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Luxembourg

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Approaches and developments

Luxembourg has always considered innovation as an essential driver for the development of financial services and the financial sector in general. In 2014, the Luxembourg Government launched its Digital Luxembourg initiative of which financial technology ("Fintech") is a key component, the aim being to bring finance to the 21st century. The Luxembourg mindset which consists of embracing and fostering change has contributed to the creation of a very successful and dynamic Fintech sector in Luxembourg. A growing number of companies from around the world are opening offices in Luxembourg to develop and market their product range in Europe and worldwide.

Fintech has been around for a long time in Luxembourg, even before the concept became known as such. The fund industry has indeed been using Fintech solutions for many years (Multifonds is one of the historic examples). Luxembourg has generally been very active in digital innovation and was amongst the first countries in Europe to implement the European payment services directive[1] in 2009. This "first mover" advantage in particular enabled the country to develop a strong track record in payments services, and this led in turn to the creation of an ecosystem of highly innovative products.

Luxembourg's financial centre provides an attractive environment for Fintech companies. The presence of 126 banks,[2] the world's leading fund industry, a well-developed insurance and reinsurance sector and financial infrastructures like central securities depositories provide for a large potential client base. Also, mainly due to Luxembourg's attractive and efficient research ecosystem, the 2020 edition of the innovation scoreboard, published by the European commission, ranked Luxembourg as one of the top five "innovation leaders",[3] and in the 2021 edition of the innovation scoreboard Luxembourg was again qualified as being a strong innovator with performance above the EU average.[4] Excellence in the field of IT in particular gives Luxembourg a competitive advantage over other countries thanks to the presence of the largest number of Tier IV data centres in the world, guaranteeing data availability and security at the highest standards. Furthermore, Luxembourg is a founding member of EuroHPC ("European High-Performance Computing") and was selected in June 2019 as one of the eight sites that will host supercomputers.[5] Thus, Luxembourg acquired a supercomputer called Meluxina, which is hosted, operated and marketed at the LuxConnect data centre and powered exclusively by green energy produced in part by Kiowatt, a cogeneration plant fuelled by scrap wood.[6]

Luxembourg is also active in the field of quantum computing. For instance, the Luxembourg Government decided to use part of the resilience funds it received in the context of the EU's recovery and resilience facility to subsidise SES's quantum communication infrastructure.

By establishing a highly secure communication infrastructure based on quantum technology, Luxembourg aims to facilitate the exchange of confidential information within the public and private sectors.[7] The country is also intensely working on blockchain technology. The creation of the Infrachain initiative, which combines the transparency of public chains with the flexibility of private chains, is one of the flagship examples in this context. It aims at enabling companies to customise blockchains for specific needs. Another example is the launch of the Luxembourg Blockchain & DLT Association ("Letzblock"), which aims to be Luxembourg's community hub for blockchain initiatives. Through its working groups and educational programmes, it encourages, supports and shares the adoption and the development of blockchain and distributed ledger technology ecosystems, but furthermore, also creates an entry point to these technologies for stakeholders across all sectors.[8] In the same vein, the Luxembourg University, through its Center for Security Reliability and Trust, is at the forefront of the research activities based on or related to distributed ledger technologies. In 2019, it has, for instance, announced a partnership with US-based Ripple.[9] Those three actors, together with the Luxembourg Institute of Science and Technology ("LIST") and the Luxembourg House of Financial Technology ("LHoFT"), launched a cross-industry collaboration with the mission to set up a landmark EU hub for blockchain education, research and industry projects, as well as develop industry capabilities to aid the deployment of the latest blockchain and distributed ledger technologies.[10] Most importantly, the country has adopted two laws setting out in "black and white", (i) that securities can be legally held and transferred through distributed ledger technologies,[11] and (ii) that blockchain and other DLT can be used to record the issuance of dematerialised securities,[12] thus adding one more layer to its long tradition of "innovation through law", of which legal certainty is one of the essential pillars. Luxembourg is not only promoting digital technology on a national basis but also fully commits to engage with digital technology at the European level and has signed the "Declaration of European Blockchain Partnership".[13]

