proportionnées et dissuasives en cas de non-conformité à ses secteur financier et non financier.

Le GAFI publiera le rapport final d'ici septembre suite à la clôture de l'examen de qualité et de cohérence du GAFI.

FINANCIAL SYSTEM STABILITY

Luxembourg publishes CSSF Regulation No.23-02 on setting the countercyclical buffer rate for Q3 2023 / Le Luxembourg publie le règlement CSSF n°23-02 relatif à la fixation du taux de coussin contracyclique pour le troisième trimestre 2023

On June 30 2023, Luxembourg published the CSSF Regulation No 23-02 of June 30 2023 on the setting of the countercyclical buffer rate for the third quarter of 2023.

In accordance with article 59-7 of the law of April 5, 1993 relating to the financial sector ("LSF"), on the basis of the elements documented in Appendix 1 and the recommendation of the Systemic Risk Committee of June 8, 2023 concerning the setting of the countercyclical buffer rate for the third quarter of 2023, documented in Appendix 2, the countercyclical buffer rate applicable to the relevant exposures located in Luxembourg remains set at 0.50% for the third quarter of 2023.

Version française

Le 30 juin 2023, le Luxembourg a publié le règlement CSSF n° 23-02 du 30 juin 2023 relatif à la fixation du taux de coussin contracyclique pour le troisième trimestre 2023.

Conformément à l'article 59-7 de la loi du 5 avril 1993 relative au secteur financier (« LSF »), sur la base des éléments documentés en annexe 1 et de la recommandation du Comité du risque systémique du 8 juin 2023 concernant la fixation du taux de coussin contracyclique pour le troisième trimestre 2023, documentée en annexe 2, le taux de coussin contracyclique applicable aux expositions pertinentes situées au Luxembourg reste fixé à 0,50% pour le troisième trimestre 2023.

GOVERNANCE

CSSF publishes outcomes of self-assessment exercise 2022 related to Circular CSSF 21/773 / La CSSF publie les résultats de l'exercice d'auto-évaluation 2022 liés à la circulaire CSSF 21/773

On 27 June 2023, the Commission de Surveillance du secteur financier (CSSF) published the outcomes of the self-assessment exercise 2022 related to Circular CSSF 21/773 on climate-related and environmental risks.

Version française

Le 27 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a publié les résultats de l'exercice d'auto-évaluation 2022 relatif à la circulaire CSSF 21/773 sur les risques liés au climat et à l'environnement.

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

CSSF publishes thematic review on UCITS Value-at-Risk models validation for global exposure calculation / La CSSF publie sa revue thématique sur la validation des modèles Value-at-Risk des OPCVM pour le calcul de l'exposition globale

On June 13 2023, the Commission de Surveillance du secteur financier (CSSF) published the results of its thematic review on validation of Value-at-Risk (VaR) models used by Undertaking for collective investment in transferable securities (UCITS) for global exposure calculation

The CSSF launched a thematic review into VaR models used by UCITS for the calculation of global exposure and more specifically the processes in place at the level of the UCITS management companies (IFMs) concerning the initial and ongoing validation of the VaR models, as governed by paragraphs 3 and 4 concerning "Model validation" of Box 22 of the CESR Guidelines 10-788.

The thematic review was carried out on the basis a representative sample of 20 Luxembourg IFM managing Luxembourg UCITS that use the VaR for the calculation of the global exposure.

A questionnaire used in that context covered various aspects, such as the organisational set-up of the validation, the aspects of the models covered by the validation, the tests performed, and the conclusions drawn by the IFMs from the validation exercise. In addition, the CSSF also based its observations on the VaR validation reports provided by the IFMs.

The main observations made by the CSSF, together with the related recommendations for improvement, are set out in Section 2.

The CSSF hereby asks all IFMs using VaR models for the calculation of the global exposure to perform

- (i) by the end of the year 2023 a comprehensive assessment of their existing VaR model validation framework against these observations, and
- (ii) to take on that basis, in accordance with a given timeline, the necessary corrective measures (if applicable).

Version française

Le 13 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a publié les résultats de sa revue thématique sur la validation des modèles de Value-at-Risk (VaR) utilisés par les Organismes de Placement Collectif en Valeurs Mobilières (OPCVM) pour le calcul de l'exposition globale.

La CSSF a lancé une revue thématique des modèles de VaR utilisés par les OPCVM pour le calcul de l'exposition globale et plus particulièrement des processus en place au niveau des sociétés de gestion d'OPCVM (GFI) concernant la validation initiale et continue des modèles de VaR, régie par paragraphes 3 et 4 concernant la « validation du modèle » de l'encadré 22 des orientations CESR 10-788.

La revue thématique a été réalisée sur la base d'un échantillon représentatif de 20 GFI luxembourgeois gérant des OPCVM luxembourgeois qui utilisent la VaR pour le calcul de l'exposition globale.

Le questionnaire utilisé dans ce contexte couvrait divers aspects, tels que le montage organisationnel de la validation, les aspects des modèles couverts par la validation, les tests effectués et les conclusions tirées par les GFI de l'exercice de validation. Par ailleurs, la CSSF a également fondé ses observations sur les rapports de validation de la VaR fournis par les GFI.

Les principales observations formulées par la CSSF, ainsi que les recommandations d'amélioration y afférentes, sont présentées dans la section 2.

La CSSF demande à tous les GFI utilisant des modèles de VaR le calcul de l'exposition globale à effectuer

- (i) d'ici la fin de l'année 2023, une évaluation complète de leur cadre de validation de modèle VaR existant par rapport à ces observations, et
- (ii) de prendre sur cette base, selon un échéancier donné, les mesures correctives nécessaires (le cas échéant).

CSSF updates document summarizing national provisions governing marketing requirements for AIFs / La CSSF met à jour le document résumant les dispositions nationales régissant les exigences de commercialisation des FIA

On June 9 2023, the Commission de Surveillance du secteur financier (CSSF) updated its document summarizing national provisions governing marketing requirements for AIFs.

A Luxembourg-based AIFM which intends to market to professional investors in Luxembourg the units or shares of an AIF which is established in another Member State, must submit a notification file to the CSSF via the eDesk portal. The notification file shall comprise the documentation as set out in Annex III of the AIFM Law. This notification procedure does not apply to Luxembourg AIFMs which intend to market AIFs that they manage to professional investors in Luxembourg, where these AIFs are subject to authorisation and prudential supervision by the CSSF. Within 20 working days following receipt of a complete notification file, the CSSF shall inform the AIFM whether it may start marketing the AIF identified in the notification file. Luxembourg-based authorised AIFMs shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units of an AIF in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

A Luxembourg-based AIFM which intends to market to professional investors in another Member State the units or shares of an EU AIF which is managed by that AIFM must submit a notification file to the CSSF via the eDesk portal. The notification file shall comprise the documentation as set out in Annex IV of the AIFM Law. Within 20 working days following receipt of a complete notification file, the CSSF shall transmit the complete notification file to the authorities of the Member State where marketing shall take place and inform the AIFM whether it may start marketing the AIF identified in the notification file. An AIFM may withdraw the notification of arrangements for marketing units in a Member State in respect of which it has made a notification in accordance with Article 30-1 of the AIFM Law. The AIFM shall submit a de-notification letter to the CSSF, containing the information in respect of compliance with the conditions referred to in the Article 30-1 of

the AIFM Law (which shall be transmitted to the authorities of the relevant Member State). Luxembourg-based authorised AIFMs shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units of an AIF in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

Every authorised EU AIFM which intends to market non-EU AIFs to professional investors in Luxembourg and which complies with the conditions under Article 37 of the AIFM Law must send an information form to the CSSF using the email address aifm@cssf.lu, before starting its marketing activity in Luxembourg. If such AIFM intends to cease the marketing of its AIF/sub-fund in Luxembourg, it must inform the CSSF whether Luxembourgish investors are still invested in the fund/sub-fund and de-register the AIF/sub-fund per e-mail to aifm@cssf.lu.

