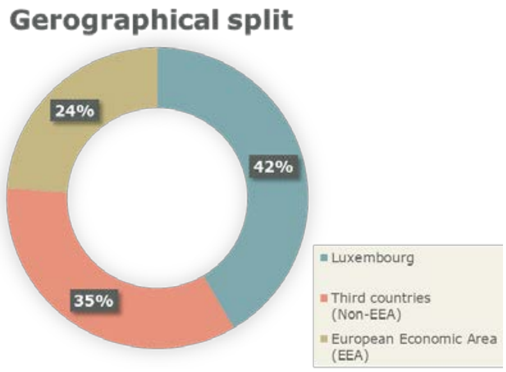
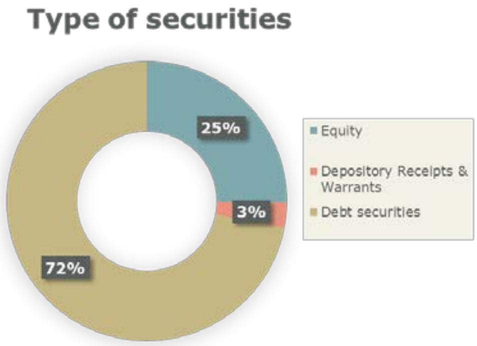
## RESULTS OF THE ENFORCEMENT OF THE 2019 FINANCIAL INFORMATION PUBLISHED BY ISSUERS SUBJECT TO THE TRANSPARENCY LAW

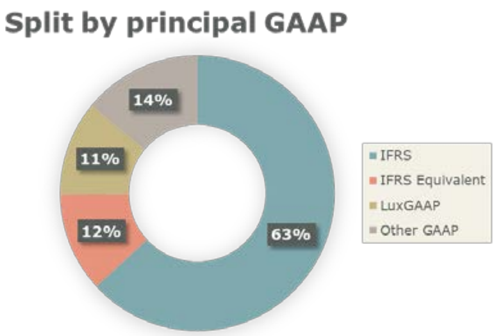
### Introduction

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 information, published by issuers under its supervision, is drawn up in accordance with the relevant reporting framework, thereby contributing to investors' protection and promotion of confidence in financial markets.

### Population of issuers falling within the scope of financial information enforcement as at 1 January 2020



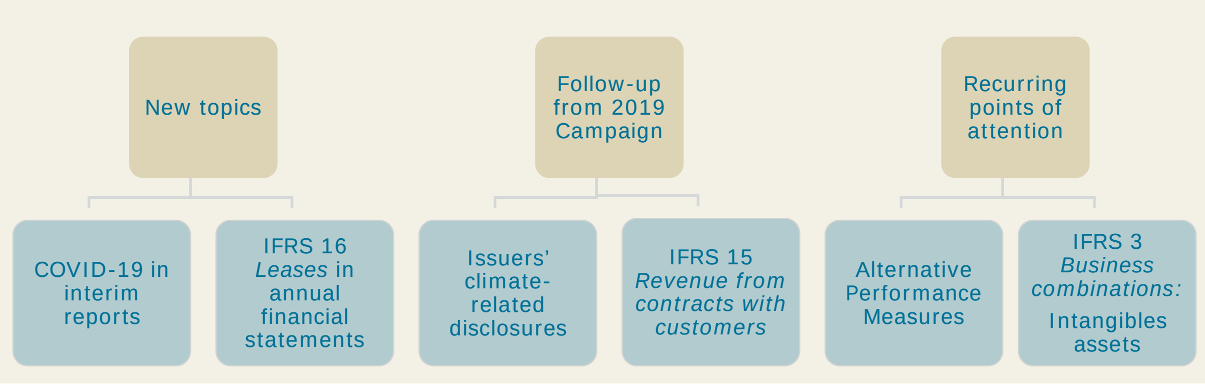




### Enforcement activities carried out in 2020

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.

