



Commission de Surveillance
du Secteur Financier

Circular CSSF 21/790

Practical rules concerning the self-assessment questionnaire to be submitted annually by Luxembourg undertakings for collective investment. Engagement of the *réviseurs d'entreprises agréés* (approved statutory auditors) of Luxembourg undertakings for collective investment and practical rules concerning the management letter and the separate report to be drawn up annually

Circular CSSF 21/790

Re: Practical rules concerning the self-assessment questionnaire to be submitted annually by Luxembourg undertakings for collective investment.

Engagement of the *réviseurs d'entreprises agréés* (approved statutory auditors) of Luxembourg undertakings for collective investment and practical rules concerning the management letter and the separate report to be drawn up annually

Luxembourg, 17 December 2021

Ladies and Gentlemen,

To all Luxembourg undertakings for collective investment and to those involved in the operation and audit of such entities

The purpose of this circular is to define the practical rules concerning the preparation and annual submission of the below-mentioned documents by Luxembourg undertakings for collective investment (“UCIs”) and their *réviseurs d'entreprises agréés* (approved statutory auditors, “REA”).

More specifically, this circular introduces, on the one hand, a self-assessment questionnaire to be completed on an annual basis by UCIs and details the information to be spontaneously transmitted by UCIs to the CSSF in case the REA issues a modified audit opinion in the context of the statutory audit of accounting data included in the annual report of a UCI (“statutory audit”).

On the other hand, this circular broadly details the role and engagement of a REA in the context of the statutory audit of UCIs. Moreover, it establishes a specific regulatory framework applicable to the management letter and also introduces a separate report (“separate report”). Both documents must be drawn up by the UCIs’ REAs on an annual basis. The separate report includes procedures that the CSSF requests the REA to perform in relation to the UCI’s self-assessment questionnaire.

This circular also repeals Circular CSSF 02/81 relating to the guidelines concerning the task of auditors of undertakings for collective investment, pursuant to the repealing provisions of Section 5.1.

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1. Scope and legal basis

This circular applies to the following UCIs:

- undertakings for collective investment subject to Part I of the Law of 17 December 2010, as amended, (“UCI Law”)(“UCITS”);
- undertakings for collective investment subject to Part II of the UCI Law (“UCIs subject to Part II of the UCI Law”);
- specialised investment funds governed by the Law of 13 February 2007, as amended, (“SIF Law”)(“SIFs”);
- investment companies in risk capital governed by the Law of 15 June 2004 (“SICAR Law”) (“SICARs”);

The requirements introduced by this circular are notably based on the following legal provisions:

- The self-assessment questionnaire as well as the requirement to spontaneously transmit information to the CSSF where the REA issues a modified audit opinion in the context of the statutory audit, as specified in Section 2 of this circular, are introduced pursuant to Article 147(2) of the UCI Law, Article 45(3) of the SIF Law and Article 32 of the SICAR Law, which allow the CSSF to require, as part of its supervisory mission, the provision of information from UCIs falling within the scope of this circular.
- The definition of the specific regulatory framework applicable to the management letter to be drawn up by the REA, as specified in Section 3 of this circular, results from Article 154(3) of the UCI Law, Article 55(3) of the SIF Law and Article 27(3) of the SICAR Law, which allow the CSSF to set rules on the scope of the mandate for the audit of the annual accounting documents of the UCIs falling within the scope of this circular and on the content of the reports and written comments issued by the REA.
- The separate report to be drawn up by the REA, as specified in Section 3 of this circular, is introduced pursuant to Article 154(3) of the UCI Law, Article 55(3) of the SIF Law and Article 27(3) of the SICAR Law, which allow the CSSF to instruct a REA to carry out audits on one or several aspects of the activity and operation of the UCIs falling within the scope of this circular.