Every non-EU AIFM which intends to market shares or units of the AIF(s) it manages to professional investors in Luxembourg and which complies with the conditions under Article 45 of the AIFM Law must send an information form to the CSSF, using the email address aifm@cssf.lu, before starting its marketing activity in Luxembourg. If such AIFM intends to cease the marketing of its AIF/sub-fund in Luxembourg, it must inform the CSSF whether Luxembourgish investors are still invested in the fund/sub-fund and de-register the AIF/sub-fund per e-mail to aifm@cssf.lu. A non-EU AIFM shall be required to fulfil its reporting obligations under Annex IV of the AIFMD towards the CSSF, even after sending the cessation notification, for as long as Luxembourg investors are invested in the relevant AIF.

The rules for the application of Article 46 of the AIFM Law for marketing of regulated AIFs to retail investors in Luxembourg are laid down in CSSF Regulation N° 15-03 CSSF Regulation No 15-03 – CSSF. Prior to marketing an AIF's units or shares to retail investors in Luxembourg, any authorised EU AIFM that complies with the conditions under Article 46 of the AIFM Law must have obtained a prior authorisation for such marketing from the CSSF. The application form as well as any changes to the initial application form must be sent to opc@cssf.lu.

The AIFM shall provide the required documents and information to the CSSF and to investors in Luxembourg in one of the following languages: Luxembourgish, French, German or English.

Version française

Le 9 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a mis à jour son document récapitulatif des dispositions nationales régissant les exigences de commercialisation des FIA.

Un GFIA établi au Luxembourg qui entend commercialiser auprès d'investisseurs professionnels au Luxembourg les parts ou actions d'un FIA établi dans un autre État membre, doit introduire un dossier de notification auprès de la CSSF via le portail eDesk. Le dossier de notification comprend la documentation telle que définie à l'Annexe III de la Loi AIFM. Cette procédure de notification ne s'applique pas aux GFIA luxembourgeois qui entendent commercialiser les FIA qu'ils gèrent auprès d'investisseurs professionnels au Luxembourg, où ces FIA sont soumis à l'agrément et à la surveillance prudentielle de la CSSF. Dans les 20 jours ouvrables suivant la réception d'un dossier de notification complet, la CSSF informe le gestionnaire s'il peut commencer à commercialiser le FIA identifié dans le dossier de notification. Les gestionnaires de FIA agréés établis au Luxembourg veillent à ce que toutes les communications marketing adressées aux investisseurs soient identifiables en tant que telles et décrivent les risques et avantages liés à l'achat de parts d'un FIA de manière tout aussi visible, et que toutes les informations incluses dans les communications marketing soient loyales, claires et non trompeur.

Un GFIA basé au Luxembourg qui a l'intention de commercialiser auprès d'investisseurs professionnels dans un autre État membre les parts ou actions d'un FIA de l'UE qui est géré par ce GFIA doit soumettre un dossier de notification à la CSSF via le portail eDesk. Le dossier de notification comprend la documentation telle que définie à l'Annexe IV de la Loi AIFM. Dans les 20 jours ouvrables suivant la réception d'un dossier de notification complet, la CSSF transmet le dossier de notification complet aux autorités de l'État membre où la commercialisation a lieu et informe le gestionnaire s'il peut commencer à commercialiser le FIA identifié dans le dossier de notification. Un gestionnaire peut retirer la notification des accords d'unités de commercialisation dans un État membre pour lequel il a effectué une notification conformément à l'article 30-1 de la loi AIFM. Le gestionnaire soumet une lettre de dénotification à la CSSF, contenant les informations relatives au respect des conditions visées à l'article 30-1 de la Loi AIFM (qui seront transmises aux autorités de l'État membre concerné). Les GFIA agréés établis au Luxembourg veillent à ce que toutes les communications marketing adressées aux investisseurs soient identifiables en tant que telles et décrivent les risques et avantages liés à l'achat de parts d'un FIA de manière tout aussi visible, et que toutes les informations incluses dans les communications marketing soient loyales, claires et non trompeur.

Tout GFIA agréé de l'UE qui a l'intention de commercialiser des FIA non communautaires auprès d'investisseurs professionnels au Luxembourg et qui respecte les conditions de l'article 37 de la loi AIFM doit envoyer un formulaire d'information à la CSSF à l'adresse électronique aifm@cssf.lu, avant de commencer son activité de commercialisation au Luxembourg. Si un tel AIFM a l'intention de cesser la commercialisation de son FIA/compartiment au Luxembourg, il doit informer la CSSF si des investisseurs luxembourgeois sont toujours investis dans le fonds/compartiment et désenregistrer le FIA/compartiment par e-mail à aifm@cssf.lu.

Tout GFIA hors UE qui a l'intention de commercialiser des actions ou des parts du ou des FIA qu'il gère auprès d'investisseurs professionnels au Luxembourg et qui respecte les conditions de l'article 45 de la loi AIFM doit adresser une fiche d'information à la CSSF, en utilisant l'e-mail adresse aifm@cssf.lu, avant de démarrer son activité de commercialisation au Luxembourg. Si un tel AIFM a l'intention de cesser la commercialisation de son FIA/compartiment au Luxembourg, il doit informer la CSSF si des investisseurs luxembourgeois sont toujours investis dans le fonds/compartiment et désenregistrer le FIA/compartiment par e-mail à aifm@cssf.lu. Un gestionnaire non membre de l'UE est tenu de remplir ses obligations de déclaration au titre de l'annexe IV de la directive AIFMD envers la CSSF, même après l'envoi de la notification de cessation, tant que les investisseurs luxembourgeois sont investis dans le FIA concerné.

Les règles d'application de l'article 46 de la loi AIFM pour la commercialisation des FIA réglementés auprès des investisseurs de détail au Luxembourg sont fixées par le Règlement CSSF N° 15-03 Règlement CSSF N° 15-03 – CSSF. Préalablement à la commercialisation des parts ou actions d'un FIA auprès d'investisseurs de détail au Luxembourg, tout GFIA agréé de l'UE qui respecte les conditions de l'article 46 de la Loi AIFM doit avoir obtenu au préalable une autorisation pour une telle commercialisation auprès de la CSSF. Le formulaire de candidature ainsi que toute modification du formulaire de candidature initial doivent être envoyés à opc@cssf.lu.

Le gestionnaire fournit les documents et informations requis à la CSSF et aux investisseurs au Luxembourg dans l'une des langues suivantes: luxembourgeoise, française, allemande ou anglaise.

CSSF publishes UCI Administrator Annual Reporting – Practical and technical guidance / La CSSF publie le rapport annuel de l'administrateur de l'OPC – Guide pratique et technique

On June 30 2023, the Commission de Surveillance du secteur financier (CSSF) the published UCI Administrator Annual Reporting – Practical and technical guidance.

A UCI administrator in scope of Circular CSSF 22/811 must communicate to the CSSF, on an annual basis, information regarding its business activities and resources pursuant to point 7 of Circular CSSF 22/811.

The CSSF must receive the aforementioned information at the latest five months after the financial year-end of the UCI administrator. The reporting requirement starts as from 06/30/2023. For example, a UCI administrator with a financial year ending on 06/30/2023 should first report the requested information no later than 11/30/2023.

The UCI Administrator Annual Reporting is possible through two different channels:

- via an online form available on the eDesk platform;
- via S3 system by using a structured exchange file

Version française

Le 30 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a publié le rapport annuel de l'administrateur de l'OPC – Guide pratique et technique

Un administrateur d'OPC dans le champ d'application de la circulaire CSSF 22/811 doit communiquer à la CSSF, sur une base annuelle, des informations concernant son activité et ses ressources conformément au point 7 de la circulaire CSSF 22/811.

La CSSF doit recevoir les informations précitées au plus tard cinq mois après la clôture de l'exercice social de l'administrateur de l'OPC. L'obligation de déclaration commence à partir du 30/06/2023. Par exemple, un administrateur d'OPC dont l'exercice social se termine le 30/06/2023 doit d'abord déclarer les informations demandées au plus tard le 30/11/2023.

