

Capital Markets

Key insights from recent developments
for a smoother journey in 2024

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Introduction

We are delighted to share with you a carefully prepared report by our Capital Markets experts. This thorough document offers a detailed summary of significant highlights in respect of the most important legislative changes from recent years and sheds light on the upcoming challenges expected in 2024.

We believe this report will prove to be a valuable asset, providing insightful perspectives to assist you in strategically planning your projects for the coming year.



Aurélien Hollard
Partner
Investment Funds and
Capital Markets



José Juan Ocaña
Senior Associate
Investment Funds and
Capital Markets

Looking ahead to 2024

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 (**ECOM**) 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.](#)

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 together with Directive (EU) 2022/2556 of the European Union and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 regarding digital operational resilience of the financial sector (**DORA Directive**). DORA and DORA Directive entered into force on 16 January 2023 and will apply as from 17 January 2025. DORA 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, pension funds, crypto-asset service providers, crowdfunding service providers, information and communication technology (ICT) third-party service providers and most alternative investment fund managers (**AIFMs**) and management companies.

On one side, DORA provides several new obligations in relation to governance and organisation, ICT risk management framework and ICT-related incident reporting, digital operational resilience testing, ICT third-party risk management and information sharing.

On the other side, DORA Directive aims at bringing existing directives, such as 2013/36/EU (**CRD IV**), (EU) 2015/2366 (**PSD2**), 2014/59/EU (**BRRD**), 2009/138/EC (**Solvency II**), (EU) 2016/2341 (**IORP 2**), 2009/65/EC (**UCITS**), MIFID II and 2011/61/EU (AIFM) in accordance with DORA.

On 4 August 2023, bill of law 8291 was submitted to the Luxembourg Parliament with a view to operationally implement DORA and transpose DORA Directive 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.

[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 details, 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.

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

Sustainable reporting for STS Securitisation

On 25 May 2023, the Joint Committee of the ESAs published a Final Report on draft Regulatory Technical Standards (**Final RTS Report**) as regards the disclosure requirements in terms of sustainability indicators regarding the adverse impacts of the assets financed by the underlying assets exposures for simple, transparent and standardised (**STS**) securitisations on climate and other environmental, social and governance (**ESG**) related adverse impacts in line with arts. 22 (6) and 26d (6) of Regulation (EU) 2017/2402 (**SECR**).

The Final RTS Report applies only to STS securitisations and on balance-sheet securitisations, where the underlying exposures are residential loans, auto loans or leases, and aims to allow originators to disclose the main adverse impacts of STS securitisations and balance-sheet securitisations using reporting that is closely aligned with the Regulation (EU) 2017/2088 (SFDR), while also contributing to the fulfilment of ESG reporting requirements by investors.

It is worth mentioning that the Final RTS Report creates a voluntary regime allowing originators to discharge their obligation by disclosing the information in accordance with the first subpara. of arts. 22 (4) and 26d (4) of SECR. However, if the originators select to opt-in, then it is mandatory to proceed with the respective disclosures, meaning the disclosure of one social or governance-related factor, and one environmental or climate-related factor. In terms of frequency, the information should be disclosed on a quarterly basis, pursuant to article 7 (1) of SECR.

The draft regulation on the regulatory technical standards is still under discussion and there is no clear information on when and if it will be adopted in 2024. For full text of draft RTS, please click here.

[Four full text of draft RTS, 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.](#)

Looking back over recent developments

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.](#)

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, click here.](#)

DLT Pilot Regime

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.

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

Luxembourg Blockchain Laws

a) Blockchain Law I

On 14 February 2019, bill of law 7363 amending the amended law of 1 August 2001 on the circulation of securities, was adopted by the Luxembourg Parliament marking the first instance of Luxembourg's legal framework concerning blockchain/DLT, referred to as "Blockchain Law I". The Blockchain Law I enabled securities accounts to be held on secure electronic registration mechanisms, such as blockchain/DLT and credited securities to be transferred to blockchain/DLT. It Blockchain Law I entered into force on 5 March 2019.

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

b) Blockchain Law II

On 21 January 2021, bill of law 7637 amending the law of 6 April 2013 on dematerialised securities and the law of 5 April 1993 on the financial sector, as amended, was adopted by the Luxembourg Parliament marking the second instance of Luxembourg's legal framework concerning blockchain/DLT, referred to as "Blockchain Law II". Blockchain Law II concentrates on the securities issuance account and recognises the feasibility of maintaining a securities account while securities

registrations can be carried out within or through the blockchain/DLT. Further, Blockchain Law II extends the status of the central account keepers at the level of service providers for non-listed debt securities issued on a blockchain/DLT in a credit institution or investment firm based in EU and no additional authorisation is required.

