LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de la Justice

ML/TF VERTICAL RISK ASSESSMENT

LEGAL PERSONS AND LEGAL ARRANGEMENTS

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CONTENTS

1. INTRODUCTION

In the Financial Action Task Force's (FATF) guidance paper titled "*Transparency and Beneficial Ownership*" (2014), it is said that:

"*Corporate vehicles – such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements - conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role those corporate vehicles play in the global economy, under certain conditions, they have been misused for illicit purposes, including money laundering, bribery and corruption, tax fraud, terrorist financing, and other illegal activities. This is because, for criminals trying to circumvent anti-money laundering and counter-terrorist financing measures, corporate vehicles are an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system*"[1].

To deter and prevent the possibility of criminals misusing legal persons and legal arrangements, the FATF has established standards on transparency through its Recommendations 24 and 25. In addition, the interpretative note to Recommendation 24 states that, to ensure that there is adequate transparency concerning legal persons, countries should have mechanisms that assess money laundering (ML) and terrorist financing (TF) risks associated with domestic legal persons. Pursuant to the FATF's Recommendation 24, foreign legal persons (i.e. legal persons that operate in the Grand Duchy but that were created in other jurisdictions) are not studied in this paper. With respect to legal arrangements, FATF Recommendation 25 does not require countries to identify and assess ML/TF risks associated with legal arrangements. As the latest update of the Luxembourg national risk assessment in 2020 (NRA 2020) identified legal arrangements governed by Luxembourg law (*fiducies*) as a "Very High" risk subsector, this report was considered an opportunity to deepen this analysis. Moreover, professionals providing services to these legal arrangements need to understand the associated ML/TF risks in order to apply anti-money laundering and combatting the financing of terrorism (AML/CFT) preventive measures commensurate with those risks. Hence, *fiducies* fall within the scope of this report.

Luxembourg is ranked among the world's leading financial centres due to its economic, social and fiscal stability[2]. The country is therefore attractive for international businesses, particularly for setting up companies that can benefit from the numerous investment opportunities the country has to offer. However, this, as in other countries with similar set-ups, may provide an opportunity for criminals to misuse the corporate sector to launder the proceeds of crimes (primarily committed abroad) or for TF activities.

The NRA 2020 and the legal persons and legal arrangements risk assessment

The NRA 2020 assessed the risk of misuse of its legal persons and legal arrangements as "High". Considering the relevance of the corporate sector to Luxembourg's economy and the findings of the NRA 2020, the Ministry of Justice (MoJ) decided to conduct this specific risk assessment (the LPA risk

[1] FATF, *Guidance on Transparency and Beneficial Ownership*, 2014, paragraph 1.
[2] https://luxembourg.public.lu/en/invest/key-sectors/finance.html

assessment), which focuses on legal persons and legal arrangements. In order to produce a comprehensive report, two different analyses were performed. First, the risk of misuse of the country's corporate sector for ML/TF purposes (the **Corporate risk**) was assessed by studying Luxembourg's capacity to obtain and maintain basic and beneficial ownership information. This should highlight the overall risks pertaining to legal persons and legal arrangements. Second, a more granular analysis was performed to assess the specific ML/TF risks of each type of legal person created in Luxembourg and the type of legal arrangement created in Luxembourg (the **Entity-type specific risk**).

The methodology applied in the LPA risk assessment is explained in the first section of this report[3]. The risk assessment itself is developed in the sections that follow, starting with a general overview of the corporate sector in Luxembourg. The first subsection of this report explores the **Corporate risk**, including the corporate inherent risk and the effect of existing mitigating factors, yielding a residual risk level for the corporate risk assessment. The following subsection of the report provides the same analysis (with some adjustments) with regard to the **Entity-type specific risk** and results in residual risk levels per type of legal person and legal arrangement. Suggested recommended actions for further reducing the vulnerabilities identified in the assessment process are compiled in a separate document.

[3] Please note that the term "paper", "risk assessment", "report" and "document" are used interchangeably in this document and refer to this LPA risk assessment.

2. METHODOLOGY

2.1 Objective

Legal persons and legal arrangements play an important role in the economy of every jurisdiction, as they are useful tools for organising, managing and developing legitimate business. However, these same characteristics also make them attractive to criminals who may wish to use them as vehicles for criminal activity or for laundering the proceeds of crime. Legal persons and legal arrangements may be misused for ML purposes involving complex operations and transactions, where money from illicit sources (e.g. drug trafficking, tax evasion, etc.) may be made to appear legitimate. Furthermore, the corporate sector may be misused for TF purposes, by channelling legitimate funds to support terrorist activities or groups.

These abuses may occur through specific corporate set-ups designed by criminals to hamper transparency and create anonymity. The anonymity aspect in particular enables illegal activities to take place out of sight of law enforcement authorities, competent authorities, financial institutions (FIs), designated non-financial businesses or professions (DNFBPs) and other AML/CFT gatekeepers. It is therefore important to promote a transparent corporate environment[4].

From a ML/TF perspective, legal persons and legal arrangements are most vulnerable when their characteristics or their structure create obstacles in identifying the beneficial owner (BO) or their purpose. A number of important studies run by the FATF[5], the Stolen Asset Recovery Initiative (StAR) of the World Bank and the United Nations Office of Drugs and Crime (UNODC)[6] have explored the misuse of corporate vehicles for illicit purposes, including for ML/TF purposes. In general, the lack of adequate, accurate and up-to-date BO information, as well as the lack of timely access to BO information, facilitates ML/TF by disguising:

- the identity of known or suspected criminals;
- the true purpose of an account or property held by a corporate vehicle; and/or
- the source or use of funds or property associated with a corporate vehicle[7].

Consequently, a legal person or legal arrangement may be subject to a higher risk of misuse where it is more challenging for authorities, including law enforcement and investigative agencies, to access basic information on the entity and its BO(s). These vulnerabilities can be identified through the contextual framework posed by the Luxembourg corporate environment and by the legal characteristics of the different types of legal persons or legal arrangements, which might hamper transparency.

[4] OECD – IDB, *A beneficial Ownership Implementation Toolkit*, 2019.

[5] See, for instance, the Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018 and the FATF *Guidance on Transparency and Beneficial Ownership*, 2014.

[6] StAR Initiative of the World Bank and the UNODC, *The Puppet Masters – How the Corrupt Use Legal Structures to hide Stolen Assets and What to Do About it*, 2011, page 33.

[7] FATF, *Guidance on Transparency and Beneficial Ownership*, 2014, paragraph 9.

Against this background, this document seeks to assess the risk of legal persons and legal arrangements created in Luxembourg of being misused for ML/TF purposes. It should be noted that ML and TF differ both in nature and in purpose. However, ML and TF present many similarities, in particular the ways in which criminals commit both crimes when misusing legal persons or legal arrangements. For instance, in cases where TF is sourced from illegal activities, criminals may decide to launder illegal proceeds before they are used for TF, using the same techniques as money launderers. For this reason, the LPA risk assessment applies the same approach as the NRA 2020. That is to say, the ML and TF threats are assessed separately in the **Corporate risk** analysis, given the differing nature of the criminal activity. Similarly, for the studied vulnerabilities (in both the **Corporate** and **Entity-type specific risk** analyses), this document considers each type of legal person and legal arrangement's ML and TF risks without differentiation, given that transparency vulnerabilities apply in relation to both.

Luxembourg is currently developing an in-depth TF vertical risk assessment, including an assessment of non-profit organisations (NPOs) most vulnerable to TF risks given the nature of their activities and the geographic scope of their action. NPOs identified in that respect are mainly those providing aid and/or carrying out humanitarian actions in areas in close proximity to an active terrorist threat. Whilst the TF risk assessment focuses on the vulnerabilities driven by the activities, the LPA risk assessment focuses on vulnerabilities arising from obstacles to transparency. Nevertheless, an additional subsection of this report provides a high-level description of the risk exposure to TF faced by the NPOs mentioned above.

Last but not least, this high-level risk assessment strives to assess legal persons and legal arrangements purely from a transparency point of view. Risks linked to the legal persons and legal arrangements' activities are studied in the respective sub-sector risk assessments conducted within the relevant sectors.

2.2 Assessing ML/TF risks of legal persons and legal arrangements

In developing the methodology presented here, a number of source documents from international organisations were used to define the elements to be considered. FATF papers, such as the FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment[8] and the FATF Guidance on Terrorist Financing Risk Assessment[9], the FATF Guidance on Transparency and Beneficial Ownership[10], the description of the International Monetary Fund (IMF) NRA methodology[11] and the World Bank explanatory remarks to its national ML/TF methodology[12] were all used as the foundation for this methodology. Although useful in their own right, these sources nevertheless focus on general national risks and do not detail how a focused analysis (as set out below) might be developed.

As noted earlier, Luxembourg updated its NRA in 2020. The starting point of the LPA risk assessment is the NRA methodology and, in particular, the vulnerabilities, threats and risks identified in the NRA 2020 in relation to legal persons and legal arrangements. However, the focus of the LPA risk assessment being ML/TF risks arising from obstacles to transparency, this risk assessment incorporates new elements of analysis related to obstacles to transparency. For this purpose, the FATF Recommendations 24 and 25 on transparency of legal persons and legal arrangements, and their respective interpretative notes, serve as benchmarks for assessing the risks of misuse of Luxembourg's legal persons and legal arrangements for ML/TF purposes.

The analysis in this assessment is made up of two parts. First, the report studies certain elements of Luxembourg's corporate environment that could hinder its transparency according to the six general categories of legal persons and legal arrangements (*sociétés commerciales*, *sociétés civiles*, *associations sans but lucratif* (ASBLs), *fondations, "*other types of legal persons"[13] and legal arrangements). This high-level analysis aims to identify the corporate risk of the country's corporate environment as a whole being misused for ML/TF purposes (earlier referred to as the **Corporate risk**). Second, this report assesses the individual risk of misuse of each type of legal person and legal arrangement for ML/TF purposes (earlier referred to as the **Entity-type specific risk**).

The following table summarises the different working steps of this document for each level of analysis.

[8] FATF, *Guidance on national ML/TF risk assessment,* 2013.
[9] FATF, *Terrorist Financing Risk Assessment Guide*, 2019.
[10] FATF, *Guidance on transparency and beneficial ownership,* 2014.
[11] IMF, *The International Monetary Fund Staffs' ML/NRA Methodology*.
[12] World Bank, *Risk Assessment Support for Money Laundering/Terrorist Financing*, 2016.
[13] Please refer to section 3.3 for a detailed overview of the types of entities that fall within this category.

Table 1: Methodology working steps: Corporate risk and Entity-type specific risk

	Corporate risk	**Entity-type specific risk**
Step 1: Assessment of the **inherent risk**…	…of Luxembourg's corporate environment **Inherent risk** = inherent vulnerabilities x threat	…of each type of the legal person and legal arrangement falling within the scope of this report[14] **Inherent risk** = inherent vulnerabilities x probability
	Studied variables	
	- Inherent vulnerabilities (section 2.2.1.1.)	
	- Threat (section 2.2.1.2)	- Probability (likelihood) of legal persons and legal arrangements being exploited for ML/TF purposes (section 2.2.1.3)
Step 2: Assessment of the **residual risk**	Residual risk = inherent risk – mitigating factors	

The specific variables referred to here are explained in greater detail below.

2.2.1 Step 1: Assessment of inherent risk

As described in the previous section, the first step of the methodology consists of assessing the inherent risk. The NRA 2020 defines "inherent risk" as the risk of misuse for ML/TF purposes before mitigating actions are applied. With regard to the **Corporate risk** analysis, the same approach as the NRA 2020 was followed and the inherent corporate risk is defined as a function of threats and inherent vulnerabilities. With regard to the more granular **Entity-type specific risk** analysis, the probability of misuse of a specific legal person's or legal arrangement's vulnerabilities was introduced. Therefore, the Entity-type specific inherent risk is defined as a function of the inherent vulnerabilities of each type of legal person and legal arrangement and the probability of legal persons and legal arrangements' vulnerabilities being misused for ML/TF purposes. For both **Corporate** and **Entity-type specific risk** analyses, the inherent risk outcomes were obtained using a risk matrix.

The following subsections further develop the concepts of "inherent vulnerability", "threat" and "probability" and explain how the inherent risk outcomes for both analyses were obtained.

2.2.1.1 Inherent vulnerability

The FATF national ML/TF risk assessment guidance explains that vulnerabilities are "[…] *factors that represent weaknesses in AML/CFT systems or controls or certain features of a country. They may also include the features of a particular sector, a financial product or type of service that make them attractive for ML or TF purposes.*"[15] The Guidance on transparency and beneficial ownership also states that "*the misuse of corporate vehicles could be significantly reduced if information regarding*

[14] This report includes the legal persons and legal arrangements created in Luxembourg.

[15] FATF, *Guidance on national ML/TF risk assessment*, 2013, paragraph 10.

both the legal owner and the beneficial owner, the sources of the corporate vehicle assets, and its activities were readily available to the authorities"[16].

For the **Corporate Risk** assessment, the inherent vulnerabilities considered in this document are the circumstances or characteristics that affect Luxembourg's corporate environment and that could be exploited for ML/TF purposes. For the more granular **Entity-type specific risk** assessment, the legal structure of the Luxembourg legal persons and legal arrangements were studied, with the focus on the specific legal characteristics that could hamper transparency and thus facilitate anonymity.

The inherent vulnerabilities explored in this document take into account the interpretative notes to Recommendations 24 and 25 and the FATF Guidance on Transparency and Beneficial Ownership. They were analysed from a broader corporate perspective and specifically for each type of legal person and legal arrangement, as follows:

Corporate risk – Inherent contextual vulnerabilities

- There may be obstacles to obtaining BO information, including:
  - the use of nominee arrangements[17]; or
  - the use of complex ownership and control structures.

Entity-type specific risk – Inherent vulnerabilities

- There may be obstacles to obtaining BO information, including:
  - the use of bearer shares[18]; or
  - the use of legal person as investment or asset holding vehicles.
- The vulnerabilities of NPOs to be abused for TF purposes.
- There may be complexity fostered from the intrinsic legal features of the corporate structures, including:
  - shares being easily transferable to third parties ownership; the possibility of shareholders/ partners being legal or natural persons;
  - the (public) availability of information on their legal owners; and
  - the possibility of the managers or directors being legal persons.

Inherent vulnerability scorecard for both Corporate risk and Entity-type specific risk analyses

Each inherent vulnerability was assigned a score from "Very Low" to "Very High". An average score was then computed as the overall inherent vulnerability score in relation to each legal person or legal

[16] FATF, *Guidance on transparency and beneficial ownership,* 2014, paragraph 2.
[17] FATF, *Guidance on transparency and beneficial ownership,* 2014, paragraph 9.
[18] FATF, *Guidance on transparency and beneficial ownership,* 2014, paragraph 9.

arrangement category (for the **Corporate risk**) or entity type (for the **Entity-type specific risk**). Section 4 describes the inherent vulnerabilities in relation to **Corporate risk** (and how they apply to each of the six general categories of legal persons and legal arrangements of Luxembourg´s corporate environment - *Sociétés commerciales*, *société civiles*, ASBLs, *fondations,* "other legal persons" and legal arrangements), whilst section 5 assesses the inherent vulnerabilities in relation to **Entity-type specific risk**.

Table 2: Inherent vulnerability scores and outcomes

Inherent vulnerability score	1.00 – 1.79	1.80 – 2.59	2.60 – 3.39	3.40 – 4.19	4.20 – 5.00
Inherent vulnerability outcome	Very Low	Low	Medium	High	Very High

2.2.1.2 Threats

Threats are considered in the Corporate risk assessment. Combining threats with corporate inherent vulnerabilities results in the level of corporate inherent risk.

As explained at the beginning of section 2, this document leverages the NRA 2020's findings and evaluates them in the context of the corporate environment in Luxembourg. The NRA 2020 relies on the FATF's definition of threat, as stated in FATF Guidance on national ML/TF risk assessment: "[…] *a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. In the ML/TF context this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities*"[19].

The NRA 2020 assessed threats on a scale of "Very Low", "Low", "Medium", "High" and "Very High", against a scorecard of criteria applying a combination of national and international data available and expert judgement, as well as workshops with public authorities, which were used as a means of validating those outcomes.

Domestic and foreign threat assessments

Threat assessments were conducted separately for domestic and foreign offences in the NRA 2020. Following that, the exposure to each threat across domestic and foreign offences was combined to produce an overall exposure level, based on a weighted average between domestic and foreign exposure, with 25% and 75% weights respectively[20]. Indeed, as explained in the NRA 2020, given Luxembourg's open economy and large financial sector, the country is more exposed to ML/TF and predicate offences from abroad, compared to domestic exposure[21]. This is also the case for misuse of

[19] FATF, *Guidance on national ML/TF risk assessment*, 2013, paragraph 10.

[20] The domestic/foreign weighting reflects an average perceived split across offences and sectors, based on expert judgement and data, where available (for instance, share of assets under management outside of the Luxembourg financial sector).

[21] NRA 2020, page 31.

Luxembourg's corporate sector; the different weighting given to foreign and domestic exposure used in the NRA 2020 also applies to the LPA risk assessment.

Although threats in the NRA 2020 were assessed along a list of predicate offences in line with the FATF crime categories, the analysis in this document is focused on criminal activity most relevant to the misuse of Luxembourg's corporate sector, such as:

- ML, which is used to abuse the corporate environment in order to access Luxembourg's financial sector;
- tax crimes, the proceeds of which may be concealed through complex, non-transparent structures;
- corruption and bribery, which are frequently associated with *sociétés commerciales*, trusts, and *fondations*;
- fraud and forgery, in light of legal persons and legal arrangement's ability to establish a degree of separation from the relevant fraudulent activity;
- other highly relevant threats such as drug trafficking, participation in an organised criminal group, and racketeering; and
- TF in light of the potential nexus to NPOs.

The threat levels used in the NRA 2020 and that were used in this LPA risk assessment are provided in the table below.

Table 3: Threat levels

Level of relevant threats as per NRA 2020	Very Low	Low	Medium	High	Very High

2.2.1.3 Probability of misuse

Probability is considered in the **Entity-type specific risk** assessment. Combining probability with the entity-type specific inherent vulnerabilities, results in the level of inherent risk per entity type.

In this document, the probability of the inherent vulnerabilities of a legal person or legal arrangement being misused for criminal activity is used for the risk assessment of each type of legal person and legal arrangement. A probability score is determined by giving relative weight to each specific type of legal person and legal arrangement against the overall population of legal persons and legal arrangements registered with the *Registre de Commerce et des Sociétés* (RCS)[22] and the *Registre des Fiducies et des Trusts* (RFT) as of 31 December 2021.

[22] In the NRA 2020, the word "size" (meaning the number of entities in a particular sector or sub-sector) had a dimension of vulnerability in relation to inherent risk. In this more granular assessment at the entity-type level, however, the number of entities is used to assess the probability of vulnerabilities being exploited and the resulting ML/TF risk.

For a specific legal person and legal arrangement type, the probability of vulnerabilities materialising in risk (of misuse ML/TF) for this specific legal person and legal arrangement increases accordingly to its prevalence in the corporate environment. In addition, chances are high that criminals use those more commonly used types of legal persons and legal arrangements in order to hide behind similar entities.

Table 4: Probability scorecard and outcomes

Size (weight of legal person/ legal arrangement type)	Size < 5%	5% ≥ Size <20%	20% ≥ Size <35%	35% ≥ Size <50%	Size ≥ 50%
Probability outcome	Very Low	Low	Medium	High	Very High

2.2.1.4 Corporate risk: Assessing corporate inherent risk

The first step to assessing corporate inherent risk consists of mapping inherent vulnerability of each category of legal person and legal arrangement with the relevant threats.

Table 5 visualises the risk matrix used to map these two factors (i.e. inherent vulnerability and threat) against each other. The horizontal axis represents the inherent vulnerability of the studied category of legal person or legal arrangement, whereas the vertical axis lists the different threat levels that could be allocated to the analysed predicate offence. The inherent risk level for the studied category of legal persons and arrangement and the threat considered is represented in the centre of the matrix on a scale of 1 (“Very Low”) to 5 (“Very High”).

Table 5: Corporate inherent risk matrix

Corporate inherent risk outcomes and scores		Corporate inherent vulnerability				
		Very Low	Low	Medium	High	Very High
Threats	Very High	3	4	4	5	5
	High	3	3	4	4	5
	Medium	2	3	3	4	4
	Low	2	2	3	3	4
	Very Low	1	2	2	3	3

This exercise is performed for every category of legal persons and legal arrangements and for each of the relevant threats identified.

The second step consists in computing the average score for every category of legal persons and legal arrangements. The overall risk level is determined in accordance with the intervals given in the table below.

Table 6: Corporate inherent risk outcomes and corresponding inherent risk scores

Inherent corporate risk outcome	Very Low	Low	Medium	High	Very High
Corresponding inherent risk score	1.00 – 1.79	1.80 – 2.59	2.60 – 3.39	3.40 – 4.19	4.20 – 5.00

2.2.1.5 Entity-type specific risk: assessing entity-type specific inherent risk

A risk matrix was also developed in order to assess the inherent risk at the entity-type level. Appropriate factors were mapped against a risk matrix where the horizontal axis represents the entity-type specific inherent vulnerability levels and the vertical axis represents the probability outcomes as per Table 4. The entity-type specific inherent risk of ML/TF misuse is represented in the centre of the matrix on a scale of 1 ("Very Low") risk to 5 ("Very High") risk (as set out in the table below).

