

EXECUTIVE SUMMARY

The Luxembourg
financial sector
and corporate
governance:

Investment funds in the human rights spotlight





This document is a summary of the full study available at www.initiative-devoirdevigilance.org/post/investment-funds-in-the-human-rights-spotlight.

This study was carried out by Action Solidarité Tiers Monde (ASTM) in collaboration and on behalf of **Initiative pour un devoir de vigilance** (IDV).

The content is made available by IDV under the terms of the Creative Commons Attribution 4.0 International Public License.

Author: Nadine Haas (ASTM)

Luxembourg, December 2023

I. Introduction and context

The Luxembourg fund industry is one of the main pillars of the Luxembourg financial sector, next to banking and insurance. Globally, it represents the second largest investment fund centre, with 6,124.7 billion € assets under management in 2022.¹

This study takes a snapshot of the investment fund sector's human rights policies. To this purpose, we benchmarked the 10 largest investment management companies on their adoption of human rights commitments and the implementation of human rights due diligence procedures. The results provide an insight into the sector's level of awareness of its responsibilities with regard to human rights.

This study is published in the context of the negotiations over the Corporate Sustainability Due Diligence Directive (CSDDD) of the European Union. The CSDDD's ambition is "to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations and corporate governance".²

The European Commission, the European Parliament, and the Council of the European Union have each submitted their proposed versions of the CSDDD.³ The three positions differ from each other in some respects, and they also deviate in several points from international human rights standards like the United Nations Guiding Principles on Business and Human Rights (UNGP) or the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The EU Parliament's position is the most ambitious as to coherence with these international standards.

As for the scope of the directive, the Council's approach leaves the inclusion of the financial sector to the discretion of EU member states and excludes almost all investment activities.⁴ This goes against article 14 of the UNGP which states that "the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure". There have been several high-level calls for the inclusion of the financial sector

¹ CSSF annual report 2022 (www.cssf.lu/en/Document/annual-report-2022/)

² https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en

³ European Commission: https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en, Council of the EU: <https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf>, EU Parliament: https://www.europarl.europa.eu/doceo/document/A-9-2023-0184_EN.html

⁴ For more details on the differences between the three propositions see Joint Policy Briefing Paper by FIAN and Südwind (02.08.2023), www.fian.de/wp-content/uploads/2023/08/FIAN_SUeDWIND_Policy-Briefing_Financial-Sector_CSDDD_ENG_20230802.pdf; OECD Watch (June 2023): Achieving alignment. Syncing EU due diligence legislation with the update OECD Guidelines, www.oecdwatch.org/download/33933/?tmstv=1697208029; Shift (October 2023): Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations, <https://shiftproject.org/resource/aligning-the-cs3d-with-the-international-standards/>.

within the scope of the directive, including an OECD ministerial declaration and a statement by the UN Working Group on Business and Human Rights.⁵ After a visit to Luxembourg in December 2022, the UN Working Group on the issue of human rights and transnational corporations explicitly called upon Luxembourg to take a stronger position to support the full inclusion of the financial sector, including investment funds, under the proposed directive, and in its own legislation.⁶ And just recently, Frank Elderson, member of the Executive Board of the European Central Bank, stated that “financial undertakings should not be treated differently from other companies, including in the context of the Corporate Sustainability Due Diligence Directive”.⁷

In addition, the Commission and the Council stipulate that financial companies only need to undertake human rights risk assessments *before* providing a financial service, clearly going against international standards that require ongoing risk assessments. This would mean, for example, that a bank which grants a loan to a company for a specific project would only have to conduct an initial, pre-contractual human rights risk assessment, but no monitoring during the implementation of the project.

The financial sector could play an important role in supporting the development towards a more sustainable economy. Investors have influence over the companies in which they invest, as well as the potential to influence corporate behaviour across different sectors. One method through which many investors exert their leverage is engagement with investee companies. However, it is crucial that they also implement human rights due diligence procedures for their financing activities. This is why this study focusses on the commitments by investment management companies to respect human rights and the implementation of due diligence procedures covering human rights risks and impacts through investors’ financing activities.

