

Law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF and ELTIF and amending notably the Law on RAIF



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The Luxembourg law implementing notably the Regulations (EU) 345/2013 on European venture capital funds, (EU) 346/2013 on European social entrepreneurship funds ("EuVECA and EuSEF"), (EU) 2015/760 on European long-term investment funds ("ELTIF"), (EU) 2017/1131 on money market funds (the "MMF") (the "EU Regulations") and amending notably the Luxembourg law of 23 July 2016 on reserved alternative investment funds (the "RAIF Law") (the "Law of 16 July 2019") entered in force on 22 July 2019. Secondly, the Law of 16 July 2019 amends, inter alia, the RAIF Law to strengthen the legal certainty and take into account certain usual practices of management companies.

1. Implementation of the EuVECA, EuSEF, MMF, ELTIF Regulations

The Law of 16 July 2019 aims to designate the competent authority, i.e. the CSSF, and provides supervisory and administrative sanctions powers granted to such authorities for the specific needs of the EU Regulations.

In respect to the power of investigation, the Law of 16 July 2019 distinguishes between:

EuVECA, EuSEF, MMF in respect of which the CSSF is vested with the supervisory and investigation powers necessary to perform its functions (notably access to any documents and data, right to require information, on-site inspection, adoption of necessary measures so that the supervised persons continue to meet their regulatory requirements, power of injunction, communication of information to the procureur d'Etat in respect of criminal offences); ELTIFs where the CSSF is vested with the supervisory and investigation powers provided by article 50 of the Law of 12 July 2013 on alternative investment fund managers (the "AIFM Law").

In case of breach of the relevant provisions of Regulations, the CSSF is entitled to impose administrative sanctions such as a public statement specifying the identity of the person

responsible for and the nature of the breach, a temporary ban of management function, an administrative penalty up to 1 000 000 euros for the individuals and 5 000 000 euros for legal persons or 10% of the consolidated turnover..

The Tribunal administratif is competent to deal with applications contesting the decision made by the CSSF.

Subject to exceptions, the CSSF is entitled to publish on its website decisions establishing a sanction or an administrative measure.

2. Amendment of the RAIF Law

The Law of 16 July 2019 strengthens the legal certainty by specifying the provisions of article 8 of the RAIF Law, which reflects now a practice according to which common funds may be managed by management companies authorised under the chapter 15, 16 and 18 of the Law of 17 December 2010 on UCI (which must appoint an external AIFM authorised under the AIFM Law).

Furthermore, the Law of 16 July 2019 adds a paragraph (12) to the article 49 of the RAIF Law in order to correct an omission in respect to the transformation of a common fund into a SICAV.