The Sustainable Finance Law Review

Editor
Anna-Marie Slot

The Law Reviews

© 2022 Law Business Research Ltd

THE SUSTAINABLE FINANCE LAW REVIEW

Reproduced with permission from Law Business Research Ltd
This article was first published in January 2023
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Anna-Marie Slot

THE LAWREVIEWS

© 2022 Law Business Research Ltd

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGER
Joey Kwok

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Isabelle Gray

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK
© 2022 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at December 2022, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above.
Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-122-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ARENDT

ASHURST LLP

BANWO & IGHODALO

DECHERT LLP

DENTONS LLP

MAYER BROWN

NAGASHIMA OHNO & TSUNEMATSU

PINHEIRO NETO ADVOGADOS

TALWAR THAKORE & ASSOCIATES

URÍA MENÉNDEZ ABOGADOS, SLP

© 2022 Law Business Research Ltd

CONTENTS

PREFACE.......... v
Anna-Marie Slot

Chapter 1 BRAZIL.......... 1
Tiago Araujo Dias Themudo Lessa, Rafael José Lopes Gaspar, Renata Gaspar Barbosa Corrêa and Victor Galembeck Ahern Miranda

Chapter 2 CANADA.......... 10
Bill G Gilliland

Chapter 3 COP27.......... 26
Anna-Marie Slot and Eileen Kelly

Chapter 4 HONG KONG.......... 31
Mark Uhrynuk, Francis K W Chen, Dion K Y Yu, Wei Na Sim and Angie N K Chan

Chapter 5 INDIA.......... 42
Rahul Gulati, Saara Ahmed and Dwiti Goyal

Chapter 6 JAPAN.......... 59
Hiromi Hattori, Yuichi Miyashita and Takuma Kaneko

Chapter 7 LUXEMBOURG.......... 70
Emmanuelle Mousel, Philippe Harles, Antoine Peter, Antoine Portelange, Dino Serafini, Clara Bourgi and Laura Archange

Chapter 8 NIGERIA.......... 87
Seyi Bella, Boluwatife Anjola, Bukola Alada and Ayomide Agbaje

Chapter 9 SINGAPORE.......... 103
Timothy Goh and David Good

© 2022 Law Business Research Ltd

Chapter 10 SPAIN........116
Jesús Sedano Lorenzo and Luis Villar González

Chapter 11 UNITED KINGDOM........125
Anna-Marie Slot and Eileen Kelly

Chapter 12 UNITED STATES........137
J Paul Forrester and Jennifer Kratochvil

Appendix 1 ABOUT THE AUTHORS........146
Appendix 2 CONTRIBUTORS' CONTACT DETAILS........158

© 2022 Law Business Research Ltd

PREFACE

Sustainable finance is a relative youngster in the world of finance, but it is growing up fast. Public and private financing of sustainable/green projects, or those with provisions in line with borrowers' and issuers' environmental, social and governance (ESG) commitments, has exploded.

Since the signing of the Paris Agreement in 2015, more than 100 countries have committed to net zero emissions targets. Countries have also acted at a national level with ambitious target-setting and nationally determined contributions (NDC) pursuant to the Paris Agreement. They are not alone. By mid-2022, more than one-third of the world's largest publicly traded companies had net zero targets. Financial institutions have also engaged with various policies introduced to enshrine ESG commitments, in terms of both their own lending targets and the carbon emissions linked to those targets. Investors at both retail and institutional levels increasingly look to the financial markets as an important lever in achieving such targets.

For over three decades the United Nations has brought together almost every country on earth for the global climate summits – known as the Conference of the Parties (COP). At COP26 in 2021, private finance showed up in force to play its role in the transformation of the business ecosystem as we know it. Precisely what that role entails is a live debate and the discussions regarding the purpose of sustainable finance cover a wide spectrum of issues – from greenwashing, to the fundamental shift of credit including the risks and opportunities of ESG considerations. We saw that debate play out in real time during COP27.

Notwithstanding ongoing considerations about the purpose of sustainable finance, financial market participants have reacted by creating a wide variety of financial products marketed as sustainable, green or ESG-friendly. The rapid increase in both supply of and demand for sustainable investment products has, at times, resulted in a lack of consistency, transparency and reliability of disclosures and metrics. Governments and regulatory bodies are increasingly focused on imposing guidelines and frameworks to address these issues.

Although sustainable finance continues to elude strict definition at present, significant efforts are being made globally to ensure quality and transparency in the industry, to impose consistent frameworks such as the International Sustainability Standards Board (ISSB) and disclosure requirements such as those of the Task Force on Climate-related Financial Disclosures (TCFD) that support comparability and interoperability among firms and products, and to provide investors with sufficient information to monitor the impact of their investments.

© 2022 Law Business Research Ltd

In this inaugural edition we aim to:

a provide a snapshot of the current state of sustainable finance and the status of regulatory efforts across multiple jurisdictions; and

b track the evolution of sustainable finance and outline key trends for the near future.

I thank all of the contributors for their expertise, hard work and dedication in producing this volume.

Anna-Marie Slot
Ashurst LLP
London
December 2022

© 2022 Law Business Research Ltd

Chapter 6

LUXEMBOURG

Emmanuelle Mousel, Philippe Harles, Antoine Peter, Antoine Portelange, Dino Serafini, Clara Bourgi and Laura Archange[1]

I INTRODUCTION

In less than 15 years, Luxembourg has become a well-known and highly regarded hub for environmental, social and governance (ESG) sustainable finance instruments.

This success story began in 2017 with the issuance of the first green bond by the European Investment Bank, called a climate awareness bond. As for other ESG products, the rise of Luxembourg sustainable finance instruments is the result of a combination of factors: a clear and flexible national legal regime, notably in the issuance of debt instruments; the combination of European and national regimes with respect to listing venues; and the strong commitment and cooperation of Luxembourg political parties, regulators and market players to greening the financial system. To date, the Luxembourg Green Exchange created by the Luxembourg Stock Exchange lists approximately 1,489 sustainable instruments split across green, social, sustainability and sustainability-linked bonds. Their aggregate issuance is approximately €750 billion.[2]

As of February 2021, 50 per cent of green bonds worldwide were listed on the Luxembourg Stock Exchange.[3] The country's green trajectory is fully supported by government initiatives, so much so that in 2020, Luxembourg became the first European and triple A-rated state to issue a sustainable bond.[4]

Luxembourg's financial sector generally derives its ground rules from European legislation, and sustainable finance is no exception to this.

The most important text laying the foundations for the new sustainable finance framework and setting the scene for sustainable engagement in the European financial world is the Action Plan on Sustainable Finance, published by the European Commission in March 2018 (Action Plan). The Action Plan set sustainability targets and initiated the main subsequent directives and regulations, targeting all financial market participants and cutting across every aspect of financial services provision (and beyond).

