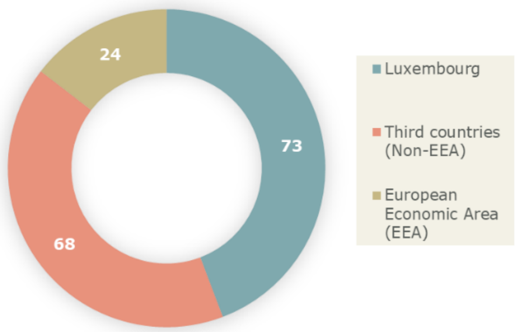
Results of the enforcement of the 2021 financial and non-financial information published by issuers subject to the Transparency Law

1. Introduction

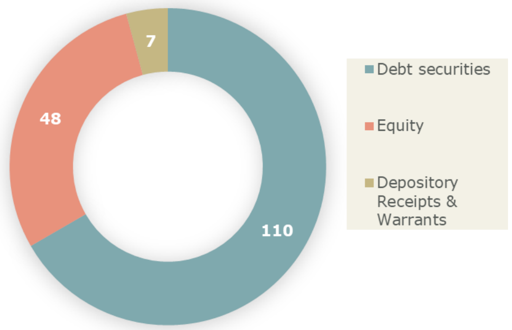
The CSSF is the competent authority to ensure the supervision of securities markets. In this context, the CSSF is in charge of examining that the financial and non-financial information, published by issuers under its supervision, is drawn up in accordance with the relevant reporting framework and thereby contributes to investors' protection and promotes confidence in financial markets.

Population of issuers falling within the scope of enforcement of financial information as at 1 January 2022

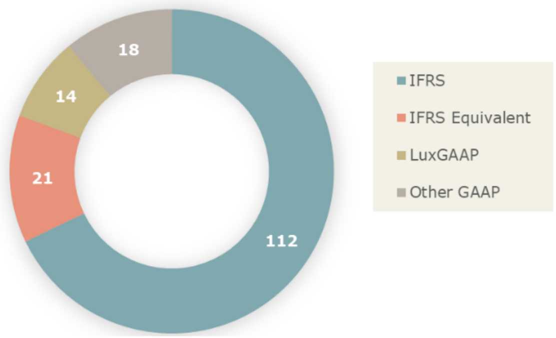
Geographical area



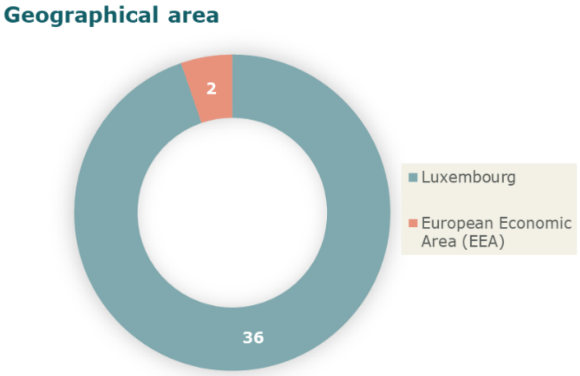
Type of securities

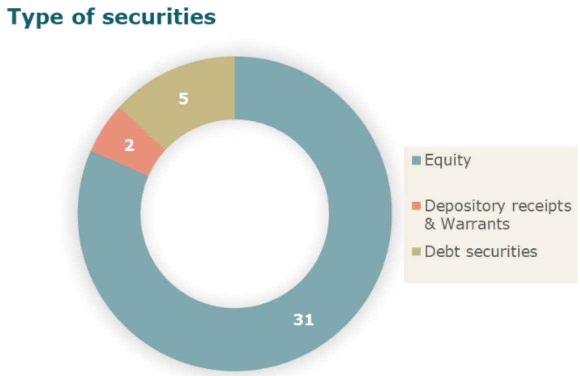


Principal GAAP



Population of issuers falling within the scope of enforcement of non-financial information as at 1 January 2022





2. Enforcement activities carried out in 2022

The selection of the issuers that are examined each year is based on a mixed model in which a risk-based approach is combined with a sampling and a rotation approach. The risk-based approach adopted considers the risk of a misstatement as well as the possible impact of such a misstatement on the financial markets.

