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MAR | SIMPLIFIED BUY-BACK REPORTING RULES AND CJEU RULING ON INSIDER LISTS AS INSIDE INFORMATION

Two recent developments under the Market Abuse Regulation (Regulation (EU) No 596/2014) ("**MAR**") deserve attention. First, on 27 February 2026, ESMA published a report (the "**Report**") proposing amendments to Commission Delegated Regulation (EU) 2016/1052 (the "**Buy-Back Delegated Regulation**") following the revision of MAR by Regulation (EU) 2024/2809 (the "**Listing Act**"). Second, on 19 March 2026, the Court of Justice of the European Union ("**CJEU**") ruled in Case C□363/24 (Finansinspektionen v Carnegie Investment Bank AB) that a notification of a person's inclusion on an insider list can constitute inside information under Article 7 of MAR.

Buy-Back regulation amendments

Article 5 of MAR provides a safe harbour for buy-back programmes and stabilisation measures conducted in accordance with prescribed conditions. The Buy-Back Delegated Regulation sets out the corresponding regulatory technical standards ("**RTS**"). The Listing Act amended the MAR buy-back framework - notably centralising NCA reporting and moving to aggregate public disclosure - necessitating updates to the Buy-Back Delegated Regulation. In the Report, ESMA proposes targeted amendments to the RTS to align them with these changes, principally by streamlining the reporting and public disclosure requirements applicable to buy-back transactions. Given the limited scope of the proposed amendments, ESMA did not carry out a public consultation.

The amended draft RTS will be submitted to the European Commission, which has three months to decide on adoption.

Can an insider list notification be inside information? The CJEU says yes

The facts: Carnegie Investment Bank AB ("**Carnegie**") held pledged shares in listed company Starbreeze AB as collateral under a loan with Varvtre AB - a company owned by Starbreeze's then CEO and main shareholder ("**BAK**"). When the Starbreeze share price fell, Carnegie began selling the pledged shares on 15 November 2018 to cover the shortfall. That afternoon, Starbreeze's head of communications emailed Carnegie with a brief but consequential message: BAK had been placed on the insider list and could not sell shares. No reason was given. Carnegie paused the sale, but soon resumed it. The Swedish Financial Supervisory Authority (Finansinspektionen) took the view that the email constituted inside information and sought a SEK 35 million fine for insider dealing under Articles 8 and 14 of MAR.

The Swedish Supreme Court referred four questions to the CJEU, which can be grouped into **two themes.**

- The first concerns **precision**: can a notification of insider list placement - without any explanation of the underlying event - be "of a precise nature" under Article 7(1) and (2) of MAR? The Court answered yes, in certain circumstances. Mere placement on an insider list is, in itself, neutral. However, when combined with a sales prohibition, the communication necessarily implies that the person has knowledge of an adverse event affecting the issuer - information capable of influencing a reasonable investor's decisions.
- The second theme concerns **accuracy**: does the information need to be correct? Again, the Court took a broad view. Information that turns out ex post to be incorrect may still qualify as inside information, provided it was credible at the time and capable of conferring an economic advantage on its holder. In this case, the email was sent just minutes before BAK was formally added to the insider list - a discrepancy the Court considered immaterial.

Three practical points stand out:

1. Insider list notifications that include trading restrictions should be treated as potentially constituting inside information - even where the underlying event is not disclosed. Firms should ensure their compliance procedures flag and assess such communications under MAR.
2. Inside information is assessed objectively and *ex ante*. The issuer's own classification is irrelevant, and information need not ultimately prove correct to be "precise" - what matters is whether it was credible at the time.
3. The Court confirmed that Article 9(3) of MAR may provide a defence where a transaction is carried out

in discharge of an obligation that became due in good faith, arising from an order placed or agreement concluded before the person possessed inside information. However, Article 9(6) preserves the possibility of an infringement finding where the competent authority establishes an illegitimate reason for the trading. Whether the defence is available will depend on the facts of each case.

TRANSPARENCY DIRECTIVE | ESMA Q&A ON APM GUIDELINES AND IFRS 18

On 16 February 2026, ESMA published Q&A 2775 under the Transparency Directive (Directive 2004/109/EC) and its Guidelines on Alternative Performance Measures (the "**APM Guidelines**").

The Q&A addresses the interaction of the APM Guidelines and IFRS 18 *Presentation and Disclosure in Financial Statements* becoming effective on 1 January 2027 while applying retrospectively (2026 financial year will already serve as the comparative period). The Q&A aims to clarify how issuers can remain compliant under both frameworks.

The APM Guidelines apply in relation alternative performance measures ("**APMs**") disclosed by issuers or persons responsible for prospectus when publishing regulated information and prospectuses or supplements. Examples of regulated information are management reports disclosed to the market in accordance with the Transparency Directive and disclosures issued under the requirements of Article 17 of the Market Abuse Regulation (Regulation (EU) No 596/2014).

Specifically, the Q&A maps out the key conceptual and practical differences between Management-defined Performance Measures ("**MPMs**") as introduced by IFRS 18 and APMs. ESMA notes that the APM Guidelines are still fit for purpose and will continue to fully apply after IFRS 18 enters into force.

The Q&A should be read together with ESMA's Public Statement from 17 February 2026 entitled "Reshaping performance: Implementation of IFRS 18 Presentation and Disclosure in Financial Statements".

LISTING ACT | ESMA PROSPECTUS IMPLEMENTATION GUIDANCE

On 18 February 2026, ESMA published a public statement providing guidance to national competent authorities ("**NCAs**"), issuers and their advisers on the implementation of certain changes to the Prospectus Regulation (EU) 2017/1129 (the "**Prospectus Regulation**" or "**PR**"), as amended by Regulation (EU) 2024/2809 (the "**Listing Act**").
The statement provides three main points.

Transitional provisions - Article 48a

Article 48a (1) of the Prospectus Regulation provides that prospectuses approved until 4 June 2026 shall continue to be governed until the end of their validity by the version of the Prospectus Regulation in force on the day of their approval. ESMA clarified that this provision should not be applied restrictively and that registration documents and universal registration documents ("**URDs**") fall within its scope notwithstanding the reference to "prospectuses" only, given that the 12-month validity period of those documents was not modified by the Listing Act. ESMA therefore expects NCAs to allow registration documents and URDs approved or filed until 4 June 2026 to be incorporated into tripartite prospectuses approved thereafter until the end of their validity, subject to ongoing supplement and amendment obligations.

Legacy secondary issuance and EU Growth prospectus regimes

Articles 48a (2) and (3) of the Prospectus Regulation provide that prospectuses approved until 4 March 2026 under the simplified disclosure regime for secondary issuances (previously Article 14 PR) and the EU Growth prospectus regime (previously Article 15 PR) continue to be governed by those articles until the end of their validity. Given that those regimes expired as of 5 March 2026 and prospectuses can no longer be approved under them, Articles 48a(2) and (3) do not apply to standalone registration documents published under those regimes. Tripartite prospectuses approved under the simplified regime for secondary issuances and EU Growth prospectuses, before 5 March 2026, however, will continue to be valid in accordance with, respectively, Articles 14 and 15 as set out in Articles 48a (2) and (3).

New short-form prospectuses - interim disclosure guidance

As of 5 March 2026, issuers may use the following two new lighter prospectus types introduced by the Listing Act featuring reduced disclosure requirements and standardised formats while ensuring investors are provided with the information necessary to make informed investment decisions:

- **EU follow-on prospectus** which is available for offers to the public or admissions to trading on a regulated market where the issuer's or offeror's securities have been admitted to trading continuously for at least 18 months on a regulated market or an SME growth market, including for transfers from an SME growth market to a regulated market. An issuer with only non-equity securities admitted to trading may not, however, use it for an equity admission to a regulated market.
- **EU growth issuance prospectus** which is available exclusively for offers to the public by persons with no securities admitted to trading on a regulated market, targeting SMEs, issuers whose securities are or are to be admitted to an SME growth market, and certain smaller unlisted issuers below defined thresholds.

Pending the entry into application of the Delegated Act amending Delegated Regulation (EU) 2019/980 as regards the reduced content and the standardised format and sequence of the EU Follow-on prospectus and the EU Growth issuance prospectus (the "Delegated Act") - adopted on 4 March 2026 but subject to a three-month scrutiny period - ESMA clarifies that Articles 14a and 15a of the Prospectus Regulation already apply, and that EU Follow-on prospectuses and EU Growth issuance prospectuses should therefore be structured in line with the respective Annexes of the Prospectus Regulation. ESMA further recommends that issuers follow the Delegated Act's detailed disclosure framework in the interim, noting that whilst not yet binding, it can assist issuers and NCAs in determining what disclosure is necessary to satisfy the requirements under the updated rules under the Prospectus Regulation.

Related matters

In a related development, the Commission also adopted on 23 February 2026 the Delegated Act amending the regulatory technical standards laid down in Delegated Regulation (EU) 2019/979, updating the list of metadata necessary for the classification of prospectuses (including the new EU Follow-on and EU Growth issuance prospectuses) and the list of information that may be incorporated by reference. This delegated act is likewise subject to the three-month scrutiny period before it enters into application.

LUXEMBOURG BRINGS ESAP INTO NATIONAL LAW I WHAT FINANCIAL SECTOR PLAYERS NEED TO KNOW

On 27 March 2026, Luxembourg took a significant step towards greater financial transparency by enacting a new law that anchors the **European Single Access Point ("ESAP")** in national legislation. The law transposes Directive (EU) 2023/2864 and implements Regulations (EU) 2023/2859, (EU) 2023/2869 and (EU) 2024/3005. ESAP is the EU's ambitious centralised platform designed to give investors, regulators and the public streamlined access to financial and sustainability-related information about companies and investment products across the single market. The new law touches a wide swathe of Luxembourg's financial regulatory framework - here is what you need to know.

We covered the draft law in our July 2025 newsletter, available here. For further background, see also our newsletters on the law transposing ESAP into Luxembourg transparency law (here) and the Luxembourg Stock Exchange's FAQ on ESAP (here).

Key takeaways at a glance:

- **Which laws are amended?**

The law casts a wide net, amending 15 existing pieces of Luxembourg legislation - from the foundational financial sector law (1993) and the insurance accounts regime (1994), through the laws on occupational pension institutions (2005), takeover bids (2006), undertakings for collective investment (2010), shareholder rights in listed companies (2011), alternative investment fund managers (2013), the insurance sector (2015), the failure of credit institutions and certain investment firms (2015), the audit profession (2016), market abuse (2016), key information documents for PRIIPs (2018), markets in financial instruments (2018) and the operationalisation of EU financial services regulations (2019), to the more recent regime on covered bonds (2021).

- **What are the key obligations?**

Whenever in-scope entities publish regulatory information under any of the amended laws, they must simultaneously transmit that information to the relevant collection body for publication on ESAP. Most of these obligations kick in on **10 January 2030**, with the notable exception of obligations relating to undertakings for collective investment (UCITS), which apply two years earlier - from **10 January 2028**.

- **Who are the designated collection bodies?**

The CSSF serves as the collection body for the majority of obligations. The CAA takes on that role for insurance and reinsurance-related disclosures, while the Resolution Board (i.e., the *conseil de résolution* established under the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms) handles resolution-related information. For market abuse and shareholder rights, the respective collection bodies are yet to be designated by Grand-Ducal Regulation with deadlines of 9 January 2028 and 9 January 2030, respectively.

- **What format and metadata are required?**

All submissions must be provided in a data-extractable format (or machine-readable where EU law requires). Each submission must also include a set of standardised metadata: the entity's name(s), Legal Entity Identifier (LEI) (where available), size category and industrial sectors of economic activities (each where applicable), the type of information submitted and whether the data contains personal data.

Looking ahead, it is worth recalling that ESAP obligations are already a reality for some market participants. The law of 3 July 2025 introduced an earlier ESAP requirement for regulated information under **Luxembourg's transparency regime**: **as from 10 July 2026**, issuers whose home Member State is Luxembourg shall be required to simultaneously transmit regulated information to the OAM (as designated collection body) for publication on ESAP. The same **10 July 2026** date also marks the start of ESAP-related disclosure obligations under Article 21a of the **Prospectus Regulation (EU) 2017/1129**. Pursuant to this provision, issuers, offerors or persons requesting admission to trading on a regulated market must, when making public prospectus-related

information within the scope of the regulation (including approved prospectuses, supplements, final terms and universal registration documents), simultaneously submit that information to the relevant competent authority acting as collection body, in order to ensure its accessibility via ESAP.

With the 2026, 2028 and 2030 deadlines now set, affected entities should begin assessing their readiness, including data formatting, LEI registration and internal reporting workflows.

LUXSE'S RULES & REGULATIONS I NEW PRE-CSD ADMISSION PATHWAY FOR EM3S SECURITIES AND DLT DEFINITIONAL ALIGNMENT

The Luxembourg Stock Exchange ("**LuxSE**") March 2026 update to its Rules & Regulations (the "R&R") introduces two key changes. First, securities listed on the Euro MTF Specialist Securities Segment ("**EM3S**") may now be admitted to listing before being recorded in a central securities depository ("**CSD**"), allowing issuers to list first and migrate to CSD infrastructure only once an on-venue trade occurs. Second, the rulebook now incorporates definitions drawn from the EU's DLT Pilot Regime (Regulation (EU) 2022/858), covering distributed ledger technology ("**DLT**"), DLT multilateral trading facilities and DLT settlement systems. These changes took effect on 2 March 2026. These two developments are examined in turn below.

LuxSE's new pre-CSD admission pathway: a flexible route to market for EM3S issuers

EM3S securities can come to market without first being recorded in a CSD or a DLT settlement system/trading and settlement system ("**DLT SS/TSS**"). This is a meaningful departure from conventional listing mechanics, where CSD registration is a prerequisite to admission.

Under this new pathway:

- securities may be held in dematerialised form in a system maintained by the issuer, in dematerialised form in a system maintained by a third party (e.g. a registrar), or in book-entry form in a CSD (the traditional option) - meaning that, at the point of admission, securities need not be within the CSD infrastructure at all;
- trading on EM3S can commence without CSD involvement from day one; and
- where a trade actually takes place on the venue, the securities must be migrated into a CSD before the intended settlement date.

This sequencing - admit first, register later - ensures that settlement integrity is preserved once a transaction occurs, without forcing instruments into conventional post-trade infrastructure from inception.

Issuers and their advisers should be aware that updated EM3S application forms and letters of undertaking now need to be used to reflect this new option, with the final submission required at least three business days before the targeted listing date. Once an on-venue trade is executed, LuxSE will notify the issuer, who must promptly set the CSD recording process in motion, meet the associated costs, and confirm completion to LuxSE together with revised issuance documentation and a published notice. Non-compliance will be treated as a breach of the R&R and will result in the cancellation of the relevant trade and the delisting of the securities concerned.

T+2 settlement carve-out and new DLT Pilot Regime definitions in the LuxSE Rules & Regulations

The R&R revision also tidies up the settlement mechanics: the standard T+2 settlement window is now expressly disapplied for the first trade in EM3S securities that takes place before those securities have been recorded in a CSD or DLT SS/TSS, reflecting the practical reality of the new admission process.

On the definitional side, LuxSE has taken the opportunity to incorporate the vocabulary of the EU's DLT Pilot Regime into the R&R, with new entries covering distributed ledger technology itself, DLT multilateral trading facilities and DLT settlement systems. Whilst these definitions do not in themselves create new obligations, they lay the groundwork for the R&R to evolve in step with the wider regulatory landscape around tokenised securities.

