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AI ACT MEETS FINANCIAL SERVICES I WHAT THE EBA MAPPING AND PARLIAMENT RESOLUTION MEAN FOR BANKS AND INSURANCE

What do banks, insurers and other financial institutions need to know about AI compliance under EU law?

The EU Artificial Intelligence Act (Regulation (EU) 2024/1689) (the "**AI Act**") entered into force on 1 August 2024 (with phased implementation beginning 2 February 2025 and general application from 2 August 2026), establishing a legal framework based on a proportionate risk-based approach to AI. This article examines recent developments concerning the interplay between the AI Act and the EU financial sector, as reported by EU authorities and institutions.

For background on the AI Act, including its risk-based classification framework, prohibited AI practices, and obligations for high-risk AI systems, readers may refer to our July 2024 article 'Ground-breaking worldwide Artificial Intelligence Act'. The implementation of the AI Act into Luxembourg law, including the designation of notifying and surveillance authorities under Draft Law No. 8476, is discussed in our January 2025 newsletter, 'Luxembourg draft law implementing the EU Artificial Intelligence Act'.

The AI Act classifies certain AI applications in financial services, particularly those evaluating creditworthiness or pricing insurance as "high-risk", subjecting them to stringent requirements for data governance, transparency, human oversight and risk management.

The AI Act adopts a four-tier risk classification: unacceptable, high, limited and minimal risk, with high-risk AI systems subject to mandatory conformity assessments and specific obligations regarding data governance, technical documentation, human oversight and cybersecurity. In the context of existing extensive EU regulation covering risk management, consumer protection, data governance and operational resilience covering the activity of financial institutions, the risk of duplicated obligations and overlapping compliance frameworks mandated further assessment.

Two key developments in November 2025 shed light on how these frameworks interact: the European Banking Authority's (EBA) mapping exercise results published on 21 November 2025, and the European Parliament's resolution on AI's impact on the financial sector, issued on 25 November 2025.

EBA AI Act Mapping Exercise: key findings for credit scoring and creditworthiness assessment

The EBA established a dedicated workstream in January 2025 to map AI Act requirements for AI systems used in creditworthiness assessment or credit scoring of natural persons, classified as high risk in Annex III(5)(b) of the AI Act. To promote a unified understanding of the AI Act's implications for the EU banking and payments sector, the EBA assessed these requirements against existing sectoral frameworks (such as, among others, the Capital Requirements Directive, Capital Requirements Regulation, the Digital Operational Resilience Act, Consumer Credit Directive etc.).

The results have been published as a factsheet and transmitted by a letter addressed to the European Commission (EC). The key takeaway is reassuring: the AI Act complements rather than conflicts with existing financial regulation. It has been concluded that no significant contradictions have been found between the AI Act and EU banking and payment legislation. The AI Act is complementary to EU banking and payment sector legislation, which already provides a comprehensive framework to manage risks stemming from the use of technologies, including AI.

The EBA identified three ways in which AI Act requirements interact with existing EU financial sector law:

- First, derogation applies where EU sectoral obligations replace relevant AI Act obligations, notably for quality management systems and post-market monitoring for deployers.
- Second, integration or combination applies where risk management and governance arrangements under EU banking law provide a framework to integrate AI Act obligations, though some adaptation may be required.
- Third, where no regulatory synergy is explicitly envisaged, existing frameworks like DORA and CRR/CRD still provide a solid base for implementation.

For now, the EBA sees no immediate need to introduce new guidelines or revise existing ones. However, the EBA emphasises that supervisory cooperation will be crucial, as financial entities will be overseen by multiple authorities under both regimes.

European Parliament Resolution on AI in Finance: no new legislation needed

On 25 November 2025, the European Parliament adopted a resolution on the impact of artificial intelligence on the financial sector spearheaded by Arba Kokalari (the "**Resolution**").

The Resolution acknowledges the broad adoption of AI across the EU financial services sector, recognising its significant potential to boost efficiency, innovation and competitiveness. Beneficial applications include fraud detection and prevention, anti-money laundering checks, transaction monitoring, personalised financial advice, ESG data analysis and regulatory compliance assistance. It is emphasised that benefits of AI use should be passed on to end customers through lower prices, improved financial advice, greater financial inclusion and enhanced financial literacy.

The Resolution identifies significant risks associated with AI deployment in financial services, including data quality issues leading to discriminatory outcomes, model opacity, privacy concerns, cybersecurity vulnerabilities and explainability challenges. The Resolution also flags concentration risk arising from dependency on a limited number of third-party AI providers, with potential systemic risks in case of disruptions.

A call for guidance and innovation

A central idea put forward by the Resolution is that no new legislation is needed for AI use in the financial sector. The Parliament, in its majority, believes that existing sectoral legislation is mainly sufficient to cover AI deployment in its current form, without additional legislation adding complexity, uncertainty and risking depriving the sector of the benefits of AI.

Instead, the Resolution calls on the Commission to provide clear and practical guidance on, among other points, applying existing financial services legislation to AI and also exploring how AI could be used for automation in strictly regulated areas, such as intermediation, portfolio management and compliance.

LISTING ACT | MAR UPDATES: PROTRACTED PROCESSES, DELAY OF DISCLOSURE, TRADING VENUE DESIGNATION & MARKET MANIPULATION INDICATORS

The Listing Act (Regulation (EU) 2024/2809) was designed to improve access to public capital markets for EU companies, especially small and medium-sized enterprises, by reducing administrative burdens associated with listing whilst safeguarding market integrity. Following ESMA's technical advice submitted to the Commission on 7 May 2025, the European Commission has now published two draft delegated regulations and ESMA has issued updated Q&A guidance, providing concrete implementation measures across several key areas of the Market Abuse Regulation ("**MAR**"). The amendments to MAR introduced by the Listing Act, including those to Article 17 (disclosure of inside information), Article 19 (managers' transactions), and the new Article 25a (order data exchange mechanism), will apply from 5 June 2026.

Three key regulatory developments

On 15 December 2025, the Commission published a draft Commission Delegated Regulation supplementing Regulation (EU) No 596/2014 (the Market Abuse Regulation or **'MAR'**) as regards disclosure of inside information in protracted processes and delay of disclosure ("**First Draft Regulation**").

On 17 December 2025, the Commission published a second draft Commission Delegated Regulation amending Commission Delegated Regulation (EU) 2016/522 as regards the list of designated trading venues that have a significant cross-border dimension in the supervision of market abuse and the indicators of market manipulation ("**Second Draft Regulation**").

Also, on 1 August 2025, ESMA published Q&A 2624 on the scope of the exception in Article 19(12a) of MAR to PDMRs' general prohibition to trade during the closed period.

Protracted processes: identifying the "final event or final circumstances"

The non-exhaustive list of final events or final circumstances in protracted processes should facilitate the identification of the moment when disclosure of inside information is required pursuant to Article 17(1) of MAR. A 'protracted process' is defined as a series of actions, steps, or decisions spread in time which need to be performed, at least in part by the issuer, in order to achieve an intended objective or result. This list is laid down in Annex I of the First Draft Regulation and contains 35 protracted processes across seven categories.

For many issuers, the challenge is not recognising that a process can generate inside information, but deciding **which step** triggers disclosure. **Annex I** responds by mapping common protracted processes to a "final event or final circumstances" that will typically crystallise the disclosure obligation. The list is non-exhaustive, and issuers remain responsible for case-by-case assessment for processes not listed. Importantly, the list applies without prejudice to the assessment of whether, in a specific case, a protracted process gives rise to inside information. If the information relating to a final event or final circumstances does not qualify as inside information pursuant to Article 7 of MAR, no disclosure obligation arises under Article 17(1). In other words, the list serves as a timing tool to identify when disclosure should occur, but does not alter the fundamental requirement that the information must first satisfy the definition of inside information under Article 7 of MAR.

The seven categories covered in Annex I are: (a) Business strategy (including agreements, mergers, corporate reorganisations); (b) Capital structure, dividends and interest payments; (c) Financial information; (d) Corporate governance; (e) Interventions by public authorities; (f) Credit institutions, insurance, and reinsurance undertakings; and (g) Legal proceedings, sanctions, and delisting.

Key examples include:

- **Transactions / agreements:** disclosure typically linked to **signing** (or, if shareholder approval is required before signing, when the governing body decides to submit the matter for shareholder approval).
- **Capital measures / distributions:** disclosure linked to the governing body’s **final decision** on respective matter (e.g., capital increase, buyback, dividend

proposal).

- **Public authority processes:** for applications (e.g., for a licence, authorisation, or recognition of IP rights), disclosure is linked to submission of the application; for decisions by authorities (e.g., grant, refusal, or withdrawal of a licence or authorisation), disclosure is linked to receipt of the formal notification from the competent authority, even where the issuer and the authority previously exchanged preliminary information or draft decisions that may themselves constitute inside information.
- **Legal proceedings / sanctions / delisting-type events:** disclosure linked to being **formally informed** of a final decision or **notified** of a court/authority decision (even if appealable).
- **Financial reports**: disclosure when the governing body **acknowledges or approves** financial results or forecasts.

The list accommodates different corporate governance structures across Member States. In two-tier board structures, the supervisory board fulfils the role of the issuer's governing body, with the internal decision-making process providing for the supervisory board decision to be taken as soon as possible after the management board decision. Where powers have been delegated to a committee or executive director (including a CEO), that committee or person fulfils the role of the governing body. Where national company law requires shareholder approval for a decision listed as a 'final event', the governing body's decision to submit the proposal to shareholders constitutes the relevant moment of disclosure.

Delay of disclosure: 'contrast' with market messaging becomes more concrete

Under Article 17(4) of MAR, issuers may delay disclosure of inside information where three cumulative conditions are met:

- immediate disclosure would prejudice legitimate interests;
- the inside information is not in contrast with the latest public announcement or other type of communication on the same matter; and
- confidentiality can be ensured.

The Listing Act amended condition (b) to provide greater legal certainty, replacing the previous requirement that delay not 'mislead the public' with a more objective test focused on whether the undisclosed information contrasts with prior communications.

Annex II to the First Draft Regulation provides a non-exhaustive list of situations where such contrast may exist, including material changes to forecasts, financial results, business objectives, environmental/social targets, financial viability, project deadlines, capital structure, business strategy, or core contract terms.

Annex III to the First Draft Regulation specifies the types of communications issuers must consider when assessing potential contrast. These go well beyond formal announcements and include: (a) communications via websites and social media; (b) public interviews; (c) publicly accessible pre-close calls, roadshows, webinars and podcasts; (d) advertising and marketing campaigns; (e) regulatory filings; (f) shareholder meeting communications; and (g) any other public communication by issuer representatives.

Whilst the lists in Annexes II and III to the First Draft Regulation are non-exhaustive and do not constitute a safe harbour, they are designed to support more consistent internal decision-making and a stronger compliance record when timing decisions are scrutinised – particularly as a broader communication footprint increases the risk that inconsistencies will narrow the ability to delay disclosure.

Issuers should document likely "final event or final circumstances' triggers in internal procedures, treat all outward-facing communications (including investor relations and marketing) as part of the MAR risk perimeter when assessing delay availability, and strengthen delay files by recording the rationale for identifying the final event or circumstances and the relevant moment of disclosure, while explicitly addressing why information is not "in contrast" with prior communications. Issuers should be prepared to substantiate these reasons to the competent authority upon request.

ESMA Q&A 2624: PDMR dealing during closed periods (Article 19 MAR)

Article 19 of MAR, as amended and integrated by the Listing Act, governs managers' transactions. Under the general rule, persons discharging managerial responsibilities ("**PDMRs**") are prohibited from conducting transactions during closed periods - typically the 30 days before the announcement of an interim financial report or a year-end report.

However, Article 19(12a) of MAR provides an exception to PDMRs' general prohibition to trade during the closed period. Recital (76) of Regulation (EU) 2024/2809 amending MAR provides examples of transactions and activities that might be covered by the exemption for PDMRs to trade during the closed period under Article 19(12a) of MAR, referring to transactions and activities that might result from "duly authorised corporate actions not implying advantageous treatment for the PDMR".

This raised the question: shall a PDMR be allowed to adhere to a takeover bid, a share capital increase, a subscription of shares arising from stock splits, a merger, a rights issue or a spin-off during a closed period pursuant to Article 19(12a) of MAR?

ESMA has now clarified that considering that a takeover bid, as well as the other mentioned transactions, should in principle grant PDMRs an equivalent treatment to that of any other shareholder, a PDMR should be allowed to adhere to these transactions during a closed period provided that the corporate action has been authorised or approved by the issuer's governing body or the competent authority. ESMA emphasised two important caveats: a case-by-case assessment remains necessary to verify that the relevant conditions are met, and the prohibition of insider dealing remains applicable during closed periods.

Other MAR updates: trading venues and market manipulation indicators

With the Second Draft Delegated Regulation, the Commission seeks to address enhanced supervision of cross-border market abuse and updating market manipulation indicators to reflect modern trading practices.

Order data exchange mechanism

The Listing Act strengthened the capacity of competent authorities to detect and enforce cases of cross-border market abuse by creating a mechanism to permit the ongoing and timely exchange of order data originating from trading venues that have a significant cross-border dimension. Trading venues are designated based on two cumulative criteria: (i) overall trading volumes of not less than EUR 100 billion per year in any of the last four years; and (ii) a ratio of at least 50% for trading volumes in financial instruments whose most liquid market is in a different Member State. By 5 June 2026, competent authorities supervising designated trading venues must set up this mechanism for shares, with extension to bonds and futures planned for 5 June 2028, subject to a positive recommendation by ESMA.

Four trading venues have been designated: AQUIS EXCHANGE EUROPE (AQEU), TP ICAP (EUROPE) SA (TPIC), CBOE EUROPE B.V. (CCXE), and TURQUOISE GLOBAL HOLDINGS EUROPE BV (TQEX).

Market manipulation indicators

The Second Draft Regulation also updates market manipulation indicators in Annex II to Delegated Regulation (EU) 2016/522 to account for algorithmic trading and technical developments. Key updates include: (i) flexible time frames for assessing manipulation beyond daily trading sessions, which is particularly relevant for less liquid instruments and algorithmic trading; (ii) recognition that manipulation may involve significant changes in volume, not only price; (iii) consideration of persons who may not hold significant positions but have significant interest or exposure to price changes through margin calls or debt covenants; and (iv) clarification of practices such as 'layering and spoofing'.

Timeline for the Draft Regulations and next steps

Both draft Regulations will enter into force on the twentieth day following their publication in the Official Journal of the European Union. The First Draft Regulation will apply from 5 June 2026, aligning with the date by which the order data exchange mechanism for shares under the Second Draft Regulation must be operational. Commission adoption of both regulations is anticipated in Q1 2026.

Issuers should begin reviewing their internal disclosure procedures and communication policies in advance of the 5 June 2026 application date to ensure alignment with the new framework.

TRANSPARENCY LAW UPDATE | CSSF 2024 ENFORCEMENT RESULTS, 2025 PRIORITIES & ESAP FILING REQUIREMENTS

Luxembourg issuers preparing their 2025 annual reports face heightened regulatory scrutiny alongside new filing requirements taking effect mid-2026. This article summarises three developments for issuers subject to the law of 11 January 2008 on transparency requirements for issuers of securities, as amended (the "**Transparency Law**"):

- the CSSF's enforcement findings from 2024 reports (published 16 January 2026),
- enforcement priorities for 2025 reports (announced 12 December 2025), and
- mandatory changes to the filing process under the European Single Access Point (ESAP) framework from 10 July 2026.

CSSF enforcement results from 2025 Campaign: key findings from 2024 annual reports

On 16 January 2026, the CSSF published its findings from its review of 2024 annual reports. The CSSF examined financial statements, sustainability disclosures, EU Taxonomy reporting, alternative performance measures and electronic reporting format compliance.

Key findings included:

- Financial statement notes: issuers should provide disaggregation of material amounts
- Segment reporting: insufficient quality of disclosures (a recurring finding from previous years)
- Going concern: the CSSF observed significant variability in disclosure quality, particularly where material uncertainties exist
- Sustainability reporting: overall improvement in quality observed with better structured reports and more relevant information, particularly among voluntarily adopting ESRS
- EU Taxonomy & APMs: continued need for enhanced disclosure quality.

The CSSF also conducted a desktop examination of 53 issuers' ESEF markup of financial position and notes, identifying common tagging errors.

The CSSF identified that alternative performance measures ("**APMs**") used in press releases announcing annual earnings were often not properly defined, explained or reconciled. Issuers are reminded that the ESMA guidelines on APMs apply to all regulated information, including press releases presenting results. Common deficiencies identified included: lack of clear definitions, missing reconciliations of comparative data and inconsistent labelling of the same APMs.

CSSF enforcement priorities for its 2026 campaign: geopolitical risks, segment reporting & sustainability disclosures

On 12 December 2025, the CSSF published a press release setting out its enforcement priorities for the 2026 campaign. These priorities are relevant to issuers preparing their financial statements for the financial year ending 31 December 2025 ("**FY2025**") in accordance with IFRS.

European common enforcement priorities (ECEPs)

As in previous years, ESMA together with European national accounting enforcers (including the CSSF) identified European Common Enforcement Priorities ("**ECEPs**") for 2025 annual reports, detailed in ESMA's public statement of 14 October 2025 (document reference ESMA32-2064178921-9254).