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

c) Blockchain Law III

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 broadens the definition of financial instruments by including securities issued on blockchain/ DLT and establishes specific regulations for financial collateral arrangements, marking in that way the third instance of Luxembourg's legal framework concerning blockchain/DTL as it transposed the DLT Regulation into Luxembourg's national law, referred to as "Blockchain Law III". It shall apply as from 23 March 2023. On 14 February 2019, bill of law 7363 amending the amended law of 1 August 2001 on the circulation of securities, was adopted by the Luxembourg Parliament marking the first instance of Luxembourg's legal framework concerning blockchain/DTL, referred to as "Blockchain Law I". The Blockchain Law I enabled securities accounts to be held on secure electronic registration mechanisms, such as blockchain/DTL and credited securities to be transferred to blockchain/DTL. It Blockchain Law I entered into force on 5 March 2019.

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

MiCAR

On 9 June 2023, the Regulation (EU) 2023/1114 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and Directives 2013/36/EU and (EU) 2019/1937 (**MiCAR**) was published in the Official Journal of the European Union and will apply as from 30 December 2024; nevertheless, the requirements set for asset-references tokens (**ARTs**) and e-money tokens (**EMTs**) (titles III and IV of MiCAR) are already applying as of 30 June 2024. Through MiCAR, the European Union is introducing a unified regulatory framework for the crypto-asset market, in relation to issuance of, intermediating and dealing in, crypto-assets not yet covered by the existing EU legislation (e.g. financial instruments under MiFID II).

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. Overall, MiCAR aims to enhance investor protection and promote market stability through the establishment of its market abuse regime, conduct of business rules and own funds standards, whilst encouraging innovation.

[For more 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.](#)

Luxembourg Securitisation Law

On 9 February 2022, the Luxembourg Parliament amended the law of 22 March 2004 on securitisation, (**Securitisation Law**), introducing various amendments and making substantial clarifications to the Securitisation Law in order to prevent misinterpretation scenarios and to safeguard the attractiveness of the Luxembourg securitisation market. Securitisation Law alterations fall into three main areas: a. greater flexibility in financing, b. rules governing the assets held by a securitisation vehicle (**SV**), and c. corporate governance rules.

With respect to the greater flexibility in financing of the SV, the Securitisation Law currently stipulates that an SV can be financed by means of any financial instrument as well as loans. It is essential to note that the value or performance of the relevant financial instruments or loans is closely related to the underlying assets. In addition, any SV that issues securities on a continuous basis to the public, i.e. more than 3 times per financial year, must be authorised by the CSSF. The Securitisation Law does, however, clarify under what circumstances an issuance is not considered to be made to the public.

Regarding the rules governing the assets held by an SV, the Securitisation Law currently entails provisions under which an SV may securitise risk portfolios actively managed by itself or third parties if the financial instruments are not issued through a public offering but through a private placement and only if the securitised assets consist of debt securities, debt instruments or receivables. Added to this, the SV may currently acquire directly or indirectly the assets which it securitises. Lastly, the Securitisation Law allows an SV to provide security over its assets, subject to certain conditions.

As per the corporate governance rules, under the Securitisation Law an SV may be established as a securitisation fund or as a company, under the structure of a société anonyme, société en commandite par action or société à responsabilité limitée. Following the amendments to the Securitisation Law, the SV may be structured as a tax transparent partnership, i.e. as a société en commandite simple or a société en commandite spéciale. At last, the Securitisation Law contains provisions on the ranking of securities.

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

Sustainability disclosures in prospectuses drawn up in compliance with the Prospectus Regulation

On 11 July 2023, ESMA published a public statement on sustainability-related disclosures within prospectuses drawn up in line with the Prospectus Regulation¹ (the **Statement**). The Statement relates to environmental, social and governance (“ESG”) disclosures that are necessary to satisfy the provisions of the Prospectus Regulation.

ESMA confirms that the Statement does not bring additional requirements to the ones already covered by the Prospectus Regulation and is also without prejudice to what may be required by the future Listing Act.

According to the Statement, even if sustainability-related information is not specifically covered by the Commission Delegated Regulation 2019/980, clarifying inter alia the content of the prospectuses, issuers are expected to provide this information in their prospectuses.

In line with the provisions of the Prospectus Regulation, sustainability-related information should be provided to the extent that it is ‘material’. The materiality of the information strongly depends on the circumstances of the issuer and type of securities covered by the prospectuses. The expected information to be disclosed depends on the type of instruments issued (i.e. equity or debt) as the disclosures related to equity should include the information required under Directive (EU) 2022/2464 of 14 December 2022, as regards corporate sustainability reporting (or “CSRD”) and the ones for debt instruments relate mostly to the use of proceeds.