Le rapport annuel de l'administrateur de l'UCI est possible via deux canaux différents :

- *via un formulaire en ligne disponible sur la plateforme eDesk ;*
- *via le système S3 en utilisant un fichier d'échange structuré*

ChD adopts Draft Law No.7885 on the screening of foreign direct investments that undermine national security / La ChD adopte le projet de loi n°7885 sur le filtrage des investissements directs étrangers portant atteinte à la sécurité nationale

BACKGROUND

Foreign direct investment is of major importance for the global economy and is considered one of the main catalysts for economic development. But the emergence of new types of investors, such as state-owned enterprises linked to foreign governments, has raised concerns, both at EU level and among Member States. Foreign investments in strategic sectors such as robotics, energy or (air)port infrastructure have raised fears that critical infrastructure could fall under the control of foreign governments.

WHAT'S NEW?

On June 23 2023, the Chambre des députés - Luxembourg adopted the Draft Law No.7885 on the screening of foreign direct investments that undermine national security. The purpose of this law is to establish a national screening mechanism for foreign direct investments that may undermine security or public order and to set up the cooperation mechanism between the Member States of the European Union and the European Commission for the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for screening foreign direct investments in the Union, as amended. The national screening mechanism applies to foreign direct investments, except for portfolio investments, which may affect security or public order, in an entity incorporated under Luxembourg law carrying out critical activities in Luxembourg. The Law will have an impact operational aspects of in-scope M&A transactions.

WHAT'S NEXT?

The Law will enter into force on the first day after two months from the publication in the Official Journal. The Government is likely to issue guidelines to assist the industry's compliance.

Version française

BACKGROUND

L'investissement étranger direct revêt une importance majeure pour l'économie mondiale et est considéré comme l'un des principaux catalyseurs du développement économique. Mais l'émergence de nouveaux types d'investisseurs, tels que les entreprises publiques liées à des gouvernements étrangers, a suscité des inquiétudes, tant au niveau de l'UE que parmi les États membres. Les investissements étrangers dans des secteurs stratégiques tels que la robotique, l'énergie ou les infrastructures (aéro)portuaires ont fait craindre que des infrastructures critiques pourraient tomber sous le contrôle de gouvernements étrangers.

WHAT'S NEW?

Le 23 juin 2023, la Chambre des députés - Luxembourg a adopté le projet de loi n°7885 relatif au filtrage des investissements directs étrangers portant atteinte à la sécurité nationale. Cette loi a pour objet d'établir un mécanisme national de filtrage des investissements directs étrangers susceptibles de porter atteinte à la sécurité ou à l'ordre public et de mettre en place le mécanisme de coopération entre les États membres de l'Union européenne et la Commission européenne pour la mise en œuvre du 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. Le mécanisme national de filtrage s'applique aux investissements directs étrangers, à l'exception des investissements de portefeuille, susceptibles d'affecter la sécurité ou l'ordre

public, dans une entité de droit luxembourgeois exerçant des activités critiques au Luxembourg. La loi aura cependant un impact sur les aspects opérationnels des opérations de fusions et acquisitions.

WHAT'S NEXT?

La loi entrera en vigueur le premier jour après deux mois à compter de la publication au Journal officiel. Le gouvernement est susceptible de publier des lignes directrices pour aider l'industrie à se conformer.

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

ALFI responds to ESAs Consultation on DORA / L'ALFI répond à la consultation des AES sur DORA

On June 22 2023, the Association of the Luxembourg Fund Industry (ALFI) responded to the ESAs consultation on Digital Operational Resilience Act (DORA) criteria for critical ICT Third-party service providers and oversight fees.

On May 26, the DORA level 3 trilogue discussions started on criteria for critical ICT third-party service providers and oversight fees. This takes a form of a joint Discussion Paper seeking stakeholders' input on aspects of the DORA.

The paper proposes and consult on two very technical aspects:

- What are the indicators and objective criteria to determine what is a critical ICT third-party service provider ?
- How to determine the amount paid by critical ICT third-party service provider to the Lead overseer (ESA appointed) ?

Question 6

Do you agree with the list of step 1 indicators proposed to cover criterion 1 referred to in Article 31(2) of the DORA?

ALFI members agree that the number of financial entities making use of the services of any given service provider could be of relevance. Meanwhile, making use of the asset under management (net asset value) figures to assess the relative

weight of the financial entities using that service provider would base the measurement on easily available and reliable data. With regards to the relative market share information, ALFI considers this information would be relevant in assessing criticality, a substantial shortcoming would be the lack of complete and reliable data. ALFI investment fund manager members and fund administrator members highlight a criticality assessment of delegates and third-party services providers performed:

- Within the scope of the business impact analysis
- Within the scope of the business continuity management

When performing such analysis, financial entities would be using a risk-based approach, assuming the impact of the unavailability of a delegate or service provider. ALFI is in the views that using a similar risk-based approach in assessing the criticality level of service providers within the scope of DORA would allow the financial companies to benefit from an existing risk assessment framework while setting up a level-playing field across the industry for all delegates and service providers. Under certain specific situations, the focus would shift from the risk-based approach to

a risk mitigation. This is for instance the case when ICT TPPs are within the same group - as excluded per Art 31(8) DORA - or when the ICT TPPs landscape is characterized by a significant concentration of providers.

Question 11

Which key data sources would you propose to use for the indicators under criterion 1? Please explain.

An overview of existing data highlights the following three main sources:

- Self-reported data from ICT third party provider
- Self-reported data from financial entities
- Third party data provider
- National competent authorities

Question 18

Do you agree with the list of step 1 indicators proposed to cover criterion 3 referred to in Article 31(2)(c) of the DORA?

ALFI considers that the assessment of critical functions should be following a business impact analysis and a risk-based approach. Such analysis, as already performed within the scope of the critical functions' analysis with regards to

business continuity, allows for assessing the impact of the temporary loss of critical functions. Using a similar risk-based approach in the identification of the critical functions served by the service providers within the scope of DORA would allow for an enhanced overall consistency within the various areas of service outsourcing for the financial entities.

As a result, ALFI would not welcome a taxonomy-based approach in the form of a list of critical activities, whose completeness and suitability could be questioned within the context of specific activities and / or entities.

Version française

Le 22 juin 2023, l'Association luxembourgeoise de l'industrie des fonds d'investissement (ALFI) a répondu à la consultation des AES sur les critères de la loi sur la résilience opérationnelle numérique (DORA) pour les fournisseurs de services tiers critiques en matière de TIC et les frais de surveillance.

Le 26 mai, les discussions du trilogue DORA de niveau 3 ont commencé sur les critères applicables aux fournisseurs de services tiers critiques en matière de TIC et sur les frais de surveillance. Cela prend la forme d'un document de travail conjoint sollicitant les commentaires des parties prenantes sur les aspects de la DORA.

Le papier propose et consulte sur deux aspects très techniques :

- Quels sont les indicateurs et critères objectifs pour déterminer ce qu'est un Tiers Prestataire TIC critique ?
- Comment déterminer le montant versé par le fournisseur de services tiers critiques en matière de TIC au superviseur principal (désigné par l'ESA) ?

Question 6

Êtes-vous d'accord avec la liste des indicateurs de l'étape 1 proposée pour couvrir le critère 1 visé à l'article 31, paragraphe 2, de la DORA ?