CSSF focus areas for 2025 reports

The CSSF will pay particular attention to the following:

- **Geopolitical risks and uncertainties**

Issuers should provide clear disclosures on how geopolitical developments, including ongoing conflicts and trade tensions, affect their financial position and performance. This includes disclosures about key judgements and estimates, going concern assumptions, liquidity, asset valuations and provisions.

- **Segment reporting**

The CSSF will review segment reporting disclosures, including whether income and expense items are appropriately disclosed in accordance with IFRS 8. Geographic and major customer disclosures are particularly relevant given current geopolitical conditions.

- **Sustainability reporting: materiality and structure**

For sustainability reporting, the CSSF will focus on how issuers conduct and disclose their materiality assessments, including the methodology used to identify material impacts, risks and opportunities. The CSSF will also review the scope and structure of sustainability statements.

- **Sustainability reporting: policies and actions**

Issuers should describe the policies they have adopted to address material sustainability matters, including the scope of those policies and any third-party standards they follow. Issuers should also disclose key actions taken and planned, along with the resources allocated to those actions.

- **Other areas of focus**

The CSSF will also focus on common errors in the electronic tagging of cash flow statements. Looking ahead, issuers should begin preparing for IFRS 18 presentation and disclosure in financial statements, which is expected to be endorsed in the course of 2026 and will be effective from 1 January 2027. The CSSF recommends that issuers start assessing its impact on their financial statements, communication and reporting systems.

European Single Access Point (ESAP): new filing requirements from 10 July 2026

The European Single Access Point ("**ESAP**") framework will enter into force on 10 July 2026. This will affect all issuers subject to the Transparency Law, as the storage of regulated information with the Officially Appointed Mechanism (OAM) will be subject to new requirements.

The Luxembourg Stock Exchange (LuxSE), acting as the OAM, has published an FAQ highlighting the following key requirements:

- File format: regulated information must be submitted in a data-extractable format (for example, PDFs must not be scanned documents). Where applicable, information must be machine-readable and comply with ESEF requirements.
- Additional information: when filing, users must provide information about the issuer's size, industry sector and whether the submission contains personal data. Information must be organised into structured categories.
- Automated checks: the OAM will perform automated checks on submissions, including verification of file format compliance and LEI validity.
- Non-compliant submissions: submissions that do not comply with the new requirements will be rejected. Users who believe a rejection was made in error may contact OAM support for assistance. Information submitted on a voluntary basis is not transmitted to ESAP.

Some upcoming key dates

- 10 July 2026: ESAP framework enters into force. All regulated information must comply with new format and metadata requirements.
- 1 January 2027: IFRS 18 effective date (subject to EU endorsement in 2026).

KAUPTHING JUDGMENT | LUXEMBOURG COURT CONCLUDES LANDMARK CROSS-BORDER BANKING FRAUD CASE

On 22 October 2025, the District Court of Luxembourg handed down a *jugement sur accord* in the criminal case relating to the collapse of KAUPTHING BANK LUXEMBOURG S.A. in October 2008. Under this judgement, each of the defendants was sentenced to a financial penalty of €75,000 in the form of confiscation and/or a fine.

This case stems from the collapse of KAUPTHING BANK LUXEMBOURG S.A. in October 2008, which occurred in the wake of its Icelandic parent company's bankruptcy. In the final days before the moratorium was declared, a series of suspicious financial transactions took place involving asset transfers between the Icelandic bank, its Luxembourg subsidiary and the offshore entity LINDSOR HOLDING CORPORATION, a company established shortly before the 2007-2008 banking crisis.

At the end of April 2010, the CSSF reported to the Luxembourg public prosecutor's office financial transactions carried out at the end of September and beginning of October 2008 involving, in particular, KAUPTHING BANK LUXEMBOURG and LINDSOR HOLDING CORPORATION. The public prosecutor's office then instructed the Judicial Police Service (SPJ) to conduct a preliminary investigation.

The proceedings initiated related to several financial transactions carried out in the days preceding the suspension of payments by KAUPTHING BANK LUXEMBOURG in the context of the bankruptcy of its Icelandic parent company. These transactions involved, in particular, transfers of assets between the Icelandic bank, its Luxembourg subsidiary and the offshore company LINDSOR HOLDING CORPORATION. These complaints triggered what would become one of Luxembourg's most complex cross-border financial crime investigations, requiring sustained judicial cooperation with Icelandic authorities over more than a decade.

The investigation revealed that these transactions had enabled certain former *de jure* and *de facto* executives of KAUPTHING BANK LUXEMBOURG to exploit the banking panic to offload illiquid or heavily depreciated securities, using internal mechanisms financed by the Icelandic parent company. To conceal these transactions, they subsequently created backdated documentation to provide false justification. These actions were thus classified as forgery, use of forged documents, misuse of company assets and money laundering.

The procedural journey was extensive: following a preliminary investigation in 2010, a formal judicial investigation was opened in April 2011. In a closing speech on 8 April 2011, the Luxembourg public prosecutor's office opened a judicial investigation against "unknown persons", provisionally classifying the facts as domestic theft, breach of trust, misuse of company assets, receiving stolen goods, forgery and use of forged documents, and money laundering

The instruction phase proved highly complex, encompassing six indictments, 33 witness hearings, 29 investigation reports, and international letters rogatory executed in Iceland in 2013 and 2016. After the Public Prosecutor requested referral to the criminal chamber in February and December 2023, the investigating chambers confirmed the referral in early 2025.

After more than fourteen years of proceedings, marked by exemplary cooperation between the Luxembourg and Icelandic authorities, the three defendants agreed to plead guilty as part of a plea bargain with the Public Prosecutor's Office.

CAPITAL MARKETS I NEW PACKAGE ON EUROPEAN MARKET INTEGRATION

Background

The European Commission's release of a comprehensive reform package on 4 December 2025 represents a major step forward in the European Union's drive to create a unified financial services market. Building on proposals first introduced in June 2024, the reform package aims to transform the EU's fragmented capital markets into a seamless, integrated system that will enhance the EU's economic competitiveness and strategic autonomy.

As outlined in the impact assessment this initiative aims to address barriers to the cross border provision of services in order to improve the functioning of EU capital markets for the benefit of investors, businesses and the wider EU economy and facilitate investors' access to a wide range of investment opportunities while enabling companies to raise capital across borders.

Overview of the legislative package

The legislative package includes the following:

- Proposal for a regulation regarding the further development of capital market integration and supervision within the Union – Master regulation (**2025/0383(COD)**) and amending various regulations including SFTR, CSDR and MIFIR.
- Proposal for a directive regarding the further development of capital market integration and supervision within the Union – Master directive (**2025/0382(COD)**) and amending the UCITS, AIFMD and MIFID II Directives.
- Proposal for a regulation of the European Parliament and of the Council on settlement finality (**2025/0381(COD)**) repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements (SFR)

Key proposals for reform at a glance

Achieving market integration

The legislative package introduces three key measures in view of promoting economies of scale and enhancing the competitiveness of EU capital markets infrastructure:

- **Expanded passporting regime**: regulated markets and Central Securities Depositories (CSDs) would use their home state authorisation more effectively across the EU, reducing duplicate authorisations and supervisory conflicts.
- **Pan-European Market Operator (PEMO) status**: thanks to this licence, one ESMA authorisation would allow trading venue operators to be active in multiple jurisdictions as host Member States would have the obligation to permit operation via services or a branch without additional requirements or authorisation.
- **Streamlined distribution requirements**: the proposal would establish a more uniform framework for fund distribution across the EU through:
  - **An EU depositary passport** enabling funds to appoint depositaries located anywhere in the Union;
  - **Accelerated timeframes** for procedural deadlines for authorities to process notifications when a management company (the "**ManCo**") or an AIFM wishes to provide services in another Member State: home Member State will have to communicate the notification to the host Member Sates within 1 month for UCITS ManCo and 15 days for AIFMs.
  - **Removal of divergent national authorisation practices and discretions** – to be achieved through ESMA engaging with national authorities and stakeholders and making use of its coordination and intervention powers;
  - **Streamlined delegation requirements within EU groups and elimination of duplicative compliance obligations**: intra-group arrangements for the sharing of resources, such as human and technical resources, will no longer be subject to delegation requirements and will only be subject to an obligation to inform the competent authority.
  - **Recognition of EU groups of management companies** which shall include authorised management companies, AIFMs, credit institutions and investments firms. These groups would facilitate the sharing of capabilities, enabling asset managers to leverage group-wide infrastructure for distribution activities

Simplifying innovation through removal of barriers

The legislative package addresses regulatory obstacles that currently prevent the adoption of Distributed Ledger Technology ("**DLT**") in financial market infrastructures. The reforms expand the existing DLT Pilot Regime to provide greater flexibility and legal certainty for blockchain-based solutions.

These amendments significantly broaden the scope of permissible DLT activities and DLT-based market infrastructures:

- Under the proposed legislative package, **former asset-class limitations have been removed**. Consequently, all financial instruments may be included in the DLT Pilot Regime, no longer restricting participation to shares, bonds, or UCITS meeting specific size or market-value criteria. Crypto-asset service providers (CASPs) can also now participate in the pilot framework.
- **Increased capacity threshold**: the maximum value of financial instruments that DLT market infrastructure may handle has increased from €6 billion to €100 billion, enabling commercial-scale operations rather than just experimental projects.

These changes strike a better balance between fostering innovation and maintaining regulatory oversight.

Streamlining and enhancing supervision

Under the proposed legislative framework, ESMA would directly supervise critical financial market infrastructures and service providers whose operations are deemed significant for EU-wide economic stability or financial system integrity. This would include major central counterparties (CCPs), central securities depositories (CSDs), key trading venues and the new pan-European market operators. All crypto-asset service providers (CASPs) would also fall under ESMA's direct authorisation and supervision, reflecting the sector's growing importance and cross-border nature. In addition and in cooperation with national competent authorities, ESMA would conduct annual reviews of the largest asset management groups to identify inefficient, redundant, or inconsistent practices and to facilitate their operations within the single market.

However, this proposal has generated significant debate, particularly regarding the transfer of supervisory powers from national authorities to ESMA. Some Member States and national supervisors have expressed concerns about centralising oversight at the European level, raising questions about national regulatory autonomy, and the implications of such a fundamental shift in the supervisory architecture.

The proposal also considers internal reform of ESMA, including the establishment of a new Executive Board and a refocused mandate on regulatory policy development and supervisory convergence across national authorities.

Benefits for investors, companies and market participants

The legislative package helps the EU address key challenges, from financing the green and digital transitions to strengthening defence capabilities and long-term economic security. The core objective is to break down barriers between national markets, creating economies of scale and easier access to capital across the 27 Member States.

The Commission expects deeper integration to create a positive cycle: more efficient capital markets deliver better returns for savers and investors, encouraging greater investment in the European economy. This provides businesses with easier access to funding for growth and innovation. This is particularly important as a press release from the European Commission dated 19 March 2025 stated that approximately €10 trillion of EU retail savings currently sit in bank deposits earning low returns.

The benefits are significant: enhanced competitiveness, stronger economic growth, and job creation across the Union. By improving capital markets, the EU aims to channel investment towards urgent priorities including climate action, digital infrastructure, and security whilst giving European citizens better opportunities to grow their savings.

Next steps

The next steps include securing approval from the European Parliament and the Council in late 2026, followed by an expected implementation period between 2027 and 2029. Member States would also be required within at least 18 months of the entry into force of the new legislation to ensure that their domestic frameworks align with the new EU requirements.

THE PROSPECTUS REGULATION | NEW ESMA Q&AS

In December 2025, ESMA issued two Q&As (Q&A 2741 and Q&A 2742) offering welcome clarity to issuers grappling with the intricacies of the EU Prospectus Regulation (2017/1129). These clarifications address critical questions about supplement obligations and prospectus exemptions, offering meaningful relief for issuers executing rights offerings and fungible securities admissions.

ESMA Q&A 2741: no supplement required for Annex IX documents

ESMA addressed whether issuers must update documents drawn up in accordance with Annex IX of the Prospectus Regulation when significant new factors, material mistakes, or material inaccuracies arise. The answer is clear: No. Documents drawn up in accordance with Annex IX PR are not prospectuses. Therefore, Article 23 of the Prospectus Regulation on supplements does not apply.

Annex IX documents are required when securities fungible with those already admitted to trading on a regulated market for at least 18 months are themselves admitted to trading or offered to the public, provided certain conditions are met. These simplified documents are limited to a maximum of 11 sides of A4-sized paper when printed, making them significantly less burdensome than full prospectuses.

Article 23 of the Prospectus Regulation requires issuers to publish a supplement when significant new factors, material mistakes, or material inaccuracies arise between prospectus approval and the closing of the offer period or commencement of trading. This supplement must grant investors a right of withdrawal exercisable within three working days, creating administrative complexity and potential deal disruption

In confirming that Annex IX documents lie beyond Article 23's reach, ESMA has delivered a pragmatic clarification that will prove particularly valuable for repeat issuers leveraging the fungible securities exemption in connection with follow-on offerings.

ESMA Q&A 2742: subscription rights inherit prospectus exemptions from underlying shares

ESMA clarified whether subscription rights fall under the exemptions in Article 1(5)(a) and (ba) of the Prospectus Regulation. The answer is affirmative - yes, subscription rights fall under these exemptions provided they relate to shares which themselves qualify under these exemptions.

Article 1(5)(a) exempts securities fungible with securities already admitted to trading on the same regulated market, provided they represent less than 30% over 12 months, whilst Article 1(5)(ba) exempts securities fungible with those admitted to trading continuously for at least 18 months, subject to specific conditions including that the issuer is not subject to restructuring or insolvency proceedings and that an Annex IX document is filed.

Subscription rights (also known as pre-emption rights) are instruments that give existing shareholders the right to subscribe for new shares, typically in proportion to their existing holdings. ESMA's guidance establishes that where the underlying shares qualify for exemption, the subscription rights inherit that exemption status, thereby enabling issuers to admit subscription rights to trading without the burden of publishing a discrete prospectus for the rights instrument itself.

LUXEMBOURG GENDER BALANCE LAW 2025 I KEY CHANGES FROM DRAFT TO FINAL TEXT

On 17 December 2025, the Luxembourg Parliament adopted the law of 19 December 2025 establishing a quantitative target for gender balance among directors of listed companies with a view to transposing Directive (EU) 2022/2381 (the "**Gender Balance Law**"). For those who have been following this legislative journey since the draft law stage, the enacted text remains largely faithful to the draft law, while introducing some notable refinements, particularly around enforcement mechanisms.

For listed companies, adoption of the Gender Balance Law marks the point at which gender balance becomes a **governance and enforcement issue**, rather than a policy aspiration.

Scope and core requirements

We first covered the draft law in our April 2025 newsletter, available here. As a refresher on the scope and core requirements:

- The Gender Balance Law applies to all companies whose registered office is in Luxembourg and whose shares are admitted to trading on a regulated market in one or more EU Member States. However, in alignment with the EU Directive, listed companies that qualify as micro, small, and medium-sized enterprises ("**SMEs**") are excluded from its scope.
- **The central requirement**: at least 33% of board positions, both executive and non-executive, must be held by the under-represented gender by 30 June 2026.
- The CSSF has been designated as the competent authority, tasked with overseeing compliance, collecting data, and publishing an annual list of companies that meet the target. The CSSF will work alongside the gender equality observatory (established under the Law of 7 November 2024) to monitor progress and promote best practices.

The Gender Balance Law entered into force on 23 December 2025 and will remain in force until 31 December 2038.

How enforcement changed in the final text: CSSF can now intervene before imposing fines

One of the most meaningful differences between the draft law and the enacted version lies in the architecture of enforcement.

Under the draft law, injunctions appeared alongside fines and reprimands within the sanctions provision. The Gender Balance Law deliberately restructures this. Injunctions are now anchored exclusively in the CSSF's supervisory powers, while Article 7 is reserved for punitive measures (warnings, public statements and administrative fines).

This distinction is not merely cosmetic; it clarifies that injunctions will be used as corrective tools by the CSSF to steer the behaviour prospectively rather than as a sanction.

For boards and nomination committees, this increases the likelihood of early supervisory intervention well before any fine is imposed, particularly where selection processes or disclosures are deemed deficient.

The "Comply-or-Explain" reality

Apart from this enforcement-related refinement, the enacted Gender Balance Law remains largely aligned with the draft law as previously discussed. Rather than revisiting unchanged provisions, this follow-up article focuses on certain aspects that take on particular practical importance now that the Gender Balance Law is in force, beginning with the "comply-or-explain" mechanism transposed from Directive (EU) 2022/2381.

The Gender Balance Law creates a two-tier compliance framework:

Tier 1: the target itself (no direct sanctions)

- Companies must aim for 33% representation by 30 June 2026.
- Failure to meet the target triggers additional obligations but not penalties.

Tier 2: process and transparency obligations (sanctions apply)

- Companies that do not meet the target must adapt their selection process, applying clear, neutral and unambiguous criteria in a non-discriminatory manner throughout the selection process.
- Where the objective is not achieved, companies must explain the reasons and provide a full description of measures taken or intended to achieve the objective.

- Companies must report annually to the CSSF and publish information on their website.

The critical distinction is as follows: Companies won't be fined simply for having a board composition of, say, 25% women. They will face sanctions if they fail to implement proper selection procedures, fail to report transparently, or fail to explain their shortfall adequately.

Board appointments are now contestable: what this means for your process

Another important practical implication of the Gender Balance Law to note, is the proceduralising of appointment decisions.