Fintech offering in Luxembourg

Luxembourg has a diversified Fintech ecosystem composed of Fintech firms, finance-related software vendors as well as IT solution providers. More than 40 of them are, for instance, active in the payments sector, offering innovative digitised payment solutions to consumers as well as to merchants.[14]

To name just a few examples, PayPal (Europe) S.à r.l. et Cie, S.C.A. was granted a banking licence in Luxembourg in 2007. Amazon Payments Europe S.C.A. has an e-money licence in the Grand-Duchy since 2010 and in 2016, Rakuten Europe Bank S.A., after having initially obtained a payment institution licence, obtained a banking licence. PingPong Europe S.A. was one of the first Chinese Fintechs to obtain a European payment licence in Luxembourg back in 2017, and received an EMI licence in 2020. Bitstamp was the first crypto-exchange to become licensed as a payment institution in Luxembourg in 2016, the Luxembourg regulator thus obliging for the first time in Europe crypto-clients to abide by AML/CTF and KYC requirements (Europe has followed the same path in the meantime). eBay S.à.r.l. is also operating its payment services in Europe under a payment institution licence granted by the Luxembourg Ministry of Finance in 2014, and Payconiq International S.A. has acquired Digicash – a booming Luxembourg mobile payments company – in order to establish a Benelux-wide presence of its mobile payments initiative. Alipay (Europe) Limited S.A. obtained an e-money licence in 2018. Airbnb Payments Luxembourg S.A. obtained its payment institution licence in autumn of 2019 and the Danish fintech Banking Circle S.A. also obtained its banking licence from the Minister of Finance in 2019. In 2020, both the London-based fintech PPRO Payment Services S.A. and Monex Europe S.A. became licensed as payment institutions in Luxembourg.

A large number of Fintech companies in Luxembourg are active in the fund – and the investment industry at large – as well as in the banking and insurance sectors. Fintech companies in Luxembourg are also omnipresent in the fields of big data, artificial intelligence ("AI"), cybersecurity, authentication (KYC), cryptocurrencies and blockchain.[15]

Over the last seven years, local and international banks, professionals of the financial sector and insurance companies have deployed impressive energy and expertise in Fintech, regulatory technology ("Regtech") and insurance technology ("Insurtech"). Across the different industries, we are seeing more and more M&A activity and collaboration at large between Fintechs and traditional actors, with the result that these traditional actors rapidly achieve innovative new offerings.

In line with the concept of "innovation through law", Luxembourg in the first place always aims to apply existing laws and regulations to new models. A striking example is the application of the payment legislation to crypto-exchanges (whereas, in contrast, other countries decided not to regulate this type of activity, leaving the actors established in their territory in a grey area, to say the least). Only where existing legislation is not clear enough, or where existing legislation is totally silent about a certain type of activity, does Luxembourg enact new legislation. The most striking examples here are the Law of 1 March 2019[16] on transfers of securities via distributed ledger technologies, and the Law of 22 January 2021 amending the Law of 5 April 1993 on the financial sector and the Law of 6 April 2013 on dematerialised securities.[17]

Regulatory and insurance technology

As part of the booming Fintech sector, an impressive number of Regtech providers have grown out of Luxembourg over the last years. Among the most well-known actors, Governance.com, Seqvoia, KYC TECH, FINOLOGEE or LUXHUB, each in their own field, for instance, assist financial institutions to face ever-increasing regulatory requirements. Regtech companies in Luxembourg mainly provide services based on automated processes in the areas of AML/CTF and KYC, reporting and risk management, thus enabling better and more efficient risk identification and regulatory compliance.

The adoption of Insurtech solutions is going smoothly in Luxembourg. Tools are becoming increasingly sophisticated and innovative. Claims handling and actuarial calculations are just two examples of areas of predilection for their implementation.