Les membres de l'ALFI conviennent que le nombre d'entités financières utilisant les services d'un fournisseur de services donné pourrait être pertinent. Entre-temps, en utilisant les chiffres des actifs sous gestion (valeur nette d'inventaire) pour évaluer le poids des entités financières utilisant ce fournisseur de services fonderait la mesure sur des données facilement disponibles et fiables. En ce qui concerne les informations sur les parts de marché relatives, l'ALFI considère que ces informations seraient pertinentes pour évaluer la criticité, une lacune importante serait le manque de données complètes et fiables. Les membres gestionnaires de fonds d'investissement de l'ALFI et les membres administrateurs de fonds mettent en avant une évaluation de la criticité des délégataires et des tiers prestataires réalisée dans le cadre de :

- l'analyse d'impact business
- la gestion de la continuité d'activité

Lors de l'exécution de cette analyse, les entités financières utiliseraient une approche fondée sur les risques, en supposant l'impact de l'indisponibilité d'un délégataire ou d'un fournisseur de services. L'ALFI est d'avis que l'utilisation d'une approche similaire basée sur les risques pour évaluer le niveau de criticité des prestataires de services dans le cadre de DORA permettrait aux sociétés financières de bénéficier d'un cadre d'évaluation des risques existant tout en établissant des règles du jeu équitables dans l'ensemble du secteur pour tous les délégués et prestataires de services. Dans certaines situations spécifiques, l'accent passerait de l'approche fondée sur les risques à une atténuation des risques. C'est par exemple le cas lorsque les TPP TIC font partie du même groupe - tel qu'exclu par l'article 31(8) DORA - ou lorsque le paysage des TPP TIC se caractérise par une concentration importante de fournisseurs.

Question 11

Quelles sources de données clés proposeriez-vous d'utiliser pour les indicateurs du critère 1 ? S'il vous plaît, expliquez.

Un aperçu des données existantes met en évidence les trois principales sources suivantes :

- Données autodéclarées par un fournisseur tiers de TIC
- Données autodéclarées par les entités financières
- Fournisseur de données tiers
- Autorités nationales compétentes

Question 18

Êtes-vous d'accord avec la liste des indicateurs de l'étape 1 proposée pour couvrir le critère 3 visé à l'article 31, paragraphe 2, point c) de la DORA ?

L'ALFI considère que l'évaluation des fonctions critiques doit suivre une analyse d'impact sur l'entreprise et une approche basée sur les risques. Une telle analyse, déjà effectuée dans le cadre de l'analyse des fonctions critiques en ce qui concerne la continuité d'activité, permet d'évaluer l'impact de la perte temporaire de fonctions critiques. L'utilisation d'une approche similaire basée sur les risques dans l'identification des fonctions critiques assurées par les prestataires de services dans le cadre de DORA permettrait une meilleure cohérence globale dans les différents domaines d'externalisation des services pour les entités financières.

Par conséquent, l'ALFI n'apprécierait pas une approche taxonomique sous la forme d'une liste d'activités critiques, dont l'exhaustivité et la pertinence pourraient être remises en question dans le cadre d'activités et/ou d'entités spécifiques.

SUSTAINABLE FINANCE / GREEN FINANCE

CSSF advises on SFDR data collection exercise relating to sustainability disclosures in the periodic reports / La CSSF donne son avis sur l'exercice de collecte de données SFDR relatif aux informations sur la durabilité dans les rapports périodiques

On June 30 2023, the Commission de Surveillance du secteur financier (CSSF) advised on the SFDR data collection exercise relating to sustainability disclosures in the periodic reports applicable to investment fund managers (IFMs) and institutions for occupational retirement provision (IORPs) on periodic disclosures in relation to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (TR).

The objective of the present Communiqué is to provide industry participants with information regarding the launch of the data collection exercise relating to the disclosures in periodic reports for financial products disclosing under Article 8 or Article 9 of SFDR. IFMs and IORPs qualifying as FMPs are required to include sustainability-related information in the periodic reports of financial products disclosing under Article 8 or Article 9 of SFDR. The objective of the current data collection exercise is to collect in a digital format on an annual basis, in accordance with the financial year-end of the financial products, information in relation to the disclosures in periodic reports.

The data collection exercise on periodic disclosure information is mandatory for all (sub-)funds of a UCITS/AIF/IORP disclosing under Article 8 or 9 of SFDR and subject to the scope as defined above. FMPs, subject to Articles 2(2) or 3(1) of the 2013 Law, can participate to this data collection exercise on a voluntary basis in relation to any Luxembourg-domiciled regulated AIF they manage.

On that basis, FMPs, for each financial product in the scope as defined above, are required to provide a set of information relating to disclosures in periodic reports, included in the annual reports issued as from January 1 2023 and with a financial year-end on or after September 30 2022, according to the following deadlines:

- For periodic reports issued, in accordance with the legal deadline to publish the annual report or to make it available to investors, between January 1 2023 and December 31 2023, information shall be provided to the CSSF by 31 January 2024 at the latest.
- For periodic reports issued as from January 1 2024, information shall be provided to the CSSF, at the latest, one month after the legal deadline to publish the annual report or to make it available to investors.

Accordingly, the aforementioned information shall be submitted to the CSSF, at the latest, 5 months after financial year-end for UCITS, respectively 7 months for AIFs and IORPs.

Version française

Le 30 juin 2023, la Commission de Surveillance du secteur financier (CSSF) a donné son avis sur l'exercice de collecte de données SFDR relatif aux informations à fournir en matière de développement durable dans les rapports périodiques applicables aux gestionnaires de fonds d'investissement (GFI) et aux institutions de retraite professionnelle (IRP) sur des informations périodiques en relation avec le règlement (UE) 2019/2088 sur les informations à fournir en matière de développement durable dans le secteur des services financiers (SFDR) et le règlement (UE) 2020/852 sur l'établissement d'un cadre visant à faciliter l'investissement durable (TR).

L'objectif du présent communiqué est de fournir aux acteurs du secteur des informations concernant le lancement de l'exercice de collecte de données relatives aux informations à fournir dans les rapports périodiques pour les produits financiers soumis à l'article 8 ou à l'article 9 du SFDR. Les GFI et IRP qualifiés de PMF sont tenus d'inclure des informations liées au développement durable dans les rapports périodiques des produits financiers divulgués en vertu de l'article 8 ou de l'article 9 du SFDR. L'exercice actuel de collecte de données a pour objectif de collecter chaque année sous forme numérique, conformément à la clôture de l'exercice financier des produits financiers, des informations relatives aux informations fournies dans les rapports périodiques.

L'exercice de collecte de données sur les informations périodiques est obligatoire pour tous les (compartiments) d'un OPCVM/FIA/IRP déclarant conformément à l'article 8 ou 9 du SFDR et sous réserve du champ d'application tel que défini ci-dessus. Les FMP, soumis aux articles 2(2) ou 3(1) de la Loi 2013, peuvent participer à cet exercice de collecte de données sur une base volontaire concernant tout FIA réglementé domicilié au Luxembourg qu'ils gèrent.

Sur cette base, les PMF, pour chaque produit financier du périmètre tel que défini ci-dessus, sont tenus de fournir un ensemble d'informations relatives aux informations communiquées dans les rapports périodiques, inclus dans les rapports annuels émis à compter du 1er janvier 2023 et avec une date de fin d'exercice le ou après le 30 septembre 2022, selon les échéances suivantes :

- pour les rapports périodiques émis, conformément au délai légal de publication du rapport annuel ou de mise à disposition des investisseurs, entre le 1er janvier 2023 et le 31 décembre 2023, les informations sont fournies à la CSSF au plus tard le 31 janvier 2024.
- pour les rapports périodiques émis à partir du 1er janvier 2024, les informations sont fournies à la CSSF, au plus tard, un mois après le délai légal de publication du rapport annuel ou de mise à disposition des investisseurs.

En conséquence, les informations précitées doivent être transmises à la CSSF au plus tard 5 mois après la clôture de l'exercice pour les OPCVM, respectivement 7 mois pour les FIA et les IRP.

ACCOUNTING

CSSF publishes CNC Q&As / La CSSF publie les questions7réponses de la CNC

On June 1 2023, the Commission de Surveillance du secteur financier (CSSF) published the Q&As by the Commission des normes comptables (CNC).