When choosing between candidates who are equally qualified in terms of their aptitude, competence and professional performance, priority shall be given to the candidate of the under-represented gender, unless, there are legally exceptional cases, such as the pursuit of other diversity policies, invoked in the context of an objective assessment that takes into account the particular situation of a candidate of the other sex and is based on non-discriminatory criteria, tip the balance in favour of the candidate of the other sex.

Candidates who are not selected now have an explicit statutory right to request information on:

- the selection criteria,
- the comparative assessment, and
- the reasons why priority was not granted to a candidate from the under-represented sex.

Combined with the shift of the burden of proof onto the company before the courts, this creates a framework in which **individual board appointments may become contestable events**, especially in closely matched candidate scenarios.

From a risk perspective, this elevates record-keeping, internal deliberation minutes and nomination committee documentation from best practice to legal necessity.

How this may work in practice

A listed company with board positions requiring 3 members of the under-represented sex for 33% compliance currently has 2 women directors. When a vacancy arises, the company receives applications from both a male and a female candidate with similar qualifications. Under the Gender Balance Law, the company must give priority to the female candidate unless it can demonstrate exceptional reasons based on other diversity policies. If it selects the male candidate, the female candidate can request the selection criteria, comparative assessment, and justification. Moreover, if the matter goes to court, the company bears the burden of proving it did not breach the priority rule.

Why process documentation matters more than board composition

With the Gender Balance Law now in force, the question for listed companies is no longer whether they will be subject to a gender-balance regime, but how well their governance processes will withstand supervisory and, potentially, judicial scrutiny.

The most exposed organisations may not be those with the least balanced boards, but those whose appointment decisions cannot be convincingly explained.

In that sense, the message to the listed companies is clear: demonstrate that you're taking gender balance seriously through transparent, merit-based processes and honest reporting. The outcome matters, but how you get there and how you explain any shortfall matters more.

What listed companies should do now

- *Conduct a board composition gap analysis against the 33% target*
- *Document your director selection criteria before your next appointment*
- *Review and formalise nomination committee procedures*
- *Prepare templates for candidate comparative assessments*
- *Establish a system for annual CSSF reporting and website publication*
- *Train nomination committees on the priority rule and burden of proof implications*

DRAFT LAW NO. 8669 | DEFERRING SHARE CAPITAL PAYMENT FOR LUXEMBOURG SARL COMPANIES

On 16 December 2025, the Luxembourg government introduced Draft Law no. 8669, proposing to allow the deferral of the share capital payment for companies having the form of a *société à responsabilité limitée* (“**SARL”)** for up to 12 months after incorporation. This reform would eliminate the current requirement to fully pay up the EUR 12,000 minimum share capital at incorporation, simplifying the process and aligning Luxembourg with practices in other European jurisdictions.

This article provides a brief overview of Draft Law no. 8669. It outlines the current legal framework, the key provisions of the draft bill, and the potential implications for company incorporation in Luxembourg.

The currently applicable regime

Under the current legal framework, it is mandatory to fully pay up the share capital of EUR 12,000 upon the incorporation of a Luxembourg SARL whereas, other Luxembourg company forms, such as the *société anonyme* (SA), already permit deferred payment of share capital. In practice, this amount must be deposited in a bank account opened in the name of the company at formation. The bank issues a blocking certificate and, following the incorporation, the notary provides an unblocking certificate enabling the release of the funds. This process might cause delays, as the opening of a corporate bank account can be complex and time-consuming in certain instances.

The Draft Law no. 8669

Key aspects

Deferral of the minimum share capital (and related share premium, if any) payment at incorporation

Draft Law no. 8669 aims to abolish the requirement to fully pay up the share capital upon incorporation. The Draft Law provides for the possibility to defer the full payment of the share capital for up to 12 months, unless the articles of association provide for a shorter period. The articles of association must explicitly specify the terms and conditions for any deferred payment.

Consequently, it would be possible to incorporate a SARL (or a simplified SARL) without immediately opening a bank account, which could instead be opened at a later stage. This would significantly simplify and accelerate the incorporation process.

Transparency

Furthermore, the Draft Law introduces transparency provisions: the list of shareholders who have not yet fully paid up their shares subscribed at incorporation, and any related share premium, together with the amounts owed, must be published following the balance sheet in the annual accounts.

Limitation to cash contributions

The scope of the planned reform is limited to cash contributions (up to a maximum amount of EUR 12,000, increased, where applicable, by any share premium) made at the time of incorporation. Structures involving a higher initial share capital (such as “alphabet shares”) would therefore only benefit from the deferred payment mechanism for the first EUR 12,000 of share capital (i.e. up to the minimum capital requirement), with any amount exceeding the minimum capital required by Article 710-5 being payable in full at incorporation.

The new mechanism does also not apply to contributions in kind, which would still need to be paid up immediately upon incorporation. Furthermore, the Draft Law permits deferral only for the payment of the initial share capital at incorporation. Any shares issued in connection with subsequent capital increases must be fully paid upon issuance. In such a case, a blocking certificate from a bank would still be necessary.

Liability of founding shareholders

The Draft Law also addresses the liability regime applicable during the deferral period. Shareholders remain liable for the amount of their shares and, where applicable, any related share premium, notwithstanding any provision to the contrary. However, a valid transfer of shares releases the transferring shareholder from liability towards the company for any debts arising after the notification of the transfer to the company (in accordance with the Luxembourg law), and from liability towards third parties for any debts arising after publication of the transfer.

Implications of the proposed law

The proposed amendments would significantly simplify the establishment of new companies. This is particularly relevant for young entrepreneurs and SMEs that may not have the required capital readily available or whose shareholders are less known to banks and require additional time to complete the currently mandatory and often burdensome bank account opening formalities prior to incorporation. Furthermore, this reform may also be of interest to larger corporate groups seeking to accelerate the formation of SARL companies.

In addition, the Draft Law aims to bring Luxembourg law in line with practices in other European jurisdictions, such as France, Germany and Belgium, where immediate full payment of the minimum share capital is not mandatory. This change is likely to enhance Luxembourg's attractiveness and competitiveness as a business-friendly jurisdiction.

As of today, the Draft Law is still under review.

RIGHT TO DISCONNECT | FINAL COUNTDOWN FOR EMPLOYERS

By a law dated 28 June 2023, the Luxembourg Parliament (*Chambre des Députés*) adopted legislation amending the Labour Code to formally introduce a statutory right to disconnect for employees using digital tools in the context of their work (the "**Law**").

While the substantive obligation has been in force since July 2023, the transitional period granted to employers to implement a system ensuring employees' right to disconnect outside working hours is coming to an end. As of 1 July 2026, failure to comply may result in administrative sanctions.

From implicit protection to explicit obligation

Before the adoption of the Law, Luxembourg legislation did not expressly recognise a statutory right to disconnect. Nevertheless, employees already benefited from indirect protection through various provisions of the Labour Code, notably those governing working time, rest periods and the employer's general duty to safeguard employees' health and safety.

In addition, Luxembourg case law had recognised the right to disconnect prior to the reform. In 2019, the Luxembourg Court of Appeal held that dismissing an employee for failing to respond to work-related communications during annual leave constituted an unfair dismissal.

A mandatory system for digital work environments

The Law introduced a specific obligation for employers whose employees use digital tools for professional purposes. In such cases, employers must establish a scheme ensuring respect for the right to disconnect outside working hours.

This scheme must be adapted to the specific circumstances of the company or the sector concerned and must address, in particular:

- the practical arrangements and technical measures for disconnecting from digital devices;
- awareness and training measures;
- and compensation arrangements in the event of exceptional derogations to the right to disconnect.

As a rule, the scheme must be implemented through a collective bargaining agreement or a subordinate agreement. In the absence of such agreements, it must be defined at company level with the involvement of the staff delegation where one exists.

Compliance deadline and sanctions

Although the obligation to implement a right to disconnect scheme has been in force since July 2023, the Law provides for a three-year transitional period before sanctions may be imposed.

This period will expire on **30 June 2026**. As of 1 July 2026, the Labour and Mines Inspectorate (*Inspection du travail et des mines*) may impose administrative fines ranging from EUR 251 to EUR 25,000 on employers who fail to comply. The level of the fine will be determined on a case-by-case basis, taking into account the circumstances, the seriousness of the breach and the employer's conduct.

What employers should do now

With the deadline approaching, employers who have not yet implemented a right to disconnect policy should act without delay.

Our Employment, Compensation and Benefits department remains available to assist you with any issues relating to the right to disconnect, including, where appropriate, the implementation of a right to disconnect policy tailored to your organisation.

BLOOD DONATION | NEW SPECIAL LEAVE FOR ALL EMPLOYEES

In November 2024, the Luxembourg Red Cross and the Blood Transfusion Centre launched an appeal for donors, as blood reserves were only covering one week's hospital needs. In this context, Luxembourg could soon take an important step towards ensuring the long-term future of its solidarity-based blood donation model.

Submitted to the Chamber of Deputies on 19 December 2024, Draft Law No. 8471 aims to extend to all private sector employees the right to four hours off work, without loss of pay, in order to donate blood.

Content of the proposed reform

The text provides for the addition of an eleventh case of special leave to Article L. 233-16, paragraph 1st of the Labour Code, worded as follows: "four hours per donation in the case of blood and other blood components".

In its amended version currently under discussion, this new special leave would have the following characteristics:

- **Fixed duration**: four hours off work **per donation**, in line with the system already in place in the civil service and in certain private sector companies.
- **Extended scope**: the leave would cover not only whole blood donations but also donations of blood components (red blood cells, platelets, plasma).
- **Maintenance of salary**: the employee's absence would give rise to full maintenance of salary.
- **Proof**: the exemption would be granted upon presentation of a certificate issued by the Blood Transfusion Centre after the donation has been made.
- **Frequency**: donations would remain subject to the limits set by the applicable health regulations (authorisation for male donors to donate four times a year and female donors three times).

While the Chamber of Employees has approved the proposal, the Chamber of Commerce opposes it, arguing that it is the responsibility of the State – and not private sector employers – to maintain sufficient blood reserves. In particular, it advocates alternative measures such as extending the hours and/or days for blood collection to facilitate donation without creating a new type of special leave at the expense of companies.

What are the implications for employers?

Pending the final vote on the text and its entry into force, we recommend that employers anticipate the possible introduction of this new special leave, in particular by:

- assessing its organisational impact;
- adapting their internal absence management procedures, where necessary;
- informing HR departments and managers of the applicable rules;
- verifying how the future system will fit in with any collective agreements or existing practices applicable within the company.

We remain at your disposal for any questions you may have regarding this new special leave.

EU DIGITAL SERVICES ACT | THE GENERAL COURT UPHOLDS VERY LARGE ONLINE PLATFORMS REGIME IN LANDMARK AMAZON RULING

On 19 November 2025, in Case T-367/23, *Amazon EU v European Commission*, the General Court of the European Union (the **Court**) delivered a seminal judgment on an action for annulment brought against a decision of the European Commission (the **Commission**) adopted pursuant to Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services (the **Digital Services Act**).

In its ruling, the Court upheld the Commission's decision in its entirety, dismissing all arguments raised by Amazon EU SARL ("**Amazon**"), both as regards the alleged unlawfulness of certain provisions of the regulation and the Commission's application thereof, in particular in relation to the designation of Amazon as a "Very Large Online Platform" ("**VLOP**").

Background to the dispute

The Digital Services Act, adopted on 19 October 2022, aims, *inter alia*, to establish a harmonised regulatory framework for digital services within the European Union ("**EU**"), in response to the growing fragmentation of national rules governing rapidly evolving online business models. It specifically targets services such as online marketplaces and social networks, which increasingly mediate business-to-consumer (B2C) transactions and shape the digital economy.

Given the systemic risks associated with such platforms, including risks for consumers, public order and market integrity, the Digital Services Act imposes a set of due-diligence obligations on providers of intermediary services. These obligations become particularly stringent where an online platform qualifies as "very large". Under Article 24(2), of the regulation, providers of online platforms are required to publish information on the average monthly active recipients (AMAR) of their services in the EU. Where this figure exceeds 45 million users, the platform may be designated as a very large online platform, triggering enhanced regulatory obligations.

On 17 February 2023, Amazon notified the Commission that the AMAR of its Amazon Store platform exceeded the statutory threshold. On that basis, the Commission, by letter of 22 February 2023, informed Amazon of its preliminary assessment that the platform met the conditions for designation as a very large online platform. Following the submission of Amazon's observations, the Commission confirmed its assessment by decision of 25 April 2023, formally designating Amazon Store as a very large online platform. Amazon subsequently brought an action for annulment of that decision under Article 263 of the Treaty on the Functioning of the European Union (TFEU), leading to the judgment at issue.

The issues at stake

Several elements made the stakes of this case particularly high. First, the obligations imposed by the Digital Services Act on very large online platforms entail significant compliance costs for providers such as Amazon. These costs include not only the technical and operational adjustments required to meet the regulation's substantive requirements, but also the annual supervisory fee established under Article 43 of the Digital Services Act, which may amount to up to 0.05% of the platform's worldwide annual net income. As such, it may represent a significant amount for Amazon. Despite its size and global relevance, Amazon Store operates in an increasingly competitive environment, challenged by emerging players often adopting aggressive market strategies to gain market share. In this context, additional regulatory burdens may directly affect competitiveness and market positioning, making the outcome of the case economically crucial for Amazon.

Second, this was one of the first judicial disputes concerning the application of the Digital Services Act, following shortly after the judgment in Case T-348/23 *Zalando v Commission* rendered on 3 September 2025. Given the novelty and complexity of the regulatory framework, judicial guidance was required to clarify both its scope and interpretative principles, making the Court's intervention particularly significant. A potential annulment of the contested provisions would have threatened the very philosophical foundations of the EU's new digital regulatory framework, of which the regulation forms part, alongside the Digital Markets Act (Regulation (EU)

2022/1925). Together, these instruments reflect a deliberate policy choice to protect European citizens and residents from the most aggressive market practices, particularly where such practices endanger fundamental rights and democratic values.

Third, the judgment was delivered in a highly sensitive geopolitical context, where the United States administration has been expressing growing hostility towards EU regulatory policies, portraying them as a threat to US digital and non-digital champions, including Amazon. While judicial review of EU legislation is not unusual, this case unfolded amid mounting transatlantic tensions over the EU's regulatory model. Adopted to strengthen consumer protection in rapidly evolving digital markets, the Digital Services Act seeks to prevent systemic risks and ensure that digital services are provided without jeopardising fundamental rights. Against this background, the case acquired a symbolic dimension, extending well beyond its strictly legal implications.

The findings of the Court

The Court dismissed in their entirety all arguments raised by Amazon challenging the lawfulness of the Digital Services Act. In particular, Amazon relied on alleged infringements of Articles 16 (freedom to conduct a business), 17 (right to property), 20 (equality before the law), 11(1) (freedom of expression) and 7 (right to respect for private and family life) of the Charter of Fundamental Rights of the European Union (the Charter). As regards the freedom to conduct a business and the right to property, the Court acknowledged that the Digital Services Act does interfere with those rights, notably due to the technical adjustments and significant compliance costs imposed on very large online platforms.

While the Court did not deny the existence of restrictions, it assessed Amazon's arguments through two foundational principles governing judicial review of EU legislative and administrative action. First, fundamental rights are not absolute: limitations may be imposed provided that they respect the essence of the right, pursue an objective of general interest and comply with the principles of legality and proportionality. Second, where EU institutions adopt measures involving complex political, economic and social assessments, the EU legislature enjoys a broad margin of discretion. Judicial review is therefore limited to verifying whether the contested measures are manifestly inappropriate in light of the objectives pursued.

Applying those principles, the Court observed that although Amazon remains free to exercise its economic activity, the obligations imposed by the Digital Services Act pursue a legitimate public interest objective, namely the protection of users against systemic risks inherent in very large online platforms. This was particularly relevant in Amazon's case, given that the Amazon Store platform reaches a significant proportion of EU users, as demonstrated by its AMAR figures. The Court recalled that the regulation specifically targets systemic risks such as, *inter alia*, the dissemination of illegal content, threats to fundamental rights, risks to public health and security and issues relating to gender protection and democratic integrity.

From this perspective, the fact that Amazon had already adopted internal policies to mitigate such risks did not, in the Court's view, undermine the rationale of the Digital Services Act. On the contrary, the Court stressed that reputational incentives alone are insufficient guarantees to effectively prevent systemic risks, thereby justifying the need for a binding regulatory framework. The Court also rejected Amazon's argument that less restrictive measures, such as qualitative criteria or rebuttable presumptions, would have been sufficient, on grounds that such alternatives would not ensure an equivalent level of effectiveness in achieving the objectives pursued by the regulation.

The Court also addressed Amazon's specific claims relating to the costs generated by the regulation, in particular those concerning recommender systems. These systems, based on artificial intelligence and machine learning, are designed to predict user preferences and suggest content or products. Under Article 34 of the regulation, very large online platforms using such systems must offer users at least one option not based on profiling, as defined under the General Data Protection Regulation. Here again, the Court held that the additional costs and technical adjustments required by this obligation do not render the measure disproportionate, given its aim of strengthening user autonomy and data protection.