Looking at Insurtech from a wide angle, it can be observed that Luxembourg's insurers are at the forefront of innovation when it comes to driverless or so-called autonomous cars. In 2018, the Association of Luxembourg Insurance Companies, together with the University of Luxembourg and Schiltz & Schiltz S.A., organised a mock trial about a fictitious car accident that "took place" in 2030, and in which a driverless car hit a pedestrian. The case was pleaded in front of real judges in the Court house of Luxembourg City, and the judges handed down a real fictitious judgment. In this judgment, the Court held that the ancient theory distinguishing between the structural custody and behavioural custody of an object (here: the vehicle) was as a matter of principle relevant for assessing liability claims in the context of driverless cars. It also held that for the car maker, the law on civil liability for defective products needed to be analysed. In the end (and in short), the driver was held liable because it was established that he did not follow the voice instructions of the car.

Regulatory bodies

Fintech entities established in Luxembourg and that are subject to regulatory supervision (many are not) are supervised by the Luxembourg supervisory authorities. Depending on their licence, they may fall under the supervision of the *Commission de Surveillance du Secteur Financier* ("CSSF") or the *Commissariat aux assurances* ("CAA"). The Central Bank of Luxembourg ("BCL") has competences, amongst others, with regard to the security of payment systems and payment instruments and the *Commission Nationale pour la Protection des Données* ("CNPD") is the authority in charge of data protection.

The CSSF is a public institution which supervises the professionals and products of the Luxembourg financial sector.

The CSSF performs its duties of prudential supervision and market supervision for the purposes of ensuring the safety and soundness of the financial sector, solely in the public interest. Within the limits of its remit, it ensures that the authorised entities and the issuers are complying with the regulations applicable to them, including those aiming to ensure the protection of the financial consumers and the prevention of the use of the financial sector for the purposes of money laundering or terrorist financing. The CSSF represents Luxembourg in the area of European and international supervision.[18]

In pursuing its objectives, the CSSF applies a prudential approach in line with the international standards, in accordance with the principle of proportionality. This approach is implemented in a professional manner, thereby ensuring an independent, forward-looking and risk-based supervision.

The CSSF is transparent and fosters effective communication with the stakeholders of the financial sector while fully complying with the professional secrecy requirements. It considers integrity and accountability to be of utmost importance and delivers on its commitment and adapts to reach its objectives. The CSSF is committed to good governance and to performing its tasks with efficiency, in a spirit of internal cooperation as well as at national, European and international level.[19]

The Central Bank of Luxembourg has within its tasks to ensure the efficiency and safety of payment systems as well as the safety of payment instruments. The means of coordination and cooperation employed for the performance of these tasks are subject to agreements between the BCL and the CSSF, complying with the legal competences of the parties.[20] For the purpose of performing its tasks related to the safety of payment instruments, the BCL may ask issuers of payment instruments to provide any information relating to those payment instruments which is necessary in order to assess their safety. Additionally, the BCL is authorised to undertake on-site visits in order to collect the information and coordinates with the CSSF to this end.[21]

The CAA is the competent supervisory authority for the insurance sector in Luxembourg, which includes the insurance companies, reinsurance companies, certain pension funds, the professionals of the insurance sector ("PSA") and insurance and reinsurance intermediaries (agents and brokers).[22]

The main objective assigned by the legislator to the CAA is to ensure the protection of the insurance takers and the beneficiaries. This objective includes the following tasks:

- examination of the applications for approval of natural and legal persons under the supervision of the CAA;
- prudential supervision of the same natural and legal persons and supervision of the market in insurance products;
- monitoring compliance with professional obligations in the fight against money laundering and terrorist financing in the insurance sector;
- attending international and European meetings in order to develop common standards; and

- preparation of draft laws and prudential regulations relating to the insurance sector and the coordination of the Government's efforts to ensure the orderly expansion of insurance sector activities in the Grand Duchy of Luxembourg as well as the out-of-court settlement of disputes.[23]

The CNPD is an independent public institution with legal personality. It is financially and administratively autonomous.