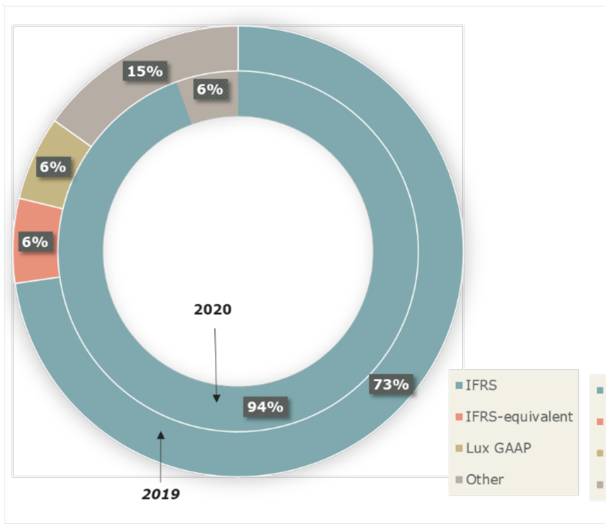
In its Communiqué of 19 December 2019, the CSSF presented its priorities for its 2020 enforcement campaign. The priorities covered by the 2020 examinations have however been adapted to take into account the COVID-19 pandemic and can be summarised as follows:



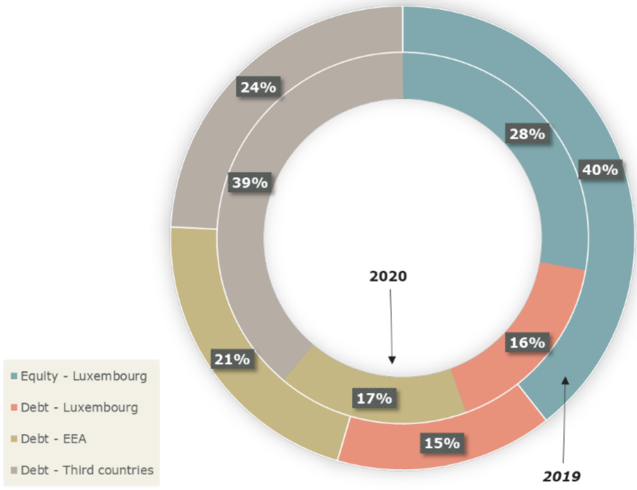

As part of the examination process, depending of the topics covered, the CSSF identifies the most effective way for examining the selected financial and non-financial information. The examination activities performed in 2020 then consisted of a combination of thematic or focused examinations and unlimited examinations.

Thus, the examinations performed in 2020 covered 21% (2019: 26%) of the issuers falling within the scope of enforcement of financial information and can be further illustrated on the basis of the following criteria:

### Examinations by accounting standards used by the issuers for 2020 and 2019




### Examinations by type of securities admitted and country for 2020 and 2019



## Results of the thematic examinations

### Thematic examination on the impact of the COVID-19 pandemic

The COVID-19 pandemic hit Luxembourg as other countries since the beginning of the year 2020 and adversely affected a number of issuers under our supervision. In that context, we decided to carry out a thematic examination of the information provided by issuers concerning the impact of COVID-19 on their operations and financial performance as of 30 June 2020. Information on this thematic review is available in the CSSF's communique dated 13 November 2020.

### Thematic examination on issuers' climate-related disclosures

Apart from financial information, non-financial information is increasingly becoming an integral part of corporate reporting, in particular since the initial application on 1 January 2017 of the Directive 2014/95/UE on non-financial information ("NFI Directive"), transposed into Luxembourg regulation by the related law of 23 July 2016.

During the course of 2020, the CSSF carried out a thematic examination on issuer's climate-related disclosures. The purpose of such examination was to review how issuers considered the recommendations made by the Taskforce on Climate-related Disclosures for completing the European Commission guidelines on non-financial reporting. More information on this thematic examination is available in the CSSF's communique dated 22 December 2020.