Finally, the Court dismissed Amazon's remaining pleas based on other Charter provisions. While acknowledging that the Digital Services Act entails interferences with certain fundamental rights, it consistently applied the same constitutional test (as described above) and concluded that none of those interferences could be regarded as manifestly inappropriate or unjustified. Regarding the right to property, the Court determined that whilst Articles 34 to 43 impose administrative burdens on very large online platforms, they do not deprive providers of ownership of their platforms. On confidentiality concerns, the Court ruled the interference was justified because Article 39 is time-limited, advertising represents only a small portion of Amazon's revenue, particularly sensitive information remains protected from disclosure, and vetted researchers under Article 40 must meet specific confidentiality criteria.

The way forward

Given the high stakes of the dispute, the Court delivered a landmark judgment confirming the legality and enforceability of the Digital Services Act in the face of Amazon’s challenge. Following the approach already adopted in the aforementioned *Zalando v Commission* case-law, the Court confirmed that platforms, whether a marketplace, social network, content-sharing service or search engine exceeding the 45 million user threshold must be designated as very large online platforms. Such qualification undoubtedly entails substantial compliance obligations under a comprehensive regulatory framework, requiring platforms to significantly adapt their operations, governance, transparency and risk-management practices. The Court nevertheless held that these obligations are well-founded and justified by the objective of protecting users in the European Union against systemic risks and abuses of their rights.

The judgment acquires particular significance in light of the increasingly hostile, at times openly intimidating, stance recently adopted by the United States administration towards EU regulators and, more generally, towards the European regulatory model. In a more stable geopolitical context, such case law might not appear as remarkable. However, the deterioration of international relations and the mounting pressure on EU institutions to soften their regulatory approach vis-à-vis major US market operators give this decision a distinct political and constitutional dimension.

Together with other recent enforcement actions, including major sanctions imposed by the Commission against large digital operators (see for instance the recent Commission’s EUR 120 million fining of X), this case illustrates a broader trend: the EU judiciary firmly supports the Union’s regulatory strategy, ensuring that political pressure does not undermine the consistent application of EU law. Far from acting on purely political impulses, the EU legislature is shown to operate within a coherent legal framework, grounded in established principles of proportionality, legality and judicial review, and, as to the judiciary, in its well-consolidated case law.

PRIMACY OF EU LAW UNDER STRAIN I WHAT A DECADE-LONG CONSTITUTIONAL CRISIS MEANS FOR LEGAL CERTAINTY IN EUROPE

On 18 December 2025, the Grand Chamber of the Court of Justice of the European Union (the **Court**) delivered its judgment in Case C-448/23, *European Commission v Republic of Poland*. In this momentous ruling, the Court held that Poland failed to fulfil its obligations under EU law as a result of two decisions adopted by the Polish constitutional tribunal (*Trybunał Konstytucyjny*) which openly and deliberately challenged core principles of the EU legal order such as, *inter alia*, the effectiveness of judicial protection and primacy of European Union (EU) law. The judgment constitutes one of the clearest judicial reaffirmations of the EU constitutional foundations to date and is particularly delicate in that the Court expressly took into account the systemic consequences of irregularities affecting the composition and functioning of the Polish constitutional tribunal. It also falls within the line of the Court's case-law and, more widely, EU institutions' initiatives aimed at countering the progressive erosion of the rule of law, judicial guarantees and civic space in Poland.

Background to the dispute

While its facts partly date back to the end of 2015, the case must be understood against the background of a broader series of disputes involving Poland and the European Union, relating to legislative reforms adopted by the Polish lower chamber (*Sejm*) between 2015 and 2023, during which it was dominated by the nationalist Law and Justice party (*Prawo i Sprawiedliwość*, PiS). Those reforms were repeatedly found by the Court to undermine judicial independence, weaken the separation of powers, restrict the civic space and limit the ability of national courts to apply and give effect to EU law. In that context, the Court was called upon to interpret and enforce EU law in relation to several legislative measures, including, *inter alia*:

- Legislation granting the President of the Republic discretionary power to extend the judicial activity of judges approaching retirement age, thereby allowing selective prolongation of mandates (Case C-619/18, judgment of 24 June 2019);
- Reforms of the disciplinary regime applicable to judges, including the establishment and operation of the disciplinary chamber of the supreme court (*Sąd Najwyższy*), under which judicial decisions applying EU law could be treated as disciplinary offences (Case C-791/19, judgment of 15 July 2021);
- Legislation prohibiting national courts from reviewing compliance with EU requirements concerning judicial independence and impartiality (Case C-204/21, judgment of 5 June 2023); and
- Measures restricting the review of the lawfulness of judicial appointments to constitutional courts and other judicial bodies (Case C-225/22, judgment of 4 September 2025).

In each of these cases, the Court found that the contested legislation infringed the requirements of judicial independence and impartiality, which constitute essential elements of the rule of law and are indispensable for ensuring effective judicial protection under EU law. The gravity and persistence of those breaches led the European Commission (the **Commission**), in 2017, to trigger the preventive mechanism under Article 7 of the Treaty of the European Union (TEU), a procedure later suspended following commitments by Poland to bring its legislation into line with EU requirements.

The dispute in the present case is rooted more specifically in the composition and functioning of the Polish constitutional tribunal. In November 2015, the newly elected PiS-dominated Sejm declared ineffective the appointment of several judges lawfully nominated by the preceding legislature, while the president of the republic declined to administer their oath of office. This enabled the appointment of replacement judges in January 2016. Those events were examined by the European Court of Human Rights, which, in its judgment of 7 May 2021 (*Xero Flor v Poland*), held that the appointment of one of the judges elected in 2016 had been affected by serious irregularities, impairing the very essence of the right to a tribunal established by law, as guaranteed by Article 6 of the European Convention on Human Rights, and undermining the rule of law.

Against that background, the Polish constitutional tribunal delivered two particularly controversial judgments in 2021. By its decision of 14 July 2021, it refused to recognise the binding nature of interim measures ordered by the Court under Article 279 of the Treaty on the Functioning of the European Union (TFEU), which required the suspension of the disciplinary chamber of the supreme court. The tribunal held that the Court had acted *ultra vires*, asserting that the Treaties did not confer competence to impose such measures on Polish constitutional bodies. The confrontation escalated further with the judgment of 7 October 2021, in which the Constitutional Tribunal extended its *ultra vires* reasoning to challenge, *inter alia*, the primacy of EU law over the Polish Constitution.

In response, the Commission initiated infringement proceedings under Article 258 TFEU. Meanwhile, a political change followed the 2023 parliamentary elections, won by the pro-European Civic Platform (*Platforma Obywatelska*, PO), resulting in Poland's position being aligned with that of the Commission. Nevertheless, the Court considered it necessary to rule on the merits of the case, given the systemic constitutional challenge posed to the EU legal order and its potential impact beyond Poland.

The issues at stake

The issues raised by the case were of the highest constitutional significance. The legislative reforms adopted by the Sejm between 2015 and 2023 directly affected the organisation, independence and functioning of the judiciary, thereby striking at the core mechanisms through which EU law is applied and enforced at national level. Those reforms aimed, in particular, at reducing the autonomy of courts and exerting political control over the appointment and functioning of the Polish constitutional tribunal. In that context, the role of the President of the Republic did not operate as an institutional counterbalance. The refusal to administer the oath of office to judges lawfully appointed, combined with the acceptance of appointments subsequently made under contested procedures, formed part of the broader institutional crisis examined by both European and national courts.

The two judgments delivered by the Polish constitutional tribunal in 2021 further escalated that crisis by directly challenging the foundational principles of EU law. By asserting that the Court had acted *ultra vires*, the tribunal sought to deny the Court's authority to interpret EU law and to order interim measures under Article 279 TFEU, a competence which the Court has exercised consistently since the early days of the European Communities. The tribunal substituted the autonomous interpretation of EU law with its own reading of the Treaties, treated as ordinary international agreements subject to constitutional override. On that basis, it held that EU law could not prevail over provisions of constitutional rank and claimed for itself, and for national authorities, the power to determine the limits of EU law primacy by reference to national constitutional identity.

While Article 4, para. 2, TEU requires the Union to respect the national identities of Member States, the interpretation advanced by the Polish constitutional tribunal went far beyond that provision. If upheld, it would have fundamentally undermined the principle of primacy, including in relation to constitutional norms, and deprived EU law of its uniform and effective application.

The consequences of such an approach would have been twofold. First, it would have required acceptance of a systemic weakening of effective judicial protection in Poland, in circumstances where the independence of the judiciary had already been compromised. In such a context, the capacity of national courts to apply EU law directly and to engage in judicial dialogue through preliminary references under Article 267 TFEU would have been seriously impaired. Second, the reasoning advanced by the tribunal would have produced a disruptive spill-over effect across the Union, preventing the Court from ensuring the uniform application of EU law and thereby calling into question the very coherence of the EU legal order.

Finally, the case also raised sensitive issues concerning the composition and functioning of the Polish constitutional tribunal itself. As recognised by the European Court of Human Rights in *Xero Flor v Poland*, serious irregularities affected the appointment of certain judges following the 2015 reforms, with the result that panels including such judges could not be regarded as tribunals established by law within the meaning of Article 6 ECHR. These findings reinforced the conclusion that the violations at issue extended beyond EU law, touching upon fundamental guarantees protected by the European Convention on Human Rights and the Polish constitutional framework itself.

The findings of the Court

In its 298-paragraph judgment, the Court held that the two judgments delivered by the Polish constitutional tribunal in 2021 infringed several fundamental principles of EU law. At the outset, the Court recalled that, although the Treaties were concluded in the form of international agreements, they constitute the constitutional charter of a legal order founded on the rule of law. Within that order, Article 19 TFEU entrusts the Court with the task of ensuring the interpretation and application of EU law. On that basis, the Court reaffirmed that national courts, including constitutional and supreme courts, cannot substitute their own interpretations of EU law for that of the Court without jeopardising its uniform application across the Union. By advancing an interpretation of EU law based on exclusively national constitutional criteria and by denying the Court's jurisdiction to order interim measures under Article 279 TFEU, the Polish constitutional tribunal directly challenged the powers conferred on the Court by the Treaties.

The Court further emphasised that, upon accession to the European Union, Member States accept not only the binding force of the Treaties, but also the body of principles and case-law interpreting them, which together form part of the *acquis communautaire*. Unlike ordinary international agreements, EU law cannot be interpreted in isolation from the settled case-law of the Court. Accordingly, Poland could not rely on its constitutional law to claim that the Court's interpretation of EU law exceeded the competences conferred by the Treaties. In that context, the Court restated its well-established case-law on effective judicial protection and the rule of law. While Member States remain free to organise their judicial systems in accordance with national constitutional traditions, EU law requires compliance with minimum standards necessary to guarantee judicial independence and impartiality. These include the requirement that courts be lawfully constituted, with judges appointed in accordance with procedures ensuring their independence.

Where those requirements are not met, the effectiveness of judicial protection is undermined, with systemic consequences for the enforcement of EU law. In particular, deficiencies affecting judicial independence may discourage national courts from applying EU law or from engaging in judicial dialogue through preliminary references under Article 267 TFEU. It was precisely to prevent such distortions that the Court ordered interim measures under Article 279 TFEU requiring the suspension of the disciplinary chamber of the Polish supreme court. The refusal by the Polish constitutional tribunal to recognise the binding nature of those measures was therefore found to constitute a serious threat to the effectiveness of judicial protection and to the rule of law.

Finally, the Court addressed the issue of the composition of the Polish constitutional tribunal. Drawing on the findings of the European Court of Human Rights in *Xero Flor v Poland*, the Court noted that serious irregularities had affected the appointment of certain judges following the 2015 reforms, in breach of Polish constitutional law. While the Court did not rule on the validity of the Tribunal as an institution as such, it acknowledged that the participation of judges appointed under such irregular procedures could undermine the requirements of a tribunal established by law and, consequently, the guarantees of effective judicial protection under EU law.

The way forward

The judgment is of paramount importance, as it enabled the Court not only to restate core principles of EU law, including the effectiveness of judicial protection, the primacy and uniform application of EU law, but also to clarify the scope of Article 4, para. 2, TEU. The requirement to respect the national identities of Member States cannot be interpreted in a manner that allows unilateral, constitutionally framed readings of EU law disregarding the Court's settled case-law. On the contrary, by acceding to the Union, Member States accepted not only the Treaties themselves, but also the system of values, principles and judicial interpretations through which those Treaties are given effect. Within that framework, the Court remains the principal guarantor of the balance between EU law and national constitutional identity.

Member States are not deprived of legal means to contest the validity or interpretation of EU acts. The Treaties provide a structured set of remedies, including actions for annulment under Article 263 TFEU, as well as the preliminary ruling mechanism under Article 267 TFEU, which allows national courts and individuals to raise questions of validity or interpretation before the Court. What EU law does not permit, however, is a unilateral redefinition of the limits of EU competences by reference to purely national constitutional criteria, nor the characterisation of the Court's exercise of its Treaty-based powers as ultra vires.

This point is particularly significant in light of recent tensions affecting the dialogue between the Court and national constitutional courts, a dialogue which has historically played a central role in the integration of EU law within domestic legal orders. While that dialogue has occasionally encountered friction, including in the judgment of the German *Bundesverfassungsgericht* of 5 May 2020 concerning the European Central Bank's Public Sector Purchase Programme, such tensions have traditionally remained within a framework of mutual recognition of jurisdiction and ultimate compliance with EU law.

However, the present case differs in nature and intensity, as it forms part of a broader pattern of judgments and legislative reforms reflecting a sustained deterioration of the rule of law in Poland, a development which the Court has repeatedly been called upon to address. At the time of writing, issues relating to the composition and functioning of the Polish constitutional tribunal remain unresolved, while legislative efforts to reverse earlier reforms continue to face political obstacles.

As a result, the judgment, while constitutionally decisive, does not in itself resolve the underlying institutional stalemate. EU citizens and economic operators in Poland remain exposed to a weakened system of judicial protection and the risk cannot be excluded that similar challenges to the authority of EU law may arise elsewhere, notwithstanding their fragile legal foundations. In that context, the judgment stands both as a reaffirmation of the constitutional integrity of the EU legal order and as a reminder that the effectiveness of that order ultimately depends on the continued commitment of Member States to the rule of law.

ELTIF 2.0 I ESMA RELEASES EUROPEAN COMMISSION GUIDANCE ON KEY REGULATORY ISSUES FOR FUND MANAGERS

On 5 December 2025, the ESMA published clarifications addressing key European Long Term Investment Fund ("**ELTIF**") industry questions submitted to the European Commission ("the **Commission**") on the structuring of ELTIFs and their managers. The primary objective was to resolve uncertainties surrounding asset eligibility, fund structuring, liquidity management and cross-border distribution, providing fund managers with enhanced operational possibilities.

Asset eligibility and structural flexibility

The Commission has confirmed in ESMA_QA_2470 that managers may use a single asset to meet both the eligible investment criteria and the liquidity requirements simultaneously. This eliminates the need to separate portfolios into distinct "eligibility" and "liquidity" categories, simplifying portfolio construction and improving operational efficiency.

The Commission clarifies, in ESMA_QA_2468, that special purpose vehicles (SPVs), holding companies, and other intermediary entities are treated as transparent conduits rather than investments in their own right. As these intermediary structures are treated as transparent, the ELTIF's portfolio composition and diversification requirements apply solely on a look-through basis to the underlying assets held by such vehicles. Accordingly, intermediary entities do not need to qualify as alternative investment funds or meet qualifying-portfolio-undertaking criteria.

In a more practical view, this means that for ELTIFs investing in European mid-market companies via a Luxembourg holding company, only the underlying operating company investments must satisfy the qualifying-portfolio-undertaking requirements. This approach from the Commission prioritises the substance of an ELTIF's investment strategy over the technical form of holding structures.

ESMA_QA_2470 also confirms that ELTIFs may invest directly in non-EU Alternative Investment Funds ("**AIFs**") only where the fund meets the eligibility requirements of Undertakings for Collective Investment in Transferable Securities' ("**UCITS**") Article 50(1)(e). This strongly limits direct investment to a narrow category of highly regulated non-EU retail mutual funds.

Liquidity management and redemption mechanics

ESMA_QA_2471 confirms that both closed-ended and open-ended ELTIFs may temporarily exceed certain regulatory limits during capital-raising or redemption periods for a period of up to twelve months.

It was also clarified that requirements designed specifically for closed-ended structures (such as borrowing maturing before the fund's termination date) do not apply to open-ended ELTIFs, which have no fixed maturity.

Managers may also temporarily fall below minimum liquidity thresholds due to market movements or redemptions, provided they take prompt corrective action, typically before the next redemption window. Corrective measures may include retaining income, holding subscription proceeds, calling investor commitments, or disposing of assets. During this remediation period, the fund may continue to process redemptions while restoring regulatory compliance.

In addition, the Commission clarifies several practical flexibilities:

- ESMA_QA_2479 clarifies that where existing investors transfer units directly to new investors, only transfer fees apply. Anti-dilution levies are not permitted, as no units are issued or cancelled.
- ESMA_QA_2478 specifies that managers may calculate minimum holding periods from the fund's launch date, from each individual subscription, or from each capital contribution. Rolling holding periods are permitted for evergreen structures.
- ESMA_QA_2477 confirms that daily valuation and redemption cycles are allowed, provided the fund has adequate operational systems and liquidity.
- ESMA_QA_2476 states that highly predictable future income streams such as interest payments, scheduled repayments, or contractual amortisations may be considered when determining redemption capacity, provided their receipt is sufficiently certain.