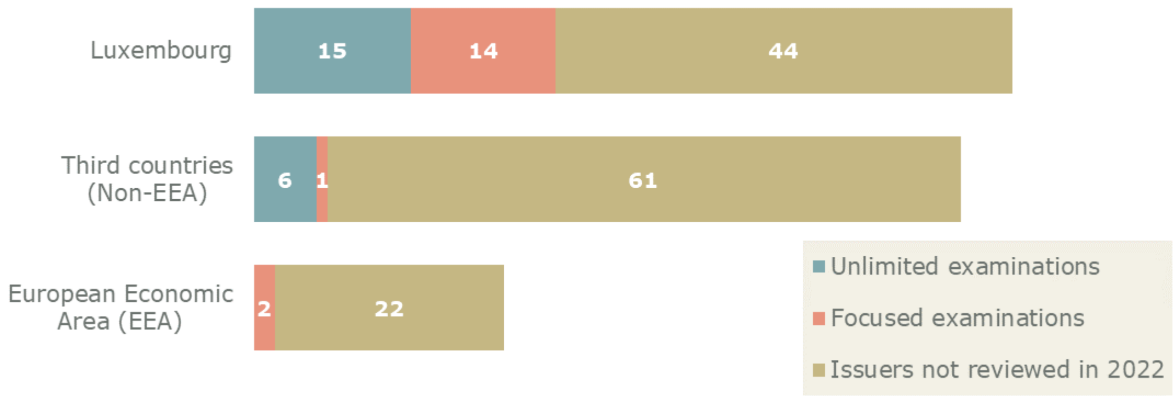
As part of the examination process and depending on the topics covered, the CSSF identifies the most effective way for examining the selected financial and non-financial information. As a result, the enforcement activities performed in 2022 then consisted of a combination of thematic, focused and unlimited examinations.

Types of examinations performed by the CSSF:

- **Unlimited examinations**: evaluation of the entire content of the financial and non-financial information of an issuer included in one or more harmonised documents in order to identify issues/areas that, in the enforcer's opinion, need further analysis and subsequent assessment of whether the information regarding those areas is in accordance with the relevant reporting framework. An unlimited examination usually entails an interaction between the CSSF and the issuer.
- **Focussed examinations**: evaluation of pre-defined issues in the financial and non-financial information of an issuer and the assessment of whether the information is compliant with the relevant reporting framework in respect of those issues. These examinations may imply interactions with the issuer or not, depending both on the issues and findings.
- **Thematic examinations**: review of the practices followed by a sample of issuers concerning specific issues. A thematic review does not generally imply an interaction between the CSSF and the issuer.

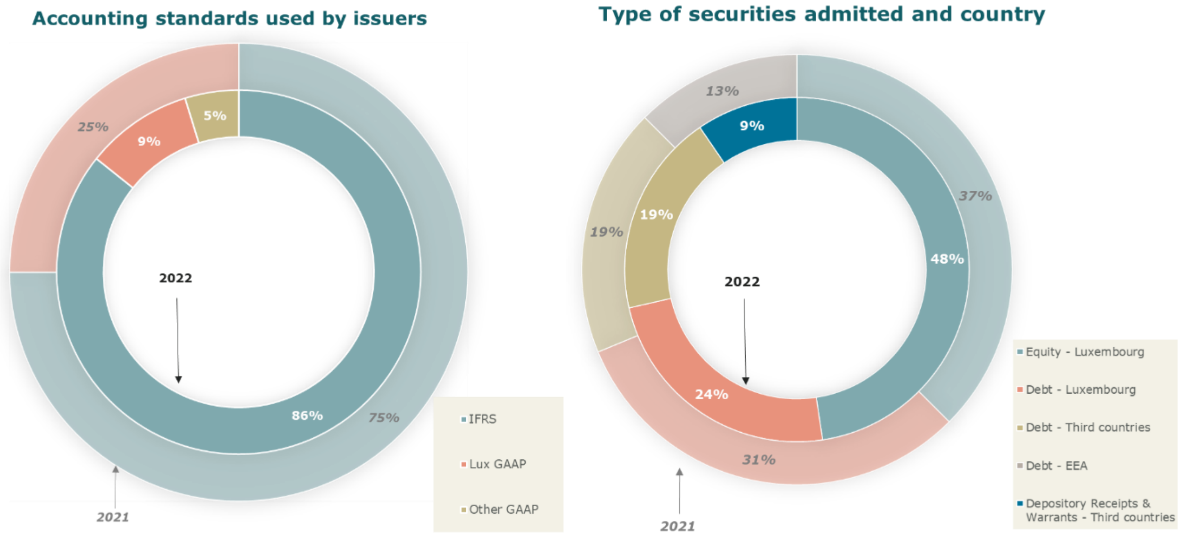
When selecting the issuers to be examined during its 2022 enforcement campaign, the CSSF also considered the relevant priorities, which concern both financial and non-financial information and which were presented in its *Communiqué* dated 17 December 2021.