The Accounting Standards Commission has published five 'Questions / Answers' (new and revised) which are available online on its website under the 'News' section (<http://www.cnc.lu/actualites>) and under the 'Publications' section, subsection 'Doctrine' (<http://www.cnc.lu/publications/doctrine/>) and which are listed below:

New "Questions and Answers":

Q&A CNC 23/029 – Accounting aspects of company migrations to Luxembourg under LUX GAAP and LUX GAAP-JV regimes:

This Q&A aims to put an end to existing heterogeneous practices in this area. Similarly, the CNC defends the thesis of accounting continuity, which echoes legal continuity. In this Q&A, the CNC argues in favour of restating securities that do not comply with Luxembourg accounting law (preferential method), while allowing the crystallisation of these values provided that the unrealised revaluation gains are presented within non-distributable reserve items for prudential purposes (alternative method). Finally, the Q&A answers several practical questions that companies face when migrating their companies to Luxembourg.

Q&A CNC 23/030 – Change of currency of bookkeeping and preparation of annual accounts in LUX GAAP and LUX GAAP-JV regimes:

The purpose of this Q&A is to specify that a change in the currency of bookkeeping and preparation of annual accounts can only be made in exceptional cases. The CNC also provides a pragmatic approach to converting accounting from the old to the new currency (using a single exchange rate that does not generate translation differences). Nevertheless, it remains possible for the company to adopt a more conceptual solution for the conversion of its accounting from the old to the new currency. In such a case, the undertaking is required to provide adequate information on the conversion method chosen in the annex.

"Reviewed Q&A":

Q&A CNC 15/004 (R) – Exemption from the preparation of consolidated accounts of sub-groups: notions of conformity and equivalence (Article 1711-7, point 2° of the law of 10 August 1915 on commercial companies):

This Q&A has been revised to reflect on the one hand the exit of the United Kingdom from the European Union and on the other hand to reflect the legislative update of the articles of the law of 10 August 1915 concerning companies Commercial.

Q&A CNC 21/024 (R) – Changes in accounting policies, valuation methods and accounting estimates under LUX GAAP and LUX GAAP-JV:

This Q&A has been revised to clarify that in the event of a change in accounting policies or valuation methods, the reasons and reasons for making the changes in accordance with Article 51 should be disclosed in the notes to the financial statements, Paragraph (2) of the Law of 19 December 2002 on the Trade and Companies Register.

Q&A CNC 22/026 (R) – Currency for bookkeeping and preparation of annual accounts in LUX GAAP and LUX GAAP-JV regimes:

This Q&A has been revised to remove the reference to ISO 4217 "Currency codes" as an international standard used to delimit the currencies that may be chosen by Luxembourg companies for the keeping of their accounts and the preparation of their annual accounts and to replace the latter by a reference to Luxembourg practice. Thus, in practice in the Grand Duchy of Luxembourg, "a company incorporated under Luxembourg law may thus freely select a currency of its choice as legal tender for the keeping of its accounts and the preparation of its annual accounts, provided that it is a fully convertible and freely usable currency and that it is issued or guaranteed by a central bank or by a public authority".

Version française

Le 1er juin 2023, la Commission de Surveillance du secteur financier (CSSF) a publié les questions-réponses de la Commission des normes comptables (CNC).

La Commission des normes comptables a publié cinq 'Questions / Réponses' (nouvelles et révisées) qui sont disponibles en ligne sur son site Internet dans la rubrique 'Actualités' (<http://www.cnc.lu/actualites>) et dans la rubrique 'Publications', sous-section 'Doctrine' (<http://www.cnc.lu/publications/doctrine/>) et qui sont listés ci-dessous :

Nouveau "Questions et réponses":

Q&R CNC 23/029 – Aspects comptables des migrations d'entreprises vers le Luxembourg sous les régimes LUX GAAP et LUX GAAP-JV :

Ce Q&A vise à mettre un terme aux pratiques hétérogènes existantes dans ce domaine. De même, le CNC défend la thèse de la continuité comptable, qui fait écho à la continuité juridique. Dans ce Q&A, le CNC plaide en faveur du retraitement des titres non conformes au droit comptable luxembourgeois (méthode préférentielle), tout en permettant la cristallisation de ces valeurs à condition que les plus-values latentes de réévaluation soient présentées au sein des éléments de réserves non distribuables à des fins prudentielles (méthode alternative). Enfin, le Q&A répond à plusieurs questions pratiques auxquelles les entreprises sont confrontées lors de la migration de leurs entreprises au Luxembourg.

Q&R CNC 23/030 – Changement de devise de comptabilité et d'établissement des comptes annuels en régimes LUX GAAP et LUX GAAP-JV :

L'objet de ce Q&A est de préciser qu'un changement de monnaie de tenue de la comptabilité et d'établissement des comptes annuels ne peut intervenir que dans des cas exceptionnels. Le CNC propose également une approche pragmatique de la conversion comptable de l'ancienne vers la nouvelle monnaie (utilisation d'un taux de change unique ne générant pas d'écarts de conversion). Néanmoins, il reste possible pour l'entreprise d'adopter une solution plus conceptuelle pour la conversion de sa comptabilité de l'ancienne à la nouvelle monnaie. Dans un tel cas, l'entreprise est tenue de fournir des informations adéquates sur la méthode de conversion choisie dans l'annexe.

"Questions et réponses révisées":

Q&R CNC 15/004 (R) – Exemption de l'établissement des comptes consolidés des sous-groupes : notions de conformité et d'équivalence (article 1711-7, 2° de la loi du 10 août 1915 sur les sociétés commerciales) :

Ce Q&A a été révisé pour refléter d'une part la sortie du Royaume-Uni de l'Union européenne et d'autre part pour refléter la mise à jour législative des articles de la loi du 10 août 1915 concernant les sociétés commerciales.

Q&R CNC 21/024 (R) – Modifications des principes comptables, des méthodes d'évaluation et des estimations comptables sous LUX GAAP et LUX GAAP-JV :

Ces questions et réponses ont été révisées pour clarifier qu'en cas de changement de méthodes comptables ou de méthodes d'évaluation, les raisons et les motifs des modifications conformément à l'article 51 doivent être indiqués dans les notes aux états financiers, paragraphe (2) du la loi du 19 décembre 2002 concernant le registre de commerce et des sociétés.

Q&R CNC 22/026 (R) – Monnaie de tenue de livres et d'établissement des comptes annuels en régimes LUX GAAP et LUX GAAP-JV :

Ce Q&A a été révisé pour supprimer la référence à la norme ISO 4217 "Codes des devises" en tant que norme internationale utilisée pour délimiter les devises pouvant être choisies par les sociétés luxembourgeoises pour la tenue de leur comptabilité et l'établissement de leurs comptes annuels et pour remplacer cette dernière par une référence à la pratique luxembourgeoise. Ainsi, dans la pratique au Grand-Duché de Luxembourg, "une société de droit luxembourgeois peut ainsi choisir librement une monnaie de son choix comme cours légal pour la tenue de sa comptabilité et l'établissement de ses comptes annuels, à condition qu'elle soit pleinement monnaie convertible et librement utilisable et qu'elle est émise ou garantie par une banque centrale ou par une autorité publique ».

SWITZERLAND

DIGITAL ECONOMY

SBA announces Swiss banks exploring a digital Swiss franc together / L'ASB annonce que les banques suisses explorent ensemble un franc suisse numérique

On June 16 2023, the Swiss Bankers Association (SBA) announced that a number of Swiss banks are exploring a digital Swiss franc together.

Coordinated by the Swiss Bankers Association, a group of banks comprising Banque Cantonale Vaudoise, Credit Suisse, Entris Banking, Lenzburg Mortgage Bank, InCore Bank, Julius Baer, PostFinance, Sygnum, UBS, Vontobel, VZ Deposit Bank and Zürcher Kantonalbank has launched the project to introduce a digital Swiss franc that will take the form of a tokenized scriptural currency and will have the character of a public good in order to lay the foundations for new and innovative financial service in Switzerland.