Authorisation or establishment requirements for ELTIFs packaged in insurance products or pension/savings plans

ESMA_QA_2481 confirms that Member States cannot impose additional requirements beyond those set out in the ELTIF Regulation when ELTIFs are packaged in insurance products or embedded in pension or savings plans. Specifically, Member States may not require ELTIFs to be domiciled or authorised in a particular jurisdiction as a condition for eligibility in such products.

Such requirements would violate Article 1(3) of the ELTIF Regulation, which prohibits Member States from adding further requirements in the field covered by the Regulation, Article 3(1), which establishes EU-wide passport validity for authorised ELTIFs, and Article 5, read in conjunction with the EU Treaty principles of non-discrimination, market access and cross-border service provision. Member States therefore cannot impose barriers such as requiring ELTIFs to obtain authorisation or establish a local presence in their jurisdiction as a precondition for inclusion in insurance-wrapped or pension-embedded investment products.

Through ESMA_QA_2481, the Commission upholds European principles of non-discrimination, market access, and cross-border service provision, ensuring that ELTIFs can be offered in insurance or pension/savings products without being subject to additional national restrictions.

PRIIPS I CONSOLIDATED Q&A

On 5 December 2025, the European Supervisory Authorities published an updated consolidated version of the Q&A on the PRIIPs Key Information Document ("**KID**"). This consolidated document brings together guidance issued by the European Commission and by the European Supervisory Authorities, covering both the interpretation of Union law and the practical application of the PRIIPs Regulation and its Delegated Acts.

This consolidated document incorporates the clarifications and technical adjustments introduced during 2025 and integrated into the Q&A up to December 2025.

It primarily clarifies three areas of the PRIIPs framework that are of particular practical relevance for PRIIP manufacturers, namely the monitoring of the Market Risk Measure and the Summary Risk Indicator, the calculation of performance scenarios across different holding periods, and the calculation of summary cost indicators.

The main clarifications introduced by the consolidated Q&A are summarised below.

Market Risk Measure and Summary Risk Indicator

The consolidated Q&A clarifies how the Market Risk Measure (the "**MRM**"), which feeds into the Summary Risk Indicator (the "**SRI**"), must be monitored and reviewed in practice.

A change to the MRM class does not apply immediately when the calculated risk level fluctuates. A new MRM class applies only if it has been observed for the majority of reference points over the preceding four-month period. Where this threshold is not met, the existing MRM class must be maintained.

This rule also applies at the time of the annual review of the KID. A PRIIP manufacturer may not apply a new MRM class in advance merely because the risk level is expected to change. Only sustained changes observed over the four-month period may justify an update.

The consolidated Q&A also recalls the ongoing monitoring obligation. Where a change to the SRI is identified, a revised KID must be published, even if the KID has been reviewed less than twelve months earlier.

Performance scenarios and holding periods

The December 2025 consolidation confirms that the methodology applicable to a performance scenario must always be determined by the effective holding period concerned, including where intermediate holding periods are presented. Where the holding period is one year or less, the parameters applicable to a one-year holding period must be used. Different parameters apply only where the holding period exceeds one year.

The consolidation also clarifies that redemption features or maturity values do not, in themselves, constitute capital protection. In the absence of unconditional capital protection, unfavourable scenarios must continue to reflect the possibility of losses, regardless of any redemption value at maturity.

More generally, these clarifications are intended to ensure that performance scenarios are calculated consistently across products and holding periods and to limit divergent methodological approaches.

Calculation of the summary cost indicators

For the purpose of presenting costs, point 90 of Annex VI of the PRIIPs Delegated Regulation requires that cost information be shown on the basis of a standardised investment amount of EUR 10,000 in order to ensure comparability between PRIIPs.

The consolidated Q&A clarifies that entry costs must be included in this reference amount.

PRIIP manufacturers should take these clarifications into account when reviewing their KIDs and their ongoing monitoring processes.

BSP remains available to assist with any questions relating to the interpretation and practical application of the PRIIPs framework and the consolidated Q&A.

AIF I ESMA FINALISES RTS FOR OPEN-ENDED LOAN FUNDS

Regulatory development

On 21 October 2025, the ESMA published its final report on draft Regulatory Technical Standards ("**RTS**") concerning open-ended loan-originating alternative investment funds ("**OE LO AIFs**") under the revised Alternative Investment Fund Managers Directive ("**AIFMD II**"). This final report follows a public consultation that ESMA launched on 12 December 2024 and closed on 12 March 2025.

Under AIFMD II, ESMA is required to develop draft RTS determining the requirements with which loan-originating AIFs must comply to maintain an **open-ended structure**, including a sound liquidity management system, the availability of liquid assets and stress testing, as well as an appropriate redemption policy.

Legal framework

Under Article 16(2)(a) of AIFMD II, an AIFM must ensure that the loan-originating AIF it manages is **closed-ended**. However, by way of derogation to this requirement, a loan-originating AIF may be open-ended provided that the AIFM managing it is able to demonstrate to its home competent authority that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.

The RTS establish a harmonised framework across the European Union, providing clarity for both AIFMs and national competent authorities ("**NCAs**") on the conditions under which loan-originating AIFs may operate with an open-ended structure.

Key changes following consultation

ESMA introduced **three significant amendments** following industry feedback:

Removal of fixed liquid asset requirements

The main point raised by respondents to the consultation concerned the requirement for AIFMs to determine an appropriate amount of liquid assets that OE LO AIFs shall hold to meet redemption requests. Respondents emphasised that effective liquidity management in OE LO AIFs depends more on the liquidity arising from the loans granted by the funds, rather than constantly holding a fixed amount of liquid assets.

Taking this into account, ESMA revised the draft RTS by removing the fixed asset requirement and instead stipulated that AIFMs must structure their OE LO AIFs in a manner that ensures that they maintain sufficient liquidity to meet redemption requests.

Reduced stress testing frequency

Taking into consideration the feedback received, ESMA updated the draft RTS to require that AIFMs managing OE LO AIFs must carry out liquidity stress tests **at least once a year**, rather than every quarter as previously proposed in the consultation paper.

Clarification on Scope

Several respondents highlighted that the wording setting requirements for AIFMs that 'intend to manage' OE LO AIFs in the draft RTS could be misinterpreted as requiring AIFMs to seek pre-authorisation from their competent authorities before managing an OE LO AIF. In response, ESMA amended the draft RTS, replacing 'intend to manage' with 'AIFMs that manage'.

Core requirements

The final RTS establish **four fundamental pillars**:

An AIFM that manages an open-ended loan-originating AIF must be able to demonstrate to the competent authorities of its home Member State that the liquidity risk management system of the AIF is compatible with its investment strategy and its redemption policy.

Appropriate redemption policy

In order to ensure that the redemption policy of the open-ended loan-originating AIF it manages is appropriate, an AIFM shall, at least, consider the following factors:

- frequency of redemptions offered to shareholders or unitholders,
- availability of liquid assets held by the AIF,
- portfolio diversification and the liquidity profile of the assets held,
- investor base and the investor concentration,
- length of the notice period and of the settlement period,
- liquidity management tools selected, their calibration, and the conditions for their activation
- results of the liquidity stress tests,

- availability of reliable, sound and up-to-date valuation of the loans and other assets in the portfolio.

Sufficient liquidity

In order to ensure that the open-ended loan-originating AIF it manages has sufficient liquidity to comply with redemption requests, an AIFM shall, at least, take into account:

- the availability of liquid assets held by the AIF, the redemption policy of the AIF, and the portfolio diversification
- for the loans granted by the AIF: the repayment terms and schedules, the maturities, the credit quality, the underlying exposures, and the estimated default rates
- the investor base including the investor type, potential investor concentration and, where available, investors' subscription and redemption behaviours
- the targeted level of leverage, including leverage arising from hedging strategies, and the related financial obligations, as well as any other liabilities

Critically, the expected cash flow generated by the loans granted by the open-ended loan-originating AIF shall be considered as liquid assets.

Liquidity stress testing

An AIFM that manages an open-ended loan-originating AIF shall conduct liquidity stress tests at least on an annual basis, unless a higher frequency is justified by the characteristics of the open-ended loan-originating AIF. An AIFM shall stress test separately the assets and the liabilities of the open-ended loan-originating AIF and shall combine the results of these stress tests to determine the overall effect on the liquidity of the AIF.

An AIFM shall apply severe but plausible scenarios in terms of change in interest rates, credit spread and potential defaults in loans granted, as well as in redemption requests considering the investor base.

An AIFM shall employ liquidity stress tests that consider adequately the characteristics of the open-ended loan-originating AIFs they manage and shall consider scenarios with low probability but with high impact on the ability of AIFMs to value the loans.

Ongoing monitoring

In order to ensure that the liquidity management system of the open-ended loan-originating AIF it manages remains compatible with its investment strategy and redemption policy, an AIFM shall, at least, monitor on an ongoing basis the following elements: portfolio concentration; the level of unencumbered cash; cash flows; the amount and timing of subscriptions and redemptions; the repayment of the loans pursuant to the schedules agreed; the behaviour of shareholders or unitholders; the maturity of the loans; early-warning signals of loans impairment (e.g. payment delays); the level of leverage, where applicable; the liquidity of the AIF, including the availability of liquid assets in the portfolio of the AIF; and any liabilities of the AIF.

Market Insights from Consultation

Fund Characteristics

Responses showed that the majority of OE LO AIFs have low redemption frequency with long notice periods. According to industry data, 48% of open-ended funds investing in private credit assets offer redemptions at quarterly intervals, whilst 47% have notice periods of 30-60 days.

Respondents provided data showing that the smallest funds ranged from approximately €45 million to €700 million, with average sizes ranging from €372 million to €1.196 billion.

Secondary market reality

ESMA observed that, in most cases, loans issued were generally illiquid and could not be readily sold on the secondary market, which reinforced ESMA's view that, for OE LO AIFs, sales of loans typically do not serve as the primary source of liquidity to meet redemption requests.

Practical implications for AIFMs

The final RTS establish a principles-based framework that requires AIFMs to take proactive steps to ensure compliance. Given the flexibility afforded by the RTS, AIFMs should focus on developing robust internal processes and documentation to demonstrate the compatibility of their liquidity risk management systems with the investment strategy and redemption policy of each OE LO AIF they manage.

In addition, AIFMs must be able to demonstrate to the competent authorities of their home Member State that they have selected the appropriate liquidity management tools in accordance with Article 16(2b) of AIFMD.

AIFMs should take the following steps to prepare:

- **review governance frameworks** to map RTS factors and demonstrate compatibility between investment strategy and redemption policy
- **build cash flow models** reflecting loan amortisation, interest payments, and redemption calendars
- **design stress testing frameworks** that separate asset and liability shocks and combine results at fund level
- **enhance monitoring systems** to capture investor behaviour, payment delays, and early warning signals
- **prepare supervisory documentation** demonstrating the compatibility of liquidity risk management with investment strategy

Timeline and next steps

The draft RTS set out in the final report have been submitted to the European Commission for adoption, and from the date of submission, the European Commission shall take a decision on whether to adopt the RTS within three months, with the possibility to extend that period by one month.

Upon adoption, the RTS shall apply from **16 April 2026**, aligning with the transposition deadline for AIFMD II into national laws across EU Member States.

However, the European Commission has recently indicated that these RTS have been included in the list of delayed non-essential Level 2 acts, meaning that adoption as a delegated regulation is not expected before 1 October 2027 at the earliest.

Conclusion

The final RTS represent a balanced and proportionate regulatory framework that recognises the unique characteristics of open-ended loan-originating AIFs whilst ensuring robust investor protection. By removing the fixed liquid asset requirement and reducing stress testing frequency, ESMA has demonstrated responsiveness to industry concerns whilst maintaining rigorous standards.

The **principles-based approach** provides AIFMs with flexibility to tailor liquidity management frameworks to specific fund characteristics, whilst establishing clear parameters for supervisory convergence. AIFMs should conduct comprehensive gap analyses and engage proactively with home NCAs to ensure smooth transition to the new regime.

UCI ADMINISTRATORS I CSSF CIRCULAR 25/900 AMENDING CIRCULAR CSSF 22/811

On 16 December 2025, the CSSF published Circular CSSF 25/900 (the "**Amending Circular**") amending Circular CSSF 22/811 on the authorisation and organisation of entities acting as UCI administrators (the "**UCIA Circular**"), with immediate effect as of 16 December 2025.

The Amending Circular introduces targeted amendments to the UCIA Circular, in particular in relation to the annual reporting framework applicable to UCI administrators and the applicable ICT and digital operational resilience requirements.

Key points to note

Annual reporting framework

The Amending Circular repeals Annex B of the UCIA Circular with immediate effect. As a result, the UCIA Circular now provides that the UCI administrator must communicate to the CSSF, on an annual basis, information regarding its UCI administration activities in accordance with the reporting modalities and instructions as further detailed on the CSSF website.

The previous reference to a fixed list of information set out in Annex B, as well as the explicit reference to a five-month deadline following the financial year-end of the UCI administrator, has been removed from the UCIA Circular.

The CSSF's website distinguishes the reporting requirements for those UCI administrators that are banks or investment firms (via the long form report, the requirements of which have been amended via CSSF circular 25/870), other specialised professionals of the financial sector (via the SAQ on the e-Desk within 3 months of the end of the year) and other UCI administrators (via the e-Desk or an API solution within 5 months of the end of the financial year).

ICT and digital operational resilience framework:

The Amending Circular updates the UCIA Circular to reflect the applicability of Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA). UCI administrators falling within the scope of DORA are required to comply with its requirements.

The UCIA Circular also refers to Circular CSSF 25/882 on ICT third-party risk management for entities subject to DORA and confirms that UCI administrators outside the scope of DORA remain subject to the applicable ICT and outsourcing requirements, including Circular CSSF 22/806.

BSP remains available to assist with any questions relating to the interpretation and application of the Amending Circular and the UCIA Circular.

CSSF CIRCULAR 25/901: PART I | MODERNISING THE SICAR REGIME

The CSSF issued Circular 25/901 on 19 December 2025 as part of a broader effort towards modernisation, clarification and simplification. The circular applies to investment companies in risk capital ("**SICARs**"), specialised investment funds ("**SIFs**") and Part II undertakings for collective investment ("**UCIs**") and repeals several previous circulars including CSSF Circular 06/241 on the concept of risk capital under the law of 15 June 2004 relating to the investment company in risk capital, as amended. The circular brings together several texts ensuring consistency in terminology used.

Part I of our series of articles on the circular concentrates on the changes to the SICAR regime. Part II and Part III deal with the changes to the SIF and Part II UCI regimes respectively.

In conjunction with the circular, the CSSF has also published a compilation of key concepts and terms used in the field of investment funds. The compilation is not intended to be legally binding but aims to clarify the most common concepts by placing them in their relevant contexts and to explain how the CSSF understands them.

Scope

The circular does not apply where a SICAR is a closed-ended fund or compartment authorised before the circular came into force, nor to SICARs with the ELTIF, EuVECA or EUSEF label.

Refined Risk Capital Concept

The circular clarifies that the object of a SICAR is to invest its assets in securities representing risk capital, defined as the direct or indirect contribution of assets to entities with a view to their launch, development or listing on a stock exchange, targeting private equity strategies, venture capital strategies, and potentially debt financing strategies for non-listed undertakings.

Risk capital is now characterised by the combination of two elements: an intention to develop the target entity through steps taken to create value (with an expected increase in financial value), and a specific risk that goes beyond mere market risk. The reference to “specific risk” differs from Circular 06/241 which referred to “high risk". “Buy and Hold” strategies are now explicitly prohibited for SICARs.

A key criterion is the exit strategy: contrary to a holding company which acquires assets to hold them, the objective of a SICAR consists in acquiring financial assets in order to resell them with a profit after a holding period. The investment must be limited in time.

In general, the SICAR must have a certain degree of control (supervision) to ensure the amounts invested will ultimately be used to develop the target entity. Whilst a SICAR often actively intervenes in the management of target entities, active intervention is not necessarily required where other factors, such as the financing mode used, the type of parties involved or their remuneration, indicate that the investment qualifies as risk capital.

Investment flexibility and restrictions

Like Circular 06/241, the circular provides that the contribution of assets by a SICAR may take various forms, including capital contributions, loan origination, bond subscriptions, bridge financing or mezzanine financing.

Investments in listed securities do not necessarily fail the risk capital criterion. The circular specifically references securities listed on stock exchanges not meeting UCITS Directive regulated market requirements as eligible. Investments in ABS, CDOs and similar securities are not, in principle, eligible.

SICARs may temporarily invest cash awaiting investment in liquid securities with low market risk. Cash awaiting investment, reinvestment or distribution must be managed in accordance with the prudent person rule. It is also now specified that a SICAR may hold cash to meet liabilities.

The restrictions on a SICAR using derivatives for purposes other than hedging is maintained but the rationale for the restriction is now explicitly stated, i.e. that derivatives are not used, in principle, to create value in itself or to contribute to the development of the target entity.

The detailed real estate criteria in circular 06/241 has been removed. Investment in real estate and infrastructure is now subject to the general risk capital criteria.

Investment in commodities is addressed for the first time. A SICAR cannot, under any circumstances, directly invest in commodities. However indirect investments are possible and acceptability will be assessed on a case-by-case basis.

Enhanced transparency requirements

The CSSF expects compliance with the risk capital requirement to be described in the authorisation file. The sales document must include information on risk capital criteria, notably the exit strategy and expected holding period.