The regulatory offspring of the Action Plan have been plentiful:

a Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR);

1 Emmanuelle Mousel is a partner, Philippe Harles and Laura Archange are counsel, Antoine Peter is a manager, Antoine Portelange and Dino Serafini are associates and Clara Bourgi is a senior associate at Arendt.

2 https://www.bourse.lu/security/US298785JT41/363919 and https://www.bourse.lu/lgx-displayed-international-bonds?bonds=green.

3 Luxembourg sustainable finance strategy, Luxembourg sustainable finance initiative, February 2022.

4 For an amount of €1.5 billion: https://www.bourse.lu/security/LU2228213398/311986.

© 2022 Law Business Research Ltd

b Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (EU Taxonomy);
c the revision of the framework of both Directive (EU) 2011/61 (AIFMD) and Directive (EU) 2009/65 (UCITS Directive);
d the update of the delegated acts to the CRR,[5] MiFID II,[6] Solvency II Directive[7] and IDD[8] frameworks;
e Regulation (EU) 2019/2089 amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks;
f the proposal for a Corporate Sustainability Reporting Directive (CSRD) amending the existing Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups (NFRD); and
g the proposal for a Corporate Sustainability Due Diligence Directive (CSDDD).

These texts have been supplemented by guidance, reports, opinions and discussion papers published by the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), as well as by the local implementing rules and regulations adopted under national law or issued by Luxembourg supervisory authorities.

Ever since, market practice in Luxembourg has gradually become clearer: those who do not wish to be part of the sustainability transition must be fully transparent about this fact (and, as a result, few financial market players have opted for that position). The asset management world was the first to undergo a significant shift towards more sustainability, initially on the retail side and then in the private universe. Other fields of finance later followed suit.

The CSSF, Luxembourg's supervisory authority for the financial sector, was quick to set clear expectations while maintaining constant dialogue with the industry. Luxembourg's supervisory authority for the insurance sector, the CAA, has issued valuable guidance as well.

Luxembourg has also set ambitious long-term goals for sustainability generally:

a Luxembourg is committed to the Paris Agreement on global warming and to the 17 sustainable development objectives set by the United Nations in the 2030 Agenda.
b Following the objectives set in the Paris Agreement, Luxembourg aims to reduce its own greenhouse gas emissions for the sectors outside the emissions trading scheme by 55 per cent by 2030 compared to 2005. For this purpose, Luxembourg adopted the law of 15 December 2020 on the climate, amending the amended law of 31 May 1999 establishing an environmental protection fund. This law imposes gas emissions reductions on the following sectors: energy and manufacturing industries, construction, transport, residential and tertiary buildings, agriculture and forestry as well as waste and wastewater treatment.

5 Amended Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR).
6 Amended Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II).
7 Amended Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive).
8 Amended Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD).

© 2022 Law Business Research Ltd

c Luxembourg has implemented the 10 priority fields of action defined by the National Plan for Sustainable Development and the National Integrated Energy and Climate Plan.
d Luxembourg is very ambitious regarding its energy sovereignty, and aims to increase its share of renewable energy from 11 to 25 per cent by 2030.
e The Luxembourg Ministry for Foreign and European Affairs, together with the Luxembourg Union of Enterprises and the National Institute for Sustainable Development and Corporate Social Responsibility (INDR), recently launched a new instalment of the National Business and Human Rights Pact,[9] a voluntary initiative for Luxembourg enterprises willing to commit to aligning with the United Nations Guiding Principles on Business and Human Rights.

National institutions are also active in this area and have applied a range of sustainability principles internally. For example, the Chamber of Commerce is implementing the principles described in its publication Luxembourg Sustainable Business Principles – Our common 2030 goal.[10]

II YEAR IN REVIEW

i General financial sector developments

In Luxembourg, and throughout the European Union, the past year has been occupied with clarifying the various requirements of the SFDR, the EU Taxonomy and other legislation, and proposing practical solutions for meeting them.

The CSSF has been proactive in offering practical means of implementing the EU's regulatory framework for sustainable finance. In particular, it has created an accelerated examination process in view of the entry into force of the SFDR Level II on 1 January 2022: in July 2022, the CSSF issued a communication informing financial market participants that, although it would require updated, compliant documents by 31 October 2022 for financial products under its supervision, these documents could be fast-tracked for examination and approval under certain conditions.

This was just one of many efforts to manage the major implementation challenge faced by the country due to the size of its financial industry. Another was the CSSF's rapid response to the publication on 25 March 2022 of the final draft of Commission Delegated Regulation (EU) 2022/1288, the regulatory technical standards relating to the SFDR (SFDR RTS). Anticipating a capacity issue, the CSSF wasted no time, already communicating on 1 April that: 'In line with the ESAs' Updated Supervisory Statement, the CSSF encourages financial market participants and financial advisers to use the draft RTS as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, 10 and 11 of the SFDR and Articles 5 and 6 of the [EU Taxonomy] in the interim period until [SFDR] RTS are adopted by the European Commission.'

The CSSF has also continually raised awareness on ESG-related legislative developments. One example of this is its communication of 15 June 2022 drawing the local market's

9 Available at https://maee.gouvernement.lu/fr/directions-du-ministere/affaires-politiques/droits-de-l-homme/entreprises-droits-de-l-homme1/pacte-national-edh.html.
10 Available at https://www.cc.lu/toute-linformation/publications/detail/luxembourg-sustainable-business-principles-notre-cap-2030-commun.

© 2022 Law Business Research Ltd

attention to two European Commission Q&As (of July 2021 and May 2022), the ESMA Supervisory Briefing of 31 May 2022 and the European Supervisory Authorities' clarification statement on the SFDR RTS of 2 June 2022.

In its 2021 annual report, the CSSF repeatedly highlighted the role and importance of sustainable finance, and issued many educational videos on the back of this report.

ii Banking and insurance-specific developments

2020, 2021 and 2022 have been years of breathtaking change for banks and insurance undertakings when it comes to ESG requirements.

Key milestones at the national level include the following:

a In 2020 and 2021, the CSSF amended and adopted key circular letters to integrate ESG risk exposures into banks' overall business strategies, risk management frameworks and internal governance arrangements.[11]

b In February 2022, Luxembourg adopted the law of 25 February 2022 implementing a range of sustainability legislation, including the SFDR and the EU Taxonomy (Implementing 2022 Law). In particular, the Implementing 2022 Law designates the Luxembourg authorities responsible for supervising the proper implementation of the SFDR and the EU Taxonomy in the banking and insurance sectors.

c In July 2022, Luxembourg adopted the Grand Ducal Regulation of 27 July 2022 amending the amended Grand Ducal Regulation of 20 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (GDR 2022). The GDR 2022 served to implement the product governance requirements imposed under the Commission Delegated Directive 2021/1269 amending the Commission Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into product governance obligations.

d In August 2022, the CSSF issued a series of press releases, in particular to call attention to the application deadlines for the new sustainability-related requirements pertaining to the integration of sustainability preferences into suitability assessments.[12]

e In the same month, the CAA published an information notice emphasising the regulatory challenges linked to sustainable finance.[13]

f In September 2022, the CSSF published the results of a public survey that assessed the knowledge and perception of sustainable finance among Luxembourg households. According to the survey, the public generally agreed that the financial sector can have a positive impact on the development of renewable energy, local communities, climate and the environment, but it lacked detailed knowledge of what constitutes sustainable finance. The survey further emphasised the importance of educational action and the key role of the banker in this regard.[14]

11 Amended CSSF Circular Letter 12/552 on Central Administration, Internal Governance and Risk Management; CSSF Circular Letter 21/773 on the Management of Climate-related and Environmental Risks.