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

Security tokens admitted for trading on the Securities Official List of the Luxembourg Stock Exchange

The Luxembourg Blockchain Law I (Law of 1 March 2019) brought an unprecedented innovation in Luxembourg capital markets field by (i) introducing the use of the Distributed Ledger Technology (**DLT**) and (ii) amending the scope of the Law of 1 August 2001 on the circulation of securities to allow for the account holders to hold their registered securities and securities accounts through secured electronic register mechanism and notably through DLT. Since then, the Luxembourg blockchain regulatory landscape was further reinforced by two additional laws that have been brought into force on 22 January 2021 (the Blockchain Law II) and on 23 March 2023 (the Blockchain Law III).

In this regard, the Luxembourg Stock Exchange (**LuxSE**) announced already on 31 January 2022 that security tokens will be admitted on its Securities Official List (**SOL**). Admissions of the security tokens will not be allowed to trade on either the regulated market of the LuxSE or on the Euro MTF market and their listing is only limited to the SOL. The LuxSE defined security tokens as tokens that represent financial instruments that are issued on a distributed ledger, allowing for a fully digital issuance and servicing process.

Due to the more complex nature of the security tokens vis-à-vis the traditional financial instruments, the LuxSE applies the following cumulative criteria when considering an application for the registration of security tokens on the SOL:

- tokens shall qualify as debt financial instruments and shall be priced in a fiat currency;
- tokens shall be offered to a limited number of Qualified Investors within the meaning of the Prospectus Regulation or shall be issued in wholesale denominations of at least EUR 100,000; and
- tokens must respect both the LuxSE SOL Rulebook as well as the Guidelines for the registration of DLT Financial Instruments onto the Securities Official List.

In the course of 2023, some significant European and international institutions proceeded with the registration of securities tokens on the SOL such as the security token by the World Bank (International Bank for Reconstruction and Development) and the security token by the European Investment Bank. It is expected that, in the light of the further modernization of the Luxembourg blockchain framework, especially with the adoption of the Blockchain Law III, the listing of security tokens will demonstrate an increased interest and smaller institutions will follow.

New ESMA Q&A on Securitisation Regulation

On 13 July 2023, the European Securities and Markets Authority (ESMA) published an updated version of its Q&A with respect to the application of the EU Regulation 2017/2402 (the Securitisation Regulation). Even though this new version of Q&A does not introduce any substantial change to the existing framework, it addressed certain questions and provided clarity in relation to a number of topics. to sustainability objectives.

Notably, ESMA's July Q&A provided guidance and updates to the following non-exhaustive topics:

- Question 5.1.7 (Delegation of XML conversion responsibility): it is clarified that even though in principle the submission of data in a form which is not compliant to a securitisation repository should be rejected as non-compliant, a reporting entity will be allowed to outsource to a third-party the conversion of a non-XML file to XML format. However, the originator's liability will not be affected if the reporting entity decides to outsource such a conversion.
- Question 5.1.28 (Amended transaction documents): it is clarified that when one or more of the transaction documents are amended or restated, the new documentation shall be made available immediately in accordance with the Securitisation Regulation and shall be accompanied by the relevant event report, while the original documents must be kept and shall not be deleted in order to ensure the completeness and consistency of the relevant documentation throughout the lifecycle of a securitisation transaction.
- Question 5.1.29 (reporting in self-securitisation): it is clarified that in the context of the self-securitisation transactions (i.e., when the originator is the subscriber of the asset backed securities notes itself), the disclosure requirements provided by Article 7 of the Securitisation Regulation would be still applicable since ESMA clarified that the Securitisation Regulation does not make any distinctions between holders of a securitisation position or potential investors who are the originator itself and those who are a separate entity from the originator.
- Question 5.1.30 (Consumer's rights to access information): it is clarified that individuals who are obligors on an underlying exposure are not entitled to access information regarding securitisation transactions except if they qualify as one of the parties described in Article 7 of the Securitisation Regulation.
- Other reporting aspects: The Q&A clarified certain aspects regarding the templated reporting, notably in relation to the completion of the non-performing exposure for written-off loans in the context of a securitisation transaction which shall be reported accordingly in Annex 10 regarding the non-performing exposure reporting annex.

Industry players



CMS Luxembourg lawyers are at the forefront of the discussions by actively engaging as members within influential organizations such as **The ICMA**, **LuxCMA**, **ABBL**, and the **LHoFT**.