Thus, the examinations performed in 2022 (excluding thematic reviews) covered 23% (2021: 17%) of the issuers and can be further illustrated as follows:



In 2022, the unlimited examinations covered 13% of the issuers (against 10% in 2021). As the charts below show, these examinations covered different categories of issuers and accounting standards, and thus a significant sample of the population of issuers supervised by the CSSF.

Unlimited examinations in 2021 and 2022



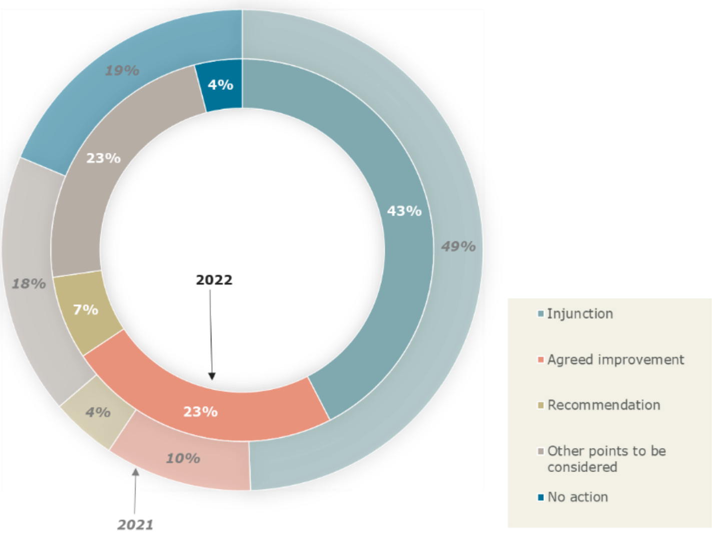
In the course of the examinations performed, the CSSF is led to take decisions vis-à-vis certain issuers, the purpose of which is either to correct the errors identified or to amend and improve the financial and non-financial information subsequently published.

Amongst the decisions taken in 2022 by the CSSF, 45% of the total number of decisions were injunctions pronounced because the treatment, the presentation or the disclosure of the information did not comply with the applicable reporting framework. 22% represented agreed improvements with issuers on the treatment or disclosures to be made. Another 7% of the decisions were recommendations to improve the information in future reports.

The remaining decisions covered other points to be considered in connection with the examination of disclosures relating to Article 8 of the Taxonomy Regulation[1] (refer to Section 4).

