

Investment Funds

Key insights from 2023
for a smoother journey
in 2024

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Introduction

As we reflect on the significant strides made in various domains of the funds industry over the past year, it becomes evident that 2024 is poised to witness even more substantial legal and regulatory developments under Luxembourg and EU law.

It is with great pleasure that we present to you a meticulously crafted report made by our Investment Funds experts. This comprehensive document offers a detailed overview of the key highlights from 2023 and sheds light on the imminent challenges that lie ahead in 2024.

We trust that this report will prove to be a valuable resource, providing you with insightful perspectives to guide you in the strategic planning of your projects for the upcoming year.



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Looking ahead to 2024

AIFMD II

On 25 November 2021, the European Commission put forward its proposal for amendments to the Directive 2011/61/EU on alternative investment fund managers (the **AIFMD**) as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds.

On 19 July 2023, the European Parliament and the Council of the European Union reached a provisional agreement. After two years, including several months of technical trilogues, the final text of the political agreement on the amendment of AIFMD (the **AIFMD II**) is finally out. It must be formally approved by both the European Parliament and the Council. The Parliament's vote is scheduled for February 2024 and the Council's vote is likely to follow shortly after. We can therefore reasonably expect the entry into force of AIFMD II by the end of Q1 2024.

Member States will then have 24 months to implement AIFMD II in their national rules, meaning that implementation can in principle be expected by Q1 2026.

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

ELTIF 2.0

On 20 March 2023, the amendments to Regulation (EU) 2015/760 on European long-term investment funds (**ELTIF 2.0**) have been published in the Official Journal of the European Union. New rules shall apply as from 10 January 2024.

On 23 May 2023, the European Securities and Markets Authority (**ESMA**) published draft regulatory technical standards (**RTS**) aiming at providing further guidance on the provisions relating to the redemption of units or shares of ELTIFs, open for consultation until 24 August 2023. Since then, there have been divergences between Member States and the Commission on the level of flexibility semi-liquid ELTIFs could have in the future.

On 15 December 2023, the Luxembourg *Commission de Surveillance du Secteur Financier* (**CSSF**) released its revised application questionnaire for ELTIF 2.0. Through this enhanced application questionnaire, the CSSF strives to streamline and accelerate the authorisation process for ELTIF and any subsequent inquiries.

On 19 December 2023, ESMA published its final report on the RTS, which have been submitted to the European Commission for endorsement and final approval. Initially expected to be approved by and applied as from 10 January 2024, a late adoption of the final RTS may well delay the application of the overall ELTIF 2.0 regime. We will actively continue to monitor recent progress on this topic and will keep you updated accordingly.

[Please check-out our dedicated page for full details here.](#)

European Single Access Point (ESAP)

On 27 November 2023, the Council adopted a regulation creating the European Single Access Point (the **ESAP Regulation**), a platform providing investors with free, reliable, user friendly, centralised and digital access to financial and sustainability-related information made public by European companies, hence facilitating the investors' decision-making process.

On 20 December 2023 the ESAP Regulation was published in the Official Journal of the European Union and enters into force 20 days after its publication.

The ESAP platform is anticipated to launch in the 2027 summer, with a gradual rollout to facilitate a robust implementation. This phased approach aims to incorporate European regulations and directives into the ESAP framework within a four-year timeframe, prioritising them accordingly. Throughout this period, there will be regular evaluations of ESAP's performance and a review process to ensure the platform aligns with the needs of its users and maintains technical efficiency.

[For full text, please click here.](#)

Retail Investment Package

On 24 May 2023, the European Commission put forward its long-awaited Retail Investment Strategy (**RIS**). It aims at strengthening the current legislative framework to ensure retail investors are adequately protected and can take informed investment decisions suited to their needs.

The RIS is composed of (i) an omnibus directive amending the directive on markets in financial instruments (**MiFID II**), the directive on insurance distribution (**IDD**), the directive on the taking-up and pursuit of the business of insurance and reinsurance, (**Solvency II Directive**), the directive on undertakings for collective investment in transferable securities (**UCITS Directive**) and the directive on alternative investment fund managers (**AIFMD**), and (ii) a regulation amending the Regulation on key information documents for packaged retail and insurance-based investment products (**PRIIPS Regulation**).

On 5 October 2023, the European Parliament's rapporteur Stéphanie Yon-Courtin published her two draft reports concerning the RIS package and intense debates are still taking place between the Members of the European Parliament. A possible vote in the ECON Committee could take place at the end of January 2024, but it remains doubtful that a final text can be adopted by the European Parliament before its elections in June 2024. Negotiations have also started in the Council and the Spanish Presidency has shared a paper suggesting a few changes to the text based on those negotiations.

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

EMIR Refit Reporting Technical Standards

On 1 December 2023, the *Commission de Surveillance du Secteur Financier (CSSF)* issued Circular 23/846 to inform that it will, in its capacity as competent authority, apply the Guidelines of ESMA on reporting under the European Market Infrastructure Regulation (**EMIR**) published on 23 October 2023, which have hence been integrated into the CSSF's administrative practice and regulatory approach.

These Guidelines will apply as from 29 April 2024 in the context of the EMIR Refit Reporting Technical Standards and shall provide clarifications on (i) the transition to reporting under the new rules; (ii) the number of reportable derivatives; (iii) the exemption from intragroup derivatives reporting; (iv) the delegation of reporting and allocation of responsibility for reporting; (v) the reporting logic and the population of reporting fields; (vi) the reporting of different types of derivatives; (vii) ensuring data quality by the counterparties and the TRs; (viii) the construction of the Trade State Report and reconciliation of derivatives by the TRs; and (ix) data access.

[Four full text, please click here.](#)

New AML Package

On 19 April 2023, the European Parliament approved the entry into interinstitutional negotiations (so-called "trilogues") with respect to three of the four legislative proposals that form part of the 2021 AML Package, namely (i) a regulation establishing an EU anti-money laundering and counter-terrorist financing authority (**AMLAR**); (ii) a regulation focusing on customer due diligence aspects (the **AMLR**); and (iii) a sixth directive on anti-money laundering and counter-terrorist financing (the **AMLD 6**).