Table 7: Entity-type inherent risk matrix

Entity-type inherent risk outcomes and scores		Entity-type inherent vulnerability				
		Very Low	Low	Medium	High	Very High
Probability (entity type)	Very High	3	4	4	5	5
	High	3	3	4	4	5
	Medium	2	3	3	4	4
	Low	2	2	3	3	4
	Very Low	1	2	2	3	3

2.2.2 Step 2: Mitigating measures and residual risk

Although specific mitigating measures apply to both the **Corporate risk** and **Entity-type specific risk**, the same procedure was followed in both analyses to assess the impact of mitigating measures and to determine residual risk.

Mitigating measures consist of actions implemented by Luxembourg authorities or the private sector (including supervisory authorities, self-regulatory bodies (SRBs), law enforcement authorities and professionals) to reduce the inherent risk. Mitigating factors were considered for each of the two types of analysis (i.e. of the **Corporate** and the **Entity-type specific risk**).

The mitigating factors considered in the **Corporate risk** analysis include:

- powers of the RCS registry to obtain and maintain basic information;
- the role of trust and company service providers (TCSPs) as AML/CFT gatekeepers in the formation of a legal person or legal arrangement and throughout the life cycle of a legal person or legal arrangement;

- Luxembourg's capacity to obtain and maintain BO information through the BO registries (*Registre des Bénéficiaires Effectifs* (RBE) and *Registre des Fiducies et Trusts* (RFT)) and from FIs and DNFBPs; and
- acknowledging that Luxembourg's corporate environment may be exploited abroad for ML/TF purposes, the capacity to maintain an effective international cooperation, for instance by responding/sending mutual legal assistance (MLA) requests and participating actively in international fora.

Following the focus on international cooperation of the interpretative notes to the FATF recommendation 24 and 25, this report devotes a separate section to international cooperation. As a result, the national component of cooperation is dealt with in various sections of the report rather than in a specifically dedicated section.

The mitigating factors considered in the **Entity-type specific risk** include:

- the role of notaries as AML/CFT gatekeepers;
- filing of financial statements;
- audit and control requirements applicable to legal persons and legal arrangements: the external audit performed by a *réviseur d'entreprises agréé* or the oversight of the legal person through works performed by a *Commissaire*; and
- monitoring/supervision performed by authorities:
    - the supervision performed by the different supervisory authorities of investment vehicles[23]; and
    - the controls performed by different Ministries for NPOs (i.e. ASBLs and *fondations*).

The mitigating measure assessment process

The mitigating factors in respect of each category of inherent risk (both corporate and entity-type specific) were assessed through a two-step approach:

i. First, mitigating measures were scored on a scale of 1 ("Limited or no mitigating factors") to 5 ("High mitigating factors") and aggregated into an overall mitigating factor score. The aggregated scores were then translated into a subtractive figure ranging from 0 ("Limited or no mitigating factors") to -2 ("High mitigating factors"), as set out in Table 8:

Table 8: Mitigating factors scores, outcomes and impact

Mitigating factors scores and outcomes	1.00 – 1.79	1.80 – 2.59	2.60 – 3.39	3.40 – 4.19	4.20 – 5.00
	Limited or no mitigating factors	Some mitigating factors	Moderate mitigating factors	Significant mitigating factors	High mitigating factors

[23] As this report allocates a higher inherent vulnerability to legal persons that can be used as investment vehicle, the additional mitigating factors in place need to be studied as well.

Impact of mitigating factors in inherent vulnerabilities	0	-0.5	-1	-1.5	-2

ii. Second, the impact of mitigating measures on inherent risk was calculated by applying the corresponding mitigating measures subtractive figure to the inherent risk score allocated under the last step of the inherent risk assessment (see Table 5 and Table 7 above). The result is a residual risk level ranging from "Very Low" to "Very High" residual risk, as per Table 9 below.

Table 9: Residual risk scores and outcomes

Residual risk score	1.00 – 1.79	1.80 – 2.59	2.60 – 3.39	3.40 – 4.19	4.20 – 5.00
Residual risk outcome	Very-Low	Low	Medium	High	Very High

2.2.3 Comparison with the NRA 2020 methodology

Although the methodology is similar to the one applied in the NRA 2020, some minor changes were undertaken to account for the specificities of this vertical risk assessment. For instance, the entity-type specific inherent risk combines the inherent vulnerability with "probability" instead of "threat". Indeed, it is deemed reasonable to use the threat level (which is a product of multiple variables and which was integrated into the NRA 2020) in the less granular analysis of **Corporate risk** and use the information relating to the occurrence of each specific type of legal person and legal arrangement in the more granular **Entity-type specific risk** analysis.

Table 10: NRA 2020 and LPA risk assessment methodology

	NRA 2020	**LPA RISK ASSESSMENT**	
		Corporate risk	**Entity-type specific risk**
Step 1: Inherent risk	Inherent vulnerabilities x Threats		Inherent vulnerabilities x Probability
Step 2: Mitigating measures and residual risk	Residual risk = Inherent risks – mitigating measures		

2.3 Sources of information

The National Prevention Committee (NPC) mandated the MoJ to conduct the LPA risk assessment. In developing the mandated risk assessment set out in this document, primary and secondary sources were used.

Primary sources

The information applied in this document derives principally from primary sources. As part of this risk assessment exercise, a comprehensive data request was sent to all the participating authorities in relation to the various matters subject to analysis. The information provided by participating stakeholders included, *inter alia*, legislation, statistics, typologies, a description of procedures and decisions made by agencies. Additionally, a series of meetings were held with all the participating stakeholders to discuss inherent vulnerabilities and mitigating measures. These meetings provided expert judgment when quantitative data was not available and a useful platform for consolidating that information.

Participating stakeholders

The stakeholders participating in this exercise were:

- Ministries:
  - Ministry of Justice (MoJ)
  - Ministry of Finance (MoF)
  - Ministry of Foreign and European Affairs (MoFA)

- Supervisory authorities:
  - Financial Sector Supervisory Authority (CSSF)
  - Insurance Sector Supervisory Authority (CAA)
  - Tax Authority – Registration Duties, Estate and VAT Authority (AED)
  - Tax Authority – Inland Revenue Authority (ACD)

- Self-regulatory bodies (SRBs):
  - Order of Chartered Professional Accountants (OEC)
  - Institute of Statutory Auditors (IRE)
  - Chamber of Notaries (CdN)
  - Luxembourg Bar Association (OAL)
  - Diekirch Bar Association (OAD)

- Investigative authorities:
  - Offices of the investigative judge of the Luxembourg and Diekirch District Courts
  - Judicial Police Service (SPJ)

- Prosecution authorities:
  - General State Prosecutor's Office (PG)
  - State Prosecutor’s Offices of the Luxembourg and Diekirch District Courts

- Administrations:
  - State Treasury
- Other authorities:
  - Financial Intelligence Unit (CRF)
  - Customs and Excise Administration (ADA)

Secondary sources

Information from open sources was used for the development of this report. This includes the NRA 2020 and other risk assessments, reports and guides from international organisations, such as the FATF, the OECD, the World Bank and the IMF.

3. OVERVIEW OF LUXEMBOURG'S CORPORATE ENVIRONMENT REGARDING LEGAL PERSONS AND LEGAL ARRANGEMENTS

In this analysis, legal persons and legal arrangements created in Luxembourg are categorised in the following manner:

- commercial companies (see section 3.1);
- non-commercial companies (see section 3.2);
- other legal persons (see section 3.3); and
- legal arrangements (see section 3.4).

Table 11 provides a high-level description of commercial, non-commercial and other legal persons in Luxembourg.

Table 11: Description of legal persons in Luxembourg

Legal person sub-sectors	Description	Sub-types / examples	Key legislation
Sociétés commerciales	• Companies conducting commercial or non-commercial activities • Constitute a legal person separate from that of their members[24]	• SNC • SCS and SCSpé • SA and SAS • SCA • SARL and SARL-S • SC, SCE and SCOOP • SE	• Civil code • Company Law Directive • Article 100-2 of the 1915 Companies Law • Council Regulation (EC) No 1435/2003 of 22 July 2003 • Directive 2001/86/EC of 8 October 2001 • Law of 19 December 2002 on the Trade and Company Register (2002 RCS Law)
Sociétés civiles	• Flexible, non-commercial, company structure (e.g. no capital required)	• Most present in the civil, agricultural, liberal or intellectual professions • Frequently used to manage immovable assets (*société civile immobilière* – SCI)	• Article 1832 of the Civil code[25] • 2002 RCS Law
ASBLs	• Non-profit organisations • Receive assets allocated to carry out work of a philanthropic, social, religious, scientific, artistic,	• Local sports, music communities, gardening clubs • Community associations • Associations providing humanitarian aid or carrying out development	• 1928 NPOs Law • 2002 RCS Law

[24] With the exception of SCSpés.

[25] "A company may be formed by two or more persons who agree to contribute something to a common endeavour with a view to sharing the benefits which may result therefrom or, in the cases provided for by law, through an act of will of a natural person who allocates assets to the conduct of a specific activity". Civil code, article 1832.

Legal person sub-sectors	Description	Sub-types / examples	Key legislation
	educational, sporting, or touristic nature		
Fondations	• Receive assets allocated to carry out work of a philanthropic, social, religious, scientific, artistic, educational, sporting or tourist nature and subject to approval by MoJ	• Philanthropic social, religious, scientific, artistic, educational, sporting or touristic *fondations* • *Fondations* providing humanitarian aid or carrying out development • No private *fondations* are allowed in Luxembourg	• 1928 NPOs Law • 2002 RCS Law
Other legal persons	• All other legal persons registered with the RCS	• Including, but not limited to: ○ *groupement d'intérêt économique* ○ *groupement européen d'intérêt économique* ○ *association agricole* ○ *établissement public*	

3.1 Commercial companies

Sociétés commerciales can take different forms. Under the Luxembourg Law of 10 August 1915 on *sociétés commerciales* (the 1915 Companies Law), the commercial nature of a company is triggered by its legal form, i.e. if any of the legal forms provided for in article 100-2 are used. Consequently, the company is considered commercial even if it pursues a non-commercial activity.

As per article 100-2 of the 1915 Companies Law, ten different types of legal persons fall under *sociétés commerciales*:

- *société en nom collectif* (SNC) – general corporate partnership or unlimited company;
- *société en commandite simple* (SCS) – common limited partnership;
- *société anonyme* (SA) and *société par actions simplifiée* (SAS) – public company limited by shares and simplified joint stock company;
- *société en commandite par actions* (SCA) – corporate partnership limited by shares;
- *société à responsabilité limitée* (SARL) and *société à responsabilité limitée simplifiée* (SARL-S) – private limited liability company, and simplified limited liability company;
- *société coopérative* (SCOOP) and *société coopérative organisée comme une SA* (SCOOP SA) – cooperative company and cooperative company organised as a public company limited by shares; and
- *société européenne* (SE) – European company.

The 1915 Companies Law (article 100-2) states that each of the above constitutes a legal person, with legal personality separate from that of its members.

It should also be noted that the 1915 Companies Law foresees that the *société en commandite spéciale* (SCSpé) is basically a SCS without legal personality.

Finally, Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a *société cooperative européenne* (SCE) introduced the European cooperative company as an entity under Luxembourg law.

In addition to the legal persons mentioned above, the 1915 Companies Law indicates that the *sociétés commerciales momentanées* (temporary commercial companies) and the *sociétés commerciales en participation* (commercial companies by participation) do not have separate legal personality. The purpose of a *société commerciale momentanée* is to undertake, without using a company name, for a limited period of time, one or more specific commercial operations. It is thus a temporary partnership between businesses. Similarly, a *société commerciale en participation* is a company, without legal personality, by which one or more persons acquire an interest in transactions managed by one or more other persons in his or their name. Both types of companies are set up between their members for the purpose, in such forms, in such respective interests and under the terms agreed between them (article 900-3 of the 1915 Companies Law). This explains why they are not registered with the RCS. Due to their purpose, these types of companies are not analysed in this paper.

Luxembourg broadly recognises two overarching classes of *sociétés commerciales*. They can either take the legal form of a *société de capitaux*, a "capital company" (in which shareholders are only held liable for the debts of the company up to the amount of their contribution and where securities are marketable) or a *société de personnes*, a "partnership" (in which shareholders are indefinitely liable for the debts of the company, including on their own personal assets, the securities are not marketable and the transfer of shares to third parties is possible only under strict conditions).

Some legal persons may have characteristics of both classes, i.e. limited liability of shareholders and limited (i.e. under strict conditions) or no transfer of shares to third parties. Therefore, they are referred to as *sociétés hybrides*, meaning hybrid companies.

3.1.1 *Sociétés de capitaux*

Sociétés de capitaux have an impersonal character, relying on the capital contributed by shareholders regardless of their personal, moral or commercial capacities. Company shares are freely transferable, and shareholders' liability is in principle limited to the amount of their contribution. They include:

- *société anonyme* (SA) and *société par actions simplifiée* (SAS), public company limited by shares and simplified joint stock company;
- *société en commandite par actions* (SCA) – corporate partnership limited by shares; and
- *société européenne* (SE) – European company.

It should be noted that a large number of rules laid down in the 1915 Companies Law applicable to the SA and SCA are the result of implementing the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others,

are required by companies in European Union Member States within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ("Second Directive"). The Second Directive is now part of the Recast made by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law ("Company Law Directive").

3.1.2 *Sociétés de personnes*

Sociétés de personnes are conceptually similar to sole proprietorship entities, insofar as the partnership contract is based on the very person of the partners "who know and trust each other". Company shares are only transferable with the consent of all partners or under strict conditions, with the partners being jointly and indefinitely liable for the debts of the company. They include:

- *société en nom collectif* (SNC) – general corporate partnership or unlimited company;
- *société en commandite simple* (SCS) – common limited partnership; and
- *société en commandite spéciale* (SCSpé) – common unlimited partnership.

3.1.3 *Sociétés hybrides*

Sociétés hybrides borrow characteristics of both *sociétés de capitaux* and *sociétés de personnes*, principally in that the liability of shareholders is limited to the amount contributed and that the shares are transferable to third parties only under strict conditions (or may even be impossible). *Sociétés hybrides* include:

- *société à responsabilité limitée* (SARL) and *société à responsabilité limitée simplifiée* (SARL-S) – private limited liability company and simplified private limited liability company;
- *société coopérative* (SCOOP) – cooperative company;
- *société coopérative européenne* (SCE) – European cooperative company; and
- *société coopérative organisée comme une SA* (SCOOP SA) – cooperative company organised as a public company limited by shares.

3.2 Non-commercial entities

Non-commercial legal persons in Luxembourg encompass:

- *société civile* – civil company; and
- NPOs, which in Luxembourg may take the form of:
    - *association sans but lucratif* (ASBL) – non-profit association; or
    - *fondation* – foundation.

3.3 Other legal persons

Other types of legal persons can be set up in Luxembourg. These legal persons have different characteristics and do not fall under the scope of the 1915 Companies Law. All of these other legal persons are analysed together in this document and include:

- *association d'assurance mutuelle*;
- two companies created on the basis of dedicated laws (Laws of 28 March 1997 – Luxembourg Railways - and of 24 March 1989 - State Bank and Savings Bank);
- *société d'épargne-pension à capital variable*;
- *groupement d'intérêt économique*;
- *groupement européen d'intérêt économique*;
- *association agricole*;
- *association épargne-pension*;
- *établissement public*;
- *mutuelle*;
- *fonds d'investissement alternatifs réservés* – Reserved alternative investment funds (RAIF)[26]; and
- *fonds commun de placement* (FCP)[27].

[26] Please note that there are two categories of RAIFs. A RAIF may be created under contractual or corporate form.

- RAIFs based on a corporate form take the form of a *société commerciale* and are thus included in section 3.1;
- RAIFs based on contractual form are included in this section (i.e. 3.3. Other legal persons). Although, these RAIFs have no legal personality, they are registered as "other legal persons" in the RCS. Please note that contractual RAIFs can be created through private deed.

[27] Although FCPs have no legal personality, they are registered as "other legal persons" in the RCS. Please note that FCPs can be created through private deed.

3.4 Legal arrangements

Trusts and other legal arrangements enable a separation of legal ownership and beneficial ownership of assets. As such there is a risk that trusts and other legal arrangements may be misused to conceal the BO of those assets. Furthermore, the identification of the BO of the assets may be further obstructed where the trust has a complex and multiple-layer ownership and control structures, involving multiple jurisdictions.

As explained in the methodology, FATF Recommendation 25 does not require countries to perform a risk assessment of ML/TF risks posed by legal arrangements. However, the NRA 2020 identified legal arrangements governed by Luxembourg law as a "Very High" risk subsector. Since the country aims to continuously improve its understanding of its ML/TF risks, *fiducies* are included in the analysis.

It is important to note that *fiducies* and trusts are not considered to be legal persons and, therefore, they are not registered with the RCS. However, in accordance with the Law of the 10 July 2020 establishing a Register of *fiducies* and trusts (2020 RFT Law), both *fiducies* and trusts must register certain personal data on their BOs in the RFT. The latter is managed by the AED. It should be noted that the RFT is complementary to the RBE. As of 31 December 2021, 1 090 *fiducies,* trusts and similar legal arrangements are registered with the RFT.

Domestic *fiducies*

Luxembourg legislation defines *fiducies* under the Law of 27 July 2003 on trusts and fiduciary contracts (2003 *Fiducies* and Trusts Law) and lists the *fiduciaires* that must comply with its provisions (article 4 of the 2003 *Fiducies* and Trusts Law). In addition to the institutions listed in the 2003 *Fiducies* and Trusts Law, the 2020 RFT Law and Law of 12 November 2004 on the fight against money laundering and terrorist financing (2004 AML/CFT Law) applies to all professionals that occupy an equivalent position in a legal which has a structure or function that is similar to those of a *fiducie* arrangement (see article 1, paragraph 2 of the 2020 RFT Law and article 1, paragraph 1, point 7 of the 2004 AML/CFT Law).

Foreign trusts managed in Luxembourg

In line with the provisions set out in the 2003 *Fiducies* and Trusts Law, Luxembourg recognises foreign trusts according to The Hague Convention of 1 July 1985 on the Law applicable to trusts and on their recognition (The Hague Convention of 1 July 1985).

Table 12: Description of legal arrangements

Legal arrangement subsectors	Description	Sub-types / examples	Key legislation
Domestic *fiducies*[28]	• Agreement whereby the settlor (or *fiduciant*) agrees with the fiduciary (or *fiduciaire*) that the latter will become the owner of certain fiduciary assets (the fiduciary estate or *patrimoine fiduciaire*) under agreed conditions	• Institutions covered by the 2003 *Fiducies* and Trusts Law to act as *fiduciaries*: – Credit institutions – Asset management companies – Investment companies with variable or fixed capital (SICAV or SICAF) – Securitisation companies – Management companies of common investment funds (FCP) or securitisation funds – Pension funds – Insurance or reinsurance companies – Public institutions of national or international character operating in the financial sector • Other professionals covered by the 2004 AML/CFT Law and 2020 RFT Law	• Articles 4 and 5 of the 2003 *Fiducies* and Trusts Law • Article 1, paragraph 2 of 2020 RFT Law • Article 1 of 2004 AML/CFT Law
Foreign trusts managed in Luxembourg	• Trusts created under foreign law administered in Luxembourg.		• The Hague Convention of 1 July 1985 • 2003 *Fiducies* and Trusts Law, in line with The Hague Trust Convention of 1 July 1985

[28] Including legal arrangements similar to a *fiducie* as defined in the domestic *fiducies* sub-section above.

4. CORPORATE RISK ASSESSMENT

4.1 Corporate inherent vulnerabilities

Vulnerabilities from legal persons and legal arrangements may be present where the following information may be difficult or impossible to obtain by competent authorities (particularly law enforcement authorities) or by obliged entities:

- information identifying the managers or directors and, where applicable, shareholders or partners of the legal person and legal arrangement accurately;
- information identifying the BOs of the legal person and legal arrangement adequately and accurately;
- nature and (business) purpose of the legal person or legal arrangement; or
- source or use of funds, assets or property associated with such legal person or legal arrangement.

As explained in the methodology section above, two risks were considered in order to analyse the risk of misuse of legal persons and legal arrangements in Luxembourg, namely the **Corporate** and **Entity-type specific risk**. This section concerns the **Corporate risk** and begins by exploring the inherent vulnerabilities of the six categories of companies of Luxembourg´s corporate environment - *sociétés commerciales*, *sociétés civiles*, ASBLs, *fondations*, "other legal persons" and legal arrangements. The following elements are considered in this respect:

- the use of nominee arrangements (see section 4.1.1); and
- the complex ownership or management structures as an obstacle to identifying the BO(s) (see section 4.1.2 for legal persons and section 4.1.3 for legal arrangements).

4.1.1 Nominee arrangements

4.1.1.1 Nominee shareholders

As the FATF explains in its Guidance for a Risk-Based Approach for Trusts and Company Service Providers (the TCSP Guidance)[29], a nominee shareholder is a "[…] *natural or legal person who is officially recorded in the Register of members (shareholder) of a company as the holder of a certain number of specified shares, which are held on behalf of another person who is the beneficial owner*"[30].

Generally, the role of the nominee shareholder is to legitimately protect the identity of the BO and/or the controller of a company or asset. From a transparency point of view, nominee shareholders may

[29] FATF, *TCSP Guidance*, 2019.
[30] FATF, *TCSP Guidance*, 2019, paragraph 198.

help to conceal the identity of the BOs, or in exceptional cases be used to circumvent jurisdictional controls on company ownership[31].

The Anglo-Saxon concept of "nominee shareholder" does not exist in Luxembourg civil and commercial law[32,33]. The closest concept used with regard to Luxembourg legal persons is that of proxy.