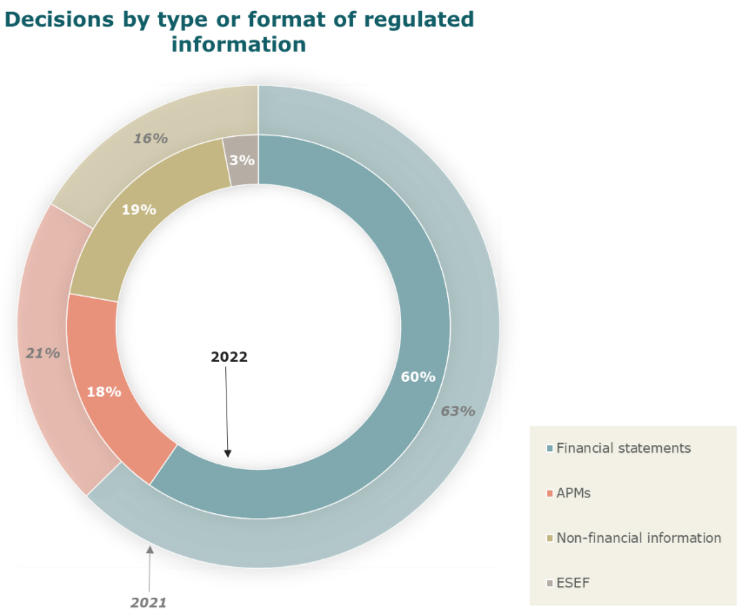
Finally, we also investigated several issues or areas where we concluded, after thorough analysis, that the reporting framework has been duly respected and that no further action was deemed necessary.

Breakdown by type of decision



[1] *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.*

With the growing importance of non-financial information, the reviews of Alternative Performance Measures, and the implementation of the ESEF format, the actions taken by the CSSF no longer exclusively concern the content of the financial statements, as shown in the chart below.



3. Main findings on 2022 priorities related to financial information

Climate-related matters in the financial statements

In 2022, the CSSF carried out focused examinations of the 2021 financial and non-financial information for a selection of issuers for which significant climate-related risks were identified.

The results of these examinations have highlighted that the information on climate-related matters provided by issuers is still often left outside of the financial statements, even when impacts on the financial information can be expected.

In particular, we noted that few issuers disclosed information relevant for the users of the financial statements in relation to:

- climate-related factors as sources of estimation uncertainty or causes for significant judgements with regard to assets in scope of IAS 16 *Property, Plant and Equipment* or IAS 38 *Intangible Assets* and to impairment of non-financial assets under IAS 36 *Impairment of Assets*;
- whether key assumptions used to estimate the assets' recoverable amounts include climate-related factors, and how climate-related matters affect those assumptions.

We also noted for some issuers a lack of information about:

- whether their management considered climate change when assessing whether the expected useful lives of non-current assets and the estimated residual values should be revised;
- material expenditures to change or adapt business activities and operations, including research and development resulting from climate-related matters, including accounting treatment of these expenditures.

Following exchanges with concerned issuers, we concluded that, even though not disclosed, the impacts of significant climate-related risks were usually fairly taken into consideration in the valuation processes. However, several issuers agreed to disclose more detailed information on their accounting policies in relation to climate-related matters.

As climate change will be of greater interest to investors and other stakeholders in the future, the CSSF urges issuers to clearly disclose judgements and estimates in relation to climate-related matters as well as related uncertainties when they face significant climate-related risks, even when they are not considered as key assumptions by the management.

Classification and measurement requirements under IFRS 9

The CSSF analysed, through a thematic review on IFRS 9 *Financial Instruments*, the disclosures provided by a selection of credit institutions on accounting policies in relation to the classification and measurement of financial instruments, and particularly to those requiring significant judgements. The CSSF has also reviewed the Solely Payment of Principal and Interest ("SPPI") assessment for loans or bonds with interest rates linked to sustainability targets, instruments which tend to develop rapidly.

Accounting policies for financial assets

We were glad to observe that overall disclosures made by these credit institutions were appropriate and clear enough to permit users to understand well how they have considered the cash flow characteristics of the assets and how they expect to manage them to align appropriately their classification and their measurement, notably regarding:

- judgements on application of SPPI criteria;
- description of how financial assets are managed to generate cash flows.

However, we observed that there is still room for improvement regarding disclosures about how credit institutions consider sales of financial assets for distinguishing both categories "held to collect" and "held to collect and sell", notably about how they have considered the frequency and significance of sales in determining the business model of financial assets.

The CSSF recommends credit institutions to ensure that users of their financial statements are able to understand from the notes which quantitative criteria have been applied to distinguish between the two categories "held to collect" and "held to collect and sell".