Significant advancements have been noted in the development of the AMLR and the AMLD 6. However, disputes regarding the AMLAR are reportedly impeding the overall progress. While no text has been published yet, the EU institutions seem to have reached a provisional agreement on AMLAR. A conclusive vote on the entire package by both the Parliament and Council may potentially be delayed until early 2024.

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

ESMA CSA on MiFID II sustainability requirements

On 3 October 2023, the European Securities and Markets Authority (**ESMA**) revealed its plan to initiate a Common Supervisory Action (**CSA**) in collaboration with national competent authorities (**NCAs**) with a focus on the incorporation of sustainability considerations into the operations of credit institutions, as well as evaluating investment firms' MiFID II suitability assessment and product governance processes and procedures. This initiative is scheduled to take place in 2024 and follows ESMA's recent update of two sets of guidelines on suitability and product governance, both entering into application on 3 October 2023.

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

Listing Act

On 7 December 2022, the European Commission submitted a package of measures known as the "Listing Act" (the **Act**), aiming at making public markets more attractive for EU companies by facilitating access to capital for small and medium-sized companies (**SMEs**).

On the one hand, the Act put forward several amendments to Regulation (EU) 2017/1129 of the European Parliament and of the Council (the **Prospectus Regulation**), Regulation No 596/2014 of the European Parliament and of the Council (the **Market Abuse Regulation** or **MAR**), as well as limited amendments to Regulation No 600/2014 of the European Parliament and of the Council (the **Markets in Financial Instruments Regulation** or **MiFIR**).

On the other hand, the Act also introduces two additional proposals: (i) a directive, amending Directive 2014/65/EU of the European Parliament and of the Council (the **Markets in Financial Instruments Directive** or **MiFID II**) and repealing Directive 2001/34/EC of the European Parliament and of the Council¹¹ (the **Listing Directive**), which harmonises and clarifies the listing requirements, and increases the low level of investment research on SMEs; and (ii) a directive harmonising rules on multiple-vote share structures.

On 24 October 2023, MEPs on the European Parliament Committee on Economic and Monetary Affairs (**ECON**) adopted their position for the forthcoming interinstitutional negotiations ("trilogues"). We will stay vigilant in tracking the latest developments on this matter and will provide you with timely updates as needed.

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

ATAD III

On 17 January 2023, the European Parliament approved almost by unanimity the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (**ATAD III**) with certain amendments proposed by its Committee on Economic and Monetary Affairs (**ECON Committee**) on 9 December 2022.

Nevertheless, during the Swedish Presidency of the Council, Member States have encountered challenges in reaching a consensus on certain critical elements of the proposals. These include (i) determining the suitable indicators of substance, (ii) defining the tax implications of being labeled a shell entity, and (iii) specifying the information that taxpayers must report and exchange among Member States.

At this stage, the date of adoption of the proposal remains uncertain and its final configuration is yet to be determined. Therefore, the dates for implementation of the proposal in domestic law from 30 June 2023 and application of the national provisions from 1 January 2024 are postponed. We are closely monitoring the progress of these developments.

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

Pillar II law

On 22 December 2021, the European Commission published the proposal for a Council directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU (**Pillar II Directive**), this is in line with a larger OECD/G20 initiative. The purpose of the Directive is to put an end to practices of certain large multinational groups which tend to shift their profits to jurisdictions where they are subject to low or no taxation. In that respect, the Pillar II Directive establishes a minimum effective tax rate of at least 15%. The proposal of Directive was adopted on 14 December 2022.

The draft law implementing the provisions of the Pillar II Directive under Luxembourg law was published on 4 August 2023. The draft law closely follows the text of the directive and introduces the following three new taxes to ensure that constituent entities of multinational groups and large-scale domestic groups are subject to a minimum effective tax rate of 15%: (i) the income inclusion rule which applies when the effective tax rate for the constituent entities of a group in a particular jurisdiction is below the minimum rate of 15%; (ii) the undertaxed profits rule which applies as a backstop rule meaning whenever the top-up tax is not levied through the application of the income inclusion rule; (iii) the qualified domestic minimum top-up tax which allows Luxembourg to levy the top-up tax whenever the

effective tax rate of the Luxembourg constituent entities of a group is below 15%. This latter rule applies in priority to the income inclusion rule and the undertaxed profit rule.

The draft law contains several exclusions including an exclusion for investment funds to the extent they qualify as ultimate parent entities of the group and for entities held by such fund subject to conditions (ownership and activity tests).

According to the draft law, the income inclusion rule and the qualified domestic minimum top up tax should become effective on or after fiscal year starting from 31 December 2023 while the undertaxed profit rule should become effective on or after fiscal year starting from 31 December 2024. However, according to a recent communication from the Luxembourg reporter of the financial commission, considering the technical complexity of the draft law, the latter should be adopted only next year which means that the application of the various rules should be postponed accordingly unless the draft law provides for a retroactive application of the taxes.

Luxembourg's new accounting law

On 28 July 2023, bill of law 8286 (the **Bill**) was introduced with the twofold purpose of (i) modernising Luxembourg's current accounting provisions and consolidating them in one single law; and (ii) extending the scope of application to include more undertakings. The Bill notably introduces the following noteworthy changes: (i) the extension of the scope to non-commercial companies such as common funds, civil companies, mutual insurance associations, pension-savings associations, agricultural associations, temporary commercial companies and commercial companies by participation; (ii) the adoption of bottom-up approach to improve the readability of the Luxembourg accounting framework; (iii) new filing requirements for special limited partnerships (SCSPs); (iv) the introduction of an audit requirement for "large holding companies"; (v) the introduction of an optional scheme applicable to "micro-enterprises" providing simplification measures that Member States are free to transpose in whole or in part; (vi) new non-financial reporting obligations, notably on the undertaking's impact on sustainability matters and diversity policy; and (vii) the abolition of the function of supervisory auditor (commission aux comptes).