This version of the R&R supersedes the version dated March 2025. Together, the pre-CSD admission pathway and the incorporation of DLT Pilot Regime definitions reflect LuxSE's continued adaptation of its listing framework to meet the changing expectations of market participants who require more flexible, technology-neutral pathways to listing and settlement, whilst safeguarding the integrity of its trading and settlement infrastructure.

The updated R&R are available on the LuxSE website.

EU INC. | THE 28TH REGIME: A NEW EUROPEAN CORPORATE FORM FOR START-UPS AND SCALE-UPS

The EU Inc. is here: a digital-first, pan-European company form under the proposed 28th Regime, designed to cut cross-border red tape for innovative firms.

Following the closing of the public consultation conducted in 2025, on 18 March 2026 the European Commission (the **Commission**) presented its proposal for a Regulation of the European Parliament and of the Council establishing a 28th Regime corporate legal framework, providing for the creation of a new corporate form, the "EU Inc." (the **Proposal**). The Proposal was adopted within a relatively short timeframe following the review of stakeholder feedback, notwithstanding that the initial timeline had envisaged its presentation later in 2026.

The Proposal introduces an optional, self-standing European corporate form, designed in particular for start-ups and scale-ups, while remaining open to broader use. At the same time, the EU Inc. is structured on the basis of existing EU company law principles, while departing from them in certain respects in order to modernise its functioning and enhance its attractiveness to investors.

A defining feature of the EU Inc. lies in its digital-by-default architecture, reflecting the broader objective of embedding company law within the Union's evolving digital ecosystem. In this respect, the effectiveness of the regime is closely linked to a number of digital infrastructures and regulatory initiatives that are still under development or pending adoption at Union level. As a result, the framework may, at this stage, appear only partially operational, pending the full deployment of the supporting digital environment.

Background to the EU Inc. initiative

As already highlighted in a previous contribution on this topic, the report on the future of the Single Market prepared by Enrico Letta (2024) and the report on European competitiveness prepared by Mario Draghi (2024) both call for a reform of internal market rules aimed at creating a more favourable environment for innovative firms. These recommendations were subsequently reflected and developed in the Commission's communication "A Competitiveness Compass for the EU" which sets out a broad and ambitious reform agenda (the **Competitiveness Communication**).

A central premise underlying both the Competitiveness Communication and the aforementioned reports is the recognition that the United States remains the primary destination for start-ups seeking to scale globally, as well as the leading global hub for venture capital and rapid expansion, particularly in AI-driven sectors. By contrast, while the European Union possesses significant structural strengths, including a favourable environment for building sustainable, high-quality companies, relatively lower initial talent costs and strong public support for research and development, it continues to face structural and legal fragmentation.

In particular, the persistence of divergent national frameworks across the 27 Member States, affecting *inter alia* the exercise of the freedom of establishment and the functioning of limited liability companies, continues to segment the internal market along national lines. This fragmentation, in turn, weakens the Union's overall competitiveness and its capacity to attract and retain high-growth, innovation-driven companies.

Harmonisation, legal basis and the EU digitalisation framework

Against this backdrop, and building on a long-standing process of harmonisation in EU company law, initiated, *inter alia*, by the First Company Law Directive (68/151/EEC) of 9 March 1968, which introduced coordinated safeguards for members and third parties in relation to limited liability companies, the Commission proposed the introduction of a new legal structure, the EU Inc. The legal basis for the Proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is the principal instrument of harmonisation provided under the EU Treaties.

Unlike earlier interventions based on the approximation of national company law regimes, the Proposal does not seek to further harmonise existing company forms within Member States. Rather, it introduces an optional, autonomous European corporate form, intended to operate alongside national regimes. In doing so, the Commission relies on Article 114 TFEU

as a legal basis not only for approximation through directives, but also for the establishment of a uniform framework designed to improve the conditions for the establishment and functioning of the internal market.

In this respect, the Proposal follows, to a certain extent, the approach adopted for the "Societas Europaea" (SE) which has been transposed into the Luxembourg law of 10 August 1915 on commercial companies, as amended (the **1915 Law**). While harmonisation of national company laws has historically been achieved primarily through directives, notably Directive (EU) 2017/1132 relating to certain aspects of company law and codifying previous harmonisation efforts in the field of company law (the **Codification Directive**), the creation of a supranational corporate form requires a legal instrument capable of ensuring uniform application across Member States. A regulation, by virtue of its direct applicability, is therefore particularly suited to establishing a company form intended to function seamlessly within the Union's legal and economic environment.

Consistently with the objectives set out in the Competitiveness Communication, the Proposal is closely embedded in the broader digitalisation of company law and administrative processes at Union level. In particular, the effectiveness of the EU Inc. relies on its integration within existing and emerging digital infrastructures. To this end, the Proposal is closely linked to several key EU instruments, including:

- The Codification Directive, and in particular the provisions relating to the Business Registers Interconnection System (BRIS), an initiative linking business registers across EU and European Economic Area (EEA) countries and providing a single point of access via the European e-Justice Portal to search for information on companies and their foreign branches;
- Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast);
- Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (the "eIDAS Regulation"); and
- Regulation (EU) 2024/1183 of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework (the **EUDIW Regulation**).

The link between the Proposal and the EUDIW Regulation is of particular importance. The latter requires Member States to provide secure and interoperable digital identity wallets by 2026, enabling individuals to manage identity and credentials in a trusted environment. It also introduces the European Digital Identity Wallet (EUDIW), a secure application allowing users to store, share and electronically sign documents across the Union, for both public and private services, while maintaining control over their personal data.

In addition, the Proposal refers to further elements of the Union's digital architecture that are still under development, notably the proposed Regulation on European Business Wallets. This initiative, presented in November 2025, aims to extend the digital identity framework to legal entities, including companies, SMEs and public administrations, thereby facilitating their operation across the internal market.

The way forward : implementation challenges and outlook

As outlined above, the Proposal is driven by a clear objective: to simplify and digitalise the European corporate environment, in particular for start-ups and scale-ups, by reducing administrative, financial and regulatory burdens that hinder cross-border growth. The anticipated benefits are significant, both in terms of cost savings for companies and increased efficiency of corporate operations across the internal market. More fundamentally, the 28th Regime introduces a genuinely transnational corporate framework, aimed at reducing fragmentation and regulatory competition, and strengthening the global competitiveness of European businesses. At the same time, the Proposal reflects a shift in regulatory logic, transferring part of the administrative burden from companies to public authorities through the implementation of digital infrastructures and the once-only principle.

However, the effectiveness of the EU Inc. framework will ultimately depend on its consistent and timely implementation across Member States. In particular, the proper functioning of the system presupposes the full deployment of the supporting digital infrastructure and effective cooperation between national authorities. Delays and divergences in implementation or administrative readiness may affect the uniform application of the regime and, consequently, its attractiveness in practice. In this context, while the

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Proposal represents an ambitious and potentially transformative step towards a more integrated single market for innovative enterprises, its success will depend not only on its legal design, but also on its practical operability within the Union's institutional and administrative framework.
For more information see the key considerations of EU Inc.

EU INC. I KEY PROVISIONS OF THE 28TH REGIME CORPORATE FORM

No minimum capital, digital share registers, and a harmonised stock option regime: the EU Inc. rewrites the rulebook for European companies.

The proposal for a Regulation establishing a 28th Regime corporate legal framework, providing for the creation of a new corporate form, the "EU Inc." (the "**Proposal"**) envisages to structure the future regulation into eleven chapters (the "**Proposed Regulation"**), setting out the rules applicable to the EU Inc. throughout its life cycle, from formation to winding-up.

The EU Inc. is conceived broadly along the lines of a public limited liability company, drawing on the principles of EU company law as harmonised, in particular, by Directive (EU) 2017/1132 relating to certain aspects of company law and codifying previous harmonisation efforts in the field of company law (the "**Codification Directive"**), and therefore closely resembles Luxembourg's *société anonyme* (SA), albeit with a number of significant differences. In particular, as with traditional capital companies, shareholders benefit from limited liability and are not personally liable for the obligations of the company.

Applicable Rules

The EU Inc. shall be governed primarily by the provisions of the Proposed Regulation, as supplemented by its articles of association (Article 4). To the extent that a matter is not regulated by either the Proposed Regulation or the articles of association, it shall be governed by the national law of the Member State in which the company has its registered office.

Registration and acquisition of legal personality

The EU Inc. acquires legal personality upon its registration (Article 5), whether it is formed *ex nihilo* or results from a restructuring operation carried out in accordance with Directive (EU) 2019/2121 on cross-border conversions, mergers and divisions (the "**Mobility Directive**"), which was transposed into the Luxembourg law of 10 August 1915 on commercial companies, as amended (the "**1915 Law"**) (already considered in previous contributions).

This constitutes a notable difference when compared to Luxembourg company law. Under the 1915 Law, a company is generally considered to come into existence upon the execution of the incorporation deed before a notary (or, in the context of a reorganisation, upon the execution of the notarial deed recording the transaction), registration and publication formalities being required for its enforceability vis-à-vis third parties.

Upon registration, an EU Inc. is assigned a European Unique Identifier (EUID) and is recognised across all Member States without the need for additional registration formalities (Article 3). The corporate denomination must include the designation "EU Inc." and be sufficiently distinct from existing company names accessible through the Business Registers Interconnection System ("BRIS") (Article 6).

Seat of the EU Inc.

An EU Inc. must have both its registered office and its central administration (or principal place of business) within the European Union (Article 9). This represents a departure from the traditional approach under Luxembourg company law, which is generally based on the coincidence between the registered office and the central administration (the so-called "real seat" principle). Under the EU Inc. framework, the place of incorporation may differ from the location of the company's central administration or principal place of business, provided that both are situated within the Union. This flexibility reflects a broader shift towards incorporation-based models within the internal market, facilitating corporate mobility while maintaining a minimum territorial link with the Union, aligned with long-standing case-law of the Court of Justice of the European Union, such as the *Centros*, *Überseering* and *Polbud* cases.

Digital-by-default architecture

The incorporation of an EU Inc. is, in principle, to be carried out fully online, with any requirement for physical presence limited to exceptional, case-by-case situations justified by public-interest reasons (such as the prevention of identity fraud or the verification of legal capacity). To this end, the Proposal provides for the establishment of a central EU interface, operated by the Commission and built on the BRIS, enabling the formation of EU Inc. entities and the submission of

related filings (Article 15).
As in Luxembourg practice, the articles of association may be drafted both in the language of the Member State of incorporation (i.e. French and German) and in a language commonly used in international business, which in practice is likely to be English. The Commission is expected to provide standardised EU templates for articles of association, available in all official Union languages (Article 7). The digital framework further includes functionalities such as real-time tracking of the registration process and online proof of payment.
Where founders make use of the harmonised application form together with the EU template articles of association through the central EU interface, Member States are required to complete preventive control and registration within a maximum of 48 hours and at a capped cost of EUR 100. Where such templates are not used, registration must be completed within five working days. Incorporation may also be carried out fully online directly through national business registers (which remain "connected" to the BRIS), subject to comparable timelines.
The cross-border nature of the EU Inc. is further reflected in the rule according to which a person disqualified from acting as a director in one Member State may not be appointed as a director of an EU Inc. in another Member State.

Once-Only Principle and data sharing

One of the key innovations of the Proposal lies in the streamlining of administrative procedures through the implementation of a "once-only" principle. Under this approach, the burden of collecting and sharing company information is shifted from companies to public authorities, in particular through the EU central interface and the interconnection of national registers (Article 13).
Upon registration, the business register is required to digitally transmit verified company data, including the EUID and information contained in the application, to the relevant authorities, such as those responsible for tax identification numbers, VAT registration, social security and beneficial ownership registers. This mechanism is designed to eliminate the need for companies to resubmit the same information to multiple authorities.
More broadly, in administrative and judicial procedures, authorities should not require EU Inc. entities to provide information that is already available through BRIS or national business registers. This principle applies subject to limited exceptions, in particular where justified on grounds of public policy or public security. Such a shift appears to reflect a broader transformation of administrative law within the Union, whereby interoperability between public authorities replaces repetitive compliance obligations imposed on economic operators.

Governance

The governance framework of entities established in the form of EU Inc. is largely based on national company law principles, as harmonised through EU company law directives and consolidated in the Codification Directive (Article 42). As such, it does not significantly depart from the governance structures applicable to public limited liability companies, such as the Luxembourg *société anonyme*.
Accordingly, the company is managed by a board of directors composed of one or more natural persons, appointed by the general meeting of shareholders, with at least one director resident within the Union. The general meeting retains the power to appoint and dismiss directors and may issue binding instructions to the board. Directors are subject to duties to act in good faith, in the best interests of the company and with reasonable care, and may incur liability in case of breach thereof, while benefiting from the protection of the business judgment rule for decisions taken in good faith.
Shareholder and board meetings may be held fully online or in hybrid form and Member States may not impose restrictions on the use of electronic meetings or electronic voting. Minority shareholders are granted protection mechanisms, including the possibility to apply to a court for withdrawal (i.e. a court-ordered buyout) in cases of conduct considered oppressive.

Shares and the Digital Share Register

The Proposal introduces significant innovations with respect to shares and share registers, by endorsing a fully digitalised model. Shares are dematerialised and recorded in a digital share register, which has constitutive effect for the ownership of shares and the exercise of shareholder rights. The register must be accessible to shareholders and to third parties demonstrating a legitimate interest, in compliance with the General Data Protection Regulation.
As in traditional capital companies under the 1915

Law, the articles of association may provide for multiple classes of shares, including shares with multiple voting rights or non-voting shares, carrying different rights and obligations. Shares are, by default, freely transferable and share transfers may be effected fully online, including through electronic signatures in accordance with Regulation (EU) 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (the "**eIDAS Regulation**"), and Member States may not impose additional formal requirements such as notarial deeds. The transfer takes effect upon its recording in the digital share register.

From a Luxembourg law perspective, this represents a noteworthy development. In the absence of specific national legislation formally recognising digital share registers, the Proposed Regulation would constitute the first binding legal instrument expressly providing for their use, thereby potentially accelerating the digitalisation of shareholding records in Luxembourg practice.

Capital and financing regime

The Proposal introduces significant changes to the traditional capital regime. In particular, shares are, by default, issued without nominal value, and EU Inc. entities are not subject to a minimum capital requirement, subject instead to alternative creditor protection mechanisms. This reflects a clear departure from the traditional conception of share capital as the primary guarantee for creditors, in favour of a more functional approach based on the company's net assets and solvency, as increasingly reflected in market practice.

Distributions are permitted only where the directors certify compliance with both a balance sheet test and a forward-looking solvency test covering a period of 12 months. Directors may incur joint and several liability in the event of unlawful distributions, and shareholders may be required to return improperly distributed amounts in certain circumstances. The same dual-test framework applies to other capital operations, including reductions of capital, redemptions and share buy-backs.

In this respect, the EU Inc. framework goes beyond traditional capital maintenance rules, such as those applicable to *sociétés anonymes* under Article 461-2 of the 1915 Law, by complementing the balance sheet test with an explicit solvency assessment for which the board assumes responsibility. This shift aligns the EU Inc. with a broader evolution in company law, whereby creditor protection is increasingly ensured through solvency-based mechanisms and director responsibility, rather than through rigid capital maintenance rules.