Under a proxy arrangement service, the proxy will not only be obliged by law to identify his or her principal, but will also disclose the existence of this proxy relationship to any relevant stakeholder. As a consequence, (i) the identity of the BO (the principal) will be known and verified before being registered in the shareholder books[34] and ii) the status of the proxy acting on behalf of the principal will be transparent and disclosed to third parties, thus preventing any misuse of shareholder arrangements which would hide the identity of ultimate BO(s).

Considering the international nature of Luxembourg's corporate environment, professionals providing trust and company services may offer proxy arrangement services to shareholders. This service, which strives to facilitate the shareholder's administrative formalities, neither corresponds to the nominee shareholder concept nor enables shareholders to conceal their identity.

Professionals from regulated professions and TCSPs that offer proxy services are all subject to the 2004 AML/CFT Law and must implement customer due diligence (CDD) requirements in relation to their customers, including identifying and verifying the identity of the BO and obtaining information on the purpose and intended nature of their business relationship.

4.1.1.2 Nominee directors

The FATF TCSP Guidance indicates that a nominee director is a "[…] *person who has been appointed to the board of directors of the legal person who represents the interests and acts in accordance with instructions issued by another person, usually the beneficial owner*"[35].

From a transparency point of view, such nominee directors could be misused where they "*lend their name as a director […] of a legal person on behalf of another without disclosing the identity of, or from whom, they will take instructions or whom they represent. They are sometimes referred to as*

[31] Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018, paragraph 5.

[32] OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Luxembourg 2019 (Second Round)*, 2019, paragraph 61.

[33] While the term of "nominee investor" is used some by professionals in the collective investment sector, the more adequate terminology would be "intermediated position"/"intermediaries"/"omnibus accounts"/"segregated accounts", in line with/as detailed in the FATF RBA Guidance on the Securities Sector published in October 2018. To be noted that the main rationale for using such intermediaries in the collective investments sector is twofold. First, the dilution of transaction fees and second, to grant a larger access to investment products for retail investors. Moreover, professionals must assess the quality of the AML/CFT framework of the "intermediary" and the latter must in turn apply adequate due diligence on the investor. In addition, specific enhanced mitigation measures on cross-border intermediaries' relationships are applied by CSSF supervised Luxembourg investment funds or their delegates. Thus, the use of "intermediaries" is a common practice to enable economies of scale within the retail sub-sector.

[34] OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Luxembourg 2019 (Second Round)*, 2019, paragraph 61.

[35] FATF, *TCSP Guidance*, 2019, paragraph 198.

"strawmen"[36]. A nominee director may also help circumvent directorship bans imposed by courts and government authorities[37].

The Anglo-Saxon concept of "nominee director" does not exist in Luxembourg civil and commercial law. In fact, the FATF TCSP Guidance also states that there are some countries that do *"[…]not recognise the status of a nominee director because in law it is the directors of the company who are liable for its activities and the directors have a duty to act in the best interest of the company"*[38]. Luxembourg is one such country; any director registered as such in the company registry and with the RCS is liable under civil and criminal law for the activities of the company.

The closest concept used with regard to Luxembourg legal persons is that of directorship services. In this case, a person is appointed and registered in the RCS as director to manage the company or to help manage the company of the client, and as such this person is fully liable. With regard to the liability of directors, the inherent risks associated with these services are drastically reduced.

4.1.2 Complex ownership or management structures for legal persons

Globally, the use of complex ownership and control structures is common in many companies. Multinationals and conglomerates are known for using many layers of control and ownership situated in different countries for economic or legal reasons. In some cases, however, such structures might be misused to conceal the ultimate BOs.

From a transparency perspective, a corporate structure is deemed to be complex when the entity's ownership structure makes it difficult for third parties to ascertain the BO of a company.

4.1.3 Complex ownership or management structures for legal arrangements

The OECD explains that these arrangements can have very complex structures, as they usually do not have (legal) owners, but parties with different roles, rights and obligations[39].

4.1.4 Conclusion on inherent vulnerabilities – Corporate Risk

Having considered the risk factors identified in this section, the outcome for inherent vulnerabilities in the context of Corporate risk for each category of entities is as follows:

[36] FATF, *TCSP Guidance*, 2019, paragraph 201.
[37]Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018, paragraph 5.
[38] FATF, *TCSP Guidance*, 2019, paragraph 202.
[39] OECD – IDB, *A beneficial Ownership Implementation Toolkit*, 2019, page 12.

Table 13: Vulnerability factor rating

	Corporate inherent vulnerability per category of legal person and legal arrangement					Legal arrangements
	Sociétés commerciales	***Sociétés civiles***	**ASBLs**	***Fondations***	**Other legal persons**	
Inherent vulnerability outcome	High	Low	Very Low	Low	Medium	Very High

4.2 ML/TF threats facing legal persons and legal arrangements

The NRA 2020 included a comprehensive assessment of the ML/TF threats and vulnerabilities that Luxembourg faces, but also contained an assessment of the mitigating factors Luxembourg has taken, including those developed since the issuance of the first NRA in 2018 in order to reduce the ML/TF risks. The LPA risk assessment leverages those findings and evaluates them against legal persons and legal arrangements.

The NRA 2020 states that "*Money laundering of proceeds of foreign crimes is the most significant ML threat for Luxembourg, given its position as a global financial centre and the low level of local criminality. The magnitude, diversity and openness of financial flows transiting through and parked in Luxembourg contribute to this exposure. This is supported by data from the judicial authorities, international studies and expert assessment from the country's authorities*"[40]. On the other hand, domestic exposure to ML was considered significantly smaller due to Luxembourg's low crime rate and limited presence of organised crime. The threat of terrorism and TF were assessed as moderate overall[41].

Table 14 below presents a summary of the threats assessment analysed in the NRA 2020. Threats were assessed along a list of predicate offences in line with the FATF crime categories[42]; these crime categories help map granular predicate offences (*infractions primaires*) under Luxembourg law. A full mapping table can be found in the Prosecution section of the NRA 2020 and a comprehensive description of each criminal activity in the threats section of the NRA 2020.

[40] NRA 2020, page 47.
[41] NRA 2020, page 7.
[42] FATF, *NRA Guidance*, February 2013, Annex I (link).

Table 14: Overview of NRA threats outcome[43]

Designated predicate offence	Domestic exposure	External exposure	Weighted average exposure[44]
Money laundering (average ML threat)	Medium	Very High	Very High
Fraud and forgery	High	Very High	Very High
Tax crimes	Medium	Very High	Very High
Corruption and bribery	Medium	Very High	Very High
Drug trafficking	Medium	High	High
Participation in an organised criminal group & racketeering	Medium	High	High
Sexual exploitation, including sexual exploitation of children	Medium	High	High
Cybercrime	Medium	High	High
Counterfeiting and piracy of products	Low	High	High
Smuggling	Low	High	High
Robbery or theft	High	Medium	Medium
Trafficking in human beings and migrant smuggling	Medium	Medium	Medium
Illicit arms trafficking	Low	Medium	Medium
Insider trading and market manipulation	Low	Medium	Medium
Illicit trafficking in stolen and other goods	Low	Medium	Medium
Extortion	Medium	Low	Low
Environmental crimes	Low	Low	Low
Murder, grievous bodily injury	Very Low	Low	Low
Kidnapping, illegal restraint, and hostage taking	Very Low	Low	Low
Counterfeiting currency	Very Low	Low	Low
Piracy	Very Low	Low	Low
Terrorism and terrorist financing	Medium	Medium	Medium

All these threats can be applied to legal persons or legal arrangements to launder proceeds of crime, as an instrument of crime, or to finance terrorist activities.

When considering international typologies and policy papers developed by the FATF, the World Bank and the OECD, three predicate offences appear as most relevant for legal persons and legal arrangements: tax crimes, corruption and bribery, and fraud and forgery. Other highly relevant threats include drug trafficking and participation in an organised criminal group and racketeering. Consequently, this assessment will focus on these five threats. Furthermore, these five threats were considered as the highest threats to Luxembourg (all were assessed as "Very High", except for drug

[43] NRA 2020, page 46.

[44] The overall threat assessment is based on a weighted average between domestic and foreign exposure, with 25% and 75% weights respectively. Given Luxembourg's open economy and large financial sector, the country is more exposed to ML from criminals abroad than domestically. For simplicity, the weighting is assumed to be constant across predicate offences.

trafficking and participation in an organised criminal group & racketeering, assessed as "High" in the NRA 2020). TF is also included in the threat assessment related to the corporate context.

The table below provides a summary overview of the most relevant threats to legal persons and legal arrangements and explains the main features of these threats.

Table 15: Overview of most relevant threats to legal persons and legal arrangements

	Threat	Relevance to legal persons and legal arrangements
Money laundering	Fraud and forgery	• Fraud and forgery offences have strong links to *sociétés commerciales*, trusts and NPOs; • Legal persons and legal arrangements can be used to establish a degree of separation from fraudulent individuals; • Misappropriated funds (through self-dealing or embezzlement, etc.) may be transferred to legal persons and legal arrangements, disguised as legitimate business activity.
	Tax crimes	• Legal persons and legal arrangements may allow for the creation of complex, non-transparent structures; • Such structures could be used to disguise the BOs and the proceeds of tax crimes.
	Corruption and bribery	• Corruption and bribery are frequently associated with *sociétés commerciales*, trusts and *fondations*; • Typically, bribe payments are made to legal persons or legal arrangements (beneficially) owned by corrupt individuals; • May be disguised as donations to NPOs controlled by corrupt individuals.
	Drug trafficking and participation in an organised criminal group & racketeering	• Certain legal structures are prone to being misused (e.g. front companies) to launder proceeds generated by drug trafficking and organised crime; • Legal persons and legal arrangements used as asset holdings may be used, for example, to conceal the BO of real estate acquired with the proceeds of drug trafficking and organised crime; • Front companies may be created to disguise illegal activity (illicit funds disguised as genuine); • Companies typically have genuine business dealings to disguise payments or proceeds of drug trafficking and organised crime.
Terrorist financing	Terrorist financing	• Potentially associated with NPOs; • Donations to genuine causes may be diverted to terrorist activities or organisations under the guise of aid payment; • NPOs may be misused to raise funds and to support terrorist activities.

4.3 The Corporate inherent ML/TF risk

The risk of misuse of Luxembourg's corporate context for ML/TF purposes is assessed by considering the combination of the inherent corporate vulnerability outcome and the threat assessment for each category of legal persons and legal arrangements, as explained in the methodology section.

Table 16: Inherent risk scores per analysed threat and inherent risk scores

			Inherent corporate risk scores by category of legal persons and legal arrangements					
			Legal persons					Legal arrangements
			Sociétés commerciales	*Sociétés civiles*	ASBLs	*Fondations*	Other legal persons	Legal arrangements
Threats	ML	Fraud and forgery	5	4	3	4	4	5
		Tax crimes	5	4	3	4	4	5
		Corruption and bribery	5	4	3	4	4	5
		Drug trafficking	4	3	3	3	4	5
		Participation in an organised criminal group & racketeering	4	3	3	3	4	5
	TF	Terrorist financing	4	3	2	3	3	4
ML/TF inherent risk score (AVERAGE)			4.5	3.5	2.8	3.5	3.8	4.8
ML/TF inherent risk outcome			Very High	High	Medium	High	High	Very High

4.4 Mitigating factors

4.4.1 The ability to obtain and maintain basic information

All corporate systems have a process for obtaining basic information on corporate entities as a preliminary requirement for the formation of such entities. The purpose of this process is to identify the legal owner of the company, as well as the responsible and liable person for a given situation (including for commercial purposes or for civil/criminal liability matters). This basic information includes the company name, proof of formation, legal form and status, registered office's address, signing powers, the name (precise role) of those through whom the entity acts, basic governance rules and signatory powers (e.g. memorandum or articles of association) and a register of their shareholders or members containing the number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights). This information shall be contained in the registry and must be accurate and up-to-date.

Moreover, the ability to obtain accurate and up-to-date basic information in a timely manner is a necessary step prior to obtaining BO information, as it is generally the legally liable person who provides the BO information of registered entities.

RCS Registry

All legal persons set up under Luxembourg law must be registered with the RCS as per the 2002 RCS Law. The RCS is managed by the Luxembourg Business Registers (LBR), an economic interest group placed under the authority of the MoJ, which includes the Luxembourg State and the *Chambre de Commerce*.

The LBR's mission is to manage and develop the different registers under its remit. Each of these registers has its own legal framework. The LBR has also been in charge of the electronic central platform for official publications, namely the Electronic Compendium of Companies and Associations (RESA) since 1 June 2016, as well as the RBE, established on 1 March 2019.

The 2002 RCS Law lists the information that entities must register with the RCS. One part of this information is descriptive data (basic information – e.g. name, members of board of directors, capital, etc.), while the other part is related to the accounting information. This information must be accurate and up-to-date. Entities must update their information within the month of the event leading to a change in their data (article 15 of the 2002 RCS Law).

The LBR is also in charge of registering the financial statements of companies. Said registration is mandatory for some types of legal persons, whereas for others it depends on certain factors, such as reaching an annual turnover threshold (amongst others).

Keeping the RCS data up-to-date

Pursuant to articles 18 and 19 of the Grand Ducal Regulation of 23 January 2003 implementing the 2002 RCS Law, the LBR has the capacity to "strike off" (*radier*) companies from the registry if they fail to provide up-to-date information for over ten years. The striking off procedure falls under the competence of the LBR and does not require a judicial procedure. After being struck off, the entities

appear in the RCS with a "struck off" reference. This status will be visible to all users of the RCS. Note that the information contained in the RCS is publicly available and that access to the information is free of charge. Furthermore, the RCS has the ability to transfer these files to the State Prosecutor's Office for further investigation.

Every year, the RCS takes various steps in order to maintain its data accurate and up-to-date.

The outcome is partly reflected in the overall downward trend of number of legal persons registered since the last years.

Table 17: Legal persons registered at year-end[45]

	31/12/2018	31/12/2019	31/12/2020	31/12/2021
Sociétés commerciales	129 120	132 633	121 918	121 916
Sociétés civiles	5 140	5 203	5 478	5 845
ASBLs	11 248	11 518	8 504	8 457
Fondations	214	217	218	193
Other legal persons	3 223	3 194	3 096	3 019
Total	**148 945**	**152 765**	**139 214**	**139 430**

In addition, a legal initiative is underway in order to grant the registry powers to "strike off" a company when it has been inactive in the RCS for over five years.

Enforcement capacity provided by the 1915 Companies Law

Article 15 of the 2002 RCS Law requires a company to file any amendments concerning its basic information (e.g. name, address, proof of formation, etc.) within one month. Article 19-1 of the 2002 RCS Law further states that deeds, extracts thereof and information required to be published by law shall be filed by electronic means with the RCS within one month following the date of the finalised deed. These provisions go hand in hand with article 100-13 of the 1915 Companies Law. The latter lists what information needs to be published with the RCS. A breach of these obligations could lead to the legal persons' managers being held liable (article 441-9 of the 1915 Companies Law) or to the closure of the company by application of article 1200-1 of the 1915 Companies Law.

Article 1200-1, paragraph 1, of the 1915 Companies Law permits the District Court dealing with commercial matters to, at the discretion of the State Prosecutor, order the dissolution and the liquidation of any *société commerciale* with a separate legal personality governed by Luxembourg law which:

- pursues activities contrary to criminal law; or
- seriously contravenes the provisions of the Commercial Code or the laws governing *sociétés commerciales* (including those laws governing authorisations for doing business).

[45] Data provided by the LBR.

Note that the 1928 NPO Law applicable to *fondations* and ASBLs and the Law of 25 March 1991 on GIE foresee similar provisions as article 1200-1, paragraph 1 of the 1915 Companies Law.

This legal procedure leads to the removal from the register of the company in question. In this case, a judicial representative (usually from a regulated profession such as a lawyer, chartered professional accountant or (approved) statutory auditor), called a "liquidator", is appointed by the court. The mission of this judicial representative is to identify, recover (i.e. collect sums owed to the company) and sell assets of the dissolved company. The generated funds are then used to pay off the company's debts, pay the cost of liquidation and, if applicable, distribute any remaining funds (a "liquidation bonus") to the partners/shareholders. If the partners/shareholders of the company have not been identified, the liquidation bonus is paid to the Consignment Office (State Treasury – *Caisse de consignation* (CdC) – being the official depositary of the Government) and allocated to the Luxembourg State after a retention period of 30 years.

The following table shows the number of liquidations that have been pronounced each year since 2015:

Table 18: Number of judicial liquidations 2015-2020

Year	Number of judicial liquidations[46]
2015	526
2016	513
2017	488
2018	546
2019	568
2020	942

Other enforcement capacities available under the 1915 Companies Law

In relation to updating the relevant shareholder registers, the 1915 Companies Law provides for criminal liability under article 1500-12, which states that managers or directors are punishable by a fine of between €5 000 and €125 000 if they knowingly:

- fail to keep a register of registered shares in accordance with the law;
- fail to appoint a depositary or do not deposit bearer shares with a depositary; or
- acknowledge the rights attached to bearer shares in breach of article 430-6, paragraph 5, i.e. failure to deposit bearer shares with a custodian and failure to record mandatory information listed in article 430-6(3) in the bearer share register.

[46] Figures for the years 2015-2019 were provided by the Statistical Service of Justice. Figures for 2020 were taken from the following source: Ministry of Justice, *Rapport d'activité 2020 du ministère de la Justice,* Table 2.1.38 ; Table 2.2.36.

4.4.2 TCSPs: AML/CFT gatekeepers

Professionals must comply with their obligations under the 2004 AML/CFT Law when offering TCSP services. This helps mitigate the vulnerabilities for legal persons and legal arrangements in the **Corporate risk**, as TCSPs are able to obtain basic information and BO information, including when there is a request from relevant authorities.

In Luxembourg, different types of professionals can provide TCSP services. They must, in all cases, implement the 2004 AML/CFT Law preventive AML/CFT measures (as set out below). The following table shows the different types of professionals that can provide TCSP services and their national AML/CFT competent supervisory body.

Table 19: Different types of professionals falling within the definition of a TCSP and their AML/CFT supervisor/SRB[47]

AML/CFT supervisor/SRB	Professionals authorised to carry out TCSP activities
CSSF	Banks and credit institutions
	Investment firms
	Management companies
	Three types of specialised professionals of the financial sector[48], including with the following licenses:
	• Family Offices
	• Corporate domiciliation agents
	• Professionals providing company incorporation and management services
CAA	Professionals of the insurance sector (PSA)
OEC	Chartered professional accountants
IRE	(Approved) statutory auditors and (approved) audit firms
OAL/OAD	Lawyers (list I and IV of the Bar[49])
AED[50,51]	Other professions offering TCSP services
	• Business centres
	• Directors

[47] Source: NRA 2020.

[48] Including support professionals of the financial sector providing TCSP services.

[49] Law of 10 August 1991 on the profession of lawyer (1991 Lawyers Law): List I lawyers defined as lawyers at the Court (*avocat à la Cour)* who are fully qualified Luxembourg lawyers; List IV lawyers defined as EU admitted lawyers (*avocat de l'UE exerçant sous son titre d'origine)* who are foreign lawyers from the European Union practising under their original professional title.

[50] Acting as a director or secretary of a company, a general partner of a partnership, or a similar position in relation to other types of legal persons. Please note that the AED supervises professionals providing directorship services that are not regulated by other supervisory authorities and SRBs.

[51] These other professions have business associations – *Association luxembourgeoise des centres d'affaires* and *Institut luxembourgeois des administrateurs* – but membership is optional and not self-regulating.

In addition to the licensing/qualification requirements for the types of professionals supervised by the CSSF, CAA, OEC, IRE and OAL/OAD, the 2004 AML/CFT Law requires them to register as TCSP with their respective supervisory authority or SRB, unless the supervisory authority has granted an exception.

TCSPs play a significant role in in preventing ML/TF. Even before the actual creation of the legal persons or legal arrangements, they must perform CDD controls when providing support to the set-up of legal persons and legal arrangements. Moreover, once the legal person or legal arrangement has been created, these professionals maintain a long-term business relationship with their corporate clients, allowing them not only to update and keep accurate CDD information, but to acquire an overall good knowledge of their clients, their activities, as well as their directors, managers, shareholders and BOs. This is particularly true when a single TCSP offers multiple services simultaneously to a client (i.e. the TCSP offers domiciliation and directorship services to an entity) and it is particularly useful when monitoring the business relationship – i.e. for detecting ML/TF-related suspicious behaviour.

Furthermore, these TCSPs are required to scrutinise the transactions undertaken by clients based on materiality and risk, to ensure they are consistent with their knowledge of the customer, their business and risk profile, and sources of funds, and, where applicable, wealth. These activities include name screening as well as transaction monitoring. These professionals also have an obligation to file suspicious transaction reports (STR) and suspicious activity reports (SAR) to the CRF.

As stated in Table 19, various professions fall within the definition of a TCSP and are subject to the 2004 AML/CFT Law. With the exception of the entities that fall under the supervision of the IRE and the OEC, none of the regulated professions are supervised by two or more supervisors. For the IRE and the OEC, the respective supervisory bodies have clearly identified which professionals are simultaneously controlled by both. Furthermore, with the adoption of the Law of 25 March 2020[52], the exchange of information between SRBs is allowed and the IRE and the OEC are coordinating their actions with regard to “common” members. In fact, as stated by article 9-1 of the 2004 AML/CFT Law, supervisory authorities and SRBs shall cooperate closely among themselves. More specifically, pursuant to article 7-2, paragraph 3, supervisory authorities and SRBs should coordinate with each other in order to set up a list of the TCSPs for which they are competent.