Despite speaking in favour of compliance with international human rights norms and standards, the previous Luxembourg government, in the negotiations at EU level, advocated against the inclusion of investment funds within the scope of the CSDDD. This study calls on the government that took office in November 2023 to align its positions with the UNGP.

⁵ In February 2023, ministers and representatives of 38 OECD member states as well as 13 other countries emphasized in a joint declaration the need to strengthen the uptake of due diligence in the financial sector. The declaration also reiterated the importance of coherence of regulations like the CSDDD with global standards on responsible business conduct, notably the OECD Guidelines and the UNGP (<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0489#mainText>). In July 2023, the UN Nations Working Group on Business and Human Rights took a position in the discussions on the CSDDD, pointing out that according to the UNGP, the responsibility to respect human rights fully applies to all financial institutions (www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/Statement-Financial-Sector-WG-business-12July2023.pdf).

⁶ United Nations General Assembly (19.04.2023): Visit to Luxembourg. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (<https://www.ohchr.org/en/documents/country-reports/ahrc5324add2-visit-luxembourg-report-working-group-issue-human-rights-and>)

⁷ Frank Elderson: Making finance fit for Paris: achieving “negative splits” (keynote speech, 14.11.2023) (www.bankingsupervision.europa.eu/press/speeches/date/2023/html/ssm.sp231114_1~98a5230732.en.html)



II. Methodology

The international human rights standards on which this analysis is based can be found in the United Nations Guiding Principles on Business and Human Rights (UNGP)⁸ and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.⁹

The study uses a benchmarking methodology developed by the World Benchmarking Alliance:¹⁰ the Financial System Benchmark (FSB). The FSB enables to measure and rank financial institutions according to their sustainability policies. While the complete FSB consists of 32 indicators divided into three measurement areas (1. governance and strategy, 2. climate and environment issues, 2. human rights and social matters),¹¹ this study focuses on those eight indicators of the FSB that are related to human rights.

Financial System Benchmark – Human Rights Indicators



1. Commitment to respect human rights

1 point

2. Commitment to respect the human rights of workers

1 point



3. Identifying human rights risks and impacts

1 point

4. Assessing human rights risks and impacts

2 points

5. Integrating and acting on human rights risk and impact assessments

2 points

6. Engagement with affected and potentially affected stakeholders

1 point



7. Grievance mechanisms for workers

1 point

8. Grievance mechanisms for external individuals and communities

1 point

⁸ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹ <https://mneguidelines.oecd.org/>

¹⁰ The World Benchmarking Alliance is a non-profit organisation founded in 2017 that develops benchmarks to measure and incentivise private business impact to the Sustainable Development Goals (www.worldbenchmarkingalliance.org/).

¹¹ www.worldbenchmarkingalliance.org/financial-system-benchmark/

The eight indicators focus on the key expectations of the UNGP: indicators 1 and 2 relate to policy commitments, indicators 3 to 6 cover the different steps of conducting human rights due diligence, and indicators 7 and 8 ask about the availability of grievance mechanisms, which enable access to remedy for individuals adversely affected by the company.

For each indicator, companies can score 0 or 1 point. Due to the key importance of due diligence procedures, indicators 4 and 5 receive double weighting. Some indicators (2,

3, 6) are divided into two different elements, meaning that the company must meet more than one requirement to obtain a full score of 1. For these indicators, half points are available. The maximum number of points that can be obtained is 10. Further explanations of the indicators as well as scoring guidelines are available in the annexe of the full study and on the WBA website.¹²

The study looks at the 10 largest Luxembourg-based management companies from the investment fund sector:¹³

COMPANY	AuM (€ million)	Net turnover ¹⁴ (€ million)	Average staff ¹⁵
JPMorgan Asset Management (Europe) S.à r.l.	381,749	2,462	349
DWS Investment S.A.	273,342	1,256	152
UBS Fund Management (Luxembourg) S.A.	212,789	930	82
Amundi Luxembourg S.A.	199,959	1,371	97
Blackrock (Luxembourg) S.A.	169,882	2,243	25
FIL Investment Management (Luxembourg) S.A.	146,817	111	70
Eurizon Capital S.A.	140,702	439	72
Schroder Investment Management (Europe) S.A.	135,212	202	313
HSBC Investment Funds (Luxembourg) S.A.	129,150	334	19
EQT Fund Management S.à r.l.	124,320	806	120

With a total of 1,913,922 € million of assets under management in 2022, these 10 companies manage about a third of all managed assets within the Luxembourg fund industry.