12 CSSF press release 22/18, published on 1 August 2022.

13 CAA Information Notice 22/9 regarding the regulatory challenges linked to sustainable finance.

14 CSSF press release 22/24, published on 21 September 2022.

© 2022 Law Business Research Ltd

The last milestone in particular illustrates a principal near-term challenge for the banking and insurance sectors: to remediate the sustainability knowledge gaps of their clientele. To achieve this, market players must ensure that relevant staff and key function holders are adequately trained to understand the new concepts and rules as they emerge, and that their businesses can implement and adjust to the ever-evolving regulatory requirements around sustainable finance.

III REGULATION AND POLICY

i Governance regime

Governance is, as a matter of principle, a subject to which Luxembourg regulators pay meticulous attention, with frequent on-site inspections of financial sector players performed to verify the adequacy of their governance mechanisms.

In today's regulatory environment, sustainability considerations impact these mechanisms directly. Boards in particular have a pivotal role to play in this respect.

From a Luxembourg law perspective, the board of directors is the body ultimately responsible for the sound and prudent management of undertakings and their compliance with applicable laws, regulations and administrative guidelines.[15]

To date, there is no general obligation under Luxembourg corporate law for boards to take action in the direct interest of their company's external stakeholders. Board members are obliged to act in the best interest of the company, and it is to the company that their fiduciary duty is due.

However, companies listing their shares on the Luxembourg Stock Exchange are subject to the 'X Principles of Corporate Governance of the Luxembourg Stock Exchange' (X Principles).[16] The X Principles include three sets of rules: the actual mandatory Principles, which are complementary to Luxembourg legislation and cannot deviate from or contradict its provisions; the related Recommendations, which are issued on a comply or explain basis; and the Guidelines, which are indicative and not binding.

With respect to fiduciary duties, Principle 2 of the X Principles provides that the board, as a collective body, must act in the corporate interest, and must serve all the shareholders by ensuring the company's long-term success. However, board members must also consider corporate social responsibility (CSR) aspects and take into account the interests of all stakeholders in their deliberations. Recommendation 2.3 further provides that the board must consider all CSR aspects of the business when defining the company's values. Furthermore, Principle 9 requires companies listed on the Luxembourg Stock Exchange to define a CSR policy that includes social and environmental responsibilities. In the creation of long-term value for the company, directors are recommended to integrate CSR aspects (Recommendation 9.2) and to consider the company's non-financial risks, including social and environmental risks (Recommendation 9.3), as well as to establish a specialised CSR committee as part of sound corporate governance (Guideline 2 on Recommendation 9.3).

While the X Principles are mandatory only for listed companies, their recognised prestige in the market makes them a clear point of reference for private companies as well. More generally, the shifting regulatory landscape and the foreseeable disruptions that climate

15 See, for example, Article 38-1 of the amended law of 5 April 1993 on the financial sector and Article 70 of the amended law of 7 December 2015 on the insurance sector.

16 See https://www.bourse.lu/corporate-governance.

© 2022 Law Business Research Ltd

change will continue to bring about make it necessary to revise the traditional interpretation of the fiduciary duties of company directors. In the current environment, the sustainability of business and governance models has ceased to be a corollary of CSR and has become a tool for risk mitigation and management. While for private companies the hard law requirements are still pinned to the traditional principle of shareholder primacy, sound corporate governance principles, the risk of exclusion from supply chains and pressure from activist shareholders and stakeholders are pushing Luxembourg boards to commit to sustainability, establish sustainability policies and take part in voluntary initiatives.

Among such initiatives, the ESR label issued by the Luxembourg INDR[17] is noteworthy: under this label, a company that satisfies certain sustainability parameters may qualify as a socially responsible enterprise. The ESR label is granted following a self-evaluation by the company, paired with an assessment by the INDR and subsequent monitoring focused on shortcomings and the implementation of CSR commitments (also subject to independent audit).

Whether a company's goal is to conspicuously excel at voluntary initiatives or merely to reduce external pressure, the application of sound corporate management rules and prudent governance principles will invariably call for an expansive interpretation of its directors' fiduciary duties (which must now go far beyond the duty to maximise short-term profits for shareholders).

Today's boards are tasked with ensuring that all relevant ESG requirements are properly implemented across corporate governance levels and functions. This means that board members must acquire or keep ready access to the range of ESG knowledge, experience and expertise needed to understand the extent and implications of those requirements. In addition, boards must ensure that key staff are properly trained in ESG matters.

Beyond their impact on requisite professional competences, ESG requirements also influence the personal qualities expected of board members, particularly in terms of diversity.

From a Luxembourg law perspective, diversity in the board room is generally considered a key component of good governance for regulated entities. For example, the amended CSSF Circular Letter 12/552 on central administration, internal governance and risk management (Circular 12/552) requires banks to include 'aspects of diversity' in the procedures that govern the composition of their management bodies. Here the concept of diversity refers to 'the characteristics of the members of the management body, including their age, gender, geographical origin and educational and professional background'. Circular 12/552 further specifies that 'the promotion of diversity shall be based on the principle of non-discrimination and on measures ensuring equal opportunities'.[18]

The recent CAA Circular Letter 22/15 on the board of directors of insurance and reinsurance undertakings[19] also explicitly refers to the 'principle of diversity of qualities and competences'.

17 See https://esr.lu/.

18 Point 11 of Circular 12/552; in particular, this Circular implements the rules laid down in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, 2 July 2021 (ESMA35-36-2319 EBA/GL/2021/06).

19 Point 23 of CAA Circular Letter 22/15 of 26 July 2022 on the board of directors of insurance and reinsurance undertakings; in particular, this Circular Letter implements the rules laid down in the EIOPA Guidelines on System of Governance, 1 January 2014 (EIOPA_BoS_14/253 EN).

© 2022 Law Business Research Ltd

Accordingly, boards must ensure when recruiting that they accumulate a broad set of qualities and competences among their members in order to foster constructive criticism and discussion based on different points of view.