It verifies the legality of the processing of personal data and ensures the respect of personal freedoms and fundamental rights with regard to data protection and privacy.[24]

Key regulations and regulatory approaches

Key regulations

In line with the principle consisting of "applying existing laws and regulations to new models", the Luxembourg legislator (Parliament) has not so far enacted numerous Fintech laws. There are indeed only two examples of specific Fintech laws that have been enacted by Parliament up to now, i.e. the above mentioned Law of 1 March 2019 amending the Law of 1 August 2001 concerning the circulation of securities, which aims to promote the use of distributed ledger technologies for the circulation of securities by setting out in "black and white" terms that securities can be legally transferred through distributed ledger technologies, including blockchain and the also above mentioned Law of 22 January 2021 modifying the Law of 5 April 1993 on the financial sector and the Law of 6 April 2013 on dematerialised securities, which expressly recognises the possibility to issue dematerialised securities through distributed ledger technology such as blockchains. Whilst it can, with some certainty, be argued that securities could be held on the blockchain even before the enactment of the said laws, both laws now provide the financial sector with crystal-clear legal certainty, thus enabling the various actors to fully take advantage of the opportunities offered by distributed ledger technologies in the field of securities.

For the rest, and in addition to these Fintech laws, Fintech actors and activities fall under the scope of existing laws and regulations, with the CSSF issuing specific secondary legislation through circulars or general guidance in a number of areas.

Whilst historically, Fintech activities developed first in the payments industry, it nowadays impacts the entire financial industry, from banks to start-ups as well as investment services and the fund industry. Clearing and settlement infrastructures as well as the Luxembourg Stock Exchange are equally running Fintech projects today. For example, HQLA$^{\chi}$ is a Luxembourg-based innovative Fintech firm whose vision is to accelerate the financial ecosystem's transition towards frictionless ownership transfers of assets, and whose core clients are financial institutions active in securities lending and collateral management.

Fintech companies, whilst building the services they offer on innovative technologies, often provide financial services and in that case they do fall – just like traditional companies providing financial services – into the scope of the CSSF's supervisory competences (and whether or not a certain law or regulation then applies to such services depends on the Fintech product or service offering). For example, Fintech payment products – such as the use of digital payment methods which are intended to be used as a means of payment for acquiring goods or services or as a means of money or value transfer – will be subject to the modified Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems ("Law of 10 November 2009 on payment services").

An example of regulatory guidance issued by the CSSF is the area of robo-advisory. According to the CSSF, investment services based on robo-advisory tools do fall under the remit of the Law of 5 April 1993 on the financial sector, as amended ("Law of 5 April 1993 on the financial sector"). In a position paper on robo-advice published on 27 March 2018,[25] the CSSF outlined that the type of licensing required by a robo-advisor to perform its activities depends on the operating model chosen, including the services provided, the contractual arrangements and the structure of the platform. Therefore, robo-advisors need to register as investment advisers[26] – just like traditional, non-automated financial advisors – when they merely provide advisory services without intervening in the implementation of the advice they have provided. The CSSF paper also considers that whenever robo-advisors use robo-technology to manage portfolios as per clients' mandates on a discretionary client-by-client basis, they need to register as private portfolio managers.[27] Furthermore, the CSSF considers that robo-advisors need to register as brokers in financial instruments[28] when their servicing consists of that of an intermediary by either encouraging parties to be brought together with a view to conclude a transaction, or by passing on their clients' purchase or sale orders without holding the investments of the latter. Finally, in cases where a robo-advisor executes orders on behalf of clients in relation to one or more financial instruments, the robo-advisor needs to apply for an authorisation as a commission agent.[29] The paper specifies that in any of the above-mentioned cases, robo-advisors have to comply with the MiFID/MiFIR framework.

