



Investment Funds

Takeaways from 2022 to better surf 2023

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Introduction

While the last year has certainly been marked by key developments in a variety of areas such as sustainable finance, digital assets or cross-border marketing, the year 2023 will undoubtedly witness further major legal and regulatory developments under Luxembourg and EU law

In this context, we are delighted to bring you this report prepared carefully by experts of our Funds and Asset Management team and providing a detailed overview on the key takeaways of 2022 and upcoming challenges for 2023.

We hope it will provide you useful insights to assist you in the preparation of your 2023 projects.



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Looking ahead to 2023

ELTIF reform

Introduced in 2015, the European Long-Term Investment Fund (**ELTIF**) framework has never met the intended success, driven by restrictive features making it difficult for retail investors to access ELTIFs. On 25 November 2021, the EC presented a proposal to amend the Regulation on ELTIFs (**ELTIFR** – Regulation (EU) 2015/760). A provisional agreement on the reform of the ELTIFR was reached on 19 October 2022, which inter alia introduced (i) more flexible investment rules, including a wider range of eligible assets and revised concentration rules; (ii) detailed rules on the use of LMTs and the possibility to have early redemptions; (iii) the broadening of the scope of eligible investors; and (iv) enhanced transparency rules.

The EP is expected to consider a finalised legislative text in plenary session in the course of February 2023. Once the Council and EP formally adopt this text, it will be published in the Official Journal of the EU and will enter force 20 days after. The revised ELTIFR shall start applying 9 months after its entry into force. A grandfathering period and opt-in regime are available for ELTIFs authorised in accordance and complying with the provisions of the ELTIFR applicable before the date of application of the revised version.

The modernisation of the ELTIF framework may boost the effectiveness and attractiveness of ELTIFs and make them the new sought-after investment vehicle.

If you want to discover more on the reform, please consult our dedicated page to discover our comparative table highlighting the most relevant amendments, and get prepared for the revival of the ELTIF.

AIFMD and UCITS Directive review

On November 25, 2021, the EC put forward the long-awaited proposal for amendments to the Alternative Investment Fund Managers Directive (AIFMD - Directive 2011/61/EU) and to the relevant extent, to the UCITS Directive, with a view to harmonising the two frameworks. Key provisions include inter alia (i) specific rules on loan-originating funds; (ii) harmonised rules on the use of LMTs and on delegation arrangements; (iii) the expansion of the AIFM's permitted ancillary services; (iv) enhanced substance requirements; (v) more flexible rules on the provision of depositary and custody services; and (vi) improved supervisory reporting requirements.

[Discover our latest publication on this topic by clicking here.](#)

While the Council adopted its general approach in June 2022, the EP released in May 2022 a draft report on the proposal but has, at the time of this publication, not yet adopted a final position. A vote by the EP is currently scheduled for end of January 2023, after which trilogue negotiations shall begin.

Democratisation of alternative assets through retailisation

More than 10 years after the entry into force of the AIFMD and in view of the expected reform of both the AIFMD and the ELTIFR (see above), it is now widely accepted that the market has become mature enough to attract retail investors into alternative strategies such as private equity, real estate or debt, and we have seen major players in the market develop pan-European products dedicated to a retail client base.

Under the current EU framework,

- marketing of alternative investment funds in the EEA under the AIFMD marketing passport marketing is only open to so-called “professional investors”, hence restricting access to certain high net worth individuals (**HNWI**) and other retail investors. Only a limited number of EEA countries extend the AIFMD marketing passport to certain non-professional investors

under specific conditions (e.g. Austria, Denmark, Germany); and

- the ELTIFR only allows distribution to retail investors who either (i) have a portfolio of financial instruments in excess of EUR 500,000 or (ii) have a portfolio of financial instruments below EUR 500,000 but in excess of EUR 100,000 with a minimum investment EUR 10,000 and a maximum of 10% of such investor’s financial instruments investors in ELTIFs.

The provisional agreement on the reform of the ELTIFR envisages to notably remove the above-mentioned requirements of minimum EUR 10,000 and 10% of the investor’s financial instruments, hence considerably broadening the scope of eligible investors under the ELTIFR.

While we are still awaiting the outcome of the trilogue

negotiations, the reform of the AIFMD seems to be heading towards a broadening of the definition of “professional investor” to notably include investors investing at least EUR 100,000 and providing a written statement of awareness of the associated risks.

