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Investment Funds

Key takeaways from 2024 for a seamless experience in 2025

January 2025

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Introduction

As we take a moment to consider the impressive advancements achieved in various sectors of the funds industry over the past year, it becomes increasingly clear that 2025 is likely to usher in even more significant legal and regulatory changes under Luxembourg and EU law.

We are excited to share a thoughtfully prepared report from our Investment Funds experts. This detailed document not only encapsulates the key accomplishments of 2024 but also sheds light on the challenges anticipated in 2025.

We are confident that this report will be an invaluable resource, providing you with insightful perspectives to aid in the strategic planning of your projects for the year ahead.

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Looking ahead to 2025

Retail Investment Strategy (RIS)

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 (**UCI**TSD) 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 23 April 2024, the European Parliament (**EP**) adopted its negotiating position to be taken into trilogue discussions with the Council of the European Union (**Council**). On 12 June 2024, the Council's Belgian Presidency successfully managed to adopt its negotiating position before the Hungarian Presidency starting on 1 July 2024. Negotiations have not led to any concrete outcome since then. On 1 January 2025, Poland will take over the Council Presidency but whether RIS will be a political priority remains unclear and we will continue to actively monitor the process. At the moment, the EP and the Council have adopted divergent positions on several key aspects including, *inter alia*, the ban on inducements and value for money.

AIFMD II and RTS

On 26 March 2024, Directive (EU) 2024/927 amending the AIFMD and the UCITSD as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (the **AIFMD II**) was published in the Official Journal of the European Union (**EU**) and entered into force on 16 April 2024. Member States will have to implement amendments to the AIFMD and UCITSD by 16 April 2026 and reporting requirements will only start applying as of 16 April 2027. Additional regulatory requirements are expected to be adopted in the form of Level 2 measures in areas including liquidity management tools, delegation regime, ESG considerations and supervisory reporting procedures.

*For more information on this topic, please click **here.***

In the AIFMD II context, the European Securities and Markets Authority (**ESMA**) was mandated to namely (i) draft regulatory technical standards (**RTS**) to determine the characteristics of the liquidity managements tools set out in Annex V of AIMFD and Annex IIA of UCITSD, and (ii) develop guidelines (the **LMT Guidelines**) on the selection and calibration of liquidity management tools by alternative investment fund managers (**AIFMs**) or UCITS management companies (**UCITS ManCos**). On 8 July 2024, ESMA launched two consultations on liquidity management tools, respectively on draft LMT Guidelines and RTS under the revised AIFMD and the UCITSD. These aim to harmonise liquidity risk management in the investment funds sector, mitigate potential financial stability risks and enhance EU fund managers' ability to manage fund liquidity during market stress situations. The Consultations were open until 8 October 2024 and ESMA is expected to deliver its final RTS and LMT Guidelines by 16 April 2025.

*More detailed information can be found **here**.*

Loan-origination regime under AIFMD II

The so-called AIFMD II provides for a new regulatory regime for loan origination activities. This new regime will only apply when EU full-scope AIFMs manage alternative investment funds (**AIFs**) engaging in loan origination activities with additional requirements when AIFs qualify as "Loan-originating AIF" (as defined in AIFMD II) and exemptions when AIFs lending activity is restricted to shareholders loans only. The new set of rules is warmly welcomed by the industry, as it will not only provide additional clarity but also create a level playing field across jurisdictions, thereby strengthening the private debt market by providing more business opportunities to funds, while also establishing a high level of protection for investors. The new regime will be applicable once transposed into Luxembourg national legislation, i.e. 16 April 2026 at the latest. AIFMD II provides for grandfathering provisions for existing AIFs engaged in loan origination activities until 16 April 2029. In addition, existing AIFs that will not raise additional capital as well as loans already issued will benefit from definitive exemptions.

*For additional details on this topic, please click **here**.*

Under Article 16(2)(f) of AIFMD, ESMA shall develop, by 16 April 2025, draft RTS to determine the requirements with which loan-originating AIFs are to comply to maintain an open-ended structure. On 12 December 2024, ESMA published a consultation paper on RTS on open-ended loan originating AIFs under the revised AIFMD, with the aim of setting out the requirements with which loan-originating AIFs shall comply to maintain an open-ended structure. As a reminder, according to the revised AIFMD, loan-originating AIFs shall be closed-ended unless their manager can demonstrate to its home national competent authority that their liquidity risk management system is compatible with their investment strategy and redemption policy. ESMA will receive responses to this consultation until 12 March 2025 and intends to finalise the draft RTS by Q3/Q4 2025.

*For more information on the consultation, please click **here.***

Luxembourg's new accounting law

On 28 July 2023, bill of law 8286 (the **8286 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 8286 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 (*commissaire aux comptes*). The 8286 Bill is still pending approval in Parliament and is expected to be adopted in 2025.

Reform of Circular 02/77 on NAV calculation errors and investment breaches

On 29 March 2024, the Luxembourg *Commission de Surveillance du Secteur Financier* (the **CSSF**) published its long-awaited Circular 24/856 (the **Circular**) on investor protection in the event of net asset value (**NAV**) calculation error, non-compliance with investment rules and other errors at the level of the undertaking for collective investment (**UCI**). The Circular replaces the well-known Circular 02/77, whose reform was, according to the CSSF, necessary to reflect the numerous regulatory developments observed in the Luxembourg fund sector since its publication in 2002. One can notably mention the various updates to the UCITSD, the implementation of the AIFMD, the introduction of the specific product regulations (ELTIF, EuVECA, EuSEF, Money Market Funds), and the enactment of the laws relating to investment companies in risk capital (**SICARs**) and to specialised investment funds (**SIFs**). The CSSF finally advocates a need to consolidate in one single document the guidance given over the past years through various means such as CSSF FAQs and activity reports. The Circular comes into force with effect from 1 January 2025, date on which the old Circular 02/77 will be repealed. New rules of Chapter 8 on external auditors will start applying for fiscal years closing from 1 January 2025, and current rules laid down in Circular 02/77 should still be observed until that date
The CSSF published a new dedicated FAQ on 24 December 2024.

*More detailed information on this can be found **here** and the FAQ can be found **here**.*

Sustainable finance

In July 2023, the Luxembourg CSSF launched the first stage of a Common Supervisory Action (**CSA**) with other national competent authorities (**NCAs**) across the EU on the integration of sustainability risks and disclosures, with the aim of investigating how UCITS managers and AIFMs comply with the relevant provisions in the Sustainable Finance Disclosure Regulation, the Taxonomy Regulation and relevant implementing measures, including the relevant provisions in the UCITS and AIFMD implementing acts on the integration of sustainability risks. This first stage focused solely on greenwashing risks. On 22 March 2024, the CSSF announced the launch of the second stage of the CSA, whereby NCAs will request the same UCITS Managers and AIFMs to complete a questionnaire dedicated to the integration of sustainability risks and factors in the organisational arrangements of UCITS Managers and AIFMs and to the transparency disclosures at IFM and product level.