2. Rules applicable to UCIs

2.1 Self-assessment questionnaire to be submitted annually by UCIs and practical rules associated with it

This circular introduces, pursuant to Article 147(2) of the UCI Law, Article 45(3) of the SIF Law and Article 32 of the SICAR Law, a self-assessment questionnaire to be completed by UCITS, UCIs subject to Part II of the UCI Law, SIFs and SICARs for each year or period in respect of which a statutory audit was carried out in accordance with Article 154(1) of the UCI Law, Article 55(1) of the SIF Law and Article 27(1) of the SICAR Law. The self-assessment questionnaire is available to UCIs via the eDesk portal (<https://edesk.apps.cssf.lu>).

The self-assessment questionnaire includes questions on predefined topics and takes into account the characteristics of the different types of UCIs concerned as well as the risks associated with them (e.g. asset valuation, compliance of investments, costs/expenses). Its main purpose is to request UCIs to perform a self-assessment of their compliance with the legal and regulatory requirements.

Depending on the developments of the legal and regulatory requirements applicable to UCIs as well as on the prudential supervision requirements, the self-assessment questionnaire may be adapted over the coming years. The fight against money laundering and terrorist financing, which has been addressed, among others, in Circular CSSF 21/788, is not covered in this self-assessment questionnaire.

The UCI's *dirigeants* (executives) as referred to in Article 129(5) of the UCI Law, Article 42(3) of the SIF Law and Article 12(3) of the SICAR Law are responsible for the content of the self-assessment questionnaire. For the purpose of filling out the self-assessment questionnaire, the *dirigeants* must put in place adequate organisational processes within the UCI to allow the retrieval of any information needed from the service providers (e.g. the investment fund manager) to provide answers to different questions.

Before submitting the self-assessment questionnaire to the CSSF, the UCI's *dirigeants* must review and validate its content.

The self-assessment questionnaire must be submitted to the CSSF within three months after the end of the UCITS' financial year and four months after the end of the financial year for UCIs subject to Part II of the UCI Law, SIFs and SICARs.

In case of deregistration of the UCI from the official list, the self-assessment questionnaire covering the period from the last year-end to the date of deregistration will be required, in principle, within the same time frames of three months for UCITS and four months for the other types of UCIs.

The above-mentioned submission deadlines may be reviewed by the CSSF over the coming years.

2.2 Follow-up on modified audit opinions issued by REAs in the context of the statutory audit of UCIs

UCITS, UCIs subject to Part II of the UCI Law, SIFs and SICARs must be subject to a statutory audit, in accordance with Article 154(1) of the UCI Law, Article 55(1) of the SIF Law and Article 27(1) of the SICAR Law. The REA's report and, where applicable, its qualifications, are set out in full in each annual report.

In this context, for every audit report drawn up by the REA that includes a modified audit opinion at the level of one or more sub-funds of the UCI and/or of the UCI as a whole, the UCI's *dirigeants* must send a letter to the CSSF, without having been expressly required to do so by the latter, explaining the underlying reasons for the modified audit opinion, its impact on the UCI and its investors as well as the corrective measures, including the timeline for their implementation, taken by the *dirigeants*.

The specific information that UCIs must transmit to the CSSF in this context, pursuant to Article 147(2) of the UCI Law, Article 45(3) of the SIF Law and Article 32 of the SICAR Law, is detailed on the CSSF's website under <https://www.cssf.lu/en/investment-funds-vehicles/>, in a specific section concerning the periodic transmission of information for the type of UCI falling within the scope of this circular.

A modified audit opinion refers to qualified opinions, adverse opinions and disclaimer opinions. Matter paragraphs and information paragraphs are not concerned by this requirement.

The above-mentioned letter must be submitted to the CSSF within one month after the publication of the annual report, considering that UCITS must publish an annual report, pursuant to Article 150 of the UCI Law, within four months after the end of their financial year and that UCIs subject to Part II of the UCI Law, SIFs and SICARs must publish such annual report, pursuant to Article 150 of the UCI Law, Article 52 of the SIF Law and Article 23 of the SICAR Law, within six months after the end of their financial year.

The letter, signed by the UCI's *dirigeants*, must be transmitted to the CSSF at the email address: opc_sp_courrier@cssf.lu and all supporting information and documents must be enclosed.