## Results of the focused examinations of financial information (FSE)

### Focused examinations on IFRS 3 *Business combinations*

For these examinations, the CSSF focused on the recognition and valuation of intangible assets acquired in a business combination. In addition to the identification, recognition and determination of the useful life of these acquired intangible assets, their valuation is indeed a challenging step for issuers, given the significant number of underlying assumptions to be considered. We therefore reviewed the determination of the fair value of intangible assets acquired as part of a business combination by examining a sample of issuers that had undergone material business combinations during the year 2020. We furthermore analysed the disclosures made regarding the methods and assumptions used in the valuation of intangible assets acquired in a business combination.

- ✓ Among the business combinations examined during the year 2020, most issuers recognised material intangible assets. We appraised the fact that a large majority of those issuers used consistent assumptions to measure intangible assets at their initial recognition (i.e. fair value for the purpose of a purchase price allocation (PPA)) and to determine their related useful life and amortisation, if any. We also welcomed the fact that the valuation techniques used were appropriate and the estimates reasonable.
- ✘ However, we still identified some issues in relation to the disclosures made in the financial statements:
  - ⇨ While some issuers disclosed, on a voluntary basis and following the CSSF's recommendation indicated in its priorities for the 2020 enforcement campaign, some information in relation to assumptions and measurements techniques used when determining the fair value of the acquired assets and assumed liabilities, some others

still did not provide any information at all despite the fact that these fair value measurements relied on significant subjective assumptions. A number of issuers were therefore challenged on this point and recommended to disclose such relevant information. We also noted that a few issuers presented on a voluntary basis the book values of the assets and liabilities acquired before the business combination occurred. Although this information is not required by IFRS 3, users may find it useful to evaluate the effect of fair value measurements on assets and liabilities.

We encourage the disclosure of methods and assumptions used in the valuation of intangible assets acquired in a business combination, as such disclosures increase users' understanding of the net assets acquired and enhance the transparency of significant management judgements and the quality of the fair value measurement. We also recommend the disclosure of the book values of the assets and liabilities acquired before the business combination occurred when significant fair value adjustments have been made at the acquisition date as part of the PPA.

- ⇨ With regard to business combinations that were incomplete at the end of the reporting period, we found that, while almost all issuers disclosed that fact, most did not identify the relevant provisional items nor disclose the reasons why the initial accounting for the business combination was incomplete, as required by paragraph B67(a) of IFRS 3.

When business combinations are incomplete at the end of the reporting period, we encourage issuers to provide any relevant and entity-specific information depicting the status and major issues to be dealt with.

- ⇨ Finally, we encountered many other disclosure issues stemming from IFRS 3, particularly in relation to paragraphs B64 et B67, such as information on contingent considerations (B64(g)) and tax deductibility of goodwill (B64(k)).

We remind issuers that all disclosure requirements in IFRS 3 shall be presented when applicable and material.

In light of these findings, in our future campaigns, we will continue to challenge the fair value measurements of intangible assets acquired as part of business combinations, the appropriateness of the information disclosed on valuation techniques and assumptions used in those fair value measurements and, more generally, all other disclosure requirements under IFRS 3.

### Focused examinations on IFRS 15 *Revenue from contracts with customers*

The CSSF also carried out focused examinations on the application of IFRS 15 for a selection of issuers. In this context, we examined, amongst others, whether the selected issuers adequately applied the five-step model for the measurement and recognition of revenue and whether the presentation and disclosure requirements set forth by IFRS 15 have been respected in the financial information presented.

For the financial information analysed, we noticed a high level of compliance with the following points of the standard:

- ✓ Implementation of the five-step model by issuers;
- ✓ Determination of the performance obligation: point in time or over time;
- ✓ Assessment of the principal versus agent consideration.

We were glad to observe that IFRS 15 was correctly applied for these areas which are judgmental and could have a significant impact on the financial statements.

