BSP Newsletter

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SUMMARY

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SUMMARY

MIFID II / MIFIR - LISTING ACT DIRECTIVE - ESAP DIRECTIVE | NEW LUXEMBOURG DRAFT LAW

On 12 February 2025, Draft Law No. 8498 ("**Draft Law**") was submitted to the Luxembourg Parliament (*Chambre des Députés*). The Draft Law aims to implement Regulation (EU) 2024/791 (the "**MiFIR Amending Regulation**") and transpose into Luxembourg law:

- Directive (EU) 2024/790 (the "**MiFID II Amending Directive**") which, together with the MiFIR Amending Regulation, aim (through amendments to MiFID II and MiFIR respectively) to establish an EU-wide consolidated tape for EU financial markets and make changes to their market structure to increase their transparency and competitiveness.
- Directive (EU) 2024/2811 (the "**Listing Act Directive**") which further amended MiFID II to make public capital markets within the EU more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (SMEs).
- Directive (EU) 2023/2864 (the "**ESAP Directive**") amending various directives as regards the establishment and functioning of the European single access point ("**ESAP**").

The **MiFIR Amending Regulation** introduces new measures to enhance and implement the consolidated tape system that will provide a real-time, comprehensive view of the prices and trading volumes of financial instruments across the EU trading venues; it also prohibits receiving payments for forwarding client orders for execution (known as "payment for order flows" or "PFOF").

The **MiFID II Amending Directive** clarifies the definition of 'systematic internaliser', an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments by executing client orders outside a regulated market, a multilateral trading facility (MTF) or an organised trading facility (OTF), without operating a multilateral system, or which opts in to the status of systematic internaliser. It also establishes the framework for the consolidated tape system; reinforces the obligation to execute orders on the most favourable terms to the clients; and introduces transparency obligations for trading venues that trade commodity derivatives and emission allowance derivatives, requiring them to implement position management controls and to publish daily or weekly position reports.

The **Listing Act Directive** is a key part of the broader Listing Act package which we have discussed in more detail in our July 2024 and January 2025 newsletters. The Listing Act Directive addresses the shortage of investment research for SMEs by a change in the previously required bundling of research payments, decreases free float requirements for listings on regulated markets to 10% and allows segments of MTF to apply to become SME growth markets.

Regulation (EU)2023/2859 (the "**ESAP Regulation**") provided for the establishment and operation of a *European Single Access Point (ESAP)* by ESMA in order to establish a centralised electronic access to information relevant to financial services, capital markets and sustainable finance; the ESAP Directive assists in achieving that aim, by amending various other directives, particularly as regards the collection of information to be made available to ESAP.

The Draft Law shall amend the Luxembourg law of 5 April 1993 on financial sector (the "**Financial Sector Law**"), the Luxembourg law of 11 January 2008 on transparency requirements for issuers (the "**Transparency Law**") and the Luxembourg law of 30 May 2018 on markets in financial instruments (the "**MiFID Law**").

Amendments to the Financial Sector Law

The Draft Law proposes to make various amendments to the Financial Sector Law to transpose certain provisions of the MiFID II Amending Directive and the Listing Act Directive and to implement the MiFIR Amending Regulation.

Notably regarding the MiFID II Amending Directive and the MiFIR Amending Regulation, key changes to the Financial Sector Law include removing the obligation to be authorised for persons dealing on own account with direct electronic access to a trading venue; adapting the provisions relating to obligation to execute orders on the most favourable terms to enhance data transparency and facilitate the establishment of the consolidated tape system; and banning payment for order flows. The trading venue operators dealing with commodity derivatives or derivatives on emission allowances will be required to implement controls for position management and provide reports on positions.

As regards the transposition of the Listing Act Directive, the Financial Sector Law shall be amended in particular with respect to adjusting the research unbundling rules to give investment firms more flexibility on how they choose to organise payments for execution services and research; this shall, include the removal of market capitalisation thresholds for companies for which the re-bundling of payments is possible and ensuring that issuer-sponsored research is produced in compliance with an EU code of conduct. The CSSF supervisory and investigative powers shall also be extended and the sanctions which the CSSF may impose are listed, in order to reflect the new provisions relating to research.

Amendments to the Transparency Law

The Draft Law proposes to amend the Transparency Law to transpose the ESAP Directive. In particular, new provisions shall be introduced into the Transparency Law with respect to regulated information: when making regulated information public, the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent, and for which Luxembourg is the home Member State, shall communicate such regulated information to the CSSF in its role as *collecting body* with a view to making it available on ESAP. Thus, all regulated information within the meaning of the Luxembourg Transparency Law and which must be published after from 10 July 2026 shall be made available to, and accessible on, ESAP.

Amendments to the MiFID Law

The Draft Law proposes to amend the MiFID Law to transpose various provisions of MiFID III and implement MiFIR II. The most notable amendments to the MiFID Law are updates to the definition and obligations of "systematic internalisers" and a requirement for regulated markets to take all necessary measures to meet data quality standards for the consolidated tape system.

The Draft Law also amends the definition of "SME growth market" to allow a segment of a multilateral trading facility ("a segment of an MTF") to apply to become an SME growth market, provided that this segment is clearly separated from the rest of the MTF. The Draft Law allows for a segment of an MTF to be registered with the CSSF.

The Draft Law introduces a requirement for regulated markets to ensure that any company applying to have its shares admitted to trading must have a foreseeable market capitalisation of at least EUR 1,000,000 (or an equivalent amount in another currency). If the market capitalisation cannot be determined, the company’s capital and reserves, including its profit and loss account, will be taken into consideration instead. The minimum free float requirement has been reduced to 10%. However, regulated markets may still apply other criteria at the time of admission to ensure that a sufficient number of shares have been made available to the public.

Expected Entry into Force

The Draft Law proposes that the amendments to the Transparency Law will enter into force on 10 July 2025, with the various amendments to the Financial Sector Law and the MiFID Law entering into force on either 29 September 2025 or 6 June 2026, depending on the respective deadlines set in MiFID Amending Directive and the Listing Act Directive.

MIFID II AND MIFIR | VARIOUS DEVELOPMENTS

Amendments to MiFID II and MiFIR

Further to the entry into force of Regulation (EU) 2024/2809 (the "**Listing Act Regulation**"), Article 25 of MiFIR has been amended. Article 25 deals with the obligations on the operators of a trading venue to keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems has been amended. With this latest amendment, Article 25 now includes an obligation that the relevant data relating to all orders in financial instruments which are advertised through their systems, must be kept in a **machine-readable format and using a common template**. The consolidated version of MiFIR (as amended by the Listing Act Regulation) is available here.

While Directive (EU) 2024/2811 (the "**Listing Act Directive**") has already entered into force on 4 December 2024, the amendments to MiFID II shall be transposed until 6 June. In the meantime, Draft Law No. 8498 transposing *inter alia* the Listing Act Directive's amendments to MiFID II has been submitted to the Luxembourg Parliament (*Chambre des Députés*) – see separate article on this draft law in this newsletter.

ESMA updates

There have been various ESMA publications on MiFID II and MIFIR in recent months, including:

- 16 December 2024: a final report on bond transparency and reasonable commercial basis under MiFIR Review Trading, that includes RTS;
- 16 December 2024: a feedback statement on the criteria to assess consolidated tape provider applicants;
- 24 January 2025: a press release reminding that the new regime for the reporting of Over the Counter transaction started on 3 February 2025 and it added that it won't published quarterly systematic internalisers data publications anymore;
- 21 February 2025: updated Questions and Answers on MiFID II Secondary Markets regarding open interest thresholds in energy derivatives.
- 8 April 2024: a final report with technical advice to the European Commission on the amendments to the research provisions in the MiFID II Delegated Directive in the context of the Listing Act
- 10 April 2025: a final report on technical standards specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies, that has been sent to EC that has 3 months to decide whether it will adopt the technical standards or not.

LUXEMBOURG STOCK EXCHANGE | RECENT UPDATES TO THE RULES & REGULATIONS

The Luxembourg Stock Exchange ("**LuxSE**") has recently published two sets of updates to its Rules & Regulations ("**R&R**")

January 2025 Update – aligning with the Listing Act

On 9 January 2025, LuxSE published revised R&R to reflect recent amendments to the Prospectus Regulation introduced by the **EU Listing Act (**adopted on 14 November 2024). While several amendments will only enter into force in 2026, the following have been applicable since **4 December 2024**:

Increased threshold for exemption for fungible securities

Previously, the exemption from publishing a prospectus applied to securities fungible with those already admitted to trading, provided the newly issued amount did not exceed **20%** of existing securities over 12 months. The threshold has now been raised to **30%**, as reflected in **Rule 203.3.2** of the LuxSE R&R.

Expanded exemption for non-equity securities issued by credit institutions

Credit institutions were formerly exempt from prospectus requirements when issuing non-equity securities in a continuous or repeated manner, provided the total issuance over 12 months did not exceed **EUR 75 million**. This limit has now been increased to **EUR 150 million** (see **Rule 203.3.9** of the LuxSE R&R).

March 2025 Update - launch of Euro MTF Specialist Securities Segment and clarifications on FastLane and Third-Country Equivalent Markets

On 20 March 2025, LuxSE published further revised R&R introducing enhancements to its listing framework

With this latest update, the LuxSE unveiled a new segment on its Euro MTF market, known as the Euro MTF Specialist Securities Segment ("**EM3S**"). This new platform is tailored for specific financial instruments and carefully navigates the interplay between investor protection and certain issuers' requirements for safeguarding sensitive details about their financial products and investment approaches.

EM3S offers issuers the ability to safeguard sensitive details – such as investment strategies and payout structures – while remaining fully compliant with regulatory standards. The key features of this segment include:

- **No public disclosure of listing documents**
- **Minimal mandatory information displayed online**
- **No prospectus approval required**

Only professional investors are permitted to access securities listed under EM3S, with retail investors strictly excluded. Issuers have complete control over who can review additional documentation, ensuring confidentiality is upheld. Despite its unique features, EM3S adheres to the same ongoing responsibilities and fee structure as the traditional Euro MTF market.

The admission process is designed to be fast and efficient with issuers only being required to submit an **admission form** and a **letter of undertaking**; the approval process being typically only 2-3 days.

Once admitted, only essential information required under MiFID will be displayed on the LuxSE website.

EM3S is governed by Rule 402 in Chapter 4 of Part 2 of the R&R, with new definitions added to Part 0. Structural updates and renumbering were made across relevant chapters.

LuxSE also has introduced notable **improvements to its FastLane admission framework**, simplifying the listing process for debt securities on the Euro MTF market. Under this refined system, issuers with shares already traded on an EU-regulated market or an equivalent third-country market are exempted from undergoing formal prospectus approval, streamlining access to the market.

Finally, the updated R&R now clearly distinguish **LuxSE's equivalence evaluations from those conducted by external authorities**, such as the European Commission. LuxSE independently carries out these assessments, within the applicable national and European legal frameworks.

FastLane and equivalence assessment updates include amendments to Rule 203.2.11, Rule 401.11, and Appendices III, VI, and VIII of the R&R.

The most recent R&R are available on the LuxSE website here.

GENDER BALANCED BOARDS | LUXEMBOURG MOVES TO IMPLEMENT "WOMEN ON BOARDS" DIRECTIVE

The long-awaited transposition into Luxembourg law of Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures (the "**Directive**") is now on track. Draft law No.8519 setting a quantitative target for gender balance among directors of listed companies (the "**Draft Law**") was submitted to the Luxembourg Parliament (*Chambre des Députés*) on 28 March 2025.

For further insights into the Directive, refer to our 2023 Newsletter.

This legislative proposal establishes binding requirements to ensure gender balance within the boards of directors of listed companies. It also outlines measures for compliance, reporting, and enforcement.

Scope and objectives

The Draft Law shall apply to all companies whose registered office is in Luxembourg and whose shares are admitted to trading on a regulated market in one or more EU Member States. However, in alignment with the Directive, the Draft Law excludes from its scope listed companies that qualify as micro, small, and medium-sized enterprises ("**SMEs**").

One of the key objectives of the Directive is faithfully mirrored in the Draft Law by introducing a **minimum requirement**: **at least 33% of board positions**, both executive and non-executive, must be held by the under-represented gender **by 30 June 2026**.

The Luxembourg angle

While largely aligned with the Directive, companies should be aware of several Luxembourg specific elements introduced by the Draft Law:

Supervisory authority

The CSSF shall be designated as the competent authority, tasked with overseeing compliance, collecting data, and publishing an annual list of companies that meet the target.

Procedural adjustments

Where companies fall short of the target, they must **adapt their director selection procedures. Clear and neutral criteria** must be applied and documented during the selection process, with preference given to equally qualified candidates from the under-represented gender—unless objective diversity-related or legal considerations justify otherwise.

Candidate rights

Candidates involved in the selection process may request access to the evaluation criteria used and any factors that influenced the final appointment decision.

Public reporting

Companies shall be required to **report annually** on gender representation. This data must be **disclosed to the CSSF**, published on their **websites**, and, where relevant, included in their **corporate governance statements**. After the Draft Law enters into force, the CSSF will submit a **report** on its application to the **Luxembourg government every two years**, starting on **1 December 2025**. This report will subsequently be forwarded to the **European Commission**, as mandated by the Directive.

Coordination with equality authorities

The **gender equality observatory**, established under the law of 7 November 2024, will work alongside the CSSF to monitor progress and promote best practices.

The Draft Law will enter into force upon its official publication and shall expire on **31 December 2038**.

Enforcement

The CSSF shall be granted robust supervisory and enforcement powers, including the authority to issue warnings and reprimands, to publish public statements identifying non-compliant companies, and to impose **administrative fines** of up to **EUR 250,000;** additionally periodic penalty payments may be levied on companies that repeatedly fail to comply with the obligations (up to **EUR 1,250** per day; capped at **EUR 25,000**).