Financial instruments with sustainability linked features

All credit institutions included in our sample held, either materially or not, loans or bonds with interest rates linked to sustainability targets and more specifically the two following types of instruments:

- green loans or bonds whose purpose is exclusively to finance or refinance, in whole or in part, new or existing "green projects" specified in the contract;
- loans with ESG features: the interest rate of these loans is linked to pre-determined ESG targets that are specific to the borrower.

This second type of instrument requires credit institutions to perform an assessment to determine what types of features are included that adjust the contractual cash flows of the loans and if the purpose of such sustainability-linked features affect the SPPI assessment (de minimis or non-genuine).

In this context, we examined whether the selected credit institutions adequately performed such assessment and whether related disclosures have been provided in the financial information. While credit institutions under review systematically addressed such assessment for their respective loans with ESG features, we observed that related disclosures were missing in their financial statements.

Although the CSSF understands that disclosures in the financial statements is governed by the principles of materiality, it recommends credit institutions to monitor guidance and interpretations issued by IASB to determine whether disclosure is needed for these types of instruments.

Presentation of the statement of profit or loss

As announced in its 2022 priorities, the CSSF analysed, through a thematic review, the statements of profit or loss presented by a selection of corporate issuers in the light of the tentative decisions of the IASB already available as part of the project “Primary financial statements”.

We noted some discrepancies between the statements of profit or loss of some issuers and the IASB proposals. We therefore recommend that issuers pay attention to potential new requirements:

- income and expenses before tax (and discontinued operations) will be classified into 3 categories: operating, investing and financing;

Commission de Surveillance du Secteur Financier

- the new compulsory 'Operating profit' subtotal will include gains and losses from disposal on property, plant and equipment and intangible assets and exclude the result from associates and joint ventures;
- issuers will not be able to exclude "non-recurring" items from the 'Operating profit' subtotal (except if such items should be included in the Investing or Financing category);
- issuers that present an analysis of their operating expenses by function in their statement of profit or loss will be required to:
  - disclose the amounts of depreciation, amortisation and employee benefits included in each line item in the statement of profit or loss;
  - disclose a narrative description of what types of expenses (based on their nature) are included in each functional line item;
  - include in cost of sales the carrying amount of inventories recognised as an expense during the period when presenting cost of sales.

Although the effective application date for the new standard is not yet set, the CSSF recommends issuers to already consider the impact, where relevant, of the future requirements for presentation of the statement of profit or loss in order to improve comparability and transparency of their performance reporting.

4. Main findings on priorities related to non-financial information

Climate-related matters

As part of the focused examinations on climate-related matters in the financial statements (see Section 3), the CSSF also reviewed the presentation of climate-related matters in the non-financial statements for the same selection of issuers.

The first satisfying observation to report, and maybe a consequence of our past years' thematic reviews and follow-up on this topic, is that all issuers under examination have presented information on climate-related matters.

In an effort to adequately organise their non-financial information, half of these issuers prepare their climate-related disclosures based on the TCFD Recommendations, although information is not always consistently and comprehensively provided. The strategy and/or policies adopted by issuers are mostly disclosed, and noteworthy progress is being made in disclosing the due diligence processes – which strengthen reliability of reported results in the absence of external assurance.

Climate-related risks are overall well disclosed, but there are still some inconsistencies in the identification and assessment of physical and transition risks, and in the way they are managed.

Finally, relevant KPIs for climate-related matters are presented, but definition of predefined targets is too often missing.

The CSSF urges issuers to strengthen their efforts to improve the presentation of climate-related matters in anticipation of the requirements of the future European Sustainability Reporting Standards that will apply with the forthcoming Corporate Sustainability Reporting Directive (the "CSRD").

Disclosures relating to Article 8 of the Taxonomy Regulation

For this first reporting period, the concerned issuers were confronted with a very short implementation period, between the publication of the regulation and its application, as well as with regulatory provisions which, at first sight, may have seemed easy to comply with but which may have turned out to be more complicated than expected.