- ✘ However, we observed that there is still room for improvement regarding disclosures presented in the financial statements, notably for these two following topics:
  - ⇨ Disaggregation of revenue: we noticed that, in fact, there are various levels of disaggregation for issuers operating in the same industry.

    As a reminder, *an entity shall disaggregate revenue recognised from contracts with customers into categories that depict how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.*

> We recommend issuers to compare categories and level of detail of their disaggregation of revenue with those provided by the peer group companies in order to ensure that, within the same industry, the available information is considered relevant for the user of the financial statements.

  - ⇨ Accounting policies: although we noticed that the standard is usually well applied by issuers, the accounting policy on revenue recognition presented in the notes is often boilerplate and not entity specific. It does not allow users of the financial statements to capture material revenue streams, notably:
    - o The disclosures insufficiently allow users to identify exactly what the performance obligations are and when they are met, as well as the remaining performance obligation (the practical expedient according to IFRS 15.121 is often used without any justification or indication);
    - o The disclosures in relation to variable consideration are often missing or incomplete.

> We recommend that issuers ensure that the user of the financial statements, when reading the notes, is able to understand what the performance obligations are and when they are satisfied.

**Focused examinations on IFRS 16 *Leases***

In the context of the implementation of IFRS 16 by issuers, the CSSF carried out a focused examination on its application.

The main findings of this review are summarised as follows:

| Level of compliance | Measurement | Presentation | Disclosures |
|---|---|---|---|
| No material issues noted | Calculation of right-of-use assets and lease liabilities for the most significant leases | Right-of-use assets in the statement of financial position | Transitional disclosure - Alternative Performance measures |
| Some issues detected | Determination of the lease term and the discount rate(s) | Lease liabilities in the statement of financial position | Disclosure of significant judgements and assumptions made |
| Many issues identified | Extension options | Presentation in the cash flow statement | Maturity analysis |

IFRS 16 is the standard for which the most decisions have been taken by the CSSF during the 2020 campaign. This is not particularly surprising due to the fact that it is a recent standard which can be particularly complex. The most common misstatements identified were the following:

- ✘ Issue relating to the determination of the discount rates

Misstatements have been identified in the assumptions used for the determination of discount rates, notably with rates that were considered too low.

> We remind issuers that at the commencement date, a lessee shall measure the lease liability at the present value of the lease payments that are not paid at that date. The lease payments shall be discounted using the interest rate implicit in the lease, if that rate can be readily determined. Otherwise, the lessee shall use its incremental borrowing rate.

- ✘ Missing information relating to the assumptions used (e.g. lease term, discount rate used)

> As a reminder, in its European common enforcement priorities for 2019 annual financial reports, ESMA indicates that lessees shall disclose information that enables users to assess the effect that leases have on the financial performance, cash flows and financial position, by providing qualitative and quantitative entity-specific disclosures and the significant judgements and assumptions made.

- ✘ Measurement of the right-of-use asset and extension options

We have noted some misstatements during our assessment of the lease term used by issuers. In accordance with paragraph 18 of IFRS 16, an entity shall determine the lease term as the non-cancellable period of a lease by taking into consideration if it is reasonably certain or not to exercise an option to extend the lease.

IFRS 16.B50 specifies the information that helps users of financial statements to assess if it is reasonably certain that the option will be exercised.

- ✘ Wrong presentation in the statement of cash flows:

A lessee shall classify, in the statement of cash flows:
(a) cash payments for the principal portion of the lease liability within financing activities;
(b) cash payments for the interest portion of the lease liability applying the requirements in IAS 7 *Statement of Cash Flows* for interest paid; and
(c) short-term lease payments, payments for leases of low-value assets and variable lease payments not included in the measurement of the lease liability within operating activities.

We have observed for several issuers that the above information was not correctly presented.

- ✘ Lack of disclosure of maturity analysis

A lessee shall disclose a maturity analysis of lease liabilities applying paragraphs 39 and B11 of IFRS 7 Financial Instruments: Disclosures separately from the maturity analyses of other financial liabilities.