As we are witnessing a progressive expansion of the investor base of alternative investment funds, originally reserved to institutional and professional investors, to include retail investors, our funds team keeps closely monitoring this latest trend in the fund industry and we are there to assist our clients and successfully respond to new challenges ahead.

If you want to get more information on this topic, please watch our webinar by [clicking here](#).

Focus on greenwashing

Concurrently to the growth of ESG-focused investments and sustainability disclosure regulations in the European market, the risk of greenwashing increases and threatens the soundness and trust of the sustainable finance market. In that context, the ESAs were individually mandated by the EC on 23 May 2022 to give their input on the trend of greenwashing practices within the EU and develop recommendations to address related issues.

On 15 November 2022, the ESAs launched a “call for evidence” requesting input from relevant stakeholders in the context of their mandate. Financial institutions, retail investors, consumers associations, NGOs or also academia may submit their input to the ESAs by 10 January 2023.

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

In the context of avoiding misleading ESG claims, the ESMA published, on 18 November 2022, a consultation paper aiming at developing guidelines on fund’s names with ESG or sustainability-related terms with more specific guidance compared to the supervisory briefing on the same topic, published on 31 May 2022, on which ESMA is seeking the views of external stakeholders. ESMA will consider all comments received by 20 February 2023 and final guidelines are expected to be issued by Q2/Q3 2023.

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

DLT Pilot Regime

On 2 June 2022, Regulation (EU) 2022/858 of the EP and of the Council on a pilot regime for market infrastructures based on DLT was published in the Official Journal (the **DLT Pilot Regime Regulation**). The Regulation aims to provide entities which operate securities trading and settlement systems based on DLT (**DLT Market Infrastructures**) with a set of rules suited to crypto assets that qualify as financial instruments within the meaning of Directive 2014/65/EU (**MiFID II**), and further enables such entities to be exempted from a number of requirements that would normally be applicable to them under existing EU directives or regulations. Most of the DLT Pilot Regime Regulation provisions shall apply as from 23 March 2023.

[For more information on the key requirements, please click here.](#)

On 27 September 2022, ESMA published a report on the DLT Pilot Regime Regulation providing guidance on certain technical elements and making recommendations on compensatory measures on supervisory data to ensure a consistent application by DLT Market Infrastructures from the start of the regime.

[If you want to read more on this, please click here.](#)

CSSF feedback report on ESMA CSA on the Supervision of Costs and Fees of UCITS

In 2021, ESMA performed a Common Supervisory Action (**CSA**) with NCAs across the EU/EEA on the supervision of costs and fees of UCITS and published, on 31 May 2022, the results of its CSA. The CSSF presented its main observations and related recommendations for improvement in view of the applicable regulatory requirements, but also engaged on a bilateral basis with certain investment fund managers to implement necessary corrective measures for the observed shortcomings. The CSSF also requested investment fund managers to conduct a comprehensive assessment, to be submitted by the end of Q1 2023, regarding the compliance of their policy, approach and arrangements related to costs, in relation to the observations of ESMA and of the CSSF and to take, if applicable, the necessary corrective measures.

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

MiCAR

On 24 September 2020, the EC put forward its proposal for a Markets in Crypto-Assets Regulation (**MiCAR**), which aims at providing a legal framework to regulate crypto-assets which are not yet covered by other EU legislation (e.g. financial instruments under MiFID II). A Union framework should provide for proportionate treatment of issuers of crypto-assets and crypto-asset service providers, thus allowing equal opportunities for market entry and ongoing and future development.

Following the adoption of the final version of MiCAR by the Council on 5 October 2022 and the EP’s ECON Committee on 9 October 2022, a final vote by the EP is expected in Q1 2023.

MiCAR shall enter into force on the twentieth day following that of its publication in the Official Journal of the EU and shall apply 18 months after the date of entry into force, except for the provisions related to asset-reference tokens and electronic money tokens after 12 months only. Crypto-asset providers (CASP) that provide their services in accordance with their applicable law before MiCAR, will be able to keep doing so without a CASP license until 18 months after the application of MiCAR or until they are granted their license, whichever is sooner.