For tokens – which continue to be a hot topic in Luxembourg – the general position in Luxembourg is that asset tokens, which represent a debt or equity claim on the issuer, entitling, for example, the holder of a share in future company earnings or future capital flows (which could, in terms of their economic function, be compared to equities, bonds or derivatives), or tokens which enable physical assets to be traded on the blockchain, would fall under the remit of different regulatory frameworks, depending on the exact qualification of the token and on the financial service provided. As a consequence, in particular, the following laws may apply:[30]

- Law of 10 July 2005 on prospectuses for securities, as amended;
- Law of 5 April 1993 on the financial sector, as amended;
- Law of 30 May 2018 on markets in financial instruments, as amended;
- Law of 17 December 2010 relating to undertakings for collective investment, as amended; and
- Law of 12 July 2013 on alternative investment fund managers, as amended.[31]

This is also confirmed by the European Commission's draft proposal for a directive amending in particular MiFID II which was adopted on 24 September 2020, and which proposes to explicitly include in the definition of financial instruments, financial instruments issued by means of distributed ledger technology.[32]

Regtech companies providing services and solutions in order to assist financial actors to comply with regulatory requirements can also be subject to regulatory supervision. Depending on their setup and the services they provide, a licence as a support professional of the financial sector ("support PFS") as per the Law of 5 April 1993 on the financial sector may be required for a number of these companies, whereas for others, i.e. those merely providing technological solutions (software in the wider sense), no specific licence would be required. The support PFS licence is a Luxembourg-specific licence aiming at including in the supervision of the financial sector a certain number of activities that are connected to or closely interlinked with a financial activity. Licensing as a client communication agent,[33] administrative agent of the financial sector,[34] primary IT system operator,[35] secondary IT systems and communication networks operators[36] may therefore have to be considered by Regtech firms.

In this context, two Regtech entities have been granted a licence in the first quarter of 2019: FINOLOGEE, which has been authorised as a client communication agent and a secondary IT systems and communication networks operator; and LUXHUB, which has been granted a licence as a secondary IT systems and communication networks operator.

In the insurance sector, no new Insurtech-specific regulations have been issued by the CAA so far.

It has to be noted that every regulated Fintech or Insurtech product or service also falls under the remit of the Law of 12 November 2004 on the fight against money laundering and terrorist financing.

Finally, it goes without saying that Luxembourg Fintech/Regtech/Insurtech companies have to comply with the European Union General Data Protection Regulation ("GDPR"), which imposes rigorous requirements on the controlling and processing of personal data. In this context, it must, *inter alia*, be ensured that only relevant and accurate personal data are processed and that the reinforced and partially new rights of data subjects are being complied with.

<u>Regulatory approaches</u>

The CSSF is on record for establishing a constructive and open dialogue with the Fintech industry by making itself available for all entities wishing to present an innovative project. In this context, the CSSF created the "Innovation Hub", which is a division dedicated to Financial Innovation and which constitutes the single point of contact of the CSSF for any person seeking to present an innovative solution, initiate an open dialogue or raise any question related to Financial Innovation. Thanks to this Innovation Hub, the CSSF can provide entities with advice and guidelines on the applicable regulatory framework in order to ensure that the project is developed in compliance with the regulations in force and the CSSF is in permanent contact with market players, which enables the CSSF to gain the best possible understanding of FinTech developments and expectations and to address the forthcoming challenges.[37]

Regarding cloud computing, the Luxembourg financial supervisor has issued a pro-cloud position on 17 May 2017 by publishing Circular CSSF 17/654, which is supported by technical guidelines related to the use of some specific cloud products. It has also published on its website frequently asked questions on cloud computing.[38] Circular CSSF 19/717 was published on 27 March 2019, updating Circular CSSF 17/654, with the objective to apply more proportionality to the treatment of the notification process for non-material outsourcing to cloud computing infrastructures, as the initial circular revealed itself to be too burdensome in certain instances both for supervised entities and for the CSSF.[39]

On 8 March 2018, the CSSF also published updated frequently asked questions on AML/CTF and IT requirements for specific customer on-boarding/KYC methods for identification/verification through video chat.[40]

With regard to robo-advice and as detailed above, the CSSF published on 27 March 2018 a position paper outlining the licence requirements for robo-advisors.

