



24/856 – What changes to expect

Arendt is by your side

Since 2002, CSSF circular 02/77 has sought to provide guidance surrounding investor protection with respect to Net Asset Value (NAV) errors and breaches of investment rules. The new Circular 24/856 (the "Circular") seeks to provide further details in relation to measures to be taken in the event of NAV errors and investment limits non-compliance, but also brings new categories of breaches into its scope. Additional fund vehicles are also now covered under this new circular – extending beyond just UCITS and UCIs Part II.

The Circular reflects general legal and regulatory developments, administrative practice and evolutions in the fund industry, codifying these into a single circular which will be complemented by a CSSF FAQ.

All you need to know

Scope

The Circular now formally covers UCITS, UCI Part II, SIFs and SICARs. In principle, unregulated AIFs are not in scope but there is an exception to ELTIFs, MMFs, EuVECAs and EuSEFs where the CSSF is the competent authority as per the relevant regulations. The Circular also brings into its reach foreign IFMs managing Luxembourg regulated funds, that need to apply the guidelines related to the handling of errors and non-compliance.

Moreover, in addition to NAV calculation errors and non-compliance with respective applicable investment rules, the Circular also covers other errors (e.g. errors in the payment of costs / fees, incorrect application of swing pricing and of as well as cut-offs and allocation of investments to the incorrect sub-fund) that may occur at the level of a UCI. These cases are cited on a non-exhaustive basis, funds needing to evaluate, on a case-by-case basis, whether other errors trigger rectification and indemnification under the Circular.

Timeline | The Circular will be in force 1 January 2025 and will directly replace Circular 02/77.

UCITS, UCIs Part II, MMFs, ELTIFs as well as SIFs and SICARs open to subscriptions must be mindful that they need to update their offering documents to inform investors that their rights to indemnification may be impaired if they are not directly in the shareholder register. This warning must be included at the **next prospectus update**. If the prospectus is not updated prior to 1 January 2025, they must inform investors via the usual communication channels.

How will you be impacted

- Increased scrutiny on investment portfolio (allocation of investments to correct sub-fund must be ensured).
- The applied tolerance thresholds may need to be updated/amended, including to take advantage of greater flexibility (UCITS funds being excluded from this flexibility).
- Your fund prospectuses may potentially need to be amended (see also under "Timeline" above).
- Existing contractual arrangements with your service providers (e.g. distribution, administration, investment management and depositary agreements / operating memoranda may need to be updated.
- Your policies and procedures that deal with NAV errors and investment breaches will need to be reviewed and supplemented with the rules on new breaches that are covered by the Circular.
- Your existing governance frameworks need to be fully compliant and properly reflect the expected, enhanced role of funds' and management companies/AIFMs' (management companies and AIFMs collectively "IFMs") boards.
- The liability clauses across delegation arrangements chain should be reviewed and may require updating.
- NAV calculation error and investment restriction operational monitoring processes have also been revisited – are yours up to date?

Questions to ask yourself

- Which of our funds are in scope for these new requirements?
- Do we have the resources/systems/policies to service these changes and ensure compliance?
- What tolerance thresholds are we currently using? Will we meet the revised limits in the new circular? What is our methodology for calculating financial damage/compensation?
- Do we want to take advantage of some of the flexibility offered by the new circular on tolerance thresholds, indemnification of beneficial owners, remediation of passive or intraday breaches? Are we eligible to avail ourselves of the respective flexibilities?
- Do the prospectuses of our funds need to be updated to reflect the foregoing?
- What do our existing contractual arrangements look like? Do our operating memoranda/SLAs need to be changed?
- Do we need to update our governance framework?



Still to come

- An amended notification form.
- A new CSSF FAQ in relation to the Circular.
- Updated procedures for the separate report pursuant to Circular CSSF 21/790, to take into account the provisions of the Circular, where applicable.

Arendt service offering

Arendt is fully equipped to assist your organisation in becoming fully compliant with 24/856.

Gap Analysis & Resources

- Arendt can perform a gap analysis to frame where you stand and what you may need.
- Arendt can provide trainings/workshops to increase your teams capabilities.
- If you need more long-term support you can explore utilising a resource from Arendt to assist in the 24/856 transition.



Policies & Procedures

- Arendt can conduct a full review of your existing policies and procedures, including those impacted by NAV calculation errors and investment breaches.
- Once reviewed – Arendt can develop a roadmap to address any changes needed by the 1 January 2025 deadline.
- Arendt also possesses the capabilities to fully implement your new 24/856 strategy across your organization.



Governance

- Arendt can review your delegation model and contractual arrangements.
- Arendt can examine your governance frameworks to ensure the necessary pieces are in place, such as your monitoring systems, roles & responsibilities, and control frameworks.



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