In the current phase of the project, the project group will strive to create a solid legal and economic framework that allows each participating bank to tokenize scriptural money while ensuring compliance with legal and regulatory requirements. In addition, the project group intends to identify the relevant parameters of a scriptural money token that can further the objectives described in an SBA White Paper. The selected variant will undergo a rigorous evaluation to ensure regulatory compliance, technical viability, scalability, functionality and alignment with efficiency and resilience improvement objectives. This will lay the foundations for a secure and transparent ecosystem for digital assets.

Throughout this phase of the project, the participating banks will therefore work closely with supervisors and industry players as well as with technology specialists. In addition, the project group is in contact with the promoters of related initiatives in Switzerland.

Version française

Le 16 juin 2023, l'Association suisse des banquiers (ASB) a annoncé qu'un certain nombre de banques suisses exploraient ensemble un franc suisse numérique.

Coordonné par l'Association suisse des banquiers, un groupe de banques comprenant la Banque Cantonale Vaudoise, Credit Suisse, Entris Banking, Lenzburg Mortgage Bank, InCore Bank, Julius Baer, PostFinance, Sygnum, UBS, Vontobel, VZ Deposit Bank et Zürcher Kantonalbank a lancé le projet d'introduction d'un franc suisse numérique qui prendra la forme d'une monnaie scripturale tokenisée et aura le caractère d'un bien public afin de jeter les bases des services financiers nouveaux et innovants en Suisse.

Dans la phase actuelle du projet, le groupe de projet s'efforcera de créer un cadre juridique et économique solide permettant à chaque banque participante de symboliser la monnaie scripturale tout en garantissant le respect des exigences légales et réglementaires. En outre, le groupe de projet a l'intention d'identifier les paramètres pertinents d'un jeton d'argent scripturaire qui peuvent poursuivre les objectifs décrits dans un livre blanc ASB. La variante sélectionnée fera l'objet d'une évaluation rigoureuse pour garantir la conformité réglementaire, la viabilité technique, l'évolutivité, la fonctionnalité et l'alignement avec les objectifs d'amélioration de l'efficacité et de la résilience. Cela jettera les bases d'un écosystème sécurisé et transparent pour les actifs numériques.

Tout au long de cette phase du projet, les banques participantes travailleront donc en étroite collaboration avec les superviseurs et les acteurs du secteur ainsi qu'avec les spécialistes des technologies. De plus, le groupe de projet est en contact avec les promoteurs d'initiatives similaires en Suisse.

NETHERLANDS

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

The Netherlands publishes Amendment of the Money Laundering and Terrorist Financing Prevention Act in related to the ban on cash payments for goods from 3,000 euros

On June 13 2023, the Netherlands published an amendment to the Money Laundering and Terrorist Financing Prevention Act in related to the ban on cash payments for goods from 3,000 euros and the expanding the possibilities for information exchange for the gatekeeper function (Money Laundering Plan of Action Act) in the Overheid (Government Documents in the Netherlands).

Although cash is legal tender, the law currently mandates individual organizations fail to accept it. They may refuse cash, and at any time more places this happens too. The petitioners are concerned about the declining acceptance rate of cash in society. This is evident from recent figures from De Nederlandsche Bank that at 12 percent of pharmacies, payment can only be made with a bank card. In parking garages and libraries this is already 16 percent and in cinemas even 22 percent.

The bill «Money Laundering Plan of Action» contains a ban for traders in goods to carry out transactions from € 3,000 in cash. The petitioners fear that in practice, especially if the current trend continues, there will also be This limit can be settled with cash in fewer and fewer places. They state Therefore, an acceptance obligation for. In principle, this acceptance obligation applies to every publicly accessible location or organisation offering products or services to Individuals. The government will be given the opportunity to take a general administrative measure. introduce exceptions to this acceptance obligation, if adequately substantiated that this is necessary for reasons of implementation or safety. This can be done, for example by sector. This must then be submitted by means of a so-called heavy hanging procedure to the House of Representatives of the States-General. A specific example of this can be, for example, unmanned filling stations, where both for practicality if security may be undesirable to impose an acceptance obligation for cash on to lay.

Many people still use cash on a daily basis. Partly out of habit, sometimes Because they have a personal preference for it, but often also out of necessity. Think for example, to people with a physical or mental disability, the growing group of seniors, people in debt assistance or people without a checking account, such as refugees. Added together, this is according to a recent study by the McKinsey agency to about 1.5 million people. 2.6 million Dutch people aged 18 and older are struggling with the digital payment world. But it is not only important for them that cash remains widely accepted in our society. Despite many investments in the robustness of the digital Payment transactions still occur with some regularity. In case of malfunctions In larger cities, people then turn to alternatives, but on a regional or national basis level alternatives are not always available. Not everyone can in such situations quickly move to another region or postpone certain purchases for a longer period of time. Therefore, a broad acceptance rate of cash also remains for the stability of the system matters because it offers an alternative that is barely exposed is at disruption risk.

DIRECTIVE ON CREDIT SERVICERS AND CREDIT PURCHASERS

The Netherlands implements Act on the Directive on Credit Servicers and Credit Purchasers

On June 12 2023, the Netherlands implemented the Act on the Directive on Credit Servicers and Credit Purchasers, as published in the Overheid (Government Documents in the Netherlands).

The bill implements Directive (EU) 2021/2167 on credit servicers and credit purchasers. The proposal introduces a licence requirement and ongoing supervision for parties servicing non-performing credit agreements (credit servicers) in the Financial Supervision Act. It also imposes requirements on credit buyers, the parties who take over non-performing credit agreements from a bank. Finally, the proposal contains some amendments to Book 7 of the Civil Code.

SPAIN

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

Spain publishes Royal Decree-Law 5/2023, which, among other issues, amends Law 10/2010 on the registration of beneficial ownership

On June 29 2023, Spain published the Royal Decree-Law 5/2023, which, among other issues, amends Law 10/2010 on the registration of beneficial ownership. Title III of this Law modifies the third and fourth additional provisions of Law 10/2010, of April 28, on the prevention of money laundering and terrorist financing, which regulate access to and use of the Registry of Beneficial Owners. The addition of a new paragraph to the third additional provision is intended to comply with the requirement imposed by Articles 30 and 31 of Directive (EU) 2015/849, which in the wording given by Directive (EU) 2018/843, implies the need to include an infringement for failure to declare to the Registry of Beneficial Ownership. This section includes the existence of the infringement, as well as the competence of the Ministry of Justice to determine the seriousness of each of the infringements, the sanctioning procedure, the determination of the possible sanctions to be imposed in relation to each infringement and the sanctioning competence.

The amendment of paragraphs 2, 3 and 4 of the fourth additional provision responds to the need to adapt our legal system to the judgment of the Court of Justice of the European Union, in joined cases C-37/20 and C-601/20, which considered that the possibility of accessing the information in the registers in general, by making personal data available to a third party, constitutes an interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter of Fundamental Rights, whatever the subsequent use of the information made available, concluding that making available of beneficial ownership information subject to an online registration and providing for, in exceptional circumstances, exemptions from access by the general public to such information do not in themselves demonstrate either a balance between the general interest objective pursued and the fundamental rights found in Articles 7 and 8 of the Charter or the existence of sufficient safeguards enabling the persons concerned to effectively protect their personal data against the risks of abuse. Consequently, the content of Article 30 of the Directive, on that point, was contrary to the Community Treaties, since it allowed access without justifying any legitimate interest. It is therefore necessary to amend Law 10/2010, of 28 April, which regulated this aspect in line with the original text of the Directive, limiting access to persons or organisations to those cases in which a legitimate interest is demonstrated.

CAPITAL REQUIREMENTS / CRD / CRR / BASEL III/IV

CNMV implements EBA's guidelines related to the revision process and supervisory evaluation (SREP)

On June 19 2023, the Comisión Nacional del Mercado de Valores (CNMV) notified the European Banking Authority (EBA) of its intention to follow the "Guidelines on common procedures and methodologies for the supervisory review and valuation process (SREP) under Directive (EU) 2019/2034". It will, therefore, consider certain criteria and ensure compliance by those entities applying the latter, within the scope of its supervisory powers.