The Bill imposes new responsibilities on diverse Luxembourg enterprises. Given that certain obligations may come into effect starting from the fiscal year 2024, businesses are advised to commence assessments of how these alterations will impact their operations.

SFDR Level 1

On 14 September 2023, the European Commission published two consultations on the future of SFDR (together, the **Consultation**): (i) a public consultation aimed at a broader range of stakeholders with a more general knowledge of SFDR (e.g. individual investors); and (ii) a targeted consultation aimed at those who are more familiar with the details of SFDR and the EU's approach to sustainable finance more generally (e.g. fund houses).

The primary aim of the Consultation is to assess the practical application of SFDR and pinpoint any possible deficiencies, with a specific focus on legal clarity, the usability of the regulation, and its effectiveness in addressing greenwashing. The Consultation will also analyse how SFDR interacts with other elements of the European sustainable finance framework, assess its compatibility with comparable frameworks in different jurisdictions, and explore potential avenues for enhancement.

The deadline for feedback is 15 December 2023 and the Commission is expected to publish a report or concrete proposal for the SFDR revision within 2024, which would potentially cover the transformation of SFDR into a categorisation system, through a potential reform of article 8 and article 9 classification.

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

SFDR Level 2

The European Supervisory Authorities (**ESAs**) published a joint consultation paper on 12 April 2023 (with consultation open until 4 July 2023), in which significant changes were proposed to SFDR and its regulatory technical standards (**RTS**).

On 4 December 2023, the ESAs published their final report amending the draft RTS by notably (i) improving the disclosures on how sustainable investments "do no significant harm" to the environment and society; (ii) suggesting new product disclosures on "greenhouse gas emissions reduction" targets; (iii) simplifying pre-contractual and periodic disclosure templates for financial products; and (iv) other technical adjustments, notably on the treatment of derivatives, the calculation of sustainable investments, and provisions for financial products with underlying investment options.

The European Commission will review the RTS and make a decision on their endorsement within a three-month timeframe. These proposed RTS would be implemented separately from the comprehensive assessment of SFDR declared by the European Commission in September 2023 (see section above), and any modifications resulting from that assessment would be introduced at a later

stage; the application of the revised SFDR RTS is therefore unlikely to take effect before mid-2024. However, the entities in scope are recommended to already consider the potential changes to the SFDR disclosures of their existing funds that would be required and watch this topic closely.

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

Greenwashing

On 1 June 2023, the European Supervisory Authorities (**ESAs**) presented their common understanding of greenwashing as a response to the European Commission's request for input on greenwashing risks and supervision of sustainable finance policies. Each of the ESAs has also taken the opportunity to publish a progress report including input on (1) the definition of greenwashing and the forms it can take in the financial sector; (2) the risks greenwashing poses to investors and financial markets; (3) the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing; and (4) potential improvements to the regulatory framework.

In accordance with the European Commission's request, the ESAs will publish their final recommendations by May 2024, including any changes to the current EU regulatory framework that they deem necessary.

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

Technical screening criteria of the Taxonomy

On 27 June 2023, the Commission adopted a new set of EU taxonomy criteria for economic activities making a substantial contribution to one or more of the four remaining objectives (the **Environmental Delegated Act**), not already covered by the Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021, as amended (the **Climate Delegated Act**), as amended.

The Environmental Delegated Act introduces activities contributing substantially to the objectives of sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control and protection and restoration of biodiversity and ecosystems.

The Commission also adopted amendments to the Climate Delegated Act which entered into force, together with the provisions of the Environmental Delegated Act, on 1 January 2024.

Fund names

On 18 November 2022, the European Securities and Markets Authority (**ESMA**) published its consultation paper on guidelines in relation to funds' names, including quantitative thresholds that would need to be met before ESG- and sustainability-related terminology can be used in funds' names.

Such consultation closed on 20 February 2023 and ESMA's final version of the rules was initially expected by Q3 2023.

Meanwhile, on 2 November 2023, ESMA released an article delving into the utilisation of language associated with environmental, social, and governance (**ESG**) factors in the names and documentation of EU investment funds, as part of its ongoing monitoring efforts around greenwashing risks.

On 14 December 2023, ESMA provided an update on the status of the guidelines together with expected changes compared to its initial proposal.

The guidelines on funds' names are expected to be approved and published in Q2 2024.

CSRD

On 17 October 2023, the European Commission suggested a two-year extension to implement specific aspects of the Corporate Sustainability Reporting Directive (**CSRD**), which came into effect in January 2023. This proposal coincided with the release of the 2024 Commission Work Programme, outlining planned actions for the upcoming year.

The primary modification detailed in the 2024 Programme involves a two-year extension of the deadline for the adoption of sector-specific European Sustainability Reporting Standards (**ESRS**), which are standards that comprise the regulations and criteria that mandate companies to disclose sustainability-related impacts, opportunities, and risks as per the CSRD (see dedicated section to ESRS). While EU companies will now have a considerably longer period before being obligated to furnish sector-specific sustainability disclosures, certain non-EU entities will also be encompassed by the CSRD two years later than initially suggested. The rationale of the delay is to allow in-scope financial market participants to focus on the implementation of the first set of ESRS.

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

ESMA second consultation paper under MiCAR

The European Securities and Markets Authority (**ESMA**) has released a second consultation package for the Markets in Crypto-Assets Regulation (**MiCAR**). Stakeholders are urged to share their feedback on these proposals by 14 December 2023. ESMA is soliciting input on five sets of suggested regulations, including sustainability indicators for distributed ledgers, disclosures of inside information, technical requirements for white papers, trade transparency measures, and record-keeping and business continuity requirements for providers of crypto-asset services.

Looking ahead, ESMA plans to compile a final report based on the feedback received and aims to submit the draft technical standards to the European Commission for endorsement no later than 30 June 2024.

ESMA will also publish a third consultation package with the remaining 18-month mandates in Q1 of 2024.