It should also be noted that supervisory authorities and SRBs do cooperate on a regular basis. This occurs both at the NPC level and informally through bilateral exchanges on specific questions, including implementation of the risk-based approach and AML/CFT supervisory practice.

[52] "Law of 25 March 2020 amending:
1° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
2° the Law of 9 December 1976 relating to the organisation of the notarial profession, as amended;
3° the Law of 4 December 1990 on the organisation of court bailiffs, as amended;
4° the Law of 10 August 1991 on the profession of lawyer, as amended;
5° the Law of 10 June 1999 on the organising of the profession of chartered professional accountant, as amended;
6° the Law of 23 July 2016 on the audit profession, as amended,
with a view to transposing certain provisions of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU.".

Domiciliation

One of the services that these TCSPs offer is the domiciliation service. The Law of 31 May 1999 governing the domiciliation of companies, as amended, (1999 Domiciliation Law) allows a company (the "domiciled company") to establish a seat (a registered office) with a third party (the "domiciliation agent") in order to carry out an activity within the framework of the domiciled company's corporate purpose. The same law states that the domiciliation agent may also provide other services related to the activity of the domiciled company (the "domiciliation services"). Finally, the law requires that the domiciled company and the domiciliation agent should conclude a written agreement called a domiciliation contract.

As such, domiciliation services are a way of business that provides third parties with a seat and ancillary services (directorship services, corporate secretariat, accounting services, holding of general meetings, provision of office space, etc.) for a company.

Domiciliation services respond to a broad number of needs and they are often used together with other corporate services. For instance, TCSPs may offer domiciliation complementing their specialised advice services in legal, commercial and, tax matters. Furthermore, not all companies may find it cost effective to own or rent private premises. A company can therefore be "domiciled" at a lower cost on the premises of a domiciliation agent.

However, this particular possibility for establishing a registered office is not suitable for operational companies with a commercial, craft or industrial activity. Indeed, any operational company established in Luxembourg is required to obtain a business license from the Ministry of Economy (MoE) in accordance with the Law of 2 September 2011 regulating the access to different professions of craftsman, trader, industrialist, as well as to certain liberal professions (2011 Business Licenses Law), which specifically states that a domiciliation within the meaning of the 1999 Domiciliation Law does not constitute an establishment[53], and therefore cannot use such domiciliation services.

Pursuant to articles 100-2 and 1300-2 of the 1915 Companies Law, domiciled companies (provided the domiciliation contract offers a registered office to the company) must make key decisions (e.g. strategic, financial or investment) in Luxembourg. Furthermore, pursuant to article 100-2 of the 1915 Companies Law, the domicile of a company is located at its central administration.

The 1999 Domiciliation Law is strict and only allows registered members of one of the following regulated professions established in Luxembourg to act as a domiciliation agent of companies: a credit institution or another professional of the financial sector and the insurance sector, a lawyer at the Court (*avocat à la Cour*) registered with List I and a European lawyer practising under the professional title of their home country registered with List IV, an (approved) statutory auditor or a chartered professional accountant.

The IRE and the OEC require (approved) statutory auditors and chartered professional accountants to perform at least one of the following services, as required by professional standards, should they provide domiciliation services to another company:

[53] 2011 Business Licenses Law, article 5.

- bookkeeping;
- preparation of financial statements and/or consolidated accounts;
- preparation of tax returns;
- mandate of *Commissaire* (see section 5.4.3) according to article 443-2 of the 1915 Companies Law; or
- directorship services. In such situations, these TCSPs are registered as directors or managers at the RCS and thus become liable under the 1915 Companies Law, as well as under civil and criminal law.

Furthermore, the CSSF for example issued different circulars dealing, amongst others, with the professional obligations of domiciliation agents, the minimum content required for a domiciliation agreement and precisions concerning the concept of "seat"[54].

All persons who can carry out domiciliation of companies are subject to the 2004 AML/CFT Law. As such, domiciliation agents are required to strictly comply with all the obligations set out in the latter (e.g. identification of the client, application of a risk-based approach). The supervisory authorities and SRBs are responsible for verifying whether the professionals under their supervision comply with these obligations.

Pursuant to article 2 of the 1999 Domiciliation Law and as already touched on before, any person exercising the profession of domiciliation agent is subject to a number of obligations. For example, domiciliation agents must ensure that the domiciled company complies with the provisions of the 1915 Companies Law. Failure to comply with their obligations carries criminal sanctions. Article 4 of the 1999 Domiciliation Law provides for criminal penalties which include imprisonment ranging from eight days up to five years and a fine of between €1 250 and €12 000.

4.4.3 Beneficial owner information

The capacity of authorities to obtain adequate, accurate and timely information of BOs is another important factor to mitigate the risk of misuse of a country's corporate environment for ML/TF purposes. This section explores the capacity of Luxembourg to obtain adequate, accurate and up-to-date BO information via the following mechanisms:

- BO registries:
  - legal persons (the RBE); and
  - legal arrangements (the RFT).
- information obtained by FIs and DNFBPs.

Article 1, paragraph 7, of the 2004 AML/CFT Law defines the "beneficial owner" for legal persons as "*any natural person who ultimately owns or controls the customer or any other natural person for whom a transaction is carried out or an activity performed*". More precisely, for companies, the 2004 AML/CFT Law expresses the cascading test for the definition of BO in the following terms:

[54] CSSF, *Communiqué: Domiciliation activity exercised when operating a business centre or a co-working space,* 2021

a) *"any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards[…]"*[55]. Note that a percentage of more than 25% is only an indicative threshold to meet this criterion. Professionals may implement a lower threshold following a risk-based approach;

b) any natural person who otherwise exercises control over the management of a legal entity[56];

c) "[…] *any natural person who holds the position of senior managing official*.[55]"

The BO for *fiducies,* trusts and similar legal arrangements is identified according to the FATF standards in both the 2004 AML/CFT Law and the 2020 RFT Law and includes the following:

1. the settlor(s);

2. the trustee(s) or *fiduciaire(s)*;

3. the protector(s), if any;

4. the beneficiaries or class of beneficiaries; and

5. any other natural person exercising effective control over the trust or *fiducie*.

4.4.3.1 Beneficial Owner registry of legal persons

The Luxembourg BO Legislation: Law of 13 January 2019 (2019 RBE Law)

The Law of 13 January 2019 (2019 RBE Law) establishes the RBE of legal persons in Luxembourg. The register became operational in March 2019. It implements article 30 concerning BO information of the EU directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

Each entity registered with the RCS, with the exception of traders who are natural persons (article 1, point 4, of the 2019 RBE Law), must file with the RBE information on the identity of its BOs, as well as the nature and the extent of the effective interests held (article 3, paragraph 1, of the 2019 RBE Law). If it is proven impossible to identify a natural person on the basis of the criteria set out in article 1, paragraph 7, of the 2004 AML/CFT Law, as an express fall-back option, any natural person(s) who holds the position of senior managing official will be registered with the RBE. As an exception, companies whose securities are admitted for trading on a regulated market in Luxembourg or in another State party to the agreement on the European Economic Area or in another third country imposing transparency and publicity obligations recognised as equivalent by the European Commission, shall

[55] 2004 AML/CFT Law, article 1, paragraph 7.

[56] Please consult the 2004 AML/CFT Law, article 1, paragraph 7 as amended by the 25 March 2020 Law for the definition regarding "control through other means".

record only the name of the regulated market in which their securities are admitted to public trading. The measures taken to ascertain the equivalence status of the market should be recorded, as should the evidence of the admission to the regulated market. The information collected in the RBE must be adequate, accurate and up-to-date.

BOs are under a legal obligation to provide the relevant BO information to the registered entity, so that the latter may in turn fulfil its own obligations under the 2019 RBE Law (article 17, paragraph 1, of the 2019 RBE Law). This BO information must be held by each registered entity at its registered office in Luxembourg, together with all relevant supporting documents (article 17, paragraph 2, of the 2019 RBE Law). Article 7, paragraph 1, of the 2019 RBE Law further obliges the LBR to refuse any application for registration which is incomplete or does not comply with the legal and regulatory provisions.

The LBR must also refuse to register or modify information that does not match the supporting documents. In case of a refusal of the registration application, the LBR must request that the relevant registered entity or, where appropriate, its representative, rectifies its application by completing, amending or withdrawing the information contained in the application made by the registered entity or by submitting the required supporting documents. Another important safeguard is provided by article 8 of the 2019 RBE Law, which provides that any person with access to the registry has to report any discrepancies they find between the data in the RBE and the information in their own records within 30 days of that discovery. After receiving such a report, the LBR shall inform the registered entity by mail of the discrepancy and ask it to check its file. If the LBR does not receive a response within 30 days, the LBR shall forward the file of the registered entity in question to the State Prosecutor's Office (articles 8 and 9 of the 2019 RBE Law). As of September 2021, the LBR received a total of 146 reports stating such a discrepancy since September 2019.

In this context, it is important to mention that the RBE is free of charge, easily and publicly accessible via the LBR's website. This amplifies the impact of this mitigating measure.

Latest actions performed by the LBR to maintain accurate and up-to-date information in the RBE

To promote the population of the RBE, upon entry into force of 2019 RBE Law, legal persons were required to file the BO information within a 6-month period, i.e. before 1 September 2019. In order to ensure compliance, the LBR sent out a letter to all entities that had not completed their RBE file in August 2019 and a reminder again in September 2019. The LBR also posted thorough information on its website, published guidelines, set up public appearances and seminars, to educate on RBE obligations and to raise public awareness.

Furthermore, the LBR has added warning messages onto its website, which hosts the RCS and RBE portals. Thus, since 22 October 2020, when a new entity undertakes its electronic RCS registration process, a warning message is displayed on the website when the registration request is created and when the process is finalised, reminding the registering entity of its obligation to proceed with the declaration of its BO(s) to the RBE.

Enforcement capacity in relation to BO information of legal persons

Should registered entities not comply with the requirements set out in the 2019 RBE Law, including the timely registration of the BO information requirements, the law provides for criminal penalties in

the form of fines of between €1 250 and €1 250 000 (articles 20 and 21 of the 2019 RBE Law). The same sanctions are applicable to a BO that fails to provide the registered entity with all the information to enable it to meet its obligations under the 2019 RBE Law (article 17 of the 2019 RBE Law).

In order to initiate the sanctioning process, the LBR transmits on a regular basis to the State Prosecutor's Office the files of the registered entities that did not make a declaration to the RBE.

Proceedings are started by sending a letter to each entity that is non-compliant with its BO obligations. In this letter, the State Prosecutor's Office manifests its intention to impose sanctions (e.g. fines), if non-compliance is not remedied.

The State Prosecutor's Office then has the choice between:

I. requesting that the court rule by way of a penal order (if it deems the amount of the maximum penalty provided for by the Penal Code in this context to be sufficient); or

II. issuing a summons to appear in court in order to prosecute the entity and access the range of penalties provided for in articles 20 and 21 of the 2019 RBE Law.

Moreover, entities that make false statements about their BO may be prosecuted before criminal courts. Finally, there might be cases where the State Prosecutor immediately decides to open a preliminary investigation.

4.4.3.2 Beneficial Owner registry of legal arrangements

Luxembourg requires trustees and *fiduciaires* to obtain and keep, at the place of administration of the trust or *fiducie*, information on the BOs of any trust administered in Luxembourg and of any *fiducie* for which they act as trustee or *fiduciaire* (article 2 of the 2020 RFT Law).

Article 13 of the 2020 RFT Law requires every *fiducie* or express trust of which a trustee or *fiduciaire* is established or resides in Luxembourg to submit detailed information on all BOs to the RFT (Register of *Fiducies* and trusts). This register is maintained by the AED. The registration requirement also extends to legal arrangements whose trustees or *fiduciaires* are not established in Luxembourg or in any other EU Member State, but who enter into a business relationship or who acquire real estate in the Grand Duchy. For the legal arrangements that have a *fiduciaire* or a trustee registered in an EU Member State, they must provide the AED with an equivalent registration certificate or an extract of the BO information kept in a comparable registry.

In order to make sure that the RFT's information is up-to-date, the 2020 RFT Law foresees that the professionals and persons who have access to the registry shall report any discrepancies found between the data in the RFT and the information in their own records to the AED.

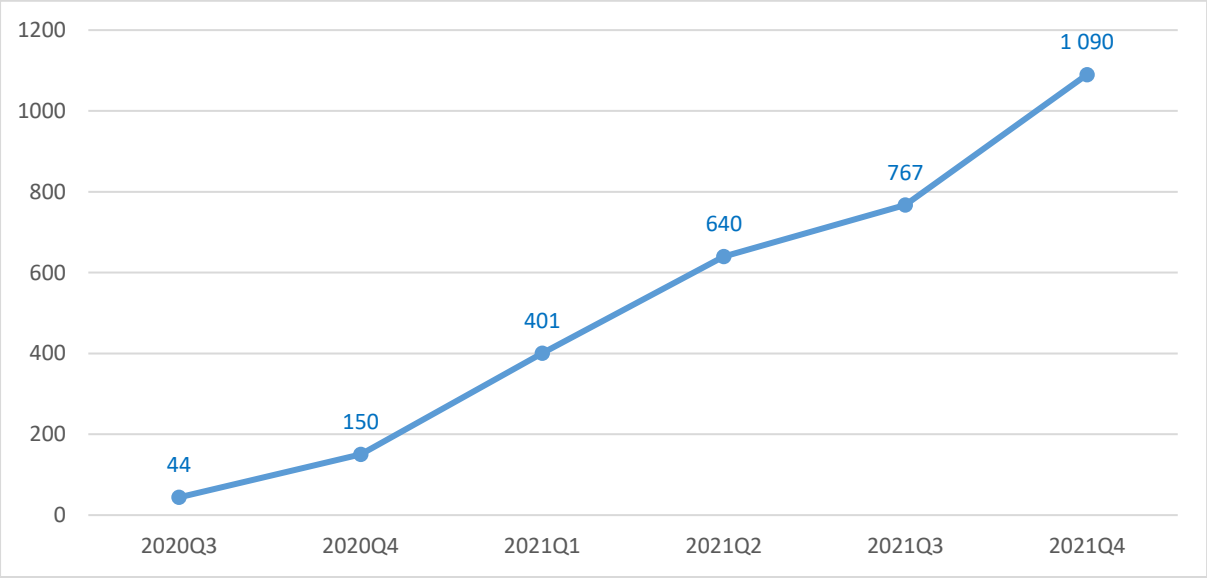
The AED has made use of several platforms to inform trustees and fiduciaries of the establishment of a register and their obligation to enter BO information into the RFT. For instance, by creating a dedicated section on the AED website on the RFT, the AED gives to the concerned parties the necessary information to comply with their obligations. Besides, the AED used the NPC as the main information platform in order to reach those concerned by the obligations arising from the 2020 RFT Law and to raise awareness. The members of the NPC include competent authorities, AML/CFT supervisors, and representatives of professional associations (i.e. in total more than 30 members,

including those for which the obligation of supervision includes informing professional trustees and fiduciaries to file information on the BO(s) with the RFT). Using the NPC as a promotion and information platform, all sectors concerned by the RFT have been covered.

Some supervisory authorities and SRBs have created an awareness and monitoring campaign in order for their supervised sector to declare any *fiducies* or trusts with the RFT, as per article 13 of the 2020 RFT Law. For example, the OEC and the IRE published practical guides on their respective internet page, offered trainings and ensured that their respective members verified the registration with the RFT of their clients during their controls.

As the RFT went live in the second half of 2020, the population of the RFT is continuing to grow (as evidenced by the figure below). By 31 December 2021, 1 090 trusts and *fiducies* have registered their BO information.

Figure 1: Evolution of total number of legal arrangements registered with the RFT



Pursuant to the 2020 RFT Law, the AED has the power to order *fiduciaries* and trustees to register or update their information. The relevant supervisory authority or SRB can monitor whether the professionals acting as a trustee or *fiduciaire* are accurately reporting to the RFT. The AED has the capacity to refuse a registration when it is not complete or accurate and the trustee or *fiduciaire* has up to 15 days to update the information. Additionally, the AED can monitor the compliance by accessing any document relating to the *fiducie* or express trust and by requesting information from the supervisory authorities or SRBs. The AED can also instruct the trustee or *fiduciaire* to update the information held with the registry or to provide accurate information. When failing to do so, the AED can impose a fine of up to €25 000 for non-compliance (article 21 of the 2020 RFT Law).

The information gathered by the RFT shows that TCSPs offering trust services are mostly legal persons, with the remainder (16%) being natural persons. Additionally, there is a high concentration of legal arrangements managed by TCSPs. Most of these TCSPs are either FIs supervised by the CSSF or professionals controlled by an SRB. Either way, these actors (i.e. trustees and *fiduciaries*) must apply robust AML/CFT measures. Consequently, these safeguards suggest that the information registered with the RFT is reliable.

4.4.3.3 Information obtained by FIs and DNFBPs

AML/CFT requirements are in place in Luxembourg and applicable to all FIs and DNFBPs, including corporate service providers (e.g. (approved) statutory auditors, lawyers, chartered professional accountants, TCSPs). Their application is monitored by the various bodies in charge of supervising the various sectors. The FIs and DNFBPs of the sectors targeted by the AML/CFT legislation must identify, verify and keep records of all BO(s) information of the customer.

All professions or activities subject to the 2004 AML/CFT Law are required to implement AML/CFT preventive measures in Luxembourg, with CDD and BO information being obtained at various points and moments in the life cycle of a legal person or legal arrangement. For example, CDD and BO information will be obtained and verified by notaries upon formation of a company, then by banks when opening a bank account and by other TCSPs such as lawyers, chartered professional accountants and (approved) statutory auditors when providing relevant services to the same entity/arrangement. Moreover, FIs and DNFBPs shall apply CDD measures at appropriate times and on a risk-sensitive basis, notably when the relevant circumstances of a customer change.

All the information obtained through the CDD process must be kept by the reporting entity for five years after termination of a business relationship or after the date of an occasional transaction. This information should be available for relevant authorities upon request. This information, including BO information has been used successfully in many situations, including for answers to international requests from foreign authorities.

As Luxembourg's AML/CFT supervisory authorities, the CSSF, the CAA and the AED play key preventive roles in the national AML/CFT framework. With reference to the obligations resulting from the 2004 AML/CFT Law and 2019 RBE Law, the CSSF, the CAA and the AED perform checks on the identification and verification of BO procedures implemented by their supervised entities and related beneficiaries (such as trustees, settlors, etc.).

From a DNFBP perspective, the IRE, the OEC and the CdN perform very similar controls to the CSSF. The OAL includes BO identification and BO information verification controls in their AML/CFT on-site control programs.

4.4.4 International cooperation

This section focuses on the international component of cooperation. As explained in the methodology section, the national component of cooperation is dealt with in various sections of this report instead of devoting a specific section to it.

As explained in the FATF Guidance on transparency and beneficial ownership, the "[…] *exchange of information with a foreign counterpart is a critical component of measures to obtain information on a corporate vehicle. It is also noted that the ability of the authorities to access information related to the beneficial owners of legal persons and legal arrangements in foreign jurisdictions is a key aspect to enhancing transparency […]*"[57].

[57] FATF, *Guidance on Transparency and Beneficial Ownership,* 2014, paragraph 84.

In an international corporate environment such as Luxembourg, the capacity to engage in international cooperation and exchange information is crucial. For this reason, the Grand Duchy has all relevant legal capacities and openly participates in a wide range of international cooperation.

Within the EU framework, AML/CFT obligations with regard to BO transparency are included in Directive (EU) 2015/849 (4AMLD), as amended by Directive (EU) 2018/843 (5AMLD). To date, all EU Member States communicated full transposition measures regarding 4AMLD[58] and 25 out of 27 Member States with regard to 5AMLD[59]. These measures constitute an additional mitigating with respect to non-residents in an EU Member State that have fully implemented both AML directives.

With respect to judicial cooperation, Luxembourg has a legal basis to process a wide range of MLAs in all circumstances in relation to ML, associated predicate offences and TF, as it has ratified the UN Conventions against trafficking in narcotics (the Vienna Convention), anti-corruption (the Merida Convention), against organised crime (the Palermo Convention) and on the suppression of TF. At a European level, Luxembourg has ratified the 1959 Strasbourg Convention and the 1978 Strasbourg Protocol, the 1962 Benelux Treaty, the 1990 Schengen Acquis and the 1990 Strasbourg Convention.

Furthermore, Luxembourg is open to providing the widest forms of cooperation. From the perspective of criminal-related information, in the last 3 years, Luxembourg has replied to 164 MLA requests concerning investigations of legal persons or legal arrangements and made 78 MLA requests.

Table 20: MLA requests involving legal persons or legal arrangements[60]

Year	MLAs received	MLAs requested
2018	67	25
2019	69	17
2020	28	36
Total	**164**	**78**

The CRF is a member of the Egmont Group, which aims at fostering cooperation between member Financial Intelligence Units (FIUs) by i.a facilitating the exchange of financial intelligence related to ML, associated predicate offences and TF. To that end, the Egmont Group provides its members with a secure encrypted IT communication tool (the Egmont Secure Web). Luxembourg law does not require the CRF to enter into any special agreement to exchange financial information related to ML, associated predicate offenses or TF with other FIUs[61]. However, a number of foreign FIUs are bound by the obligation of a prior agreement and the CRF has therefore signed memoranda of understanding with the following foreign FIUs (as at 18 January 2022): Andorra, Australia, Belgium, Benin, Canada, Chile, China, Finland, France, Indonesia, Israel, Japan, Mauritius, Macedonia, Monaco, Panama,

[58] European Commission, as of 05 October 2021 (Link).
[59] European Commission, as of 05 May 2021 (Link).
[60] Information provided by judicial authorities.
[61] Article 74-5(1) of the Law on the Organisation of the Judiciary.