The focus is on investment fund management companies (ManCos) rather than the investment funds themselves, as ManCos are responsible for compliance with applicable

¹² <https://assets.worldbenchmarkingalliance.org/app/uploads/2023/04/2022-Financial-System-Benchmark-Scoring-Guidelines.pdf>

¹³ The sample is based on a ranking of the largest management companies (ManCos) established by PwC Luxembourg, which includes different types of ManCos (UCITS ManCos, Alternative Investment Fund Managers and Super ManCos), according to their assets under management by end of 2022 (www.pwc.lu/en/asset-management/docs/pwc-observatory-management-companies-barometer.pdf).

¹⁴ According to the 2022 annual accounts retrieved from the Luxembourg Trade and Company Register.

¹⁵ According to the 2022 annual accounts retrieved from the Luxembourg Trade and Company Register.

“sustainability-related provisions” within the existing EU sustainable finance legislative framework.¹⁶

The benchmarking methodology relies on publicly disclosed information, mostly sustainability or annual reports and corporate governance documents. Information was collected in the period from 25 September to 6 November 2023.



III. Results and conclusions

None of the analysed companies has reached the full score of 10 points, and only two companies (UBS, Schroders) reached more than half of the available points. Most companies scored only between two and four out of 10 points. One company – JP Morgan Asset Management, the largest Luxembourg ManCo – scored zero out of 10 points.

	Total	1.	2.	3.	4.	5.	6.	7.	8.
UBS Fund Management Luxembourg	7,0	1,0	0,5	0,0	2,0	2,0	0,5	1,0	0,0
Schroder Investment Management Europe	6,5	1,0	0,5	0,5	0,0	2,0	0,5	1,0	1,0
Eurizon Capital	4,5	1,0	1,0	0,0	0,0	0,0	0,5	1,0	1,0
Blackrock Luxembourg	4,0	0,0	0,0	0,0	0,0	2,0	0,0	1,0	1,0
EQT Fund Management	4,0	1,0	1,0	0,0	0,0	0,0	0,0	1,0	1,0
DWS Investment	3,0	1,0	0,0	0,0	0,0	0,0	0,0	1,0	1,0
HSBC Investment Funds Luxembourg	3,0	1,0	0,0	0,0	0,0	0,0	0,0	1,0	1,0
FIL Investment Management Luxembourg	2,5	0,0	0,5	0,0	0,0	0,0	0,0	1,0	1,0
Amundi Luxembourg	2,0	1,0	0,0	0,0	0,0	0,0	0,0	1,0	0,0
JPMorgan Asset Management Europe	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
Total	7,0	3,5	0,5	2,0	6,0	1,5	9,0	7,0	

¹⁶ CSSF (2023): Thematic Review on the implementation of sustainability-related provisions in the investment fund industry (www.cssf.lu/wp-content/uploads/The-implementation-of-sustainability-related-provisions-in-the-investment-fund-industry.pdf)

Results per indicator



Policy commitments

Indicator 1

Seven out of 10 companies have adopted a policy document in which they commit to respecting human rights.

Indicator 2

However, when it comes to fundamental labour rights, only two companies (Eurizon, EQT) received the full score, as they are committed to respecting these rights and require their suppliers to do the same. Two companies (UBS, Schroders) commit to respecting labour rights, but partly limit their expectations towards suppliers to compliance with local legislation, which is not sufficient. Another company (FIL) requires its suppliers to respect fundamental rights at work but does not commit to doing so itself.



Human rights due diligence

Indicator 3

Based on publicly available information, **none of the 10 companies has a comprehensive process for identifying its human rights risks and impacts that covers both its own operations and its financing activities.** Only one company (Schroders) identifies the risks and impacts related to its own operations.