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

UCITS marketing notifications on eDesk

After Circular CSSF 22/810 was issued on 12 May 2022, the *Commission de Surveillance du Secteur Financier* (**CSSF**) informed, through its communication dated 15 November 2023, Luxembourg UCITS that intend to notify or de-notify arrangements for marketing shares in another Member State under Article 6 of the 2010 Law that they are required to adhere to the marketing notification and de-notification procedures accessible through the eDesk Portal starting from 2 January 2024. Consequently, Circular CSSF 11/509 will be revoked on this date.

DORA

On 27 December 2022, Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on the digital operational resilience of the financial sector and amending Regulations (EC) 1060/2009, (EU) 648/2012, (EU) 600/2014, (EU) 909/2014 and (EU) 2016/1011 (**DORA**) was published in the Official Journal of the European Union. It entered into force on 16 January 2023 and will apply as from 17 January 2025. It aims at achieving a high level of common digital operational resilience by establishing standard requirements for network security and information systems that are the support structure for the business processes of financial entities and applies, among others, to investment firms, ICT third-party service providers and most AIFMS and management companies.

On 4 August 2023, bill of law 8291 was submitted to the Luxembourg Parliament with a view to operationally implement DORA in Luxembourg, by notably (i) amending existing laws relating to the financial sector to take DORA into account; (ii) giving the *Commission de Surveillance du Secteur Financier (CSSF)* and the *Commissariat aux Assurances* supervisory and investigative powers to ensure the application of DORA; and (iii) introducing administrative sanctions in cases of non-compliance with DORA.

Our team will keep monitoring the legislative process.



Looking back over 2023

CSSF SFDR data collection

On 25 March 2023, the *Commission de Surveillance du Secteur Financier (CSSF)* launched its digital collection process of data related to the precontractual information on financial products under Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (**SFDR**).

In July 2023, the CSSF launched a second data collection with regards to periodic information for Article 8 and Article 9 products. This yearly exercise covers all the SFDR periodic reports issued as from 1 January 2023 and with financial year end on or after 30 September 2022.

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

Amendments to the SFDR RTS on fossil gas- and nuclear energy-related activities

On 20 February 2023, the Commission Delegated Regulation (EU) 2023/363 of 31 October 2022 entered into force, amending Delegated Regulation (EU) 2022/1288 of 6 April 2022 (**SFDR RTS**).

The aim of the Delegated Regulation is namely to include, in the SFDR disclosures, disclosure requirements about nuclear and gas-related activities, introduced in the EU Taxonomy in March 2022 by the Delegated Regulation (EU) 2022/1214.

Key elements of the amendments to the SFDR RTS are the following: (i) revised annexes: the SFDR Annexes (pre-contractual and periodic) are amended with an additional question and a graph, requiring disclosing whether the financial product invests in fossil gas and/or nuclear energy related activities that comply with the EU Taxonomy; (ii) clarification about the scope of Taxonomy disclosures: the Delegated Regulation clarifies that the application of the Taxonomy Regulation is relevant only for financial products committing to invest in “sustainable investments” with an environmental objective, as defined under Article 2(17) SFDR. As a result, funds disclosing

under Article 8 that are not investing in “sustainable investments”, or funds investing in “sustainable investments” having only a social objective, are not required to include, in their SFDR disclosures, provisions about the Taxonomy-alignment of their investments; and (iii) correction of clerical errors: cross-references in Article 55(1) and 62(1) of the SFDR RTS have been corrected.

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

Introduction of a vigilance duty in terms of sustainability for Luxembourg companies

On 16 May 2023, a bill of law was submitted to the Luxembourg Parliament to introduce a duty of diligence for companies in terms of sustainability for (i) large Luxembourg companies (i.e. where at least two of the following criteria are met: 250 employees, an annual turnover of 50 million euros and a balance sheet 42 million euros) and (ii) small and medium enterprises which have an economic activity “at risk”, as such list of activities would be defined by way of Grand Ducal regulation.

The bill of law is currently being discussed by the Luxembourg Parliament before being voted on, and our dedicated ESG experts at CMS Luxembourg will keep monitoring the legislative process.

For further details, please click [here](#).

Adoption of the European Sustainability Reporting Standards

On 31 July 2023, the European Commission adopted the new European Sustainability Reporting Standards (**ESRS**).

The ESRS will become mandatory for use by large companies, listed small and medium-sized companies (**SMEs**) and parent companies of large groups that are subject to the Accounting Directive including the Non-Financial Reporting Directive (**NFRD**), as amended by the Corporate Sustainability Reporting Directive (**CSRD**), which outlines the obligation for companies to use standards to fulfil their legal sustainability reporting obligations and aims at ensuring that companies across the European Union report comparable and reliable information on how sustainability matters affect the company's development, performance and position.

The first phase for companies to start reporting under ESRS is scheduled for financial year 2024, with first sustainability statement published in 2025, for companies previously subject to the NFRD (i.e. large listed companies, large banks and large insurance undertakings having more than 500 employees), as well as large non-EU listed companies with more than 500 employees. However, on 17 October 2023, the European Commission suggested a two-year extension to implement specific aspects of the CSRD including the adoption of sector-specific ESRS (see dedicated section on CSRD).

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

CSSF Thematic Review on the implementation of sustainability-related provisions in the investment fund industry

On 3 August 2023, the *Commission de Surveillance du Secteur Financier* (**CSSF**) released its thematic review on sustainability-related provisions in the investment fund industry, which findings are set to pave the way for the common supervisory action led by the European Securities and Markets Authority (**ESMA**).

The review highlights the importance of transparency, accountability, and adherence to sustainability objectives.