3. Practical rules concerning the engagement of REAs for UCIs

UCITS, UCIs subject to Part II of the UCI Law, SIFs and SICARs must entrust the statutory audit to a REA on an annual basis, in accordance with Article 154(1) of the UCI Law, Article 55(1) of the SIF Law and Article 27(1) of the SICAR Law.

In this context, this circular defines, pursuant to Article 154(3) of the UCI Law, Article 55(3) of the SIF Law and Article 27(3) of the SICAR Law, a specific regulatory framework applicable to the management letter that the REA will have to draw up to the attention of the UCI's *dirigeants* and the CSSF.

Moreover, in accordance with these same articles, this circular introduces a separate report to be drawn up annually by the REA, notably in relation to the UCIs' self-assessment questionnaire, in compliance with the details provided in Section 3.3. below.

In accordance with Article 32(2) of the Law of 23 July 2016 concerning the audit profession, the audited entity and the REA, the *cabinet de révision agréé* (approved audit firm) or the audit firm must inform the CSSF of the dismissal or resignation of the REA, the *cabinet de révision agréé* (approved audit firm) or the audit firm during the term of appointment and provide an adequate explanation of the reasons therefor.

The CSSF will analyse for each request to change the *cabinet de révision agréé* (approved audit firm) the reasons for the envisaged change and will assess whether, when selecting a new *cabinet de révision agréé* (approved audit firm), the UCI has carefully assessed the adequacy of the competences and resources of the new *cabinet de révision agréé* (approved audit firm) considering the type and volume of the UCI's activities.

3.1 The statutory audit of a UCI

Pursuant to Article 33 of the Law of 23 July 2016 concerning the audit profession, the statutory audit of a UCI must be performed in compliance with the international auditing standards as adopted by the European Commission and the standards issued by the CSSF.

On this basis, the REA must present the results of the statutory audit in an audit report which includes its audit opinion.

3.2 The management letter

This circular introduces a specific regulatory framework for the management letter that REAs must draw up for each year or period subject to a statutory audit to the attention of the *dirigeants* of UCITS, UCIs subject to Part II of the UCI Law, SIFs and SICARs. The management letter form is available to REAs via the eDesk portal (<https://edesk.apps.cssf.lu>).

Once finalised by the REAs, the UCI's *dirigeants* must submit the management letter to the CSSF via the eDesk portal.

In the context of the management letter, the REA is not required to carry out any further procedures other than those already performed during the statutory audit and any other legal or regulatory duties concerning the UCIs for the same financial year.

Among the weaknesses identified or points needing improvement having been brought to the attention of the UCI's *dirigeants*, the REA determines, according to his/her professional judgement, the items whose importance requires that they have to be reported in the management letter.

The management letter must include, at least, the following findings:

- an important weakness or a point needing improvement communicated to whom it concerns in accordance with:
 - o ISA 260 "Communication with those charged with governance";
 - o ISA 265 "Communicating deficiencies in internal control to those charged with governance and management";
- any other weakness or point needing improvement which, based on the professional judgement of the REA, is of sufficient importance to be brought to the attention of the UCI's *dirigeants* or the CSSF.

The management letter must also include the follow-up of the weaknesses or points needing improvement raised in the management letters issued in preceding financial years and that have not been "closed" in the previous management letter. The weakness or point needing improvement is considered as "closed" where the necessary corrective measures have been taken to remedy this weakness or point needing improvement and where the UCI's *dirigeants* have put in place appropriate measures to prevent their recurrence.

Every weakness or point needing improvement raised by the REA must be linked to a topic selected from a list of subjects predefined by the CSSF, included in the management letter form available on the eDesk portal. The REA must also provide additional information by responding to a questionnaire, included in the same management letter form, in order to allow the CSSF to determine the risk level for each weakness or point of improvement. This risk level will be taken into account in the prudential supervisory approach of the CSSF for UCIs.

Moreover, every weakness or point needing improvement must be accompanied by the comments of the UCI's *dirigeants*, which must mandatorily include, among others, the following information:

- a detailed explanation of the reasons and circumstances related to the occurrence of the weakness or point needing improvement raised by the REA;
- a detailed explanation of the measures taken or decided in order to remedy the weakness or point needing improvement and to prevent their recurrence in the future. These measures must be accompanied by a detailed remediation plan with a related timetable.