Finally, the Proposal facilitates access to modern financing instruments commonly used in early-stage investment, such as Simple Agreements for Future Equity (SAFE) and Keep It Simple Securities (KISS) and also enables fully digital capital increases, share issuances and transfers, without the need for intermediaries.

Employee stock options (EU-ESO)

EU Inc. entities may implement an EU employee stock option plan ("**EU-ESO**"), under which warrants may be granted to eligible employees and members of the board of directors, including those of subsidiaries (Article 78). The regime provides for a mandatory vesting period of at least 24 months, as well as certain eligibility restrictions, notably the exclusion of individuals holding more than 25% of the company's capital.

From a tax perspective, income derived from EU-ESO warrants is subject to taxation only upon the disposal of the shares acquired following their exercise, and not at the time of grant, vesting or exercise. Member States are required to ensure that EU-ESO schemes are not treated less favourably than comparable national employee share option regimes.

Closure and insolvency

The Proposal provides for a solvent liquidation procedure designed on a digital-by-default basis (Article 82). This includes online filing with the business register, real-time status updates, once-only exchanges of liquidation data with relevant authorities, and the possibility for creditors to submit claims entirely online.

In addition, a simplified fast-track liquidation procedure is available for companies meeting certain conditions, typically where the company has ceased activity and has no assets or liabilities, or where any remaining liabilities have been settled or approved by creditors, and no proceedings are pending (Article 83). This procedure is intended to be completed within approximately three months. It includes, *inter alia*, a 30-day period for creditor opposition and a 30-day (extendable) period for tax authority clearance.

Following the completion of the liquidation, company records must be retained for a period of six years. Board members may remain personally liable, and where applicable jointly and severally liable, for certain outstanding or unsatisfied claims.

Simplified winding-up for innovative startups

The Proposal introduces a simplified winding-up procedure for EU Inc. entities qualifying as "innovative startups," aimed at enabling swift and cost-effective closure through predominantly digital processes. The procedure may incorporate elements akin to a debtor-in-possession approach, allowing for a streamlined management of the winding-up process (Article 88).

The application may be filed either by the debtor or by a creditor, using a standardised form and without the need for mandatory legal representation. Member States are required to establish electronic auction platforms for the realisation of assets, while the Commission is tasked with ensuring the interconnection of national auction systems through the European e-Justice portal.

Employee Participation and Labour Law Safeguards

Employee participation rules applicable to EU Inc. entities are, in principle, those of the Member State in which the company has its registered office, where the company is formed *ex nihilo* or through purely domestic operations. In the context of cross-border conversions, mergers or divisions, employee participation rights are protected in accordance with the procedures laid down in EU company law, in particular those reflected in the Codification Directive.

More broadly, the Proposed Regulation does not affect the application of Union or national employment law. Likewise, obligations relating to anti-money laundering and counter-terrorist financing (AML/CFT), as well as Member State anti-fraud controls and enforcement mechanisms, remain fully applicable.

Non-discrimination and prohibited requirements

In view of ensuring the full enhancement of the EU Inc. and boost its potentials, the Proposal includes a non-discrimination principle and a list of prohibited requirements to prevent Member States from treating entities established in the form of EU Inc. less favourably without objective justification, including restrictions tied to the location of the registered office, such as conditions on eligibility for public support, authorisation requirements, forced local representative or physical presence requirements, or denial of access to a payment account in another Member State. Thus, these provisions reflect the logic of the internal market freedoms, ensuring that the EU Inc. can operate across Member States without being subject to disguised restrictions or regulatory fragmentation.

Timeline

Once adopted, the Proposed Regulation shall apply 12 months after its entry into force, which occurs 20 days following its publication in the Official Journal of the European Union. An indicative timeline provides for the adoption of the Proposed Regulation in 2026 or 2027, followed by the adoption of implementing measures in 2027, and a date of application in 2028.

GDPR RIGHT OF ACCESS I USE IT, DON'T A-BUSE IT CJEU JUDGMENT, 19 MARCH 2026, C-526/24, BRILLEN ROTTLER GMBH & CO. KG V TC

On 19 March 2026, the Court of Justice of the European Union delivered a landmark judgment reshaping the boundaries of the GDPR right of access. In a decision of practical importance, the Court clarifies when access requests may be abusive, when compensation arises and what qualifies as non-material damage.

Background: a request for access refused by an optician

The case involved Brillen Rottler GmbH & Co. KG, a family-run optician's firm, and TC, an individual, concerning the firm's refusal to comply with TC's request for access to his personal data under Article 15 of the GDPR. The question put to the Court was threefold: can an initial request for access be classified as "excessive"? Does a breach of the right of access give rise to a right to compensation? What constitutes "non-material damage" within the meaning of the GDPR? Against this backdrop, the Court addressed three distinct questions, each of which carries significant practical consequences.

An initial request for access may be "excessive" in the event of an abuse of rights

This is the most significant finding of the judgment.

Until now, the excessive nature of a request within the meaning of Article 12(5) of the GDPR — which allows the controller to refuse to comply with requests that are "manifestly unfounded or excessive, in particular because of their repetitive nature" — was generally associated with a multiplicity of requests. The Court goes a step further.

An initial request for access to personal data may be considered "excessive" where the controller demonstrates, in the light of all the relevant circumstances of the case, that, despite formal compliance with the conditions laid down in those provisions, that request was made not to ascertain the processing of such data and verify its lawfulness, but with an abusive intent, such as the artificial creation of the conditions required to obtain an advantage resulting from that same Regulation.

The fact that, according to publicly available information, the data subject has submitted several requests for access to their personal data, followed by claims for compensation, to various data controllers, may be taken into account in order to establish the existence of such abusive intent.

In practice, this means that where an access request is deployed as a tactical device rather than exercised in good faith, data controllers may now legitimately resist it, provided they can establish the requisite evidence. This significantly strengthens the position of data controllers faced with strategic or opportunistic requests.

A breach of the right of access gives rise to a right to compensation

It follows from the wording of Article 82(1) of the GDPR that a person who has suffered material or non-material damage "as a result of an infringement of [this] Regulation" is entitled to receive compensation from the controller for the damage suffered. That provision contains no reference to "processing", so that the right to compensation cannot be confined to damage resulting from the processing of personal data. Even in the event of a breach of the GDPR which does not, as such, involve any processing of data, the data subject may rely on the right to compensation provided for in Article 82 of that Regulation.

Article 82(1) of the GDPR must be interpreted as conferring on the data subject a right to compensation for damage resulting from a breach of the right of access provided for in Article 15(1) of that Regulation.

The practical consequence is clear: failing to respond to or unduly rejecting a request for access exposes the data controller to a claim for damages, irrespective of any unlawful processing operation.

Non-material damage: real, proven, and not caused by abuse

The Court provides important clarifications on the conditions for compensation for non-material damage.

The existence of "damage" that has been "suffered" constitutes one of the conditions for the right to compensation, as does the existence of a breach of

the GDPR and a causal link between that damage and that breach, these three conditions being cumulative.

A person seeking compensation for non-material damage on the basis of that provision is required to establish not only the infringement of provisions of the GDPR, but also that that infringement has caused them such damage or harm. Such damage cannot therefore be merely presumed on the basis of the occurrence of the said infringement.

A mere allegation by the data subject of a fear arising from a loss of control over their personal data cannot, in itself, give rise to an entitlement to compensation.

However, the non-material damage suffered by the data subject encompasses the loss of control over their personal data or their uncertainty as to whether their data has been processed, provided that it is demonstrated, in particular, that the data subject has actually suffered such damage and that their own conduct was not the decisive cause thereof.

The data subject shall not be awarded compensation where the loss of control or uncertainty was caused by their own decision to submit data to the controller with a view to artificially creating the conditions required for the application of that provision.

Taken together, these findings confirm that **compensation is neither automatic nor presumed.** The claimant must demonstrate actual harm, distinct from the mere infringement, and must not themselves have been the cause of it. **In short: no damage, no damages.**

Practical implications for organisations

This judgment has immediate consequences for the way in which organisations, acting as data controllers, manage incoming access requests. It calls on data controllers to:

- document and analyse each access request in its context, including considering the applicant's past conduct;
- keep clear records to evidence, where necessary, the abusive nature of a request (notably by reference to publicly available sources);
- resist, where appropriate, requests made with a view to litigation or the pursuit of compensation claims;
- establish robust internal processes to handle legitimate requests.

This decision is a timely reminder that the right of access, whilst fundamental, is not without limits. For organisations, it paves the way for a stronger defence, provided it is properly substantiated and documented.

Our Data Protection team remains available to assist you in reviewing your practices and navigating these developments.

EU DIRECTIVE 2026/799 ON HARMONISATION OF INSOLVENCY LAW

On 30 March 2026, the European Parliament and the Council officially adopted Directive (EU) 2026/799 harmonising certain aspects of insolvency law (the "**Directive"**).

This article provides an overview of the Directive's key reforms, including harmonised avoidance actions, asset tracing mechanisms, pre-pack insolvency proceedings, directors' duties and civil liability, creditors' committees and standardised information factsheets. It also considers the Directive's implications for Luxembourg's insolvency framework and its role in advancing the CMU agenda.

The Directive forms part of the broader Capital Markets Union ("**CMU**") agenda and aims to address obstacles to the internal market arising from divergent national insolvency regimes. In particular, it seeks to promote cross-border investment, enhance the efficiency and predictability of insolvency proceedings and, ultimately, strengthen the functioning of the internal market for capital, as well as the freedom of establishment.

Policy purposes and scope

The Directive builds on the existing EU insolvency framework, in particular Regulation (EU) 2015/848 and Directive (EU) 2019/1023, the latter having been transposed into Luxembourg by the Luxembourg law of 7 August 2023 on the preservation of businesses and the modernisation of bankruptcy law.

Rather than harmonising insolvency proceedings in their entirety, the Directive introduces minimum substantive standards in carefully selected areas where divergences between national regimes are most likely to affect cross-border investment and creditor confidence. In line with a minimum harmonisation approach (Article 4), it aims to reduce fragmentation while preserving Member States' ability to maintain or adopt more stringent rules where appropriate.

The Directive does not apply to certain categories of debtors, including:

- insurance and reinsurance undertakings,
- credit institutions and investment firms,
- collective investment undertakings and financial market infrastructures (such as central counterparties and central securities depositories),
- certain financial holding and parent entities,
- public bodies under national law, and
- natural persons acting outside a business or professional capacity.

Finally, the Directive expressly provides that it is without prejudice to individual and collective workers' rights under Union and national law in the context of insolvency proceedings.

Main innovations of the Directive

Avoidance actions

Avoidance actions (also known as "claw-back" or "preference" actions) allow insolvency practitioners or liquidators to challenge and reverse certain legal transactions concluded prior to the opening of insolvency proceedings that unfairly deplete the insolvency estate and prejudice the general body of creditors. Luxembourg law already provides for comparable mechanisms, in particular through the *action paulienne* (Article 1167 of the Civil Code).

Under the Insolvency Directive, avoidance rules apply to all "legal acts" of the debtor that are detrimental to creditors, carried out prior to the opening of insolvency proceedings and falling within defined avoidance grounds. This notion is interpreted broadly and covers any deliberate conduct producing legal effects detrimental to creditors, including omissions, irrespective of whether the debtor intended to cause such detriment.

Legal acts that may be declared void or unenforceable include (Articles 7–9):

- "preferential transactions", benefiting one or more creditors over others, concluded within three months prior to the opening (or request for opening) of insolvency proceedings;
- transactions at undervalue -that is, transactions entered into for no consideration or for manifestly inadequate consideration within twelve months prior to that date; and
- intentionally detrimental transactions, where the counterparty knew or should have known of the debtor's intent to prejudice creditors, within two years prior to that date.

Member States remain free to maintain or introduce stricter avoidance regimes.

Where a legal act is successfully challenged, it becomes unenforceable against the insolvency estate, and the beneficiary must return the advantages received (Article 10) (any claim previously satisfied through the avoided transaction being reinstated). A defence based on the absence of enrichment is available only where the beneficiary was not aware of the circumstances giving rise to the avoidance action.

Finally, the Insolvency Directive provides that the limitation period for bringing avoidance-related claims shall not exceed three years from the opening of insolvency proceedings.

Tracing of assets

Asset tracing mechanisms play a key role in insolvency proceedings by enabling the rapid identification and recovery of debtor assets, preventing their concealment and ultimately increasing recoveries for creditors. This is particularly relevant in cross-border contexts, where asset structures may be complex or opaque, creating a significant risk of value dissipation.

In this context, the Insolvency Directive grants insolvency practitioners access to a range of national information registers, including:

- bank account registers (Articles 14–17),
- beneficial ownership registers (Article 18), and
- other national registries (Articles 19–20).

With respect to bank account registers, access is generally exercised through competent national courts or administrative authorities, which must be empowered to obtain and transmit relevant information at the request of insolvency practitioners. Such access is intended to facilitate the identification of assets forming part of the insolvency estate, including those that may be subject to avoidance actions.

Pre-pack insolvency proceedings

Pre-pack procedures allow for the sale of a debtor's business to be prepared prior to the opening of insolvency proceedings, with execution taking place immediately thereafter. Their objective is to preserve the going-concern value of the business, ensure continuity of operations (including employment and contractual relationships), and avoid the loss of value typically associated with piecemeal liquidation.

Under the Directive, pre-pack procedures are structured in two distinct phases. First, the preparation phase (Articles 23-27) aims to identify a suitable buyer for the debtor's business, or part thereof. This phase is initiated at the request of the debtor and involves the appointment of an independent monitor. The monitor is tasked with supervising the valuation of the assets and the sale process and must be independent from the debtor and any related parties (as defined in Article 3 of the Directive), thereby mitigating risks of manipulation and insider transactions.

The sale process must comply with requirements of transparency, competitiveness and fairness, and reflect market conditions. During this phase, the debtor generally remains in full or partial control of its assets and day-to-day operations. However, the preparation phase may be terminated where the debtor fails to act with due diligence or where the prospects of a successful transaction are deemed insufficient.

Second, the liquidation phase (Articles 28-32) is triggered upon the formal opening of insolvency proceedings under national law. Its purpose is to execute the sale of the business and distribute the proceeds to creditors. The court or competent authority authorises the sale to the selected acquirer, which may be:

- a purchaser identified through the monitored sale process,
- a buyer selected through a competitive procedure (including public auction), or
- a purchaser approved by creditors.

Acquisitions by parties closely related to the debtor are permitted, provided that enhanced transparency requirements are met and that a proper going-concern valuation is carried out.

Duties of directors and civil liability

As is already the case in several Member States, directors of a company that has become insolvent must, in accordance with national law, submit a request for the opening of insolvency proceedings to the competent court or authority within three months from the moment they became aware, or could reasonably be expected to have become aware, of the company's insolvency (Article 40).

Alternatively, directors may comply with this obligation by making a public notification of the company's insolvency in a designated register within the same

time limit. The duty to file may also be suspended where directors adopt measures aimed at avoiding harm to creditors, provided that such measures ensure a level of protection for the general body of creditors equivalent to that afforded by the duty to file (Article 41).

Directors who fail to comply with these obligations may incur civil liability under national law. In particular, they may be held liable for damages caused to creditors as a result of a delayed filing, including where protective measures were taken in lieu of filing, if such damages would not have arisen had insolvency proceedings been initiated in a timely manner; unless they can prove otherwise (Article 42).