In the context of AI, the CSSF has carried out a research study in order to better understand AI. The result of the research, which has been made public, aims at spreading basic knowledge about AI, describing the different types of AI together with practical use cases for and in the financial sector. Furthermore, the study covers the analysis of the main risks associated with AI technology and provides some key recommendations to take into account when implementing AI into a business process.[41]

Following the publication of the European Regulation (EU) 2020/1503 of 7 October 2020 on European Crowdfunding Service Providers for business,[42] the CSSF clarified that as of 10 November 2021 (date on which the regulation will be directly applicable in all Member States), the provision of crowdfunding services from Luxembourg will be subject to the obtention of a licence as European Crowdfunding Service Providers ("ECSP") as well as the prudential supervision of the CSSF. Should an ECSP intend to provide payment services in addition to the crowdfunding services, a separate licence under the Law of 10 November 2009 on payment services may be required.[43]

As for Insurtech, even though – as indicated above – no new specific Insurtech regulations have been issued so far, it is by no means anticipated that the CAA will want to put barriers in place for Insurtech solutions – in fact, the opposite is true.

<u>Influence of supra-national regulatory bodies</u>

The CSSF does closely cooperate with supra-national regulatory bodies such as the European Banking Authority ("EBA"), the European Securities and Markets Supervisor ("ESMA"), the International Organization of Securities Commissions ("IOSCO"), the Single Supervisory Mechanism ("SSM"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the Committee of European Auditing Oversight Bodies ("CEAOB"), the Basel Committee on Banking Supervision ("BCBS") and the International Monetary Fund ("IMF"). The CSSF is also closely involved with several international working groups dealing with AML/CFT issues, notably the Financial Action Task Force ("FATF"), the Joint Committee's Sub-Committee on Anti-Money Laundering ("AMLC") under the Joint Committee of the European Supervisory Authorities, the Expert Group on Money Laundering and Terrorist Financing ("EGMLTF") of the European Commission and the Anti-Money Laundering Expert Group ("AMLEG") of the BCBS.[44]

The CAA is a member of the EIOPA, the International Association of Insurance Supervisors ("IAIS"). The CAA is involved in the Expert Group on Banking, Payments and Insurance ("EGBPI") as well as in the European Commission's working groups, the FATF and the OECD.

The BCL is an integral part of the European System of Central Banks ("ESCB").

The CNPD is a member of the European Data Protection Board ("EDPB"), the International Working Group on Data Protection in Telecommunications, the VIS Supervision Coordination Group ("VIS SCG"), the Europol Joint Supervisory Authority ("JSA"), the SIS II Supervision Coordination Group ("SIS II SCG") and the Joint Supervisory Authority ("JSA") for customs. In addition, the CNPD represents the Grand Duchy of Luxembourg in various Council of Europe committees.

<u>Fintech platform and working groups</u>

One of the main Fintech regulatory working groups today is the Tech law group which is working under the auspices of the *Haut Comité de la Place Financière* ("HCPF").

In 2008, the Luxembourg Financial Industry Federation ("PROFIL") and the Luxembourg Government founded Luxembourg for Finance ("LFF"), an agency for the development of the Financial Centre. The objective of this public-private partnership is to develop Luxembourg's financial services industry and identify new business opportunities. LFF, among others, monitors global trends in finance and provides informational material on products and services available in Luxembourg. It does so in particular in the Fintech area.