Tailored Digital Assets Expertise



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Sample of recent landmark deals

Imagine Impact Bonds SV

Advising on structuring a securitization platform to enhance investment in impact projects and elevate ESG and impact management standards.

Blochome

Advising on the incorporation and STO of a platform enabling fractional real estate ownership.

Blocktrade

Advising this digital asset trading platform on the largest crowdfunding in Luxembourg. The company raised over €22M in an oversubscribed Series A round of funding, with over 6,000 investors across Europe.

Sequoia

Advising a UK major asset manager on the set-up of a non-regulated Luxembourg securitisation vehicle as well as related financing transactions.

Quantumrock GmbH

Advising a German investment firm on the set-up of a non-regulated Luxembourg securitisation vehicle, as well as assisting in the issuance and listing of asset-backed debt certificates

Aquila Group

Advising investment and asset development company in the structuring and listing of high yield and return notes.

Contacts

Aurélien Hollard

Partner

T +352 26 27 53 55

E aurelien.hollard@cms-dblux.com

Aurélia Viémont

Partner

T +352 661 758 283

E aurelia.viemont@cms-dblux.com

José Ocaña

Senior Associate

T +352 26 27 53 79

E jose.ocana@cms-dblux.com

Stéphane Boutoundou

Senior Associate

T +352 26 27 53 35

E stephane.boutoundou@cms-dblux.com

Julie Pelcé

Managing Associate

T +352 661 102 574

E julie.pelce@cms-dblux.com

Georgios Kortesis

Managing Associate

T +352 661 102 578

E georgios.kortesis@cms-dblux.com

Sonia Vanzo

Managing Associate

T +352 26 27 53 114

E sonia.vanzo@cms-dblux.com

Stamatina Stylianopoulou

Associate

T +352 661 8190 60

E stamatina.stylianopoulou@cms-dblux.com

Romain Galand

Associate

T +352 661 102 575

E romain.galand@cms-dblux.com

Sophie Liberatore

Knowledge Lawyer

T +352 26 27 53 31

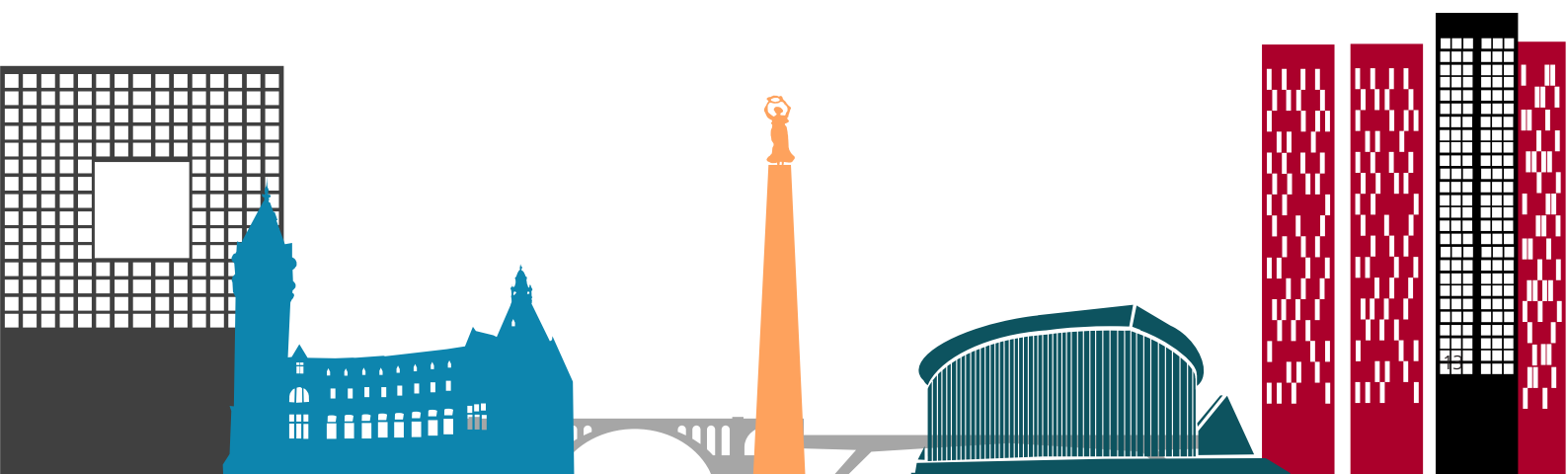
E sophie.liberatore@cms-dblux.com

Julien Robert

Knowledge Lawyer

T +352 661 438 075

E julien.robert@cms-dblux.com



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