The guidelines published by the EBA on April 19 2023 aim to provide detailed information on the common procedures and methodologies of supervisory review and evaluation for investment firms (IFs) and risk management assessments. They also specify processes related to supervisory powers, additional equity requirements, and liquidity requirements.

These guidelines, applicable from June 19 2023, build upon previous guidelines applicable to credit institutions and investment service companies.

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

CNMV adopts the ESMA guidelines on suitability requirements under MiFID II

On June 5 2023, the Comisión Nacional del Mercado de Valores (CNMV) adopted the ESMA guidelines on requirements of suitability for MiFID II.

The CNMV will consider and apply these guidelines in its supervision activities, particularly in the review of compliance with sustainability preferences. The guidelines aim to ensure consistent implementation of MiFID II suitability requirements, specifically regarding sustainability-related aspects. Key points include the collection of detailed information on clients' sustainability preferences, the obligation to gather this information since August 2022, the updating of preferences for existing clients, the evaluation of suitability based on sustainability preferences, and the prohibition on recommending products that do not align with clients' sustainability preferences. Entities should ensure that their staff possesses the necessary knowledge and skills in evaluating sustainability preferences. The guidelines also incorporate adjustments based on the joint supervisory action and align with other relevant regulations. The translations of the guidelines into official EU languages were published in April 2023 and will become applicable six months from that date.

SECURITIES TRADING

CNMV publishes a press release on a new system related to the admission of fixed-income securities to trading in Spanish regulated markets

On June 14 2023, the Comisión Nacional del Mercado de Valores (CNMV) published a press release on a new system related to the admission of fixed-income securities to trading in Spanish regulated markets.

The Spanish Securities Market and Investment Services Law (LMVSI) has introduced Article 63, effective from September 18 2023, to enhance the competitiveness and appeal of Spanish securities markets. This article transfers the CNMV's supervision powers for compliance with admission requirements to the governing bodies of markets where non-equity securities, including fixed income, warrants, and promissory notes, are sought for admission. This streamlining eliminates duplication in the admission process, resulting in reduced costs and administrative burdens for issuing companies.

The implications of the handover described in Article 63 of the Spanish Securities Market and Investment Services Law (LMVSI) are as follows:

- The CNMV will continue to approve prospectuses for admission if required by Regulation (EU) 2017/1129.
- The verification of admission requirements for non-equity securities will be conducted by the governing bodies of the relevant markets, not the CNMV.
- The CNMV will record and publish the final conditions of public offerings and/or admission in compliance with the Regulation (EU) 2017/1129 without performing any verification.

- The final conditions must be submitted to the CNMV for registration and publication before the governing bodies of the markets verify compliance with admission requirements.
- No documentation will be required for submission to the CNMV for promissory note programs with maturities of less than 365 days.
- The entry into force of LMVSI also leads to a significant reduction in fees collected by the CNMV for admission procedures.

These measures aim to streamline the admission process, reduce costs, and administrative burdens for issuing companies while aligning Spanish securities markets with supervisory practices in neighboring countries. The changes are expected to promote the use of Spanish securities markets by issuers, reduce reliance on bank financing, and strengthen capital structures.

To facilitate the recording and publishing of final conditions, the CNMV has implemented a new procedure through the CFP procedure of the Virtual Office. Issuers are advised to consult the Virtual Office for instructions and ensure they have the appropriate procedures in place.

UNITED KINGDOM

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

UK Legislation publishes the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023

On June 7 2023, the UK published the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023.

This order makes amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, which provides exemptions to the restriction on financial promotions under the Financial Services and Markets Act 2000.

Articles 4 to 6 extend certain exemptions to communications related to qualifying cryptoassets.

Article 7 creates a new exemption for registered persons who are cryptoasset exchange providers and custodian wallet providers, allowing them to communicate their own financial promotions regarding qualifying cryptoassets without the need for authorization or approval from authorized persons. However, they are not permitted to approve financial promotions for other businesses or communicate financial promotions for other controlled investments.

Article 8 amends controlled activities to include activities related to qualifying cryptoassets.

Article 9 creates a new controlled investment category for qualifying cryptoassets.

Article 10 and the accompanying schedule subject registered persons to the Financial Conduct Authority's financial promotion rules and enforcement regime, similar to other controlled investments.

Article 11 provides a transitional provision regarding FCA consultation on rules and guidance.

No significant impact on the private, voluntary, or public sector is expected, and a de minimis impact assessment is available from HM Treasury.

The order enters into force on June 8 2023.

FCA introduces tough new rules for marketing cryptoassets

On June 8 2023, the Financial Conduct Authority (FCA) introduced tough new rules for marketing cryptoassets.

The UK government plans to regulate the promotion of cryptoassets through the Financial Conduct Authority (FCA). The FCA has released a Policy Statement (PS) summarizing the feedback received during a consultation and presenting the final policy stance and nearly final Handbook rules. The rules will categorize cryptoassets as "Restricted Mass Market Investments" and impose marketing restrictions. The FCA emphasizes the risks associated with cryptoassets and warns that they will remain highly risky and largely unregulated. The near final rules are available for firms to prepare, and enforcement actions will be taken against non-compliant firms.

The FCA has introduced regulations for promoting cryptoassets to protect consumers and ensure transparency. They have issued rules and proposed guidance to ensure fair and clear communication of risks. The guidance focuses on consumer risks associated with stablecoins and complex yield models. It applies to all firms marketing cryptoassets to retail consumers in the UK.

Effective from October 8 2023, new advertising rules regarding the marketing of cryptoassets to UK consumers include the introduction of a cooling-off period for first-time investors and a ban on 'refer a friend' bonuses. The purpose of these measures is to ensure that individuals purchasing cryptoassets understand the associated risks. Under the new rules, crypto firms are required to verify that individuals have the necessary knowledge and experience to invest in crypto, provide clear risk warnings, and ensure that advertisements are fair, transparent, and not misleading.

DEPOSITOR PROTECTION RULES

PRA publishes a statement of policy on deposit guarantee scheme

On June 30 2023, the Prudential Regulation Authority (PRA) published a statement of policy on deposit guarantee scheme.

This statement of policy is aimed at the Financial Services Compensation Scheme (FSCS) in respect of its role as scheme manager of the Deposit Guarantee Scheme (DGS). This statement may also be of interest to firms and depositors.

The purpose of this statement is to set out the expectations of the Prudential Regulation Authority (PRA) on the FSCS with regards to:

- the duties of the FSCS;
- the FSCS's role in assessing and paying compensation in respect of deposits;
- the FSCS's role in assessing and paying temporary high balance (THB) claims; and
- the FSCS's role in the funding of the DGS.

By providing further information to the FSCS with regards to its duties and role in paying and funding compensation in respect of deposits, this statement should help to ensure an effective deposit guarantee scheme and thus contribute towards the safety and soundness of deposit takers.

This statement of policy is intended to be read together with the rules specific to deposits as set out in the Depositor Protection Part of the PRA Rulebook, which applies to the FSCS, and firms that are DGS members. The funding section is also intended to be read with the Management Expenses Levy Limit and Base Costs Part and the Management Expenses in respect of Relevant Schemes Part which also apply to PRA-authorized insurers and the Society of Lloyd's.