ESMA's final report on the outcome of its CSA to assess disclosures and integration of sustainability risks in the investment fund sector is expected in Q1 2025.

*For more information on this topic, please click **here**.*

On 24 July 2024, ESMA published an opinion reflecting its long-term vision on the sustainable finance regulatory framework (the **Opinion**). The Opinion provides suggestions, proposals for amendments and insights on the current challenges of the regulatory framework applicable to sustainable finance (the **Framework**). According to ESMA, the Framework aims to ensure that financial systems can support sustainability and the transition and promote interoperability at EU level. ESMA sets the context of the Framework as a fast-evolving process, supporting the mobilisation of private capital into sustainable investments, while being aligned with the EU target of climate-neutrality by 2050 and the reduction of greenhouse gas target. The general observation is also that the Framework is ensuring the investors to make effective and aware decisions. However, the Opinion underlines that ESMA, and the national competent authorities are of the view that the Framework could further mature to facilitate investors' access to sustainable investments and improve its usability and coherence throughout the sustainable investment value chain.

*More details on this topic can be found **here**.*

Implementation of the UK Overseas Fund Regime

In 2021, the UK Government created the Overseas Funds Regime (**OFR**), which allows overseas funds deemed to be equivalent by the Government, to gain streamlined access to UK retail investors. On 30 January 2024, the UK Government announced the first equivalence decision, in relation to Undertakings for Collective Investment in Transferable Securities (**UCITS**) established and authorised in states in the European Economic Area, including EU member states. Many of these UCITS are currently accessing the UK market through the Temporary Marketing Permissions Regime (**TMPR**). The TMPR is currently due to end in December 2025, but the Government can extend it further. In May 2024, a roadmap setting out the key dates and processes for operators of overseas funds to apply for OFR recognition was published, together with a webpage setting out when and how operators in scope

of the Government's decision should apply for recognition. In July 2024, the UK Financial Conduct Authority has published a policy statement setting out the final rules and guidance necessary to implement the OFR. The gateway for eligible funds to apply for recognition under the OFR opened in September 2024 for new schemes and starting from October 2024 for funds currently in the TMPR. The new Handbook rules and guidance to support the implementation of the OFR came into force on 31 July 2024. New funds which are not in the TMPR can apply to join the OFR at any stage after 2 September 2024. For funds which are in the TMPR, the fund operator will receive a three-month time slot to make an application (between 1 October 2024 and 30 September 2026).

*For more details on this topic, please click **here.***

Review of UCITS eligible assets directive

On 7 May 2024, ESMA published the long-awaited Call for Evidence (**CfE**) on the review of the UCITS Eligible Assets Directive, driven by the number and variety of financial instruments traded on financial markets have considerably increased since its creation in 2007. In its CfE, ESMA asked for feedback, *inter alia*, on (i) recurring or significant issues stakeholders have encountered on the interpretation or consistent application of the UCITS eligible asset rules on a wide range of instruments, (ii) issues with the interpretation or consistent application of the notion of "liquidity" under the UCITS framework and on whether the presumption of liquidity and negotiability which currently exists for listed securities is still appropriate, (iii) the extent to which UCITS have gained direct and indirect exposure to certain asset classes, including for example leveraged/structured loans, catastrophe bonds, CoCo bonds, crypto assets, ABS and MBS, EU and non-EU AIFs and commodities. It has also sought views on the merits of allowing UCITS to gain exposure to the specific asset classes identified in the CfE. The CfE was closed on 7 August 2024 and ESMA is expected to submit its technical advice to the European Commission in 2025 (initially scheduled for 31 October 2024).

*More details on this update can be found **here.***

DORA

On 11 July 2024, the national "DORA law" of 1 July 2024 was published in the Official Journal (the **DORA Law**). The Law aims at (i) applying the rules set out in Regulation (EU) 2022/2554 on DORA for the financial sector (the **DORA Regulation**) and (ii) implementing Directive (EU) 2022/2256 amending several EU directives as regards DORA for the financial sector (the **DORA Directive**). The Law punctually amends several Luxembourg laws, such as the law of 5 April 1993 on the financial sector, as amended (the **LFS**), the law of 10 November 2009 regarding payment services, as amended, the law of 12 July 2013 on alternative investment fund managers, as amended and the law of 7 December 2015 on the insurance sector, as amended. Overall, the amendments add the requirement for relevant entities of the financial sector to ensure that information networks and systems are implemented and managed in accordance with the requirements of the DORA Regulation. The Law entrusts national competent authorities with the supervisory and investigative powers necessary to (i) carry out their duties, within the limits of the DORA Regulation, and (ii) lay down an appropriate system of penalties, which entails amending the law of 16 July 2019 on the implementation of European regulations in the sector of financial services. Sanctions and other administrative measures include notably administrative fines of a maximum amount of EUR 5 million or 10% of the total annual turnover for legal persons. The Law shall come into force on 17 January 2025, at the same time as the DORA Regulation.

The three European Supervisory Authorities (EBA, EIOPA and ESMA) published the second batch of level 2 rules under the DORA Regulation on 17 July 2024. On 23 October 2024, the European Commission adopted some of the RTS and implementing technical standards (**ITS**) through delegated regulations supplementing the DORA Regulation. The Council of the EU and the EP will scrutinise these for a maximum of three months, and if neither object, these will be published in the Official Journal of the EU and enter into force 20 days after. Final versions of the some other RTS and ITS are still pending at this stage.

*For more information on DORA, please visit our **dedicated page.***

Bill of law 7961 on RBE

Bill of law 7961 (the **7961 Bill**) amending the Law of 19 December 2002 on the register of commerce and companies (the **RCS**) and the accounting and annual accounts of companies and the Law of 13 January 2019 on the register of beneficial owners (the **RBE**) was filed with the Parliament on 27 January 2022 but is still pending formal approval. The 7961 Bill aims at increasing the quality of information registered with the RCS by (i) verifying the information to be entered into or registered with the RCS database against other national registers and (ii) continuously monitoring the information entered in the RCS database. In this context, the powers of the RCS manager have been strengthened and the latter can impose administrative measures and sanctions on entities subject to the obligation to register with the RCS in the event of non-compliance with their obligations vis-à-vis the RCS. As regards the RBE, the proposed amendments are in line with those for the RCS. They are intended (i) to facilitate the access to the RBE database by the national authorities, (ii) to interconnect the RCS and the RBE, (iii) to set up an electronic platform for the exchange of information between the users of the RBE and the RBE manager and (iv) to ensure the follow-up and maintenance of the database. Finally, the 7961 Bill grants the RBE manager with incentive and coercive measures to encourage registered entities to carry out their declaration to the RBE and to keep the information on their beneficial owners up to date. The adoption procedure has been delayed until implementation of the sixth anti-money laundering directive (AMLD6), in view of proposed amendments on access to the RBE. We will continue monitoring this process as things may finally move forward in 2025.