Philippines, the Republic of Congo, Romania, Russia, San Marino, Senegal, Singapore, South Africa, South Korea, Tunisia, Turkey and the Vatican City[62].

In addition to the Egmont Secure Web, the CRF uses the FIU.Net for exchanging financial intelligence in a secure and encrypted manner with its EU counterparts pursuant to the requirements of article 53 of the 4AMLD[63].

Through these mechanisms, the CRF has answered 857 and made 1 358 international requests related to legal persons and legal arrangements during the past three years.

The CRF's annual activity report 2020[64] elaborates in further depth its international cooperation with its foreign peers.

Table 21: CRF international assistance involving legal persons and legal arrangements

Year	Incoming requests	Outgoing requests
2018	246	321
2019	284	398
2020	327	639
Total	857	1 358

Pursuant to article 74-5(1) of the Law on the Organisation of the Judiciary, the CRF may exchange, spontaneously or upon request, with a foreign FIU of whatever type, any information and supporting documents, e.g. including on shareholders and BOs, that may be relevant for the processing or analysis of information related to ML, associated predicate offences or TF, and the natural or legal person involved, even if the type of predicate offence that may be involved is not identified at the time of the exchange.

For the supervisory authorities, requests received from foreign authorities concerning BO information on legal persons and legal arrangements are usually part of a greater request and are dealt with according to the same framework and methods as for any other cooperation request.

The capacity for exchanging information in Luxembourg extends to the level of administrative enquiries from supervisory authorities like the CSSF and the CAA. Chapter 2 of Title I of the 2004 AML/CFT Law contains different articles stating that, for example, the CSSF and the CAA shall closely cooperate with their foreign counterpart authorities, where necessary, to perform their respective tasks and for AML/CFT purposes. In a similar vein, this chapter foresees the cooperation of the supervisory authorities and SRBs with their foreign counterpart authorities.

[62] CRF, *Rapport d'activité 2020*, 2021.

[63] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[64] CRF, *Rapport d'activité 2020*, 2021.

In relation to VAT fraud, the AED replied to 641 requests between 2018 and 2020. Additionally, the ACD replied to 147 international requests concerning BO information between 2018 and 2020.

4.4.5 Mitigating factor and residual risk analysis

Taken as a whole, the aforementioned measures have "significant mitigating effects" (-1.5) on the inherent risk identified in section 4.3.

Table 22: Mitigating factors outcome

	Legal persons (condensed view)[65]	Legal arrangements
Mitigating factors outcome	Significant mitigating factors (-1.5)	

The impact of this significant mitigating factors outcome is translated into a reduction of 1.5 from the corporate inherent risk score calculated in section 4.3. This results in the corporate residual risk score and outcomes for each category of legal persons and legal arrangements as shown in the table below.

Table 23: Corporate analysis - residual ML/TF risk assessment scores and outcomes

Legal persons and legal arrangements categories	Corporate inherent risk	Mitigating factors	Corporate residual risk
Sociétés commerciales	Very High (4.5)	Significant mitigating factors (-1.5)	Medium (3.0)
Sociétés civiles	High (3.5)		Low (2.0)
ASBLs	Medium (2.8)		Very Low (1.3)
Fondations	High (3.5)		Low (2.0)
Other legal persons	High (3.8)		Low (2.3)
Legal arrangements	Very High (4.8)		Medium (3.3)

[65] For simplicity, a condensed view of all categories of legal persons is provided here.

5. ENTITY-TYPE SPECIFIC RISK ASSESSMENT

The aim of this section is to explore the potential risks of misuse for ML/TF purposes of the most relevant types of entities in Luxembourg. This section will consider the following entity-types of legal persons and legal arrangements[66]:

Sociétés commerciales:

- *société anonyme* (SA) – public company limited by shares;
- *société par actions simplifiée* (SAS) – simplified joint stock company ;
- *société à responsabilité limitée* (SARL) – private limited liability company ;
- *société à responsabilité limitée simplifiée* (SARL-S) – simplified private limited liability company
- *société cooperative* (SCOOP) and *société cooperative organisée comme une SA* (SCOOP SA) – cooperative company and cooperative company organised as a SA;
- *société Européenne* (SE) – European company;
- *société en commandite par actions* (SCA) - corporate partnership limited by shares;
- *société en commandite simple* (SCS) – common limited partnership;
- *société en commandite spéciale* (SCSpé) – common unlimited partnership;
- *société en nom collectif* (SNC) – general corporate partnership or unlimited company; and
- *société cooperative européenne* (SCE) – European cooperative company.

Non-commercial entities:

- *société civile* – civil company;
- *association sans but lucratif* (ASBL) – non-profit associations ; and
- *fondation* – Foundations.

Legal arrangements:

- *fiducie*; and
- similar legal arrangement.

5.1. Inherent vulnerabilities per type of legal person and legal arrangement

Following the interpretative notes to the FATF recommendations 24 and 25 and the results of the NRA 2020, the aim of this analysis is to explore the characteristics of each type of legal person and legal arrangement created in Luxembourg in order to identify their inherent vulnerabilities for potential misuse in ML/TF offences or in predicate offences by analysing the following factors:

- the use of bearer shares;

[66] The "other types of legal persons" category (as defined in section 3.3) represents about 2.17 % of the total registrations with the RCS and encompasses about 10 different forms of legal persons with very few registrations per entity-type as at 31 December 2021. They were studied under the Corporate risk section and were not considered for this more granular entity-type specific risk assessment.

- the use of the entity as an investment vehicle or asset holding vehicle;
- the transferability of shares to third parties; and
- the legal characteristics to assess the corporate structure of the entity.

5.1.1. The use of bearer shares

The StAR Initative of the World Bank and the UNODC define bearer shares as company shares that exist in certificate form and whoever is in physical possession of such shares is deemed to be their owner. Usually, the transfer requires only the delivery of the instrument from one person to another person (in some cases, combined with an endorsement on the back of the instrument)[67].

In Luxembourg, the legitimate use of bearer shares is legally regulated and permitted in SA, SAS, SE, and SCA entities. These four types of legal persons account for 34 747 out of the 139 430 registered legal persons as at the end of 2021. This represents 24.92% of Luxembourg legal persons[68]. However, as will be explained below, the number of companies actually using bearer shares is much lower (3 536 companies having declared the existence of bearer shares before 2014[69]).

On 6 April 2013, Luxembourg adopted a law introducing dematerialised securities[70]. This law obliges dematerialisation to be carried out either when issuing securities or when converting physically existing securities into dematerialised securities. This law also requires that dematerialised securities must be held with approved account keepers (as defined in article 1, paragraphs 8 and 10, of the Law of 6 April 2013) and settlement organisations (as defined in article 1, paragraph 6, of the 2013 Law on dematerialised securities) in Luxembourg, guaranteeing security and transparency of the securities' custody. This law focuses on dematerialising bearer shares that are traded on a public market, but also applies to Luxembourg investment funds that are traded on the stock market.

In July 2014, Luxembourg adopted a law regulating the immobilisation of bearer shares and the keeping of a share register for bearer shares (2014 Shares Register Law). This legislation mandates all existing companies with bearer shares to either nominate a depositary (which are subject to the 2004 AML/CFT Law) with whom all bearer shares must be immobilised, or to transform them into registered shares. If neither is done, the shares are cancelled and the company's capital will be reduced accordingly. The 2014 Shares Register Law also states that new or existing companies that wish to issue bearer shares must appoint a depositary and all bearer shares must be immobilised. The 2014 Shares Register Law also modifies the rules applying to transfers of shares and their ownership: ownership of bearer shares is established by their registration in the bearer shares register held by the depositary, and no longer through the possession of share certificates (article 430-6, paragraph 4, of the 1915 Companies Law). Moreover, the 2014 Shares Register Law introduced the following obligations in the 1915 Companies Law and 2002 RCS Law that ensure the effectiveness of the immobilisation mechanism for bearer shares:

[67] StAR Initiative of the World Bank and the UNODC, *The Puppet Masters – How the Corrupt Use Legal Structures to hide Stolen Assets and What to Do About it*, 2011, page 41.

[68] As shown in Table 30.

[69] To note that this figure is before the implementation of the 2014 Shares Register Law.

[70] Law of 6 April 2013 on dematerialised securities.

- the designated depositary must keep, in Luxembourg, a register of bearer shares containing the identification of all shareholders of bearer shares, the number of bearer shares owned, the date of deposit and the date of any transfers or conversion of bearer shares into registered shares. The depositary cannot be a shareholder of the company and the identity of the professional depositary must be recorded and published in the RCS and RESA[71;72];
- pursuant to article 430-6, paragraph 2, of the 1915 Companies Law, the depositary for bearer shares must be one of the following professionals established in Luxembourg: credit institutions, asset managers, distributors of undertakings for collective investment (UCI) shares, professionals of the financial sector (PFS), lawyers, notaries, (approved) statutory auditors and chartered professional accountants. They are all subject to the 2004 AML/CFT Law and are supervised for compliance with AML/CFT requirements, including the CDD requirement to identify their customers and their BO;
- the transfer of bearer shares is effective and enforceable only when shares are deposited with the depositary. Moreover, the rights attached to the shares can only be exercised if the shares are deposited with the depositary along with all information on the shareholder(s). Furthermore, the ownership and any transfer of the deposited bearer shares must be recorded by the depositary in a register. A fine ranging between €500 and €25 000 may be imposed on depositaries who do not keep the register in accordance with the law (article 1500-12, paragraph 2, and article 171-2 of the 1915 Companies Law); and
- a fine ranging between €5 000 and €125 000 may be imposed on managers and directors who have not designated a depositary or who recognise the rights attached to bearer shares although they have not been immobilised (article 171-2 of the 1915 Companies Law).

In comparison with the 2013 Law on dematerialised securities, the 2014 Shares Register Law goes a step further in dematerialising bearer shares. Indeed, the 2014 Shares Register Law requires all existing legal persons with bearer shares to dematerialise the latter, regardless of whether they are publicly traded. Consequently, the following sections specify in more detail the results following the implementation of this specific law.

Depositaries (custodians)

As mentioned above, the 2014 Shares Register Law requires companies having issued bearer shares to appoint a depositary with whom all bearer shares had to be immobilised and publish the appointment of the depository in the official Gazette. A later reform of the 2002 RCS Law in 2016 (the modified 2002 RCS Law) required companies to register their depositaries with the RCS.

Pursuant to the 2014 Shares Register Law and the modified 2002 RCS Law, the RCS keeps the publications on the appointments of depositories and the registration of depositaries. Companies may specify whether their share capital is made up of bearer shares (and any changes that apply) when registering with the RCS.

[71]The RESA is the central electronic platform of official publication that replaced the Mémorial C. This platform is also managed by the LBR.

[72] Article 100-13, paragraph 1, letter d, and article 430-6, paragraphs 2 and 3, of the 1915 Companies Law and article 13, point 15°, of the 2002 RCS Law.

To identify all companies with bearer shares and detect those in breach with the 2014 Shares Register Law, the RCS can perform a manual exercise of reviewing the publications that have been made for each company. Similarly, where there is a publication (in compliance with the 2014 Shares Register Law), but not a registration (breach with the modified 2002 RCS Law), the information on the depositary can be determined by reviewing the published extracts.

It is important to note that depositaries are subject to the AML/CFT requirements. The monitoring of their activities (as depositaries) is the responsibility of their respective supervisory body, the CSSF, or one of the SRBs. Please note that pursuant to the 2014 Shares Register Law, legal persons under the supervision of the CAA may not be appointed as depositary of bearer shares.

Cancellation of bearer shares that were not immobilised

As explained above, in accordance with the 2014 Shares Register Law, bearer shares that have not been immobilised or converted have to be cancelled and the issued capital has to be reduced accordingly. These amounts have to be deposited with the *Caisse de Consignation* (CdC), where they are held until the legitimate holder (who is able to prove his or her claim over them) requests their repayment. After validation of the request by the CdC, the refund is made in the form of a transfer in cash to a bank account at an European banking institution. It is to note that the procedure to establish the identity of the legitimate holder has been qualified as sufficient to guarantee the integrity of the system of restitution[73].

Monitoring of the application of the 2014 Shares Register Law

As highlighted at the beginning of this section, sanctions and fines were introduced by the 2014 Shares Register Law in order to ensure an effective application of the latter.

In order to promote and monitor the application of the law, the following actions have been put in place: (i) continuous monitoring within the regular framework of company tax inspections; (ii) a one-off project for the verification of the immobilisation of bearer shares issued before 18 August 2014; (iii) an analysis of the one-off campaign results and referral to the prosecution authorities; and (iv) the CSSF has done a number of awareness raising activities and is doing spot checks during inspections.

The decrease in the use of bearer shares

Even though the issuance of bearer shares in Luxembourg is possible, the relevant sectors, including notaries, lawyers, (approved) statutory auditors, chartered professional accountants and the financial sector have observed that the use of such instruments has decreased significantly over the last few years.

[73] OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Luxembourg 2019 (Second Round)*, 2019, paragraph 108.

5.1.2. Investment and asset holding vehicles

The joint FATF/Egmont Group report on the Concealment of Beneficial Ownership[74] presents numerous examples of how investment and asset holding vehicles could be misused for ML/TF and associated predicate offences.

The following subsections provide a high-level overview of investment and asset holding vehicles from the perspective of the legal person entity-type. For a more granular analysis focused at the product level, the CSSF's ML/TF sub-sector risk assessment on collective investments should be consulted[75].

5.1.2.1. Investment vehicles

Overall, Luxembourg's investment vehicles can be divided into two structures:

- The contractual structure (*Fonds Commun de Placement* or *FCP*): this is a co-ownership of assets that has no legal personality and is governed by contractual arrangement. The contractual structure is a form reserved for undertakings for collective investments (UCIs), that may take the contractual structure[76]. FCPs must be managed by a Luxembourg investment fund manager (having one of the following forms of a *société commerciale*: SA, SARL, SCOOP, SCOOP SA or SCA[77]). FCPs have no legal personality, but they are registered with the RCS[78]. They have been studied in the "other legal persons" (see section 3.3) category in the Corporate risk assessment.
- The corporate structure: the investment vehicle is a legal person that has a standalone legal personality (except in the case where the vehicle takes the form of a SCSpé) and may take the form of an investment company (SICAV or SICAF). As shown in the table below, the legal forms that these investment companies may take vary according to the applicable legal regime.

Table 24: Investment vehicles legal form

	FCP	SA	SCA	SCS – SCSpé	SARL	SCOOP SA	SCOOP	SE – SCE	SAS – SNC	SARL-S
2010 OPC Law[79] – Part I, articles 5 and 25	√	√								
2010 OPC Law – Part II, articles 93 and 97	√	√	√							
2007 SIF Law[80], articles 4, 25 and 38	√	√	√	√	√	√				
2004 SICAR Law[81], article 1 (1)		√	√	√	√					

[74] Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018.
[75] CSSF, *ML/TF Sub-Sector Risk Assessment Collective investments*, 2020.
[76] 2016 RAIF Law, article 6.
[77] Law of 17 December 2010 relating to undertakings for collective investment (the 2010 OPC Law), articles 101 (1) and 125-1 (1).
[78] 2002 RCS Law, article 10.
[79] Law of 17 December 2010 relating to undertakings for collective investment.
[80] Law of 13 February 2007 relating to specialised investment funds.
[81] Law of 15 June 2004 relating to the investment company in risk capital.

	FCP	SA	SCA	SCS – SCSpé	SARL	SCOOP SA	SCOOP	SE – SCE	SAS – SNC	SARL-S
2016 RAIF Law[82], articles 6, 23 and 31	√	√	√	√	√	√				
2004 Securitisation Law[83], articles 2 and 4 (1)		√	√		√	√				
Alternative investment fund (AIF)[84]		√	√	√	√				√	

Consequently, these entities must at least comply with the provisions set out in the 1915 Companies Law, the 2002 RCS Law and the 2019 RBE Law. However, it is important to note that each investment vehicle listed in Table 24 is subject to a specific legislation foreseeing additional provisions.

5.1.2.2. Asset holdings

In Luxembourg, asset holdings can either take the legal form of a *société commerciale* or a *société civile*.

Sociétés commerciales

- *Société de Participations Financières* (SOPARFI): a taxable ordinary *société de capitaux* or *hybride* (except for SARL-S[85]) with a limited purpose to the holding of participations and related activities. It is the most common vehicle dedicated to holding and financing activities in Luxembourg.
- *Société de gestion de patrimoine familial* (SPF): a private wealth management vehicle, which enables individuals to structure their estate. It is prohibited from performing commercial activities. The SPF is only allowed to hold an interest in a company provided that it does not interfere in the management of that company. SPFs can take the form of a SA, SARL, SCA or SCOOP SA.

Société civile

Although the *société civile* is often used for civil, agricultural, freelance and intellectual professions, it is also frequently used to manage immovable assets in the form of a real estate company constituted under the form of a *société civile immobilière* (SCI). The SCI's objective is to administer the properties it owns and to lease them to the operator. The net income generated by letting is distributed between the partners.

Other asset holdings

Fiducies and other similar legal arrangements are inherently asset holding entities as they separate legal ownership from the beneficial ownership of the assets.

[82] Law of 23 July 2016 on reserved alternative investment funds.

[83] Law of 22 March 2004 on securitisation.

[84] AIFs not subject to the 2010 OPC Law, 2004 SICAR Law, 2016 RAIF Law and 2007 FIS Law, but that comply with the definition of AIFs as set out in article 1, paragraph 39, of the 2013 Law on alternative investment fund managers (AIFM).

[85] Pursuant to article 720-3 of the 1915 Companies Law, this form of legal entity is reserved to craftsmen, traders, manufacturers and certain liberal professionals. The purpose of the SARL-S must be in line with the Law on 2 September 2011 regulating the access to the professions of craftsman, trader, industrialist and certain liberal professions.

From the perspective of asset holdings, *fondations* and ASBLs are comparable to *fiducies* and other similar legal arrangements, as their founders and members transfer assets to the entity to be managed on behalf of the beneficiaries. However, their use is strictly limited to non-profit objectives. Furthermore, private foundations are prohibited in Luxembourg.

5.1.3. Non-profit organisations and terrorist financing

As stated in the methodology section 2.1, this vertical risk assessment strives to assess ML/TF risks of legal persons and legal arrangements purely from a transparency point of view. Risks linked to the legal persons and legal arrangements' activities are studied in the respective sub-sector risk assessments conducted by the relevant supervisors or in other vertical risk assessments.

The FATF defines an NPO a *"A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works""*. Pursuant to the FATF's interpretive note to Recommendation 8, these NPOs are particularly at risk of terrorist financing abuse.

In 2020, the MoJ, in collaboration with the MoFA and the LBR, conducted an in-depth analysis of all types and status of Luxembourg NPOs in order to identify which NPOs are at risk of TF abuse and in order to compose the subset of NPOs that fall under the FATF definition. The outcome of the analysis was that most ASBLs and *fondations* do not fall under the FATF "NPO" definition.

In 2021, another analysis was carried out by the MoJ, in the context of the on-going TF vertical risk assessment. Acknowledging that riskier NPOs are those with activities in areas in close proximity to an active terrorist threat, the aim of the analysis was to assess the international dimension of Luxembourg's NPOs' activities by reviewing the statutory purpose of the whole population of ASBLs and *fondations* as of 17 February 2021.

5.1.4. The legal features for assessing the corporate complexity of the entity

Corporate entities of various types are all useful tools for economic purposes. However, legal persons and legal arrangements may be more vulnerable to being misused for ML/TF purposes because they have certain legal elements that could obscure the identity of the BO or the purpose of the entity. Structures that, by law, are allowed to have legal persons as shareholders and managers are considered to be more vulnerable than entities whose shareholders and managers must be natural persons, or whose partners must be listed within the articles of association/contract and registered with the RCS.

Therefore, this section describes the characteristics of each type of legal person and legal arrangement in Luxembourg in order to identify potential inherent vulnerabilities. From the perspective of legal persons, this analysis considers the following:

Table 25: Variables studied to assess complex corporate structure

Studied variable	Subcategory	Underlying assumption
Transferability of share capital	Shares transferable to third parties	Legal persons whose shares are easily transferable to third parties (e.g. the transfer does not require the approval of the other shareholders) are considered to be more complex (i.e. have a higher inherent vulnerability) than entities where the transfer of shares needs to be approved by the general meeting or rules set in the articles of association.
Legal owner complexity	Whether the shareholders/ partners are legal or natural persons	Legal persons allowing corporate and natural shareholders are considered to be more complex (i.e. have a higher inherent vulnerability) than entities allowing natural persons only.
	The legal owner (i.e. shareholder/ partner) is listed in the articles of association/contract and this information is publicly available	Legal persons where information about its legal owners is publicly available are considered to be less complex than entities where such information is not available.
Management complexity	Legal persons can be manager/director	Legal persons that can be managed by a legal person are considered to be more complex (i.e. have a higher inherent vulnerability) than legal persons whose managers must be natural persons.

5.1.4.1. *Sociétés commerciales*

***Société coopérative* and *société coopérative organisée comme une SA* – SCOOP and SCOOP SA (Cooperative company and cooperative company organised as a public company limited by shares)**

Transferability of share capital

The main feature of a SCOOP and SCOOP SA include its variable capital. The 1915 Companies Law requires neither a minimum nor a maximum capital.