Indicator 4

None of the 10 companies indicate that they have a process for assessing salient human rights risks. Only one company (UBS) discloses the results of such an assessment.

Indicator 5

Only three out of 10 companies integrate results of human rights risks assessments into their operations. UBS discloses “controversial areas” and “areas of concern” for human rights in which it will not invest at all or only after enhanced due diligence. As for Schroders and BlackRock, while there is no evidence that they have a global system in place to prevent, mitigate or remediate salient human rights issues, they do provide examples of actions taken to address individual salient human rights issues.

Indicator 6

Three out of 10 companies (UBS, Schroders, Eurizon) disclose the categories of stakeholders whose human rights have been or may be affected by their activities. However, none of the companies achieve the full indicator score as they do not provide examples of their engagement with these stakeholder groups.



Grievance mechanisms

Indicator 7

In terms of the existence of grievance mechanisms for workers, the analysed companies perform best, with nine out of 10 companies having set up such a mechanism.

Indicator 8

Seven of these companies also make this grievance mechanism available to external individuals and communities.

Conclusions

The analysed companies score best on indicators that measure policies or the availability of specific mechanisms, and worst on indicators that relate to existing practices. Although seven out of 10 companies commit to respecting human rights, there is no evidence that any of the companies carry out human rights due diligence. While there are individual examples of what companies assess as their salient human rights risks or how they integrate these into their operations, no company indicates that it has comprehensive processes in place to identify, assess and integrate human rights risks into its financing activities. It should be noted that all 10 analysed companies have signed the UN Principles for Responsible Investing and have thus committed themselves to incorporating ESG issues into their investment analysis and decision-making processes. This shows that voluntary commitments are insufficient and that a strong human rights due diligence legislation is required.

With regard to grievance mechanisms, the benchmark area in which the companies scored best, it should be noted that while the existence of such grievance mechanisms is a positive first step, this indicator initially only provides information on the accessibility of such mechanisms and says nothing yet about effective remedy. In addition to making such mechanisms available, companies should disclose more details on how they respond to human rights related complaints and what measures they take regarding remedy.

Some best practice examples have been highlighted in the company analyses relating to policy commitments (EQT), assessing human rights risks and impacts (UBS), and grievance mechanisms (Schroders) (see full version of the study).

Recommendations



...the Luxembourg financial sector:

- ☒ To conduct meaningful and comprehensive human rights due diligence to ensure that the sector's financing activities do not negatively impact human rights, and ensure transparency on the procedures in place.
- ☒ To ensure compliance with international human rights standards as well as international treaties on climate and environmental issues, particularly in the positions of associations representing the financial sector at national and EU level.
- ☒ To develop and implement an ambitious strategy for a transition to a truly sustainable financial centre, which ensures that its economic activities are fully compliant with international treaties on human rights, climate, and the environment.

...the Luxembourgish government:

- ☑ To ensure that national laws and government positions at EU level in relation to the financial sector fully comply with international standards and treaties on human rights, the climate, and the environment.
- ☑ In the context of the elaboration of the EU Corporate Sustainability Due Diligence Directive, to commit to an effective and strong legislation, fully aligned with international standards, particularly in view of the inclusion of the entire financial sector, including the investment fund sector, and to be transparent about this position.
- ☑ If the EU does not succeed in adopting a directive, to introduce a national law on corporate sustainability due diligence ensuring the inclusion of the entire financial sector.
- ☑ To further integrate the respect for human rights in line with the UNGP into the Luxembourg Sustainable Finance Strategy in the context of its update planned for 2024.¹⁷
- ☑ To ensure that any reduction in subscription tax for investment funds investing in sustainable economic activities is tied to full compliance with the UNGP.¹⁸
- ☑ To ensure that state-owned companies in the financial sector and state bodies (such as the pension fund) comply with international treaties on human rights, the environment and the climate, as well as international standards such as the UN and OECD guidelines on business and human rights.

¹⁷ cf. Accord de coalition 2023-2023, p. 51

¹⁸ cf. Accord de coalition 2023-2023, p. 37