ESMA to collect data on costs charged by AIFs and UCITS

On 14 November 2024, ESMA launched a data collection exercise together with the national competent authorities (**NCAs**), on costs linked to investments in AIFs and UCITS. ESMA and NCAs have designed a two-stage data collection involving both manufacturers and distributors of investment funds: (i) information requested from manufacturers will provide an indication on the different costs charged for the management of the investment funds; and (ii) information requested from distributors (i.e., investment firms, independent financial advisors, neo-brokers) will inform on the fees paid directly by investors to distributors. To carry out that assessment, NCAs are required to provide ESMA (on a one-time basis) with data on costs including all fees, charges and expenses borne directly or indirectly by investors, or by the AIFM or UCITS management company in connection with the operations of the AIF or UCITS, and that are to be directly or indirectly allocated to the AIF or UCITS. A report based on these data will be submitted to the EP, the Council and the European Commission in October 2025. This will also be part of an enhanced 2025 ESMA market report on costs and performance of EU retail investment products.

*More information on this topic can be found **here.***

SFDR Level 1

On 3 May 2024, the European Commission published a summary report on the public and targeted consultations on the implementation of the Sustainable Finance Disclosures Regulation (**SFDR**). The key findings from the consultations related *inter alia* to (i) the support for a voluntary categorisation system regulated at the EU level, (ii) the need to ensure consistency across the sustainable finance regulatory framework and (iii) the support for setting uniform disclosure requirements for all financial products offered in the EU as well as additional disclosures for products making sustainability claim.
The Commission is still assessing the result of the consultations and working on the review of SFDR.

On 18 June 2024, the three European Supervisory Authorities (EBA, EIOPA, and ESMA, collectively known as the **ESAs**) published an opinion (the **Opinion**) on the evaluation of the Sustainable Finance Disclosure Regulation (SFDR). This Opinion was initiated by the ESAs themselves and was addressed to the European Commission. It focuses on key elements including (i) the introduction of a categorisation system for financial products, (ii) the adoption of an indicator similar to the PRIIPS KID risk indicator, which would serve as a straightforward guide for retail investors, (iii) the review of key parameters of the definition of "sustainable investments" under Art. 2(17) SFDR, (iv) a potential expansion of products in the scope of SFDR, (v) a simplification of the documentation to better suit the recipient, (vi) the improvement to the transparency of principal adverse impact at product level, and (vii) several technical changes. The Opinion could serve as a valuable resource for the Commission during its assessment of stakeholders' responses to support policy considerations aimed at improving the EU framework for sustainable finance. We will continue to monitor any proposal for SFDR 2.0 throughout 2025.

*For more details on this topic, please click **here.***

SFDR Level 2

The 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 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.
Initially scheduled for 2024, the adoption of the amended RTS has been postponed for various reasons including the complexity of the suggested amendments.

*For further 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 EU and applies as from 30 December 2024, with some rules already applying as of 30 June 2024. Through MiCAR, the EU 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. To supplement MiCAR, European authorities are required to prepare and publish additional documentation, such as delegated acts, regulatory technical standards (RTS), implementing technical standards (ITS) and guidelines. While the first batch of delegated regulations has been published in the Official Journal of the EU, several delegated acts are still to be approved by the EP and the Council, even though the deadline for application of MiCAR is fast approaching.

*For more detailed information on MiCAR, please visit our **dedicated page** or click **here.***

CSRD

Following the adoption of the corporate sustainability reporting directive requiring detailed external reporting related to environmental, social, and governance topics (the **CSRD**), the Member States of the EU were required to implement its relevant provisions into their national laws and regulations by 6 July 2024. In this context, the long-awaited Luxembourg Bill of law 8370 was introduced before the Luxembourg *Chambre des députés* on 29 March 2024 (**the Proposal**). The Proposal does not clarify the scope of the CSRD provisions within the Luxembourg landscape and reiterates that CSRD does not apply to financial products listed in Article 2 (12) (b) and (f) of the SFDR, therefore excluding UCITS and AIFs from the scope.

On 25 October 2024 and despite the elapsed deadline for implementation, Luxembourg's Parliament submitted certain amendments to the Proposal, addressing specific concerns raised by the *Conseil d'Etat* and industry stakeholders and providing clarity on sustainability consolidation and reporting formalities. A revised version of the Proposal was published on 28 October 2024, clarifying namely that holding companies may be excluded from the scope of a consolidated sustainability report published under CSRD. The Proposal is expected to be adopted by Q1 2025.

The European Sustainability Reporting Standards (the **ESRS**) sector specific standards and the provisions related to third countries entities, which will complete CSRD standards for its application, are currently under development. On 11 April 2024, the EP's Plenary officially approved to delay their adoption to 30 June 2026.

*For more information on this topic, please click **here.***

Partial liquidation - Redemption of (classes of) shares

On 11 December 2024, the tax bill 8388 has been approved by the Luxembourg Parliament (the **8388 Law**). The amendments aim notably at ensuring legal certainty with respect to the application of certain tax provisions following recent developments in case law and to provide companies with greater flexibility. Among others, the 8388 Law clarifies that the redemption of (classes) of shares qualify as a partial liquidation if the following conditions are simultaneously met (safe GAAR application): one entire class of shares must be (i) repurchased/redeemed and (ii) cancelled within 6 months from the date of the repurchase/ redemption; classes of shares must be implemented at incorporation of the Luxembourg company or upon a capital increase; each class must have different economic rights; the redemption price, which must reflect the fair market value of the redeemed shares, must be determinable based on criteria set in the articles of association of the company or any other documents mentioned in the articles of association.

Where the holder of the redeemed shares is an individual holding a substantial participation, the company whose shares are redeemed must provide information regarding the identification of the concerned shareholder in its annual corporate tax return. This amendment will come into force the day after the publication of the law in the Official Journal.

Looking back over 2024

Funds' names using ESG and sustainability-related terms

On 21 October 2024, the Luxembourg CSSF published a communication informing market participants of the publication of Circular 24/863, implementing ESMA's guidelines on funds' names using ESG- or sustainability-related terms (the **Naming Guidelines**). The CSSF reminded that the Naming Guidelines apply to new funds from 21 November 2024 and that existing funds are subject to a six-month transition period until 21 May 2025. The CSSF outlined its supervisory expectations confirming that (i) the Guidelines are applicable regardless whether the funds are disclosing under Article 6, 8 or 9 SFDR; (ii) the names of the funds should not be misleading in light of the sustainability characteristics of the fund; (iii) adequate disclosure supporting the fund's name should be reflected in the precontractual documentation; (iv) the list of ESG and sustainability-related terms mentioned in the Naming Guidelines is not exhaustive; (v) market participants are expected to closely monitor and take due consideration of any further developments on this topic at European level. Moreover, similarly to the "fast-track procedure" introduced with the staged application of SFDR, the CSSF established a priority processing procedure addressed to existing funds under specific conditions for the filing of updated precontractual documentation in view of the implementation of the Naming Guidelines.