While good governance in general is an eligibility criterion for classification as a sustainable investment, board gender diversity in investee companies is now among the mandatory social principal adverse impact (PAI) indicators imposed under the SFDR.[20]

For listed companies, Recommendation 4.1 of the X Principles specifies that, when appointing board members, companies must include diversity criteria in their considerations, including criteria relating to professional experience, geographical origin and the appropriate representation of genders, beyond general skill-based criteria.

ii Regulators

General considerations

The Luxembourg Sustainable Finance Initiative is a not-for-profit association that designs and implements the Luxembourg Sustainable Finance Strategy.[21]

It is charged with raising awareness, promoting and developing sustainable finance initiatives in Luxembourg, and helping regulators and financial market participants improve their practices.

Asset managers

The CSSF is the Luxembourg authority competent to supervise the financial sector. It reports to the Ministry of Finance, and its functioning and powers are governed by the amended law of 23 December 1998 establishing a financial sector supervisory commission.

The Implementing 2022 Law explicitly confirms that the CSSF is the competent authority in Luxembourg tasked with supervising the proper implementation of the SFDR and the EU Taxonomy in the financial sector.

The CSSF has been very active in regulating, enforcing and promoting the sustainable finance framework.

In its September 2022 newsletter, the CSSF highlighted that: 'sustainable finance is a rather complex subject, and its objectives can only be fully reached if investors sufficiently understand the different concepts. It is essential to ensure a high level of trust in the regulatory framework which is being implemented. [. . .] Consequently, sustainable finance will continue to require not only educational efforts and financial education efforts from all stakeholders, but also an interest and questioning from investors.'[22]

The CSSF actively participates in financial education efforts, particularly via Letzfin,[23] a website devoted to making the workings of the financial world accessible to the broader public with simple explanations of technical terms, practical advice and interactive tools.

Many industry associations also support the regulator in this area.

The Association of the Luxembourg Fund Industry (ALFI) has regular meetings with the CSSF to discuss technical matters in the pursuit of better large-scale financial education. The

20 ESMA Final Report on draft Regulatory Technical Standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a(3), Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of SFDR, 2 February 2021 (JC 2021 03).

21 See https://lsfi.lu/.

22 CSSF Newsletter No. 260, September 2022.

23 See www.letzfin.lu.

© 2022 Law Business Research Ltd

association has also prepared many informative publications accessible either to its members or to the general public, including the SFDR Guidelines for Luxembourg, ALFI Guidelines on sustainability-related pre-contractual disclosures, ALFI guidance on sustainability-related disclosures and reduced subscription tax for EU Taxonomy-compliant investment funds.

The CSSF is also in close dialogue with the Luxembourg Bankers Association (ABBL), which has made various efforts to promote ESG, for example by adding a chapter on responsible banking into its Code of Conduct, and by participating in the CSSF survey on Luxembourg household knowledge of sustainable finance referred to in Section II.

The roles and responsibilities of the CSSF are mirrored in the insurance sector by the CAA (also under the authority of the Ministry of Finance), whose functioning and powers are governed by the amended law of 7 December 2015 on the insurance sector and that is in charge of supervising compliance with any rules and regulations applicable to insurance undertakings, including those pertaining to sustainability.

As for the CSSF, the Implementing 2022 Law explicitly confirms that the CAA is the Luxembourg authority competent to supervise the proper implementation of the SFDR and the EU Taxonomy in the insurance sector.

In an Information Notice published in August 2022,[24] the CAA emphasised the challenges entailed by the regulatory requirements pertaining to sustainable finance, and specified that its own control measures would be gradually adapted to integrate the verification of compliance with the evolving regulatory landscape.

VII SUSTAINABLE FINANCE INCENTIVES

The Luxembourg legislation governing sustainable bond issuance allows bonds to be issued in a variety of forms by various forms of companies. Bonds may take a registered, bearer or dematerialised form and, in accordance with Luxembourg private international law, a Luxembourg-based company may issue them subject to Luxembourg law or a foreign law.

Three bond listing platforms are available in Luxembourg:

a the Securities Official List, a listing venue that does not permit trading but that does give issuers some visibility;
b the EuroMTF, a multilateral trading facility offering both listing and trading opportunities; and
c the regulated market, for which bonds require a prospectus compliant with Regulation (EU) 2017/1129.

There is currently no specific legal regime governing sustainable bonds, and all eyes are on the 2021 Commission proposal for a European green bond standard. This proposal is still undergoing intense negotiations, as indicated by the rapporteur's report published in May 2022, which suggests that the framework created by the European green bond standard will be relatively binding.

While they await further developments, Luxembourg market players adhere to the set of principles published by the International Capital Markets Association (ICMA) while taking into consideration the EU Taxonomy and the draft rules on the European green bond standard.

24 CAA Information Notice 22/9 regarding the regulatory challenges linked to sustainable finance.

© 2022 Law Business Research Ltd

Currently, bonds can also benefit from the green bond label issued by LuxFLAG, an independent non-profit Luxembourg association created in July 2006 by ALFI, the ABBL, the European Investment Bank, LuxembourgForFinance, the ADA and the Luxembourg government.

To access the Luxembourg Green Exchange, the Luxembourg Stock Exchange requires issuers to provide an external review of the bond issue performed by a third party and commit to post-issuance reporting. Such reports, which are publicly accessible, give a precise insight into the types of projects funded with the issuance proceeds.

For the Luxembourg sustainability bond, these reports indicate that, of a total of €1.1 billion, 53 per cent went to fund social projects, with the remaining 47 per cent allocated to green projects – notably the construction of the Luxembourg tramway, used free of charge by nearly 15 million passengers, resulting in the avoidance of 194,490 tonnes of CO_2 emissions.[25]

V SUSTAINABLE DISCLOSURE REQUIREMENTS AND TAXONOMY

Luxembourg's sustainable disclosure requirements derive from the NFRD, the SFDR, the EU Taxonomy and additional sector-specific regulations.

i The NFRD and the law of 19 December 2002

The NFRD, which became applicable in 2017, applies to public interest entities (which include banks and insurance undertakings) that meet certain size criteria in terms of employee volume as well as balance sheet and net turnover.

The management reports of entities in-scope of the NFRD must include a non-financial statement that assesses how their business is affected by sustainability issues and how, conversely, it impacts the external environment (pursuant to the amended Article 19a of Directive 2013/34 as implemented into Luxembourg law by the amended Article 68 bis of the law of 19 December 2002 on the trade and companies register and the accounting and annual accounts of companies).

The NFRD is slated for future changes as a result of the proposal for a CSRD, which will expand the scope of the NFRD and further detail and harmonise the disclosure requirements it imposes.

ii The SFDR

The SFDR, which came into force on 10 March 2021, applies to financial market participants and financial advisers; in Luxembourg, these include asset managers, credit institutions that provide portfolio management or investment advice within the meaning of MiFID II and insurance undertakings that make available, or advise on, insurance-based investment products within the meaning of the IDD.