[Please click here to discover our dedicated MiCAR videos.](#)

Periodic disclosure requirements under SFDR RTS

In its Q&A dated 2 December 2022, the CSSF reminded that annual reports of UCITS and AIFs (independently of their financial year-end), issued as from 1 January 2023, with fund(s) disclosing under Article 8 and/or Article 9 SFDR, shall comply in accordance with the guidance given in the document “Updated Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation” dated 24 March 2022 (JC 2022 12) with the product disclosure requirements in periodic reports laid down in Article 11 SFDR and further clarified by the SFDR RTS, including the information to be presented in an annex to the annual reports by using the mandatory templates.

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

ATAD III

On 21 December 2021, the EC published the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes (the **ATAD 3 Proposal**). The ATAD 3 Proposal has been subject to several amendments proposed by the EP’s ECON Committee, with the latest proposed on 9 December 2022. On 17 January 2023, the EP approved the ATAD 3 Proposal as amended. In a nutshell, the new proposal provides for the following:

- a lowering of the threshold of the gateways (cumulative conditions to be met by entity to be considered as at risk and subject to reporting obligations)
- a reduction of the number of excluded entities (i.e., exemption for entities with at least five own full time equivalent employees has been removed) even if it is worth to note that the carve out for regulated financial undertakings has been maintained.
- a relaxation and in some cases precision of the minimum substance indicators to be reported by an “at risk” entity (among others, (i) the undertaking can now evidence the use of own premises, premises for their exclusive use but also premises shared with entities of the same group, (ii) the condition linked to the existence of a bank account in the Union has been extended to include e-money account in the Union and (iii) the limitation according to which a director must not be an employee / director of a non-associated enterprises has been deleted). However, the list of documentary evidence has been expanded.
- a timeframe for the rebuttal and exemption for absence tax motives procedures has been specified given that the competent authority will have 9 months as from the date of receipt of the request to analyse it. A failure to provide an answer after

the expiry of the period will be considered as an approval.

It is worth noting that the implementation deadline remains unchanged (i.e., 1 January 2024) meaning that the look-back period has already started since 1 January 2022.

To be definitively adopted, the ATAD 3 Proposal will still need to be approved by the Council of the EU.

DORA

On 10 November 2022, the EP adopted in plenary the text of the Digital Operational Resilience Act (**DORA**), aiming at harmonising national rules around operational resilience and cybersecurity regulation across the EU, introducing harmonised rules related inter alia to (i) internal governance and information communication technologies (**ICT**) risk management; (ii) digital operational resilience testing; (iii) ICT-related incidents; and (iv) information sharing; and (v) ICT third-party service providers.

DORA will enter into force 20 days after its publication in the Official Journal of the EU and start applying 24 months after its entry into force.

CSDDD

On 23 February 2022, the EC published its proposal for a Directive on Corporate Sustainability Due Diligence (the **CSDDD**), which aims at imposing obligations on companies, their subsidiaries and their value chains to identify and tackle adverse human rights and environmental impacts. The proposals are wide reaching as they cover obligations throughout the value chain and also attach to non-EU companies which meet specific criteria. In a nutshell, the CSDDD establishes a corporate sustainability due diligence duty requiring specific companies to identify and, where necessary, prevent, end or mitigate the potential or actual adverse impacts of their activities on human rights and the environment.

In December 2022, the Council has adopted its general approach, but the EP’s position is still pending. The text will still go through trilogue negotiations to reach a common compromise. The CSDDD will then need to be formally adopted by the co-legislators and published in the Official Journal of the EU, and will enter into force 20 days thereafter. Following its entry into force, Member States have two years to transpose the CSDDD into their respective national laws.

For more detailed information on this key features, please [click here](#).

CSRD

The Corporate Sustainability Reporting Directive (**CSRD**) was published in the Official Journal of the European Union on 16 December 2022. Large companies and listed SMEs will soon be required to publish detailed information on sustainability matters, such as environmental rights, social rights, human rights and governance factors. The CSRD will inter alia (i) strengthen the existing rules on non-financial reporting introduced by the non-financial reporting directive; and (ii) significantly increase the number of companies subject to sustainability reporting.

The application of CSRD will take place in four stages from 2025 to 2029. Member states will have 18 months to transpose the CSRD into national law after its entry into force.