What's Next?

As the Draft Law progresses through Luxembourg's legislative process—its timeline contingent on the speed and degree of consensus among stakeholders—companies which will fall within its scope are encouraged to take proactive steps in anticipation of its entry into force.

On this basis, listed companies can already start conducting a **gap analysis** to evaluate current board gender representation; review and formalize **director selection policies**, ensuring alignment with the transparency and fairness standards set by the Draft Law; prepare internal processes for **reporting obligations** and consider developing or refreshing a broader **diversity policy**.

MICA | RECENT ESMA DEVELOPMENTS

Since our last newsletter, several publications by ESMA have provided further clarity on various aspects of the Markets in Crypto-Assets Regulation ("**MiCA Regulation**" or "**MiCAR**").

Public statement on crypto services for non-Mica ARTs and EMTs

On 17 January 2025, ESMA published a public statement addressing the provision of certain crypto-asset services in relation to non-MiCA compliant asset-referenced tokens ("**ARTs**") and electronic money tokens ("**EMTs**"). In its statement, ESMA urged crypto-asset service providers ("**CASPs**") to comply with MiCAR, which took effect on 30 June 2024. The regulation requires CASPs to cease providing services that amount to offering to the public or seeking admission to trading of non-MiCA compliant ARTs and EMTs in the EU. ESMA emphasised that the cessation of such services had to be finalised by the end of January 2025. To assist EU investors in liquidating or converting their holdings in non-MiCA compliant ARTs and EMTs, CASPs have been granted an extended period—until the end of Q1 2025—to continue offering services for these products on a "sell-only" basis.

The statement also underscores the importance of clear communication with investors and a coordinated transition to preserve market stability. Additionally, ESMA highlighted its appreciation for the European Commission's Q&A, which clarified which crypto-asset services within the EU may qualify as either public offerings or admissions to trading, in accordance with Articles 16(1) and 48(1) of MiCAR.

Opinion on MiCA's RTS on conflicts of interest for CASPs

On 24 January 2025, ESMA published an opinion on regulatory technical standards ("**RTS**") outlining specific requirements regarding conflicts of interest for CASPs under MiCAR. The opinion addresses ESMA's feedback on the European Commission's proposed amendments to the RTS under Article 72(5) of MiCA. While ESMA recognises the importance of striking a balance between investor protection, financial stability, and innovation, it has suggested modifications to the Commission's proposed amendments.

To reflect these changes, ESMA submitted a revised draft, which is elaborated upon in the opinion and its annex. Moving forward, the European Commission may choose to adopt the RTS with amendments it deems appropriate or reject the revised draft altogether. Additionally, the European Parliament and the Council hold the right to object to any RTS adopted by the Commission within a three-month window.

Supervisory briefing on authorisation of CASP's under MiCA

On 31 January 2025, ESMA released a shortened version of its supervisory briefing to assist market participants in navigating MiCA authorisations. The briefing aims to ensure that national competent authorities ("**NCAs**") apply MiCA requirements consistently when authorising CASPs. It advocates a risk-based approach, urging NCAs to subject higher-risk CASPs to stricter scrutiny. Moreover, it provides detailed guidance on assessing governance structures, organisational substance, and outsourcing arrangements to ensure alignment with MiCA and related frameworks, such as DORA. The briefing also includes recommendations for evaluating the business plans of prospective CASPs.

Recent ESMA guidelines

On 26 February 2025, ESMA published the following guidelines, which shall apply 60 calendar days from the date of their publication on ESMA's website in all official EU languages :

- guidelines on the procedures and policies, including the rights of clients, in the context of transfer services for crypto-assets under MiCA on investor protection. These guidelines apply to competent authorities and, CASPs that act as providers of transfer services for crypto-assets on behalf of clients within the meaning of Article 3 (1)(26) of MiCA. Developed by ESMA in collaboration with the EBA, these guidelines aim to ensure consistent and effective supervision under Article 82 of MiCA. They clarify the requirements for CASPs offering transfer services, focusing on procedures, client rights, and policies. By doing so, ESMA seeks to enhance investor protection. The guidelines also align with relevant rules under PSD2, particularly for electronic money tokens ("**EMTs**")

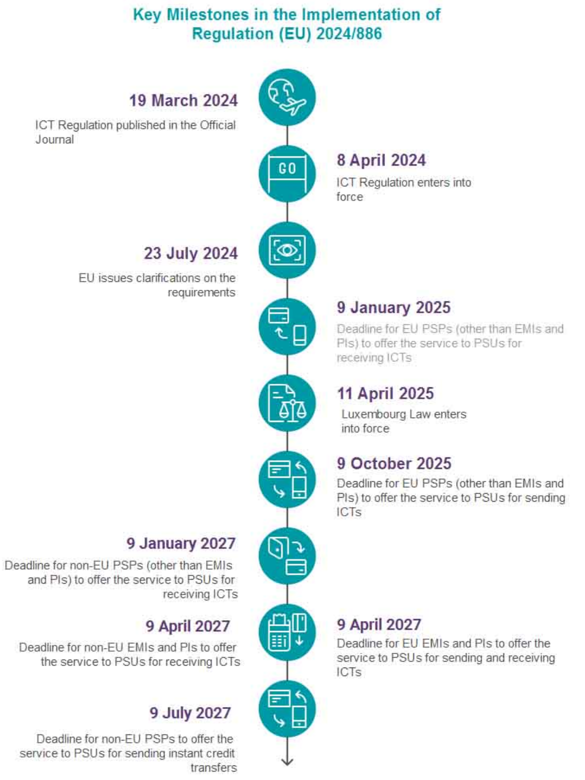
- guidelines on the specification of Union standards for the maintenance of systems and security access protocols for offerors and persons seeking admission to trading of crypto-assets other than ARTs and EMTs. The guidelines apply to competent authorities and to 'offerors' as defined in Article 3(1)(13) of MiCA and persons seeking admission to trading of crypto-assets other than ARTs or EMTs. Also developed with the EBA, these guidelines set EU standards for offerors and those seeking trading admission under Article 14(1)(d) of MiCA. They outline requirements for maintaining secure systems, access protocols, and related policies. They aim to ensure a consistent interpretation and application of MiCA provisions across the Union.
- guidelines on situations in which a third-country firm is deemed to solicit clients established or situated in the EU and the supervision practices to detect and prevent circumvention of the reverse solicitation exemption under MiCA. They apply to competent authorities, and as regards Section 5, third-country firms. Based on Article 61(3) of MiCA, these guidelines aim to ensure uniform and effective supervision across the EU. They clarify when a third-country firm is considered to be soliciting EU clients and promote consistent regulatory approaches. They outline supervisory practices to detect and prevent the misuse of Article 61, helping to prevent circumvention of MiCA rules.

INSTANT CREDIT TRANSFERS | LUXEMBOURG LAW ENTERS INTO FORCE

The law of 4 April 2025 on credit instant payments entered into force on the 11 April 2025. It implements the Regulation (EU) 2024/886 as regards instant credit transfers in euro (the "**ICT Regulation**") which aims at making **instant payments fully available in euro** to consumers and businesses across the EU.

The Draft Law, which amends Payment Services Law of 10 November 2024 (the "**Payment Services Law**") was adopted without any substantial amendments to the version we reported on in our January 2025 Newsletter.

The CSSF has helpfully already published a consolidated version of the Payment Services Law which is available here.



DORA | VARIOUS RECENT DEVELOPMENTS

Since the Digital Operational Resilience Act (Regulation (EU) 2022/2554) ("**DORA**") entered into force on **17 January 2025**, the European Supervisory Authorities, being ESMA, EIOPA and EBA, (the "**ESAs**") and the relevant national competent authorities of the EU Member States have been actively working to shape its implementation. Below is an overview of a few of the key DORA developments at the EU level and at the national Luxembourg level.

European Supervisory Authorities (ESAs)

Finalisation of the CTPP designation roadmap

Financial entities subject to DORA ("**DORA Entities**") are required to collect, maintain and report an up-to-date register of information relating to all contracts for information and communication technology ("**ICT"**) third-party services they use. Pursuant to DORA, certain ICT service providers ("**ICTPPs**") that are deemed **essential to the EU financial sector** will be formally designated as **critical** – such service providers being then referred to as Critical ICT third-party service providers ("**CTPPs"**). The designation of the CTPPs as such, will be done according to the detailed roadmap published by the ESAs on 18 February 2025 (the "**Roadmap**"). The Roadmap identifies four key milestones:

- **By 30 April 2025**: national competent authorities **submit** ICT ROIs to the ESAs.
- **By end of July 2025**: ESAs **assess** the data and notify CTPPs of their classification as such
- **By 1st half of September 2025**: end of the identified CTPPs' six weeks objection period in relation to ESAs' initial assessment.
- **By year-end 2025**: final list of CTPPs is published, and oversight begins.

In Luxembourg, the deadline for ROI submission is earlier: the deadline is **15 April** for the CSSF and **18 April** for the CAA (*Commissariat aux Assurances*).

ICTPPs not designated as critical, may voluntarily request critical status later. The ESAs will also host an online workshop in Q2 2025 to clarify the process.

DORA applies retroactively to ICT contracts predating 17 January 2025. However, DORA Entities have until 15 January 2028 (36 months) to update legacy ICT agreements to comply with DORA's requirements. These amendments would include contractual clauses such as: access and audit rights for regulators, termination rights for non-compliance or clear subcontracting protocols.

EBA streamlines ICT Risk guidelines

The EBA originally introduced its Guidelines on ICT (Information and Communication Technology) and security risk management in 2019 (the "**Original ICT Risk Guidelines**"). The Original ICT Risk Guidelines were based on the Capital Requirements Directive (Directive 2013/36/EU) and Payment Services Directive 2 (Directive (EU) 2015/2366) and aimed to create a consistent approach across the financial sector for managing ICT and security risks. These were implemented in Luxembourg law by way of Circular CSSF 20/750 on ICT and security risk management, as detailed below.

In light of the entry into force of DORA on 17 January 2025, the EBA published in a final report dated 11 February 2025 detailing the rationale behind amending the Original ICT Risk Guidelines, and adopting new Guidelines (2025/02) (the "**Amended ICT Risk Guidelines**"). This amendment aims to sustain the harmonised EU regulatory framework, thus limiting the scope of the Amended ICT Risk Guidelines to the limits imposed by DORA.

In the Amended ICT Risk Guidelines, the EBA reduced the initial scope of the Original ICT Risk Guidelines. The Amended ICT Risk Guidelines will cover only (1) the DORA Entities and (2) the requirements on relationship management of payment service users in relation to the provision of payment services

Other entities or areas previously subject to the Original ICT Risk Guidelines that are not covered by DORA will not be required to follow the Amended ICT Risk Guidelines. Such entities remain, however, subject to rules under PSD2, and other national requirements, if applicable.

ESAs align with European Commission's amendments on Subcontracting RTS

Pursuant to Article 30(5) of DORA, the ESAs were responsible for drafting Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS).

The ESAs submitted to the European Commission in July 2024, a draft RTS specifying the elements that a financial entity has to determine and assess when subcontracting ICT services supporting critical or important functions. This draft had been rejected by the Commission in a decision dated 21 January 2025 based on concerns that the provisions relating to the monitoring of the subcontracting chain in the draft RTS exceeded the authority granted to the ESAs under Article 30(5) of DORA. The Commission proposed amending the ESAs' RTS by removing requirements not specifically linked to the conditions for subcontracting.

On 7 March, the ESAs published an Opinion acknowledging the Commission amendments without proposing further changes, and agreeing to the adoption of the RTS as amended by the Commission.

ESAs FAQ update

The ESAs updated the FAQs on reporting of registers of information under Article 28(3) of DORA on 14 February 2025. The FAQ address practical matters regarding the completion of templates set out in Commission Implementing Regulation (EU) 2024/2956, reporting formats, preparing the reporting files, maintaining registers and submitting them to the ESAs.

Luxembourg competent authorities

CSSF Circulars and clarifications

On 9 April 2025, the CSSF published a communication informing all supervised entities of important updates concerning the provisions of several CSSF circulars, following the entry into application of DORA and adoption by the EBA of a reviewed set of Guidelines on ICT and security risk management (see above).

To align these changes with the existing Luxembourg rules, the CSSF issued new circular and amended some existing circulars as set out below:

On ICT and security risk management

- Issuance of **Circular CSSF 25/881** amending Circular CSSF 20/750 on requirements regarding information and communication technology (ICT) and security risk management.
- Amendment of **Circular CSSF 20/750** mainly to:
  - reduce the scope to the entities that are subject to CSSF supervision but are not DORA Entities, and therefore are not subject to DORA requirements; and
    - remove specific rules applicable to Payment Service Providers (PSPs) (whether they are also in scope of DORA or not) which are now addressed in a separate dedicated circular (see point c) below).
- Issuance of **Circular CSSF 25/880** on relationship management of payment service users and PSP ICT assessment, applicable to all PSPs within the scope of Article 1(37) of the Law of 10 November 2009 on payment services (LPS) and supervised by the CSSF. **Circular CSSF 25/880:**
  - transposes the EBA Amended ICT Risk Guidelines (2025/02); and
    - integrates the national requirements on the risk assessment related to PSP (previously found in Circular CSSF 20/750),

On the use of ICT third-party services

- Issuance of **Circular CSSF 25/883** amending Circular CSSF 22/806 on outsourcing arrangements.
- Amendment of **Circular CSSF 22/806** mainly to**:**
  - reduce the scope of application: ICT outsourcing is now regulated under DORA, therefore the Circular CSSF 22/806 is amended to cover only the business process outsourcing by DORA Entities. Nonetheless, it remains fully applicable to entities not subject to DORA, and partially applicable to certain authorised investment fund managers; and
  - remove the requirement of specific contractual clauses for cloud computing service providers.
- Issuance of **Circular CSSF 25/882** on the use of ICT third-party services for DORA Entities. It provides:
  - practical guidance on reporting obligations for new critical or important ICT third-party arrangements and the ROI; and
  - a section on the use of ICT services, based on relevant elements from Circular CSSF 22/806, which is not addressed by DORA.