Creditors' committees

The Directive requires Member States to establish a framework for creditors' committees, particularly in large or cross-border proceedings (Article 44). These committees are intended to oversee the activities of insolvency practitioners, approve significant transactions and represent the collective interests of creditors. National law must also provide for key aspects of their functioning, including voting procedures, eligibility criteria, conflict of interest rules and confidentiality obligations.

Key information factsheet

Finally, the Directive requires Member States to publish a standardised factsheet providing an overview of key elements of their insolvency regimes, including available procedures, ranking of claims, expected duration and costs, avoidance rules and directors' duties. This measure is intended to improve transparency and comparability across jurisdictions, thereby enhancing the attractiveness of Member States as destinations for cross-border investment.

Transposition timeline and outlook

As the Directive was published in the Official Journal of the European Union on 1 April 2026, its entry into force will be 21 April 2026, i.e. 20 days thereafter, in accordance with the rules of the Treaties. Member States shall transpose it by 22 January 2029.

The Directive represents a significant step forward in the "Europeanisation" of insolvency law. Consistent with a prudent approach, the Commission's strategy has been not to replace national systems, but to introduce minimum common standards in carefully selected areas where fragmentation most strongly affects cross-border investment, while leaving Member States free to enhance creditor protection. Taken together, the reforms are expected to strengthen creditor protection, improve asset recovery, reduce forum shopping, and support the development of the CMU.

Given Luxembourg's already well-developed insolvency framework, the impact of the Directive is likely to be evolutionary rather than revolutionary. Nevertheless, its strategic importance should not be underestimated: the reforms will further enhance the jurisdiction's predictability, transparency and attractiveness for international investors.

POST-BREXIT EUIPO OPPOSITION PROCEEDINGS I COURT OF JUSTICE CLARIFIES WHEN EARLIER UNREGISTERED TRADEMARK RIGHTS MUST EXIST TO BLOCK AN EU TRADEMARK

Earlier rights must remain legally effective throughout EUIPO opposition proceedings to block an EU trademark. On 5 February 2026, the Court of Justice of the European Union (the **"Court"**) delivered its judgment in Case C-337/22 P, *EUIPO v Nowhere Co. Ltd (Ape Tees)*. By its appeal, the European Union Intellectual Property Office ("EUIPO") sought to have set aside the judgment of the General Court of 16 March 2022 (*Nowhere v EUIPO – Ye (Ape Tees)*, T-281/21), which had annulled the decision of the Second Board of Appeal of EUIPO of 10 February 2021 in opposition proceedings between *Nowhere Co. Ltd and Mr Junguo Ye*.

The case raises an important question of European Union (EU) trademark law, namely the point in time at which the existence of an earlier unregistered trademark must be assessed for the purposes of opposition proceedings. As such, the judgment is likely to have significant implications for the handling of future disputes of a similar nature. Set against the backdrop of Brexit, and in particular the expiry of the transition period, the ruling also provides valuable insight into the practical consequences of the United Kingdom's withdrawal from the Union for the protection and enforceability of intellectual property rights within the EU.

Background to the dispute: unregistered UK trademarks and the passing off action

The dispute underlying Case C-337/22 P arose from opposition proceedings before the European Union Intellectual Property Office concerning an application for registration of the EU trademark "Ape Tees". The opposition was based on earlier rights consisting of unregistered trademarks protected under United Kingdom law, in particular through the common law action of passing off, within the meaning of Article 8(4) of Regulation (EC) No 207/2009 of 26 February 2009 on the Community trademark, now replaced by Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trademark.

The application for registration was filed on 30 June 2015 by Mr Junguo Ye. On 8 March 2016, Nowhere Co. Ltd, a Japanese streetwear company, filed a notice of opposition, alleging that the sign applied for reproduced elements of its brand identity. While the opposition proceedings were ongoing, the United Kingdom withdrew from the European Union, with the transition period ending on 31 December 2020. As a result, the earlier rights relied upon, being protected exclusively under English law, ceased to produce legal effects within the EU legal order.

By decision of 10 February 2021, the Second Board of Appeal of EUIPO dismissed the opposition, holding that, following the expiry of the transition period, rights existing solely in the United Kingdom could no longer constitute a valid basis for opposition under Article 8(4) of Regulation No 207/2009.

The issues at stake: temporal assessment of earlier rights after Brexit

The case before the Court raised a fundamental question concerning the temporal scope of earlier rights in EU trademark opposition proceedings. More specifically, it required the Court to determine the point in time at which the existence of an earlier right must be assessed, in a context shaped by the completion of the United Kingdom's withdrawal from the European Union. The central issue was whether it is sufficient that an earlier (unregistered) trademark right exists at the date of filing of the contested EU trademark application, or whether such a right must continue to exist and produce legal effects at the time when EUIPO adopts its decision, including at the stage of appeal.

This question is not entirely novel. The EU judicature has previously addressed aspects of the temporal assessment of earlier rights, notably in cases such as *Grupo Textil Brownie v EUIPO* (T-598/18) and *EUIPO v Indo European Foods Ltd* (C-801/21 P). However, the present case required the Court to clarify this issue in a context where the disappearance of the earlier rights was not due to their intrinsic characteristics, but to a structural change in the territorial scope of EU law.

The implications of this question extend beyond the

specific circumstances of the case. While the dispute concerned unregistered rights protected under national law, the reasoning adopted by the Court is equally relevant to registered trademarks, which may also cease to produce legal effects during proceedings, for example due to revocation, non-use or invalidity. The case therefore raises broader considerations as to the dynamic nature of intellectual property rights and their interaction with procedural frameworks.

At the same time, the legal framework governing opposition proceedings, in particular Article 8(4) of Regulation No 207/2009, is grounded in the objective of preventing the registration of signs that conflict with earlier rights protected within the European Union. From this perspective, allowing reliance on rights that no longer produce legal effects within the Union would risk undermining the coherence and effectiveness of the EU trademark system.

Against this background, Brexit played a decisive role in crystallising the issue. The withdrawal of the United Kingdom and the expiry of the transition period resulted in the cessation of the application of EU law to United Kingdom rights, thereby reasserting the principle of territoriality underlying EU trademark protection. The case thus required the Court to address how this structural change affects the operation of EUIPO opposition proceedings and the assessment of earlier rights within the EU legal order.

The findings of the Court: a dynamic and territorial approach

The Court set aside the judgment of the General Court and upheld the position adopted by EUIPO in the context of an appeal challenging the interpretation of Article 8(4) of Regulation No 207/2009 and the effects of the United Kingdom's withdrawal from the European Union.

As regards the interpretation of Article 8(4), the Court clarified that the provision contains a dual temporal requirement. While the earlier right must predate the filing of the contested EU trademark application (or the relevant priority date), it must also continue to exist and confer on its proprietor the right to prohibit the use of a subsequent mark at the time when EUIPO adopts its decision. The Court thus held that, in opposition proceedings, earlier rights must not only exist at the relevant filing date but must also continue to produce legal effects throughout the proceedings. On that basis, it rejected the approach adopted by the General Court, which had limited the assessment to the filing date of the contested application.

The Court further examined the consequences of Brexit. It recalled that, pursuant to Article 50 TEU and the EU–UK Withdrawal Agreement, EU law ceased to apply to the United Kingdom at the end of the transition period on 31 December 2020. As a result, rights protected solely under United Kingdom law no longer constituted rights protected within the legal order of the Union. In this context, the Court reaffirmed the principle of territoriality, according to which trademark rights produce effects only within the territory in which they are protected. For the purposes of Article 8(4), only rights capable of producing legal effects within the European Union may be relied upon in opposition proceedings.

Consequently, the Court held that no conflict could arise between earlier rights protected exclusively in the United Kingdom and an EU trademark, once those rights no longer produce effects within the Union. EUIPO must therefore take into account changes in the legal and factual situation occurring during the proceedings, including the loss of protection of earlier rights within the EU.

The way forward: implications for practitioners and the EU trademark system

The judgment in EUIPO v Nowhere Co. Ltd provides important clarification on the temporal scope of earlier rights in EU trademark opposition proceedings. First, it confirms a dynamic approach to the assessment of earlier rights, requiring their continued existence throughout the administrative process. This reinforces the principle that EU trademark protection is inherently territorial and contingent upon rights that are effective within the Union at the time of the decision. Secondly, the ruling has implications extending beyond the specific context of Brexit. It applies equally to situations in which earlier rights expire, are revoked or declared invalid, are surrendered, or otherwise cease to produce legal effects during the course of proceedings.

For practitioners, the judgment highlights the importance of actively monitoring the validity and territorial scope of earlier rights throughout opposition and appeal proceedings. It also underscores the need to anticipate potential changes affecting such rights and to adapt litigation strategies accordingly. More broadly, the decision contributes to the consistency and effectiveness of the EU trademark system by

ensuring that registration decisions are based on rights that are legally operative at the time they are taken. At the same time, it raises questions of procedural fairness in cases where the loss of rights is linked to external or unforeseen events. In this respect, the case illustrates the broader tension between legal certainty and procedural efficiency, on the one hand, and the evolving nature of rights within the internal market, on the other.

Beyond its immediate procedural implications, the judgment reflects a broader tendency of the Court to interpret EU law in a manner that preserves the coherence and autonomy of the Union legal order. In the specific context of Brexit, it confirms that rights originating in a former Member State cannot continue to produce effects within EU procedures once they fall outside the territorial scope of Union law. Rather than constituting a sanction against non-EU operators, the ruling illustrates a more internally focused interpretation of EU legal concepts, limiting the extent to which external or former Member State situations can influence the operation of EU mechanisms such as opposition proceedings.

AIFMD II | LIQUIDITY MANAGEMENT TOOLS FROM PRACTICE TO REGULATION

Open-ended AIFs and UCITS must integrate at least two liquidity management tools under the new AIFMD II framework.

Regulatory update – Investment funds

The deadline for the transposition of Directive (EU) 2024/927 (the "**AIFMD II**") was 16 April 2026. The European Commission has finalised the regulatory technical standards specifying the operational characteristics of the liquidity management tools ("**LMTs**") that will apply to both AIFs and UCITS. In Luxembourg, the transposition has been carried out by the law of 3 March 2026 (the "**2026 Law**"), amending the law of 17 December 2010 relating to UCIs (the "**UCI Law**") and the law of 12 July 2013 on AIFMs (the "**AIFM Law**").

In addition, ESMA published, on 12 March 2026, its Guidelines on Liquidity Management Tools of UCITS and open-ended AIFs (the "**ESMA Guidelines**"), which the CSSF has integrated into its administrative practice and regulatory approach through Circular CSSF 26/910 dated 15 April 2026 (the "**Circular**").

Two Delegated Regulations, supplementing AIFMD II and implementing the regulatory technical standards ("**RTS**"), were published in February 2026:

- Delegated Regulation (EU) 2026/465, specifying the characteristics of LMTs for AIFs;
- Delegated Regulation (EU) 2026/466, specifying equivalent rules for UCITS.

ESMA Guidelines, developed on the basis of Article 16(2h) of the AIFMD, Article 18a(4) of the UCITS Directive and Article 16(1) of the ESMA Regulation, provide guidance on the selection, calibration, activation and deactivation of LMTs by fund managers for liquidity risk management and for mitigating financial stability risks. The Circular confirms that the CSSF, in its capacity as competent authority, applies the ESMA Guidelines with a view to promoting supervisory convergence at European level.

AIFMD II establishes a harmonised European regulatory framework for LMTs, replacing the previously fragmented environment in which the availability and structure of such tools were largely subject to national supervisory practices.

In the Luxembourg context, the reform does not introduce fundamentally new mechanisms. Instead, it formalises and harmonises practices that have already become widely established in the industry, particularly regarding anti-dilution mechanisms and liquidity governance.

The new regulatory framework

The reform is built on three complementary layers.

First, AIFMD II amends the AIFMD and UCITS directives and introduces a harmonised list of LMTs that can be used by fund managers.

Second, the RTS adopted in November 2025 define the technical characteristics and operational conditions of LMTs.

Third, the ESMA Guidelines provide detailed guidance on the selection, calibration, activation and deactivation of LMTs, addressing general principles, quantitative-based tools, anti-dilution tools and side pockets.

The regulatory objective is to ensure that fund managers can effectively manage redemption pressures during periods of market stress, while at the same time ensuring the fair treatment of investors and preserving financial stability.

Mandatory liquidity management toolkit for open-ended AIFs and UCITS

AIFMs managing open-ended AIFs and UCITS are required to select and implement appropriate LMTs for each fund under their management.

In selecting the two mandatory LMTs, the ESMA Guidelines recommend that fund managers consider, where appropriate, whether to select at least one quantitative-based tool (i.e. redemption gates or extension of notice periods) and at least one anti-dilution tool (i.e. redemption fees, swing pricing, dual pricing or anti-dilution levies), taking into account the investment strategy, redemption policy and liquidity profile of the fund as well as the market conditions under which they may be activated. Fund managers may also consider whether to select one tool to use under normal market conditions and one tool to be used under stressed market conditions.

The EU list includes several mechanisms already well known to the Luxembourg market:

- redemption gates
- swing pricing
- anti-dilution levies
- redemption fees
- extension of notice periods
- redemption in kind
- side pockets

Operational rules introduced by the RTS

While the directive establishes the regulatory framework, the RTS define how LMTs operate in practice.
They specify, in particular:

- activation thresholds;
- calculation methodologies;
- investor treatment mechanisms; and
- operational constraints.

While the RTS standardise the functioning of the tools, the overall responsibility for liquidity risk management remains with the AIFM, which must ensure that the tools chosen are appropriate to the fund's investment strategy, as well as its liquidity profile and redemption terms. In accordance with the ESMA Guidelines, fund managers should be able to demonstrate, at the request of the CSSF, that the activation and calibration of the selected LMTs are in the best interest of all investors and are appropriate and effective in light of market conditions and the relevant characteristics of the fund.

Redemption gates

The RTS require that redemption gates must be triggered by predefined activation thresholds.
For AIFs, these thresholds may be based on:

- a percentage of the fund's net asset value ("**NAV**");
- a monetary threshold;
- a percentage of liquid assets; or
- a combination of these metrics.

The RTS also provide for different gate structures for AIFs, including:

- fund-level gates, which are triggered by aggregate redemption orders;
- investor-level gates, triggered by individual redemption requests; and
- combined gate structures incorporating elements of both approaches.

For UCITS, the framework is more standardised. The activation threshold for redemption gates must be determined at the level of the UCITS and expressed as a percentage of the fund's NAV, taking into account aggregate redemption orders for a given dealing date or period.
The above provisions encourage managers to adopt a quantitative approach to monitoring liquidity that can identify redemption pressures at an early stage.
Even where the activation threshold is exceeded, the manager retains discretion as to whether to activate the redemption gate, considering the liquidity of the fund, prevailing market conditions and the best interests of investors.

Anti-dilution mechanisms

The RTS also provide detailed rules for anti-dilution LMTs.
These are:

- swing pricing;
- dual pricing;
- anti-dilution levies; and
- redemption fees.

The RTS adopt a broad economic definition of liquidity costs and provide that such costs generated by subscriptions or redemptions should be borne by the investors entering or exiting the fund, covering both explicit transaction costs and implicit costs, such as the market impact cost due to the purchase or sale of assets.
The anti-dilution feature of swing pricing, widely used in Luxembourg funds, is explicitly recognised. The RTS make it clear that the published NAV must reflect the swing factor adjustment, and that both full swing and partial swing methods are acceptable.
For many Luxembourg managers, these rules will therefore formalise existing industry practices rather than introduce entirely new mechanisms.