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

EU Taxonomy

The Taxonomy Regulation provides six environmental objectives. Whereas the disclosure requirements related to the first two objectives (climate change mitigation and climate change adaptation) entered into force on 1 January 2022, the other four objectives (sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems) are applicable as of 1 January 2023. The technical screening criteria, which are necessary to assess the alignment of an economic activity with any of the four remaining objectives, are therefore expected to be published in Q1 of 2023 by way of EC' Delegated Regulation(s).

In addition, the provisions of Article 8 of the Taxonomy Regulation, requiring the entities in scope to disclose the alignment of their activities with the EU Taxonomy, are applicable as of 1 January 2023.

Development of an Ecolabel for retail products

A voluntary Ecolabel, that will apply to all PRIIPs, is currently under development as part of the EC's Action Plan on Financing Sustainable Growth. Although the draft Ecolabel regulation is not yet published, the Joint Research Committee of the EC made available a Technical Report that has been tested by ESMA at the end of 2022 on existing UCITS. The Ecolabel for retail products is still under discussion and will certainly evolved in 2023.

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

The European Green Bond Standard

In 2022, discussions were ongoing on the proposal of the EC for a voluntary European Green Bond Standard (**EU GBS**) amongst the EP and the Council. The EU GBS will be open to any issuer of green bonds, included outside of the EU, complying with specific requirements such as (i) allocation of the funds to projects aligned with the EU Taxonomy, (ii) transparency and reporting regime, (iii) mandatory review by an external party and (iv) specific conditions pertaining to such reviewer.

On 16 May 2022, the ECON Committee at the EP decided to open interinstitutional negotiations which we expect to lead to the approval of the final text of the EU GBS in 2023.

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

Looking back at 2022

CSSF FAQ on the use of LMTs by investment funds

On 31 March 2022, the Commission de Surveillance du Secteur Financier (**CSSF**) published new questions and answers (**Q&A**) on the application of liquidity management tools (**LMTs**) by investment funds in the context of the impact of the Ukraine crisis on financial markets, which, together with the restrictive measures taken by the European Union (**EU**) and other countries, rendered some assets illiquid or non-tradeable as a consequence of this crisis and the restrictive measures taken by both the EU and some other countries. In its Q&A, the CSSF addressed questions received from market participants regarding temporary and more structural measures, including on (i) the use of LMTs; (ii) the implementation of a segregation of assets; (iii) information to be provided to investors; and (iv) prior notification to the CSSF with a view to authorisation.

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

New rules governing outsourcing arrangements

On 22 April 2022, the CSSF published Circular 22/806 on outsourcing arrangements, which applies to (i) credit institutions, (ii) payment institutions and electronic money institutions, (iii) investment firms, and (iv) financial sector professionals (**Full-scope Entities**). It also applies to the following entities when performing ICT outsourcing: (i) investment fund managers, (ii) Part I undertakings for collective investment in transferable securities, (iii) central counterparties, (iv) approved publication arrangements and authorised reporting mechanisms, (v) market operators operating a trading venue, (vi) central securities depositories, and (vii) administrators of critical benchmarks (the **Limited Scope Entities** and together with the Full-scope Entities the Entities). The Circular notably describes the outsourcing process and the requirements imposed upon the Entities, such as (i) a pre-outsourcing analysis including a risk assessment and a due diligence on the service provider, (ii) the written content of the outsourcing agreement, and of the sub-outsourcing arrangement, (iii) the control on confidentiality and integrity of data and system (**ICT**) throughout the outsourcing chain, (iv) the access to the

information relating to outsourced functions by the internal audit function, the statutory auditor and the competent authority and (v) exit plans. The Circular is applicable from 30 June 2022 to all outsourcing arrangements entered into, reviewed or amended on or after this date. Entities must (i) review and amend existing outsourcing arrangements and (ii) complete the documentation of all existing outsourcing arrangements in accordance with the Circular following the first renewal of each existing outsourcing arrangement by no later than 31 December 2022.

[To discover more on the content of Circular 22/806, please click here.](#)

On 1 July 2022, the CSSF released a communiqué providing a notification template, together with explanation for outsourcing a critical or important business process (**BPO** – Business Process Outsourcing).

[More information can be found by clicking here.](#)

Notification and de-notification procedures for pre-marketing and cross-border marketing

On 12 May 2022, the CSSF issued Circular 22/810 on the procedures to be followed, inter alia, by Luxembourg-based undertakings for collective investment in transferable securities (**UCITS**) and alternative investment fund managers (**AIFMs**) to notify pre-marketing and cross-border marketing of units or the withdrawal of such activities, which shall eventually repeal Circular 11/509. Such procedures will be progressively made available on the eDesk portal and that the CSSF will continue to inform the entities that fall within the scope of the Circular on the evolution of the procedures available on the eDesk portal by separate *communiqués*.