CAA

In the Circular Letter 25/1 published on 14 January 2025, the CAA (being the competent supervisory authority for the insurance sector in Luxembourg) notes that as from 17 January 2025, DORA Entities that are also subject to CAA supervision must report major ICT incidents to the CAA using the templates published by CAA. Additionally, the Circular Letter directs the DORA Entities subject to CAA supervision to the appropriate template to be used for their first ROI submission to the CAA, before 18 April 2025. The Circular Letter informs DORA Entities that the appropriate templates for the first ROI report can be found on the EBA website.

CROWDFUNDING REGULATION | NEW ESMA Q&A & ESMA MARKET REPORT

On 12 February and 3 April 2025, ESMA updated its Questions and Answers ("**Q&As**") in relation to Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business (the "**Crowdfunding Regulation**"), adding four new Q&As. Earlier this year, in 8 January 2025, ESMA published its first annual market report on crowdfunding in the EU (the "**ESMA Report**"). This article explores the updated Q&As and provides a summary of the key aspects of the ESMA Report.

Q&A: Scope of the Crowdfunding Regulation – Multiple offers and suitability

Under the Crowdfunding Regulation, project owners can raise up to EUR 5,000,000 through crowdfunding platforms within a 12-month period. ESMA explained that in order to calculate this threshold, the following amounts should be aggregated and summed up:

- the amount raised by a project owner in offers of transferable securities, admitted instruments or loans, conducted through crowdfunding platforms across the EU over the previous 12 months; and
- the amount in transferable securities that the same project owner offered in other offers to the public, when exempted from the obligation to publish a prospectus in accordance with of Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Prospectus Regulation**").

If the sum of the items above exceeds EUR 5,000,000, the offer shall be considered as not covered by the Crowdfunding Regulation.

Even though the Crowdfunding Regulation does not prevent a project owner from seeking funds through both a crowdfunding offer and an offer to the public of transferable securities which is not a crowdfunding offer, ESMA clarified that the following offers of transferable securities to the public shall not be taken into consideration when calculating the EUR 5 million threshold (as outlined above):

- offers not made under the exemptions of Article 1(3) or Article 3(2) of the Prospectus Regulation;
- offers closed more than 12 months prior to the launch of the crowdfunding offer; and
- offers conducted after the launch of the crowdfunding offer.

In these cases, the public offer will not count toward the threshold calculation, giving project owners more flexibility in how they raise funds while staying within the Crowdfunding Regulation limits.

Q&A: Operating a bulletin board under the Crowdfunding Regulation

Under the Crowdfunding Regulation, crowdfunding service providers can operate bulletin boards where they allow their clients to advertise interest in buying or selling loans, transferable securities, or admitted instruments for crowdfunding purposes that were originally offered on their crowdfunding platform. Such clients are required to provide a Key Investment Information Sheet (the "**KIIS**"). The KIIS is prepared under the responsibility of the project owner when a crowdfunding offer is presented on a crowdfunding platform, and its contents are updated until the relevant crowdfunding offer is closed. Since this information may become outdated by the time the advertisement is made on the bulletin board, ESMA advises that these clients disclose the date when the KIIS was provided to them.

In addition, ESMA stresses that the bulletin board shall not consist of an internal matching system that executes client orders on a multilateral basis in a way that results in a contract, unless a crowdfunding service provider is also authorised as an investment firm under the Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (the "**MiFID II**").

Q&A: Assessment of the entity to be considered as the project owner

ESMA acknowledges that the identification of the project owner can sometimes become complicated, notably in those situations in which several entities or several layers of entities are involved. In order to avoid practices consisting in designating as project owner an entity having insufficient or artificial link with the crowdfunding project, ESMA gives examples of concrete elements to be taken into consideration when assessing whether a legal or natural person shall be considered as the project owner:

- the entity launched and/or contributed to developing the crowdfunding project in its early stage,
- the entity has sufficient legal and economic ties to the crowdfunding project;
- for investment-based crowdfunding, the entity is issuing the transferable securities and the admitted instruments for crowdfunding purposes directly or through a special purpose vehicle;
- for loan-based crowdfunding, the entity is the one to which investors make available the amount they lend, and it is the entity that assumes an unconditional obligation to repay that amount to investors, together with the accrued interest, in accordance with the instalment payment schedule.

ESMA Market Report: key insights from the 2024 ESMA Market Overview Report

The ESMA Report provides an overview of the EU crowdfunding market, marking the first of its annual reports under the Crowdfunding Regulation. By the end of 2023, 159 crowdfunding service providers (the "**CSPs**") had been authorised, with 98 CSPs included in the report. Of these, 53 offered loan-based crowdfunding, 30 provided debt-based crowdfunding, 25 focused on equity-based crowdfunding, and 17 used other models. Loan-based crowdfunding was the most popular, accounting for 65% of the total funding raised.

The report revealed that the majority of crowdfunding investors were retail (87%), with the average investment per retail investor amounting to EUR 590. The professional services sector raised the most funds (EUR 390,000,000), followed by construction (EUR 240,000,000). France and the Netherlands were the leading countries for crowdfunding, hosting the most providers and raising the most funds. Lithuania, however, had the highest number of investors (500,000), reflecting the strength of its national crowdfunding framework.

Cross-border investments accounted for 17% of total funding, with platforms in Austria and Estonia seeing significant foreign participation.

As the crowdfunding market continues to mature, ESMA will keep monitoring trends, risks, and developments across the EU, with further reports to follow.

ECJ CASE LAW - LANDMARK | ASYMMETRIC JURISDICTION CLAUSE

On 27 February 2025, the Court of Justice of the European Union ("**CJEU**") ruled on the interpretation of Article 25(1) of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**Brussels Regulation (Recast)**"). The full judgment can be found here.

The key questions referred to the CJEU for a preliminary ruling were whether the lawfulness of asymmetric jurisdiction clauses should be evaluated under the autonomous principles of the Brussels Regulation (Recast) or the applicable national law; if the Brussels Regulation (Recast) applies, whether Article 25(1) permits a clause that grants one party exclusive access to a specific court, while allowing the other party the option to choose between that court and any other court with jurisdiction under general rules of law.

The CJEU ruled that the **validity of a jurisdiction clause** and, objections based on the alleged imprecision or asymmetry of the clause must be **considered through the lens of EU law**. Such issues are not to be evaluated using national legal concepts that govern when an agreement is "null and void as to its substantive validity". Instead, they must be examined **using autonomous criteria derived directly from Article 25** itself, as interpreted by the CJEU.

Article 25(4) of the Brussels Regulation (Recast), read in conjunction with Articles 15, 19, and 23, expressly governs the circumstances in which an asymmetric jurisdiction clause is valid or invalid. As highlighted in Recital 18 of the Regulation, asymmetry between the parties is a common feature in insurance, consumer, and employment contracts. The provisions in Articles 15, 19, and 23 are designed to correct that imbalance by granting the weaker party access to jurisdictional rules that are more favourable than the general ones. A jurisdiction clause remains valid if it allows the weaker party (such as a consumer, employee, or insured person) to bring proceedings before courts other than those that would normally have jurisdiction under the Regulation. Conversely, if the clause excludes the jurisdiction of certain courts solely for the benefit of the stronger party (e.g. the employer, business, or insurer), it will be deemed null and void.

Therefore, Article 25(1) and (4) of the Brussels Regulation (Recast) is to be interpreted as **allowing asymmetric jurisdiction** clauses, where one party may bring proceedings only before a designated court, while the other party retains the option to bring proceedings before that court or any other competent court, **provided that certain conditions are satisfied**; notably the jurisdiction clause must:

- designate with sufficient precision the courts of one or more EU Member States or states that are parties to the 2007 Lugano II Convention (being Switzerland, Iceland, Norway),
- contain sufficiently precise and objective criteria to enable the court seized to determine whether it has jurisdiction,
- not infringe the protections afforded under Articles 15, 19, or 23 of the Regulation (relating to insurance, employment, and consumer contracts), and
- not override the exclusive jurisdiction rules set out in Article 24.

This pivotal ruling establishes that asymmetric jurisdiction clauses are not inherently invalid under EU law, provided they meet the specified conditions. This clarification will undoubtedly capture the attention. of those engaged in international financing, where such clauses are widely used. Only time will reveal whether this trend wanes as a consequence.

TRANSPOSITION OF THE MOBILITY DIRECTIVE | A REVIEW

Introductory notes

The entry into force, on 2 March 2025, of the law of 17 February 2025 (the "**Law**") transposing in the Grand Duchy of Luxembourg Directive (EU) 2019/2121 of the European Parliament and the Council of 27 November 2019 on cross-border conversions, mergers and divisions (the "**Mobility Directive**") entails important changes in the Luxembourg legal system (see BSP's Newsflash). The adoption of dedicated European restructuring regimes under the Mobility Directive forms part of a broader trend to enhance the mobility of companies within the EU internal market, based on the freedom of establishment enshrined in Article 49(2) and 54 of the Treaty on the Functioning of the European Union (TFEU).

Such evolution has been driven by a series of directives in the field of company law, now codified in Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law. A limited but influential line of judgments from the Court of Justice of the European Union (CJEU) has also played a catalytic role in this liberalisation process. Notably, the *Sevic* and *Polbud* directly address the removal of obstacles to cross-border corporate transformations within the internal market.

In this framework, the main innovation of the Mobility Directive is the introduction of European cross-border mergers, divisions and conversions, falling within the scope of the European rules of the Mobility Directive (the "**European Regime**" or together the "**European Regimes**"). Besides the introduction of European Regimes, the Luxembourg law of 1915 on commercial companies (the "**Company Law**") now provides for a general regime applying to internal and cross-border restructurings *other* than the European cross-border mergers, divisions and conversions introduced by the Mobility Directive (the "**General Regime**" or together the "**General Regimes**").

This contribution on the Mobility Directive is divided in three parts, the first of which being dedicated to **exploring the General Regimes**, the **second to the European Regimes**. A third part exploring the **practical approach** to the new Luxembourg mobility law concludes this contribution.

TRANSPOSITION OF MOBILITY DIRECTIVE PART 1 | GENERAL RESTRUCTURING REGIMES

General Regimes: confirming (and polishing) the existing rules in the Company Law

As mentioned in the introductory part to this contribution, the entry into force of the Law, on 2 March 2025, has introduced separate legal regimes in each of Chapter II of Title 10 (on mergers), chapter III (divisions) and in the new chapter VI (cross-border conversions) of the Company Law, as a result of which this now provides for both General Regimes and the European Regimes.

For mergers, divisions and internal conversions, the General Regimes generally reflect the procedures already set out in the Company Law prior to the implementation of the Mobility Directive, with the addition of few new provisions only. Conversely, the Law has introduced some new rules clarifying certain procedural rules applicable to cross-border conversions (other than European ones).

The following is an overview on the specificities of the different General Regimes introduced by the Law.

General Regime regarding Mergers

The definition of mergers by absorption has now been extended to also apply to:

- Upstream mergers, whereby a company transfers by way of dissolution without liquidation *the whole* of its assets and liabilities to its parent company (Article 1020-5 (1)); and
- Side-step or side-stream mergers, referring to mergers between companies that are either wholly owned by a sole shareholder or owned by shareholders in identical proportions. In such cases, one company may transfer all its assets and liabilities to the other through a dissolution without liquidation, without requiring the issuance of new shares by the resulting company) (Article 1020-5 (2)).

General meetings are now empowered to decide to modify the merger plan and make the effectiveness of the restructuring subject to certain conditions or time-limits (Article 1021-3). Furthermore, companies having a sole shareholder are exempted from the requirement to obtain an expert report on the restructuring plan (Article 1021-6).

As per the existing rule, the merger will take effect between the merging companies on the date that correlating decisions have been taken by such merging companies (Article 1021-13).

Mergers other than cross-border mergers will only take effect against third parties on publication of the extraordinary general meeting minutes of the absorbing company that approves the merger or, if no such general meeting takes place, of the publication of a certificate by a notary attesting to the satisfaction of all merger requirements (Article 1021-14).

The date of the effectiveness of a cross-border merger remains determined by reference to the legislation of the country governing the company that results from the merger (new Article 1021-16 (1)).

In the case of the absorption of a Luxembourg company by a foreign company, the deletion of the Luxembourg company from the Luxembourg trade and companies register may be carried out on proof of the merger having taken effect, for example by way of an opinion of a foreign notary or lawyer (Article 1021-16 (2)). Thus, the new regime extends proofs beyond notification by a foreign trade register is no longer the only means of proof, as it was previously.

General Regime regarding Divisions

As in the case of mergers, general meetings are now empowered to decide to modify the division plan and make the effectiveness of the restructuring subject to certain conditions or time-limits (Article 1031-3) and companies having a sole shareholder are exempted from the requirement to obtain an expert report on the restructuring plan (Article 1031-6).

As per the existing rule, the division will take effect between the companies participating in the division on the date that correlating decisions have been taken by such companies (Article 1031-14 (1)).

It is now expressly foreseen that the division will only take effect against third parties on publication of the extraordinary general meeting minutes of the company that is being divided (Article 1031-15 (1)).

The date of the effectiveness of a cross-border division is now determined by reference to the legislation of the country governing the company that is being divided (Article 1031-14 (2)).