Suspension mechanisms and side pockets

The RTS also provide clarification on the functioning of some of the tools typically used in stressed market conditions.
Where redemptions are suspended, the suspension must apply simultaneously to subscriptions, repurchases and redemptions.

This ensures that all investors are treated on an equal basis during periods of market disruption.
Side pockets are also recognised as LMTs. They may be created either by:

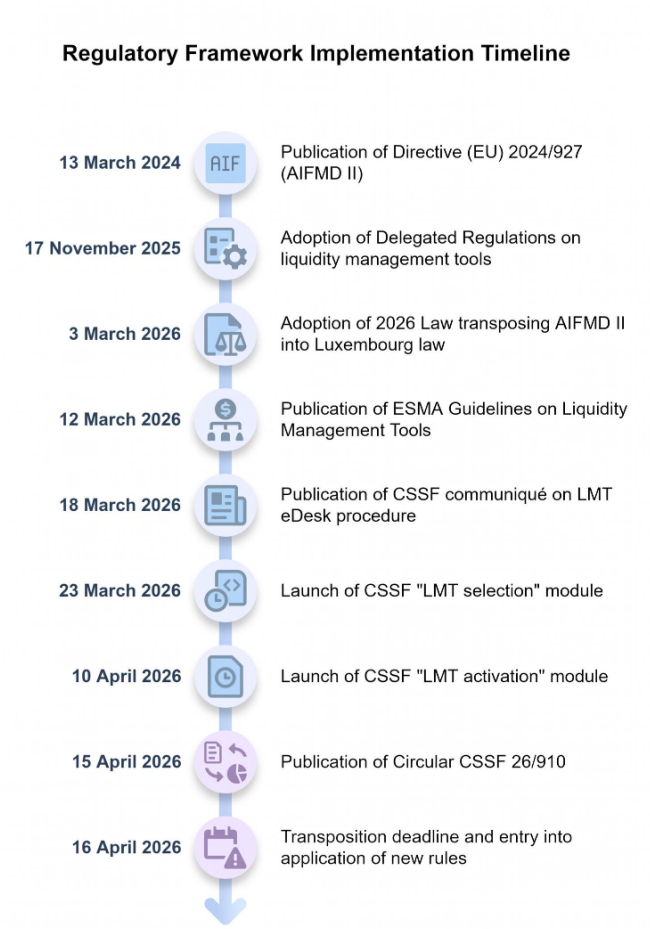
- accounting segregation within the existing fund; or
- physical separation of affected assets into a distinct structure.

These mechanisms may be particularly useful for funds that invest in illiquid assets or assets that are subject to exceptional valuation uncertainty.
The ESMA Guidelines further emphasise that fund managers should ensure that the level of subscription and redemption orders received is treated in a manner that prevents certain investors from benefiting from information regarding the potential activation of LMTs, for instance where activation thresholds may be reached in the case of redemption gates.

Luxembourg supervisory perspective

In connection with the entry into application of the 2026 Law, the CSSF has launched a dedicated "LMT eDesk procedure" comprising two modules: an "LMT selection" module, through which UCITS, or where applicable their management companies, and authorised AIFMs, are required to communicate their selection of LMTs together with their detailed policies and procedures governing their activation and deactivation; and an "LMT activation" module, through which such entities are required to notify the CSSF of the activation or deactivation of suspensions of subscriptions, repurchases and redemptions, of any LMT used in a manner that is not in the ordinary course of business, and of side pockets.
The information provided through the eDesk procedure will subsequently be used by the CSSF to notify the relevant competent authorities, ESMA and, where applicable, the ESRB, in accordance with the provisions of the UCI Law and the AIFM Law. In addition, Luxembourg-domiciled funds subject to Part II of the UCI Law, specialised investment funds governed by the law of 13 February 2007 and investment companies in risk capital governed by the law of 15 June 2004, which do not qualify as AIFs or are not managed by a Luxembourg-authorised AIFM, are also required to notify the CSSF of the activation or deactivation of suspensions and the creation of side pockets under the "LMT activation" module.
In addition, the Circular recommends that open-ended specialised investment funds not governed by Part II of the Law of 13 February 2007, which are subject to CSSF Regulation N° 15-07, as well as open-ended UCIs subject to Part II of the UCI Law managed by a registered AIFM, consider the provisions of the Circular in conjunction with Commission Delegated Regulation (EU) 2026/465, even where they fall outside the mandatory scope of the ESMA Guidelines.

Implementation timeline



For AIFs and UCITS established before **16 April 2026**, the RTS introduce a **one-year transitional period** to allow managers to update fund documentation, operational processes and technical infrastructure.

Key takeaways for AIFMs

- Fund managers managing open-ended AIFs and UCITS must ensure that each fund they manage has at **least two LMTs** and include them in the fund documentation.
- The RTS introduce detailed technical parameters governing the operation of LMTs.
- Existing funds benefit from a **one-year transitional period following 16 April 2026**.
- ESMA Guidelines, as integrated by the CSSF through Circular CSSF 26/910, provide detailed guidance on the selection, calibration and activation of LMTs, including the recommendation to combine quantitative-based tools with anti-dilution tools and the obligation for fund managers to demonstrate, at the request of the CSSF, that the calibration and activation of the selected tools are in the best interest of investors.

Conclusion

Liquidity management has traditionally been viewed as a technical aspect of portfolio management.

Under AIFMD II, it becomes a fully structured regulatory discipline. The reform aims to ensure that liquidity shocks are absorbed within the fund structure rather than transmitted to financial markets.

LUXEMBOURG INVESTMENT FUNDS I CSSF FEES - NEW FEE REGIMES INTRODUCED

CSSF supervisory fees for Luxembourg funds and fund managers remain unchanged, while new fee regimes apply from 16 January 2026.

The Grand-Ducal Regulation of 8 January 2026 relating to the fees levied by the CSSF introduced new fee regimes in connection with recent EU regulatory developments, notably in the areas of crypto-assets, distributed ledger technology and credit servicers. The amendments are summarised below.

No change for Luxembourg funds and IFMs

The fee levels and fee structure applicable to Luxembourg investment funds and IFMs remain identical to those already in force.

Introduction of new fee regimes

The reform consists of extending the CSSF fee perimeter to new categories of regulated activities.

First, a dedicated regime is introduced for entities subject to Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA). The text provides for an examination fee of EUR 30,000, reduced to EUR 15,000 where the applicant is already authorised by the CSSF, together with applicable annual supervisory fees, set at EUR 40,000, or EUR 25,000 where the entity is already subject to CSSF supervision.

Second, a specific regime is established for DLT trading and settlement systems. The examination fee is set at EUR 50,000 for entities already authorised by the CSSF and EUR 92,000 for other applicants.

Third, the regulation introduces a fee framework for credit servicers. It provides for an examination fee of EUR 30,000 and an annual lump sum of EUR 35,000, increased to EUR 45,000 where the entity is authorised to receive and hold funds from borrowers.

The reform therefore does not impact the cost base of traditional Luxembourg fund structures or management platforms, but extends the CSSF supervisory fee framework to newly regulated activities.

OMNIBUS I DIRECTIVE | CSRD SIMPLIFICATION

On 24 February 2026, the European Union ("EU") adopted Directive (EU) 2026/470 (the "Directive"), amending, inter alia, Directive 2006/43/EC, Directive 2013/34/EU, Directive (EU) 2022/2464 and Directive (EU) 2024/1760, with a view to strengthening corporate sustainability reporting and due diligence requirements. It introduces mandatory human rights and environmental due diligence obligations for large companies operating in or with the EU.
With the entry into force of the Directive, companies should now assess whether their existing sustainability reporting or due diligence readiness plans remain necessary under the revised thresholds.

Impact for investment funds

Although the Directive does not directly apply to fund vehicles as such, its personal scope is of relevance to the asset management industry. The definition of "company" expressly includes regulated financial companies, including alternative investment fund managers ("**AIFMs**"), managers of EuVECA, EuSEF and ELTIF, as well as UCITS management companies.

Amendments to the Corporate Sustainability Reporting Directive (CSRD)

Introduction of a new scope

The obligation to prepare and publish sustainability reporting is limited to companies with more than 1,000 employees and a net turnover exceeding EUR 450 million during the financial year.

In addition, the European Commission has been granted the power to periodically revise the applicable net turnover thresholds in order to reflect the effects of inflation, thereby ensuring that the scope of the reporting obligation remains proportionate over time.
The Directive further clarifies the obligation to report on key intangible resources, specifying that such requirement applies exclusively to companies exceeding the above-mentioned thresholds.
The extraterritorial application of the reporting obligation has been significantly limited by the Directive. Reporting obligations for third-country corporate groups now arise only where two cumulative thresholds are met:

- the non-EU parent generates more than EUR 450 million in net turnover within the European Union, and
- the relevant EU presence (subsidiary or branch) exceeds EUR 200 million in net turnover.

In that case, the non-EU parent company prepares the sustainability report at group level. The EU subsidiary/branch does not write its own sustainability report anymore. The main obligation of the subsidiary branch is to make the parent company's report publicly available in the EU (e.g. on a website or official filing platform).
It does not mean the non-EU entity is "out of scope" entirely. It still exists within the regulatory framework and may still be involved indirectly in providing data to the parent if needed (format reporting burden is on the group level).
Furthermore, listed small and medium-sized enterprises ("**SME**") have been removed from the mandatory scope of the CSRD. Correspondingly, the empowerment previously conferred on the European Commission to adopt SME-specific and sector-specific European Sustainability Reporting Standards ("**ESRS**") has been deleted.

What are the major changes?

Introduction of a new "Protected Undertaking" Concept

The Directive introduces the concept of "protected undertakings" to cover smaller entities within the value chain that employ fewer than 1,000 employees on average. These entities fall under a voluntary sustainability reporting framework and are not required to provide information beyond what is set out in those voluntary standards.
Reporting companies may rely on self-declarations to determine whether a value-chain partner qualifies as a protected undertaking. Where a requested piece of information goes beyond what is permitted under the voluntary standards, reporting companies must inform the protected undertaking of this fact and clearly communicate their right to decline the request. Assurance providers issuing opinions on sustainability reports are similarly required to respect these

limitations when performing their assessments.
Overall, this framework is designed to reduce the reporting burden across value chains while still ensuring a baseline level of accessible sustainability information.
In parallel, a three-year transitional regime continues to apply for value-chain data gaps. During this period, reporting companies are required to explain any missing information and to describe the steps they intend to take to obtain direct data or, where that is not feasible, to develop reasonable estimates over time.

Simpler reporting for group going through restructuring

The Directive introduces less burdensome reporting for groups undergoing mergers, acquisitions, or disposals during a reporting period.
These groups are now permitted to postpone inclusion of sustainability data for entities acquired or merged during the financial year until the subsequent reporting cycle. Similarly, entities exiting the group during the year may be excluded from that year's consolidated sustainability disclosures.
However, this flexibility does not remove the obligation to provide continuing transparency requirements. To that extent, the parent undertaking must disclose any material events associated with such transactions that could have a significant impact on the group's overall sustainability profile.

Introduction of exemptions for financial holding companies

The Directive sets out a new exemption for certain EU and non-EU financial holding companies, removing the requirement to prepare consolidated sustainability reporting under specific conditions.

Indeed, a parent undertaking qualifying as a financial holding entity and not participating in operational, financial, or strategic decision-making over its subsidiaries will benefit from reporting exemptions.

Safeguards for commercially sensitive information

The Directive allows companies to leave out certain sustainability disclosures where publishing them would seriously harm their commercial interests, expose trade secrets, reveal classified information, or where confidentiality is necessary to protect privacy or security interests. This possibility is subject to specific conditions and must be reviewed at every reporting period.

Revision of European Sustainability Reporting Standards (ESRS)

The Directive states that the Commission shall issue non-binding sector guidance to support practical implementation.
Within six months after the rules start applying, the European Commission is required to update the ESRS standards through a formal delegated act.
The purpose of this update is to make the reporting framework less complex and more focused. In practice, this means:

- removing data requirements that add little value or are repetitive,
- putting more emphasis on clear, numerical (quantifiable) information,
- clearly distinguishing what companies must report from what is optional,
- reinforcing the materiality principle so companies only report what is truly relevant and avoid over-reporting, and
- improving alignment with international sustainability reporting frameworks to make systems more compatible across jurisdictions.

Timeline

Companies falling below the new thresholds may be exempted by Member States from CSRD reporting for financial years running from 1 January 2024 to 31 December 2026. From financial years beginning on or after 1 January 2027, mandatory sustainability reporting will apply exclusively to companies that meet the revised thresholds.
In Luxembourg, the latest amendments to draft law 8370, adopted on 6 May 2025, have already anticipated this transitional exemption in the national transposition framework.
For more information you can also read our previous publications on the topic.

- ESG - Omnibus Package I CSRD & Taxonomy changes | BSP
- ESG - Omnibus Package | Changes to the Corporate Sustainability Due Diligence Directive | BSP

To discover the amendments to the Corporate Sustainability Due Diligence Directive (CSDDD),

INVESTMENT MANAGEMENT

read our separate article.

OMNIBUS I DIRECTIVE | CSDDD SIMPLIFICATION

On 24 February 2026, the European Union ("EU") adopted Directive (EU) 2026/470 (the "Directive"), amending, inter alia, Directive 2006/43/EC, Directive 2013/34/EU, Directive (EU) 2022/2464 and Directive (EU) 2024/1760, with a view to strengthening corporate sustainability reporting and due diligence requirements. It introduces mandatory human rights and environmental due diligence obligations for large companies operating in or with the EU.

With the entry into force of the Directive, companies should now assess whether their existing sustainability reporting or due diligence readiness plans remain necessary under the revised thresholds.

Impact for investment funds

Although the Directive does not directly apply to fund vehicles as such, its personal scope is of relevance to the asset management industry. The definition of "company" expressly includes regulated financial companies, including alternative investment fund managers ("**AIFMs**"), managers of EuVECA, EuSEF and ELTIF, as well as UCITS management companies.

Amendments to the Corporate Sustainability Due Diligence Directive (CSDDD)

Introduction of a new scope

The scope of the CSDDD has also been narrowed, with the thresholds now set at more than 5,000 employees and a net turnover exceeding EUR 1.5 billion for EU-companies and to non-EU companies to an identical threshold of more than EUR 1,5 billion net turnover generated in the Union.

What are the major changes?

Streamlining information requests

The Directive limits the type and volume of information companies may request from their business partners. Indeed, requests shall now assess what is strictly necessary to carry out due diligence obligations.

To that end, where an entity has fewer than 5,000 employees, information can only be sought if it cannot reasonably be obtained through alternative sources. This aims to reduce the administrative burden on smaller entities while maintaining the integrity of the due diligence process.

These changes significantly reduce both the breadth and frequency of information requests directed at business partners.

Risk-based and proportionate due diligence approach

The Directive shifts the due diligence framework on a risk-based approach. Companies must identify and prioritise adverse human rights and environmental impacts across their chain of activities, paying particular attention to high-risk areas, direct business partners, and information that can reasonably be obtained. This ensures that due diligence efforts are targeted where they are most relevant and effective, rather than applying the same level of scrutiny regardless of the level of risk.

Redefining the scope of mandatory stakeholder consultation

Companies are no longer required to consult widely or at many different points in the process. They have now fewer people to consult and fewer moments when consultation is mandatory.