Modernised framework for UCI administration

On 16 May 2022, the CSSF published Circular 22/811 on administrators of undertakings for collective investment (**UCIs**) with the aim of replacing and modernising Chapter D of Circular IML 91/75 in view of recent developments in UCI administration (legislative framework, technology, market evolution...), hence providing the UCI administrator industry with a strong and comprehensive regulatory framework, notably on (i) authorisation requirements; (ii) UCI administration functions; and (iii) organisational arrangements.

To find out more on the key takeaways, please click here.

SFDR clarifications from the ESAs

On 31 May 2022, the European Supervisory Authorities (**ESAs**) published a supervisory briefing aiming at providing guidance to National Competent Authorities (**NCA**s) regarding the supervision of sustainability-related disclosures and integration of sustainability risks, with the overall goal to increase transparency for investors as well as avoiding the practice of “greenwashing”.

On 2 June 2022, the ESAs also published clarifications on the regulatory technical standards (**RTS**) supplementing Regulation (EU) 2019/2088 of the European Parliament (**EP**) and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (the **SFDR**), intending to give investment fund managers subject to SFDR some guidance on key areas of the RTS such as the principal adverse impacts (**PAIs**), the Taxonomy-alignment disclosures and the “do not significantly harm” (**DNSH**) disclosures.

To discover the key takeaways of the supervisory briefing and clarifications, please click here.

New PRIIPS KID rules

In 2021, ESMA performed a Common Supervisory On 24 June 2022, a new Delegated Regulation (EU) 2022/975, which was adopted by the European Commission (the **EC**) on 17 March 2022 and relates to the entry into force of certain rules on the Key Information Document (**KID**) for packaged retail and insurance-based investment products (**PRIIPS**), was published in the Official Journal. The aim was (a) to postpone the application of the rules laid down in Delegated Regulation (EU) 2021/2268 (the **RTS Delegated Regulation**), amending Delegated Regulation 2017/653 (the **PRIIPS Delegated Regulation**), to 1 January 2023; and (b) to prolong the application of the transitional arrangement contained in Article 14(2) of the PRIIPS Delegated Regulation until 31 December 2022 (instead of 30 June 2022), which enables PRIIP manufacturers to use the key investor information

document drawn up in accordance with Articles 78 to 81 of Directive 2009/65/EC (the UCITS Directive), provided that at least one of the underlying investment options is a UCITS or non-UCITS fund as referred to in Article 32 of Regulation (EU) No 1286/2014 (the **PRIIPS Regulation**).

For more information on this topic, please click here.

On 16 December 2022, the CSSF published its updated Q&A on the law of 17 December 2010 on UCIs (the 2010 Law), whereby it notably confirmed that, as from 1 January 2023, manufacturers of Luxembourg UCITS have to provide a PRIIPS KID to retail investors in the European Economic Area (EEA), and that such PRIIPS KID must be filed with the CSSF before 31 January 2023. Non-compliance with this filing deadline will be considered to be a breach of the PRIIPS Regulation and the CSSF may impose sanctions accordingly.

If you want to discover the key elements of the Q&A, please click here.

Level 2 disclosure requirements under SFDR

On 25 July 2022, Commission Delegated Regulation (EU) 2022/1288 (the SFDR Delegated Regulation) laying down the RTS supplementing SFDR was published in the Official Journal of the EU, which applies as from 1 January 2023.

On 27 July 2022, the CSSF published a new press release to remind the investment fund industry of the deadline of 1 January 2023 for specific update of UCITS’ and alternative investment funds’ (AIFs) pre-contractual and periodic documents under the SFDR Delegated Regulation, supplementing the SFDR and Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investments (Taxonomy Regulation).

In that context, the CSSF reminds financial market participants which have not yet submitted to the CSSF the required updates to the prospectus/issuing documents of UCITS and/or AIFs to do so by 31 October 2022 at the latest, in which case the CSSF will endeavour to release the visa stamp prior to 31 December 2022.