General Regime regarding Cross-Border

Conversions

As mentioned, the general regime applicable to internal conversions remains substantially unchanged (Articles 1010-1 through 1010-12). A new regime governs cross-border conversions of Luxembourg established companies into entities of a non-EU member state jurisdiction, and *vice versa*. The new regime does not apply to conversions falling within the scope of Regulation (CE) 2157/2001 on European Companies (*société européenne*) (Article 1061-1(2)).

The conversion of a Luxembourg entity into a non-EU foreign entity may be carried out without dissolution, liquidation or winding up of the Luxembourg entity and, if relevant, without loss of legal personality, subject to this being permissible under the foreign law (Article 1061-1). In such case, the transformation shall be carried out under the rules governing the change of the Articles or constitutive documents of the Luxembourg entity (Article 1061-3 (1)).

Conversely, the transformation of an entity established in a non-EU jurisdiction into a Luxembourg entity may be carried out under the conditions governing the incorporation of the type of company or entity in Luxembourg (Article 1061-3 (2)).

The law of the departure state governs the procedures and formalities to be completed before the conversion, while the law of the destination state governs those to be completed after proof that the prior formalities have been duly fulfilled (Article 1061-2).

TRANSPOSITION OF MOBILITY DIRECTIVE PART 2 | EUROPEAN RESTRUCTURING REGIMES

Overview on the European Restructuring Regimes

In transposing the Mobility Directive, the Law introduced new provisions on the European Regimes in the Company Law: (i) Articles 1025-1 through 1025-20 on European mergers, (ii) Articles 1034-1 through 1034-20 on European divisions, and (iii) Articles 1062-1 through 1062-18 on European cross-border conversions. A reading of the relevant new provisions shows that the procedures regarding such European restructurings within the scope of the European Regimes are harmonised as much as possible and will therefore be dealt with together in the following overview.

- **Applicability**

Only Luxembourg companies taking the form of a *société anonyme* (SA), a *société à responsabilité limitée* (SARL) or a *société en commandite par actions* (SCA) can participate in the restructurings covered by the European Regimes (Articles 1025-1, 1034-1 and 1062-1).

The European Regimes do not apply, *inter alia*, to cooperative companies (even if organised as SAs), UCITS, companies in liquidation having started the distribution of assets to shareholders, credit institutions, investment firms or European Companies (*société européenne*) (Articles 1034-2 and 1062-2).

Any aspects of the restructuring not expressly regulated by the European Regimes are regulated by the provisions of the General Regimes (in particular the rules applicable to the decision-making relevant for the restructuring operations).

- **Restructuring Plan**

Similarly to General Regimes, companies involved in European restructurings need to agree on a common restructuring plan ("**Restructuring Plan**"), i.e. a European cross-border common merger plan (*projet commun de fusion transfrontalière européenne*: Article 1025-4), a European cross-border common division plan (*projet commun de scission transfrontalière européenne*: Article 1034-4) and a European cross-border common conversion plan (*projet commun de transformation transfrontalière européenne*: Article 1062-4) for the envisaged transaction, covering certain points further detailed in the Company Law.

- **Publication formalities**

Further to the Restructuring Plan, companies required to hold general meetings approving the restructuring also need to publish at least one month before their holding a notice addressed to shareholders, creditors and representatives of employees (or, in case of no representative being appointed, employees themselves) informing them of their right to provide comments on the Restructuring Plan at least five days before the relevant general meeting (Articles 1025-5, 1034-5 and 1062-5 respectively).

- **Board Report(s)**

Either a joint report or two separate reports, containing certain specific information now set out in the Company Law, have to be prepared and addressed to shareholders and employees respectively (Articles 1025-6, 1034-6 and 1062-6 respectively).

The Board Report or Reports are made available in electronic form to the shareholders and representatives of employees (or if none, the employees) at least six weeks before the relevant general meeting.

Any comments received from representatives of employees (or, in case of no representative being appointed, employees themselves) need to be transmitted to shareholders and annexed to the Board Report.

The Board Report (or section of the Board Report) addressed to shareholders is not mandatory (i) for companies having a sole shareholder or (ii) if all shareholders have waived the requirement.

The Board Report (or section of the Board Report) addressed to employees is not mandatory if the relevant company or any of its subsidiaries has no employees other than those belonging to its management or supervisory body.

The entire Board Report(s) can be dispensed with if (i) all shareholders have waived the requirement and (ii) the section for employees is not mandatory.

- **Expert Report**

At least one (1) month before the relevant general meeting an Expert Report needs to be made available to shareholders (Articles 1025-7, 1034-7 and 1062-7 respectively).
The Expert Report can be dispensed with either if all shareholders of each company participating in the restructuring have so decided or if a company has a sole shareholder.

- **Availability of documents and reports before the general meeting**

No notable changes have been introduced for the documents to be made available at the registered offices of the restructuring companies or on their websites at least one month before the relevant general meeting (Articles 1025-8 and 1034-8 respectively for European mergers and divisions). Nevertheless, as mentioned above, Board Report or Reports need to be made available in electronic form to the shareholders and representatives of employees (or if none, the employees) at least six weeks before the relevant general meeting.

- **Approval by general meetings**

The general meetings of the restructuring companies may either approve, reject or modify (if no incidence for third parties, in particular workers and creditors) the Restructuring Plan (Articles 1025-9, 1034-9 and 1062-8 respectively).

- **Protection of shareholders**

During the relevant general meeting before a notary, shareholders may vote against the restructuring and declare that they wish to transfer their entire shareholding (or part of shareholding if provided for in the Restructuring Plan) in return for the compensation set out in the Restructuring Plan. Such shareholders will then be entitled to the compensation within two months of the restructuring taking effect (Articles 1025-10, 1034-10 and 1062-9 respectively).
Transferring shareholders may challenge the amount of compensation payable in courts within one (1month of the relevant general meeting approving the restructuring.
In respect of mergers and divisions, shareholders that did not exercise the right to transfer their shares can challenge the adequacy of the exchange ratio (number of shares in the absorbing or new company being obtained in lieu of shares held in the disappearing company) set out in the Restructuring Plan and apply to the courts for an additional cash payment within one month of the relevant general meeting approving the restructuring.
None of the above-described legal challenges will suspend the restructuring operations.

- **Protection of creditors**

The right of creditors, whose claims came into existence before publication of the Restructuring Plan, to ask for additional sureties must be exercised within three months of the publication of the Restructuring Plan (rather than within two months of the publication of the effectiveness of the restructuring as foreseen in the General Regimes) (Articles 1025-11, 1034-11 and 1062-10 respectively). Again, such legal challenge does not suspend the restructuring operations.

- **Role of Luxembourg notary**

Luxembourg notaries need to first verify whether all the procedures and formalities required by Luxembourg law for the implementation of the restructuring have been complied with and issue a preliminary certificate (Articles 1025-12, 1034-12 and 1062-11 respectively). For the purposes of the verification, notaries need to be provided all relevant documents (either online or in person) and are required to carry out the verification within three months of receipt of such documents (which period may be extended). Notaries will in particular verify whether the restructuring operation is carried out for abusive or fraudulent purposes, in order to remove a company from the application of EU or national laws or to circumvent such laws or for illegal purposes.
Such preliminary certificate is filed with the Luxembourg trade register and transmitted by the register to the register(s) of the companies that participate in the restructuring operations (Articles 1025-13, 1034-13 and 1062-12 respectively).
If the company resulting from the restructuring is subject to Luxembourg law, the notary is additionally charged with verifying and confirming that all steps (Luxembourg and foreign) relating to the restructuring

have been carried out in accordance with all legal requirements (Articles 1025-14, 1034-14 and 1062-13 respectively). For these purposes the notary can rely on preliminary certificates concluding that all required procedures and formalities have been carried out in the other member states of the EU to which one or more of the restructuring companies are subject.

- **Communications between different Luxembourg Business Registers**

Restructuring companies will separately apply their respective laws vis-à-vis the forms of the publication of the accomplishment of the restructuring in their respective trade registers (Articles 1025-16, 1034-16 and 1062-15 respectively).
If the company resulting from the restructuring is subject to Luxembourg law, the Luxembourg Trade and Company Register will promptly inform the trade register of each of the restructuring companies that the restructuring has taken effect.
If a Luxembourg company is being dissolved without liquidation following the effectiveness of the restructuring, its deletion from the Luxembourg Trade Register will take place as soon as this receives notification of the effectiveness of the restructuring from the trade register of the company resulting from the restructuring.

- **Nullity**

Once the restructuring has become effective, its validity may no longer be challenged (Articles 1025-20, 1034-20 and 1062-18 respectively).

Specificities of the European Regimes
The specificities of the different European Regimes as they apply to a particular restructuring operation can be summarised as follows:

- **European Regime regarding mergers**

The European Regime applies to the same type of mergers including upstream and side-stream mergers, considered under the General Regime as amended by the entry into force of the Law. However, it will apply even if the cash compensation exceeds 10% of the nominal or par value of the company resulting from the merger.
The laws of the country to which the company resulting from the merger is subject determine the date of effectiveness of the merger (Article 1025-15).
Between the merging companies, the merger is effective on confirmation by the notary (as above described) that all legal requirements have been fulfilled.
Against third parties, the merger is effective from the date of publication of the minutes of the general meeting of the company that results from the merger.

- **European Regime regarding divisions**

The European Regime applies to the following forms of divisions (Article 1034-1).

Complete divisions
A company transfers all of its assets and liabilities, upon dissolution without liquidation, to two or more newly created companies. Its shareholders receive shares in the recipient company or companies, and possibly a cash payment

Partial divisions
A company transfers part of its assets to one or more newly created companies. Its shareholders receive shares either in the recipient company or companies, or both in the recipient companies and the company being divided, along with a possible cash payment.

Division by separation
A company transfers part of its assets to one or more recipient companies. In this case, the dividing company receives itself the shares in the recipient company or companies.
Unlike the General Regime, the European Regime does not apply to (i) total or partial divisions to one or more pre-existing companies or (ii) mixed divisions where the patrimony of the company being divided is distributed to one or more pre-existing companies and one or more newly constituted companies.
However, it will apply even if the cash compensation exceeds 10% of the nominal or par value of the company that comes into being by reason of the division.
The date of effectiveness of the division is determined by the laws of the country to which the company being divided is subject (Article 1034-15). It is now expressly foreseen that the division will only take effect in

Luxembourg on the date of publication of accomplishment of the division in the Luxembourg trade register.

- **European Regime regarding European Cross-Border Conversions**

The European regime for European cross-border conversions applies to cross-border conversions meeting all the following conditions (Article 1062-1):

- the conversion of a company established in the form of *société anonyme* (SA), a *société à responsabilité limitée* (SARL) or a *société en commandite par actions* (SCA) under Luxembourg law into a company of another EU Member State essentially having an equivalent form under the laws of another EU Member State (as listed in Annex II of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law), considering the harmonisation of EU company law developed by the European lawmaker, or the conversion of a company established in another EU Member State from equivalent to the mentioned Luxembourg ones into a company established in the aforementioned forms of *société anonyme* (SA), a *société à responsabilité limitée* (SARL) or a *société en commandite par actions* (SCA) under Luxembourg law;
- the conversion does not cause the dissolution, liquidation or winding up of the company;
- the conversion involves at least the transfer of the company's registered office to the EU Member State of destination; and
- the company retains its legal personality.

The laws of the country of destination of the conversion determine the date of effectiveness of the European cross-border conversion (Article 1062-15).

For companies involved in a cross-border conversion, the conversion is effective upon confirmation by the notary that all legal requirements have been fulfilled, as further indicated above (Article 1062-14). The conversion takes effect against third parties from the date of the publication of the confirmation attesting to the completion of the European cross-border conversion.

TRANSPOSITION OF MOBILITY DIRECTIVE PART 3 I A PRACTICAL APPROACH

As previously developed in the first and second parts on the new Luxembourg mobility law, the transposition of the Mobility Directive should have been realised before 31st January 2023. Some Member States like Germany or The Netherlands have transposed the Directive in time. France and Belgium were a little late in the game by transposing the Directive into their national law in May and June 2023 respectively. The transposition was finally realised in the Grand Duchy in February 2025, effective 1st of April.

The fact that Luxembourg was the biggest latecomer already created a quite long intermediary transitional period resulting from the fact that other countries were implementing their process through th e Directive requirements whereas the Luxembourg notaries and authorities were not prepared to produce the requested documentation. Such situation was resulting in some mismatches but even if Luxembourg players were still applying their usual process, notably for conversions, it was possible to meet the requirements of the other European countries.

Now that the transitional period will end, the Law will only apply to European cross-border mergers, demergers and conversions (all referred as "**Restructuring**") for which the plan (merger, demerger or conversion, as the case may be), are published on or after 1st April 2025, meaning that all Restructurings for which the plan was published beforehand (meaning the process was started) will remain subject to prior rules. Still working on the old process and new Directive requirements in order to realise the effectiveness of the Restructuring in both countries.

The practical aspects mainly lead us to further develop the new roles assigned to two majors Luxembourgish players in corporate law:

- **the notary(ies)** who become somehow the guardian of the legality of the Restructuring: being now additionally in charge of the control of all procedures and formalities required under the Law, resulting in either:
  - the issuance of a preliminary certificate (for each Restructuring involving a Luxembourg company), or
  - a confirmation stating that all legal requirements have been fulfilled if the company that results from the Restructuring is subject to Luxembourg law.
- **the Luxembourg Trade and Company Register ("RCS")**: which must communicate to its foreign counterpart the publication of the accomplishments of the Restructuring.

Taking the conversion of a French company into a Luxemburgish entity as an example. France, the company's country of origin, transposed the Directive already in 2023, while Luxembourg, the country of destination, only just adopted the Law.

