

BSP Newsletter

2025 July edition



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AML | LUXEMBOURG UPDATES ITS NATIONAL RISK ASSESSMENT

Publication

Luxembourg has officially released its updated National Risk Assessment (NRA 2025) on money laundering, marking a key milestone in the country's ongoing efforts to strengthen its anti-money laundering and counter-terrorist financing (AML/CFT) framework. Coordinated by the Ministry of Justice and mandated by the *Comité de prévention du blanchiment et du financement du terrorisme*, this assessment reflects a collaborative effort involving a broad range of public authorities, private-sector stakeholders, and civil society actors.

The NRA 2025 focuses exclusively on the national money laundering risk landscape, with a separate update on terrorist financing scheduled for release at a later date. The analysis is based on data from 2020 to 2023 and captures the state of play as at the end of 2023. It follows the same methodological framework as previous assessments, identifying inherent risks, assessing existing mitigation measures, and determining the residual risk levels across key sectors.

Key findings of the NRA 2025

- Luxembourg remains primarily exposed to money laundering threats stemming from foreign predicate offences, owing to its role as an international financial hub. Fraud and forgery, tax crimes, and corruption continue to pose the most significant external threats.
- Domestic exposure is comparatively limited,

reflecting Luxembourg's low crime rate. However, fraud and forgery, theft (both simple and aggravated), and drug trafficking are identified as the main domestic risks.

- Vulnerabilities are linked to sectors that are susceptible to misuse for money laundering purposes, notably the financial sector, non-financial professions, legal persons, and legal arrangements.
- Within the **financial sector**, banks, investment firms, e-money and payment institutions, certain specialised professionals, virtual asset service providers, and the life insurance sub-sector all present a high level of inherent risk. Effective mitigation measures reduce their residual risk to medium.
- In the **non-financial sector**, legal and accounting professions also display a **high inherent risk**, with the exception of auditors and bailiffs, whose risks are rated medium. Mitigation measures bring most of these risks down to medium, while auditors' residual risk is considered low.
- Regarding **legal persons and arrangements**, the NRA 2025 draws on the 2022 vertical risk assessment. Legal arrangements are assessed as having the highest inherent and residual risk, followed by commercial companies.

Strengthening risk understanding and response

With the publication of the NRA 2025, Luxembourg reaffirms its commitment to a dynamic, risk-based

AML/CFT framework. The assessment is intended not only as a strategic policy instrument but also as a practical reference for professionals subject to AML obligations. By providing updated risk analyses, case studies, and an adaptable risk assessment methodology, the NRA supports both national coordination and effective risk mitigation at the institutional level.

This latest assessment also follows Luxembourg's positive evaluation by the Financial Action Task Force (FATF) in 2023, which recognised the strength of the country's AML/CFT framework and its sound understanding of the risks at play. The NRA 2025 builds on that momentum, ensuring Luxembourg continues to evolve in line with emerging threats and international best practices.

The NRA 2025 alongside further publications on AML/CFT by the Ministry of Justice can be found [here](#).

AML/CFT | CSSF FAQ ON MARKET-ENTRY FORM - UPDATE

On 26 May 2025, the CSSF published [Version 8 of its FAQs on the AML/CFT Market-Entry Form \(“MEF”\)](#) relating to the completion of the MEF to be submitted via eDesk. This document provides clarifications on the circumstances in which the MEF must be submitted or updated, and on the information and documents required by the CSSF.

The FAQ is maintained by the CSSF and may be updated from time to time to reflect changes in regulatory expectations or administrative practices. Version 8 replaces the previous version dated 21 December 2023.

The FAQ in a nutshell

Submission of the MEF

The updated FAQ reiterates that the MEF must be submitted not only upon initial market entry, but also upon occurrence of a “trigger event”, such as the launch of a new sub-fund, the addition of a new qualified shareholder, or the appointment of a new *responsable du contrôle* (“RC”) or *responsable du respect des obligations* (“RR”).

Distinction between initial and update filings

The FAQ clarifies that a MEF must be submitted upon initial registration, as well as upon the occurrence of a trigger event.