The SICAR Law does not refer to the principle of risk-spreading, though this does not prevent SICARs from setting investment limits in their sales documents. A SICAR which sets investment limits may also provide for ramp-up and wind-down periods during which these limits do not apply.

To the extent that a SICAR provides for redemptions or invests in other funds or investment vehicles there are certain additional disclosure requirements (for more information see Part II in this series of articles).

It is now clearly specified that the offering document must also include a description of the procedures that can be implemented to modify the investment policy or to make any other material change.

Extensions

The circular expressly provides that extensions of the life of a fund or compartment by one year, up to a maximum of three times, are possible if such extensions are necessary to allow the investments to reach their full potential and if the funds' instruments of incorporation or the compartments offering document provide for such a possibility. In exceptional circumstances, the CSSF may grant derogations from the above based on a duly motivated justification. This applies equally to SIFs, SICARs and Part II UCIs.

Conclusion

CSSF Circular 25/901 represents a welcome modernisation of the SICAR regime, providing greater clarity on the risk capital concept and consolidating previous guidance and adapting it to market practice whilst at the same time allowing the CSSF to grant derogations from its provisions on a duly motivated justification.

CSSF CIRCULAR 25/901: PART II | SPECIALISED INVESTMENT FUNDS

Circular 25/901 also applies to specialised investment funds ("**SIFs**") and repeals CSSF Circular 07/309. Part II of our series of articles concentrates on the changes to the SIF regime. Part I and Part III deal with the changes to the SICAR and Part II UCI regimes respectively.

Scope

The circular applies to all SIFs other than closed-ended funds or compartments authorised before entry into force, or SIFs with the ELTIF, MMF, EuVECA or EUSEF label.

Investment limits

The circular notes that the concept of risk spreading in the law of 13 February 2007 relating to specialised investment funds, as amended (the "**SIF Law**") is not defined. Previously its interpretation was based on quantifiable investment limits expressed as a maximum percentage applied to a predefined calculation basis (in principle the assets or commitments to subscribe). A different calculation basis may be used if justified to and accepted by the CSSF.

Investment limits are now applied based on investor sophistication. As SIFs may only be subscribed by well-informed investors, limits applicable to unsophisticated retail investors are addressed in Part III of our series.

It is now permissible for a SIF (or compartment) whose securities are reserved for well-informed or professional investors to apply the following limits:

- Up to 50% of its assets or commitments to subscribe may be invested in:
  - One and the same entity or person subject to the same existing exemption for securities issued or guaranteed by an OECD Member State or certain other authorities or institutions.
  - One and the same undertaking for collective investment or other investment vehicle subject to the same existing exemption for UCIs that apply the same or stricter risk spreading.
  - One and the same other assets. Assets whose economic viability is closely linked such that they form a single economic entity are not considered distinct assets.
- Short sales may not result in the fund or compartment holding a short position in securities issued by the same entity representing more than the 50% limit referred to above.
- When using financial derivative instruments, the fund must ensure comparable risk-spreading through appropriate diversification of underlying assets. Counterparty risk not cleared by a clearing institution or mitigated by collateral must be limited having regard to counterparty quality.
- Up to 70% of its assets may be invested in one and the same infrastructure investment. An infrastructure investment may consist in the acquisition of such asset or the exposure to it.

Each compartment of an undertaking for collective investment may be considered as a distinct undertaking for the purposes of the foregoing limits. This principle now extends to compartments of other investment vehicles and securitisation undertakings, provided segregation of liabilities is ensured.

It is now expressly provided that when using intermediary vehicles, investment limits apply to the underlying investments, not the vehicles themselves.

The CSSF may grant further derogations based on duly motivated justification or require compliance with additional investment restrictions for specific investment policies.

Ramp-up and wind-down periods: New clarity

The circular introduces detailed provisions on ramp-up and wind-down periods not previously addressed.

The offering document may provide that investment limits do not apply during the ramp-up period: up to twelve months for UCITS-eligible assets, or up to four years for private investments. The CSSF may approve extensions in exceptional circumstances, generally not exceeding one year.

For private investment funds, the offering document may provide that investment limits cease to apply during wind-down. During any periods when investment limits do not apply the fund must not be exposed to excessive risks or conflicts of interest that had not been previously identified.

Such provisions are without prejudice to AIFM Directive risk management requirements.

Borrowing limits

Where securities are reserved for well-informed or professional investors, no borrowing limits apply; such SIFs may set their own maximum borrowing limit which must be set out in the offering document.

Techniques and collateral management

SIFs may use techniques to manage their portfolio more efficiently, including positions in repurchase or reverse repurchase agreements, securities lending or borrowing, or other arrangements, provided such use complies with the principle to act in investors' interests and does not result in a change in investment objectives or assumption of higher risks than those communicated to investors. The fund must ensure risk-spreading through an appropriate diversification of the collateral received. The techniques used must be profitable or enable one or more of the following objectives: (a) risk reduction, (b) cost reduction, or (c) generation of additional capital or income for the fund.

Enhanced transparency requirements

The circular clarifies the requirements for disclosing certain important information to investors, without prejudice to the disclosure requirements under the AIFM Directive. The transparency requirements below apply equally to Part II UCIs, SIFs and SICARs. Additional requirements apply when marketing to unsophisticated retail investors. See Part III of our series of articles for those latter requirements. The transparency provisions are subject to the overall requirement that all information provided in the offering document must be correct, clear and not misleading

Specific transparency requirements

For SIFs investing primarily in less liquid assets, the offering document must address temporary investment of significant cash holdings in liquid assets.

Where investments are made in funds or other investment vehicles this must be expressly mentioned in the offering document. If the target entity is not supervised by or registered with an authority with which the CSSF can cooperate this must be clearly indicated in the offering document and taken into consideration at the level of the risks communicated to investors. Where the investment is in funds or vehicles of the same initiator or manager, the offering document must specify applicable fees or charges.

The use of techniques referred to above must be expressly indicated in the offering document.

Where investors have redemption rights, the offering document must clearly describe such rights and relevant terms including the redemption frequency, the notice and settlement period, the available liquidity management tools and their activation conditions, how redemption orders are executed, and for any quantitative limitation, the treatment of the non-executed part of redemption orders, i.e. whether they are cancelled or carried over to the next redemption date.

It is now clearly specified that the offering document must also include a description of the procedures that can be implemented to modify the investment policy or to make any other material change.

Extensions

See Part I of our series of articles.

Conclusion

Circular 25/901 represents a comprehensive modernisation of the regulatory framework for specialised investment funds. The increase in investment limits for single assets from 30% to 50%, the added clarity on ramp-up periods, borrowing limits, and transparency requirements are all welcome changes to ensure the continued attractiveness of the SIF regime. It is to be noted that existing structures may continue under their current frameworks whilst new funds benefit from the enhanced guidance and flexibility the new regime provides.

CSSF CIRCULAR 25/901: PART III | CHANGES TO THE PART II UCI REGIME

Circular 25/901 also applies to undertakings for collective investment subject to Part II of the law of 17 December 2010 on undertakings for collective investment in transferable securities, as amended ("**Part II UCIs**" and the "**2010 Law**" respectively). This article concentrates on the changes to the regime applicable to Part II UCIs.

Scope

The circular applies to all Part II UCIs other than closed-ended funds or compartments authorised before entry into force, or Part II UCIs with the ELTIF, MMF, EuVECA or EUSEF label.

Investment limits

The 2010 Law provides that Part II UCIs are funds set up with the intention of spreading risk. However, as noted in the circular, the concept of risk spreading is not defined. Previously its interpretation was based on quantifiable investment limits expressed as a maximum percentage applied to a predefined calculation basis (in principle the assets or commitments to subscribe). A different calculation basis may be used if justified to and accepted by the CSSF.

Investment limits in Part II UCIs are now to be applied based on investor sophistication. For Part II UCIs reserved to well-informed or professional investors we refer you to the limits set out in Part II of our series of articles (relating to SIFs).

For those Part II UCIs which may be marketed to unsophisticated retail investors the following investment limits apply:

- Up to 25% of its assets or commitments to subscribe may be invested in:
  - One and the same entity or person, subject to the same existing exemption for securities issued or guaranteed by an OECD Member State or certain other authorities or institutions.
  - One and the same undertaking for collective investment or other investment vehicle subject to the same existing exemption for UCIs that apply the same or stricter risk spreading.
  - One and the same other assets. Assets whose economic viability is closely linked such that they form a single economic entity are not considered distinct assets.
- Short sales may not result in the fund or compartment holding a short position in securities issued by the same entity representing more than the 25% limit referred to above.
- When using financial derivative instruments, the fund must ensure comparable risk-spreading through appropriate diversification of underlying assets. Counterparty risk not cleared by a clearing institution or mitigated by collateral must be limited having regard to counterparty quality.
- Up to 50% of its assets may be invested in one and the same infrastructure investment. An infrastructure investment may consist in the acquisition of such asset or the exposure to it.

Each compartment of an undertaking for collective investment may be considered as a distinct undertaking for the purposes of the foregoing limits. This principle now extends to compartments of other investment vehicles and securitisation undertakings, provided segregation of liabilities is ensured.

It is now expressly provided that when using intermediary vehicles, investment limits apply to the underlying investments, not the vehicles themselves.

The CSSF may grant further derogations based on duly motivated justification or require compliance with additional investment restrictions for specific investment policies.

Ramp-up and wind-down periods: new clarity

The circular introduces detailed provisions on ramp-up and wind-down periods not previously addressed. We refer you to Part II of our series of articles as the same provisions apply to SIFs.

Borrowing limits

Where securities of the Part II UCI or a compartment thereof are reserved for well-informed or professional investors, no borrowing limits apply; such funds may set their own maximum borrowing limit.

If the fund is marketed to unsophisticated retail investors, borrowing must, in principle, not exceed 70% of the assets or commitments to subscribe.

The circular clarifies that temporary borrowing arrangements that are fully covered by capital commitments are, in general, not regarded as borrowings. The same applies, in principle, to any debt security issued by the fund whose income is linked to the performance of the assets in the portfolio.

The maximum borrowing limits must be set out in the offering document.

CSSF Circular 02/80 which set out borrowing limits for certain types of Part II UCIs and the provisions of Circular IML 91/75 applicable to Part II funds, including provisions relating to borrowing, are repealed.

Techniques and collateral management

Part II UCIs may use techniques to manage their portfolio more efficiently. The guidance in the circular on such use applies equally to SIFs and Part II UCIs. Please refer to Part II of our series of articles.

The circular repeals CSSF circular 08/356 on the use by UCIs of techniques and instruments relating to transferable securities and money market instruments.

Enhanced transparency requirements

The same transparency rules applicable to the SIF apply to Part II UCIs that are not marketed to unsophisticated retail investors. The circular however provides for extensive additional disclosure requirements when a fund is marketed to unsophisticated retail investors:

Where a fund intends to invest in undertakings for collective investment or other investment vehicles, this possibility must be expressly mentioned in the offering document. Where the fund is marketed to unsophisticated retail investors and intends to invest more than 25% of its assets or commitments to subscribe in such entities it must expressly provide for this in the offering document specifying that a risk-spreading comparable to or stricter than that provided in the section on Investment Limits above is ensured at the level of the target entity.

If the fund invests significantly in private investments, the offering document must contain a warning stating that the investment in the fund may imply a high level of risk, that it is only suitable for persons able to bear that risk, and that the average subscriber is advised to invest only a portion of their sums allocated to long term investments. If, in addition, the life of the fund or the period during which the investors cannot exit, exceeds or could exceed ten years, the offering document must include a warning that the fund may not be suitable for investors that are unable to maintain a commitment over such period of time.

Extensions

See Part I of our series of articles.

Conclusion

The demand for exposure to private assets by the retail sector continues to mean the Part II UCI is a relevant and needed tool. As such this comprehensive modernisation of the regulatory framework and bringing together of the various rules in one text is to be welcomed. The different rules applicable to those funds offered to professional investors and those offered to non sophisticated retail investors shows a sensible and practical approach by the CSSF to authorising and supervising these funds going forward.

CSSF FAQ CIRCULAR 22/811 I UCI ADMINISTRATORS (UCIA) – VERSION 6

On 18 December 2025, the CSSF published Version 6 of its FAQ relating to Circular CSSF 22/811 on UCI Administrators ("**UCIA Circular**").

This updated FAQ focuses on clarifying the scope of application of the UCIA Circular and removes certain previously included questions. It does not introduce new requirements.

Key points to note

Clarification of scope (Question 2.1)

The FAQ clarifies that the UCIA Circular applies to entities listed under point 2.1 of the UCIA Circular that effectively perform, in Luxembourg, one or more UCI administration functions. In addition, it now expressly states that the UCIA Circular also applies to management companies subject to Chapter 15 or Chapter 16 of the 2010 Law and to alternative investment fund managers authorised under Chapter 2 of the 2013 Law, where such entities pursue the activity of UCI administrator through a branch established in another EU Member State.

The FAQ also reiterates that entities not listed under point 2.1 of the UCIA Circular remain outside scope, including cases where the administration of an unregulated UCI is performed by the UCI itself or by its registered AIFM subject to Article 3(2) of the AIFM Law.

Deletion of FAQ questions (Questions 5.1 and 6.1)

The updated FAQ deletes former Question 5.1 on annual reporting under the UCIA Circular and former Question 6.1 on the notion of central administration. These questions are no longer covered in the FAQ. The annual reporting framework is addressed in a separate article dedicated to Circular CSSF 25/900.

BSP remains available to assist with any questions relating to the interpretation and application of the UCIA Circular and the updated FAQ.

AIF I CNC INTERPRETATION OF ARTICLE 1711-8(3) OF 1915 LUXEMBOURG COMPANY LAW

Regulatory Development

On 9 December 2025, the CSSF drew attention to the publication by the *Commission des normes comptables* (CNC - Accounting Standards Commission) to a [Q&A of the CNC] (“**Q&A CNC 25/036**”) interpreting Article 1711-8(3), point (3), of the Law of 10 August 1915 on commercial companies in the specific case of companies operating in the alternative investment sector.

Article 1711-8(3), point (3), of the Law of 10 August 1915 on commercial companies provides that: “*In addition, an undertaking need not be included in consolidated accounts where: (…) 3° the shares or (corporate) units of that undertaking are held exclusively with a view to their subsequent resale*.”

In order to validly invoke the exclusion from the scope of consolidation referred to in Article 1711-8(3), point (3), of the Law of 10 August 1915 on commercial companies and thus be exempt from the obligation to draw up and publish consolidated accounts and a consolidated management report as referred to in Article 1711-9, point (2), of this law, companies operating in the alternative investment sector must fulfil a range of conditions.

The CNC’s updated guidance significantly tightens the conditions for using the consolidation exemption, requiring clearer evidence that subsidiaries are genuinely held for disposal.

The main conditions are:

- Managers must now maintain documented exit strategies, reassess holding periods, and provide fair value and risk disclosures in the notes to the annual accounts.
- Structures with investments held for more than 10 years, cascade arrangements, or service entities will need particular attention to ensure continued eligibility.
- The new framework applies immediately to financial years for which the filing deadline has not yet expired, meaning preparation for upcoming reporting cycles should begin now.
- Many Luxembourg SPVs will need to update their governance, valuation processes and reporting documentation. Early coordination with advisers and auditors is advisable to avoid unexpected consolidation requirements

Entities concerned

The Q&A CNC 25/036 targets Luxembourg investment structures whose activity consists in raising capital from *investisseurs avertis* and deploying it through investments intended to be realised at a gain.

This includes private equity, venture capital, private debt, infrastructure and similar alternative investment strategies.

Entities holding participations for long-term operational, industrial or strategic purposes fall outside the scope.

The approach broadly reflects the profile of entities covered by the former CNC 09/002 and aligns with the characteristics typically associated with IFRS 10 investment entities.

Entry into effect and withdrawal of previous CNC Opinion

The Q&A CNC 25/036 applies to any financial year for which the filing deadline has not yet expired. CNC Opinion CNC 09/002 of 18 December 2009 is formally withdrawn.

Conclusion

The updated Q&A provides a clearer framework for investment structures relying on an exit-driven model for which consolidated financial statements may be of limited relevance. The CNC places emphasis on timely documentation, consistency of approach and transparency in the notes, factors which should be considered in the annual reporting cycle.

PILLAR TWO I OECD INCLUSIVE FRAMEWORK ISSUES NEW “SIDE BY SIDE PACKAGE” GUIDANCE

On 5 January 2026, the OECD Inclusive Framework issued additional guidance on the application of the Global Anti-Base Erosion Model Rules (“**Pillar Two**” or the “**GloBE Rules**”). This guidance covers several topics, most notably the “Side-by-Side Safe Harbour”, which is currently applicable to US-parented multinational enterprises.

In addition to this considerable carve-out for US-parented multinational enterprises (“**MNEs**”), the new guidance includes the following measures:

Material simplifications

Simplified ETR Safe Harbour

Under this safe harbour, an MNE Group’s Effective Tax Rate (“**ETR**”) is determined pursuant to a simplified calculation based on income and taxes drawn from the MNE Group’s reporting packages, with minimal adjustments. The Simplified ETR Safe Harbour will be available to MNE Groups in all jurisdictions from the beginning of 2027, or from the beginning of 2026 in certain circumstances.

Extension of the Transitional CbCR Safe Harbour

The Inclusive Framework has agreed to a one-year extension of the Transitional CbCR Safe Harbour in order to allow sufficient time to implement the Simplified ETR Safe Harbour.