Luxembourg has furthermore created in 2016 a dedicated national Fintech platform, the LHoFT.[45] The LHoFT is a platform in charge of building and developing the growing national Fintech ecosystem. It should enable financial institutions, Fintech innovators, research, academia and public authorities to interact and develop solutions and products in order to cover specific industry needs.[46] The LHoFT also interacts with other Fintech hubs around the world encouraging domestic and international collaborations, working groups and initiatives.[47]

The Luxembourg Bankers' Association ("ABBL") as well as the Association of the Luxembourg Fund Industry ("ALFI") have also set up dedicated working groups in order to allow their members to engage with the Fintech community.[48]

The ABBL's Digital Banking and Fintech Innovation Cluster ("DBFI") facilitates cooperation between banks and Fintech firms in Luxembourg and strives to support its members in embracing disruptive technologies to satisfy expectations of more and more demanding customers.[49]

The University of Luxembourg is also heavily involved in many Fintech initiatives.[50]

It should also be noted, that at an international level the CSSF is an active member of international working groups, such as the European Forum for Innovation Facilitators ("EFIF")[51] and Global Financial Innovation Network ("GFIN").[52]

Restrictions

There are as such in Luxembourg no patent restrictions to the development of Fintech, Regtech or Insurtech activities. It accordingly will suffice to outline below a few aspects to be taken into account or to be borne in mind for Fintech activities:

No one shall be authorised to carry out a financial activity without a licence in Luxembourg or out of Luxembourg. This does not mean that every Fintech needs a licence, but every Fintech carrying out a regulated activity – in general, providing financial services – does. A Fintech company which would like to establish itself in Luxembourg shall accordingly define its business purpose and its activity in a sufficiently concrete and precise manner, so as to allow the CSSF to determine whether a licence and, if so, which licence is required; mere technology providers will, for instance, not be required to apply for and obtain a licence.

On virtual currencies, the CSSF has stated that: "*there is currently no legal framework in Luxembourg or at European level that specifically applies to virtual currencies. However, the CSSF reminds that it should be borne in mind that any provision of financial sector services by a natural or legal person requires an authorisation by the Minister of Finance. The CSSF furthermore clarifies that legal qualification of virtual currencies and services provided relating to these virtual currencies is complex, notably given the technical specificities inherent in the different types of virtual currencies. Therefore, the CSSF invites the persons that envisage exercising an activity associated with virtual currencies (such as the issuing of means of payment in the form of virtual or other currencies, the offer of payment services using virtual currencies or other, or the provision of virtual currency exchange services) to submit their draft documentation to the CSSF beforehand. The CSSF will then determine whether or not the activity is a regulated activity.*"[53] This statement is also to be viewed against the background of the payment licence issued to Bitstamp as a crypto-exchange.

On initial coin offerings ("ICO") and tokens, the CSSF has informed service providers and initiators of ICOs that: "*– despite the lack of specific regulations that applies to ICOs – the activities related thereto or implied through the creation of tokens as for example the collection and raising of funds may – depending on their characteristics – be subject to certain legal provisions in Luxembourg and thus to certain supervisory requirements. The CSSF therefore* *explains that it will not hesitate to assess such fundraising activities by extending its analysis to the objectives pursued in order to assess whether it could be a scheme to circumvent or avoid financial sector regulations, notably the provisions of the amended Law of 10 July 2005 on prospectuses for securities and the Law of 5 April 1993 on the financial sector. In this context, the CSSF considers that for any fundraising, the initiators of such ICOs are required to establish anti-money laundering and terrorist financing procedures.*"[54]

The common denominator here is that while being open to innovation, the CSSF is likely to regulate Fintech activities in a large number of instances and will not tolerate financial activities being undertaken out of Luxembourg without a licence.

It has to be mentioned here that a recent amendment of the AML/CTF Law has brought Virtual Assets Service Providers ("VASPs") that do not meet the conditions to be qualified as electronic money within the meaning of the Law on payment services or the conditions to be qualified as financial instruments under the Law of 5 April 1993 on the financial sector, as amended into the scope of the AML/CTF Law.[55] The said law now provides legal definitions related to VASPs, virtual assets, virtual currencies, safekeeping or administration service providers and custodian wallet providers and designates the CSSF as the competent supervisory authority for virtual assets and VASPs.