*For more information on this topic, please click **here** and **here**.*

On 13 December 2024, ESMA published questions and answers (Q&As) with further details on specific aspects of the practical application of the Naming Guidelines, namely on green bonds, the convergence on "meaningfully investing in sustainable investments" and the definition of controversial weapons.

*To find out more about the Q&As, please click **here.***

Greenwashing

Mandated by the European Commission in May 2022, the ESAs published their individual final report (the **Final Report**) on greenwashing risks and sustainability-related supervision, complementing the progress report issued in June 2023 and notably confirming a common understanding of the concept of "greenwashing". In the context of the Final Report, ESMA focused on four key sectors – and their actors - of the EU sustainable financial markets supervised by NCAs: issuers, investment funds mangers, investment service providers and benchmark providers. The Final Report emphasises the critical importance of adopting a risk-based approach as the fundamental pillar of regulatory oversight in combating greenwashing.

*To discover more about this, please click **here.***

On 15 November 2024, the Luxembourg CSSF released a communication to warn the general public about greenwashing risk when investing in financial products. To this end, the CSSF launched a new dedicated section on its platform www.letzfin.lu addressing the growing interest in sustainable financial products and the greater need for awareness. This initiative aims to educate and protect individual investors in the face of increasing green investment opportunities and the potential risks of greenwashing. In its communication, the CSSF defines "greenwashing" as "*a deceptive practice whereby some companies present themselves as more sustainable than they actually are, misleading investors into believing that their money is being used to benefit the environment, when this is not always the case*". While calling on individual investors to remain vigilant, the CSSF invites them to be critical and not to blindly rely on labels and sustainability promises and provides several key recommendations.

*To learn more about this, please click **here** and visit the **Letzfin platform.***

Listing Act

On 23 October 2024, the EP adopted the package of measures known as "Listing Act" comprising *inter alia* Regulation (EU) 2024/2809 (the **Listing Regulation**), which amends (i) Regulation (EU) 2017/1129 of the EP and of the Council (the **Prospectus Regulation**), (ii) Regulation No 596/2014 of the EP and of the Council - the Market Abuse Regulation, and (iii) Regulation No 600/2014 of the EP and of the Council – MiFIR, and was published in the Official Journal of the EU on 14 November 2024. On 6 December 2024, the **CSSF** published Circular CSSF 24/867 (the **24/867 Circular**) updating Circular CSSF 19/724 on technical specifications regarding submission to the CSSF of documents under the Prospectus Regulation and the law of 16 July 2019 on prospectuses for securities and general overview of the regulatory framework on prospectuses.

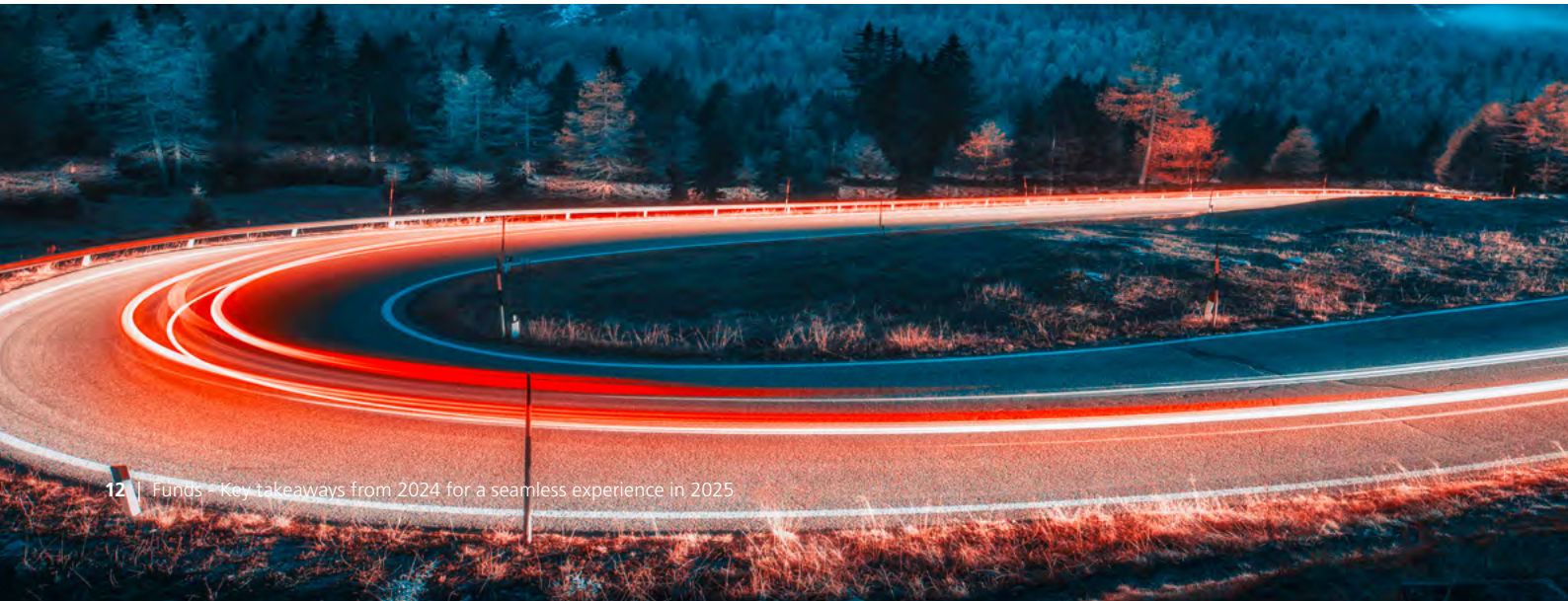
The 24/867 Circular namely introduces the exemption from the obligation to publish a prospectus for public offers with a total aggregated consideration below EUR 12,000,000 (with an option for Member States to choose to apply a lower exemption threshold of EUR 5,000,000), replacing the previous system which allowed Member States to set varying exemption thresholds ranging from EUR 1,000,000 to EUR 8,000,000. Key changes of the 24/867 Circular apply as from the dates set out in Article 4 of the Listing Regulation. While most amendments to the Prospectus Regulation brought by the Listing Act apply as from 4 December 2024, some key amendments, including the small offers threshold, the page limit or rules on ESG disclosure, will not apply before Q1-Q2 2026, as applicable.