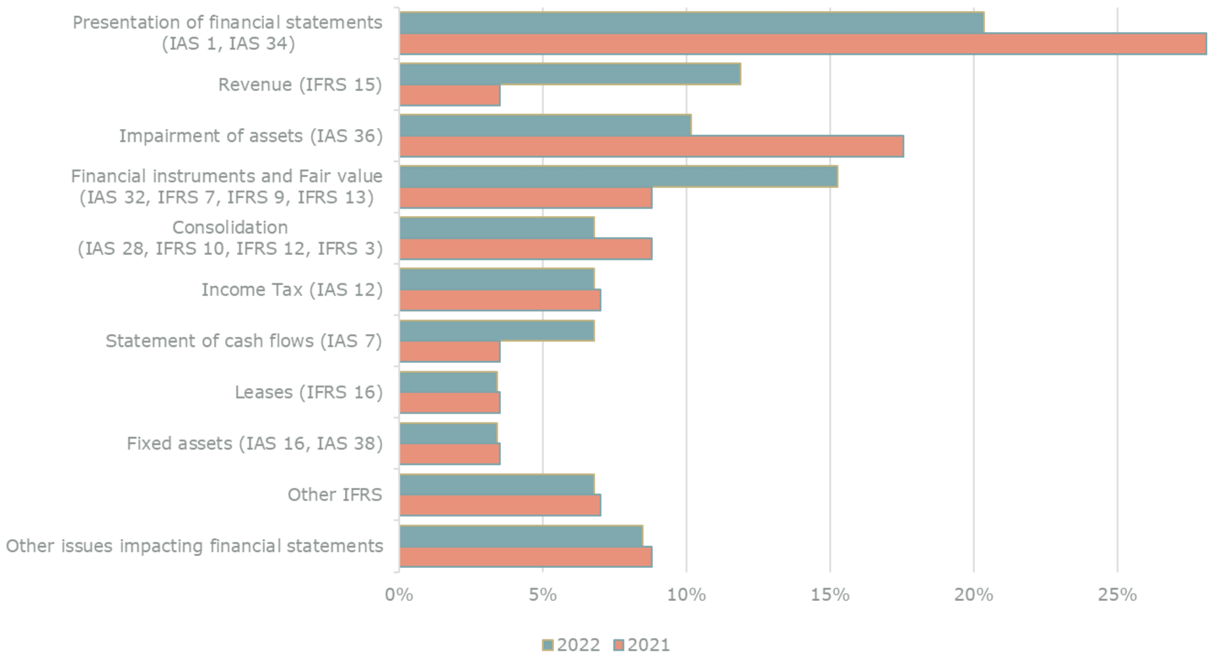
Despite these conditions, 60% of the examined issuers were able to achieve compliance with the new disclosure requirements. As regards the remaining 40%, the CSSF reminds them to comply with the requirements of Article 8 of the Taxonomy Regulation.

Sustainability data is increasingly seen as key information for issuers, in the same way as financial information. Article 8 of the Taxonomy Regulation contributes to provide relevant information in this context. Therefore, the CSSF recommends issuers to improve the qualitative information provided, thus better achieving the objective of the Regulation which is to provide clear, understandable, relevant and comparable information.

We refer to our Report published in October 2022 for the detailed results of our thematic review on this topic.

5. Other findings of the examinations of financial information

Breakdown by topic of decisions on financial statements



Presentation of financial statements

Further to some of our reviews, we asked several issuers to add comparative information to specific notes where this information was lacking; two issuers were asked to disclose a breakdown of a significant profit or loss line item in order for the users to better understand their nature.

Revenue recognition

Regarding decisions taken in relation to IFRS 15 *Revenue from contracts with customers*, we required clear and detailed information to be disclosed regarding performance obligations, determination of the transaction price including obligations for return, methods used to determine the stand-alone selling price and other entity-specific accounting policies where they were deemed relevant for users to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers.

Goodwill impairment test assumptions

We warned several issuers regarding inappropriate or unreliable assumptions used for the determination of the recoverable amount of Cash Generating Units (CGUs). We also required more relevant disclosure regarding key assumptions used and their sensitivity to reasonable changes.