These disclosures were missing for some issuers reviewed.

### Results of the unlimited examinations of financial information (USE)

In addition to the focused and thematic examinations discussed above, unlimited examinations have also been carried out during the 2020 enforcement compaign. Unlimited examinations consist of the evaluation of the entire content of the financial information included in one or more harmonised documents of an issuer in order to identify issues / areas that, in the enforcer's opinion, need further analysis, and the subsequent assessment of whether the financial information regarding those issues / areas is in accordance with the relevant financial reporting framework. The unlimited examination entails an interaction between the enforcer and the issuer. Based on the examination procedures undertaken and the information received from the issuer, the enforcer concludes whether infringements exist in relation to the issues / areas analysed.

The unlimited examinations carried out in 2020 covered 11% of the total population of issuers under our supervision and 67% of the decisions taken. In this context, the actions vis-à-vis certain issuers aim to either correct the identified errors or amend and improve the subsequent published financial statements.

It should be noted that a significant part of the decisions taken in the context of the 2020 unlimited examinations was also in relation to the application of IFRS 16. These decisions mainly relate to presentation of leases or missing disclosures.

As a year-on-year recurring area of examination, the CSSF also reviewed the impairment tests for non-financial assets, with a focus on the judgements and assumptions made by management. The issues noted when examining the detailed impairment tests provided by issuers, concerned, amongst others, the determination of the carrying amounts of cash generating units, the determination of the discount rate and the assumption made for the growth rate applied on the cash flow projections. Also, some issuers still do not provide adequate disclosures with respect to the requirements of IAS 36 *Impairment of assets* concerning the headroom between the value-in-use and the carrying amounts of the cash generating units.

IFRS 7 *Financial instruments: Disclosures* was another standard for which we had to take many decisions. Indeed, we observed that the disclosures made by some issuers were either boilerplate, missing or even erroneous.

During these unlimited examinations, the CSSF also had to take a significant amount of decisions towards issuers with respect to disclosures being either boilerplate or generic or simply not properly addressing the accounting policy's disclosure requirements.

> Following IAS 1.117 "an entity shall disclose its significant accounting policies comprising:
> (a) the measurement basis (or bases) used in preparing the financial statements; and
> (b) the other accounting policies used that are relevant to an understanding of the financial statements."

> IAS 1.119 says that "in deciding whether a particular accounting policy should be disclosed, management considers whether disclosure would assist users in understanding how transactions, other events and conditions are reflected in reported financial performance and financial position. Each entity considers the nature of its operations and the policies that the users of its financial statements would expect to be disclosed for that type of entity…"

For the fourth year running, we also scrutinised the good use of Alternative Performance Measures ("APMs") outside the financial statements, namely in management reports and press releases of issuers.

The guidelines on APMs (ref. ESMA/2015/1415) include eight principles to be followed. Our main findings during our 2020 campaign are the followings:

- ✓ Most of the issuers examined comply with the requirements of the following five principles:
  - o Disclosure;
  - o Presentation;
  - o Labels;
  - o Comparatives;
  - o Consistency.
- ✓ However, even if the compliance with the three remaining principles is often globally good:
  - o Reconciliation;