For additional information on key changes, please click ***here.***

New AML Package

The AML package includes (i) Regulation (EU) 2024/1624 of the EP and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (ML/TF) (the **AMLR**), (ii) Directive (EU) 2024/1640 of the EP and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of ML/TF, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (the **AMLD6**), and (iii) Regulation (EU) 2024/1620 of the EP and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (the **AMLA**) and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 (the **AMLA Regulation**). The CSSF has published a *Communiqué* dated 19 June 2024, which describes the AML package and its timeline. In terms of application, the AMLR will apply from 10 July 2027 and Member States will have until the same date to implement AMLD6 into their national legislation. The AMLAR will apply from 1 July 2025, corresponding to the start of its operations.

For more information on this topic, please click ***here*** *and visit* ***our dedicated page.***



ELTIF RTS

On 20 March 2023, the amendments to Regulation (EU) 2015/760 on European long-term investment funds (**ELTIF 2.0**) were published in the Official Journal of the EU. New rules started applying from 10 January 2024. On 19 July 2024, the European Commission (**EC**) published final regulatory technical standards (the **Final RTS**) under the ELTIF 2.0. This publication marks the end of back and forth with ESMA, whereby the EC submitted in March 2024 a communication suggesting certain amendments to the attention of ESMA, who responded at the end of April 2024 with a revised version of the RTS. The Final RTS detail the criteria for using derivatives exclusively for risk mitigation, outline requirements for redemption policies and liquidity management, set protocols for matching unit transfer requests, define standards for asset disposal, and establish requirements for cost transparency. A significant aspect of the Final RTS is the EC's decision to adopt a more flexible approach to liquidity management, moving away from ESMA's one-size-fits-all proposal. This change grants ELTIF managers greater autonomy in tailoring liquidity provisions to suit their specific funds, within certain boundaries. As a result, semi-open and open-ended ELTIFs are no longer required to maintain a mandatory minimum percentage of liquid assets or adhere to a minimum holding period, allowing for more adaptable fund structures.

*If you want to discover more about this topic, please click **here.***

New RCS filing requirements

As of 12 November 2024, with the implementation of new forms in HTML format that may be completed directly online (which replace the current application forms in PDF format), persons and entities registered with the RCS must provide the Luxembourg national identification number (the **NIN**) for any natural person registered with the RCS, within their file, according to Article 12bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. This measure affects all natural persons registered with the RCS, within the file of an entity registered in any capacity whatsoever (as a shareholder, agent, person responsible for auditing accounts, etc.). If the natural person already has a NIN, the number will be filled in the field of the designated application form, in addition to the usual identification information (name, first names, date, place and country of birth). If the natural person to be registered with the RCS does not have a NIN, the creation of this number must be requested with the RCS during the registration process.

If the individual is already registered with the RCS before the new HTML forms are made available, the information concerning the NIN will also need to be filed with the RCS, as per the above. During a first transitional period, aimed at allowing registered entities to adapt to this new obligation and to obtain the necessary documents and information, the NIN shall be provided on a voluntary basis. In a second stage, its filing shall become mandatory. The duration of the transitional period has not yet been published.

*More information on this topic can be found **here.***

CSSF supervisory priorities in sustainable finance

On 22 March 2024, the CSSF published an updated version of its supervisory priorities in sustainable finance, which were initially issued in April 2023. With respect to asset management, the CSSF will continues the verification of (a) the compliance with the pre-contractual and periodic sustainability-related disclosures requirements, (b) the consistency with the website disclosures and (c) the consistency of information in fund documentation and marketing material, the CSSF outlines a strong focus on the monitoring of the organisational arrangement of the investment funds managers (**IFMs**), including with respect to the integration of sustainability risks. In line with the outcome of its Thematic Review in August 2023, IFMs are required to have a robust approach in the integration of sustainability risks into their investment decisions and expected to assess, on an ongoing basis, their compliance with the sustainability-related requirements, taking into account the results of the Thematic Review.

The CSSF makes sure that corrective measures, where necessary, are being enforced to achieve compliance. The CSSF also underlines its implication on the second stage of the common supervisory action launched by ESMA on 6 July 2024. To enhance the integration of sustainability risks and disclosures in the asset management sector, the authority issued specific questionnaires to a sample of IFMs on 19 March 2024. The CSSF also intends to supplement the information gathered through pre-contractual and periodic data collection with on-site inspections on the integration of sustainability-related provisions by IFMs in their organisation.

*For more details on this topic, please click **here.***

ESG ratings

On 19 November 2024, the Council formally adopted the regulation governing environmental, social, and governance (**ESG**) rating activities (the **ESG Rating Regulation**). This rating aims to offer an assessment of a company's or a financial instrument's sustainability profile, ultimately bolstering investor confidence in sustainable products. ESG ratings' new rules appear as a priority, as they will strengthen the reliability and comparability of ESG ratings and improve the transparency of the operation of ESG rating providers. Specifically, the ESG Rating Regulation inter alia provides that ESG rating providers established in the EU will be authorised and supervised by ESMA regarding their methodology and sources of information. Conversely, third country-based ESG rating providers seeking to operate within the EU will either need: (i) to obtain an endorsement of their ESG ratings by an EU-authorised ESG rating provider, (ii) to be recognised based on quantitative criterion, or (iii) to be included in the EU registry of ESG rating providers based on an equivalence decision. Furthermore, the ESG Rating Regulation clarifies various aspects of the regulatory scope by defining circumstances and territorial boundaries and provides more detailed information on applicable exclusions. The ESG Rating Regulation enters into force on the twentieth day following publication in the Official Journal of the EU and will start applying from 2 July 2026.

*More information on this topic can be found **here.***

CSSF Circular 24/853 on the revised long form report for investment firms

On 6 February 2024, the Luxembourg CSSF published Circular CSSF 24/853 (the **24/853 Circular**) revising the framework of the long form report applicable to investment firms and amending the scope of application of Circular CSSF 03/113. Under the revised approach, investment firms shall provide annually self-certifications on key aspects of Circular CSSF 20/758 as well as MiFID regulations via a self-assessment questionnaire, taking into consideration the nature, size and complexity of their business model. Their *réviseur d'entreprises agréé* shall provide dedicated reports allowing the CSSF to assess the investment firm's compliance with relevant MiFID aspects, including provisions on the protection of financial instruments and funds belonging to clients as required under Article 7 of the Grand-ducal Regulation of 30 May 2018, and the relevant AML/CFT laws and regulations. The completion and submission must be performed via eDesk. A dedicated use guider is also available. To allow for a gradual implementation of the revised framework, the 24/853 Circular will become applicable in a staggered manner: for the financial year ending 31 December 2023, all Class 2 investment firms incorporated under Luxembourg law, including their branches and certain Class 3 investment firms will be required to submit the revised long form report, while all other investment firms will remain subject to Circular CSSF 03/113; and for financial years ending after 31 December 2023, all investment firms will have to submit the revised long form report in accordance with the 24/853 Circular.

