

# Regulatory Update Q2 2020

## 1. Luxembourg

### 1.1 Covid-19: Extension of CSSF reporting deadlines applicable to regulated entities:

On 30 March 2020, the *Commission de Surveillance du Secteur Financier* (the **CSSF**) issued an updated version of its **CSSF FAQ COVID-19** on its website combining its communications and recommendations aiming to answer questions received from industry participants.

In particular, **the CSSF grants extension, suspension and leeway on certain regulatory deadlines.**

On 7 May 2020, the Luxembourg Parliament adopted a law extending the deadlines for publishing annual accounts and related reports mentioned in certain specific laws of the financial sector during the state of emergency declared in the context of the COVID-19 crisis (the "**Law**").

The Law grants a 3 months deadline extension for certain regulated entities which are not, or are only partially, subject to the Company Law or the RCS Law with respect to those matters, or whose sector-specific law provides for more stringent requirements.

Below the details of the extended deadlines by three months:

- the publication of annual accounts and related reports (i.e. the management report and the auditor's report) for credit institutions and insurance and reinsurance companies;
- the publication of the annual and half-yearly report for securitisation funds;
- the disclosure of the annual report and statutory auditor's report to investors for SICARs other than those managed by an authorised AIFM;
- the preparation of annual accounts and related reports (management report and auditor's report) for SEPCAVs and ASSEPs;
- the period to make the annual report available to investors for SIFs other than those managed by an authorised AIFM;
- the publication of the half-yearly report for Part II UCIs.

The CSSF provides that the above extensions applicable to all regulated entities are subject to the following conditions:

- Where the submission can be performed within the ordinary deadlines without compromising the quality of the reporting and in line with the health rules to contain the spread of COVID-19, a timely submission is encouraged.
- These justified delays may be accepted provided the CSSF has been informed ahead of reporting deadlines.
- Communication and reasoned request to the CSSF must only be made by email to the usual contact person at the CSSF and exclusively to the address [opc@cssf.lu](mailto:opc@cssf.lu) in relation to investment funds or their investment fund managers, as applicable

Following the Law of 12 May 2020 on the extension of certain deadlines provided for in the sectorial laws of the financial sector during the state of crisis (the “**Financial Sector Extension Law**”), the Luxembourg legislator has now enacted a distinct law applicable to Luxembourg companies generally and which extends the deadlines for convening annual general meetings and for filing and disclosing annual accounts, consolidated accounts as well as related reports during the state of emergency (the “**General Extension Law**”).

The Council of the European Union has also adopted on an urgency basis a regulation providing for an extension of the period during which the 2020 general meeting of European companies (SEs) and European Cooperative Societies (SCEs) must be held.

## 1.2 Whistleblowing

On 5<sup>th</sup> May 2020 the CSSF published it’s Whistleblowing – FAQ

<https://www.cssf.lu/en/Document/whistleblowing-questions-answers/>



whistleblowing\_EN.pdf

## 2. Europe

### 2.1 DAC6

“DAC6” is the name given to EU Directive 2018/822, which is the sixth Directive to amend the Directive on Administrative Cooperation in the field of taxation (EU Directive 2011/16/EU). In summary, DAC6 requires intermediaries and, in some cases, taxpayers to report information relating to a wide range of cross-border arrangements to EU tax authorities.

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Each tax authority will then periodically share the information they receive with other EU tax authorities.

The commencement date for the reporting and information sharing requirements was originally 1 July 2020, with the first reports due by the end of August.

However, the amended proposal gives each Member State the option to defer the reporting dates by six months as follows:—change of date from 31 August 2020 to 28 February 2021 for the reporting of “historical” cross-border arrangements (i.e., reportable arrangements dating between 25 June 2018 to 30 June 2020) where a reportable cross-border arrangement is made available for implementation, or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020, the first deadline for the filing of reports is within the period of 30 days beginning on 1 January 2021—change of date for the first exchange of information on reportable cross-border arrangements between Member State tax authorities from 31 October 2020 to 30 April 2021.