Instead, they must:

i. Only consult a limited group of people

- employees and their representatives (e.g. unions or worker committees), and
- people or communities directly affected by the company's activities at a specific point in the supply chain or project.

ii. Only consult at specific stages of due diligence

Companies must involve those stakeholders only when they are:

- identifying problems or risks (adverse impacts),
- planning how to address those problems (action plans), and
- deciding how to fix harm that has already occurred (remediation).

New monitoring frequency

The Directive modifies how often companies must assess the effectiveness of their due diligence

measures. Instead of more frequent reviews, assessments are now required:

- at least once every five years; and
- without undue delay when a significant change occurs.

Removal of the obligation to develop a Climate Transition Plan

The Directive has removed the original CSDDD framework obligation that included a specific duty requiring companies to develop and implement a climate transition plan. This plan was intended to ensure that a company's business model and strategy aligned with the sustainable economy and the objective of limiting global warming to 1.5°C.

Revision of the financial penalties

Key changes include:

- removing the requirement that fines be calculated based on global net turnover;
- replacing the previous minimum threshold of 5% with a maximum cap of 3%; and
- mandating the European Commission to issue guidance to ensure more consistent application across Member States.

Deletion of the financial services review clause

The review clause in the original CSDDD, which had left open the possibility of extending due diligence rules to the financial services and investment sectors, has been removed. This makes clear that, under the amended framework, the rules will not be expanded to include financial intermediation or portfolio investment activities.

Timeline

The Directive delays the implementation schedule. Member States are now required to complete transposition by 26 July 2027, while companies within scope must apply the rules from 26 July 2029. In addition, reporting obligations under Article 16 will only become applicable for financial years beginning on or after 1 January 2030.

For more information you can also read our previous publications on the topic.

ESG - Omnibus Package I CSRD & Taxonomy changes | BSP

ESG - Omnibus Package | Changes to the Corporate Sustainability Due Diligence Directive | BSP

To discover the amendments to the Corporate Sustainability Reporting Directive (CSRD), read our separate article.

SUSTAINABLE FINANCE | CSSF UPDATES ITS SUPERVISORY PRIORITIES FOR 2026

The CSSF reinforces its sustainable finance agenda across all supervised sectors

In a communiqué dated 2 March 2026, the CSSF has updated its priorities within the area of sustainable finance. The CSSF believes that sustainability considerations and the integration of sustainability risks should not be seen merely as a regulatory obligation, but as essential drivers of long-term financial strategies and resilience.

The CSSF, as an active participant at the international level and in close engagement with various stakeholders, aims to promote long-term sustainability. To this end, the CSSF supports a transparent, credible, and coherent approach towards sustainability objectives. The CSSF is engaged in constructive dialogue with stakeholders to ensure that the sustainable finance framework remains effective and proportionate while maintaining a risk-based approach.

The CSSF priorities focus on distinct sets of supervisory priorities for credit institutions and investment firms, asset management industry and lastly issuers.

Priorities for credit institutions and investment firms

The CSSF considers the ongoing EU regulatory developments regarding transparency and disclosure obligations, including the review of Regulation (EU) 2019/2088 (the "**SFDR**") and Implementing Regulation 2024/3172. The focus is on transparency and disclosure ,risk management and governance, and MiFID rules related to sustainability.

- Compliance by credit institutions and investment firms with the sustainability-related disclosures under the SFDR. This is verified through the Long Form Report submission, which is continuously updated by CSSF circulars.
- Corrective measures may be taken by the CSSF where the Long Form Report reveals weaknesses or non-compliance in the self-assessment.
- Continued on-site inspections by the CSSF at depositaries, to ensure that ESG investment-related restrictions are respected.
- Climate and nature-related risks remain a top priority for the banking sector. The CSSF will assess how banks integrate ESG risks into their management in accordance with CSSF Circular 21/773 and the European Banking Authority ("EBA") guidelines on management of ESG risks the risks (implemented via CSSF Circular 26/905).
- MiFID rules remain under supervision, but the CSSF will adapt its expectations to each firm and to the evolving regulatory framework.

Supervisory priorities for the asset management industry

The CSSF aims to increase transparency for investors and prevent greenwashing. To this end, it will continue to monitor investment fund managers' ("**IFMs**") compliance with the sustainability-related provisions set forth under the SFDR, the SFDR regulatory technical standards ("**SFDR RTS**") and Regulation (EU) 2020/852 (the "**Taxonomy Regulation**"), as well as the principles and guidance laid down by ESMA regarding sustainability risks and disclosures in the area of investment management and funds' names using ESG or sustainability-related terms.

The CSSF will focus on the following priority areas, applying a risk-based approach integrating on-site and off-site supervision:

- Integration of sustainability risks in the organisational arrangements of IFMs, notably in terms of human resources and governance, investment decision and advice processes, remuneration, risk management and management of conflicts of interest, as required under SFDR.
- Compliance of pre-contractual and periodic disclosures with the transparency requirements under the SFDR, the SFDR RTS and the Taxonomy Regulation.
- Consistency of sustainability-related disclosures across fund documentation and marketing materials.
- Compliance of IFMs' website disclosure obligations relating to the publication and maintenance of up-to-date SFDR-related information for the investment funds they manage.
- Portfolio analysis to ensure that holdings reflect the name, investment objective, strategy and the characteristics disclosed in the documentation provided to investors.

The CSSF will continue to leverage data collected from SFDR IFM pre-contractual and periodic data to support its supervisory work. IFMs remain responsible for ensuring that all submitted information is kept up to date and accurate. The CSSF will also continue to provide clarifications to the industry as needed, including through its SFDR-related communiqués and FAQ.

The supervisory priorities for issuers

Following the publication of Directive (EU) 2022/2464 on corporate sustainability reporting 2026/470 amending Directive (EU) 2022/2464 on corporate sustainability reporting (the "**CSRD**") (see our newsletter on this topic), which is still awaiting transposition in Luxembourg, the CSSF will continue to guide issuers that voluntarily publish sustainability statements in line with the European Sustainability Reporting Standards ("**ESRS**"), through fact-finding exercises and bilateral exchanges, to highlight key points when developing their sustainability reports.

As in previous years, the ESMA, together with the European national accounting enforcers, including the CSSF will continue to identify and implement European common enforcement priorities (the ECEPs) for annual reports, to guide the monitoring and assessment of relevant reporting requirements.

As for securities prospectuses approval, the CSSF and ESMA will continue to develop the annex defining the minimum ESG-related information to be included in prospectuses, as well as related questions and answers and guidelines at the European level.

Conclusion

The CSSF continues to adapt its supervisory framework in line with the latest EU regulatory developments, with a view to maintaining high standards in the areas of sustainable finance and risk management, taking into consideration the evolving ESG and corporate reporting standards. In doing so, the CSSF applies a proportionate and pragmatic approach, encouraging supervised entities to integrate sustainability considerations into their long-term business strategies, rather than treating them solely as regulatory obligations.

TAX OMNIBUS I SIMPLIFYING EU CORPORATE TAXATION FOR 2026

Background

The European Commission has launched the Tax Omnibus initiative (the "**Initiative**" or "**Tax Omnibus**") to **simplify and modernise corporate direct taxation** across the EU. The aim is to reduce **administrative burdens**, clarify rules, and increase the **competitiveness of the internal market**. The Initiative follows the Council Conclusions of 11 March 2025, which set a tax decluttering and simplification agenda with a view to contributing to the EU's competitiveness, and is part of the Commission's broader objective of reducing administrative burdens by at least 25% for all businesses and by at least 35% for SMEs.

The Initiative builds on previous EU reforms, including the global minimum tax (Pillar 2) and anti-tax avoidance measures. It addresses outdated, overlapping or overly complex rules and aligns taxation with modern economic realities. In particular, the Initiative responds to concerns that certain provisions of the Anti-Tax Avoidance Directive require revision in light of the implementation of the Global Minimum Tax through the Pillar 2 Directive, as well as significant changes in the broader economic landscape, including rising interest rates and high inflation.

The Tax Omnibus is particularly important for companies operating across multiple Member States, where compliance with different national regulations has often been complex and costly. **The corporate tax directives include various implementation options at national level, and** this flexibility has created a fragmented EU landscape, as Member States have taken differing approaches in transposition. Taxpayers face the burden of navigating divergent rules which are often subject to varying interpretations, creating significant direct administrative costs and legal uncertainty.

Businesses should prepare for **simpler, more predictable EU tax rules** that reduce compliance costs and support cross-border operations.

Scope of the initiative

The Initiative reviews several key EU directives, including:

- Anti-Tax Avoidance Directive (ATAD),
- Parent-Subsidiary Directive,
- Interest and Royalties Directive,
- Merger Directive, and
- Tax Dispute Resolution Mechanisms Directive.

In respect of the Anti-Tax Avoidance Directive, the Initiative is expected to address, inter alia:

- the Controlled Foreign Company rules, which partially overlap with Pillar 2 rules, potentially leading to instances of economic double taxation and unnecessary administrative burdens;
- the Interest Limitation Rule, which does not appear to adequately address earnings volatility arising from an entity's life cycle or broader economic conditions, nor does it adequately reflect sector-specific characteristics or the needs of SMEs; and
- the scope of the General Anti-Abuse Rule, which may require review to ensure it covers all relevant direct taxes. In respect of the Parent-Subsidiary Directive and the Interest and Royalties Directive, the Initiative is expected to address the divergent procedural requirements for accessing benefits, which in certain jurisdictions are so burdensome that they may discourage taxpayers from relying on the directives.

The scope of the Tax Merger Directive is expected to be realigned with the Merger Directive under company law, in order to address mismatches that currently undermine the competitiveness of the EU Single Market.

Finally, the Initiative envisages limited and targeted amendments to the Tax Dispute Resolution Mechanisms Directive, in particular the provisions regarding the admission phase, to remove ambiguities and ensure consistent application across Member States.

The Tax Omnibus aims to remove redundant or obsolete rules, simplify procedural and reporting obligations, harmonise the application of rules across Member States - in particular by reducing the implementation options that have led to divergent transposition - and ensure proportional compliance for SMEs.

Simplifying reporting and procedure across borders

The European Commission targets a **25% reduction in administrative costs** for all companies and **35% for SMEs**. This will be achieved by simplifying **reporting and filing requirements**, clarifying **tax obligations**, and eliminating **redundant procedures**.

Businesses operating in multiple Member States will benefit from **consistent rules** and **simplified cross-border reporting**, making compliance more predictable and less resource-intensive.

Improving competitiveness and clarity

The Tax Omnibus also aims to enhance **EU competitiveness**. Harmonised rules on dividends, interest, royalties, mergers, and other intra-EU transactions should promote investment and reduce disputes between national tax authorities. In terms of fiscal impact, the envisaged measures aim to be tax neutral for taxpayers and are not expected to lead to any material redistribution of tax revenues between Member States.

Next steps

The Call for evidence was published on 16 February 2026, inviting stakeholders to provide feedback on the identified problems and the need to act. No separate public consultation is planned; however, the Commission Services have carried out extensive targeted consultations involving all Member States and approximately 50 multinational groups and business associations. The **Tax Omnibus directive is expected by Q2-2026**. The proposal will be based on Article 115 TFEU and will require adoption by the Council acting unanimously in accordance with the special legislative procedure, after consulting the European Parliament and the Economic and Social Committee.

The Commission plans to conduct ongoing monitoring to ensure the simplifications achieve their objectives, particularly in reducing administrative burdens and facilitating cross-border transactions.

Practical impact

Businesses should expect **predictable and uniform rules** across the EU, **simplified reporting requirements**, and a **reduction in administrative burdens**, especially for SMEs. Larger groups will benefit from improved **harmonisation**, reducing uncertainty and disputes.

The Initiative reflects the EU's commitment to **fair taxation** while improving **economic efficiency**.

Conclusion

The Tax Omnibus represents a **significant step towards a simpler, more coherent, and modern corporate tax system within the EU**. Businesses can expect lower **compliance costs**, clearer rules, and a framework better adapted to **today's economic and cross-border realities**.

With the legislative proposal expected in Q2 2026, businesses should begin assessing the potential impact of the anticipated **simplifications on their existing compliance** processes, cross-border structures, and tax dispute strategies, and consider engaging with the Call for Evidence to ensure their concerns are reflected in the final proposal.

2025 OECD COMMENTARY I CROSS-BORDER REMOTE WORK AND PERMANENT ESTABLISHMENT

The 2025 update to the OECD Model Tax Convention, published in November 2025, is the first comprehensive revision since 2017. The update notably provides clarification to the Commentary of Article 5 on when a home office of a cross-border worker may constitute a permanent establishment.

Why this update matters

When an employee resides in a different country from their employer and works from home, a key question arises: can that home office constitute a permanent establishment ("**PE**") of the employer, giving the employee's state of residence a right to tax the enterprise's profits?

Moving on from the 2017 Commentary

The 2025 update replaces earlier guidance from the 2017 Commentary (former paragraphs 18 and 19), adding paragraphs 44.1 through 44.21. The 2017 framework had established that an individual carrying on business from a home office does not automatically mean the location is at the disposal of the enterprise; that intermittent or incidental use would not be sufficient for the home to be considered a place of business; and that, where a home office was used on a continuous basis, the facts and circumstances of each case would need to be examined. The 2025 update replaces this approach with a more structured analytical framework centred on two key criteria under which employers with cross-border remote workers should reassess PE exposure.

The two key criteria

The 50% working time threshold

A home or other relevant place would generally not be considered a place of business of the enterprise if the individual worked from it for less than 50% of their total working time over any twelve-month period commencing or ending in the fiscal year concerned. Updated Commentary adds that the actual conduct of the individual - rather than formal contractual arrangements alone - determines the calculation of working time.

The commercial reason

If the 50% threshold is met, whether a PE exists depends on the facts and circumstances and prominently, whether there is a commercial reason for the individual's physical presence in that state. A commercial reason exists where the individual's presence itself facilitates the enterprise's business, such as access to local customers, suppliers, or resources. Minor or incidental engagements do not qualify. Conversely, no commercial reason exists where the enterprise enables remote work solely for employee convenience, talent retention, cost savings related to office space, or the provision of financial support for a home office.

The updated Commentary goes beyond clarifying Article 5(1) of the OECD Model Tax Convention, introducing criteria, such as the 50% threshold and the commercial reason, not referenced in Article 5 itself.

Practical illustrations

The updated Commentary includes five examples with two being particularly instructive:

Example C: an employee works from home in State S for 80% of working time and regularly visits local clients. Since the 50% threshold is exceeded and a commercial reason exists (facilitating service delivery), the home constitutes a PE of the employer in State S.

Example D: an employee works from home in State S for 60% of working time but visits a local client only once a quarter. Although the threshold is exceeded, the visits are intermittent and incidental, so no commercial reason exists, and the home does not constitute a PE.

Key takeaways

These comments are especially relevant for Luxembourg given the important number of cross-border workers. However, their application by Luxembourg and its treaty partners remains to be seen depending on whether they follow the static or dynamic approach to treaty interpretation theory.

VAT GUARANTEE CALL I A NEW RIGHT OF CHALLENGE FOR DIRECTORS?

In Case C-158/25 (QJ v the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*) ("**AEDT**")), Advocate General Medina proposes in her Opinion of 5 March 2026 that the **CJEU** grants company directors subject to a guarantee call the right to incidentally contest the *ex officio* tax assessment issued against the company. A ruling in line with this Opinion could profoundly reshape Luxembourg practice.