FINANCIAL SUPERVISION

PRA publishes a consultation paper on the review of rules

On June 30 2023, the Prudential Regulation Authority (PRA) published a consultation paper on wider rule-making responsibilities under the Financial Services and Markets Act 2023 (FSM Act) and is considering its approach to policymaking. To initiate dialogue, the PRA published a Discussion Paper (DP) 4/22 on its future approach to policy. This consultation paper (CP) outlines the PRA's proposed approach to reviewing its rules as required by the FSM Act. Rule review is already a part of the PRA's existing policy-making approach, where existing rules are assessed for their effectiveness and impact. The PRA has reviewed various rules in recent years, resulting in revisions or enhancements. As the PRA assumes broader rule-making responsibilities, it aims to be more responsive and cost-conscious, prioritizing rule reviews and using stakeholder engagement to gather evidence. The CP presents a framework for undertaking rule reviews, emphasizing stakeholder engagement through various channels and establishing transparency by publishing information on rule reviews. The PRA seeks views from interested parties on its proposed statement on rule reviews, with specific questions related to information collection, prioritization, review methods, stakeholder engagement channels, and communication of ongoing reviews and outcomes.

The consultation closes on September 29, 2023.

FCA updates the FCA Handbook (6/30/2023)

On June 30 2023, the Financial Conduct Authority (FCA) updated its Handbook.

Handbook Notice No 110 provides information about the changes made to the FCA Handbook and other relevant material by the FCA Board. The notice lists the instruments through which these changes were made and specifies their effective dates:

- Consumer Credit (Debt Packager Remuneration from Debt Solution Provider) Instrument 2023 - Changes took effect from June 2 2023, following the Board's decision on May 25 2023.
- Long-Term Asset Fund (Amendment) Instrument 2023 - Changes will come into effect from July 3 2023, following the Board's decision on June 12 2023.
- Handbook Administration (No 65) Instrument 2023 - Changes will be effective from June 30 2023, following the Board's decision on June 29 2023.
- Cryptoasset Financial Promotions Instrument 2023 - Changes will take effect from October 8 2023, following the Board's decision on June 29 2023.
- Mortgage Affordability Rules (Amendment) Instrument 2023 - Changes became effective on June 30 2023, following the Board's decision on June 29 2023.

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

FCA publishes a policy statement on broadening retail access to LTAFs

On June 30 2023, the Financial Conduct Authority (FCA) published a policy statement on broadening retail access to the long-term asset fund (LTAF).

This PS outlines the response to the feedback received on Consultation Paper CP22/14, which proposed expanding the distribution of the Long-Term Asset Fund (LTAF) to retail and pension schemes. The PS provides the final rules and guidance that will be implemented based on the consultation.

The LTAF is an authorized open-ended fund designed for efficient investment in long-term, illiquid assets such as venture capital, private equity, real estate, and infrastructure. While these investments carry higher risk, they also offer the potential for higher long-term returns. Previously, retail promotion of the LTAF was limited to certain investor categories, but the aim now is to provide broader access to suitable investments for retail investors and pension schemes.

The new rules categorize the LTAF as a Restricted Mass Market Investment (RMMI), which includes additional protections for retail investors, such as risk warnings and investment limits. The intention is to ensure that investors understand the risks involved before investing. The possibility of excluding the LTAF from the Financial Services Compensation Scheme (FSCS) coverage is also considered.

This policy statement primarily affects consumer groups, asset managers, depositaries, pension providers, investment advisers, insurers, and fund distributors. It is relevant to consumers seeking non-traditional investment funds for diversification or higher yields, either as part of their retail investment portfolio or pension scheme.

The PS aligns with the objective of promoting effective competition and consumer protection. It allows a wider range of consumers to access investments with different risk, return, and liquidity characteristics while ensuring they are adequately protected.

The changes introduced in the final rules include reclassifying the LTAF as an RMMI, requiring risk warnings and summaries, conducting appropriateness assessments for retail investors, and limiting retail investors' exposure to RMMIs. Some adjustments have been made based on feedback, such as modifying risk warnings, adjusting fund-of-funds exposure limits, and refining third-party valuation rules.

For pensions distribution, changes include revised exposure limits for self-select defined contribution schemes, inclusion of non-advised investors in unit-linked products, removal of illiquid asset restrictions in default arrangements, and notification of illiquidity for consumers approaching retirement age.

Overall, the aim is to provide retail investors with the choice to invest in long-term illiquid assets while ensuring appropriate governance, controls, and investor protection.

UK FINANCIAL SERVICES ACT

UK Government grants the Financial Services and Markets Bill Royal Assent

On June 29 2023, the UK Government granted the Financial Services and Markets Bill Royal Assent, marking a significant milestone in regaining control of the financial services rulebook after Brexit. The Act aims to tailor financial services regulation to suit UK markets, bolstering the country's competitiveness as a global financial center and benefiting consumers and businesses. It introduces new powers to reform Solvency II, potentially unlocking £100 billion for productive investments and fostering innovation. The Act also establishes new objectives for the Financial Conduct Authority and the Prudential Regulation Authority, focusing on facilitating economic growth and international competitiveness. It enhances scrutiny and accountability of regulators, including regular reporting and cost-benefit analyses.

Additionally, the Act enables the implementation of the Edinburgh Reforms, simplifies the UK prospectus regime, removes restrictions on wholesale markets, protects access to cash, introduces safeguards against payment scams, regulates cryptoassets, and establishes "sandboxes" for testing new technologies like blockchain in financial markets.

BRAZIL

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

CVM publishes Decree on Virtual Assets

On June 13 2023, the Comissão de Valores Mobiliários (CVM) issued the Decree 11.563/23, which determines that the Central Bank of Brazil is the regulator referred to in Law 14.478/22, which provides for the regulation of virtual asset services.

The Decree does not alter the CVM's competences, in a way that it is up to the Autarchy to regulate and supervise securities, regardless of their form of representation, digital or not.

In this sense, and in order to clarify the market the scope of the Decree with regard to the securities market and the performance of the CVM, the Autarchy clarifies that the operating authorization for the providers of virtual asset services, to be granted by the Central Bank of Brazil under the Law 14.478 and the Decree, does not cover activities with securities that are digitally represented in the form of tokens, according to article 4, item III, of the legal document.

INTERNATIONAL

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

FATF publishes a press release on plenary week in June 2023

On June 19 2023, the Financial Action Task Force (FATF) published a press release on plenary week on June 21-23 2023 and FATF Week which starts on June 19 2023.

Delegates will work through a full agenda and discuss key issues that include work to strengthen the standards on asset recovery to deprive criminals from their ill-gotten gains, and work to prevent the misuse of non-profit organisations for terrorism financing. Delegates will also focus on the progress that countries have made in implementing the FATF's requirements on virtual assets and virtual asset service providers, since the June 2022 update.

Delegates will also discuss the assessment of measures to combat money laundering and terrorist financing in Luxembourg as well as the progress made by some jurisdictions identified as presenting a risk to the financial system.

SUSTAINABLE FINANCE / GREEN FINANCE

ISSB issues inaugural global sustainability disclosure standards

On June 26 2023, the International Financial Reporting Standards (IFRS) issued its inaugural standards—IFRS S1 and IFRS S2—ushering in a new era of sustainability-related disclosures in capital markets worldwide. The Standards will help to improve trust and confidence in company disclosures about sustainability to inform investment decisions.

And for the first time, the Standards create a common language for disclosing the effect of climate-related risks and opportunities on a company's prospects. These standards incorporate the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and aim to enable companies to communicate their sustainability risks and opportunities to investors.

IFRS S1 provides disclosure requirements that cover short, medium, and long-term sustainability-related information, while IFRS S2 focuses specifically on climate-related disclosures. Both standards are designed to be used alongside any accounting requirements and are built on the principles of the widely adopted IFRS Accounting Standards.

The ISSB Standards aim to establish a global baseline for sustainability reporting, ensuring that companies include sustainability-related information in their reporting packages alongside financial statements. They have been developed with extensive market feedback and support from various international bodies and stakeholders.

The next steps for the ISSB involve supporting the adoption of IFRS S1 and IFRS S2 by working with jurisdictions and companies. This includes establishing a Transition Implementation Group to assist companies in applying the standards and launching capacity-building initiatives for effective implementation.

Furthermore, the ISSB will collaborate with jurisdictions that seek additional disclosures beyond the global baseline and work with the Global Reporting Initiative (GRI) to promote efficient and effective reporting when combining the ISSB Standards with other reporting standards.

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