*Fore more details, please click **here.***

CSSF Circular 24/854 on guidelines for the collective investment sector on the AML/CFT Summary Report RC

On 29 February 2024, the Luxembourg CSSF published Circular 24/854 regarding the guidelines for the collective investment sector on the AML/CFT Summary Report RC (the **SRRC**). In accordance with Article 42(7) of CSSF Regulation No 12-02 of 14 December 20212 on the fight against money laundering and terrorist financing, as amended (the **CSSF Regulation**). This SRRC shall be prepared annually by the compliance officer in charge of the control of compliance with the professional obligations (*Responsable du contrôle du respect des obligations professionnelles* or RC) of Luxembourg investment fund managers (including registered alternatives investment fund managers), Luxembourg branches of foreign investment fund managers or Luxembourg investment funds supervised by the CSSF for AML/CFT purposes. In accordance with Article 42(7) of the CSSF Regulation, the submission to the CSSF of the SRRC is waived for "Luxembourg investment funds which designated a Luxembourg management company submitting this annual report". Circular 24/854 aims at introducing the new template of SRRC as well as further specifying the reporting procedure to the CSSF. To that end, the CSSF has issued some practical and technical guidance on the procedure to be followed. The SRRC must be submitted every year 5 months after the closing of the financial year-end, exclusively via eDesk. Only for the closing ending on 31 December 2023, an extension of two extra months is granted for the submission.

*For more insight on this topic, click **here.***

Adoption of MiFID 3 and MiFIR 2 to enhance transparency on markets in financial instruments

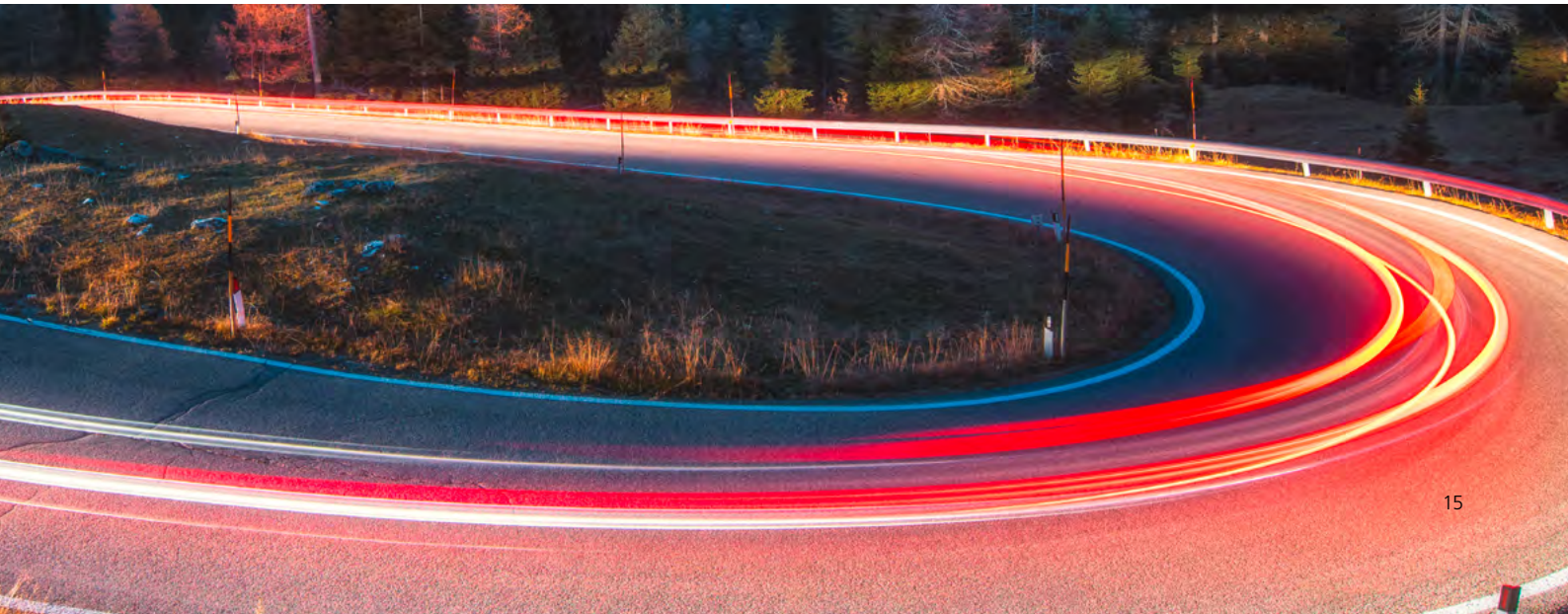
On 8 March 2024, Regulation 2024/791 (the **Regulation**) amending Regulation (EU) No 600/2014 (**MiFIR**) and Directive 2024/790 (the **Directive**) amending Directive 2014/65/EU (**MiFID 2**) on markets in financial instruments were published in the Official Journal of the EU. The Regulation aims at enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow. It introduces consolidated publication systems and pre-trade transparency obligations. Professional and retail investors have access to near-real-time trading data (such as price and volume) on equities, bonds and derivatives on all trading venues in the EU, available in one place. Pre- and post-trade transparency obligations are imposed on trading platforms for bonds, structured financial products, emission allowances, derivatives and order packages. The Directive aims at improving transparency on markets in financial instruments. It introduces the definition of 'systematic internaliser', an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments by executing client orders outside a regulated market, a multilateral trading facility (MTF) or an organised trading facility (OTF), without operating a multilateral system, or which opts in to the status of systematic internaliser. According to the Regulation, the systematic internaliser is excluded from the scope of the pre-trade transparency requirements for non-equity instruments. The Regulation and the Directive entered into force on 28 March 2024. The Regulation applied immediately in all EU countries, whereas Member States have to implement the Directive by 29 September 2025.

More detailed information on this topic can be found ***here.***

CSSF Regulation 24-01 and Circular 24/847 on ICT-related incident reporting

On 5 January 2024, the CSSF released (i) Circular CSSF 24/847 on information and communication technology (**ICT**)-related incident reporting framework (the **24/847 Circular**), (ii) Regulation No 24-01 (the 24-01 Regulation) relating to the notification of incidents according to the law of 28 May 2019 transposing Directive (EU) 2016/1148 of the EP and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the EU (the **NIS Law**), and (iii) frequently asked question regarding the 24/847 Circular and ICT-related incident reporting framework (the **FAQ**). The Regulation outlines the requirements for incident classification and major incident notification under the NIS Law for operators of essential services and digital service providers subject to the NIS Law. The 24/847 Circular aims at introducing a new ICT-related incident reporting framework to acquire a better and more structured overview of the nature, frequency, significance and impact of ICT-related incidents, also considering the growing ICT and security risk in the context of a highly interconnected global financial system. The FAQ are intended to bring further clarity on the supervisory expectations regarding 24/847 Circular and lay down examples to clarify the classification and the notification of an ICT-related incident, together with a tree of decision, (i) where the supervised entity is a credit institution and an operator of essential services under the NIS Law, or (ii) a support professional of the financial sector and a digital service provider under the NIS Law. The Regulation and the 24/847 Circular both entered into force on 1 April 2024, but the 24/847 Circular became applicable to investment funds and fund managers on 1 June 2024.