Financial instruments and fair value

We have carefully reviewed the classification of warrants issued by Special Purpose Acquisition Companies ("SPACs") before and after the acquisition of a target company. Following the clarifications provided by the IFRS IC publication of 24 October 2022, one issuer was required to change its accounting treatment of the existing warrants after the de-SPAC transaction.

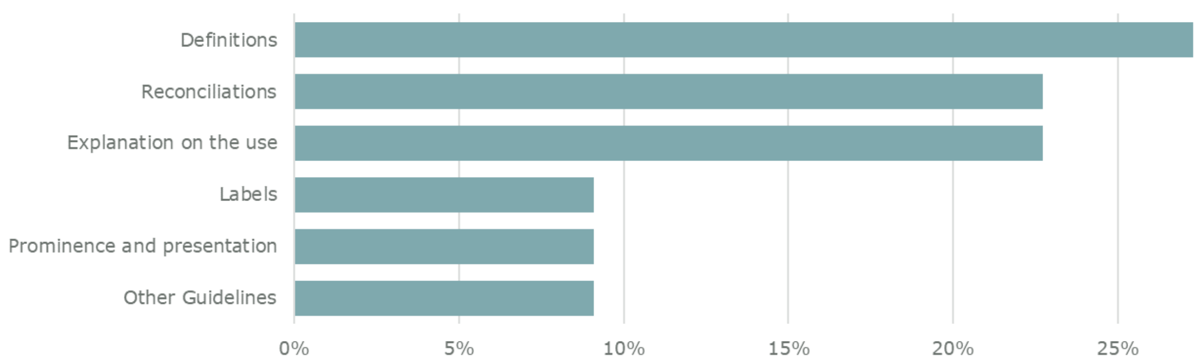
ESEF

We noted several missing mandatory mark-ups and other less significant errors or omissions. Notably, two issuers have been required to mark up their principal place of business, as it was different from their registered office.

It should also be noted that prior to the examination of the compliance with accounting requirements (completeness and correctness of tagging), several issuers have been required to resubmit their annual financial report prepared in conformity with the ESEF for non-compliance with IT requirements or other technical issues, notably because of incorrect file extensions. These actions are not included in the charts displaying the CSSF decisions for the 2022 Enforcement campaign.

6. Findings on Alternative Performance Measures (APMs)

Breakdown by topic of decisions on APMs



Nine issuers were reminded in 2022 of their obligations to comply with the ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415) in their management report and press releases presenting periodical results and to present definitions, reconciliations and reason for use for each APM disclosed.

We also asked two issuers to modify the presentation in their management report so that APMs are not displayed with more prominence than measures directly stemming from financial statements.

7. Next steps

On 2 January 2023, the CSSF has released its priorities in relation to the enforcement of the 2022 financial information published by issuers subject to the Transparency Law. These priorities, as well as a link to ESMA's ECEPs, can be found on the CSSF website under Enforcement of financial information.

Commission de Surveillance du Secteur Financier

Relevant publications

Since January 2022, we have issued several publications and relayed relevant communications from ESMA and other stakeholders. They can be found on the CSSF website:

https://www.cssf.lu/en/enforcement-of-financial-information

Date	Document		Link
02.01.2023	Communiqué	Enforcement of the 2022 annual reports published by issuers subject to the Transparency Law	Link
19.12.2022	FAQ	FAQ on the disclosure requirements under Article 8 of the Taxonomy Regulation (published by the European Commission)	Link
28.10.2022	Communiqué	ESMA statement on European common enforcement priorities for 2022 annual reports	Link
26.10.2022	Communiqué	Sustainability Disclosures for Issuers	Link
26.10.2022	Report	Sustainability Disclosures for Issuers: A first look on information reported under Article 8 of the Taxonomy Regulation for the transition year	Link
17.05.2022	Report	ESMA Publication: 26th extract of EECS's database of enforcement	Link
08.03.2022	Communiqué	Results of the enforcement of the 2020 financial and non-financial information published by issuers subject to the Transparency Law	Link
07.02.2022	Annual statistics	Population concerned by the enforcement	Link