The SFDR was issued after it had been observed that the absence of harmonised requirements for sustainability-related disclosures had led to the provision of insufficiently detailed disclosures to end investors.

25 Luxembourg sustainability bond report, post-issuance use of proceeds report published on the website of the Luxembourg Stock Exchange, 7 September 2022.

© 2022 Law Business Research Ltd

In this context, the SFDR now requires institutions to make pre-contractual and ongoing disclosures to end investors in an effort to reduce the asymmetry of information on the integration of sustainability risks, the consideration of adverse sustainability impacts, the promotion of environmental or social characteristics, and the sustainable status of investments.

Level I of the SFDR provided for principles-based transparency rules, but was incomplete. This led to many challenges in its implementation as market participants awaited the regulatory and technical standards meant to provide further guidance. These were finally published on 6 April 2022 and adopted a few months later as the SFDR RTS.

The SFDR provides for transparency rules at entity level (asset managers, insurance product manufacturers, etc.) and at product level (investments funds, pension products, etc.).

Under the entity rules, institutions' websites must contain information about their policies governing the integration of sustainability risks in their investment decision-making process, as well as information on whether they consider principal adverse impacts (if so: how; if not: why not). Their remuneration policies must contain information on how they are consistent with the integration of sustainability risks. These requirements have applied since 10 March 2021.

As for product rules, the SFDR establishes a distinction between three types of products, subject to different levels of disclosure requirements:

a financial products without any particular ESG characteristic or sustainable investment objective (standard products);

b financial products that promote environmental or social characteristics or a combination of those characteristics (provided that the companies in which the investment is made follow good governance practices) (SFDR Article 8 products); and

c financial products having sustainable investment as their objective, meaning an investment in an economic activity that contributes to an environmental or social objective, provided that such investment does not significantly harm any of the other objectives and the investee company follows good governance practices (SFDR Article 9 products).

The pre-contractual documents of all products, including standard products, must at least disclose how sustainability risks are integrated into the investment decisions of a financial market participant, or the investment (or insurance) advice of a financial adviser. The SFDR further requires disclosure of the results of an assessment of the likely impacts of sustainability risks on the returns of the financial products that financial market participants make available or that financial advisers provide advice on. Moreover, the pre-contractual documents for each financial product must include information on the integration of adverse impacts on sustainability factors.

SFDR Article 8 products and SFDR Article 9 products have even more detailed disclosure requirements for their pre-contractual documents, websites and annual reports.

The SFDR RTS list key principles and specific guidance in interpreting SFDR obligations for SFDR Article 8 products and SFDR Article 9 products, as well as new rules on website disclosures for such products, indicators of principal adverse impacts and related disclosure obligations. They also contain templates for pre-contractual disclosures and periodic reporting. After several delays, the SFDR RTS will finally enter into force on 1 January 2023.

© 2022 Law Business Research Ltd

In the Luxembourg investment fund sector, the CSSF has been very attentive to feedback from financial market participants and has sought to take the lack of available data on the European and global markets into account.

iii The EU Taxonomy

The EU Taxonomy applies to institutions qualifying as financial market participants under the SFDR, and to institutions in-scope of the NFRD.

The EU Taxonomy is a classification tool to help investors and companies make informed investment decisions on environmentally friendly economic activities. Contrary to popular belief, however, it is not a mandatory list to invest in, nor a list of standards or exclusions.

When assessing whether an economic activity can be considered as environmentally sustainable under the EU Taxonomy, the first step is to check whether the EU Taxonomy covers the activity at all.

If the activity is eligible under the EU Taxonomy criteria, the next step is to assess whether it is being performed in a manner that meets the EU Taxonomy's technical screening criteria, which take the form of scientific and technical thresholds. If the economic activity does not meet relevant thresholds or the data needed to establish this cannot be obtained, the activity cannot be considered EU Taxonomy-aligned.

If these first two steps are successful, the next step is to verify that, when making a substantial contribution to one of the EU Taxonomy objectives, the economic activity does not significantly harm any of the other objectives. Here again, the EU Taxonomy provides technical criteria against which the performance of the activity must be checked.

Finally, it must additionally be ensured that the company itself respects minimum social and governance safeguards; for instance, by complying with, inter alia, international agreements on human rights and International Labor Organization labour conditions.

Financial products subject to the SFDR must therefore add specific EU Taxonomy-related disclosures to their pre-contractual information:

a SFDR standard products must add a specific disclaimer stating that they are not aligned with the EU Taxonomy;

b SFDR Article 9 products that invest in a sector contributing to environmental objectives are required to disclose which environmental objectives they contribute to, and how and to what extent their investments qualify as environmentally sustainable (including the percentage of their investments that are aligned with the EU Taxonomy); and

c although SFDR Article 8 products are covered by the EU Taxonomy, the exact disclosure requirements for them are still rather unclear.

The transparency rules for entities subject to the SFDR begin to apply in two stages: 1 January 2022 for disclosing information in relation to the first two EU Taxonomy objectives, and 1 January 2023 for the remaining four objectives. At the same time, while non-financial undertakings in-scope of the EU Taxonomy must begin disclosing on their EU-Taxonomy alignment in 2023, financial undertakings need only begin in 2024. In 2022, therefore, financial market participants were likely not in a position to accurately estimate the EU Taxonomy alignment of their funds, notably because the supporting data will not be reported by underlying companies before 2023 – and even then, data will not be available for all companies due to the misaligned reporting deadlines between the disclosure obligations at fund and product level and the corresponding reporting obligations at undertaking level.

© 2022 Law Business Research Ltd

In addition, the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or adaptation have yet to be approved, and are thus not yet in force. The rules for calculating alignment with the EU Taxonomy at portfolio or fund level are also awaiting finalisation, and have received heavy criticism from the industry.

Still, the SFDR RTS have helped to diminish these challenges by providing pre-contractual templates to guide the disclosure of EU Taxonomy-related information for financial products. While this clarifies what is expected of such disclosures in terms of content, the lack of data from underlying assets remains a serious impediment to reporting institutions.

Moreover, once the arrival of the CSRD extends the scope of the disclosure rules, the EU Taxonomy will also concern players other than financial market participants and financial advisers, impacting large (non-regulated and unlisted) industrial companies as well.

iv Sector-specific regulations

In addition to the three more general texts discussed above, sector-specific regulations like the CRR and the Solvency II Directive now also include sustainability-related disclosure obligations for banks and insurance undertakings.

The CRR requires large credit institutions[26] whose shares are admitted to trading on a regulated market to disclose prudential information on ESG risks, including transition risks and physical risks, in their Pillar 3 disclosures.