For more information on this topic, please click ***here.***



EMIR Refit and EMIR 3

On 1 December 2023, the 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 started applying 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. In its *Communiqué* dated 26 March 2024, the CSSF reminded all counterparties involved in derivatives that there has been sufficient time for stakeholders to implement required changes imposed by EMIR Refit and reminds key elements.

On 4 December 2024, Regulation (EU) 2024/2987 (**EMIR 3**) was published in the Official Journal of the EU, aimed at boosting EU clearing framework's competitivity and resilience, which introduces measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of EU clearing markets. On the same date, Directive (EU) 2024/2994 (the **Directive**), amending Directives 2009/65/EC, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk arising from exposures towards central counterparties and of counterparty risk in centrally cleared derivative transactions, was also published. EMIR 3 shall apply from 24 December 2024 except for certain provisions which will not apply until the date of entry into force of certain technical standards. Member States are expected to transpose the Directive by 25 June 2026.

Read more on this topic, by clicking ***here.***

New regime on non-performing loans

On 18 July 2024, the law of 15 July 2024 on transfer of non-performing loans (the **NPL Law**) was published in the Official Journal of the Grand-Duchy of Luxembourg. It aims at implementing Directive (EU) 2021/2167 on credit servicers and credit purchasers into Luxembourg law. The NPL Law primarily sets out a legal framework enabling the transfer of non-performing loans (the **NPLs**) from bank's balance sheets therefore achieving the creation of a secondary market for NPLs. It also creates new categories of service providers which will be subject to authorisation requirements under the law of 5 April 1993 on the financial sector, as amended (the **FSL**).

Finally, it also strengthens the current legal framework regarding notably consumer and mortgage credit agreements by way of amendments to existing laws. The NPL Law organises the transfer of the creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself to a credit purchaser and entered into force on 22 July 2024.

For more detailed information on this topic, please click ***here.***

CSSF clarification regarding controls to be implemented by Luxembourg depositaries in relation to AIFs investing in illiquid assets

On 24 July 2024, the Luxembourg CSSF published clarifications regarding controls to be implemented by Luxembourg depositaries in relation to AIFs investing in illiquid assets, due to diverging approaches amongst Luxembourg depositaries. More specifically, the CSSF expects that controls in connection with transactions involving the acquisition of illiquid assets would typically be implemented as follows (1) prior to payment: notification of the relevant transaction by the AIFM to the depositary with supporting documents (in draft form, where applicable). This is a means of allowing the depositary to verify the existence of the transaction and the relevant assets, the structure through which the transaction is designed to take place and the counterparties thereto as prerequisite to authorising the payments or authorising the AIFM to proceed with the payments, in line with expectations foreseen under paragraph 105 of the Circular CSSF 18/697; (2) at the time of payment: consistency checks between the details of the payment instructions and the documents referred to in point i) above; (3) after payment: verification of the effective ownership of the assets by the relevant AIF based on the final executed transaction documents and, where applicable, extract from an external register (e.g. land register, commercial register, etc.).

In light of Article 90(1) of the AIFMR, Luxembourg

authorised AIFMs are correspondingly required to provide in a timely manner the depositary of the AIFs they manage with all relevant information necessary for the depositary to comply with its safekeeping duties regarding ownership verification and record keeping (as further specified under Article 90(2) of the AIFMR). For the avoidance of doubt, this includes the aforementioned ex-ante controls.

More detailed information on this topic can be found ***here.***

FATF's high-risk jurisdictions and jurisdictions under increased monitoring

On 28 October 2024, the Luxembourg CSSF updated the Annex to Circular 22/822 on high-risk jurisdictions and jurisdictions under increased monitoring by the Financial Action Task Force (**FATF**) to FATF's new statement. The list of countries qualified as high-risk jurisdictions on which enhanced due diligence and, where appropriate, counter measures are imposed remains unchanged and still includes the Democratic People's Republic of Korea, Iran and Myanmar. Senegal is no longer subject to the FATF's increased monitoring process but will continue working with the relevant FATF regional bodies. Monaco and Venezuela are added to the list of countries which are currently having strategic deficiencies in their regime to counter money laundering, terrorist financing and proliferation financing.

For more information, please click ***here.***

The EU AI Act

On 12 July 2024, the "Regulation laying down harmonised rules on artificial intelligence" (the **EU AI Act**) was published in the Official Journal of the EU. After a long and complex journey that began in 2021 with the European Commission's proposal of a draft EU AI Act, the regulation entered into force 20 days after its publication, i.e. on August 2, 2024. As the world's first comprehensive law to regulate artificial intelligence, the EU AI Act aims to establish uniform requirements for the development and use of artificial intelligence in the EU. The AI Act will apply to different stakeholders in the supply chain. Like other EU law, it can apply whether or not those stakeholders are established or located in the EU. Two of the key stakeholder roles that will be regulated by the EU AI Act are "providers" and "deployers". A "provider" is a natural or legal person that develops (or has developed on its behalf) an AI system or general-purpose AI model that it places on the market or that puts an AI system into service under its name or trademark in the EU. A "deployer" is a natural or legal person that uses an AI system under its authority, other than in a non-professional capacity, which is established or located in the EU (this would include, for example, a financial institution deploying an AI system developed by a third-party to evaluate eligibility of its clients to receive credit).

The EU AI Act will also regulate providers and deployers that are established or located in a third country (i.e. not established or located in the EU) if the output produced by the applicable AI system is used in the EU. The EU AI Act entered into force on 01 August 2024 and will be applicable after 01 August 2026. However, some specific provisions will have different application dates, such as prohibitions on AI, that will apply from 01 February 2025 – 6 months after entry into force, or genera-purpose AI models already on the market, which are given a compliance deadline of 12 months, i.e. until 01 August 2025.

For more detailed information on this topic and related impacts, please refer to our ***Back to Basis*** *on AI and Funds, and our* ***dedicated page.***

ESAP

On 20 December 2023, a regulation creating the European Single Access Point (the ESAP Regulation) was published in the Official Journal of the EU, together with an Omnibus Regulation and Omnibus Directive amending a range of EU texts on capital markets, financial services and sustainability with the aim of facilitating the provision of information to ESAP. The ESAP platform provides investors with free, reliable, user friendly, centralised and digital access to financial and sustainability-related information made public by EU companies, hence facilitating the investors' decision-making process.