ESAS' report on PAI voluntary disclosures

On 28 July 2022, the ESAs have published, through the Joint Committee, a report to the EC on the extent of voluntary disclosure of PAIs, in accordance with Article 18 of SFDR. The ESAs' findings show that level of compliance significantly varies across respondents and that generally when financial market participants (**FMPs**) belong to a larger group, this leads to a higher level of compliance. They have also put together a preliminary, indicative and non-exhaustive overview of best and less good practices for disclosures under Article 4(1) (a) and (b) SFDR, as well as some recommendations to the NCAs in their ongoing supervisory actions.

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

Application of sustainability preference under MiFID and integration of sustainability factors in product governance obligations

Delegated Regulation 2021/1253 relating to the integration of sustainability factors and sustainability risks and preferences into certain organisational requirements and operating conditions applicable to investment firms and credit institutions subject to MiFID, including alternative investment fund managers and management companies under Chapter 15, entered into force on 2 August 2022.

For more information on the key elements, please [click here](#).

In connection therewith, Delegated Directive 2021/1269, which relates to the integration of sustainability factors into product governance obligations, has been implemented under national law by the Grand-Ducal Regulation of 27 July 2022, which entered into force on 22 November 2022. It aims at introducing sustainability factors (that are environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters) in the Grand-Ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, thereby subjecting credit institutions and investment firms which manufacture and/or distribute financial instruments to certain new requirements in light of such sustainability factors. For more information on this topic, please [click here](#).

Amendments to the requirements for professionals subject to the AML Law

On 8 August 2022, the law of 29 July 2022 was published in the Official Journal of the Grand Duchy of Luxembourg, which notably amends the law of 12 November 2004 (the AML Law) to ensure coherence of the texts governing the fight against money-laundering and the financing of terrorism, their compliance with the international standards, and the proliferation of the Financial Action Task Force (FATF).

Want to know more on the key amendments? please [click here](#).

CSSF FAQ on cross-border distribution of funds

On 20 September 2022, the CSSF published a Q&A on the application of article 4 of Regulation (EU) 2019/1156 of the EP and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings (the CBDF Regulation), applicable since 2 August 2021, and the underlying guidelines of the European Securities and Markets Authority (ESMA) on marketing communication published on 2 August 2021, which have been implemented by the CSSF through Circular 22/795 and are applicable since 2 February 2022.

If you want to know more on the key takeaways, please [click here](#).

Fossil gas and nuclear energy activities under the Taxonomy Regulation

Under the Taxonomy Regulation, a large range of economic activities may qualify as “environmentally sustainable” to the extent that they comply, inter alia, with scientific criteria provided by delegated acts.

With the adoption of Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (the **Complementary Climate Delegated Act**) by the EP in July 2022, the environmentally sustainable economic activities aligned with the EU Taxonomy will include, under specific conditions, nuclear energy and fossil gas-related activities, as of 1 January 2023.

On 8 April 2022, the EC requested the ESAs to suggest amendments to the SFDR in line with the provisions of the Complementary Climate Delegated Act, which had just been approved by the EC.

Three months before the entry into force of the RTS, the ESAs published, on 30 September 2022, the updated RTS to include disclosures on gas and nuclear energy-related investments, which would meet the EU Taxonomy criteria.

[Want to discover the key elements of the revised RTS, please click here.](#)

On 31 October 2022, the EC adopted amendments to the SFDR Delegated Regulation, which are now subject to a three-month scrutiny period by the EP and the Council.

Standardised Model Prospectus for UCITS

The CSSF published a Standardised Model Prospectus for UCITS, together with a detailed User Guide, which is designed for the set-up of an undertaking for collective investment subject to Part I of the 2010 Law, in the form of an investment company with variable capital (SICAV), managed by a management company domiciled in Luxembourg or in another EU Member State, and set up with multiple sub-funds of low to average complexity.

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

New ESAs’ SFDR Q&A

The ESAs have published a new Q&A on the SFDR Delegated Regulation. This Q&A gives further clarity on a few key topics, while answering to some of the questions by cross-referencing to their clarification document

published in June 2022, notably on (i) the current value of all investments in PAIs and Taxonomy-aligned disclosures; (ii) PAI disclosures; (iii) financial product disclosures; (iv) multi-option products; (v) Taxonomy-aligned investment disclosures; and (vi) financial advisers and execution-only financial market participants.