The conversion work was first carried out in France applying French corporate rules, formalities and procedures arising from the Directive and allowing to obtain the preliminary certificate from the *Greffe du Tribunal*, which was allowing the conversion process. Then the notarial deed was passed in Luxembourg and taking into account that the Directive was not applicable yet, the notary only delivered the notarial deed at a first stage.

However, beyond the approval of the conversion by the shareholder in front on the Luxembourg notary (evidenced by the notarial deed) and the registration of the conversion with the RCS, the French legal authorities required to be provided with:

- a confirmation from the Luxembourg notary stating that all legal requirements have been fulfilled in Luxembourg; and
- the information directly transferred by the administrator of the RCS stating that the company was registered with the RCS, through the *Business Register Interconnection System* ("**BRIS**"), the European Central Platform which connects the business registers of each Member State,

in order to complete the conversion (and then, deregister the company from the French register), in accordance with the Directive.

Neither the notary nor the RCS being under a legal obligation to issue such confirmation, it was necessary to find a way to obtain equivalent documents which could be accepted by the French authorities in order to obtain the deregistration of the entity in France. After discussions the RCS accepted, without going through the BRIS process, to issue a letter directly to the *Greffe du Tribunal* in France and the notary issued a certificate confirming that under Luxembourg laws all requirements were met.

The Law being now applicable for any process started as from 1st April 2025, these issues should gradually disappear as most of the European countries transposed the Mobility Directive and the formalism required should be the same in both countries.

ESG - OMNIBUS PACKAGE | CHANGES TO THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Background

On 26 February 2025, the European Commission published the proposal for the Omnibus Simplification Package, which aims to simplify EU rules, reduce red tape, and unlock additional investment capacity.

Among the changes proposed is the amendment to Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (also known as the Corporate Sustainability Due Diligence Directive or "**CSDDD**"), focusing on balancing sustainability objectives with competitiveness and reducing compliance burdens while maintaining effective corporate responsibility mechanisms.

The Corporate Sustainability Due Diligence Directive

The **CSDDD** entered into force on 25 July 2024 to ensure that companies operating in the EU market take responsibility for identifying and mitigating adverse human rights and environmental impacts in their operations and supply chains. The directive introduced mandatory due diligence obligations, requiring companies to implement governance mechanisms, risk assessments, and remediation measures.

The key due diligence obligations for companies involve identifying adverse human rights and environmental impacts within their own operations and those of their subsidiaries and business partners throughout the activity chain.

Business and industry associations expressed some concerns about the CSDDD due to its complexity, implied costs, and legal uncertainties.

See also our previous newsletter.

Changes introduced in the Proposal and impacts on companies

The core revisions to the CSDDD proposed by the Commission in the Omnibus package aim to ease the regulatory burden, clarify legal obligations, and align due diligence responsibilities with practical business considerations.

- The proposal limits the scope of the due diligence obligations to lift the communication burden on small and medium businesses (SMEs). It limits the amount of information that large companies may request as part of the value chain mapping, specifying that large companies should limit information requests unless they need additional information and cannot obtain that information in any other reasonable way (Recital 22 and Article 4, par. 3).
- It simplifies the assessment obligations. The amendment states that due diligence requirements should, as a general rule, be limited to a company's operations, subsidiaries, and direct business partners. This means that companies will only be required to conduct in-depth assessments of **direct** business partners unless they obtain plausible information suggesting an adverse impact at the level of an **indirect** business partner (Article 4, par. 4).
- It also limits the frequency of periodic monitoring, extending the intervals in which companies need to regularly assess the adequacy and effectiveness of due diligence measures from one year to five years (Article 4, par. 8).
- Another essential change is the proposal's streamlined definition of stakeholders and limitation of due diligence steps to ensure engagement is focused only on relevant stakeholders. These are specifically identified as workers, individuals, and communities whose rights or interests are or could be **directly** affected by the company's products, services and operations, subsidiaries and business partners (Article 4, par. 2).
- Measures are developed to reduce legal uncertainty and address business concerns about excessive litigation risks. Notably, the proposal tasks the EU Commission with developing fining guidelines in collaboration with the Member States and prohibits Member States from setting a fines cap that would limit the flexibility of supervisory authorities for the imposition of penalties (Article 4, par. 11). Furthermore, the proposal removes the EU-wide civil liability regime in the CSDDD. Instead, it relies on existing national liability laws, ensuring companies remain accountable under domestic frameworks. It also eliminates provisions on representative actions

and overrides mandatory application while maintaining victims' right to full compensation if a company's due diligence failure causes harm (Article 4, par. 12).

Finally, the proposal grants companies additional time to prepare for compliance with the new requirements by delaying the application of CSDDD obligations for large companies by one year—until 26 July 2028. At the same time, it advances the deadline for the EU Commission to adopt guidelines by one year—to July 2026.
The proposal will have significant practical and financial implications for businesses, as it will foreseeably lower compliance costs, as companies will no longer need to conduct annual full-scale due diligence or maintain extensive engagement with indirect suppliers and improve flexibility in Supply Chain Management.

Critics

Although the European Commission has presented the proposal as a successful way to balance sustainability with business flexibility, some have voiced concerns. Climate advocates and policymakers argue that, instead of enhancing clarity, the proposal could undermine fundamental aspects of these key pillars of the Green Deal and responsible business practices.

ESG - OMNIBUS PACKAGE I CSRD & TAXONOMY CHANGES

Background

On 26 February 2025 the European Commission published a new package of proposals to simplify and reduce the reporting requirements under Corporate Sustainability Reporting Directive (CSRD), the EU Taxonomy (EUT), and the Corporate Sustainability Due Diligence Directive (CSDDD), the Omnibus package.

This proposal marks an effort to enhance competitiveness and investment capacity, by decreasing administrative burdens and compliance stringency under the applicable overlapping directives and distinct regimes.

This article provides an overview of the proposed changes to the EUT and CSRD regimes. For more details on the CSDDD proposed amendments, please consult our separate newsletter article on Omnibus Package regarding CSDDD.

EU Taxonomy

The **EU Taxonomy Regulation** is a classification system that defines environmentally sustainable economic activities to guide investments toward the EU's climate and environmental goals. It provides detailed technical screening criteria, established through delegated acts. The EU Taxonomy Regulation became applicable in phases starting from **January 2022**, from which time in-scope entities were required to report the proportion of their turnover, capital expenditures (CapEx), and operational expenditures (OpEx) that were aligned with the taxonomy's criteria for environmentally sustainable activities. For more details on the regime, please consult our previous EU Taxonomy article.

Some of the key substantive changes to the EUT framework include:

- **Amendments to delegated acts regarding the content and form of taxonomy reporting, including the following:**
  - **Financial materiality threshold**
    Companies would be exempted from assessing taxonomy-eligibility and alignment of economic activities that are not financially material for their business (i.e. accounting for less than 10% of their total revenue, capital expenditure or assets). This change is expected to lead to approximately a 70% reduction in data points.
  - **Simplification of reporting templates** - eliminating redundant or overly complex disclosure requirements

- **Introduction of an "opt-in" regime**
  For companies with more than 1,000 employees and net turnover below EUR 450 million taxonomy reporting will not be required. These would have the benefit of a voluntary "opt-in" taxonomy reporting with lighter disclosure requirements.

- **Adjustment of the green asset ratio**
  The green asset ratio (GAR) represents the proportion of assets invested in taxonomy-aligned economic activities as a share of total covered assets. To make the GAR more representative of a financial institution's sustainable activities, it is proposed to exclude reporting assets that relate to companies falling outside the revised scope of the CSRD, excluding SMEs and large companies with fewer than 1,000 employees (see CSRD Section below).

- **"Do no significant harm" criteria**
  Simplifications to the "Do no significant harm" (DNSH) criteria for pollution prevention and control related to the use and presence of chemicals that apply horizontally to all economic sectors under the EU Taxonomy would be introduced.

- **"Stop-the clock": Implementation delay**
  The Commission plans to adopt the final amendments in the second quarter of 2025. If the proposal is adopted, large EU undertakings falling under the voluntary "opt-in" exception, as well as listed SMEs would benefit from a two-year delay in the effective date.

CSRD

The CSRD strengthens and standardises corporate sustainability reporting across the EU, replacing the Non-Financial Reporting Directive**.** Effective from

January 2023, it expands reporting requirements under the **European Sustainability Reporting Standards (ESRS)**. Entities in scope must disclose audited ESG data, including sustainability risks, impacts, and performance.

The Omnibus Package proposes significant changes to the CSRD reporting scope. Among the key amendments, we note the following:

Reduction in scope

The CSRD would apply only to large undertakings with more than 1,000 employees (an increase from the previous threshold of 250 employees) and either a turnover exceeding EUR 50 million or a balance sheet total above EUR 25 million. For companies with fewer than 1,000 employees that are no longer in scope of the CSRD, the Commission would, through a delegated, introduce a voluntary reporting standard. This standard would be based on the standard for SMEs (VSME) developed by the European Financial Reporting Advisory Group (EFRAG) - a private association established to work with the European Commission, in charge of drafting and amending European Sustainability Reporting Standards.

According to the Explanatory Memorandum of the Omnibus Package Proposal, this change is expected to exempt around 80% of previously covered companies, including listed SMEs, unless they meet the new thresholds. Non-EU parent companies would be subject to CSRD only if they generate EU-derived turnover of EUR 450 million, up from EUR 150 million.

Simplification of reporting standards

The ESRS will be revised to:

- reduce mandatory data points by focusing on key quantitative metrics,
  - eliminate sector-specific standards and prioritise interoperability with global frameworks, and,
  - provide clearer guidance on materiality assessments.

Postponement of reporting deadlines

Similarly to the EUT regime, the large entities with opt-in exemptions and listed SMEs, would begin reporting for financial years 2 years after the initial set date.

The CSRD has not yet been implemented in Luxembourg law. However Draft Law No. 8370 has been submitted on 29 March 2024 before the Luxembourg Parliament to transpose the CSRD and the Commission Delegated Directive (EU) 2023/2775 into national legislation, and the legislative process to adopt that draft law is currently underway.

CASE LAW I ARTICLE 10 OF THE BUSINESS CONTINUATION LAW OF 2023

Article 10 of the Business Continuation Law

The law of 7 August 2023 on the preservation of businesses and the modernisation of bankruptcy law (the "**Business Continuation Law**"), in Article 10, provides for the appointment of a judicial representative (*mandataires de justice*) when serious and proven breaches by the debtor or its management threaten the continuity of the business, provided that the requested measure is likely to safeguard it.

The Luxembourg District Court, upon request of the Public Prosecutor or any interested party, may appoint one or more judicial representatives, chosen from the list of sworn experts. The court order appointing the judicial representative must detail the scope and duration of his mission.

It should be noted that the opening of judicial reorganisation proceedings does not automatically terminate the judicial representative's mission. Instead, the court will determine, either in the judgment opening the reorganisation or in a subsequent decision, whether the mission should continue, be modified, or be terminated. Finally, an *ad hoc* evaluation must also be carried out in the event that a conciliator has been already appointed.

Factual background

In the case at hand, the court had previously invited the parties to take a position on the decisions adopted by the board of directors regarding possible measures to be taken pursuant to Article 10 of the Business Continuation Law concerning the appointment of a judicial representative.

The defendant, a Luxembourg public limited company, argued that it had undertaken a series of measures to improve its financial situation, making the request for a judicial representative unfounded. It further asserted that two independent directors had been appointed by the general meeting of shareholders and had subsequently accepted their mandates. The company also presented a financial plan, including credit facilities, assets, and operations aimed at repaying its debts and improving its financial stability to ensure its continued presence on the market.

Conversely, the claimant, a company administrator, firmly contested the defendant's position arguing that the independent directors' appointment was not published on the Luxembourg Trade and Company Register, making their acceptance unclear. Moreover, he questioned the impartiality of one director, due to their close ties with the company.

Additionally, the claimant challenged the financial plan, citing the company's failure to lift asset attachments and alleging irregularities in the 2022 accounts, as well as insufficient liquidity. He further claimed that conflict of interest had impaired the company's ability to act properly, with no mitigating measures taken. As a result, he requested the court to appoint a judicial representative to restore the company's financial viability.

Key takeaways from the decision

In order No. 2025TALCH02/00210, issued on 31 January 2025, the President of the District Court stepped in to address a governance crisis that had brought the company's decision-making to a standstill. Internal opposition within the board had led to paralysis, with no concrete steps taken to resolve the company's financial troubles.

Recognising this deadlock as a direct threat to the company's survival, the court opted for a balanced solution: appointing a judicial representative – not to take control, but to mediate conflicts, ensure necessary measures were implemented, and protect the interests of all parties. The Court emphasised that the representative's role should be one of "targeted and reasoned interventions" rather than active participation in the company's daily management, rejecting the claimant's request to grant the judicial representative veto powers as excessive.

The appointment was set for one-year term, with the possibility of extension or adjustment depending on the evolution of the company's situation. This decision underscores the Court's focus on preserving stability without overstepping into corporate governance.

Conclusive remarks

The Business Continuation Law expands the ability to request the appointment of a judicial representative, no longer limiting it to shareholders or directors in urgent circumstances. Now, any party with a legitimate interest can apply if serious misconduct by the company's management threatens its survival – provided the measure could help preserve business continuity.

In this case, ongoing financial mismanagement and internal conflicts within the board of directors justified the appointment of a judicial representative. Crucially, the ruling clarified that the representative's role is not to take over management but to intervene strategically to address specific issues, ensuring the company's stability while respecting its governance.