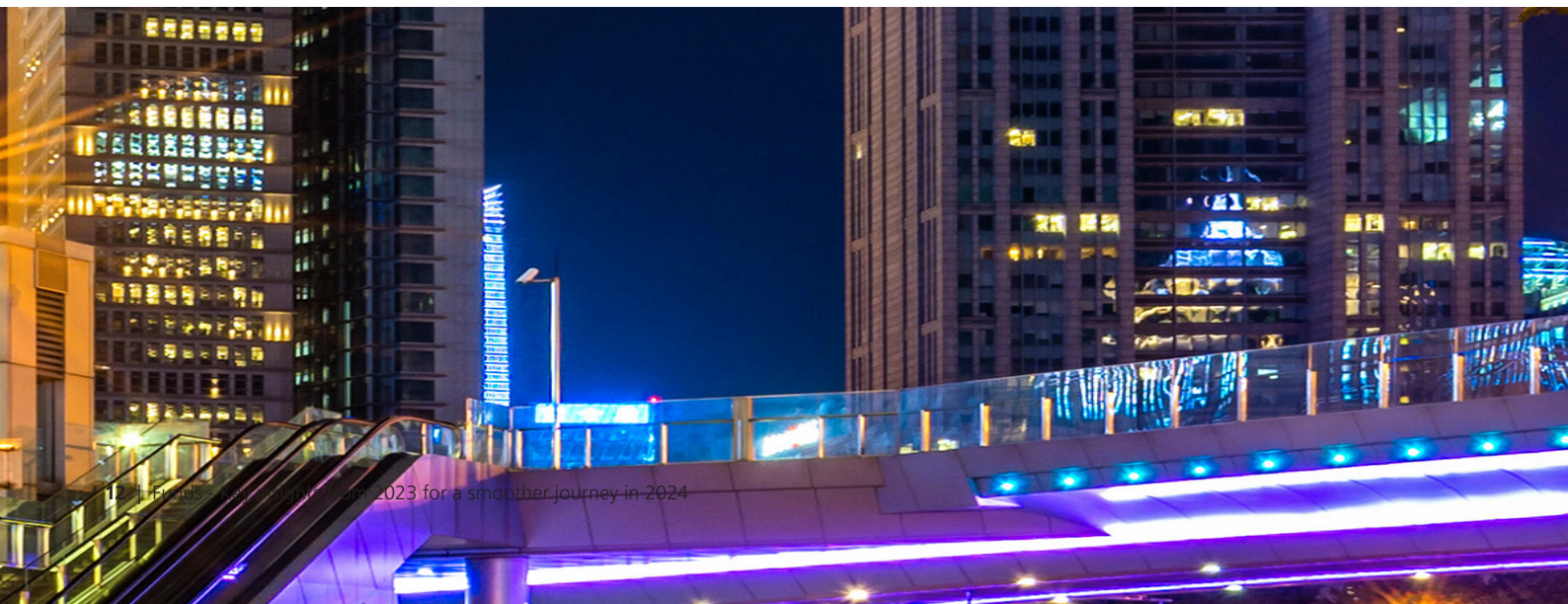
The observations and expectations outline the need for investment fund managers (**IFMs**) to embrace sustainable finance and align with the Sustainable Finance Disclosure Regulation (**SFDR**). By promoting clear and comprehensive disclosures, and integrating sustainability risks into their risk management frameworks, IFMs can play a crucial role in advancing the sustainable finance agenda.

[Further information on this topic, can be found here.](#)

CSSF report on diversity through its data collection exercise

In a press release dated 10 October 2023, the Luxembourg *Commission de Surveillance du Secteur Financier* (**CSSF**) presented the current state of diversity within the management bodies of less significant institutions (**LSI**) in a report. This report stems from the survey launched in April 2023 targeting 46 LSI and aimed at gathering additional information on the implementation of diversity policies, and essentially targets diversity in terms of gender, assessing compliance of LSI with respect to the adoption of a diversity policy and its concrete outcomes.

[For further details on this topic, please click here.](#)



Adoption of the EU Green Bonds Regulation

On 23 October 2023, the Council of the European Union adopted in first reading the regulation on European green bonds standards (the **EU GB Regulation**). This formal adoption ends a two-year process, from the European Commission's initial proposal on 6 July 2021 to the provisional agreement reached with the European Parliament (the EP) on 28 February 2023, which was formally adopted by the EP on 5 October 2023.

Key elements of the EU GB Regulation include, among others, (i) some flexibility on the use of proceeds for European Green Bond (**EuGB**)s; (ii) the introduction of a safeguard for the alignment of the EuGB with the Taxonomy; (iii) the application of the technical screening criteria with grandfathering provisions; and (iv) additional disclosure requirements in case of securitisation bonds. The EU GB Regulation shall apply from 21 December 2024.

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

ESMA Guidelines on certain aspects of the MiFID II remuneration requirements

On 13 October 2023, the Luxembourg *Commission de Surveillance du Secteur Financier (CSSF)* released a circular on remuneration requirements under Directive 2014/65 on markets in financial instruments (**MiFID II**) to integrate into the CSSF's administrative practice and regulatory approach the Guidelines of ESMA on certain aspects of the MiFID II remuneration requirements, published in April 2023, which inter alia describe (i) the design of remuneration policies and practices, (ii) the governance, and (iii) the controlling risks related to remuneration policies and practices. The Guidelines are supplemented with examples of good and poor practice and illustrative examples.

[For further details, please click here.](#)

Update of ESMA Q&As on UCITS and AIFM Directives

On 13 June 2023, ESMA updated its questions and answers (**Q&As**) on the application of the UCITS Directive and the AIFM Directive. Changes with respect to the UCITS Directive deal with (i) permitted activities of UCITS management companies; and (ii) de-notification requirements in case there is no investor in a designated Member State. The Q&A regarding the application of the AIFMD has been revised to inter alia address the following subjects: (i) pre-marketing activities conducted by non-EU AIFMs; (ii) permitted activities of AIFMs; (iii) the definition of "substantive direct or indirect holding" in the context of sub-threshold/registered AIFMs; (iv) pre-marketing undertaken by an EU AIFM or by a third party on behalf of an authorized EU AIFM; (v) pre-marketing by registered AIFMs that do not qualify as EuSEF managers or EuVECA managers; (vi) de-notification requirements in the absence of investors in a host Member State; and (vii) the calculation of leverage for AIFs acquiring real estate assets indirectly through non-listed companies.