## 2.2 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

The proposal forms an integral part of the EU’s efforts, under its Capital Market Union project, to connect finance with needs of the economy and the EU’s sustainable development agenda.

This proposal should facilitate investments in sustainable projects and assets across the EU.

The proposal is part of a package put forward by the European Commission on 24 May 2018 and announced in its Action Plan on Sustainable Finance in March 2018.

The aim is to include environmental, social and governance (ESG) considerations in the decision-making process of investors and asset managers.

The Commission established in December 2016 a High-Level Expert Group (HLEG) to develop a comprehensive EU strategy on sustainable finance. The expert group published its final report on 31 January 2018. In the report, the expert group issued eight key recommendations, which it believes are the essential building blocks of a sustainable European financial system. The advice of the expert group was to start, as a first step, with establishing when an economic activity can be considered as environmentally sustainable. This proposal address this priority indicated by the expert group.

The proposal sets out uniform criteria for determining whether an economic activity is environmentally sustainable. It further sets out a process involving a multi-stakeholder platform to establish a unified EU classification system (EU taxonomy) based on a set of specific criteria, in order to determine which economic activities are considered sustainable.

The aim is a gradual development of an EU taxonomy for climate change and environmentally and socially sustainable activities. According to the Commission, such EU taxonomy will be embedded in future EU law and provide the basis for using that classification system in different areas (e.g. standards, labels, sustainability benchmarks).

Currently Member States differ in their interpretations as to what counts as sustainable investment.

Some Member States have in place labelling schemes or market led initiatives to determine what qualifies as green for investment purposes, others do not have any rule in place but are likely to legislate in this field based on their own definition of sustainable investments.

National labels based on different criteria as to which economic activities qualify as environmentally sustainable make it difficult for investors to compare green investment, thus discouraging them from investing cross borders. Existing divergences are also a burden on economic operators having to comply with different standards in different Member States.

According to the Commission, more and more Member States are likely to explore the option of introducing labels for sustainable financial products, using their own bespoke taxonomies.

This would exacerbate national barriers to the operation of capital markets for raising funds for sustainable projects.

Diversifying classification systems would increase market fragmentation and raise competition problems.

According to the Commission, the criteria for determining what constitutes a sustainable activity for investment purposes should be standardised at EU level.

This proposal launches a gradual process for the establishment of an EU classification system, involving a broad range of stakeholders with the relevant knowledge and expertise and taking into account that it would be an evolving tool as the sustainability subject is rapidly evolving itself.

In the European Parliament, the dossier was assigned initially to the ECON Committee. Rapporteurs and Shadow rapporteurs were appointed. A Committee draft report has been produced.

On 13 November 2018, the referral to joint committee (art.55 Rules of procedures EP) was announced in Parliament. ECON and ENVI Committees have been assigned jointly the dossier.

On 11 March 2019, the joint committee adopted its report on the proposal, welcoming the legislative proposal, while calling for a number of changes.

The joint report has been voted during the Parliament's March II plenary session. European Parliament adopted its position.

On 25 September 2019, the Council agreed a common position on the dossier.

After trilogues, European Parliament and Council reached an agreement on 18 December 2019. The new rules will be formally adopted by the Council and the Parliament following the legal and linguistic revision of the text.

On 15 April 2020, the Council has adopted the regulation. The regulation now needs to be adopted by the European Parliament at second reading before it can be published in the Official Journal and enter into force.

On 23 April 2020, the European Commission published a Communication to the European Parliament stating that Council's position at first reading correctly reflected the outcome of the political agreement that was reached and that the Commission supports this agreement.

On 28 May 2020, the Committees on Economic and Monetary Affairs and on Environment, Public Health and Food Safety will vote in joint committee on the recommendation for second reading for the proposal on the EU Taxonomy. Earlier, the Council's position at first reading was officially announced in Plenary.

On 18 June 2020, the European Parliament adopted the regulation in Plenary.