SIMPLIFIED PROCEDURE FOR THE CREATION OF NEW SHARE CLASSES

On 12 February 2025, the CSSF introduced a **new simplified procedure** for creating **new share classes** that do **not require a prospectus update**. This applies to **UCITS, UCI Part II, SIFs, and SICARs**.
The **key points** include that**:**

- the procedure is available **only for share classes whose characteristics are already defined** in the current prospectus.
- submissions must follow the **dedicated form** and include a **standardised table** with all relevant details.

The form requires the fund to confirm that the share class adheres to certain requirements including that the management body of the fund has approved the share class, that the prospectus defines all of the characteristic of the share class, for UCITS that the new share class complies with ESMA's guidelines on share classes and if applicable, that a PRIIPs KID will be transmitted to the CSSF in due course.
This change aims to **streamline approvals** while maintaining regulatory clarity. Fund managers should ensure compliance with the outlined requirements when submitting new share class requests.

FUND PROSPECTUS | EVOLUTION IN THE ELECTRONIC VISA "STAMP" PROCEDURE

Starting April 2025, the CSSF has introduced a new e-Identification system to replace the current VISA procedure for fund prospectuses, including **UCITS, Part II UCIs, SICARs, and SIFs**.
The key changes include:

- each prospectus will receive a **unique identification number** and an **e-Identification date**, both displayed on the first page.
- submissions for new or revised prospectuses will go through the **eDesk e-Identification Prospectus application**.
- certain amendments **will no longer require prior CSSF approval**, as outlined in a dedicated guide available via **eDesk** (the "**Guide**"), including among others (i) additional share class(es) set up but not registered with the CSSF excluding class(es) with restrictions in distribution or ETF share classes, (ii) amendments to the initiator in the prospectus (iii) increases, decreases of fees or changes to the fee structure, and (iv) not-material changes to an existing fund or sub-fund.

In other words, this means that the **administrative process will be streamlined**, reducing approval delays for non-critical changes. The CSSF may still however conduct **ex-post reviews** of changes that were not pre-approved. Additionally, the governing body of each fund will bear **greater responsibility for compliance**.
To increase operational efficiency, the process supports automation via API (S3).
The Guide which was released on 20 March 2025 also includes a technical part facilitating IT and operational implementation. This modernisation aims to improve efficiency while upholding **strong investor protection standards**.

UNREGULATED AIFS I AED REINFORCES AML/CFT FRAMEWORK WITH NEW REPORTING DUTIES

The *Administration de l'enregistrement, des domaines et de la TVA* ("**AED**") in Luxembourg launched a campaign on 25 February 2025 inviting all alternative investment funds ("**AIFs**") to submit certain documentation in order to allow the AED to carry out its AML oversight obligations. Some of the reporting is new for unregulated AIFs, having previously only applied to Reserved Alternative Investment Funds ("**RAIFs**").

Identification forms

Every AIF subject to the supervision of the AED is obliged to appoint a *responsable du respect des obligations* ("**RR**") and a *responsible du contrôle* ("**RC**") and to inform the AED of same. As such an identification form for the appointment of the RR and of the RC must be submitted, in the form available on the AED's website, either when first appointed or when one of them changes.

Annual RC report and annual questionnaire

All unregulated AIFs must now submit an annual RC Report and a comprehensive AML/CFT Questionnaire, the latter to be completed by the RR. However, the RR may mandate the RC of the RAIF to submit the questionnaire.

The AED has outlined the essential elements to be included in the RC Report for both a RAIF and an unregulated AIF.

The AML/CFT Questionnaire, for its part, covers a wide range of topics including the AML risks to which the AIF is exposed, what mitigation measures are in place and a separate section on terrorist financing exposure and mitigating measures.

Timing

The AED has introduced distinct and official deadlines for RAIFs and other unregulated AIFs.

The official submission deadlines for both the RC Report and the AML/CFT Questionnaire are 31 May 2025 for RAIFs and 30 June 2025 for other unregulated AIFs. Delays may result in administrative fines.

TAX MEASURES IN FAVOUR OF THE REAL ESTATE SECTOR | SIX MONTH EXTENSION

The law of 22 May 2024 provided for several short term tax measures (applicable for fiscal year 2024) in favour of the Luxembourg real estate market as well as long term tax measures applicable as from 2025 (see our previous newsflash). To support the ongoing recovery of the real estate sector, the law of 4 April 2025 extends the temporary tax measures until 30 June 2025.

Temporary tax measures extended until 30 June 2025

The following measures initially applicable only for fiscal year 2024 are extended until 30 June 2025:

- The **allowance for registration and transcription duties for the acquisition of the main residence ("*Bëllegen Akt*")** is increased from EUR 30,000 allowance to EUR 40,000 for each individual and applicable to transactions taking place between 1st January 2024 and 30 June 2025.
- **Allowance for registration and transcription duties for investment in rental properties by individuals:** this allowance is dedicated to investments in rental properties sold in future state of completion (*VEFA*) and amounts to EUR 20,000 per individual. Taxpayers having entered into an eligible transaction between 1st January 2025 and the law's publication in the Luxembourg Official Gazette (7 April 2025), must address a written request to the tax collector and sign a commitment to comply with relevant conditions.
- **Reduced tax rate for capital gains on Luxembourg real estate realised until 30 June 2025:** capital gains realized by individuals in the context of the management of their private assets on Luxembourg real estate held for more than two years will be subject to a quarter of the global rate applicable to the taxpayer instead of half the global rate.
- **Roll-over of real estate capital gains:** individuals realizing real estate capital gains at least 2 years after the asset's acquisition will be granted a rollover relief if proceeds are reinvested in real estate rented under the condition of Article 49 of the law of 7 August 2023 (i.e., social rental) or in real estate falling within the A+ class for energy performance, thermal insulation and environmental performance as defined in the Grand-Ducal Decree of 9 June 2021. For capital gains realized between 1 January 2024 and 31 December 2024, the reinvestment must take place during fiscal year 2026 at the latest and for capital gains realized between 1 January 2025 and 30 June 2025, the reinvestment must take place during fiscal year 2027 at the latest.
- **The special deduction for rental income derived from real estate acquired in future state of completion** (*VEFA*) consisting in special deduction corresponding to a 4% deemed amortisation of the real estate asset on the same basis as the existing 2% amortisation for rented buildings is extended to VEFAs signed between 1 January 2024 and 30 June 2025. The measure is relevant for taxpayers realizing rental income under Article 10 (7) of the Luxembourg income tax law. In addition, the Luxembourg tax authorities issued circular 129f/1 on 20 January 2025 clarifying the functioning of the mechanism.

As a result of these amendments, the application period of the above measures ends on 30 June 2025 together with the 50% reduction of the taxable basis for registration and transcription duties applicable to real estate acquisitions voted in the 2025 budget law (see our previous newsflash).

Adjustment to long term tax measures

The law of 22 May 2024 provided for an increase of the holding period to determine the tax regime applicable to real estate capital gains from 2 to 5 years as from 1 January 2025. The law of 4 April 2025 postponed the application date of this change to 1st July 2025. This measure is relevant for individual taxpayers acting within the management of their private wealth (i.e., acting outside of an enterprise).

START-UP INVESTMENTS | TAX CREDIT BY INDIVIDUALS

On 4 April 2025, Draft Law No. 8526 was submited to the Luxembourg Parliament (*Chambre des Députés*) and intends to introduce, as from fiscal year 2026, a tax credit for private individuals investing in Luxembourg startups amounting to 20% of their equity investment.

The measure is designed to ease early-stage financing of innovative startups by private individuals.

Background to the proposal

The proposal implements part of the 2023-2028 governmental coalition program to enhance the economic environment for startups. Already in 2022, the Minister of Finance commissioned a report assessing the Luxembourg start-up ecosystem and found that early-stage financing is key for a start-up success. As observed by the government, such measure aligns with the findings of the 2024 Draghi report ("The future of European competitiveness") that the lack of early-stage financing pushes EU startups to transfer their activity outside of the EU and more recently the EU Commission communication of January 2025 ("A competitiveness Compass for the EU") calling for an improvement of the European framework regarding the funding of innovative startups.

Eligible taxpayers

The tax credit will be available to Luxembourg resident individuals and non-resident individuals taxable in Luxembourg under the assimilation regime. The taxpayer must act in the context of the management of its private wealth, thus excluding investments through an enterprise. Employees and founder of the startup entity are excluded from the measure.

Eligible startups

Form and tax regime

A fully taxable Luxembourg resident company or a company resident within the European Economic Area subject to a corporate tax equivalent to the Luxembourg corporate income tax and engaged in innovative activities through a Luxembourg permanent establishment.

Newly formed

At the end of the fiscal year for which the tax credit is requested, the startup is in existence for less than 5 years.

Size

It has less than 50 employees and either its total balance sheet or its turnover does not exceed 10 million.

Group membership

When the startup entity is part of a group, the condition pertaining to the size must be assessed at the level of the group and its fulfilment be certified by a chartered accountant or an auditor. Each entity of the group must have been formed since less than 5 years. There is a group when the start-up entity has at least one associated enterprise. The latter being another entity, alone or with other associated enterprises, (i) with a relationship of at least 25% in terms of capital or voting rights, (ii) holding or controlling (through an agreement) the majority of the voting rights, (iii) having the power to designate or remove the majority of the management, or (iv) has a significant influence on the management of another entity through a contract or statutory provision.

Innovative activity

The start-up must be engaged in an innovative activity. This requirement is met when the entity has at least two persons working full-time (not necessarily employees, managers/directors are included but external contractors are excluded) and during at least one of the three financial years preceding the investment, at least 15% of the entity's operating expenses were dedicated to research and development (condition to be realised within the first year if the investment takes place the year of formation). Eligible expenses do not include subcontracted activities. An auditor or chartered accountant must certify the second condition is met.

R&D and relevant expenses: R&D is broadly defined as work to systematically increase knowledge, and use this knowledge to develop new applications, whether for products, services, processes, methods or organizations. This definition is aligned with the one used in Draft Law 8314 intending to introduce subsidies (capital or loans) for R&D and innovative activities. **Relevant expenses** include remuneration of staff allocated to R&D activities and any material used for such activities.

The Draft Law also lists **excluded startup entities** which comprises law firms, audit firms, entities active in the real estate sector, venture capital companies under the law of 15 June 2004, entities with listed securities, entities formed upon a tax neutral merger or demerger, entities having distributed dividends or proceeded to a share capital reduction since incorporation (unless to absorb losses) and entities required to repay State aid under EU legislation.

Investment by the taxpayer

Form and timing

The investment must be in in cash and take place upon formation or during a subsequent share capital increase. Subscription and payment must take place the same year.

Minimum/maximum investment

The taxpayer must invest at least EUR 10,000 per startup entity. When the participation reaches 30% of the share capital of the startup, additional investments are not eligible.

Maximum capital raised from eligible taxpayers amounts to EUR 1,500,000 and additional investors cannot benefit from the tax credit.

Direct holding

The taxpayer must hold the relevant shares directly excluding any indirect holding (even through tax transparent entities).

Minimum period

The taxpayer commits to hold the shares in the share capital of the startup for at least 3 years starting as from the end of the fiscal year for which the tax credit is requested. The holding period is annually documented in the tax returns with retroactive adjustment if it is not met (certain exceptions apply, startup bankruptcy, taxpayer's disability).

Request for the tax credit

The tax credit amounts to 20% of the invested amount (capital and share premium). The maximum tax credit granted for one fiscal year amounts to EUR 100,000 and unused amount is carried forward to subsequent fiscal year. It is non-refundable.

For taxpayers under joint taxation investing in startups, the conditions are to be analysed separately.

The request must take place through a tax return and taxpayers not subject to mandatory tax returns filing will be required to file a tax return for the three years following the granting of the tax credit.

Documentary evidence to be attached to the tax return include (i) a certificate issued by the startup confirming the paid-up capital within two months after the issuance, the percentage held by the taxpayer and the capital subscription by taxpayers eligible to the tax credit and (ii) a certificate issued by the startup entity confirming its eligibility.

DOUBLE TAX TREATY LUXEMBOURG – COLOMBIA I LEGISLATIVE UPDATE

On 19 January 2024, the Grand Duchy of Luxembourg and the Republic of Colombia have signed a convention for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance (the "DTT"). For more information, please refer to our previous newsletter on this topic here.

The draft law submission

The draft law approving this convention was submitted to the Chamber of Deputies under No. 8483 on 24 January 2025.

Council of State and Finance Committee Opinions

The Council of State (*Conseil d'Etat*), the Chamber of Commerce (*Chambre de Commerce*) and the Finance Committee (*Commission des finances*) issued favorable opinions on 4 February 2025 and 19 March 2025 and 25 march 2025, respectively.

Parliamentary approval

On 2 April 2024, the Chamber of Deputies approved the draft law, thereby ratifying the DTT.

Entry into force

The DTT will take effect on 1 January of the year following the exchange of notifications between the contracting states.

DOUBLE TAX TREATY LUXEMBOURG – MOLDOVA I PROTOCOL AMENDING THE DOUBLE TAX TREATY

On 25 June 2024, Luxembourg and the Republic of Moldova signed a protocol (the "**Protocol**") amending the double tax treaty originally signed on 11 July 2007 (the "**DTT**"). The law of 25 march 2025, approving the Protocol, was published in the Luxembourg Official Gazette on 7 April 2025.

Key amendments introduced by the Protocol

Updated preamble

The Protocol replaces the preamble of the DTT to align it with the OECD - BEPS Action 6, emphasizing the intention of the contracting states to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or fraud.

Expanded non-discrimination

The Protocol amends paragraph 5 of Article 23 of the DTT, specifying that Article 23 regarding the non-discrimination principle applies to all taxes, regardless of their nature or denomination.