Shares in the company's share capital cannot be transferred to third parties (article 811-1 of the 1915 Companies Law). New partners are admitted to the company by increasing the share capital. Should a partner withdraw from the company, the share capital is reduced accordingly.

Legal owner complexity

Whereas the SCOOP requires at least two partners, the SCOOP SA can be founded by one person only. The partners can be natural or legal persons and they do not need to be registered as traders. Nevertheless, management must file a list of the names, professions and addresses of all partners with the RCS every 6 months.

Management complexity

A SCOOP and SCOOP SA is administered by one or more representatives. The representatives may or may not be partners and are only liable within the scope of the duties entrusted to them. Their appointment and powers must be declared to the RCS. Legal persons can be appointed as representatives. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf and the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

***Société cooperative européenne* – SCE (European cooperative company)**

A SCE is governed by specific provisions with regard to its formation, capital, operation and management fixed by the EU Council Regulation No. 1435/2003 (SCE Regulation), as well as by the 1915 Companies Law, where implementation was needed notwithstanding the direct applicability of the SCE Regulation, in particular for the implementation of the options offered by the SCE Regulation or for the appointment of competent authorities as required by the SCE Regulation.

Transferability of share capital

The minimum capital requirement as per SCE Regulation amounts to €30 000. Furthermore, the number of members, as well as the capital of an SCE, shall be variable.

In accordance with the statutes and with the agreement either of the general meeting, of the management or administrative body, shares may be assigned or sold to a member or to anyone acquiring membership.

Legal owner complexity

Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal persons (article 14, paragraph 1, of the SCE Regulation).

In particular, according to the SCE Regulation, a SCE may be formed:

- by five or more natural persons resident in at least two Member States;
- by five or more natural persons and companies and firms within the meaning of the second paragraph of article 48 of the Treaty establishing the European Community (Treaty) and by other legal bodies governed by public or private law, formed under the law of a Member State, resident in or governed by the law of at least two different Member States;
- by companies and firms within the meaning of the second paragraph of article 48 of the Treaty and by other legal bodies governed by public or private law, formed under the law of a Member State, which are governed by the law of at least two different Member States;
- by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States;

- by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if, for at least two years, it has had an establishment or subsidiary governed by the law of another Member State.

An alphabetical index of all members shall be kept at the registered office of the SCE, showing their addresses and the number and, if appropriate, class of the shares they hold. Any party having a direct legitimate interest may inspect the index on request and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof (article 14, paragraph 4, of the SCE Regulation).

Moreover, those that manage the company must file with the RCS every six months a list, in alphabetical order, of the names, professions and addresses of all the members, dated and certified true by the signatories (article 813-5 of the 1915 Companies Law).

Management complexity

A SCE can choose one of the following management structures:

- monistic: a board of directors manages the company; or
- dualistic: a management board manages the company and a supervisory board supervises management.

The choice must be specified in the articles of association.

The members appointed to the board of directors (in a monistic structure), the management board and supervisory board (in a dualistic structure) may be natural or a legal persons. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

The day-to-day management, as well the representation of the company in managerial matters, can be delegated to one or more directors, senior managers, managers or other representatives, who may or may not be members.

***Société anonyme* –SA (Public company limited by shares)**

Together with the SARL, the SA is one of the most common types of legal persons in Luxembourg. This legal form offers certain advantages, in particular in terms of limited liability (limited to the level of contribution). The rules on maintenance of capital are the result of the implementation of the Second Directive and cover obligations on capital requirements, safeguards as regards statutory capital, rules on distribution, rules on companies' acquisitions of their own shares, and rules for the increase and reduction of capital.

Transferability of share capital

The minimum amount of capital needed to form a SA amounts to €30 000.

As the shares are freely transferable, the name of the owners is not included in the articles of association, although a logbook of the registered shares that establishes their ownership is to be kept at the head office.

Legal owner complexity

SAs can be formed by one or more natural or legal persons.

Management complexity

A SA can choose one of the following management structures:

- monistic: a board of directors manages the company; or
- dualistic: a management board manages the company and a supervisory board supervises management.

The choice must be specified in the articles of association.

The members appointed to the board of directors (in a monistic structure), the management board and supervisory board (in a dualistic structure) may be a natural or a legal person. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

The day-to-day management, as well as the representation of the company in managerial matters, can be delegated to one or more directors, senior managers, managers or other representatives, who may or may not be shareholders.

***Société par actions simplifiée* – SAS (Simplified joint stock company)**

Most of the rules of the SA also apply to the SAS by cross-reference to the SA regime in article 500-1 of the 1915 Companies Law. The main appeal of this legal form lies in the limitation of the mandatory provisions applicable to its governance rules (e.g. management by a president and more flexibilities regarding the organisation of a general assembly). In the absence of specific provisions applicable to the SAS, the rules applicable to the SA apply.

Transferability of share capital

The minimum amount of capital needed to form a SAS totals €30 000.

Transfer of shares are determined by the rules as laid out in the articles of association.

Legal owner complexity

A SAS must be formed by at least one (natural or legal) person. At least one shareholder is required and there is no limit to the number of shareholders. Another difference with the SA is that a SAS cannot be listed (article 500-2 of the 1915 Companies Law).

Management complexity

The management of the company's affairs, as well as the representation of the company with regard to such management, shall be entrusted to a chairman. The chairman is vested with the broadest powers to act in all circumstances in the name of the company and within the limits of the corporate purpose. The function of chairman or director may be entrusted to a legal person. In this case, the company must appoint a natural person to carry out this task in the name and on behalf of the legal person.

***Société à responsabilité limitée* – SARL (Private limited liability company)**

The SARL is the most common legal person created in Luxembourg. It is to be noted that the SARL is also covered by the Company Law Directive as regards the rules on incorporation and nullity of the company and validity of its obligations**.**

Transferability of share capital

The minimum share capital contribution is €12 000.

The company shares are not freely negotiable. They may only be transferred to non-partners with the approval of the general partners meeting representing at least 75% of the share capital.

Legal owner complexity

Generally, a SARL can have between 1 and 100 partners. The partners can be natural or legal persons.

The articles of association must contain certain legally required information, including the information on the identity(ies) of the natural or legal person(s) who signed the deed, or on whose behalf the deed was signed. Also, article 6, point 6°, of the 2002 RCS Law requires the registration of the identity of its partners, as well as the exact number of shares held with the RCS.

Management complexity

An SARL is managed by one or more managers, who may or may not be partners. A legal person may be appointed to manage an SARL. Should this be the case, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8° of the 2002 RCS Law).

***Société à responsabilité limitée simplifiée* – SARL-S (Simplified private limited liability company)**

Transferability of share capital

One of the main features of a SARL-S is that the share capital required to form an SARL-S can range from €1 up to a maximum of €12 000.

The company shares are not freely negotiable. Furthermore, shares with voting rights may not be transferred to anyone other than the partners (or holders of profit shares with voting rights) without the approval of the general meeting representing 75% of the share capital.

Legal owner complexity

A SARL-S can only be formed by natural persons whose identity and number of shares must be registered with the RCS (article 6, point 6a, of the 2002 RCS Law). A natural person may not be a partner in more than one SARL-S at the same time, unless shares were transferred to them following the death of another partner.

The purpose of the company must be specified in its deed of incorporation and can only be an activity covered by the 2011 Business Licenses Law and for which a special business license granted by the MoE is required. At the registration of a SARL-S, the number of the permit is required (article 6, point 6a, of the 2002 RCS Law). The business permit is granted by the MoE if:

- the applicant satisfies the required legal conditions of qualification (when applicable);
- the applicant satisfies the professional integrity for the activity concerned; and
- the business has a fixed physical establishment in Luxembourg.

Consequently, a SARL-S can solely be created by craftsmen, traders, manufacturers and certain liberal professionals. It cannot engage in financial activities.

Management complexity

The partner can appoint, either in the articles of association or in a subsequent deed (for a limited or unlimited term), one or more managers. The partner can also be the manager of the company. Please note that the management of the company is entrusted to one or more natural persons. No legal person can be a manager of a SARL-S.

***Société européenne* – SE (European company)**

Often referred to by its Latin name *'Societas Europaea'*, the SE is a company governed by EU regulations. It has its own legal framework and acts as a single economic operator throughout the entire EU. A SE is a SA set up in accordance with article 2 of Regulation (EC) no. 2157/2001 of the Council of 8 October 2001 on the Statute for a SE. It is subject to the rules governing the SA of the 1915 Companies Law and to the provisions specifically applicable to SEs foreseen in Regulation (EC) no. 2157/2001 of the Council of 8 October 2001 on the Statute for a SE.

The status of a SE allows for mergers and restructurings of European groups and thus avoids the legal and practical obstacles under the laws of the different EU countries. Therefore, a SE does not need to set up a complex network of subsidiaries governed by the different national legislations but can carry out its activities on EU territory through branches.

Furthermore, a SE enables businesses to reduce the complexity of managing an international network governed by multiple legislations and facilitate cross-border restructuring and cooperation.

Transferability of share capital

The minimum capital of an SE has been set at €120 000 and the company shares are freely negotiable.

Legal owner and management complexity

For any SE with its registered office in Luxembourg, Luxembourg law governing the SA applies to all provisions not covered by European legislation.

By its nature, a SE is suitable for legal or natural persons wishing to operate on an international scale with at least two structures in at least two countries within the EU.

Just like a SA, the SE can have a natural person or a legal person in the senior management and can choose one of the following management structures: i) monistic: a board of directors that manages the company, or ii) dualistic: a management board that manages the company, whilst a supervisory board supervises the management board.

When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

***Société en commandite par actions* – SCA (Corporate partnership limited by shares)**

A SCA combines features of a SCS with those of a SA.

Transferability of share capital

The minimum share capital contribution must be at least €30 000 and the company shares are freely negotiable.

Legal owner complexity

The SCA must be founded by at least two partners: one general partner and one limited partner. The main difference between general partners and limited partners is their respective liability.

The main difference between a SCA and a SCS is that the shares of a SCA are freely transferable, while those of a SCS are not (except under certain conditions as laid out in the partnership agreement).

Management complexity

The rules governing the SA apply to SCAs except for the provisions specifically provided for in Title VI of the 1915 Companies Law. These derogations are set in 10 articles and mostly concern the governance of the SCA (articles 600-1 to 600-10 of the 1915 Companies Law).

The company is managed by one or more managers, who may be a legal person and who may or may not be general shareholders. They are appointed in accordance with the articles of association. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

***Société en commandite simple* – SCS (Common limited partnership)**

Transferability of share capital

There is no minimum capital requirement. The terms and conditions of transfers of ownership of shares are provided in the partnership agreement.

Legal owner complexity

To form an SCS, a minimum of two partners is always required, with at least one general partner and one limited partner and there is no minimum capital requirement. A general partner may simultaneously be a limited partner.

The identity of the general partners must be in the articles of incorporation and registered in the RCS (article 6, point 7°, of the 2002 RCS Law).

Management complexity

A natural or legal person may be a partner. The SCS is managed by one or more managers, who may or may not be general partners. The manager(s) are appointed in accordance with the rules provided for in the partnership agreement. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

Société en commandite speciale – SCSpé (Special limited partnership)

This type of legal person operates similarly to a limited partnership. The SCSpé is governed by the same rules as the SCS with the main difference being that it has no separate legal personality (article 320-1 of the 1915 Companies Law).

Transferability of share capital

There is no minimum capital requirement. Share ownership is transferable in accordance with the terms and conditions provided for in the partnership agreement.

Legal owner complexity

The same features as for the SCS apply for the legal owner complexity.

***Société en nom collectif*– SNC (General corporate partnership or unlimited company)**

A SNC is a *société commerciale* characterised mainly by the fact that the partners are jointly liable to an unlimited extent for all the company's commitments.

Transferability of share capital

There are no minimum capital requirements. The company's shares may not be transferred or assigned, unless the partners have unanimously decided to do so or otherwise stipulated in the articles of association. The company must be notified of and agree on any share transfers.

Legal owner complexity

At least two partners (natural or legal persons) are required and the exact names of the joint partners must be registered in the RCS (article 6, point 7°, of the 2002 RCS Law).

Management complexity

The daily management of the business of the company and the task of representing the company in matters concerning its management may be delegated to one or more managers. The manager may be appointed in the articles of association or later through a decision by the partners and can be a legal or natural person. When a legal person is appointed as a member of the management, a natural person must be appointed as permanent representative responsible for enacting the mandate on its behalf. Furthermore, the identity of that permanent representative must be registered with the RCS (article 6, point 8°, of the 2002 RCS Law).

Corporate structure assessment of *sociétés commerciales*

The following tables set out a summary of the features analysed in this section for each *société commerciale* entity-type.

Table 26: Summary of features studied to assess complexity of corporate structure

	SCOOP – SCOOP SA	SCE	SA	SAS	SARL	SARL-S	SE	SCA	SCS	SCSpé	SNC
Shares are easily transferable to third parties	No	No, approval of general meeting or management required	Yes	No, depends on the rules determined in the articles of association	No, approval of general meeting required	No, approval of general meeting required	Yes	Yes	No, depends on the rules determined in partnership agreement	No, depends on the rules determined in partnership agreement	No, depends on the rules determined in partnership agreement
The shareholder / partner can be a legal person	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes, but does not have a legal personality separate from its members	Yes
Legal owner is listed in the articles of association	Yes	Yes	No	No	Yes, information about the natural or legal person(s) who signed the deed, or on whose behalf the deed was signed	Yes, information about the natural or legal person(s) who signed the deed, or on whose behalf the deed was signed	No	No	Yes	Yes	Yes
Information of legal owners is publicly available.	Public, a list of all the partners must be filed every 6 months with the RCS	Public, a list of all the partners must be filed every 6 months with the RCS	No	No	Public	Public	No	No	Public	Public	Public
The manager/director can be a legal person	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	No	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered	Yes, but representative natural person needs to be registered

5.1.4.2. Non-commercial legal persons

Three types of non-commercial legal persons are studied in this paper: s*ociété civile,* ASBL and *fondation.*

Société civile (Civil company)

A *société civile* is a flexible company structure (e.g. no capital required and flexible governance rules) and may not be used for commercial activities. Therefore, it is often used to manage non-commercial real estate assets in a tax transparent manner (i.e. where members are taxed in their own name) as per article 1832 of the civil code.

Sociétés civiles must register with the RCS and must record basic information with the RCS, including the identity of their partners (article 8, point 4°, of the 2002 RCS Law). The partnership agreement must include a description of each partner´s contributions.

The manager may be a natural person or legal person, who may or may not be a partner. Managers who are not general partners are representatives and are only liable for misconduct, while partners are equally liable. The ownership shares must be registered shares. The terms and conditions of transfers of ownership shares are provided for in the partnership agreement.

There are four different forms of *sociétés civiles*:

- the *société universelle tous biens présents*: this company pools all movable and immovable assets that the parties possess and the resulting profits;
- the *société universelle de gains*: this company pools what the parties acquire through their efforts, of whatever type, throughout the life of the company such as the movable assets held by the parties over the term of the contract (personally held property only comes in for utilisation purposes);
- the status of *société particulière*: applies only to certain defined items, their usage or the resulting benefits; and
- the *société civile immobilière* (SCI): this company pools professional property in a legal structure distinct from the operating business. It is called a *société civile immobilière de gestion* if its objective is to administer the properties it owns and that it leases to the operator. The net income generated by letting is distributed between the partners.

ASBLs and *fondations*

ASBLs and *fondations* have a separate legal personality, but have neither partners nor shareholders. Instead, they have members. They are generally managed by a board of directors.

In Luxembourg, both ASBLs and *fondations* are governed by the 1928 NPOs Law and therefore have similar corporate structures and registration requirements with the RCS. Both entities are suited for non-profit objectives engaged in charitable, social, religious, scientific, artistic, educational, sporting

or tourism-related activities. ASBLs and *fondations* must register with the RCS[86] and must register the deed of incorporation[87]. In the case of ASBLs, the latter must include a list with the identity of its members[88], which must be supplemented each year by an indication of the changes that have occurred among the members. These lists are available to the public free of charge[89].

The information registered with the RCS is in line with the requirements of the 2002 RCS Law. However, this information is not suited for further analysis of the risk profile of the ASBL's activity (e.g. whether the ASBL (or the *fondation* when pursuing philanthropic or similar activities abroad on top of its general interest activities in Luxembourg) is active in high-risk jurisdictions[90]).

In Luxembourg, private *fondations* (e.g. for organising a family assets' inheritance) are not allowed. That being said, *fondations* can be established by will. In such case, a testamentary executor must be appointed and the information regarding the *fondation* is subject to MoJ approval.

Both entities are managed by a board of directors, who may be natural or legal persons. According to the 1928 NPOs Law, these legal persons must communicate the identity of their directors. In the case of ASBLs at the time of filing of the articles of association with the RCS, and any modification must be reported to the RCS each year[91]; in the case of *fondations*, their identity must be included in the articles of association[92]. However, these filings (board members) are not publicly available.

Inherent vulnerability assessment

The following table presents a summary of the features analysed for each type of non-commercial legal person.

Table 27: Complexity of corporate structure for non-commercial legal persons

Sub-factor	*Société civile*	ASBLs	*Fondations*
Shares can be transferred to third parties	Yes, under the conditions provided for in the partnership agreement	N/A	N/A
The partner/member can be a legal person	Yes	Yes, though considered as members	Yes, though considered as members
Partners/members are listed in the articles of association/partnership agreement and the information is publicly available	Yes	Yes	Founding members are listed in the articles of association but the members list is not publicly available
The manager/director can be a legal person	Yes	Yes	Yes

[86] 1928 NPOs Law, article 3, paragraph 2 with regard to ASBLs and article 32, paragraph 3 with regard to *fondations*.
[87] 1928 NPOs Law, article 3, paragraph 1 with regard to ASBLs and article 32, paragraph 1 with regard to *fondations*.
[88] 1928 NPOs Law, article 2, point 4°.
[89] 1928 NPOs Law, article 10.
[90] FATF high-risk and other monitored jurisdictions.
[91] 1928 NPOs Law, article 3, paragraph 3.
[92] 1928 NPOs Law, article 30, paragraph 2, point 4°.

5.1.4.3. Legal arrangements

As explained in the Egmont-FATF Joint Report, "*In a trust, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, benefit from, and control the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed).*"[93]

Bearing in mind that legal arrangements are different from legal persons, the corporate structure inherent vulnerabilities assessment considers the following variables:

- legal owner is listed in the deed;
- there is a complex structure without ownership[94]; and
- the manager/director can be a legal or natural person.

Legal arrangements in Luxembourg consist of domestic *fiducies*, foreign trusts and similar legal arrangements. They are defined and recognised in the 2003 Fiducies and Trusts Law, the 2020 RFT Law and the 2004 AML/CFT Law. Although Luxembourg permits the creation of domestic *fiducies* and similar legal arrangements, the country recognises the use of foreign trusts in line with the 1985 Hague Trust Convention. Such legal arrangements (i.e. foreign trusts) are registered with the RFT.

Both *fiducies* and foreign trusts are created by an express deed that usually contains the information of the parties involved. In the case of *fiducies,* it is mandatory for the deed to be notarised. Foreign trusts follow foreign regulations for their constitution (which can take on a number of forms).

In Luxembourg, the trustee or *fiduciaire* can be a legal or natural person. They must in all cases comply with AML/CFT regulations and be supervised by a supervisory authority or a SRB, as explained in the section on TCSPs or FIs and DNFBPS.

Corporate structure inherent vulnerability assessment

The following table presents a summary of the features analysed for the legal arrangements. The final score for this inherent vulnerability factor is "Very High" for *fiducies*.

[93] Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018, paragraph 23.

[94] Legal arrangements have no partners or shareholders and thus "ownership" (as it is the case for *sociétés commerciales* for instance) cannot be determined based on the number of shares. In a similar vein, different people (with different roles) benefit from and (or) control the trust.

Table 28: Complexity of corporate structure - inherent vulnerability score for legal arrangements

	Fiducies
Shares can be transferred to third parties	N/A
Legal owner is listed in the articles of association	Yes, the parties are generally included in the deed. However, the deed is not registered.
The manager/director can be a legal person	Yes, the manager can be a legal or natural person (*fiduciaire*)
Complex structure without ownership/ membership/ partnership	Yes

5.1.5. Entity-type inherent vulnerability assessment

This section assesses the inherent vulnerability of each specific entity-type when considering their inherent characteristics, such as the possibility of issuing bearer shares, their use as an investment vehicle or asset holding vehicle, as well as their complexity as a matter of Luxembourg law. Considering these factors, the entities with the highest inherent vulnerability are SAs, SCAs, SEs and *fiducies* ("Very High"), followed by SASs, ASBLs, and *fondations* that are rated "High". SARLs, SCSs, SCSpés, SCOOP/SCOOP SAs, SCEs, SNCs and *sociétés civiles* are rated with a "Medium" inherent vulnerability. Finally, SARL-Ss appear as the least vulnerable entity-type ("Very Low").

Table 29: Entity-type inherent vulnerability assessment

	Sociétés commerciales											Non-commercial entities			Legal arrangements
	SCOOP – SCOOP SA	**SCE**	**SA**	**SAS**	**SARL**	**SARL-S**	**SE**	**SCA**	**SCS**	**SCSpé**	**SNC**	***Société civile***	**ASBL**	***Fondation***	***Fiducie***
Inherent vulnerability outcome	Medium	Medium	Very High	High	Medium	Very Low	Very High	Very High	Medium	Medium	Medium	Medium	High	High	Very High

5.2. Probability

In order to identify the inherent risk of the misuse of a type of legal person or legal arrangement in Luxembourg, the probability that such a legal person's vulnerabilities will be abused for ML/TF purposes needs to be considered. Please note that ML and TF are crimes that can occur in any sector of the economy and the probability that a type of legal person's or legal arrangement's vulnerabilities are misused is higher when that legal person or legal arrangement is very commonly used.