These disclosure requirements were detailed further in draft implementing technical standards (ITS)[27] published by the EBA on 24 January 2022. The ITS set out templates for comparable quantitative disclosures on climate change-related transition and physical risks, including information on exposures towards carbon-related assets and assets subject to chronic and acute climate change events as well as institutions' mitigating actions to support their counterparties in transitioning to a carbon-neutral economy and adapting to climate change; and key performance indicators on institutions' asset financing activities that are environmentally sustainable according to the EU Taxonomy. The ITS also include tables for providing qualitative information on how institutions are embedding ESG considerations in their governance, business model, strategy and risk management framework.

In the insurance sector, ESG risks have not yet been included in the Pillar 3 disclosures imposed under the Solvency II Directive. EIOPA has, however, indicated that further consideration should be given to mandatory requirements for public disclosures on sustainability risks on both sides of the balance sheet.[28]

---

26 Large institutions are defined as institutions that meet any of the following conditions:
   a they qualify as a 'global systemically important institution 'within the meaning of the CRR;
   b they have been identified as an 'other systemically important institution' within the meaning of the CRR;
   c they are, in their Member State of establishment, one of the three largest institutions in terms of the total value of their assets; or
   d the total value of their assets on an individual basis or, where applicable, based on their consolidated situation is equal to or greater than €30 billion.

27 EBA draft implementing technical standards on prudential disclosures on ESG risks in accordance with Article 449a CRR (EBA/ITS/2022/01) of 24 January 2022.

28 EIOPA Opinion on Sustainability within Solvency II Directive (EIOPA-BoS-19/241) of 30 September 2019.

© 2022 Law Business Research Ltd

In addition, Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing the Solvency II Directive has now been updated to require insurance undertakings of any size to disclose, in their remuneration policies, information on how they consider integrating sustainability risks in their risk management system.

Banks and insurance undertakings now face a deluge of disclosure requirements with diverging scopes and timelines for application.

The first challenge that undertakings must tackle, therefore, is to determine whether, and when, the various requirements may be applicable to them, before embarking on the herculean task of adapting their internal policies and procedures, updating their pre-contractual documentation and periodic reporting as well as reviewing and expanding the content of their websites.

VI ESG DATA AND REPORTING

The sustainable finance reporting requirements applicable in Luxembourg mainly stem from the EU-level rules in this area; Luxembourg does not have its own specific regime governing ESG data reporting.

Central to the EU rules on ESG reporting are obligations on relevant institutions to add SFDR and EU Taxonomy-related information to their annual reports.

These reporting obligations primarily require institutions to report on how they attained the ESG characteristics or sustainable investment objectives advertised (whatever they may be) over the past reference period.

In addition, institutions are asked to calculate and disclose their level of alignment with the EU Taxonomy.

It may also be necessary to report on certain specific ESG indicators listed in Annex I of the SFDR RTS (PAI indicators).

This ESG reporting may be done using the templates provided in the Annexes to the SFDR RTS.

Luxembourg has also seen a significant uptake in the FinDatEx European ESG Template (EET) initiative.

Many financial market participants in Luxembourg are planning to use the EET to streamline their processing and analysis of investment funds' ESG credentials, notably in order to match them with the ESG preferences expressed by investors in MiFID suitability assessments on sustainability. This is leading many investment fund managers to prepare their ESG reporting as EET Excel spreadsheets.

Beyond the general EU-level rules, the law of 19 December 2002 mentioned above imposes an obligation on certain large companies to publish an annual management report with information on ESG topics (e.g., diversity, environment, social questions, respect for human rights and the fight against corruption). In addition, two further factors are leading Luxembourg enterprises to already begin collecting ESG-related data and setting up disclosure procedures. One is the impending application of the CSRD, which will impact many large Luxembourg entities given that Luxembourg is (rather famously) a popular choice of headquarters for large holding companies. The other factor, of interest for small and medium-sized enterprises as well, is the domino effect that the disclosure obligations on financial market players have on underlying investments: companies' ability to report on their externalities and potential adverse impacts can influence the likelihood of their being granted access to debt or equity financing, or both.

© 2022 Law Business Research Ltd

As for companies with shares listed on the Luxembourg Stock Exchange, under Recommendation 9.2 of the Exchange's X Principles, these companies must disclose CSR information either in a separate report or in their management report, in a specific section or in an appendix relating to sustainable development. They must analyse the sustainability of their activities and provide clear and transparent non-financial information to support this analysis. In doing so, companies are advised to rely on well-established international standards and show, in the form of a scoreboard, the CSR performance indicators applicable to their business activities; for example, gender balance, subcontracting and relations with suppliers, energy consumption, water consumption, waste treatment, CO_2 emissions, adaptation to the consequences of climate change and measures taken to preserve or develop biodiversity.

IV SUSTAINABLE FINANCE INSTRUMENTS

i Incentives for investment funds

In Luxembourg, investment funds are subject to subscription tax on their total net assets (assets under management) valued on the last day of each quarter.

This subscription tax is reduced for more sustainable funds.

Since 2021, funds that invest in assets related to economic activities qualifying as environmentally sustainable (as defined by the EU Taxonomy – Taxonomy compliant assets) have been eligible for reduced subscription tax, currently levied at 0.05 per cent of net asset value (a right conferred by the Luxembourg law of 19 December 2020 on the state revenue and expenditure budget for 2021, amending the law of 17 December 2010 on undertakings for collective investment, implementing Directive (EU) 2014/91 (UCITS V Directive) into Luxembourg law).

This reduction depends on the percentage of investment in Taxonomy compliant assets:

a for a fund investing more than 5 per cent of its net assets in Taxonomy-compliant assets, subscription tax is reduced to 4 basis points on that portion;

b for a fund investing more than 20 per cent of its net assets in Taxonomy-compliant assets, subscription tax is reduced to 3 basis points on that portion;

c for a fund investing more than 35 per cent of its net assets in Taxonomy-compliant assets, subscription tax is reduced to 2 basis points on that portion; and

d for a fund investing more than 50 per cent of its net assets in Taxonomy-compliant assets, subscription tax is reduced to 1 basis point on that portion.

ii Incentives for corporates

Luxembourg also provides substantial support for sustainable business incentives in the form of financial aid.

The government adopted the amended law of 15 December 2017 on an aid scheme for environmental protection, implementing Regulation (EU) No. 651/2014,[29] which came into force on 25 December 2017.[30] This aid targets all undertakings and natural persons holding

29 Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of state aid compatible with the internal market, in application of Articles 107 and 108 of the Treaty of the Functioning of the European Union (TFEU).

30 Amended law of 15 December 2017 on an aid scheme for environmental protection and amending the law of 17 May 2017 on the promotion of research, development and innovation as well as the law of 20 July 2017 on the establishment of a regional investment aid scheme.

© 2022 Law Business Research Ltd

establishment permits in order to encourage them as they pursue sustainability transition. The law covers different types of aid with different objectives: investment aid to enable companies to exceed EU environmental protection standards or improve environmental protection in areas that lack standards, to fund early adjustment to future EU standards, to increase energy efficiency in buildings or fund other energy efficiency measures, to enable high-efficiency cogeneration and promote energy from renewable sources, to remediate contaminated sites, as well as to fund efficient heating and cooling networks, waste recycling and reuse, energy infrastructure and environmental studies.