Improved mutual agreement procedure

The Protocol replaces paragraph 1 of Article 24 to align it with the current version of the OECD Model Tax Convention on Income and Capital ("**OECD Model Tax Convention**"), allowing taxpayers to initiate a mutual agreement procedure with the competent authorities of a contracting state within three years of the first notification of an assessment that is inconsistent with the provisions of the Convention.

Enhanced exchange of information

The Protocol replaces Article 25, aligning it with the OECD Model Tax Convention.

Introduction of anti-abuse clause

The Protocol adds a new Article 26A concerning entitlement to treaty benefits, introducing the "principal purpose" rule. This general anti-abuse rule aims to deny treaty benefits when one of the main purposes of an arrangement or transaction is to obtain a tax benefit that would be contrary to the object and purpose of the treaty provisions.

Entry into force

The updated DTT will take effect on 1 January of the year following the exchange of notifications between the contracting states i.e. at the earliest on 1st January 2026 provided Moldova undergoes all domestic formalities and the exchange of notifications takes place before the end of this year.

TEMPORARY EMPLOYEES I REDUCTION OF THE FLAT-RATE TAX ON THE REMUNERATION PAID

Pursuant to Article 137, paragraph 5a of the amended law of 4 December 1967 on income tax (the "**LITL**"), and by way of derogation from the normal taxation system, remuneration paid by temporary employment contractors under an assignment contract to temporary employees whose agreed gross hourly wage does not exceed the amount of EUR 25 is taxed at a flat rate.

The flat-rate tax was previously set at 10% of the difference between, on the one hand, the gross amount of the remuneration taxable in Luxembourg and, on the other hand, the social security contributions referred to in Article 110, number 1 of the LITL on the part of the remuneration taxable in Luxembourg.

By Grand-Ducal Decree dated 11 March 2025 amending the Grand-Ducal Decree dated 17 December 2021 implementing Article 137, paragraph 5a and article 143, paragraph 1 of LITL, the flat-rate tax has been reduced from 10% to 7.5%.

The flat-rate reduction is effective from the 2025 tax year.

CBCR I UPDATE OF THE LIST OF REPORTABLE JURISDICTIONS

On 3 March 2025, the government issued a draft Grand-Ducal Decree amending the existing Grand Ducal-Decree of 13 February 2018 implementing Article 4, paragraph 2, of the law of 23 December 2016 on Country-by-Country Reporting ("**CbCR**"), the purpose of which is to update the list of 'Reportable Jurisdictions' for CbCR to be submitted by multinational enterprise ("**MNE**").

The draft has added the following jurisdictions to the list of Reportable Jurisdictions, effective from the respective fiscal years:

- **Kenya** – for fiscal years beginning on or after 1 January 2023
- **Albania**, **Aruba**, and **Ukraine** on or after 1 January 2024
- **Belize, Curaçao**, and **Georgia** – on or after 1 January 2025
- **Armenia** – on or after 1 January 2026.

As a reminder, according to the Article 4 of the law of 23 December 2016 on Country-by-Country Reporting (*the law transposing Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards the automatic and mandatory exchange of information in the field of taxation and concerning CbCR rules for multinational enterprise groups),* the Luxembourg Tax Authorities shall automatically exchange the CbCR, within 15 months from the last day of the reporting fiscal year.

This exchange must be carried out with any reportable jurisdiction in which, based on the information contained in the CbCR, one or more 'Constituent Entities' of the MNE of the 'Reporting Entity' are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

TAX CREDITS I LUXEMBOURG TAX ADMINISTRATION PUBLISHES THREE NEW CIRCULARS

On 12 March 2025, the Luxembourg Tax Administration released three new circulars detailing updates to tax credits for employees, pensioners, and self-employed individuals. These updates aim to clarify the application of existing credits and incorporate the recently introduced CO2 tax credits effective from the 2024 tax year.

1. Circular L.I.R. 154quater/1 – Employees

Employers are now required to calculate both the standard tax credit for employees (*CIS*) and the new CO2 tax credit for employees (*CI-CO2 salarié*) with each payroll allocation. These credits are applicable only if the annual gross salary remains below EUR 80,000. Employers must regularise the amounts at year-end. From 2025, the maximum *CI-CO2 salarié* is EUR 192/year, while the *CIS* is capped at EUR 600/year.

2. Circular L.I.R. 154quinquies/1 – Pensioners

This circular outlines how pension institutions should apply the standard pensioner credit (*CIP*) and the new CO2 tax credit for pensioners (*CI-CO2 pensionné*). Similar to employees, eligibility ceases beyond EUR 80,000 gross annual pension income. The *CI-CO2 pensionné* is limited to EUR 192/year from 2025, with the *CIP* capped at EUR 600/year.

3. Circular L.I.R. 152ter/1, 154quater/2, 154quinquies/2 – Annual assessment procedures

This joint circular explains how these tax credits should be handled during annual tax assessments, especially in cases involving multiple income types (e.g. employment, self-employment, pensions). The circular clarifies that credits cannot be combined across categories and provides detailed examples for calculating monthly averages and regularisations.

SINGLE-PARENT TAX CREDIT I NEW CIRCULAR

On 26 February 2025, the Luxembourg Direct Tax Authorities issued a new Circular L.I.R. No. 154*ter*/1, replacing Circular L.I.R. No. 154*ter*/1 dated 24 May 2023, on single-parent tax credit (CIM) provided for in Article 154*ter* of the Luxembourg income tax law ("**LITL**").

As from the 2025 tax year, the formulas for the determination of the amount of the CIM have been adapted and the maximum amount of the CIM has been increased, while the conditions for granting the CIM remain unchanged.

Entitled taxpayers

Those eligible for the CIM are unmarried taxpayers who:

- are classified in tax class 1a;
- raise one or more children in their household for whom they receive a child tax reduction; and
- do not share a common residence with the other parent of the child.

The CIM expires when the taxpayer is no longer classified as single or does not meet the eligibility criteria.

Amount of the CIM

Since the 2017 tax year, the CIM has been determined based on the adjusted taxable income realised by the eligible taxpayer.

From the 2025 tax year, the CIM amounts to:

- EUR 3,504 per year if the taxpayer's adjusted taxable income is less than EUR 60,000;
- If the taxpayer's adjusted taxable income is between EUR 60,000 and EUR 105,000, the CIM is calculated with the following formula: CIM = [3,504 – (adjusted taxable income – 60.000) x 0.039]; and
- EUR 750 if the taxpayer's annual income is higher than EUR 105,000.

The CIM is reduced by 50% of the amount of maintenance payments (expenses for maintenance, care, education and vocational training, etc.) from which the child benefits, provided these payments exceed the annual amount of EUR 2,712.

If there are several children and each child receives maintenance payments, the lowest amount of the maintenance payments per child will be considered to determine, if necessary, the reduction of the tax credit. Orphan pensions are not taken into account for the reduction of the CIM.

When the taxpayer has not been subject to tax throughout the year, the maximum amount of the CIM is applied based on the complete months during which the taxpayer was subject to tax. However, the CIM does not depend on the number of children composing the taxpayer's household.

Finally, where the amount of the tax debt is less than the amount of the CIM, the amount of the CIM in excess of the tax debt is to be repaid to the taxpayer. Where there is no tax debt, the amount of the CIM must be returned to the taxpayer in full.

Procedure employees and pensioners subject to withholding tax based on a withholding tax form

The CIM is credited during the tax year by the employer or pension fund to taxpayers who are employees or pensioners and have a withholding tax form. The withholding tax form is marked "CIM" when the resident taxpayer has made a prior request to the tax authorities.

For employees and pensioners who are not subject to taxation by assessment and are therefore not required to file a tax return, the CIM may still be requested as part of the annual adjustment provided for in Article 145, par. 2, e) of the LITL. In this case, the crediting and, where applicable, the refund of the CIM is limited to the part of the CIM that has not been credited by the employer or the pension fund during the tax year.

Taxpayers liable to taxation by assessment and not subject to withholding tax

Taxpayers who are not employees or pensioners (e.g. self-employed workers) may request the CIM through their tax return and will therefore be granted in accordance with the provisions of the Article 154, par. 1, no. 2 of the LITL.

Taxpayers not subject to taxation by assessment nor to withholding tax

This category includes people whose taxable income does not exceed the income bracket exempted by the income tax tariff. However, these people can ask to be taxed by assessment and therefore benefit from the CIM.

Non-résident taxpayers

To benefit from the CIM, non-resident taxpayers must be treated as Luxembourg residents for tax purposes in accordance with the provisions of the Article 157*ter* of the LITL.

What is the CIM?

The Single Parent Tax Credit (CIM) is a measure aimed at unmarried taxpayers classified in tax class 1a who are raising one or more children. This credit reduces the tax burden for single parents, ensuring additional financial support for their households.

Who is entitled to the CIM?

Unmarried taxpayers who:

- Are classified in tax class 1a.
- Raise one or more children in their household for whom they receive a child tax reduction.
- Do not share a common residence with the other parent of the child.

These individuals are eligible for the Single Parent Tax Credit (CIM).

How much is the CIM?

For 2024, the CIM is calculated as follows:
Adjusted taxable income below EUR 60,000 : CIM is EUR 2,505.
Adjusted taxable income between EUR 60,000 and EUR 105,000:
CIM = EUR 2,505− (Adjusted Taxable Income − 60,000) × 0.039
Adjusted taxable income above EUR 105,000: CIM is EUR 750.

For 2025, the CIM amounts were increased:
Adjusted taxable income below EUR 60,000: CIM is EUR 3,504.
Adjusted taxable income between EUR 60,000 and EUR 105,000:
CIM = EUR 3,504 − (Adjusted Taxable Income − 60,000) × 0.0612
Adjusted taxable income above EUR 105,000: CIM is EUR 750.

What adjustments apply for child allowances?

The CIM is reduced by 50% of any child-related allowances exceeding:
2024: EUR 2,424 annually or EUR 202 monthly.
2025: EUR 2,712 annually or EUR 226 monthly.
Rents and family benefits do not count towards these reductions.

How to get the CIM?

Declare your single-parent status on your tax return. The CIM can also be deducted at source by employers or pension funds.

When does the CIM expire?

The CIM expires when the taxpayer is no longer classified as single or does not meet the eligibility criteria.

PILLAR 2 | ADDITIONAL LUXEMBOURG ACCOUNTING GUIDANCE

On 25 March 2025, the Luxembourg accounting board (*Commission des normes comptables*, "**CNC**") issued a third Q&A with respect to Pillar 2 focusing on relevant accounting information to be provided in standalone and consolidated financial statements before and as of the transition year.

Background

Pillar 2 has been implemented in Luxembourg through the law of 22 December 2023 (the "**Pillar 2 Law**") and applies to MNE groups and large scale domestic groups as defined under the Pillar 2 Law for fiscal years starting as from 31 December 2023 (see our previous newsflash for more details on Pillar 2).

On the accounting aspects, the CNC already issued two Q&As (CNC 24/031 and 24/032) in 2024 providing guidance for financial year 2023. The Luxembourg tax authorities also issued guidance on the tax treatment of deferred tax assets ("**DTA**"), deferred tax liabilities ("**DTL**") and transferred assets upon transition also referring back to the CNC Q&A (see our previous newsletter).

Q&A 25/035 applies to (i) financial years preceding the first fiscal year the group falls within the scope of Pillar 2 (the "**Transition Year**") and (ii) financial years starting as from the Transition Year. The Q&A is relevant for Luxembourg entities and groups preparing their stand alone or consolidated financial statements under LuxGAAP or LuxGAAP-JV.

The CNC guidance relies on the updated IAS 12 – "income taxes" issued by the International Accounting Standards Board and also adopted by the EU in order to maintain a level playing field for groups preparing their consolidated financial statements under Lux GAAP or Lux GAAP-JV.

Financial years preceding the transition year

When to include information in the notes to financial statements

- **Pillar 2 application is probable**: the CNC takes the view that that the assessment whether Pillar 2 could apply to the entity or group is under the responsibility of the management which can rely on "internal indicators" (consolidated revenue thresholds of previous years, budget or business plan of the group). When Pillar 2 is likely to apply, information can be included in the financial statements.
- **Pillar 2 application is certain:** When the EUR 750 million revenue threshold is exceeded, the inclusion of relevant information is strongly recommended.

Which information to include in the standalone and consolidated financial statements appendices

- The CNC provides that information known or that can reasonably be established can be included in the notes to the financial statements with the objective to illustrate the entity or group's exposure to Pillar 2. In line with IAS 12, the entity or group can provide qualitive (entities and countries impacted) and quantitative information on Pillar 2 (fraction of profits subject to additional taxation, applicable average effective tax rate, prospective impact) related taxes at the end of the financial year. It is not required to cover all the specifics of Pillar 2 rules and indicative ranges are allowed. When the information is not known or cannot be estimated, the entity or group should indicate this fact with an update on the progress made in the evaluation process.

Reflecting DTA in standalone accounts of Luxembourg companies' part of a Pillar 2 group:

Under the Pillar 2 Law, deferred tax assets and liabilities are taken into consideration as booked or reflected in the financial statements of each constituent entity of a jurisdiction. The question arises for Luxembourg companies' part of a Pillar 2 Group, how to reflect deferred tax assets accumulated at the end of the financial year preceding the transition year as they cannot be accounted for. The CNC provides that a mention in the notes to the standalone financial statements is more granular and provides more traceability than a presentation only in consolidated financial statements, concluding that both presentations are complementary rather than exclusive.

On the legal basis allowing the presentation of deferred tax assets in notes to the standalone financial statements, the CNC provides that such presentation falls within the obligations to present in annexes complementary information enhancing the true and fair view standard set by article 26 (3) of the Luxembourg accounting law.