Applicability of Article 47 of the Charter to the guarantee call mechanism

The first preliminary question referred by the Luxembourg Supreme Court (*Cour de cassation*) seeks to determine whether Article 47 of the Charter applies to the joint liability mechanism for company directors provided for under Articles 67-1 et seq. of the **LTVA**. The Luxembourg Court of Appeal (*Cour d'appel*) had held that these provisions did not constitute an implementation of EU law and had rejected this plea. The Luxembourg government contested the application of Article 47 on the ground that Articles 67-1 et seq. of the LTVA do not constitute fiscal sanctions but rather specific rules on civil liability.

The Advocate General dismisses these arguments and concludes that the mechanism constitutes an implementation of EU law within the meaning of Article 51(1) of the Charter. She notes in particular that:

- Member States are required, under Articles 2 and 273 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Directive), read in conjunction with Article 4(3) TEU and Article 325(1) TFEU, to ensure the full collection of VAT;
- a joint liability mechanism enabling the recovery of unpaid VAT from a director directly contributes to that objective; and
- the characterisation of the mechanism under national law as falling within civil liability is irrelevant, provided that the amount claimed corresponds to the unpaid VAT.

As per her Opinion, Article 47 of the Charter should therefore be applicable in the context of the director's appeal against the guarantee call.

Right to contest incidentally the ex officio tax assessment

The second and third preliminary questions concern whether Article 47 of the Charter precludes a national practice preventing the director from contesting incidentally the ex officio tax assessment that has become final, and the scope of the pleas that may be raised.

The Advocate General considers that the current restriction – limiting the director's defence to the conditions of his own liability (fault, damage, causal link) without allowing him to challenge the amounts in the *ex officio* tax assessment – infringes the essential content of the right to an effective remedy:

- the *ex officio* tax assessment produces a binding effect on the director, a third party who was neither the addressee of the act nor a party to the tax assessment procedure;
- relying on the Adler Real Estate judgment (C-546/18), the Advocate General emphasises that the rights of the defence are subjective in nature: the director must be able to exercise them personally, irrespective of any possibility of acting on behalf of the company;
- the director and the company are legally distinct entities with potentially divergent interests.

As to the scope of the pleas available, the Advocate General proposes a nuanced solution:

- the director must be able to contest incidentally the factual circumstances and legal assessments established in the *ex officio* tax assessment, insofar as they are decisive for the outcome of the proceedings against him;
- however, the director may not invoke, in his own name, a breach of the company's rights of defence, nor demand to be personally involved in the ex officio tax assessment procedure; and
- the professional secrecy argument is dismissed, since the contested elements relate to events of which the director necessarily had knowledge by virtue of his functions.

Implications for Luxembourg practice

Under current Luxembourg law, a director subject to a guarantee call has no personal remedy against the *ex officio* tax assessment issued to the company. Once that assessment has become final, the amounts stated therein can no longer be challenged, and the director can only defend his interests based on his personal fault.

A CJEU ruling in line with the Advocate General's Opinion would require Luxembourg courts to allow the director to contest incidentally the factual findings and legal assessments in the *ex officio* tax assessment. In particular the current case law of the Court of Appeal, which denies the director any defence relating to the existence or amount of the tax debt, would need to be revisited;.

Further, a broad interpretation could have repercussions in the field of direct taxation, where an analogous guarantee call mechanism exists under § 119 of the General Tax Law of 22 May 1931, as amended (*Abgabenordnung*), on the basis that Article 47 of the Charter would similarly entitle the director to contest incidentally, in his own right, any *ex officio* tax assessment issued against the company.

However, an alternative approach appears possible to avoid granting the director a dual avenue of challenge: issuing the guarantee call bulletins concurrently with the *ex officio* tax assessment.

LUXEMBOURG CASE LAW I ADMINISTRATIVE COURT RULES ON THE APPLICATION OF ROLLOVER RELIEF IN INTRA-GROUP SHARE ACQUISITION CONTEXT

Lower Administrative Court validates deferral of capital gains through intra-group reinvestment

In a judgment of 13 February 2026, the Lower Administrative Court (*Tribunal administratif*) ruled (No. 48945) in favour of a Luxembourg company (the "**Parent Company**") and its subsidiary (the "**Acquiring Company**"), both members of the same fiscal unity within the meaning of Article 164*bis* LITL and part of an operational food retail sector (the "**Group**"). The Acquiring Company had applied the rollover mechanism under Article 54 Luxembourg income tax law ("**LITL**") to **defer a capital gain realised on a real property disposal in 2017**, by reinvesting the sale proceeds into shareholdings in three sister companies acquired from its Parent Company (i.e., *société-mère intégrante*) in 2019.

The tax authorities denied the benefit of the Article 54 LITL regime at the level of the Acquiring Company on three grounds:

- the newly acquired shares did not qualify as eligible reinvestment assets,
- the transaction constituted an abuse of law, and
- the pricing was not at arm's length. In particular, **the tax authorities argued that the combined effect of Articles 54 and 166 LITL within the fiscal unity would result in the gain never being effectively taxed**, since the Parent Company had benefited from the participation exemption on the very sale of those participations to the Acquiring Company. The Lower Administrative Court rejected all three challenges.

Lower Administrative Court's reasoning

Qualifying conditions under Article 54 LITL

Article 54 (1) LITL imposes specific conditions on the asset disposed of, but places no particular restriction on the nature of the reinvestment asset - the sole requirement being that it constitutes a fixed asset (i.e., *immobilisation*).

The lower Administrative Court recalled that **fixed assets are defined under Article 21(2) LITL as assets "permanently allocated to the business"**, with the decisive criterion being the intended allocation rather than the nature of the asset itself. A taxpayer retains a margin of discretion to classify a shareholding as a fixed asset based on the specific circumstances of the enterprise. In this case, the lower Administrative Court identified three indicators supporting that classification:

- **The participations were recorded as financial fixed assets** in the Acquiring Company's 2019 annual accounts, providing an initial indication of their intended permanent allocation.
- **The acquisition was designed to allow the Acquiring Company to continue operating as a central purchasing entity for the three operational companies it supplied exclusively**, while also holding direct controlling or significant stakes in those companies.
- The Acquiring Company purchased the near-entirety of the shares in two of the three sister-companies (99.99%) and a significant stake in the third (39.99%). Notably, Article 54 LITL does not prohibit reinvestment within a group or a fiscal unity.

The Lower Administrative Court also dismissed the tax authorities' argument that the reinvestment assets had to be "more appropriate" than the asset disposed of. Unlike Article 53 LITL, which expressly requires a replacement asset corresponding economically and technically to the asset lost, no such condition appears in the wording of Article 54 LITL.

Abuse of law under § 6 of the Adaptation Tax Law

As a reminder, an abuse of law under § 6 of the Adaptation Tax Law (in the new version applicable since 1 January 2019) **requires three cumulative conditions**:

- use of legal forms and institutions;
- the legal route pursued has, as a principal objective or one of its principal objectives, obtaining a tax advantage contrary to the object or purpose of the tax law; and
- that legal route is not authentic, meaning it was not used for valid commercial reasons reflecting

economic reality.

On the first condition, the lower Administrative Court agreed it was met, i.e. the share purchase agreements clearly involved legal forms and institutions.
On the second condition, even a temporary deferral of taxation suffices to constitute a "circumvention or reduction" of the tax burden. The purely temporary nature of the immunisation under Article 54 LITL does not prevent this criterion from being satisfied. The lower Administrative Court further found that the object and purpose of Article 54 LITL requires both that the asset disposed of had become unfit for the business and that the reinvestment asset be better adapted to serve its needs - neither of which was established by the taxpayer on the facts. The tax advantage obtained therefore ran counter to the object and purpose of Article 54 LITL, thereby satisfying the condition that the tax burden be circumvented or reduced contrary to legislative intent.
On the third and decisive condition, **the Lower Administrative Court concluded that the detailed commercial explanations provided by the taxpayer were sufficient to establish valid economic reasons, such that the transaction could not be characterised as a non-authentic arrangement**. In particular, the partial split of the Group's assets in 2019 was found to have been genuinely carried through to completion, as evidenced by the subsequent restructuring steps and the ultimate sale of the remaining shareholdings by the Parent Company to a single third-party acquirer in July 2023.
The tax authorities were therefore not entitled to rely on § 6 of the Adaptation Tax Law to deny the benefit of Article 54 LITL. The Lower Administrative Court however explicitly noted that no criticism could be directed at the tax authorities for having raised the abuse of law argument, as the taxpayer had failed repeatedly to produce - both during the pre-litigation phase and in the course of proceedings - documents clearly in its possession. It was only following a request from the lower Administrative Court itself during deliberations that the key evidence was produced.

Valuation of the reinvested participations

The tax authorities lastly challenged the valuation of the shares acquired on the basis that said valuation had not been carried out by an independent third party, but by the Group itself. The lower Administrative Court rejected this challenge. Indeed, t**he taxpayer demonstrated that both internal and external valuations had been carried out,** including a report from an independent third-party firm whose work covered the relevant sub-group and produced a valuation range consistent with the prices ultimately agreed. In the absence of any substantive rebuttal by the tax authorities, the Lower Administrative Court also held that the valuation was in conformity with the arm's length principle and rejected the tax authorities' comparison with historical book values as insufficiently substantiated.

LUXEMBOURG CASE LAW | QUALIFICATION OF A CIRCULAR INTRA-GROUP LOSS-GENERATING STRUCTURE AS AN ABUSE OF LAW

On 11 February 2026, the Luxembourg Lower Administrative Tribunal ("**Tribunal**") (No. 47018) ruled on the existence of an abuse of law within the meaning of §6 of the Luxembourg tax adaptation law (*Steueranpassungsgesetz* - "**StAnpG**").

Facts

A Luxembourg private limited liability company ("**Company A**"), newly incorporated, was involved in a series of intra-group transactions carried out between 26 and 27 May 2015 as part of a group restructuring.

On 26 May 2015, a group company ("**Company B**") contributed to Company A a receivable it held against its sole shareholder ("**Company C**"), the fair market value of which exceeded its nominal value. In consideration, Company A issued tracking shares, the value of which was expressly linked to the underlying receivable. On 27 May 2015, Company A contributed the same receivable to Company C in exchange for newly issued tracking shares. This transaction resulted in the extinction of the receivable by confusion, as Company C became both creditor and debtor. On the same day, Company A sold the tracking shares it held in Company C to its parent company ("**Company D**") for a price corresponding to the value of the receivable prior to its extinction, thereby realising a significant capital loss. The valuation report dated 22 May 2015 indicated that the fair market value of the tracking shares was directly linked to the value of the underlying asset, namely the receivable that was subsequently extinguished.

The transactions were carried out between entities of the same group over a very short period of time. Company A for example held the receivable for one day only.

Following a tax audit, the Luxembourg tax authorities ("**LTA**") issued tax assessments for the year 2015 denying the deduction of the capital loss on the grounds that the transactions constituted an abuse of law within the meaning of §6 StAnpG. The Company's administrative complaint was rejected by the Director of the LTA, leading the Company to file a petition before the Tribunal, which ultimately upheld the LTA's position.

The decision of the Tribunal

Legitimate expectations

The Company argued that the absence of any objection from the LTA during discussions held prior to the implementation of the restructuring gave rise to a legitimate expectation that the loss would be recognised for tax purposes.

The Tribunal rejected this argument. It recalled that, since 1 January 2015, the legislator has formalised the advance tax ruling procedure through §29a of the Luxembourg General Tax Law (*Abgabenordnung* - "**AO**"). As a result, the principle of legitimate expectations can only apply within this legal framework. The Company had deliberately chosen not to seek a formal advance tax ruling and could not therefore validly invoke any legitimate expectation arising from informal discussions.

Moreover, the Tribunal noted that the information provided evolved between the initial meeting and subsequent exchanges. Accordingly, Company A could not reasonably claim that the tax authorities had validated a transaction not presented in its final form at the time of the initial discussions.

Abuse of law - § 6 StAnpG

The Tribunal assessed the four cumulative conditions required to establish an abuse of law:

Use of private law forms or institutions

The parties did not dispute that Company A had made use of private law forms and institutions. This first condition was considered to be met.

Tax savings

The Tribunal found that the deduction of the loss would have reduced the Company's taxable base and generated a tax loss carry-forward, which Company A had notably used in 2016. The Tribunal again expressly clarified that §6 StAnpG does not require the tax saving to meet any minimum threshold, whether in absolute or relative terms. The argument that the tax saving was negligible in the context of the group's

overall financial activities was accordingly dismissed.

Use of inappropriate means

The Tribunal noted that the receivable had been transferred in a purely circular manner, from Company B to Company A, and then from Company A to Company C, before being extinguished by confusion in Company C's hands. The tracking shares received in exchange were expressly linked to the value of an asset that was already intended to be extinguished. The Company could not have been unaware, at the time of the contribution, that the value of the tracking shares it was receiving would be almost immediately wiped out, as reflected in the transaction documentation, including the board minutes and contribution agreements.

The Tribunal also rejected the argument based on the principle of attachment of the tax balance sheet to the commercial balance sheet (Article 40 of the Luxembourg Income Tax Law - "**LITL**"). A transaction that is perfectly valid from a legal and accounting standpoint may nonetheless constitute an abuse of law, particularly where it is designed to exploit the attachment principle whilst circumventing other fundamental tax principles, such as the arm's length principle and the non-deductibility of hidden profit distributions.

The Tribunal accordingly concluded that the loss arose from the use of inappropriate means, as the legislator cannot reasonably be regarded as having intended to allow the deduction of a loss generated by a series of purely circular and intra-group transactions.

Absence of valid extra-fiscal justification

On the burden of proof, the Tribunal recalled that the State is limited to render plausible the absence of any economic justification for the structure chosen. It then falls to the taxpayer to demonstrate real and sufficient extra-fiscal reasons. It is not sufficient for the taxpayer to simply invoke economic reasons. Those reasons must be genuine and must present an economic advantage, beyond the mere tax benefit obtained.

The Company put forward three extra-fiscal justifications:

- **Increase in distributable reserves***:* No evidence was provided to support an increase at the level of Company A and the Tribunal found that Company A failed to establish that the restructuring was necessary or justified to achieve that result, or that more direct means were not available.
- **Elimination of foreign exchange risk***:* The Tribunal acknowledged that the contribution of the receivable had eliminated the currency risk attached to the receivable. However, this objective was insufficient, on its own, to justify the overall structure, which was primarily a complex arrangement of circular transactions whose legal effects were largely neutralised.
- **Elimination of upward, reciprocal and cross-shareholdings***:* The Tribunal noted that it was the earlier steps of the restructuring that had themselves created the cross-shareholdings and latent losses in the first place, which does not constitute a valid extra-fiscal justification. This argument only corroborated the artificial nature of the arrangement: the overall structure was devoid of genuine economic substance.

All three justifications were rejected, and the fourth condition required for the abuse of law was accordingly found to be met.

Key takeaways

This decision provides another useful guidance on the application of § 6 StAnpG:

- **Circular intra-group transactions:** a series of intra-group transactions involving the transfer and subsequent extinction of an asset within a short period, combined with the realisation of a capital loss, may indicate an artificial arrangement.
- **No minimum threshold for tax savings:** §6 StAnpG does not require the tax advantage to be material.
- **Accounting regularity is not a shield against abuse of law:** a transaction may be valid from a legal and accounting perspective and still be disregarded for tax purposes where it constitutes an abuse of law. Article 40 LITL does not prevent the application of §6 StAnpG.