Substance-based Tax Incentive Safe-Harbour

The guidance introduces a safe harbour allowing taxpayers to benefit from certain tax incentives that are strongly connected to economic substance in the relevant jurisdiction. The Substance-based Tax Incentive Safe Harbour allows an MNE Group to be eligible where the Qualified Tax Incentive is generally available to taxpayers and is calculated based on expenditures incurred or on the amount of tangible property produced in the jurisdiction.

Side-by-Side Safe Harbours system

As of 1 January 2026, an MNE headquartered in a Qualified SbS Regime or Qualified UPE Regime (as defined in the guidance) may elect to have its Top-Up Tax deemed to be zero for the purposes of the Income Inclusion Rule (“**IIR**”) and the Under-Taxed Profits Rule (“**UTPR**”) for the entire group, including foreign entities.

The Side-by-Side ("**SbS**") Safe Harbour will only be available to an MNE Group whose Ultimate Parent Entity (“**UPE**”) is located in a jurisdiction that has both an eligible domestic tax regime and an eligible worldwide tax regime, meaning that the jurisdiction effectively achieves a minimum level of taxation on both domestic and foreign operations of MNE Groups.

The UPE Safe Harbour will apply to domestic profits of MNE Groups headquartered in jurisdictions with a pre-existing eligible domestic tax regime. Where an MNE Group elects to apply the UPE Safe Harbour, it will not be subject to the UTPR in respect of profits located in the UPE jurisdiction.

Jurisdictions meeting the criteria to be considered a Qualified SbS Regime or Qualified UPE Regime will be recorded in a Central Record of Jurisdictions. Currently, only the United States has been included as a Qualified SbS Regime, reflecting the US position that US-parented MNE Groups should not be subject to additional Top-Up Tax under the IIR or UTPR. Other jurisdictions may benefit from this designation in the future. This change represents a significant evolution in the scope of the Pillar Two Rules.

These changes will need to be reflected in the EU Pillar Two Directive adopted in 2022 and in Member States’ domestic legislation implementing the GloBE Rules. The exact legal mechanism for such amendments remains unclear, although the European Commission has previously stated that it could rely on Article 32, which allows Member States to apply safe harbour rules without formally amending the Directive.

EU LETTER OF FORMAL NOTICE | DISCRIMINATORY TAX REGIME APPLICABLE TO PUBLIC DIVIDENDS

In December 2025, the European Commission issued a letter of formal notice to Luxembourg concerning the failure to abolish a discriminatory tax regime applicable to dividends derived from public investments. The contested regime allows for an exemption of the Luxembourg 15% withholding tax on dividends distributed by Luxembourg resident companies to the Luxembourg State and its public entities, whereas dividends paid to other Member States of the European Union and the European Economic Area, as well as to their public entities, remain subject to such withholding tax. According to the European commission this difference in treatment constitutes a discrimination that is contrary to the principle of free movement of capital enshrined in Article 63 of the Treaty on the Functioning of the European Union ("**TFEU**") and Article 40 of the Agreement on the European Economic Area ("**EEA Agreement**").

The discriminatory regime at issue

As a general principle, pursuant to the combined provisions of Articles 146 and 148 of the amended law of 4 December 1967 on income tax (hereinafter, the "**L.I.R.**"), dividends distributed by Luxembourg companies are subject to Luxembourg withholding tax at a rate of 15% of gross income without deduction.

However, Article 147, (2), letter c) of the L.I.R. provides for an exemption from such withholding tax where dividends are allocated to the State, municipalities, municipal syndicates or undertakings of domestic public law entities. This exemption enables Luxembourg public entities to receive the full amount of dividends without any tax deduction.

Conversely, dividends paid to other EU/EEA Member States and their public entities remain subject to the 15% withholding tax without access to the domestic withholding tax exemption. This difference in treatment based on residence is contrary to the principle of free movement of capital.

The European Commission has therefore initiated infringement proceedings. Luxembourg has two months to respond to the letter of formal notice. In the absence of compliance, the Commission shall issue a reasoned opinion and may subsequently refer the matter to the CJEU, which may confirm the infringement and impose financial penalties.

Potential solutions and their implications

The European Commission requires the abolition of the discriminatory regime. The following correctives might be envisaged:

Option 1: extension of the exemption to EU/EEA public entities

This option entails a legislative amendment to Article 147, (2), letter c) of the L.I.R. to extend the withholding tax exemption to dividends paid to EU/EEA Member States and their public entities.

While this option appears to be the preferred approach of the European Commission, whose objective is to extend the benefit of the withholding tax exemption regime to European public entities and Member States this will affect the tax revenues for the Luxembourg State.

Option 2: repeal of the domestic exemption

This option consists of the outright repeal of Article 147, (2), letter c) of the L.I.R., thereby subjecting all dividends paid to public entities, whether Luxembourg or foreign, to the 15% withholding tax. Whilst this solution appears to be the most straightforward in theory, the practical reality may prove otherwise. The fundamental question concerns the budgetary impact: although this option formally satisfies the European Commission's requirement to eliminate the discrimination, it would in substance merely reduce the net dividend income received by the Luxembourg State and as such does not at first glance appear to be a suitable option for the Luxembourg government's objectives

By way of illustration, according to the budget adopted for the 2025 fiscal year, the Luxembourg State anticipates receiving a total amount of EUR 393 million in dividend income through its various shareholdings in local undertakings (Spuerkeess, BNP Paribas, Post Group, Cargolux, etc.). Hence, if this road is followed the State would be deprived of approximately EUR 59 million by virtue of the withholding tax.

The Luxembourg government will therefore have to strike a balance between avoiding an infringement procedure and the least costly option for the budget.

INTERNATIONAL TAXATION I COUNCIL MODERNISES COOPERATION AGREEMENTS WITH SWITZERLAND, LIECHTENSTEIN, ANDORRA, MONACO AND SAN MARINO

Since 2015, the EU has engaged in tax cooperation exchanges with third countries as part of its efforts to promote transparency and international tax cooperation. These exchanges have so far been based on traditional financial account information relating to individuals, in line with the OECD Common Reporting Standard. This standard has over the years been revised multiple times to cover new categories of financial information within the EU.

The goal of this new initiative is that the automatic exchange of financial account information between EU Member States and the respective five countries is aligned with the updated CRS applicable within the EU and more generally continues to take place from 1 January 2026.

Tax cooperation with third countries

These revised agreements now align the exchange of information with Switzerland, Liechtenstein, Andorra, Monaco and San Marino with the latest international standards developed by the OECD. They thus broaden the scope of automatic exchange of financial account information between the EU and the partner countries to also cover electronic money products and digital currencies. The new protocols also introduce an enhanced framework for cooperation on the recovery of value-added tax (VAT) and for combating tax fraud and tax evasion. Furthermore, they reinforce due diligence and reporting obligations, enabling tax authorities to respond more swiftly and effectively to the information received.

Building on this, the EU will now also launch negotiations with Norway.

With respect to Switzerland, the EU Council expressed its hope that Switzerland will take all necessary measures to ensure that the agreement reached on the recovery of VAT will also be extended to cover mutual assistance for the recovery of other tax claims in the near future and that if this objective is not achieved within four years, the European Union will reconsider the overall balance of this agreement.

DOUBLE TAX TREATY | LUXEMBOURG - ALBANIA

On 14 January 2009, the Grand Duchy of Luxembourg and the Republic of Albania signed a treaty for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance (the "**DTT**"). The DTT had however never been ratified due to a change in convention policy regarding the article on the exchange of information. It was decided that the DTT should not be ratified without including the new article on the exchange of information, which now corresponds to that of the OECD model convention. A new Protocol was finally negotiated following a request from Luxembourg to amend Article 26 on the exchange of information and to include the minimum standards resulting from the BEPS project, which was signed on 21 October 2020 (the "**Protocol**"). The DTT was then approved by the Grand Duchy of Luxembourg by the law of 18 December 2024. As the conditions for the entry into force of the DTT were fulfilled on 25 June 2025, the DTT entered into force on that date for both contracting states, in accordance with Article 28 (1) of the DTT.

Withholding taxes

Withholding taxes on dividends paid to beneficial owners who are resident in the other contracting state cannot exceed 5%, if the beneficial owner is a company that holds, directly or indirectly, at least 25% of the capital of the paying company. In all other cases, the withholding tax on dividend distributions shall not exceed 10%.

Withholding taxes on interest payments made to beneficial owners in the other contracting state cannot exceed 5%. The DTT also foresees a withholding tax exemption for interest payments in very limited situations (e.g. interest payments to the state itself as well as to any of its political subdivisions).

Withholding taxes on royalty payments made to beneficial owners in the other contracting state cannot exceed 5%. On this point, the DTT diverges from the OECD model convention, which provides for exclusive taxation of royalties in the residence state only.

Capital gains

The DTT provides that:

- capital gains from the disposal of immovable property are taxable in the contracting state where such immovable property is located;
- capital gains from the disposal of ships or aircraft operated in international traffic or movable property used in the operation of such ships or aircraft shall be taxable only in the contracting state in which the place of effective management of the company is located.

For capital gains arising from the disposal of any property other than that referred to above, the DTT provides that they are taxable only in the contracting state where the alienator is a resident, i.e. no real estate rich clause has been inserted in the DTT.

Independent personal services

The DTT also includes a specific provision for professional services or other activities of an independent character, which shall especially include independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants. Any such income derived by a resident of one contracting state may be taxed in the other contracting state, in case the professional services are carried out through a fixed base regularly available to the taxpayer in that other contracting state or in case the taxpayer stays in that other contracting state for a period or several periods amounting to or exceeding in the aggregate 183 days in any twelve months period commencing or ending in the concerned fiscal year.

Elimination of double taxation

In general, Luxembourg will apply the exemption method for the purpose of eliminating double taxation for most types of income. In certain situations, like dividends, interest, royalties and entertainers' and sportspersons' income, Luxembourg will apply the credit method.

Entitlement to benefits

As recommended by the OECD model convention, the Protocol adds a new Article 27A to the DTT relating to the entitlement to benefits, which however remains limited, by solely including a principal purpose test and foreseeing the possibility of discretionary relief.

DOUBLE TAX TREATY | LUXEMBOURG - MONTENEGRO

On 29 January 2024, the Grand Duchy of Luxembourg and Montenegro signed a treaty for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance (the "**DTT**"). The DTT was approved by the Grand Duchy of Luxembourg by the law of 18 December 2024. As the conditions for the entry into force of the DTT were fulfilled on 24 September 2025, the DTT entered into force for both contracting states on 1 October 2025, in accordance with Article 28 (1) of the DTT.

Withholding taxes

Withholding taxes on dividends paid to beneficial owners who are resident in the other contracting state cannot exceed 5%, if the beneficial owner is a company that holds, directly or indirectly, at least 10% of the capital of the paying company. In all other cases, the withholding tax on dividend distributions shall not exceed 10%.

Withholding taxes on interest payments made to beneficial owners in the other contracting state cannot exceed 10%. The DTT also foresees a withholding tax exemption for interest payments in very limited situations (e.g. interest payments to financial institutions or to the state itself as well as to any of its political subdivisions).

Withholding taxes on royalty payments made to beneficial owners in the other contracting state cannot exceed 5% (for the use or licence of the use of a copyright in a literary, artistic or scientific work) or 10% in certain cases (e.g. for the use or licence of a patent, trademark, design or model). On this point, the DTT diverges from the OECD model convention, which generally provides for exclusive taxation of royalties in the residence state only.

Capital gains

The DTT provides that:

- capital gains from the disposal of immovable property are taxable in the contracting state where such immovable property is located;
- capital gains from the disposal of ships or aircraft operated in international traffic or movable property used in the operation of such ships or aircraft shall be taxable only in the contracting state in which the place of effective management of the company is located.

For capital gains arising from the disposal of any property other than that referred to above, the DTT provides that they are taxable only in the contracting state where the alienator is a resident, i.e. no real estate rich clause has been inserted in the DTT.

Elimination of double taxation

In general, Luxembourg will apply the exemption method for the purpose of eliminating double taxation for most types of income. In certain situations, like dividends, interest, royalties and entertainers' and sportspersons' income, Luxembourg will apply the credit method.

Entitlement to benefits

As recommended by the OECD model convention, the DTT includes an entitlement to benefits clause, which however remains limited, by solely including a principal purpose test and foreseeing the possibility of discretionary relief.

Certain collective investment vehicles may benefit from the DTT

The governments of Luxembourg and Montenegro agreed, in a protocol to the DTT, that they will consider any collective investment vehicles which are established in a contracting state and are treated as a body corporate for tax purposes in that contracting state as residents and as the beneficial owner of the income they receive for the purpose of the DTT. Likewise, collective investment vehicles which are established in a contracting state and are not treated as a body corporate for tax purposes shall be considered as resident individuals and as the beneficial owner of the income they receive for the purpose of the DTT.

START-UP INVESTMENTS | TAX CREDIT FOR INDIVIDUALS: FINAL LAW ADOPTED

On 17 December 2025, the Luxembourg Parliament adopted the law introducing a tax credit for private individuals investing in innovative start-ups (the Law of 19 December 2025, the "**Law**"). The Law applies as from tax year 2026.

This Law follows Draft Law No. 8526, submitted to the Luxembourg Parliament on 4 April 2025, which intended to introduce a tax credit amounting to 20% of the equity investment made by private individuals in eligible start-up entities, as described in our previous article Subsequently, on 17 June 2025, the Luxembourg Council of State issued its opinion on the Draft Law, raising a number of constitutional and practical issues, which were analysed in our October article

As adopted, the Law largely reflects the structure and mechanics of the Draft Law, while incorporating certain amendments following the Council of State's opinions. This article summarises the final regime and highlights the main changes compared to the Draft Law.

Overview of the final regime

Eligible taxpayers and investments

The tax credit is available to Luxembourg resident individuals and assimilated non-resident individuals taxable in Luxembourg. Professional investments including investments made through an enterprise are excluded so that, in a nutshell, the tax credit is only made available to taxpayers acting in the context of the management of their private wealth. The founders of the start-up entity as well as any person in a subordinate relationship are excluded from the regime.

Eligible investments must be made in cash, either upon incorporation or during a subsequent share capital increase, and any subscription and payment must take place in the same tax year.

The tax credit amounts to 20% of the qualifying investment (capital and share premium) with a maximum per tax year of EUR 100.000. Any excess amount is not reportable. Where the tax credit (within this cap) exceeds the income tax due for the year, the excess is non-refundable but may be carried forward to subsequent tax years.

The investment must not result in a participation exceeding 30% of the share capital of the start-up entity. In addition, the maximum amount of capital raised from eligible taxpayers is capped at EUR 1.5 million per start-up entity.

Eligible start-up entities

- **Form and tax regime**

The start-up entity must be either:

- A fully taxable Luxembourg resident entity; or
- A company resident in another EEA Member State, fully taxable to a tax corresponding to Luxembourg corporate income tax and carrying out its innovative activity through a Luxembourg permanent establishment.

Where the tax credit is requested for an investment in a capital company or cooperative company resident in another EEA Member State with a Luxembourg permanent establishment, the innovative activity and exclusion conditions (relating to law firms and audit/accounting firms) must be met only at the level of that permanent establishment.

Where the tax credit is requested for an investment in a Luxembourg resident entity with a foreign permanent establishment, the innovative activity condition must be met only at the level of the head office.

- **Newly formed**

At the end of the tax year for which the tax credit is requested, the start-up entity must have been in existence for less than 5 years.

- **Size Requirements**

The start-up entity must have less than 50 employees and either:

- a total balance sheet not exceeding EUR 10,000,000; or
- turnover not exceeding EUR 10,000,000.

These conditions must be met at the end of the financial year ending during the tax year for which the tax credit is requested, or in the case of a start-up entity formed during the tax year for which the tax credit is requested, at the end of the first financial year.

- **Group membership**

Where the start-up entity is part of a group, the size condition must be assessed at group level. Each entity of the group must have been formed for less than five years and compliance with the size condition must be certified by an auditor or chartered accountant.
For the purposes of this requirement, the group comprises the entity and all partner enterprises or linked enterprises within the meaning of Annex I, Article 3 of EU Regulation No. 651/2014.

- **Innovative activity**

The start-up entity must be engaged in an innovative activity.
This condition is met where:

- at least 2 persons work full-time for the entity (not necessarily employees, managers/directors are included but external contractors are excluded); and
- during at least one of the three financial years preceding the investment, at least 15% of the entity's operating expenses were dedicated to R&D (condition to be realised within the first year if the investment takes place the year of formation).

The eligible R&D expenses exclude subcontracted activities, and compliance with the R&D expense condition must be certified by an auditor or chartered accountant.

Key changes from the Draft Law

Definition of "associated enterprises"

The Council of State formally opposed the definition of group relationships set out in the Draft Law, considering it circular and unclear. As adopted, the Law addresses this concern by expressly referring to the definition of "partner" (*entreprise partenaires*) and "related" (*entreprises liées*) contained in Annex I, Article 3 of Regulation (EU) No 651/2014.

Direct holding vs. tax-transparent vehicles

Under the Draft Law, the tax credit was limited to direct shareholdings, excluding any indirect investment, including through tax-transparent entities.
Following the Council of State's opinion, the Law now allows investments made through tax-transparent vehicles to qualify, provided that the investment conditions are met, in proportion to the investor's fraction held in the invested net assets. For these purposes, such holdings are treated as direct holdings.
This amendment addresses the Council of State's concerns regarding the principle of equality before the law.