With reference to legal persons, the figures used in this paper for this probability are based on the number of registrations for a specific type of legal person in the RCS (e.g. 74 461 for the SARL) and the total number of registrations in the RCS (139 430). Following the assumption laid out in section 2.2.1.3, the most popular legal persons' vulnerabilities are most likely to be misused for ML and TF purposes. In a similar way, the OECD notes that almost all requests for information about ownership concerned SARLs (the most common type of company in Luxembourg) and to a lesser extent SAs[95].

Table 30: Probability analysis by entity-type of legal person

	Registrations by 31 December 2021	Probability	Probability rating
Sociétés commerciales			
Société cooperative – SCOOP /SCOOP SA	263	0.19%	Very Low
Société anonyme – SA	32 392	23.23%	Medium
Société par actions simplifiée – SAS	212	0.15%	Very Low
Société à responsabilité limitée – SARL	74 461	53.40%	Very High
Société à responsabilité limitée simplifiée – SARL-S	4 150	2.98%	Very Low
Société Européenne – SE	56	0.04%	Very Low
Société en commandite par actions – SCA	2 087	1.50%	Very Low
Société en commandite simple – SCS	1 849	1.33%	Very Low
Société en commandite spécial – SCSPé	6 304	4.52%	Very Low
Société en nom collectif – SNC	142	0.10%	Very Low
Société coopérative européenne – SCE	0	0.00%	Very Low

[95] OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Luxembourg 2019 (Second Round)*, paragraph 43.

	Registrations by 31 December 2021	Probability	Probability rating
Non-commercial entities			
Société civile	5 845	4.19%	Very Low
ASBL	450[96]	0.32%	Very Low
Fondation	26[97]	0.02%	Very Low
Other legal persons (as defined in section 3.3)[98]	**3 019**	**2.17%**	
Total registrations with the RCS	**139 430**		

Regarding legal arrangements and as explained in section 3.3, there are 1 090 *fiducies* or trusts deeds registered in Luxembourg. The Joint Egmont-FATF report explains that "[…] *criminals may exploit the secrecy provisions inherent in certain legal arrangements to prevent competent authorities from exerting authority to unravel the true ownership structure.*"[99]

It is also important to note that globally, legal arrangements have been identified as a recurring vehicle used in ML/TF schemes. The Joint Egmont – FATF report clarifies that "*the relative frequency of the use of legal arrangements in the cases analysed for this report (approximately one-quarter of all cases) may be due to the fact that many of the cases involved sophisticated predicate offences that yielded significant proceeds and thus warranted the additional investment*"[100]. In light of this analysis, the probability score given to *fiducies* is "Very High".

5.3. Inherent risk assessment

As explained in the methodology, the inherent risk outcome of each entity type is obtained through the combination of the inherent vulnerability and the probability scores using a risk matrix (see Table 7 in the methodology section.)

Using this risk matrix, it appears that the entity-types with the highest inherent entity-type specific risk are *fiducies* ("Very High"), followed by SAs and SARLs ("High"). SCAs, SASs, SE and NPOs present a

[96] Although 8 457 ASBLs were registered in the RCS as of 31 December 2020, it is estimated that around 450 fall under FATF definition and are vulnerable to TF.

[97] Although 193 *fondations* were registered in the RCS as of 31 December 2020, it is estimated that around 25 fall under the FATF definition of "NPO" and are vulnerable to TF.

[98] As stated in section 5.2, the "other types of legal persons" category (as defined in section3.3) represents about 2.17% of the total registrations with the RCS and encompasses about 10 different forms of legal persons with very few registrations per entity-type as at 31 December 2021. They were studied under the Corporate risk section and were not considered for this more granular entity-type specific risk assessment. Consequently, the concept of "probability" does not apply here.

[99] Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018, paragraph 50.

[100] Egmont-FATF Joint Report, *Concealment of Beneficial Ownership,* 2018, paragraph 51.

"Medium" inherent risk. With the exception of SARL-Ss, which presents a "Very Low" inherent risk, the remaining legal person-types obtain a "Low" inherent entity-type specific risk score.

Table 31: Entity-type specific inherent risk determination

	Inherent vulnerability	Probability	Inherent risk outcome
Sociétés commerciales			
Société cooperative – SCOOP/ SCOOP SA	Medium	Very Low	Low
Société coopérative européenne – SCE	Medium	Very Low	Low
Société anonyme – SA	Very High	Medium	High
Société par actions simplifiée – SAS	High	Very Low	Medium
Société à responsabilité limitée – SARL	Medium	Very High	High
Société à responsabilité limitée simplifiée – SARL-S	Very Low	Very Low	Very Low
Société Européenne – SE	Very High	Very Low	Medium
Société en commandite par actions – SCA	Very High	Very Low	Medium
Société en commandite simple – SCS	Medium	Very Low	Low
Société en commandite spéciale – SCSpé	Medium	Very Low	Low
Société en nom collectif - SNC	Medium	Very Low	Low
Non-commercial entities			
Société civile	Low	Very Low	Low
Association sans but lucratif – ASBL	High	Very Low	Medium
Fondation	High	Very Low	Medium
Legal arrangements[101]			
Fiducie	Very High	Very High	Very High

5.4. Mitigating measures

Luxembourg has put in place a number of measures to mitigate the vulnerabilities identified in the previous section. The following factors reduce the impact of the entity-type inherent risk:

- notaries as AML/CFT gatekeepers;
- filing of financial statements;
- audit and control requirements applicable to legal persons and legal arrangements; and
- monitoring/supervision performed by authorities.

[101] Refer to the specific explanations given at the end of section 5.2 with regards of the probability score given to legal arrangements.

5.4.1. Notaries: AML/CFT gatekeepers

Pursuant to article 1, paragraph 1, of the 1976 Notaries Law[102], "*Notaries are public officials established to receive all deeds and contracts to which the parties must or wish to give the character of authenticity which is attached to public authority deeds, and to guarantee their date, to file them, and to issue executory and certified copies"*.

In Luxembourg, instead of offering their services as a business, notaries act as representatives of the State in order to guarantee the legality of a given act. As outlined in the 1976 Notaries Law, they are prohibited from performing any of the TCSP activities included in the FATF's Glossary[103]. Nonetheless, notaries are subject to the 2004 AML/CFT Law and are, therefore, required to implement CDD and AML/CFT preventive measures.

Notaries implement the necessary AML/CFT CDD controls before preparing a notarial deed. This includes the identification and verification of the BO(s). Notaries also verify whether the BO is duly registered with the RBE. Should they find inconsistencies, they must notify this discrepancy to the RBE. Since 1 September 2019, date of entry into force of the RBE consultation, the LBR has received 146 reports, including discrepancy reports from notaries.

To fulfil their duties, Luxembourg notaries rely on several sources of information, including customer declarations and documentation such as, and depending on the results of the notary risk assessments, BO declarations, proof of address, excerpts of the articles of association, memoranda of association, structure charts and/or certification of management that the documentation is up to date. Furthermore, research in the RCS or RBE – and if needed – on the internet is carried out. In case of suspicious transactions, notaries must file STRs or SARs to the CRF and put the transaction on hold.

With reference to the formation of legal persons, once the company is set up, the notarial deed is transferred to the AED for registration. Upon return from the AED, the notary registers the company with the RCS.

Regardless of whether the transactions were prepared by other professionals (such as TCSPs), the scope and the rationale of the AML/CFT checks carried out by the Luxembourg notaries do not change. Indeed, the CdN requires CDD and BO controls to be performed in an independent manner and notaries should not rely on information conveyed by other professionals.

The CdN monitors the implementation of the AML/CFT measures during the inspections of the notarial offices. To this end, a questionnaire is sent out to the notaries, their respective AML/CFT policies are checked and their application is verified during on-site inspections. The role of the notaries clearly helps ensure that the information registered with the RCS and the RBE is accurate, in particular during the formation process of the entity.

[102] Law of 9 December 1976 on the organisation of the notarial profession.

[103] See prohibitions in: European E-Justice. Types of legal professions. https://e-justice.europa.eu/content_legal_professions-29-lu-maximizeMS-en.do?member=1

It is important to note that the involvement of a notary is mandatory for the formation of the most popular types of legal persons such as the SARL, SA, SCA, SAS, SE, SCE and the *fondation*. These legal persons represent about 78% of the total legal persons registered with the RCS as of December 2021. For these entities, any change affecting the articles of incorporation (e.g. capital, registered office address, basic regulating powers) needs to be notarised. Consequently, AML/CFT measures are performed by the notary. Considering that the articles of incorporation tend to change at certain stages of the legal person's life, the controls performed by notaries are considered to be a significant mitigating factor (4) for these entity types.

The setup of the remaining types of companies (i.e. SCOOP, SCOOP SA, SARL-S, SCS, SCSpé, SNC, *Société civile*, ASBL) do not necessarily require the intervention of a notary. However, it is common practice for notaries to be involved (primarily for reasons of legal certainty) in their formation.

Luxembourg notaries must be involved in the creation of the *fiducie* contracts.

5.4.2. Filing of financial statements

The filing of financial statements promotes transparency, as they openly present how the assets are managed within the entity, its performance, as well as the general source and use of assets. This information can be very useful for investigators, law enforcement entities, prosecutors, and tax authorities when investigating ML/TF or predicate offences. Additionally, effectively monitoring legal persons not complying with their obligation to file their annual financial statements may be a useful mechanism to detect inactive or dormant companies.

The SCOOP/SCOOP SA, SA, SAS, SARL, SARL-S, SE, SCE and SCA must file, on a yearly basis, their financial statements with the RCS within 7 months after the closing of the financial year. Two months after the closing of the financial year, a *fondation* must submit the accounts and budget to the MoJ.

On the other hand, the SCS and SNC must file their financial statements i) should the turnover of its last financial year exceed €100 000, or ii) when all partners with unlimited liability are legal persons in the form of a SA, SARL, or SCA. ASBLs do not need to submit financial statements unless they accept inter vivos or testamentary donations or receive public funds (article 16, paragraph 6, of the 1928 NPOs Law).

However, SCSpé, *société civile* and *fiducies* do not have to file their financial statements.

5.4.3. Audit and control requirements applicable to legal persons and legal arrangements

Most of the *sociétés commerciales* in Luxembourg are required to have their financial statements audited by an approved statutory auditor ("*réviseur d'entreprises agréé*"). In some instances (mainly size criteria), these structures may be overseen by a *Commissaire* who could be a member of the overseen structure or

not. *Commissaires* are supervisory auditors for a sub-set of *sociétés commerciales*[104] that do not meet the thresholds to appoint an approved statutory auditor as per the 2016 Audit Law[105].

Pursuant to article 69, paragraph 3, of the 2002 RCS Law, entities that do not meet the criteria to appoint an approved statutory auditor[106] can voluntarily perform a statutory audit. In this case, the *Commissaire* disappears and the audit is performed by an approved statutory auditor according to the rules laid out in the 2016 Audit Law.

It is important to note that *Commissaires* were inspired by Belgian law and established under the 1915 Companies Law. When approved statutory auditors were created by the 8th EU Directive in 1984[107], Luxembourg created the *réviseur d'entreprises* in addition to the existing *Commissaires* (while most other EU jurisdictions such as France or Belgium replaced or merged *Commissaires* with the newly established profession of *réviseur d'entreprises* (as it was the case in Belgium) and *Commissaire aux Comptes* (as it was the case in France)). The approved statutory auditor was established under the Law of 18 December 2009 on the audit profession, which has been superseded by the 2016 Audit Law.

Commissaires can be shareholders, partners or employees of the company and must, therefore, not necessarily be independent. The *Commissiaires'* missions are twofold. First, they ensure that the financial statements have been prepared in accordance with the accounting records. Second, they ensure that the annual report prepared by the board of directors is consistent with the financial statements before their presentation and approval by the general meeting. To fulfil these missions, *Commissaires* are granted supervisory powers over the entity's transactions.

The approved statutory auditor is an external independent auditor. Approved statutory auditors are natural persons, registered with the Luxembourg IRE. In order to perform statutory audit as defined in the 2016 Audit Law, approved statutory auditors must be registered with the CSSF (independent oversight body for the audit profession). Approved statutory auditors perform their duties pursuant to the provision of the 2016 Audit Law and a fixed-term service agreement that can only be cancelled on serious grounds. Moreover, they must comply with a strict code of conduct and abide by the provisions in terms of their independence (e.g. approved statutory auditors are prohibited from performing a vast number of services to the audited entity) as set out in the 2016 Audit Law and the EU regulation nº 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities.

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[104] The 1915 Companies Law references the requirement to appoint a *Commissaire* for SAs per articles 430-20 and 443 1-3; for SASs per articles 500-7 and 600-7, SARLs per article 710, and SCOOP per article 811-2.

[105] Law of 23 July 2016 on the audit profession.

[106] For example, a SA that does not meet at least two out of the three size criteria for at least two consecutive years is required to appoint a *Commissaire*:

1. the SA must have a total balance sheet over €4.4 million;
2. its annual turnover must surpass €8.8 million;
3. it must engage a minimum of 50 full-time employees.

Per article 710-27 of the 1915 Companies Law, SARLs are subject to being audited by a *Commissaire* if they have more than 60 shareholders.

[107] Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents.

In particular, the approved statutory auditor is responsible for assessing whether the financial statements give a true and fair view of the audited company's financial position, whether the financial statements have been prepared in accordance with legal requirements and whether the annual report is consistent with the financial statements for the same financial year.

Entities, such as the *société civile* or legal arrangements, do not have any oversight. ASBLs and *fondations* do not have any obligation to have their financial statements audited by an approved statutory auditor, except for NPOs with a goal of international cooperation and development (DNGOs). They are specifically defined and accredited by the MoFA. These DNGOs mostly take the legal form of an ASBL. When receiving public subsidies, DNGOs must have their accounts audited by an approved statutory auditor[108]. Furthermore, these financial statements must be submitted to the RCS annually. As at October 2021, 92 NPOs are considered to be DNGOs[109].

The following table shows relevant criteria per entity-type.

Table 32: Oversight mitigating outcome

	Oversight by a *Commissaire* is mandatory	**Criteria to appoint an approved statutory auditor ("*réviseur d'entreprises agréé*")[110]**
Sociétés commerciales		
SCOOP/SCOOPSA	✓	If for at least two consecutive years, two out of the three following criteria are exceeded: - Balance sheet total: €4.4 million; - Net turnover: €8.8 million; - Average number of full-time employees: 50.
SCE	✓	
SA	✓	
SAS	✓	
SARL	Only when entity has more than 60 shareholders	
SARL-S		
SE	✓	With an annual turnover exceeding €100 000
SCA	✓	If for at least two consecutive years, two out of the three following criteria are exceeded: - Balance sheet total: €4.4 million; - Net turnover: €8.8 million; - Average number of full-time employees: 50

[108] Pursuant to article 5 of the Law of 15 December 2017 amending the Law of 6 January 1996 on development cooperation and humanitarian action, DNGOs receiving public subsidies exceeding (or equal to) €100 000 must appoint an approved statutory auditor who performs a limited review of the DNGOs annual accounts in accordance with the International Standard on Review Engagements. Pursuant to article 5 of the Law of 15 December 2017, DNGOs receiving public subsidies exceeding (or equal to) € 500 000 must appoint an approved statutory auditor who performs a statutory audit in accordance with the international standards adopted by the CSSF.

[109] https://cooperation.gouvernement.lu/en/partenaires/ong-partenaires.html

[110] Please note that the majority of entities supervised by the CSSF must always appoint an approved statutory auditor.

	Oversight by a *Commissaire* is mandatory	Criteria to appoint an approved statutory auditor (“*réviseur d’entreprises agréé*”)[110]
SCS	X	- When all the partners are SAs, SARLs, SCAs or companies in any other comparable legal form; or - If for at least two consecutive years, two out of the three following criteria are exceeded: o Balance sheet total: €4.4 million; o Net turnover: €8.8 million; o Average number of full-time employees: 50.
SCSpé		
SNC		
Non-commercial entities		
Société civile	X	N/A
ASBL	X	DNGOs must have their financial statements reviewed if they received public subsidies exceeding €100 000. Their financial statements must be audited by an approved statutory auditor if they receive public subsidies exceeding €500 000.
Fondation	X	
Legal arrangements		
Fiducie	X	N/A

5.4.4. Monitoring/supervision performed by authorities

5.4.4.1. Investment vehicles

As a higher vulnerability score was granted to entities that could be used as investment vehicles (see section 5.1.2), this section analyses the supervisory activities performed by the CSSF and the AED.

The CSSF’s supervision of investment vehicles

The CSSF’s supervision aims to ensure that investment vehicles subject to its supervision continuously observe all legal, regulatory and contractual provisions relating to their organisation and operation, including the requirements pursuant to the 2004 AML/CFT Law as obliged entities. The CSSF’s supervision is exercised via:

- off-site supervision based on the analysis of the periodic financial information, annual reports, other reports (including the reports of the approved statutory auditors and regular or ad hoc information received by the CSSF); and

- on-site supervision, i.e. on-site inspections carried out by the CSSF agents at the offices of supervised entities.

For further information and details regarding the CSSF's supervisory activities in particular from an AML/CFT perspective, it is recommended to consult the CSSF's ML/TF sub-sector risk assessment on collective undertakings.

Alternative investment funds (AIFs) – supervision or registration with the CSSF of the alternative investment fund manager (AIFM)

AIFs not regulated by the 2010 OPC Law - Part I UCITS Law, 2004 SICAR Law and 2007 SIF Law, but that comply with the definition of AIFs as set out in article 1, paragraph 39, of the 2013 Law on AIFMs must, in accordance with article 3 of the 2013 Law on AIFMs appoint an AIFM which, if based in Luxembourg:

- be authorised by the CSSF, should the AIFM's assets under management exceed €500 million (or €100 million where the managed portfolios are leveraged) ; or
- be registered with the CSSF, should the AIFM's assets under management not exceed €500 million (or €100 million where the managed portfolios are leveraged).

The AIFM can also be located in another EU Member State duly authorised pursuant to Directive 2011/61/EU.

Authorised AIFMs are subject to the CSSF's supervision including licensing and regular controls relating to AML/CFT purposes.

Registered AIFMs are also subject to CSSF AML/CFT supervision and to CSSF reporting obligations and must, in accordance with article 3, paragraph 3, of the 2013 Law on AIFMs:

- provide information on the investment strategies of the AIFs that they manage to the CSSF at the time of registration; and
- regularly provide the CSSF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the CSSF to monitor systemic risks effectively.

For a more granular analysis on AIFMs, please refer to the CSSF's ML/TF sub-sector risk assessment on collective investments.

Lastly, the CSSF ensures that all the persons subject to its supervision, authorisation or registration comply with the professional AML/CFT obligations.

In light of the above, it is clear that both types of AIFMs play an important gatekeeper role for AIFs that do not fall under the supervision of the CSSF.

AED's supervision of investment vehicles

Additionally, pursuant to article 2-1, paragraph 8, of the 2004 AML/CFT Law, the AED is the supervisory authority for the vehicles or products not supervised by the CSSF (or another supervisory authority for

investment vehicles that do not fall within the scope of this report[111]). For instance, the AED is responsible for the AML/CFT supervision of reserved alternative investment funds (RAIFs) subject to the Luxembourg Law of 23 July 2016 on RAIF.

In this regard, the AED sent on 11 December 2020 a letter to the registered address of RAIFs, as indicated on the RAIF list of the RCS, in order to receive the completed RAIF AML/CFT identification form regarding the identification of the person responsible for compliance with the professional obligations as regards the fight against ML/TF *(responsable du respect des obligations professionelles en matière de lutte contre le blanchiment et contre le financement du terrorisme)* and the Compliance officer (*responsable du contrôle du respect des obligations)*. These persons must confirm that they:

- have sufficient AML/CFT knowledge with regard to the applicable Luxembourg legislation and regulation and can demonstrate (e.g. trainings) this upon request;
- are knowledgeable about the investments and distributions strategies of the RAIF;
- will be available without delay upon request by the Luxembourg AML/CFT competent authorities; and
- have access to all internal documents and systems required for performing their tasks. Note that this criterion only applies to the compliance officer.

To conclude on this section, the CSSF plays a significant role in the supervision of those investment vehicles. As explained above, most investment vehicles either are subject to the CSSF's supervision or must be managed by an authorised or registered AIFM. In this case, the CSSF is informed of the investment vehicle's activities via its Luxembourg AIFM that is subject to regular reporting requirements and AML/CFT controls. In addition to that, the AED is responsible for the AML/CFT supervision of reserved alternative investment funds (RAIFs) subject to the Luxembourg Law of 23 July 2016 on RAIF.

Moreover, it is important to point out that even though most legal persons belonging to the category of *sociétés commerciales* could be used as an investment vehicle, a significant portion of these entities pursue a different objective.

Pursuant to Table 24, *sociétés civiles,* ASBLs, *fondations* and *fiducies* cannot be used as investment vehicles studied under the scope of this report.

Similar to the remarks made in section 5.1.2.2, this report adopts a conservative and general approach to investment vehicles. For the purpose of this report, no differentiation is made between the different types of investment vehicles for legal persons and legal arrangements. With regard to this paper's objective, investment vehicles are assessed from a transparency point of view.