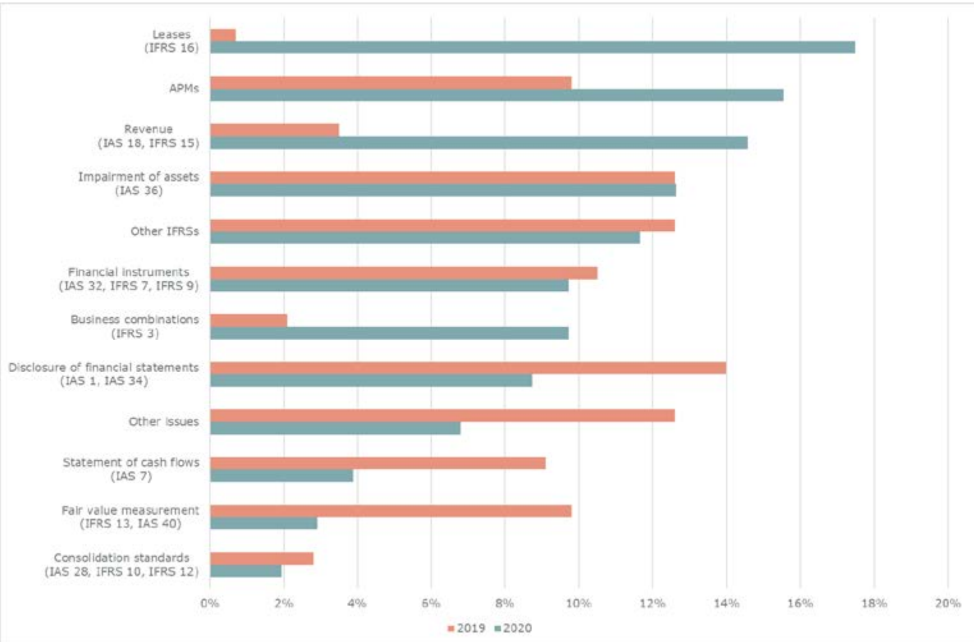
- Explanation on the use;
- Prominence.

Improvements may be needed, notably:

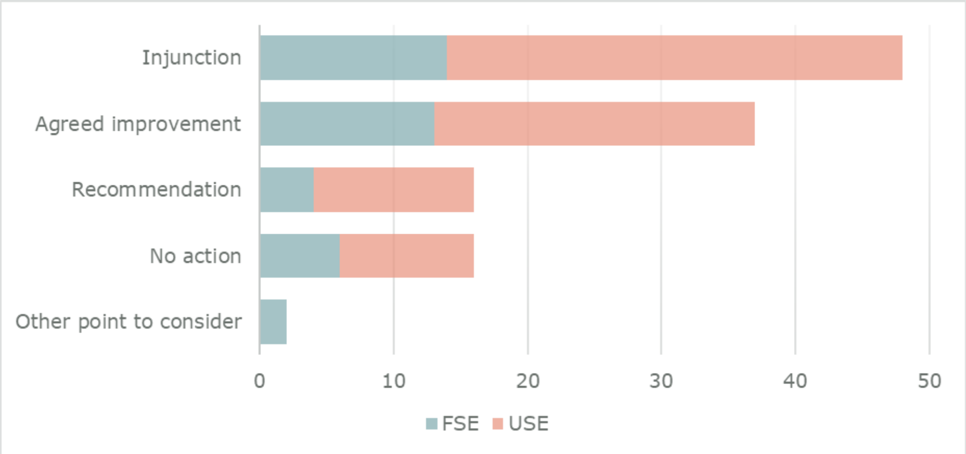
- ✘ For these principles, requested information is not always provided for **each and every** APM disclosed (such as ratios for instance);
- ✘ Explanations provided for **reconciliation** items which are not directly extracted from the financial statements are not always sufficient;
- ✘ **Explanation on the use** are often omitted when issuers consider that the measures are well-known by the market; and
- ✘ A lower level of compliance with the Guidelines is often observed in **press-releases** than in management reports, notably with regard to the prominence principle.

## Quantitative data on the decisions taken by the CSSF during its 2020 Enforcement campaign

***Breakdown by topic of notifications***



***Breakdown by type of decision***




Amongst the decisions taken in the course of the examinations performed by the CSSF, 40% of the total decisions were injunctions pronounced as the accounting treatment or the presentation was not in conformity with the applicable reporting framework or missing disclosures had been noted. 31% of represented agreed improvements with issuers on the accounting treatment or disclosures to be made. Another 14% of decisions represented recommendations to improve the financial information in the future financial statements. Lastly, we also investigated as to several issues or areas for which we concluded that the reporting framework has been duly respected and no further action was deemed necessary.