On 10 May 2022, the government also launched the 'Klimabonus' programme, which helps provide reformed and strengthened financial measures to support the ecological, energy and social transition.

Finally, as mentioned in Section IV, the Luxembourg Green Exchange makes industry best practices for green, social and sustainable securities a mandatory requirement.

The Luxembourg Green Exchange is also the only exchange that requires post-issuance commitments from issuers, including certain reports once the security has been issued and listed.

According to the Review of the implementation of EU environmental policy, Luxembourg is Europe's best performer in terms of resource productivity, meaning the efficiency with which the economy uses material resources to produce wealth.

VIII GREEN TECHNOLOGY

As in many other European jurisdictions, the carbon markets have enjoyed much interest from investment fund managers since early 2022. This has led to the creation of investment vehicles structured with the objective of investing in carbon offsets (verified emissions reductions). This in turn has impacted the whole fund industry value chain; for example, in compelling depositaries and fund administrators in Luxembourg to update their procedures and operational processes to account for the particular features of this new type of asset.

In parallel, financial market participants are looking for ways to gain exposure to carbon markets in traditional UCITS strategies. To achieve this, some are starting to look at the potential UCITS-eligibility of EU emissions allowances (carbon emissions allowances exchangeable under the European Union Emissions Trading Scheme).

At the end of 2021, Luxembourg market players created the first-ever pledge on emissions allowances at the EU level: an exchange-traded commodity backed with carbon allowances that also benefits from the advantages of the Luxembourg law on collateral arrangements.

IX CLIMATE CHANGE IMPACT

As mentioned in Section II, key regulatory initiatives linked to climate change mitigation in Luxembourg's banking sector include the adoption of specific regulatory requirements to integrate ESG risks, and especially climate change risks, into banks' overall business strategies, risk management frameworks and governance requirements.

CSSF Circular Letter 21/773 on the management of climate-related and environmental risks requires institutions to integrate ESG risks into their business strategies, risk management frameworks and governance arrangements. It applies to all credit institutions deemed less significant institutions under the Single Supervisory Mechanism, and to all branches of non-EU credit institutions, and is consistent with the European Central Bank's

© 2022 Law Business Research Ltd

Guide on climate-related and environmental risks and the Guide for Supervisors: integrating climate-related and environmental risks into prudential supervision published by the Network of Central Banks and Supervisors for Greening the Financial System.

These requirements are mirrored in Circular 12/552, which also specifies that a bank's business model, internal governance arrangements and risk management framework should take into account all risks and relevant risk factors, including ESG risks.

In the insurance sector, climate change risks were recently addressed in the application guidance on running climate change materiality assessments and using climate change scenarios in the own risk and solvency assessment (ORSA)[31] published by EIOPA in August 2022.[32]

This guidance is expressly referred to in CAA Information Notice 22/9 on the regulatory challenges linked to sustainable finance, in which the CAA specifies that it intends to publish a separate information notice in the near future containing its analysis of the progress supervised undertakings have made in integrating sustainability elements into their ORSA reports.

According to CAA Information Notice 22/9, the main challenges for concerned undertakings will consist in analysing the impacts of climate change on their activity and conducting specific stress tests as part of their forward-looking ORSA assessments, which may require actuarial projection models (and therefore special technical expertise).

By and large, the applicable regulatory frameworks for ESG risk management are fairly recent creations, making it difficult to assess how 'successful' they are at this stage. Monitoring such success will be one of the key tasks of the competent supervisory authorities.

X OUTLOOK AND CONCLUSIONS

Beyond the broader future developments that the SFDR, the NFRD, the CSRD, the EU Taxonomy and the draft CSDDD have set in motion, there are several major hurdles that Luxembourg banking and insurance market actors will have to surmount sooner rather than later.

Banks will first have to comply with the detailed product governance requirements imposed under the GDR 2022, which became applicable on 22 November 2022.

Banks will further have to consider the rules included in ESMA's Final Report – Guidelines on certain aspects of the MiFID II suitability requirements published on 23 September 2022 (ESMA Suitability Guidelines).[33] The ESMA Suitability Guidelines integrate sustainability factors, risks and preferences into certain organisational requirements and operating conditions imposed under MiFID II. Once they have been published in all official EU languages, a two-month period will begin to run during which the CSSF will have to notify ESMA as to whether it already complies with them, or intends to.

Finally, major future developments could potentially derive from the outcome of a discussion paper on the role of environmental risks in the prudential framework[34] launched by ESMA in May 2022, in which it explores whether and how environmental risks are to be

31 In addition to the specific climate change requirements in the proposal for a directive amending the Solvency II Directive published by the Commission in September 2021 (COM/2021/581).

32 EIOPA-BoS.22/329, published on 2 August 2022.

33 ESMA35-43-3172.

34 EBA/DP/2022/02.

© 2022 Law Business Research Ltd

incorporated into the Pillar 1 prudential framework imposed under the CRR. In the paper, ESMA discusses targeted enhancements and clarifications within the existing framework that would be needed to address environmental risks, and the potential incorporation of forward-looking methodologies as an alternative to introducing specific risk-weighted adjustment factors.

On the insurance side, EIOPA states in its guidance on the integration of sustainability preferences in suitability assessments under the IDD published in July 2022 (EIOPA suitability guidance) that, unlike ESMA, it has paused its work on issuing formal guidelines in this area. For the time being, therefore, concerned insurance undertakings will have to make do with the practical recommendations contained in the EIOPA suitability guidance.

With respect to potential developments in the prudential framework, European institutions are currently discussing the proposal for a directive amending the Solvency II Directive published by the Commission in September 2021,[35] which mandates EIOPA to explore, by 2023, a specific prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives, and to regularly review the scope and calibration of the standard formula pertaining to natural disaster risks. The outcome of such a proposal may thus have major impacts on the insurance industry.

In this environment, even Luxembourg's non-financial industry players must continue to adapt their business models to more sound and transparent governance, if they are to maintain access to external financing, mitigate the mid and long-term risks of unsustainability and limit the transitional risks caused by the fluctuating EU legislative backdrop (especially the new rules set forth in the CSRD and the draft CSDDD, and the broad-based disruptions these will bring to unregulated enterprises).

To conclude, the key market challenges that Luxembourg financial actors are currently facing in relation to sustainability are those of implementing the existing requirements, whose compliance is currently being integrated into the regulators' supervisory processes and practices, and of remaining agile enough to adapt to the additional sustainability-related legislative changes that are expected to come into force in the future.