[For more information on the key features of the Q&A, please click here.](#)

CSSF FAQ on SFDR

On 2 December 2022, the CSSF published a Q&A on the application of the SFDR and RTS, entering into force on 1 January 2023, a few weeks after the publication of a Q&A on SFDR by the ESAs, bringing additional clarification and certainty on key points for the application of SFDR by the FMPs, notably on (i) the materiality of changes in relation to SFDR; (ii) the use of an exclusion strategy; and (iii) sustainable investments during the life-cycle of Article 9 funds.

[For more information on the key elements comprised in the CSSF FAQ, please click here.](#)

ESMA’s final report on draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS

ESMA is empowered under the UCITS Directive and AIFMD to develop draft RTS and draft implementing technical standards (**ITS**) to specify the information to be provided, the content and format of notification letters to be submitted by management companies, UCITS and AIFMs to the NCAs to undertake cross-border marketing or cross-border management activities and to provide services in host Member States, as well as the procedure for the communication of the notification file by the relevant home NCA to the host NCAs of the Member States where these activities are envisaged. On 17 May 2022, ESMA published a consultation paper, which consultation closed on 9 September 2022. ESMA has submitted the RTS and ITS to the EC for adoption within three months, respectively in the form of a Commission Delegated Regulation and a Commission Implementing Regulation, which will then be subject to the non-objection of the European Parliament and of the Council.

[Want to discover the key elements of the final report, please click here.](#)

Other relevant topics

LuxSE enables issuers to register DLT Financial Instruments on the SOL

On 31 January 2022, the Luxembourg Stock Exchange (**LuxSE**) published new guidelines regarding the registration of certain distributed ledger technology (**DLT**) financial instruments (the **DLT Financial Instruments**) onto its Securities Official List (**SOL**) under the following criteria: (i) debt instruments are offered exclusively to qualified investors or issued in a denomination per unit that amounts to at least EUR 100,000; (ii) issuers have previously issued securities in capital markets or applicants have a proven track record in capital market transactions; and (iii) pricing is in FIAT currency. Such registration will enhance the visibility of DLT Financial Instruments and facilitate the dissemination of indicative prices and securities data in relation thereto.

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

New Luxembourg Securitisation Law

On 9 February 2022, the Chamber of Deputies voted the law amending the Luxembourg law of 22 March 2004, bringing additional flexibility for securitisation vehicles while ensuring the protection of investors from the risks related to the investments in securitised pool of assets. The key features include (i) additional legal forms for SVs, (ii) a clarification of the definition of offer to the public on a continuous basis, (iii) the extension of the scope of borrowing settlements, (iv) the possibility of active management of assets and (v) the segregation of assets in several compartments.

[For more details on the amendments, please click here.](#)

CSSF notice to private consumers on virtual assets

On 22 July 2022, the CSSF published a notice to private consumers in the context of investment funds providing exposure to virtual assets, in which it outlines the growing importance of virtual assets within the financial sector, remind of the risks associated with such investment, and encourages consumers to get informed on the topic, notably by getting acquainted with the dedicated guidance published on 27 April 2022.

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

New LuxSE's fast-lane procedure for Euro MTF listings

As a result of consultations with international stakeholders, the LuxSE has launched a new fast-lane procedure for Euro MTF listings, which will not require the disclosure of certain information already available in other public sources when applying for a listing, nor the formal approval of a prospectus.

[If you want to know more on the fast-lane procedure and its requirements, please click here.](#)

Interesting facts about the CMS Funds Group

We have over **130 specialised funds lawyers** in core funds jurisdictions including **24 in Luxembourg**.

Our practices are ranked **16 times across 8 jurisdictions** (inc. **Tier 2** in Legal 500 Luxembourg for Investment Funds)

Sample of recent landmark deals

PATRIZIA's Global Real Estate Debt mandate.

Sustainable Future Venture's (part of the PATRIZIA group) first venture fund, that invests in technology companies that focus on the future of the built environment.

Aquila Capital's Southern European logistics Fund.

Eurazeo's European Long Term Investment Fund distributed to retail investors.

The Three Seas Initiative Investment Fund, a pan-European Lux domiciled fund with a focus on transportation, digitalisation and energy, established in Luxembourg.

Principal's pan-European Data Centre Fund for manage-to-core data centre assets in core European markets. CMS also advised the Fund on its first two acquisitions in Spain and in the UK.

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