NET ASSETS OF LIBERAL PROFESSIONALS | DIVIDENDS FROM A CLIENT COMPANY: INVESTMENT INCOME OR PROFESSIONAL INCOME?

On 11 February 2026, the Lower Administrative Tribunal (*Tribunal administratif*) ruled in favour of a taxpayer-lawyer, holding that his 100% shareholding in a UK company did not form part of the net assets (*actif net investi*) of his law firm, and that the dividends received therefore qualified as investment income rather than liberal profession income.

Background

The taxpayer, a business lawyer operating his own Luxembourg law firm since 2008**,** held the entirety of the shares in a UK company ("**Company AA**") since its incorporation in 2007. Company AA was managed from London, held its bank accounts exclusively with a UK bank, and carried out diversified commercial and financial activities subject to UK Corporation Tax. The law firm provided legal services to Company AA on a recurring basis, duly invoiced and recorded in its accounts. In 2017, Company AA distributed its profits to the taxpayer, who declared the dividend as investment income and claimed the 50% tax exemption under Article 115, No. 15a of the Luxembourg Income Tax Law of 4 December 1967 ("**LITL**"). The Direct Tax Administration (*Administration des contributions directes*) reclassified the dividend as liberal profession income, on the basis that the shareholding formed part of the law firm's net assets under Article 19(1) LITL, since Company AA was a client of the firm.

Legal framework and key holdings

The court clarified that, for liberal professionals, the composition of net assets is not governed by Article 19 LITL, which is disapplied by the specific provision of Article 93(2) LITL. Under that provision, only assets which, by their nature, are intended to serve the exercise of the liberal profession and whose possession is in direct relation with that profession may be included. Assets serving the profession only indirectly are excluded. This constitutes a cumulative two-limb test, and liberal professionals - unlike traders - have no option to elect which assets to include.

Decision

The court found that neither condition was met. Fees invoiced to Company AA represented only approximately 18% of the lawyer's total professional income, meaning the shareholding was not, by its nature, necessary to the exercise of the legal profession. Moreover, the lawyer held no management role in Company AA, had no signing authority over its bank accounts, and the shares had been financed entirely from private funds. Company AA's activities - management consultancy - were wholly unrelated to legal practice. The court also noted, relying on the case law of the German Federal Tax Court (*Bundesfinanzhof*), that shareholdings held by liberal professionals can only be included in their net assets in exceptional cases where the holding is not alien to the nature (*wesensfremd*) of the profession. The dividends were accordingly reclassified as investment income, and the case was remitted to the competent tax office.

Key takeaway

Where a lawyer holds shares in a client company, the resulting dividends will only be taxable as liberal profession income if the shareholding satisfies both limbs of the cumulative test under Article 93(2) LITL - a high threshold that is not met by the mere fact that the company is a client of the firm.

MBT | NON-RESIDENT ENTITIES SUBJECT TO MUNICIPAL BUSINESS TAX ONLY WHERE A PERMANENT ESTABLISHMENT IN LUXEMBOURG IS MAINTAINED, IRRESPECTIVE OF LEGAL FORM

In a judgment dated 3 March 2026 (No. 53701C), the Higher Administrative Court (*Cour administrative,* the "**Court**") dismissed an appeal brought by the Luxembourg State and confirmed that the Direct Tax Authority (*Administration des contributions directes*, "**DTA**") had failed to establish the existence of a Luxembourg permanent establishment in the hands of a UK-incorporated limited liability partnership ("**LLP**") operating as a law firm. The ruling underscores that assimilation of a foreign entity to a corporation addresses only the characterisation of income, not its territorial nexus.

Background

The LLP held a 99% interest as general partner (*associé commandité*) in a Luxembourg *société en commandite simple* ("**SCS**") that operated a law firm from premises in Luxembourg. The SCS was fiscally transparent under Article 175 of the Luxembourg Income Tax Law of 4 December 1967 ("**LITL**"), such that a prorata portion of its income was attributed directly to the LLP for tax purposes. The LLP filed corporate income tax (*impôt sur le revenu des collectivités*) and municipal business tax (*impôt commercial communal*, "**MBT**") returns for the years 2015 to 2019, declaring the income as arising from the exercise of a liberal profession. The tax office, however, issued assessments treating the LLP as maintaining a Luxembourg permanent establishment and characterising its income as commercial profit, thereby subjecting it to MBT. The LLP contested both the existence of a permanent establishment and the commercial characterisation of its income.

Key legal conclusions

Commercial characterisation by legal form does not resolve the permanent establishment question

It was undisputed that the LLP, as a UK entity, was to be assimilated - by application of the comparison of legal forms (*Rechtstypenvergleich*) method - to a corporation within the meaning of Articles 159 and 160 LITL falling within the scope of § 2(2) No. 2 GewStG. By virtue of that assimilation, all of the LLP's income was deemed to be commercial profit under Article 162(3) LITL, irrespective of the nature of the underlying activity.

The Court recalled, however, that a MBT liability under § 2(1) GewStG is subject to two cumulative conditions: first, the existence of a commercial enterprise (*Gewerbebetrieb*) within the meaning of Article 14 LITL and, second, the operation of that enterprise through a permanent establishment (*Betriebsstätte*) on Luxembourg territory. Whilst § 2(2) No. 2 GewStG creates an irrebuttable presumption satisfying the first condition for entities assimilated to corporations - so that the nature of the activity actually carried on is irrelevant - it does not dispense with the second. The permanent establishment requirement accordingly remained a necessary precondition for the LLP's subjection to MBT.

The burden of proof rests with the tax authorities

The Court confirmed that the existence of a permanent establishment - defined by § 16(1) of the Luxembourg tax adaptation law *(Steueranpassungsgesetz)* as any fixed installation or facility serving the operation of a standing commercial enterprise - is a question of fact, the burden of proof of which rests with the DTA. In the present case, the State had failed, both at first instance and on appeal, to adduce any concrete evidence that the LLP maintained such an establishment on Luxembourg territory. Its argument on appeal amounted to a bare assertion that the LLP's activity "was deemed to be exercised directly" on Luxembourg territory, which the Court declined to accept as sufficient.

LUXEMBOURG CASE LAW | HIGHER ADMINISTRATIVE COURT CLARIFIES FORMAL REQUIREMENTS FOR TAX COMPLAINTS UNDER § 249 AO

On 12 February 2026, the Higher Administrative Court (*Cour administrative*, the "**Court**") issued a decision in case No 53399C, clarifying the formal requirements for tax complaints under § 249 of the General Tax Law (*Abgabenordnung*, the "**AO**").

Facts of the case

On 1 July 2021, a Luxembourg limited liability company (the "**Company**") filed its tax return for the 2019 tax year with the Luxembourg direct tax authorities (*Administration des contributions directes*). On 14 July 2021, the tax office issued, on the basis of § 100a (1) AO, the corporate income tax and municipal business tax assessment for the 2019 tax year, as well as the unitary value and net wealth tax assessments as at 1 January 2020 (the "**Tax Assessments**").

By letter dated 24 August 2021 (the "**Letter**"), the Company wrote to the tax office to inform it that the 2019 annual accounts did not adequately reflect the economic reality of the Company and did not give a true and fair view thereof, that those accounts were shortly to be amended and that a rectified tax return would be submitted for the 2019 tax year.

On 11 November 2021, the Company electronically filed its rectified tax return for the 2019 tax year. The tax office acknowledged receipt thereof whilst indicating that the Tax Assessments had become final (*coulés en force de chose décidée*) and that an amendment on the basis of § 94 (1) AO was no longer possible.

In these circumstances, the Company lodged an appeal against the Tax Assessments with the Lower Administrative Court (*Tribunal administratif*). The Lower Administrative Court declared the appeal inadmissible, qualifying the Letter as a mere statement of intent designed to put the tax office on notice of a forthcoming rectified tax return, rather than a complaint within the meaning of § 228 AO. The Company appealed that judgment before the Higher Administrative Court.

Findings of the Court

Two main issues were dealt with by the Court:

- The characterisation of the Letter: was it to be considered a mere statement of intent, a request for amendment under § 94 AO, or a complaint within the meaning of § 228 AO?
- The validity of the Letter in the pre-litigation phase, given that it bore the signature of a single director only, whereas the Company's articles of association required the joint signature of two directors of categories A and B for acts falling outside the scope of day-to-day management.

Characterisation of the Letter

The Court begins by recalling that § 249 AO requires only that the wording of a complaint indicates that the taxpayer considers himself aggrieved by the tax assessment and is seeking a review, whilst reducing all other formal requirements to a strict minimum. § 249 (2) AO further calls for a broad interpretation: a taxpayer's tax returns are to be regarded as a complaint whenever the complaint procedure is the avenue that serves his interests, the essential criterion being the objective the taxpayer seeks to achieve.

Whilst acknowledging the suggestive and implicit nature of the wording of the Letter, the Court overturns the finding of the Lower Administrative Court. The indication that the annual accounts do not give a true and fair view implies that the tax bases do not reflect reality, thereby conveying a grievance arising from the Tax Assessments. The announcement of a forthcoming amended tax return must, furthermore, be understood as a request for review whose precise scope would be set out at a later stage.

The Court then notes that the distinction between an application for rectification under § 94 AO and a complaint under § 228 AO lies in the objective pursued: the former seeks to correct a specific and isolated point, whereas the latter challenges the tax assessment as a whole. Given its suggestive wording, the Letter does not contain sufficiently clear indications to determine which of the two avenues was intended.

The Court identifies four cumulative factors: (i) the amendments to the 2019 annual accounts had a material impact on the Company's taxable position; (ii) an amended tax return accompanied by the relevant

accounting documents is sufficient to enable the director to conduct a review; (iii) the complaint procedure was the only avenue still available, the time limit under § 94 AO having expired; and (iv) a taxpayer's tax returns are to be regarded as a complaint whenever that avenue is the one that serves his interests.

In view of all these factors, the Court concludes that the Letter must be characterised as a complaint within the meaning of § 228 AO.

Validity of the signature on the Letter

The State argued that the Letter was invalid as a complaint, as it bore the signature of a single director only, whereas the Company's articles of association required the joint signature of two directors of categories A and B for acts falling outside the scope of day-to-day management.

The Court drew a distinction between the litigation and pre-litigation phases: the rules governing the representation of a legal person in judicial proceedings concern the capacity to act before the courts and cannot be transposed to the pre-litigation phase, which is governed by the AO. Moreover, even if the filing of a complaint were to be regarded as an act exceeding the limits of day-to-day management, the Court held that it follows from § 249 (1), second sentence, AO that a complaint filed on behalf of a company need not bear all the signatures normally required under company law, provided that the content of the complaint enables the identity of its author to be established.

In the present case, the Letter identified the Company by its registered name, address and registration number, specified the assessment at issue and bore the signature of one of the Company's directors acting in that capacity, thereby satisfying the identification requirement under § 249 AO.

VAT | NO FRAUDULENT INTENT REQUIRED FOR FINES IMPOSED UNDER ARTICLE 77(3) OF THE VAT LAW

In a judgment dated 5 February 2026, the District Court of Luxembourg (No. TAL-2023-09471) has confirmed a EUR 725,000 administrative fine imposed by the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*) ("**AED**") on a company that failed to declare a change in the use of its properties. The judgment delivers clear and important guidance on the scope of Article 77, paragraph 3 of the Luxembourg VAT Law ("**VAT Law**").

Background

Following a VAT audit, the AED identified multiple breaches: the company had failed to declare the required input tax adjustments and provisional or definitive non-deductions, had issued invoices lacking mandatory particulars, and had omitted to declare VAT due on invoiced supplies. The total undeclared or unduly deducted VAT amounted to EUR 4,832,747.98.

The company did not dispute the materiality of these findings but denied any fraudulent intent, attributing the failures to a dispute with its external accounting service provider. That provider had ceased all services and exercised a right of retention over the company's files, which, the company argued, had prevented it from identifying that the required declarations had not been made. The company was subsequently declared bankrupt, and proceedings were continued by its court-appointed curator.

Key Legal Conclusions

No referral to the Constitutional Court

The company argued that Article 77 of the VAT Law was unconstitutional on the basis that paragraphs 1 and 3 sanction the same breaches but with radically different penalties - a flat fine of EUR 250 to EUR 10,000 under paragraph 1, compared with 10% to 50% of the evaded VAT under paragraph 3.

The Court rejected this argument. It held that, whilst both paragraphs target the same statutory provisions, it is clear from a comparative reading that paragraph 1 is designed to punish purely formal breaches without any negative consequence for the Treasury, whereas paragraph 3 applies where the breach has had the effect of evading VAT or obtaining an irregular refund. It follows that the AED cannot arbitrarily opt for the more severe sanctions of paragraph 3; it must first establish that the breach actually had the effect of evading VAT or obtaining an undue refund. The constitutional challenge was accordingly dismissed as being without foundation.

Fraudulent intent is irrelevant

The Court examined the legislative history of Article 77(3) in detail. It noted that the Chamber of Commerce (*Chambre de commerce*) had, during the parliamentary process, identified the difficulty of distinguishing between paragraphs 1 and 3 in cases where the breach had the "result" - rather than the "purpose" - of evading tax, and had expressly requested the deletion of the words "or as a result" ("*ou pour résultat*") from paragraph 3, so as to confine the heavier sanctions to intentional conduct. The Council of State (*Conseil d'Etat*) endorsed that recommendation. The legislature, however, chose not to follow either recommendation and retained the original wording. The Court concluded that a taxable person is accordingly liable to the fine under Article 77(3) where a breach of the relevant provisions has had the effect of evading VAT or obtaining an irregular refund, even where that effect was not intended by the taxable person.

Article 77(3) thus operates on a strict liability basis: the decisive criterion is the objective consequence of the breach, not the subjective intention of the taxable person. The company's arguments regarding the absence of fraudulent intent were therefore held to be without relevance. This finding is consistent with the approach adopted by the Court of Appeal (*Cour d'appel*) in a separate case (judgment of 25 February 2026, No. CAL-2023-00948), in which the Court similarly confirmed that the legislature had deliberately retained the words "or as a result" in Article 77(3) of the VAT Law, thereby enabling the imposition of the proportional fine irrespective of any fraudulent intent on the part of the taxable person.

Liability cannot be deflected to third-party advisers

Equally important for businesses and their advisers: a taxable person cannot shelter behind a failure of diligence on the part of one of its representatives or

agents in order to escape liability - the fault of the agent is attributed to the principal. The dispute with the external service provider therefore provided no defence.

Fine confirmed in full

The fine of EUR 725,000, representing 15% of the evaded tax of EUR 4,832,747.98, was found to be consistent with the lower end of the 10–50% bracket prescribed by Article 77(3), and the Court declined to reduce it.

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CONTRIBUTORS

Marc-Alexandre Bieber, Harun Cekici, Mikail Ceylan, Nuala Doyle, Gaëlle Felly, Ali Ganfoud, Isabel Høg-Jensen, Elsa Jorro, Chloé Kaizer, Sophie Labruyère, Evelyn Maher, Camille Mascolo, Pol Mellina, Anne Morel, Alessandro Morini, Harmonie Méraud, Elma Osmic-Badic, Marie Oster, Ailyn Sandra Pérez Utria, Daniel Riedel, Guillaume Robert, Olivier Schank, Laura Simmonds, Jean Steffen, Elzbieta Tumko