If the UCI's *dirigeants* do not remedy the weaknesses or points needing improvement raised by the REA in the management letter in a timely manner and within a reasonable time frame, the REA will issue this management letter specifying that no comments have been received by the UCI's *dirigeants* on the weaknesses or points raised.

Where the REA did not identify any issue to be included in the management letter, the REA will still have to validate the form "management letter" via the eDesk portal, specifying that no issue has been raised by using the specific field provided for that purpose in the form (i.e. "No comment ML").

The management letter must be submitted to the CSSF by the UCI's *dirigeants* within four months after the end of the UCITS' financial year and six months after the end of the financial year for UCIs subject to Part II of the UCI Law, SIFs and SICARs.

3.3 The separate report

This circular introduces a separate report to be completed by the REAs of UCITS, UCIs subject to Part II of the UCI Law, SIFs and SICARs, for each year or period for which a self-assessment questionnaire has been submitted by the UCI. The purpose of this new report, which must be filled in via the eDesk portal under <https://edesk.apps.cssf.lu>, is notably to ensure the reliability of the answers provided by the UCI in the self-assessment questionnaire and to provide answers to a set of questions determined by the CSSF.

The drawing-up of a separate report consists of a set of procedures defined by the CSSF to be implemented by the REA, broken down into predefined topics. These procedures are directly indicated in the separate report.

Depending on the developments of the legal and regulatory requirements applicable to UCIs as well as on the prudential supervision requirements, the procedures to be implemented by the REA may be adapted over the coming years, notably following amendments to the self-assessment questionnaire.

The results of these procedures are documented in the separate report in the form of answers to a set of mainly closed-ended questions and they do not result in an opinion in accordance with auditing, insurance or any related services standards. Any comments by the REA in the empty text fields of this questionnaire must be concise, clear and provide answers to the questions asked.

The separate report must be submitted by the UCI's *dirigeants* to the CSSF within five months after the end of the UCITS' financial year and six months after the end of the financial year for UCIs subject to Part II of the UCI Law, SIFs and SICARs.

In case of deregistration of the UCI from the official list, the report covering the period from the last year-end to the date of the deregistration will be required, in principle, within the same time frames of five months for UCITS and of six months for the other types of UCIs.

The above-mentioned submission deadlines may be reviewed by the CSSF for the following years.

4. Procedures for the preparation and filing of the self-assessment questionnaire, the separate report and the management letter

The procedures and explanations on the practical arrangements for the preparation and filing of the self-assessment questionnaire, the separate report and the management letter will be made available to the UCI and its REA on the eDesk portal (<https://edesk.apps.cssf.lu>) under the heading "Investment funds and vehicles/Investment fund managers".

The requirements relating to the procedures and requests to the CSSF via the eDesk portal have been detailed in Circular CSSF 19/721.

The "Authentication and user account management" user guide is available to UCIs and REAs on the eDesk portal of the CSSF.

5. Final provisions

5.1 Repealing provisions

At the entry into force of this circular, Circular CSSF 02/81 on the guidelines concerning the task of auditors of undertakings for collective investment as well as Chapter P of Circular CSSF 91/75 on the obligation of UCIs to inform the CSSF of the audit performed by the REA will be repealed.

Moreover, for the financial years closing on or after 30 June 2022, the management letter for UCIs will no longer have to be transmitted to the CSSF pursuant to the provisions of Circular CSSF 19/708.

5.2 Entry into force

For UCITS and UCIs subject to Part II of the UCI Law, the instructions of this circular must be complied with in their entirety for the financial years closing on or after 30 June 2022. For these UCIs, all financial years closing as from that date will thus fall within the scope of this circular.

For SIFs and SICARs, the instructions of this circular must be complied with for the financial years closing on or after 30 June 2022, with the exception of the provisions relating to the separate report in Section 3.3 of this circular. The provisions concerning the separate report must be complied with by SIFs and SICARs for the financial years closing on or after 30 June 2023. For these UCIs, all financial years closing as from the above-mentioned dates will thus fall within the scope of this circular.

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