Accounting for DTA in consolidated financial statements under Lux GAAP and Lux GAAP-JV

The CNC provides that Luxembourg accounting practice and ongoing accounting law reform allow for the accounting of DTA under both regimes when they are highly likely to be recovered in the foreseeable future. Accounting for DTA being optional, Pillar 2 groups have the possibility to present DTA in the notes to these consolidated financial statements in line with the true and fair view standard.

DTA computation

According to the CNC, the aggregate rate of corporate income tax and municipal business tax as known at the end of the financial year should be applied to the gross amount of tax attributes or temporary differences. Recoverability analysis is only required where the DTA is booked in the consolidated financial statements, as only DTA whose recoverability is highly probable can be accounted for.

Financial years starting as from the Transition Year

According to the CNC, as from the Transition Year the above described qualitative and quantitative information are no longer required as their sole purpose is to provide a prospective information on the impact of Pillar 2 and as from the Transition Year such impact should be computed and accounted for.

Information in the notes to the stand alone and consolidated financial statements

The level of information should be guided by general accounting principles and in particular the true and fair view objective (of entity/group's assets, financial positions and result) and the significance of the information (an information is deemed significant when, if omitted or inaccurate, it can reasonably be expected to influence decisions based on the accounts).

The Q&A provides for two illustrative examples where the Luxembourg company or group are within the scope of Pillar 2:

- **Additional taxes resulting the application of Pillar 2 are nil or not significant:** in line with the general accounting principles applicable under Lux GAAP or Lux GAAP-JV and the true and fair view objective, in principle, no additional information is required to meet such objective. Where the management of the company or group considers Pillar 2 related information as relevant for the users of the accounts, they can be included.
- **Additional taxes resulting from Pillar 2 are considered as significant:** based on the above-mentioned principles, additional information should be provided in the accounts. Determining the nature and scope of such information lies with the management of the company/group. In CNC's opinion, such information could take the form of a separate presentation of the tax liability resulting from the application of Pillar 2 Law.

Other items in relation with financial years as from the transition year

- **Accounting for or information on the DTA or DTL in relation to taxes resulting from the Pillar 2 Law:** the CNC adopts the position of the IAS 12, such that no obligations to make such accounting or provide information in that respect even for groups that usually account for DTA/DTL arises. The mandatory application of this exception is being justified by the complexity of the Pillar 2 rules and the exception should be mentioned in the financial statements.
- **Follow-up of DTA in notes to standalone or consolidated financial statements:** in the CNC's opinion, Luxembourg companies or Pillar 2 groups choosing to mention DTA in notes to their standalone or consolidated financial statements should provide a follow-up on the evolution and use of their tax attributes to ensure a granular and traceable information in line with the true and fair view standard.
- **Accounting for DTA in consolidated financial statements prepared under Lux GAAP/Lux GAAP-JV** is possible as long as there is high probability that they will be recoverable in the foreseeable future. Once accounted for, in application of the consistency principle, the accounting for DTA as well as the provision of an explanatory note must be continued annually.
- **Accounting for Pillar 2 tax liabilities under the Luxembourg charter of accounts:** in the absence of dedicated accounts in the Luxembourg standard

chart of accounts, the CNC provides guidance on which accounts to use and how to adapt the current charter of accounts.

POLITICAL AGREEMENT ON DAC9 PROPOSAL | EXCHANGE OF PILLAR 2 INFORMATION RETURNS

On 11 March 2025, the Economic and Financial Affairs Council ("**ECOFIN**") reached a political agreement on the amendment of Directive 2011/16/EU on administrative cooperation in the field of taxation ("**DAC**") to ease Pillar 2 filing obligations and implement the exchange for Pillar 2 information returns within the EU ("**DAC9**"). The EU Commission ("**EC**") finally adopted the proposal on 14 April 2025.

Background

The proposal for DAC9 was introduced on 28 October 2024 by the EC with the key objective of providing for the operational arrangements to allow groups within the scope of Directive 2022/2523 (the "**Pillar 2 Directive**") to make use of the single filing option provided by Article 44 of this Directive (see our previous newsflash) and ensure proper exchange of relevant information to relevant EU Member States.

The standard reporting obligations under the Pillar 2 Directive involves a reporting by each constituent entity with its relevant tax authority while the single filing option involves one filing by the Ultimate Parent Entity ("**UPE**") or a designated constituent entity. However, the use of this option is subject to the existence of a qualifying competent authority agreement that provides for the automatic exchange of annual top-up tax information returns and DAC9 will constitute such agreement within the EU.

The Polish Presidency of the EU treated the DAC9 proposal as a priority and ensured that Member States reached an agreement in March.

Key amendments

The key change aims at ensuring that the Top-up Tax information return standard format as annexed to DAC9, remains aligned with the latest version of the GloBE Information return ("**GIR**"), the reporting format developed by the OECD which is subject to updates.

The standard model annexed to the agreed version has been updated in line with the OECD update of the GIR model on 15 January 2025 (after the release of the DAC9 proposal by the EC).

In order to maintain the EU reporting format in line with the OECD model, the initial proposal provided that, where required, the DAC9 appendix pertaining to the Top-up Tax information return standard form would be updated through delegated acts by the EC which was not approved by all Member States. The consensus version requires the amendments to take place through a Council Directive, thus requiring unanimous approval from EU Member States.

The DAC9 mechanism intends to mirror, within the EU, the Multilateral competent authority agreement on the Exchange of GloBE information ("**MCAA**") developed by the OECD/G20 Inclusive Framework on BEPS and the signature of which would still be required for exchanges with third countries. Recital 16 of the updated DAC9 proposal provides that in implementing DAC9, Member States can use the MCAA together with relevant OECD commentary as a source of interpretation.

Next step

The DAC9 will now be published in the Official Journal of the European Union and the transposal deadline remains set for 31 December 2025.

VIDA | FINAL APPROVAL ON VAT IN THE DIGITAL AGE PACKAGE

On 11 March 2025, the VAT in the Digital Age (ViDA) package has been finally adopted by the Council of the European Union and the measures will be turned out progressively until January 2035.

The purpose of this package is to modernize and improve the VAT system in the EU to better align with the digital economy and prevent tax fraud by planning major changes.

The ViDA package is divided into the three following pillars:

- digital reporting requirements and mandatory e-invoicing;
- changes to VAT treatment for the platform economy; and
- simplified single VAT registration.

The various innovations will be introduced gradually with flexible timelines:

- **Immediate entry into force of ViDA package**
  - Ability of Member States to introduce obligatory e-invoicing under certain conditions – possible impact on businesses in Member States introducing e-invoicing (national competence)
  - Improvements to the Import One-Stop-Shop (IOSS) framework to make it more robust by enhancing Member States' controls.
- **With effect as from 1st January 2027**
  - some slight legislative clarifications and alignments impacting those using the One-Stop Shop schemes (OSS and IOSS)
- **With effect as from 1st July 2028**
  - Deemed supplier measure for platforms facilitating the supply of short-term accommodation rental and passenger transport services – impact on platforms facilitating short-term accommodation rental and passenger transport services – however, Member States have the option to delay implementation until 1 January 2030.
  - Single VAT Registration main elements come into effect:
    - extension of the OSS schemes including set of improvements to the processes involving IT investments and new transfer of own goods scheme
    - mandatory reverse charge for non-identified suppliers
- **With effect as from 1st July 2030**
  - Digital Reporting Requirements measures coming into effect – main impact on businesses making cross border B2B supplies.
- **By 1st July 2035**
  - Those Members who had a domestic digital real-time transaction-based reporting obligation before 1 January 2024 shall align their systems with the EU system.

For additional information, please refer to our previous newsletter on this topic, dated on 30 January 2025.

ECJ CASE LAW I INPUT VAT DEDUCTION AND ALLEGATIONS OF FRAUD

Key takeaways

On 14 February 2025, the Court of Justice of the European Union ("**ECJ**") handed down a reasoned order in case C-270/24, Granulines Invest Kft, regarding the right to deduct input value added tax ("**VAT**") for **invoice incorrectness** pertaining to the supply of goods.

Facts of the case

The applicant is a Hungary-based VAT taxable person, which operates in the waste trade during the relevant period (the "**Applicant**").

The applicant ordered an industrial shredder from a Germany-based manufacturer and paid a deposit to the manufacturer (the "**First Sale**"). Shortly after the First Sale, the applicant found out about a local incentive program whereby interest-free financings could be granted for the purposes of investing into machinery (the "**Incentive**"). However, as this program did not apply to the direct purchase of a machine from a supplier based abroad, the Applicant decided to cancel the First Sale and identified a reseller established in Hungary (the "**Reseller**") from whom it acquired the said shredder so as to benefit from the Incentive (the "**Second Sale**"). Subsequently, the Applicant invoked a full deduction right on the input VAT incurred with respect to the invoice received by the Reseller by reason of the Second Sale.

Following an audit, the tax inspector considered that the invoice issued by the Reseller was fraudulent, given that the machinery in question had been delivered to the Applicant at a later stage (as opposed to the delivery date outlined in the invoice) and for an inflated resale price. The tax authorities were also of the view that the machinery was directly purchased from the manufacturer located in Germany without the intervention of the Reseller and considered that the Applicant committed tax fraud as the Second Sale should be regarded as an artificial transaction from a VAT perspective given all the facts at hand.

Outcome of the ECJ's ruling

The ECJ reminds that the right to deduct VAT applies irrespective of the purpose and result of the economic activity in question. In addition, taxpayers are generally free to choose the organisational structures or transactional arrangements they consider most appropriate for their economic activities and to limit their tax burdens. The principle of prohibition of abusive practices (applicable in VAT matters), prohibits only purely artificial arrangements carried out for the sole purpose of obtaining a tax advantage, which would be contrary to the objectives of the VAT Directive.

In the particular case at hand, it does not appear from the case brought before the ECJ that the transaction carried-out between the Applicant and the Reseller had as its sole or, at the very least, essential purpose the obtaining of a tax advantage, since the local authorities recognised that one of the main purposes of entering into the Second Sale was to enable the Applicant to benefit from the Incentive.

In addition, the ECJ ruled that the excessive price of a supply of goods, even if established, cannot justify by itself the denial of the VAT deduction right to the disadvantage of a taxable person.

Furthermore, the ECJ ruled that the mere omission for a reseller to pay the duly reported VAT cannot, regardless of the intentional or unintentional nature of such an omission, constitute VAT fraud leading to the denial of the deduction of input VAT in the hands of the purchaser. In order to justify such a denial, the tax authorities must establish to the required legal standard that the purchaser actively participated in VAT fraud or knew or should have known that the issuer of the invoice had committed such fraud.

Lastly, the fact that an invoice for a supply of goods, for which it is established that it has actually taken place, outlines a false delivery date - even if this mention is intentional - does not in itself constitute proof of the existence of VAT fraud.

In conclusion and in order to be in a position to deny the right to deduct VAT, the tax authorities must establish to the requisite legal standard that the taxable person has actively participated in VAT fraud, which cannot be solely assessed on the basis of the formal incorrectness of an issued invoice, but on the economic result of the transaction considered in its whole.

ECJ CASE LAW I VAT DEBT - JOINT AND SEVERAL LIABILITY OF COMPANY ADMINISTRATORS

On 27 February 2025, the Court of Justice of the European Union (CJEU) handed down a decision on the procedural rights of administrators which may be held jointly and severally liable for the VAT debts of the companies they administer.

As a reminder, many Member States including Luxembourg provide that company administrators or managers may be found jointly and severally liable in their personal capacity for the VAT debts of the companies they administer. Such liability is usually established in separate proceedings, following a final determination of the company's VAT liability.

In the case at hand, Polish law prevented a company administrator that could be held jointly and severally liable for the VAT debts of a company from participating in the tax proceedings brought against the legal person. The national court referred a preliminary question to the CJEU asking whether such limitation was contrary to Article 325(1) of the Treaty on the Functioning of the European Union, the rights of defence and the principle of proportionality.

In its judgment, the CJUE confirmed that Member States have a wide discretion in ensuring the collection of VAT. On the other hand, the CJEU recalled that the right of defence is a general principle of EU law.

In the case at hand, the joint and several liability proceedings did not enable the administration, as a third party to call into question the amount of tax debt and therefore undermined the rights of the defence of the administrator, according to the CJEU. In addition, the Polish administrator was not allowed to participate in the proceedings brought against the company.

On this latter point, the CJEU concluded that this exclusion from the company's proceedings was not precluded under EU law in so far as the administrator can, during his joint and several liability proceedings brought against him, effectively call into question the findings of fact and the legal classification made by the tax authority in the context of the proceedings against the company and has access to the tax administration file.

As a reminder, under Luxembourg law, the collection of VAT from an administrator can occur by the emission of a "*bulletin de garantie*" in accordance with Article 67-1 and following of the law of 12 February 1979 on value added tax dated which enables the Luxembourg VAT administrator to recover the company's VAT debt from the administrator in his personal capacity.

The conclusion of the CJEU seems to be compatible with the approach under Luxembourg law regarding the "*appel en garantie*" in the field of VAT which was recently confirmed by the Luxembourg Court of Appeal (**CA**). In its 2023 decision (CAL-2022-00375), the CA confirmed that an administrator cannot challenge the validity of the VAT assessments issued to a company in the context of his subsequent joint and several liability proceedings (*appel en garantie*) because he could have, as representative of the company at the time of their issuance, challenged the lawfulness of the company's VAT assessment. In other words, if the administrator had the opportunity, indirectly through the company that he represents and controls, to challenge the findings of fact and legal classification made by the VAT authority that subsequently formed the basis of the joint and several liability proceedings, his rights of defence would not be unduly restricted.

It remains that, the CA refused to refer the question to the CJUE for confirmation, and did not explore how an administrator who was not in charge of the company at the time of issuance of the VAT assessments would be entitled to challenge the findings of fact and the legal classification made by the tax authority forming the basis of the proceedings against him.

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