Implementation of the DLT Pilot Regime – Blockchain law III

On 2 June 2022, Regulation (**EU**) 2022/858 of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology (**DLT**) was published in the Official Journal (**DLT Regulation**). The DLT Regulation introduces pilot scheme which allows national competent authorities to temporarily exempt DLT market infrastructures (**DLT MI**) from some of the specific requirements imposed by existing legislation on traditional market infrastructures.

On 8 March 2023, the European Securities and Markets Authority (**ESMA**) released its Guidelines setting out standard forms, formats and templates to apply for specific permissions under the DLT Regulation on a pilot regime for market infrastructures based on DLT to operate DLT MI, namely a DLT Multilateral Trading Facility, a DLT Settlement System and a DLT Trading and Settlement System. The Guidelines set forth (i) information to be provided for all applicants (such as the identification and legal status of the applicant and the identification of the application); and (ii) specific additional information depending on the applicant's regulatory status and on the nature of its application request, and shall apply as from 23 March 2023.

On 9 March 2023, bill of law 8055 laying down rules for the application of the DLT Regulation was adopted by the Luxembourg Parliament. The proposed legislation additionally establishes specific regulations for financial collateral arrangements and marks the third instance of

Luxembourg's legal framework concerning DLT-blockchain, referred to as "Blockchain Law III." It shall apply as from 23 March 2023.

[More information on this topic can be found here and here.](#)

Modernisation of the Luxembourg fund toolbox

On 24 July 2023, the Luxembourg law of 21 July 2023 aiming to improve and modernise the legal and regulatory framework applicable to investment fund products has been published in the Official Journal of the Grand Duchy of Luxembourg. It comprises significant amendments to four Luxembourg product laws, namely the law of 23 July 2016 on reserved alternative investment funds, as amended (the **RAIF Law**), the law of 13 February 2007 on specialised investment funds, as amended (the **SIF Law**), the law of 15 June 2004 on investment companies in risk capital, as amended (the **SICAR Law**), and the law of 17 December 2010 on undertakings for collective investment, as amended (the **UCI Law**, and together with the RAIF Law, the SIF Law and the SICAR Law, the **Product Laws**), as well as the Luxembourg law of 12 July 2013 on alternative investment fund managers, as amended (the **AIFM Law**). The overall objective is to improve and modernise the Luxembourg toolbox for investment funds, and therefore to increase the attractiveness and competitiveness of the Luxembourg financial centre.

Key changes to the Product Laws include inter alia (i) the amendment of the definition of "well-informed investor"; (ii) the extension of the timeframe to reach the minimum capital requirement; (iii) enhanced rules on withdrawal of the depositary; (iv) a new subscription tax exemption for ELTIFs and PEPPs; (v) the deletion of the requirement of notary's acknowledgment for RAIFs established by notarial deed. Key amendments to the AIFM Law include, among others, (i) clarifications on the marketing to retail investors; (ii) news rules on tied agents; and (iii) clarifications on the liquidation of AIFMs.

The law entered into force on 28 July 2023.

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

MiCAR

On 9 June 2023, the Markets in Crypto-Assets Regulation (**MiCAR**) was published in the Official Journal of the European Union and will apply as from 30 December 2024, with some rules already applying as of 30 June 2024. Through MiCAR, the European Union is introducing a unified regulatory framework for the crypto-asset market. This framework, the first of its kind, is applicable to both conventional financial sector entities and emerging participants in the crypto ecosystem. These entities engage in activities such as issuing, publicly offering, trading crypto-assets, or providing related services within the EU.

To obtain a recognised regulated status at the Union level, these institutions must fulfill specific requirements, enabling the cross-border provision of these services throughout the EU market.

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

DAC 8

On 17 October 2023, the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (**DAC 8**) was adopted, introducing an additional layer of due diligence and reporting obligations for taxpayers acting in the crypto-asset market as response to the emergence of new methods of payment and investment such as crypto-assets and e-money, which in most cases escaped from the scope of DAC framework.

DAC 8 became effective on 13 November 2023 and EU Member States have until 31 December 2025 to transpose the main rules into national law, and the new provisions will generally apply as of 1 January 2026. However, provisions on the identification services should be transposed into national law by 1 January 2024 (applying as from 1 January 2025) and provisions on TIN validation should be implemented into national law by 31 December 2027 (applying as from 1 January 2028).

The final implementation in Luxembourg and other EU members should be monitored as it will be crucial to assess whether transactions carried out by taxpayers in crypto assets would fall into the scope of these obligations, to anticipate to the potential impact and costs these compliance obligations would have on them.

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

Update of the EU Blacklist

On 17 October 2023, the Council adopted the new EU list of non-cooperative jurisdictions for tax purposes (the **EU Blacklist**), which is updated twice a year. Antigua and Barbuda, Belize and Seychelles are being added, while the British Virgin Islands, Costa Rica and the Marshall Islands have been removed from the EU Blacklist. Clients operating transactions with entities located in any of the above-mentioned jurisdictions should thoroughly assess the implications of the updated list on their business operations.

Luxembourg whistleblowing law

The law transposing Directive (EU) 2019/1937 on the protection of persons who report violations of Union law (the **Whistleblower Directive**) was published in the Luxembourg Mémorial A on 17 May 2023 with a view to establishing a comprehensive legal framework for the protection of persons who report or disclose illicit acts or omissions contravening Luxembourg or EU law ensuring that, inter alia, (i) they are effectively protected against any form of retaliation by their employer and are provided with effective legal remedies, and (ii) they will not incur any liability for obtaining or accessing information that is reported or publicly disclosed.

The obligation to implement dedicated reporting channels and procedures applies to both private and public entities with 50 employees or more, which must establish dedicated written and oral reporting channels and procedures ensuring the confidentiality of the reporting persons and any mentioned third parties and appoint an impartial person responsible for the diligent follow-up of the report.

All forms of retaliation, including threats and attempts at retaliation, are prohibited against persons who have carried out a reporting pursuant to the law.