According to the AML/CTF Law, VASPs that carry on activities other than the provision of payment services must be registered within the register of VASPs established by the CSSF. This new requirement applies to VASPs which are either established in Luxembourg or provide their services in Luxembourg.

In 2021, the first VASPs were registered within a primary register of VASPs established by the CSSF. The first VASP to be registered in Luxembourg was Bitflyer, the latter was shortly followed by Swissquote Bank Europe S.A.

The CSSF specifies that the aforementioned registration requirement is without prejudice to any other licence/registration or other status required either in Luxembourg or by another European or third country for any other activities performed by the applicant[56] and that the CSSF's role in this context is limited to registration, supervision and enforcement for AML/CFT purposes only.[57]

In the insurance sector, legal issues, if any, generally do not arise under insurance sector regulations themselves, but more likely in a data protection environment. It will suffice to mention two examples here:

Processing health data can be a challenge against the background of the GDPR, which does not provide for a carve out or specific rules regarding the insurance sector, in particular life insurance.

New car insurance models include the tracking of the behaviour of the driver of a car through a dedicated app. Data protection can be a challenge here as well, in particular when it comes to the processing of personal data, the amalgamation of which may for instance show that a criminal offence has been committed (no matter whether such offence is a major one or not). There is at least one known example where this type of application has been debated in Luxembourg with the data protection authority.

Cross-border business

Luxembourg is the European centre from where Fintech companies can – in a regulated way – provide their services and develop their activities all over the European Union and in third countries. Since the European regulatory framework applies to most of the authorised

Fintech activities, the providers that have obtained a licence can easily passport their services throughout the European Union.

Fintech has – more than ever – a very strong international and global dimension[58] which requires a common and harmonised response from the regulators of the financial sector and the insurance sector. In this context and as previously mentioned, the CSSF, the CAA, the BCL and the CNPD actively participate in all major supra-national regulatory bodies and working groups, thus continuing, together with others, to be at the forefront of innovation and contributing to shape the international regulatory landscape of Fintech, Regtech and Insurtech.

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Endnotes

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14. https://www.Fintechmap.lu.
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16. See endnote 11.
17. See endnote 12.
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19. http://www.cssf.lu/en/about-the-cssf/mission-and-competences.
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26. Article 24 of the Law of 5 April 1993 on the financial sector.
27. Article 24-3 of the Law of 5 April 1993 on the financial sector.
28. Article 24-1 of the Law of 5 April 1993 on the financial sector.

29. Article 24-2 of the Law of 5 April 1993 on the financial sector.
30. *The Virtual Currency Regulation Review* Luxembourg Chapter by Jean-Louis Schiltz and Nadia Manzari.
31. *Ibidem*.
32. Article 6, (1) of the EU's proposal for a Directive of the European Parliament and of the Council of 24 September 2020 amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341.
33. Article 29-1 of the Law of 5 April 1993 on the financial sector.
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53. http://www.cssf.lu/fileadmin/files/Protection_consommateurs/Avertissements/W_virtual_currencies_140318eng.pdf, 14 March 2018.
54. http://www.cssf.lu/fileadmin/files/Protection_consommateurs/Avertissements/W_ICOS_140318_eng.pdf, 14 March 2018.
55. Article 2(1) point 16 of the AML/CTF Law.
56. https://www.cssf.lu/registration-vasp.
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58. On 4 October 2018, the CSSF has for instance signed a Cooperation Agreement with the Australian Securities & Investments Commission ("ASIC"), providing a framework for cooperation to understand financial innovation in each jurisdiction and for information sharing between the two regulators on Fintech and Regtech (http://www.cssf.lu/fileadmin/files/Publications/Communiques/Communiques_2018/PR1832_ASIC_CSSF_Cooperation_Agreement.pdf).

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