Timing of capital contributions

The requirement that capital contributions be fully paid within the tax year has been retained, despite the Council of State's concerns that this condition may be restrictive in practice and suggested a 12-month payment period from the subscription date.

Innovation requirement

While the Council of State raised concerns regarding potential duplication with other existing certification related to innovation regimes (i.e., Draft Law No. 8314, enacted on 13 June 2025), the Law maintains the innovation criteria and certification mechanism as initially foreseen, with some drafting adjustments.

Employee and founder exclusion

The tax credit remains unavailable to the founders of the start-up entity as well as any person in a subordinate relationship during the relevant tax year. Despite the Council of State's view that this exclusion may be disproportionate, the legislator chose to retain this restriction in the Law.

Ownership cap and investment ceiling

The regime retains the 30 % ownership cap per investor and the EUR 1.5 million cap per start-up entity is confirmed. In line with the Council of State's opinions, the Law clarifies that capital contributions without issuance of shares (e.g., account 115 contributions) are excluded from the scope of the tax credit.

Sectoral exclusions

The Council of State pointed out that the Draft Law excluded chartered accountants and audit firms, but did not expressly exclude accountants, which could raise issues under the principle of equality before the law. As adopted, the Law clarifies this point by expressly excluding audit firms, chartered accountants and accountants.

Compliance and documentation requirements

The tax credit must be claimed through the annual income tax return.

The documentation to be attached includes:

- a certificate issued by the start-up confirming the capital paid up, the percentage held by the taxpayer and the capital subscribed by eligible investors; and
- a certificate confirming that the start-up entity meets the eligibility conditions.

The taxpayer must commit to hold the shares for a minimum period of 3 years, with annual documentation through the tax return. Failure to meet the holding requirement results in a retroactive adjustment, subject to limited statutory exceptions (e.g., bankruptcy, disability).

Conclusion

The Law of 19 December 2025 introduces a tax measure aimed at facilitating the financing of innovative start-ups by private individuals. While the final regime remains largely aligned with Draft Law No. 8526, it incorporates several targeted amendments following the Council of State's opinions.

Nevertheless, the regime continues to be subject to a significant number of conditions. As already noted by the Council of State during the legislative process, these conditions may limit the practical scope of the measure considering its intended objective.

IN CASE YOU MISSED IT I OUR LATEST PUBLICATIONS

Right by you in Luxembourg

FOCUS ON ESG | SUSTAINABLE FINANCE INSIGHTS SERIES

All the content relating to ESG and Sustainable Finance, the hot topic of the moment on which our lawyers in the Investment Management department can advise, are listed below.

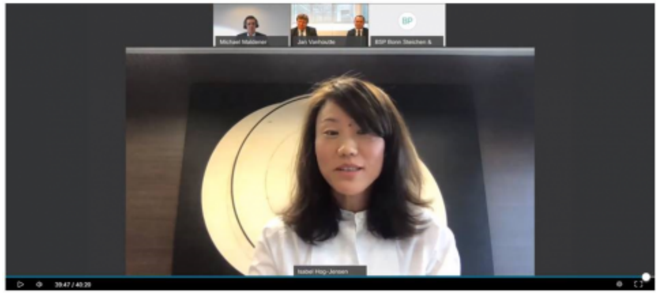
Feel free to reach out to Isabel Høg-Jensen for further details.

- Sustainable Finance Insights Series - 1
- Sustainable Finance Insights Series - 2 | Amendment of the Benchmark Regulation in line with an ESG optic
- Sustainable Finance Insights Series - 3 | ESMA - Strategy on Sustainable Finance
- Sustainable Finance Insights Series - 4 | The European Commission publishes proposal for amendments to AIFM Regulation
- Sustainable Finance Insights Series - 5 | The European Commission publishes proposal for amendments to UCITS implementing Directive
- Sustainable Finance Insights Series - 6 | The European Commission publishes draft delegated acts on the integration of sustainability factors under MiFID II
- Sustainable Finance Insights Series - 7 | EU taxonomy regulation published
- Sustainable Finance Insights Series - 8 | Amendments to the Disclosure Regulation (2019/2088)
- Sustainable Finance Insights Series - 9 | Reduced Subscription tax for UCIs investing in sustainable activities
- Sustainable Finance Insights Series - 10 | SFDR Final Report on Draft RTS
- Sustainable Finance Insights Series - 11 | Joint ESAs supervisory statement on the application of the SFDR
- Sustainable Finance Insights Series - 12 | ESMA final report on taxonomy - alignment of non-financial undertakings and asset managers
- Sustainable Finance Insights Series - 13 | The European Commission adopts amended draft delegated acts on the integration of sustainability factors under MiFID II
- Sustainable Finance Insights Series - 14 | ESA's final report on sustainability – related disclosures - 22 October 2021
- Sustainable Finance Insights Series - 15 | ESA issues supervisory statement on the application of SFDR
- Sustainable Finance Insights Series - 16 | ESA's Report on the extent of voluntary disclosure of principal adverse impact under article 4 (1) of the SFDR
- Sustainable Finance Insights Series - 17 | Fossil gas and nuclear activities are considered aligned with the Taxonomy Regulation – what are the ramifications?
- Sustainable Finance Insights Series - 18 | RTS on nuclear and gas investment disclosures under SFDR
- Sustainable Finance Insights Series - 19 | CSSF Thematic Review on Sustainable Disclosure
- Sustainable Finance Insights Series - 20 | ESAs final report on the review of SFDR Delegated Regulation
- Sustainable Finance Insights Series - 21 | The CSSF issues Circular CSSF 24/863 applying ESMA Guidelines on funds' names using ESG or sustainability-related terms
- Sustainable Finance Insights Series - 22 | SFDR revision | European Commission proposes major overhaul to simplify sustainable finance disclosures

BSP Roundtable Talk 2021

SFDR update and market insights - 24th February (Agenda)

To access the video recording of the webinar, please ask for the password sending an email to the marketing@bsp.lu.



IN CASE YOU MISSED IT I OUR LATEST PUBLICATIONS

MONDAQ | ESG COMPARATIVE GUIDE

- What regulatory regimes and codes of practice primarily govern environmental, social and governance (ESG) regulation and implementation in Luxembourg?
- Is the ESG framework primarily based on hard (mandatory) law and regulation or soft (eg, 'comply or explain') codes of governance?
- What is the regulators' general approach to ESG and the enforcement of the ESG framework?

Discover the Luxembourg Chapter of the Mondaq ESG Comparative Guide, contributed by our experts Partner Isabel Høg-Jensen, Counsel Elzbieta Tumko, Senior Associates Mikail Ceylan and Alessandro Morini, and Knowledge Manager Anne Becker for an overview of some of the key points of law and practice.

IN CASE YOU MISSED IT I OUR LATEST PUBLICATIONS

MONDAQ | LABOUR AND EMPLOYMENT COMPARATIVE GUIDE

- What are our top tips for navigating the employment regime and what are the potential sticking points?
- What, if any, are the rights to parental leave, at either a national or local level?
- How are data protection rules applied in the workforce and how does this affect employees' privacy rights?
- What protections are employed against discrimination in the workforce?

Discover the Luxembourg Chapter of the Mondaq Labour and Employment Law Comparative Guide, contributed by our experts Partner Anne Morel, Counsel Harmonie Méraud and Associate Alexandra Simon for an overview of some of the key points of law and practice.

INFOGRAPHIC | PAY TRANSPARENCY: WHAT WILL CHANGE IN LUXEMBOURG WITH DIRECTIVE (EU) 2023/970 AND HOW TO PREPARE

Luxembourg is preparing for the transposition of Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023, which aims to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

The Directive must be transposed no later than 7 June 2026.

Although no bill has yet been introduced, its adoption is certain. Luxembourg employers should therefore start preparing now.

In practical terms, what changes will this entail for companies? Our BSP Employment, Compensations & Benefits department has got you covered with this concise overview of the key upcoming changes and the steps companies can already take to anticipate compliance.

For all you need to know, click here.

French version: Transparence des rémunérations

For the German version: Entgelttransparenz

For any questions, you can contact our experts Anne Morel, Harmonie Méraud, Pauline Wirtzler and Alexandra Simon.

NEWSFLASH I LUXEMBOURG CASE LAW - CLARIFICATIONS FROM THE LUXEMBOURG SUMMARY COURT ON THE PROCEDURAL INITIATION OF A RECOURSE IN REVOCATION UNDER THE EUROPEAN ACCOUNT PRESERVATION ORDER REGULATION

In its judgment of 9 October 2025, the Luxembourg Summary Court (*tribunal d'arrondissement de et à Luxembourg siégeant en matière de référé*) provided clarification on the procedural requirements for initiating a recourse in revocation (*recours en revocation*) of a European Account Preservation Order (EAPO) under Regulation (EU) No. 655/2014. The decision provides practical guidance on the interplay between the European procedural framework and Luxembourg domestic law.

The proceedings originated from an action brought by a French-based company, which lodged two recourses in revocation against preservation orders previously issued in Luxembourg. These orders had been obtained at the request of a Luxembourg bank, seeking to secure an alleged claim of several million euros. Acting under Regulation (EU) No. 655/2014, the Luxembourg court had authorised the execution of EAPOs in France.

In contesting these measures, the debtor filed its applications by way of petition (*par voie de requête*), using the standard European form provided under Implementing Regulation (EU) 2016/1823. This regulation establishes uniform procedural templates to facilitate recourses under the EAPO framework.

Before the Summary Court, the applicant argued that pursuant to Article 33(1)(a) of Regulation (EU) No. 655/2014, a debtor may seek revocation or modification of a preservation order on the ground that the conditions or requirements of the Regulation have not been met. Furthermore, Article 36 provides that any application for recourse under Articles 33 to 35 must be introduced using the standard form and may be lodged at any time and by any means of communication accepted under the procedural rules of the relevant Member State.

The applicant therefore contended that the use of the standard European form, filed by way of petition, was sufficient to validly initiate the recourse procedure. In its view, requiring the service of a formal writ of summons (*assignation*) would not only add an unnecessary layer of procedural formality but would also run counter to the very purpose of the European Account Preservation Order Regulation, which seeks to simplify and accelerate cross-border debt recovery within the European Union.

This position finds support in Recitals 40 and 41 of Regulation (EU) No 655/2014, which expressly emphasise the simplification and efficiency of the procedure through the creation of standardised forms and the encouragement of modern means of communication, including electronic submission and digital signatures. According to the applicant, the European legislator's intention was clearly to remove procedural barriers, not to impose parallel national formalities that would undermine the Regulation's practical effectiveness.

The Summary Court, however, took a more cautious view. It recalled that Article 46(1) of the Regulation expressly provides that any procedural matter not specifically governed by the Regulation shall be determined in accordance with the national law of the Member State where the proceedings take place. This provision preserves a measure of national procedural autonomy, ensuring that domestic rules continue to apply whenever the European instrument is silent.

Applying this principle, the court referred to Article 685-5(4) of the Luxembourg New Code of Civil Procedure, which provides that recourses for revocation or modification of a European preservation order involving claims exceeding EUR 15,000 must be brought before the President of the District Court and are to be "*introduced and adjudicated as in summary proceedings.*" From this, the court inferred that, under Luxembourg procedural law, such proceedings must be initiated by means of a formal writ of summons (*assignation*), rather than by simple petition accompanied by the European form.

The court thus reaffirmed the role of national procedural law in defining how such recourses are to be initiated, even within the context of an EU-harmonised mechanism. The judgment therefore provides an important clarification of how the European procedural framework must be coordinated with domestic procedural requirements.

Until this decision, Luxembourg case law had not expressly addressed the procedural requirements for initiating such recourses in revocation. The Court of Appeal, in its decision of 7 June 2023 (No. 80/23, 7th Chamber), had implicitly accepted that a recourse filed directly with the court registry by way of petition using the European form under Article 36 was validly introduced. However, in that case, no procedural objection had been raised by the parties, and the court was not required to rule specifically on the method of initiation.

By contrast, the Summary Court's decision of 9 October 2025 represents the first explicit judicial analysis of this procedural question in Luxembourg. While acknowledging the binding effect of EU procedural instruments, the decision underscores that national procedural autonomy remains a determining factor where the European framework does not provide comprehensive procedural guidance.

CHAMBERS GLOBAL PRACTICE GUIDE | INSOLVENCY 2025

The new Chambers Global Practice Insolvency Guide 2025 aims to provide legal and non-legal professionals with a concise overview of the main restructuring and insolvency law topics in various jurisdictions. The experienced authors on restructuring and insolvency law describe the rules and practices applicable in their jurisdictions, as well as the latest (upcoming) developments. To provide an outline of the main elements, this Guide discusses the different liquidation, restructuring and insolvency procedures in each jurisdiction, as well as the main statutory officers and other actors within the systems.

Law and Practice

1. Overview of Legal and Regulatory System for Insolvency/Restructuring/Liquidation

1.1 Legal Framework

The general insolvency regime is regulated by the following:

- Commercial Code – Section III, Articles 437 to 614, dealing with stay of payments and insolvency proceedings;
  • New Insolvency Law – formally known as the Law of 7 August 2023 on the business preservation and modernisation of insolvency law (the "Law of 7 August 2023");
  • Regulation (EU) 2015/848 – Regulation of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the "EU Insolvency Regulation (Recast)"), which replaces the previous Regulation (EU) 1346/2000 for insolvency procedures opened after 26 June 2017; and
  • Grand Ducal Regulation of 4 July 2025 regulating the electronic communication of documents and notifications in bankruptcy and reorganisation proceedings.

Specific Insolvency Regimes or Provisions

In addition to the general framework, specific insolvency regimes or provisions exist for the following sectors.

- Credit Institutions and Financial Professionals: Law of 18 December 2015 covers resolution, recovery and liquidation measures for credit institutions and certain investment firms, as well as deposit guarantee schemes and investor indemnification (as amended).
- Insurance and Reinsurance Undertakings: Law of 7 December 2015 governs the insurance sector (as amended).
- Regulated Investment Funds and Fund Managers:
  - Law of 15 June 2004 relates to investment companies in risk capital (SICAR) (as amended);
  - Law of 13 February 2007 on specialised investment funds (as amended);
  - Law of 17 December 2010 pertains to undertakings for collective investment (UCIs) (as amended); and
  - Law of 23 July 2016 on reserved alternative investment funds (RAIFs) (as amended).
- Regulated Securitisation Vehicles and Affiliates: Law of 22 March 2004 governs securitisation (as amended).

Read more in the Law and Practice Luxembourg chapter of the Chambers insolvency 2025 Guide.

THE GLOBAL LEGAL POST | LAW OVER BORDERS COMPARATIVE GUIDE TO ARBITRATION

The Law Over Borders Comparative Guide to Arbitration provides a comprehensive understanding of the current complexities of international arbitration. Written by expert practitioners, the guide covers all the key aspects of the arbitral process, including the requirements for validity of arbitral agreements, rules concerning the constitution of the arbitral tribunal, and available measures from local courts to assist the arbitral proceeding. It also provides detailed information on general procedural minimum requirements, rules for the validity of awards, availability of post-award proceedings, and enforcement of foreign awards, as well as applicable professional and ethical rules, and the approaches on third-party funding in each jurisdiction. This second edition also features information on specialist arbitration and sovereign immunity. The guide is an invaluable resource for anyone looking to navigate the intricacies of the practice of international arbitration.

Have a look at the **Luxembourg chapter** contributed by our experts Fabio Trevisan and Laure-Hélène Gaicio-Fievez.

1. Key considerations in deciding whether to arbitrate in this jurisdiction

Luxembourg offers a modern, arbitration-friendly framework, confidentiality, and robust enforcement tools.

1.1 Advantages

- Modern, arbitration-friendly legal framework.
- Strong confidentiality protection.
- Expeditious proceeding (the 2023 reform introduced a six-month time limit to conclude proceedings).
- Parties are free to choose arbitrators with the expertise relevant to their dispute.
- A multilingual culture that facilitates international cases.
- Availability of lawyers from different backgrounds with knowledge of the various jurisdictions' legal systems.
- Political and economic stability that reinforces trust in Luxembourg as a neutral seat.

1.2 Disadvantages and common pitfalls

- Costs may outweigh the costs of court litigation in minor disputes.
- Not all matters are arbitrable.

1.3 Distinctive features

- Competence–competence principle: the arbitral tribunal may rule on its own jurisdiction.
- The presence of a supporting judge, who assists the arbitral tribunal in organising the proceedings.
- Luxembourg includes a review of the award in cases of fraud, newly discovered evidence, or falsified documents.
- Confidentiality of the proceedings.
- Flexible procedural rules: parties can tailor procedures and language to suit disputes.

Read more in the Luxembourg chapter of The Global Legal Post Law Over Borders Comparative Guide to Arbitration.

OUR LATEST BROCHURE

BANKING & FINANCE BROCHURE

BSP's banking and finance team assists local and international market players on all regulatory and transactional aspects of Luxembourg banking and financial matters.

Our lawyers are reputed for their extensive experience in **bank lending**, **debt capital markets** and **structured finance**, in particular securitisation. Their expertise also extends to **financial restructuring** and the entire spectrum of financial regulatory matters.
Our cross-practice working philosophy and partner-led services allow us to provide our clients with p**ractical and comprehensive assistance**, which is vital to the success of **cross-border and domestic financial transactions**.
For further information, download our Banking & Finance Brochure.

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