Entities which fail to implement said reporting channels and procedures could face fines ranging from 1,500 to 250,000 euros, with penalties potentially reaching up to 500,000 euros for repeat offences.

The law entered into force on 21 May 2023, apart from the obligation for private sector entities having between 50 and 249 employees to establish internal reporting channels which shall apply from 17 December 2023.

[Further details on this topic can be found here.](#)

Luxembourg foreign direct investments screening regime

Luxembourg foreign direct investments screening regime
On 13 June 2023, the Luxembourg Parliament adopted the law establishing a new legal national framework for the screening of foreign direct investments in Luxembourg, thereby implementing Regulation (EU) 2019/452 on foreign direct investments in the European Union.

This law introduces a screening mechanism for foreign direct investments (excluding portfolio investments), which are likely to undermine security or public order, which are made by non-European investors in any Luxembourg entity operating in so-called "critical activities" in Luxembourg and shall apply as from 1 September 2023.

In a nutshell, any investments made by a foreign investor which are intended to establish or maintain a direct and lasting relationship between the foreign investor and an entity governed by Luxembourg law for which the funds are intended, thereby enabling the foreign investor to participate effectively on their own, in concert or by interposition in the control of this Luxembourg entity are subject to compulsory notification to the Minister of the Economy, provided that the Luxembourg entity carries out an activity considered to be critical.

Critical activities include, inter alia, (i) the development, operation and trading of dual-use goods; (ii) specific activities in the energy, transport, water, health and communications sectors; (iii) in the data processing or storage sector: the installations of data processing, hosting information services and internet portals, and technologies relating to artificial intelligence, semiconductors, and cybersecurity; (iv) in the aerospace sector: space operations and the exploitation of space resources; and (v) in the finance sector: the activities of the central bank, as well as the infrastructures and systems for the exchange, payment and settlement of financial instruments.

Modernisation of Luxembourg insolvency law

Introduced ten years ago as a response to the 2008 financial crisis, the bill of law on the preservation of undertakings and the modernisation of bankruptcy law was finally adopted on 19 July 2023 after a long and eventful parliamentary process and entered into force on 1 November 2023. Greatly inspired by Belgian law, it implements Directive (EU) 2019/1023 on restructuring and insolvency. Its main objective is to favour early restructuring and to avoid bankruptcy.

For further details on this, please click here.

Adjustments to the 1915 Law

On 19 July 2023, the Luxembourg Parliament adopted the bill of law 8007 correcting some omissions, errors and inconsistencies in the Luxembourg law of 10 August 1915 on commercial companies, as amended (the **1915 Law**).

The 1915 Law was subject to substantial amendments introduced through the law of 10 August 2016 after almost 10 years of legislative procedure. The complex and lengthy legislation process resulted in a welcome modernisation of the Luxembourg corporate law, however, some omissions, erroneous cross-references passed undetected at the time, and certain uncertainties or inconsistencies were revealed in the practical application of the new provisions.

The Luxembourg legislator has now seized the opportunity to address these issues by means of adopting the bill of law 8007, without however making any substantial changes. The bill follows the law of 6 August 2021, which has already implemented the most urgent amendment clarifying the scope of application of the criminal sanctions applicable to non-authorized financial assistance.

Among others, key changes include (i) a clarification that the shares with suspended voting rights (including where the suspension results from the waiver of the voting rights by the shareholder) shall not be taken into consideration for the calculation of the quorums and majorities at the general meetings of shareholders (article 450-1 (9) / article 710-19 of the 1915 Law); (ii) the removal of the double majority (the majority of shareholders per capita plus $\frac{3}{4}$ of the share capital) requirement with regard to the decision to put a private limited liability company (société à responsabilité limitée) into liquidation; and (iii) expressly providing that sole shareholder owned private limited liability companies (sociétés à responsabilité limitée) may allow in the articles of association their managers/board of managers to

increase the share capital (authorised share capital) and to amend the articles of association further to the change of the registered office.

The amendments entered into force on 22 August 2023.

For more information on this topic, please click here.

Standardised Model Articles of Incorporation for UCITS

On 1 August 2023, the *Commission de Surveillance du Secteur Financier (CSSF)* communicated on the launch of Standardised Model Articles of Incorporation (the **Standardised Model**) for drafting articles of incorporation for a an undertaking of collective investment in transferable securities (**UCITS**) project set up in the form of an investment company with variable capital, with the following characteristics: (a) a UCITS subject to Part I of the Law of 17 December 2010 concerning undertakings for collective investment; (b) a UCITS to be set up in the form of an investment company with variable capital (SICAV); (c) a UCITS to be managed by a Luxembourg-domiciled Management Company or by a Management Company domiciled in another EU Member state in accordance with the freedom to provide services on a cross-border basis; (d) a UCITS set up with multiple sub-funds of low to average complexity.

Please note that using the Standardised Model shall not be considered as a regulatory requirement or as a guarantee for the approval and that the CSSF may request additional information as it deems necessary in the context of the authorisation process. While the Standardised Model should reflect current and up-to-date practice, the content is composed of information of a general nature and may need to be adapted to suit the context and circumstances of any specific investment company.

For more information on this topic, please click here.

CSSF FAQ on virtual asset service providers

On 17 August 2023, the *Commission de Surveillance du Secteur Financier (CSSF)* published its frequently asked questions (**FAQ**) on virtual asset (**VA**) service providers (**VASPs**), which provides useful clarifications on the applicable legal AML/CFT regime applicable, including inter alia (i) the requirement for any person, natural or legal, who is established in Luxembourg and/or provides in Luxembourg any of the following VA-related services on behalf of customers or for its customers to register as a VASP in the CSSF register; (ii) a set of internal criteria analysed by the CSSF in order to determine whether a person providing services in Luxembourg needs to register as VASP or not; (iii) the fact that, under the current national and European legal frameworks, no passporting regime is foreseen; (iv) the level of information expected for the ML/TF risk assessment to be submitted as part of the registration file for a VASP; (v) the expectations in terms of monitoring of the transactions; (vi) the obligation for VASPs to report promptly to the Financial Intelligence Unit any suspicious activities or transactions; (vii) an annual supervisory fee of EUR 15,000 to be paid by the VASP to the CSSF; and (viii) the fact that the CSSF's role for the registered VASPs is currently limited to registration, supervision and enforcement for AML/CTF purposes only.