In this context, it is also important to note that the other mitigating measures studied in the **Corporate risk** and **Entity-type specific risk** apply to all categories of investment vehicles. As highlighted during

[111] Other supervisory authorities would be the CAA for example. Investment vehicles supervised by the CAA are exclusively organised under contractual form and, therefore, do not fall within the scope of this paper.

several occasions in the LPA risk assessment, legal persons and legal arrangements (must) intervene throughout their lifetime with different professionals regulated by the 2004 AML/CFT Law. For instance, many different types of legal persons must be set up through a notarial deed. Moreover, TCSPs may also be involved in the creation of a legal person, as they may set up the articles of association or provide consulting services. Furthermore, it is common practice that Luxembourg legal entities use a Luxembourg bank account. In fact, Luxembourg authorities identified that around 95% of entities registered in the Grand-Duchy have a Luxembourg bank account[112]. Consequently, almost every legal person and legal arrangement doing business in Luxembourg is subject to the banks' internal AML/CFT rules. As pointed out above (under 4.4.3.3.), banks are a very mature and robust AML/CFT gatekeeper. In a similar vein, legal persons exceeding certain size criteria must also have their financial statements audited by an approved statutory auditor.

5.4.4.2. Monitoring performed by other authorities to the ASBLs, *fondations*

ASBLs

ASBLs wishing to obtain public utility status must submit an application to the MoJ. This application is examined by both the MoJ and the MoF. First, authorities analyse whether the association has a general interest purpose. Second, the department in charge assesses whether the association works in the philanthropic, religious, scientific, artistic, educational, social, sporting or tourist domain. For this assessment, an activity report from the three previous years preceding the request must be submitted to the MoJ. Furthermore, the MoJ checks whether the entity has complied with all its filing obligations (e.g. changes to the articles of association, yearly filing of the members list). The purpose of the recognition of the public utility status mainly consists in tax deductibility of donations (under certain conditions). Although the evaluation of public utility criteria is made on a case–by–case basis by the MoJ and MoF (which take into account the specificities of each file), such status is given to entities having a strong public purpose (i.e. which are not limited to fundraising) and that have substantial activities on the Luxembourg territory. As at February 2021, about 105 entities received the public utility status[113].

NPOs with a goal of international cooperation and development (DNGOs) are specifically defined and accredited by the MoFA. These DNGOs mostly take the legal form of an ASBL. Given that the MoFA finances DNGOs, it performs checks on DNGOs and their projects to ensure appropriate use of government funds. When receiving public subsidies exceeding €100 000, DNGOs must have their financial statements reviewed by an approved statutory auditor. If public subsidies exceed €500 000, the financial statements must be audited by an approved statutory auditor. Furthermore, these accounts must be submitted to the RCS annually. As at October 2021, 92 NPOs are considered to be DNGOs[114]. However, ASBLs do not require the DNGO status to carry out development projects. They may conduct these activities as long as they fund them with their own funds.

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[112] OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: Luxembourg 2019 (Second Round)*, 2019.
[113] LBR data as at February 2021.
[114] https://cooperation.gouvernement.lu/en/partenaires/ong-partenaires.html

Fondations

Any deed creating a *fondation* must be reported to the MoJ for approval and the statutes must be approved by grand-ducal decree. The approval process includes a physical meeting between the MoJ and the future founders. Moreover, mandatory documentation on the initial amount allocated for the creation of the *fondation*, the identity of future founders and board members, and a financial business plan (which is based on a three-year plan explaining how the *fondation* intends to get funded and the expected amount of the funds, as well as how and which kind of projects are going to be funded) are studied by the authorities. The file is also submitted to the MoF in order to analyse the purpose of the *fondation* and, in particular, whether it is of a public utility nature.

Any authentic declaration and any testamentary provision made by a founder with a view to creating a *fondation* shall be communicated to the MoJ for approval. Moreover, any dissolution with transfer of assets to the designated entity is notarised as it constitutes a modification of the articles of association and, therefore, also requires the approval of the MoJ and a grand-ducal decree. Furthermore, donations (gifts and bequests) to the *fondation* exceeding €30 000 must be approved by the MoJ by ministerial decree (article 16, paragraph 1, of the 1928 NPOs Law). However, ministerial approval is not required to accept gifts when they are made by wire transfer from a credit institution authorised to do business in a Member State of the EU or the European Economic Area (article 36 by cross-reference to article 16, paragraph 3, of the 1928 NPOs Law). Bequests are excluded from this exemption.

Finally, the MoJ ensures that the assets of the *fondation* are assigned to the purpose for which it has been created (article 40 of the 1928 NPOs Law). In some instances, *fondations*, when pursuing development projects abroad in addition to their national public utility purpose, may be recognised as DNGOs by the MoFA for their international activity. For this purpose, the MoFA also performs checks (similar to the checks performed for ASBLs). As of October 2021, 5 *fondations* are accredited as DNGOs.

5.4.5. Mitigating factors scores and residual risk ratings

Based on the analysis above, Luxembourg has implemented a range of mitigating measures to various entities. Such mitigating measures include notaries being very important ML/TF gatekeepers at the start of and, as the case may be, at certain stages of an entity's life; the filing of financial statements, which unquestionably promotes transparency and the oversight of legal persons, which helps raise red flags about their activities. Finally, monitoring/supervision conducted by different authorities directly mitigates vulnerabilities posed by investment vehicles. Although there are a few shortcomings which could be further addressed, the aforementioned measures result in the following mitigating factor outcomes for each specific entity.

Table 33: Entity-type mitigating measures analysis

	Mitigating factor outcome	Impact of mitigating factors
Sociétés commerciales		
SCOOP	Moderate	-1
SCOOP SA	Moderate	-1
SCE	Significant	-1.5
SA	Moderate	-1
SAS	Moderate	-1
SARL	Moderate	-1
SARL-S	Moderate	-1
SE	Significant	-1.5
SCA	Moderate	-1
SCS	Some	-0.5
SCSpé	Limited	0
SNC	Some	-0.5
Non-commercial entities		
Société civile	Limited	0
ASBL	Some	-0.5
Fondation	Significant	-1.5
Legal arrangements		
Fiducie	Limited	0

As explained earlier in this document, residual risk is the result of the balance of applying mitigating effects against entity-type specific inherent risks. When performing this analysis, the results show that entity-types with the highest residual risk of being misused for ML/TF purposes are *fiducies* ("Very High"), followed by SAs, SARLs and *sociétés civiles* with a "Medium" residual risk. All remaining specific entity-types present a "Low" or "Very Low" specific residual risk.

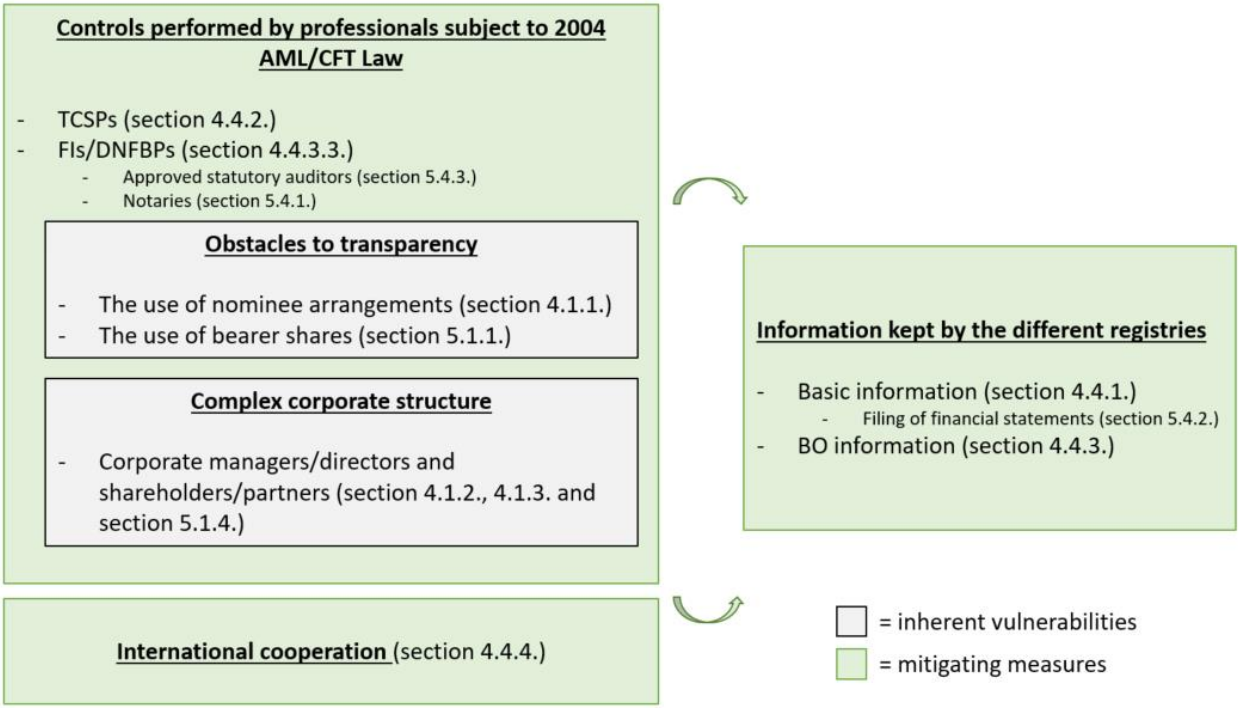
Table 34: Residual risk assessment

	Residual risk outcome
Sociétés commerciales	
SCOOP/SCOOPSA	Very Low
SCE	Very Low
SA	Medium
SAS	Low
SARL	Medium
SARL-S	Very Low
SE	Very Low
SCA	Low
SCS	Very Low
SCSpé	Low
SNC	Very Low
Non-commercial entities	
Société civile	Low
ASBL	Low
Fondation	Very Low
Legal arrangements	
Fiducie	Very High

6. CONCLUSION

Although the LPA risk assessment analyses the ML/TF risks of legal persons and legal arrangements being misused at two different levels, the **Corporate risk assessment** and the **Entity-type specific risk assessment** are closely linked to each other. The following figure illustrates the linkages that exist between the vulnerabilities and mitigating factors studied in this report.

Figure 2: Linkages between vulnerabilities and mitigating factors assessed in the LPAs risk assessement



As depicted in the figure above, this report studies three overall categories of mitigating measures, namely i) the controls performed by the professionals subject to the 2004 AML/CFT Law; ii) international cooperation; and iii) the information kept by the different registers and the coordinated actions carried out by Luxembourg authorities in this regard. Moreover, other elements of national cooperation, in addition to coordinated actions by Luxembourg authorities, such as significant exchanges of information between supervisory authorities, concerned ministries, the SRBs, the LBR, the CRF and prosecution authorities, are dealt with in different sections of this report. Especially for the controls performed by the professionals subject to the national AML/CFT framework, the LPA risk assessment studies the more general provisions in the **Corporate risk assessment**, whereas the more specific provisions applicable to approved statutory auditors and notaries were analysed in the more granular **Entity-type specific risk assessment**. In a similar way, the capacity to obtain basic information was tackled in the broader **Corporate risk assessment**, whilst a more detailed section on the filing of financial statements was analysed in the **Entity-type specific risk assessment.**

The supervisory activities performed by the respective authorities and SRBs as well as the national coordination actions are not addressed in a specific section of this report. Nevertheless, they are key in ensuring the effectiveness of the mitigating factors and their beneficial effect on inherent vulnerabilities.

As depicted in Figure 2, professionals must comply with the controls laid out in the provisions of the 2004 AML/CFT Law. In the **Corporate risk**, section 4.4.2 and 4.4.3.3 describe how the AML/CFT supervisory authorities and SRBs continuously make sure via i) licensing and registration requirements and ii) on- or off- site controls that the supervised entities live up to these requirements. In the more granular **Entity-type specific risk**, section 5.4.1 and 5.4.4 illustrates these efforts in the context of the studied factor.

Similar to the supervisory activities, national coordination and cooperation efforts are also mentioned continuously throughout this LPA risk assessment. As pinpointed in the **Corporate risk**, the NPC serves as an important information platform to reach those concerned by the obligations arising from the 2004 AML/CFT Law (or other legal requirements in line with AML/CFT – as it was the case in section 4.3 for the 2020 RFT Law, for example). It is also important to note that national coordination and cooperation is not limited to those regular interventions within the NPC. Sections 4.4.1 and 4.4.3 depict, for example, how different authorities cooperate in order to ensure that the data registered with the registers of the LBR (i.e. the RCS and RBE) are accurate and up-to-date. Section 4.4.2 provides the legal basis for dealing with national coordination regarding AML/CFT purposes, and explains in further detail the mechanisms in place regarding "common" members of different supervisory authorities and SRBs. With respect to the **Entity-type specific risk**, section 5.1.1 about bearer shares visualises how actions taken by different authorities ensures the monitoring of the application of the 2014 Shares Register Law.

The studied vulnerabilities take potential obstacles to transparency and features that may make the corporate structure more complex into account. Similar to the studied mitigating measures, each assessed vulnerability includes elements from **the Corporate** and **Entity-type specific risk**.

The subsequent paragraphs briefly describe the inherent vulnerabilities assessed in this report and their respective mitigating measures.

Obstacles to transparency and the controls performed by the professionals subject to the national AML/CFT framework

The FATF's interpretative note to Recommendation 24 lists bearer shares and nominee arrangements as obstacles to transparency and, therefore, their potential relevance as inherent vulnerabilities in Luxembourg was assessed in this report.

As highlighted in section 4.1.1, the concepts of nominee shareholder and nominee director do not exist under Luxembourg civil and commercial law. The closest concepts used with regard to Luxembourg legal persons would be that of a proxy and directorship services. With regard to proxy arrangements, a proxy must identify their principal and disclose to any relevant stakeholder the existence of this proxy relationship. Hence, it is not the proxy that will be registered in the shareholder books, but the principal. In practice, TCSPs tend to offer such proxy services to shareholders. As they fall under the scope of the 2004 AML/CFT Law, they must duly apply all the relevant controls regarding CDD and BO identification.

Another obstacle to transparency mentioned in the FATF's Recommendation 24 concerns bearer shares. As stated in section 5.1.1, the legitimate use of bearer shares is permitted in Luxembourg for the *sociétés de capitaux* (i.e. the SA, SAS, SE and SCA entities). The 2014 Shares Register Law regulates the usage of such shares. In line with the requirements provided for in the interpretative note to Recommendation 24, this law requires from entities that issue bearer shares to:

- convert them into registered shares; or
- nominate a depositary (a professional subject to the 2004 AML/CFT Law) with whom all bearer shares must be immobilised.

Should a depositary be appointed, the professional must perform all relevant AML/CFT controls pursuant to the 2004 AML/CFT Law. Furthermore, the designated depositary must keep a register of bearer shares in Luxembourg that includes, among others, the identification of all shareholders, and the number of bearer shares owned. This ultimately reduces the transparency obstacles that are generally associated with bearer shares.

Complex corporate structure and controls performed by professionals subject to the 2004 AML/CFT Law

An important part of the Corporate and Entity-type specific risk covers the complexity of the Luxembourg legal persons and legal arrangements. Overall, factors that add layers to the corporate structure such as corporate shareholders/partners or managers/directors are considered to increase the complexity. In the **Corporate risk assessment** (section 4.1.2), the report analyses the occurrence of corporate shareholders/partners and managers/directors registered with the RCS. In the more granular **Entity-type specific risk assessment** (section 5.1.4), the report studies which type of legal entities can, in theory, use corporate owners or managers/directors.

As highlighted at several occasions in this LPA risk assessment, legal persons or legal arrangements (must) interact throughout their lifetime with different professionals regulated by the 2004 AML/CFT Law. For instance, many different types of legal persons must be set up through a notarial deed. TCSPs can also be involved in the creation of a legal person as they may set up the articles of association. Furthermore, it is common practice that Luxembourg legal entities and legal arrangements use a Luxembourg bank account. As touched on in section 4.4.3.3, banks have been obliged to apply AML/CFT controls for over two decades now and they are very mature AML/CFT gatekeepers. Moreover, legal persons exceeding certain size criteria must also have their financial statements audited by an approved statutory auditor.

To conclude, although a legal person or legal arrangement must not necessarily be set up through a notarial deed or have their financial statements audited by an approved statutory auditor, chances are high that the legal person or legal arrangement requires services from a FI (e.g. opening of a bank account) or a TCSP (e.g. domiciliation) for example. Article 2 of the 2004 AML/CFT Law includes all the professionals that are likely to intervene during the lifetime of a legal person or legal arrangement.

Pursuant to article 3, paragraph 2, of the 2004 AML/CFT Law, these professionals must take reasonable measures to understand the ownership and control structure of their customers. Consequently, although

a legal person or legal arrangement may include many layers, the professional must untangle the latter in order to comply with the provisions as set out in the 2004 AML/CFT Law.

Activity-based analysis

As stated in the introduction, the LPA risk assessment strived to assess ML/TF risks purely from a transparency point of view. However, this report studied in greater detail activities that may be particularly vulnerable to being misused for ML/TF purposes. Investment and asset holding vehicles, as well as NPOs carrying out development projects abroad, were analysed in this context.

Risk level outcomes

With regard to **Corporate risk**, the LPA risk assessment results in the following levels of inherent and residual risk by legal person and legal arrangement category:

- legal arrangements and *sociétés commerciales* present the highest corporate inherent risk ("Very High"). Taking into account the impact of mitigating factors, their residual risk is "Medium";
- *société civiles*, "other legal persons" and *fondations* have "High" corporate inherent risk and "Low" residual risk; and
- ASBLs appear as the least risky category of legal persons with a "Medium" and "Very Low" corporate inherent and residual risk respectively.

With regard to the **Entity-type specific risk**, the LPA risk assessment yields the following results:

- with respect to the inherent entity-type risk, *fiducies* are the riskiest type of legal persons and legal arrangements ("Very High"), followed by SAs and SARLs ("High"). SASs, SEs, SCAs and NPOs (ASBLs and *fondations*) present a "Medium" inherent entity-type risk level. The inherent risk level of the remaining entity types is "Low" or "Very Low"; and
- with regard to residual risk, *fiducies* remain "Very High" despite of existing mitigating measures. The residual risk of SA and SARL is "Medium" once mitigating measures are considered. With the exception of *sociétés civiles,* SAS, SCA, SCSpé and ASBLs (which its residual risk is considered "Low"), the residual risk of the remaining entity types is "Very Low".

APPENDIX A. ACRONYMS

Term	Definition
ACD	Administration des Contributions Directes
ADA	Administration des Douanes et Accises
AED	Administration de l'Enregistrement, des Domaines et de la TVA
AIF	Alternative investment fund
AIFM	Alternative investment fund manager
AML	Anti-money laundering
ASBL	Association sans but lucratif
BO	Beneficial owner
CAA	Commissariat aux Assurances
CdC	Caisse de Consignation
CDD	Customer due diligence
CdN	Chambre des Notaires
CFT	Combatting the financing of terrorism
CPA	Chartered professional accountant
CRF	Cellule de Renseignement Financier
CSSF	Commission de Surveillance du Secteur Financier
DNFBP	Designated non-financial professions and businesses
DNGO	Non-governmental organisation for development (referring to NPOs carrying out development projects abroad and accredited as such by MoFA)
EU	European Union
FATF	Financial Action Task Force
FCP	Fonds commun de placement
FI	Financial Institution
FIS	Fonds d’investissement spécialisé
FIU	Financial Intelligence Unit
IMF	International Monetary Fund

IRE	Institut des Réviseurs d'Entreprises
LBR	Luxembourg Business Registers
LPA	Legal persons and legal arrangements
ML	Money laundering
MLA	Mutual Legal Assistance
MoE	Ministry of Economics
MoF	Ministry of Finance
MoFA	Ministry of Foreign and European affairs
MoJ	Ministry of Justice
NPC	National Prevention Committee
NPO	Non-profit organisation
NRA	National risk assessment
OAD	Ordre des Avocats de Diekirch
OAL	Ordre des Avocats de Luxemboug
OEC	Ordre des Experts Comptables
OECD	Organisation for Economic Cooperation and Development
OPC	Organisme de placement collectif
PFS	Professionals du secteur financier – professionals of the financial sector as defined in the 1998 CSSF Law
PG	General State Prosecutor's Office
RAIF	Reserved alternative investment fund
RBE	Register of Beneficial Owners
RCS	Trade and Companies Register
RESA	Electronic Compendium of Companies and Associations
RFT	Register of Fiducies and Trusts
SA	Société anonyme
SAR	Suspicious activity report
SARL	Société à responsabilité limitée
SARL-S	Société à responsabilité limitée simplifiée

SAS	Société par actions simplifiée
SCA	Société en commandite par actions
SCE	Société cooperative européenne
SCI	Société civile immobilière
SCOOP	Société cooperative
SCOOP SA	Société cooperative organisée comme une société anonyme
SCS	Société en commandite simple
SCSpé	Société en commandite spéciale
SE	Société européenne
SICAF	Société d'investissement à capital fixe
SICAR	Société d'investissement en capital à risque
SICAV	Société d'investissement à capital variable
SNC	Société en nom collectif
SOPARFI	Société de participations financières
SPF	Sociétés de gestion de patrimoine familial
SPJ	Judicial Police Service
SRB	Self-regulatory body
StAR	Stolen Asset Recovery Initiative
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF	Terrorist financing
UCI	Undertakings for collective investments
UN	United Nations
UNODC	United Nations Office of Drugs and Crime
VAT	Value-added Tax

APPENDIX B. LIST OF TABLES

APPENDIX C. LIST OF FIGURES