## ESEF

The European Single Electronic Format ("the ESEF") is the electronic reporting format in which issuers on EU regulated markets initially should have prepared their annual consolidated financial reports for financial years beginning on or after 1 January 2020.

In December 2020, the European Parliament and the Council agreed to allow Member States to delay by one year the application of the ESEF requirements for listed companies' annual financial reports. The 1-year postponement option of the ESEF requirements will be used in Luxembourg.

More information is available in the CSSF's press release 21/01 .

### Outlook / Next steps

Globally the economic environment remains uncertain and issuers are struggling with significant uncertainties to be considered when preparing the 2020 financial and non-financial information. Currently, the consequences of the COVID-19 pandemic are the outmost significant factor to be considered when preparing financial reports as the effects are pervasive on a issuers' financial and non-financial reporting.

On 9 December 2020, the CSSF has released its priorities in relation to the enforcement of the 2020 financial information published by issuers subject to the Transparency Law. As highlighted in this communication, the CSSF will monitor amongst others the European Common Enforcement Priorities ("ECEP") for the 2020 financial reports. Further information on ESMA's ECEPs can be found on the CSSF website under Enforcement of financial information.

While performing the enforcement examinations, the CSSF will also focus in particular on management's assessments of the recoverable value of non-financial assets when performing their impairment testing on such non-financial assets. Furthermore, the measurement and disclosures of impairment of trade receivables, which under the current uncertain environment may need to be adjusted accordingly, will be scrutinized.

Another item of examination will be the fair value measurement of investment properties. Due to the disruption to the market caused by the COVID-19 pandemic, there are substantially more uncertainties than normal and therefore a higher risk that the assumptions upon which issuers have based their investment properties valuations might finally need to be reassessed.

As another point of attention, the CSSF will closely monitor the recognition and measurement of deferred tax assets.

The CSSF will furthermore continue to monitor the application of the requirements of the NFI Directive and continue its active involvement in the development of the non-financial information legal framework, the two hot topics in progress being currently the revision of the NFI Directive and the adoption of a delegated act to supplement requirements of Article 8 of Regulation (EU) 2020/852. We strongly recommend issuers to actively stay informed about these future developments.

**2020 publications**

During the year 2020, the Enforcement division has issued several publications and relayed relevant communications from ESMA. They can be found on the CSSF website:

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

| Date | Document | | Link |
|---|---|---|---|
| 20.01.2021 | Press release | Delay by one year of ESEF requirements for listed companies | Link |
| 22.12.2020 | Communiqué | Thematic Review on issuers' climate-related disclosures | Link |
| 9.12.2020 | Communiqué | Enforcement of the 2020 financial information published by issuers subject to the Transparency Law | Link |
| 13.11.2020 | Communiqué | COVID-19 Thematic Review of issuers' reporting | Link |
| 28.10.2020 | Other guidance | ESMA Public Statement "European Common Enforcement Priorities for 2020 annual financial reports" - ESMA32-63-791 | Link |
| 21.07.2020 | Communiqué | ESMA Public Statement: actions to mitigate the impact of COVID-19 on the EU financial markets<br><br>Coordination of supervisory action on accounting for lease modifications | Link |
| 30.04.2020 | Other statistics | Population concerned by enforcement | Link |
| 2.04.2020 | Studies and reports | ESMA Report "24rd Extract from the EECS's Database of Enforcement" - ESMA32-63-845 | Link |
| 2.04.2020 | Studies and reports | ESMA 2019 report on enforcement of corporate disclosure - ESMA71-99-1308 | Link |
| 17.02.2020 | Communiqué | Examination of non-financial information published by certain issuers for 2018 financial year | Link |
| 17.02.2020 | Press release | Results of the enforcement of the 2018 financial information published by issuers subject to the Transparency Law | Link |