The FAQ has been established based on the current legal AML/CFT framework applicable to VASPs and does not take into account the evolution of the framework related to virtual assets at European level (i.e. the Regulation on Markets in Crypto-Assets (**MICAR**)).

CSSF general findings and observations on marketing communications

On 23 August 2023, the *Commission de Surveillance du Secteur Financier (CSSF)* published the results of its thematic review on marketing communications under Regulation 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the **CBDP Regulation**), which covers the period from 1 April 2021 to 31 March 2023, in which it lays down its findings and observations, as well as some recommendations to investment fund managers (**IFMs**) including inter alia on (i) the identification as such of marketing communications; (ii) the consistency with fund's documents; (iii) the suitability of the marketing communication for the target investors or potential investors; (iv) mandatory references

to the availability of fund documents; (v) information on risks and rewards; (vi) information on costs; (vii) information on performance and benchmark; (viii) information on sustainability-related aspects; and (ix) short marketing communications.

You will find more information on this topic, by clicking [here](#).

ESMA Opinion on undue costs

On 17 May 2023, the European Securities and Markets Authority (**ESMA**) published an opinion on undue costs of UCITS and AIFs (the **Opinion**) in view of the European Commission's legislative proposals in the context of the Retail Investment Strategy (see dedicated section).

The Opinion includes useful suggestions and clarifications, notably (i) a suggestion to amend Article 12 AIFMD to add an obligation for AIFMs to maintain and operate a pricing process which should transparently demonstrate the legitimacy of all incurred costs, with explicit responsibilities assigned to the management body for determining and reviewing the costs charged to investors; (ii) a recommendation for the Commission to provide clarity on the eligibility of costs in reference to the PRIIPs List outlined in Annex VI of the PRIIPs KID Delegated Regulation, which assessment should be fund-specific, considering the fund type and its investment policy on a case-by-case basis as part of pricing due diligence and quantitative aspects such as costs aligning or surpassing market standards; (iii) ESMA's role to develop Regulatory Technical Standards (RTS) to define circumstances under which a cost in the PRIIPs List would be deemed undue or ineligible, as well as conditions under which national competent authorities (NCAs) could authorise additional cost categories not covered in the PRIIPs List; (iv) the fact that, in instances where undue costs have been charged, managers should be obligated to promptly reimburse or indemnify investors; and (v) that ongoing monitoring and regular evaluations of implemented policies and procedures should be conducted to prevent undue costs, while anomalies should be annually reported to the NCA and reported to investors.

More information on this topic can be found [here](#).

Interesting facts about the CMS Funds Group



Global reach | We have over **130 specialised funds lawyers** in core funds jurisdictions including **25+ in Luxembourg**.



Industry players | CMS Lawyers are at the forefront of the discussions by actively engaging as members within influential organizations such as ALFI and LPEA (Luxembourg), IPF, AREF, INREV, BCO, BPF, LPeC, BVCA, EPRA, FMLC, TISA, IE, Invest Europe, BVK (Germany) ALFI and Itinerari Previdenziali (Italy).



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

PATRIZIA's Global Real Estate Debt mandate.

Sustainable Future Venture

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

Aquila Capital's Southern European logistics Fund.

Eurazeo

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

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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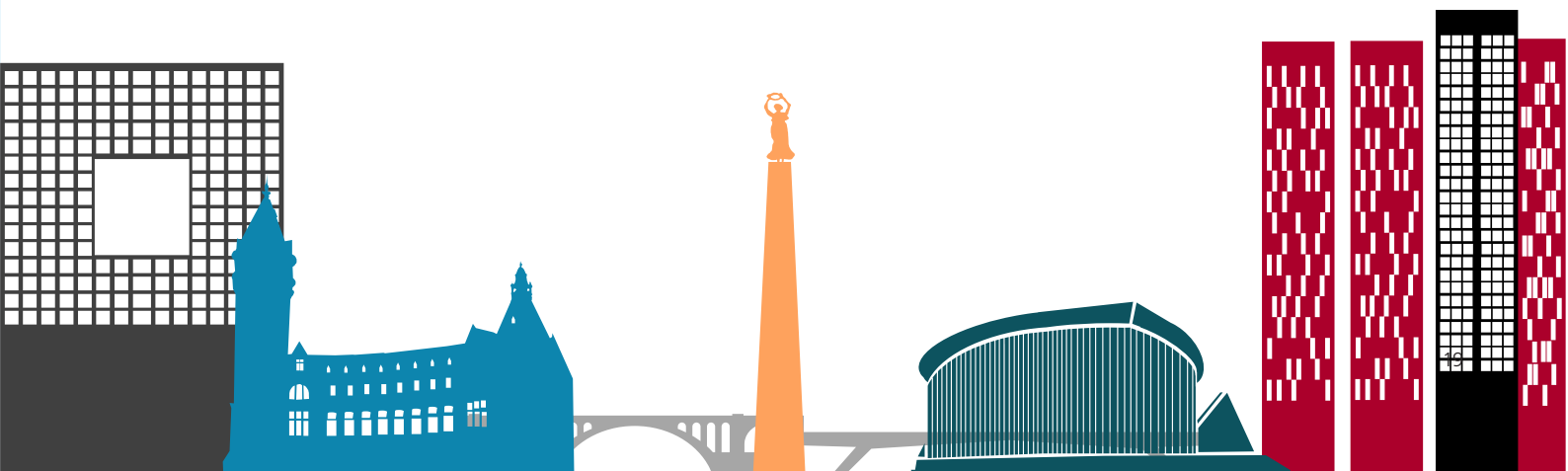
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