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.

CSSF thematic review on the delegation of the portfolio management function by IFMs

On 23 October 2024, the Luxembourg CSSF published a report with its observations made during a supervisory thematic review on the monitoring processes put in place by IFMs who delegate the portfolio management function. The aim of the CSSF's thematic review was to assess the compliance of Luxembourg-based IFMs with the relevant provisions of the UCITS and AIFMD framework regarding the supervision of such delegation and related contingency planning. For this review, they selected a sample of IFMs managing regulated investment funds and investment funds that are not authorised by the CSSF. Overall, the CSSF observed that IFMs were mostly adhering to the relevant legal and regulatory framework. While the thematic review focused on the delegation of the portfolio management function, the CSSF explicitly specified that, where relevant, its recommendations should also be applied to other delegated functions. The CSSF reminded IFMs that they must implement and maintain a delegation framework procedure in accordance with the applicable rules under CSSF Circular 18/698 on substance. This includes, among others, well-documented and formalised processes for the initial and periodic due diligence, as well as the monitoring of delegates, the identification and management of potential and actual conflicts of interest arising from the delegation, the set-up of contingency plans for situations where the IFM needs to withdraw the mandate of a delegate with immediate effect, and the allocation of sufficient human resources to monitor the delegated activity. In this context, the CSSF invites all IFMs to perform, at the latest by the end of Q1/2025, a comprehensive assessment of how they monitor the delegation of their portfolio management function in the light of the observations mentioned in the thematic review document and of the applicable regulatory requirements, and where necessary, take corrective measures.

*More details on this topic can be found **here**.*

Single company group

On 11 December 2024, the tax bill 8414 has been approved by the Luxembourg Parliament (the **8414 Law**). The purpose of the 8414 Law is to enhance taxpayers' purchasing power, stimulate the economy and promote inclusive and sustainable economic growth in line with the coalition agreement for 2023 to 2028. Among others, the 8414 Law amends the Luxembourg interest deduction limitation rule (**IDLR**) by introducing a new equity escape clause, the single company group.

According to this rule, a taxpayer which is not part of a consolidated group for financial accounting purposes and which at the same time is not considered as a stand-alone entity, can, upon request and under certain conditions, deduct all its exceeding borrowing costs of the year. In this regard, it is expected that companies which are not consolidated, and which are debt financed entirely by third parties (e.g., orphan securitisation or finance companies) may going forward, and under conditions, not be affected by the IDLR. This provision will apply to financial year starting as from 1 January 2024.

Pillar II Law

On 19 December 2024 the tax bill 8396 has been approved by the Luxembourg Parliament (the **8396 Law**). The Law aims at incorporating several items from the February, July and December 2023 agreed administrative guidance and clarifications from the OECD 2022 Commentary. The June 2024 administrative guidelines were introduced via governmental amendments. All these amendments aim at clarifying the interpretation and application of certain provisions of the Pillar II Law. Among others, the 8396 Law clarifies that entities held by investment fund/real estate fund that does not qualify as an ultimate parent entity solely on the basis that it is not required to prepare consolidated financial statements can still be considered as excluded entities where the relevant conditions are observed.

In addition, as a result of the June 2024 guidance in which the OECD agreed that jurisdictions adopting domestic minimum top-up tax (**QDMTT**) can take into account the specific situation of securitisation entities (**SE**), Luxembourg has opted to allow an SE within the scope of Pillar II to allocate its top-up tax liability to other constituent entities (**CEs**) of the group located in the same jurisdiction. Because of this option, any top-up tax liability arising from a Luxembourg securitisation vehicle would be allocated to the other CE of the group in Luxembourg which is not an SE. If there are several CEs in Luxembourg, the Law provides that the top-up tax liabilities of the SE would be allocated to the other CEs in proportion to their respective shares in the total amount of top-up tax liability determined for these CEs in Luxembourg. However, where there are no other CE in Luxembourg, the top-up tax will remain with the SE. To this end, the 8396 Law also introduces a definition of SE for the purpose of Pillar II Law. This option allows Luxembourg to retain the benefit of the QDMTT safe harbour. These amendments regarding Pillar II will apply to tax years starting on or after 31 December 2023.

Key facts about the CMS Funds Group

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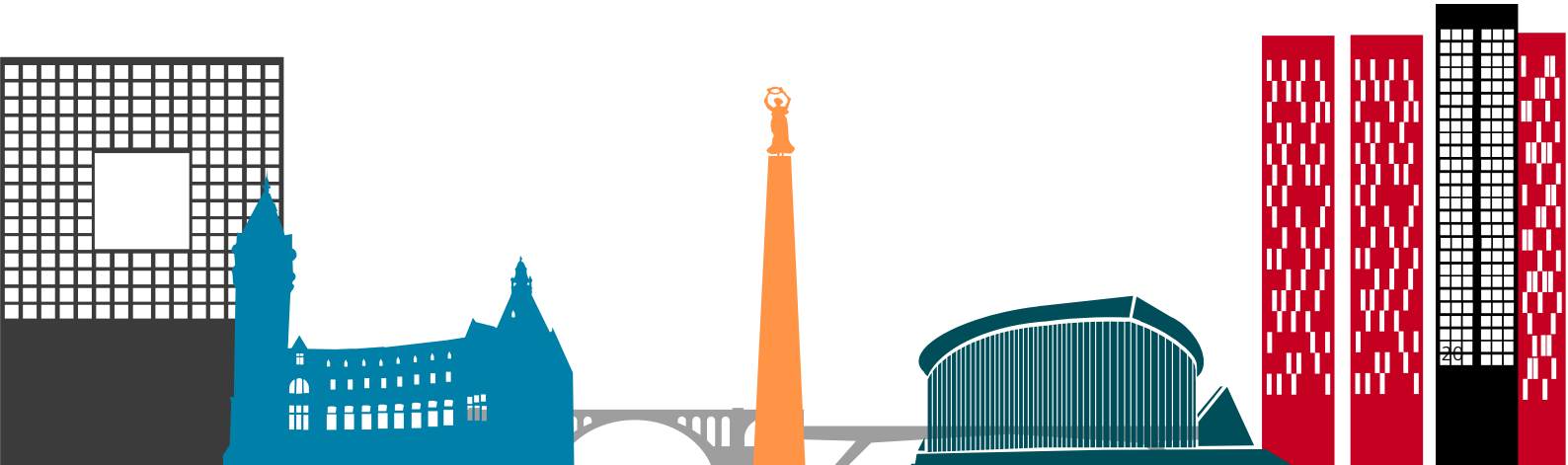

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