35 COM/2021/581.

© 2022 Law Business Research Ltd

Appendix 1

ABOUT THE AUTHORS

EMMANUELLE MOUSEL

Arendt

Emmanuelle Mousel is a partner in the insurance and reinsurance and banking and financial services practices of Arendt & Medernach. Emmanuelle advises banks, investment firms and other financial sector professionals, as well as payment service providers, insurance and reinsurance undertakings, insurance intermediaries and insurance sector professionals on regulatory, civil, commercial and insolvency law matters. Her areas of special expertise include licensing requirements, mergers and acquisitions, drafting and review of contractual and business documentation, as well as issues pertaining to anti-money laundering and anti-terrorism financing measures. She also advises on questions relating to pension funds. In addition, Emmanuelle assists institutional clients with criminal and regulatory investigations and litigation cases. She has received high praise for her work as an attorney in finance litigation. Emmanuelle has further developed proficient knowledge and expertise in environmental, social and governance matters and regularly advises clients on any requirements deriving therefrom, including disclosure, risk management, product governance as well as organisational and conduct of business rules. Emmanuelle has been a member of the Luxembourg Bar since 2012 and joined Arendt & Medernach in the same year.

PHILIPPE HARLES

Arendt

Philippe Harles is a counsel in the corporate law, mergers and acquisitions and finance and capital markets practices of Arendt & Medernach. He specialises in corporate projects, advising domestic and global companies, including financial and insurance companies, as well as private equity houses on the structuring of international transactions, private equity investments, corporate reorganisations, mergers and acquisitions and governance matters. He also specialises in capital markets transactions. He has been a member of the Luxembourg Bar since 2014 and joined Arendt & Medernach in the same year. Philippe is involved in the lawyers' community in Luxembourg and abroad. He was treasurer of the Luxembourg Young Bar Association (2014). He currently serves as an officer of the Young Lawyers' Committee of the IBA. He is a lecturer in general company law at the Luxembourg Chamber of Commerce and also a teaching assistant in general corporate law at the University of Luxembourg. He holds a master's degree in law (*licence en droit*) from the Université Libre de Bruxelles

© 2022 Law Business Research Ltd

(Belgium) and also a master of laws degree (LLM) in corporate and securities law from the London School of Economics (UK). Philippe participated in an exchange programme with Bocconi University.

ANTOINE PETER

Arendt

Antoine Peter is a manager at Arendt. Antoine started his career in 2014 in the banking industry. He held several positions at investment and depositary banks in both France and Luxembourg, acquiring significant knowledge and experience of capital markets and the financial sector as a whole. In 2017, Antoine joined Arendt. He gives regulatory and operational advice to clients in Luxembourg and abroad in the asset management and asset servicing businesses. He also assists clients by providing general compliance support and reviewing operating models related to governance, as well as to investment management, risk management frameworks and valuation models. Specialising in ESG and sustainable finance solutions, Antoine assists clients, among others, with the set-up and implementation of their ESG strategies, the preparation of sustainability-related disclosures and the integration of sustainability risks in internal processes. He is a speaker for the sustainable investment series, a three-module training programme by Arendt Institute. He also participates in the Association of the Luxembourg Fund Industry working groups on responsible investing (RI) and RI fund labels. Antoine holds a master's in corporate finance and financial markets from the University of Strasbourg, and is a graduate of Sciences Po Strasbourg.

ANTOINE PORTELANGE

Arendt

Antoine Portelange is an associate in the investment management practice of Arendt & Medernach where he advises domestic and international clients on the legal, regulatory and corporate aspects of the creation, development and restructuring of Luxembourg investment funds and management entities. He also collaborates with the EU and competition law department. Since October 2019, Antoine has been studying at the Luxembourg Bar in order to become a qualified lawyer in Luxembourg. Before joining Arendt definitively in 2019, he completed an internship in the EU and competition law department of the same firm and an internship in the legal department of the prudential control department of the National Bank of Belgium. Antoine studied law at the University of Liège (Belgium) where he obtained a master's degree in business law, focusing on national and international aspects, with great distinction.

DINO SERAFINI

Arendt

Dino Serafini is an associate in the corporate law, mergers and acquisitions practices of Arendt & Medernach. He advises companies on the structuring and implementation of domestic and international transactions, private equity investments, mergers and acquisitions as well as corporate governance matters, including corporate sustainability. Dino has been a member of the Rome (Italy) Bar since 2017 and the Luxembourg Bar (List IV) since 2021, when

© 2022 Law Business Research Ltd

he joined Arendt & Medernach. He holds a PhD in law from the University of Naples – 'Federico II', with a doctoral thesis on social enterprises and third sector entities and serves as co-chair of the sustainability board of the International Association of Young Lawyers.

CLARA BOURGI

Arendt

Clara Bourgi is a senior associate in the banking and financial services and insurance and reinsurance practices of Arendt & Medernach. She advises financial institutions such as banks, investment firms and other financial sector professionals on regulatory matters, including licensing requirements, organisational and governance requirements, drafting and review of contractual and business documentation and issues pertaining to anti-money laundering and counter-terrorist financing. She has developed an extensive knowledge of environmental, social and governance (ESG) requirements to assist credit institutions in implementing legal obligations that have been imposed upon them in that respect, ranging from transparency duties to risk management, conduct of business and product design requirements. She has contributed to a series of training sessions to help clients adapt their day-to-day activities to the ESG regulatory landscape. She specialises in assisting actors of the financial sector in the day-to-day management of complex and cross-border disputes, investigations and litigation. She has developed a special focus on mastering cutting-edge forensic tools to assist clients in navigating regulatory and criminal proceedings, as well as litigation cases. Her expertise further encompasses advising clients in responding to inquiries from authorities, including in the context of international letters rogatory.

LAURA ARCHANGE

Arendt

Laura Archange is a counsel in the finance and capital markets practice of Arendt & Medernach. She specialises in the fields of securitisation, financing and sustainable finance. Laura has significant experience structuring both public and private securitisation transactions and related issuance of debt instruments. She is well versed in credit enhancement mechanisms, and in both Luxembourg securitisation law and EU securitisation legislation. She is a member of the securitisation working groups of the Association of the Luxembourg Fund Industry and the Luxembourg Capital Markets Association. Laura also assists international clients with various types of financing, including real estate and asset finance, with a focus on fund financing. Before honing her financing specialisation, Laura spent three years as part of Arendt & Medernach's investment fund team, where she advised on the set-up, organisation and marketing of Luxembourg investment funds. She recently authored an article entitled *Subscription Facilities in Luxembourg: Overview of a Decade of Legal Practice*, which will soon be published by the Luxembourg Association of Banking Jurists. Laura is also part of the Arendt team that helps credit institutions implement European and Luxembourg environmental, social and governance rules and regulations.

© 2022 Law Business Research Ltd

ARENDT

41A, avenue J F Kennedy
2082 Luxembourg
Tel: +352 40 78 78 1
www.arendt.com

© 2022 Law Business Research Ltd

ISBN 978-1-80449-122-5

© 2022 Law Business Research Ltd