Documentation of individuals

Directors, managers, and other individuals already approved by the CSSF are no longer required to resubmit their CV, ID, or criminal record, provided that

the previous submission is properly referenced. Conversely, newly appointed individuals – in particular the *responsable du contrôle* – must submit all required documents and identification forms.

Submission channels

Depending on the nature of the update, the MEF and supporting documentation must be submitted via the CSSF’s eDesk platform. In case of a trigger event (e.g. new sub-fund, appointment of a new RR or RC, new qualified shareholder), the relevant MEF request must be selected in eDesk. For ELTIFs outside the scope of Part II, SIF or SICAR, identification-only updates must be submitted via eDesk using the option “Market entry OTHER LU AIF (ELTIF) – notification update”, and the CSSF must also be notified by email.

Signature requirements

The CSSF confirms that both wet-ink and electronic signatures are acceptable, provided that appropriate measures are taken to prevent any post-signature alteration.

Sub-fund updates

When a new sub-fund is added and triggers one of the specified events (e.g. new initiator, new founder, limited investor base, or new investment type), a single MEF must be submitted via eDesk for the umbrella fund. The MEF must include complete and up-to-date information for all existing and new sub-funds. No separate MEF is required per sub-fund.

“Known to the CSSF” status

The FAQ clarifies that this status applies to portfolio

managers or investment advisors not authorised by the CSSF, but already acting in the same capacity for other funds authorised by the CSSF.

New clarifications introduced in version 8 ELTIF notification updates

A new procedure applies to authorised ELTIFs outside the scope of Part II, SIF or SICAR. If only the identification of a director, RR or RC changes, the MEF must be submitted in eDesk under “Market entry OTHER LU AIF (ELTIF) – notification update”, with supporting documents uploaded, and the CSSF must be notified by email.

Article 3(2) AIFMs

The CSSF confirms that AIFMs registered under Article 3(2)(a) or (b) of the AIFM Law are only required to submit the MEF at the time of initial registration. No further update is required unless specifically requested by the CSSF. However, any substantial change must be notified separately by email.

This update serves as a reminder to ensure that all AML/CFT governance documents and procedures are up to date, and that the appropriate version of the MEF is submitted in line with the nature of the change and the regulatory status of the fund or IFM.

BSP remains available to assist with the preparation, review, and submission of the MEF in accordance with the CSSF’s latest expectations.

MICA | RECENT ESMA DEVELOPMENTS

Since our last [newsletter](#), ESMA has released updated Q&As, supervisory guidelines, a peer review, further guidelines on staff competence, and a public statement – all regarding the implementation of Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets (“**MiCA**”).

Supervisory guidelines to prevent market abuse under MiCA

Since MiCA’s entry into force on 29 June 2023, ESMA has been publishing various Q&As, guidelines, supervisory briefings, opinions, as well as maintaining an interim register (available [here](#) as a collection of CSV files until mid-2026 when it will be formally integrated into ESMA’s IT systems), in an effort to establish a more cohesive legal framework, regulating the crypto-asset markets in the EU.

On 29 April 2025, fulfilling its mandate under article 92(3) of MiCA, ESMA issued its final report on supervisory practices in order to prevent and detect market abuse under MiCA (the “[MAR-related Guidelines](#)”). The MAR-related Guidelines are directly applicable to the National Competent Authorities (as defined in Article 3(1)(35) of MiCA), (the “**NCAs**”) after three months following the date of their publication on ESMA’s website in all official EU languages. Within two months from such publication, the NCAs must confirm to ESMA whether they already comply or intend to comply with the MAR-related Guidelines, by incorporating them into national legal or supervisory

frameworks. If they do not or do not intend to comply within this deadline, this decision and the reasons for it will be published on ESMA website. In Luxembourg, the MiCA NCA is the CSSF.

The MAR-related Guidelines build on the experience made under Regulation (EU) No 596/2014 of 16 April 2014 on market abuse (the “**MAR**”), while taking into consideration the unique features of crypto trading, such as its cross-border nature and the intensive use of social media. Their objective is to promote consistency in the supervisory practices of NCAs in relation to crypto assets, by establishing efficient and harmonized oversight mechanisms to better prevent, detect, and address market abuse –specifically insider trading, unlawful disclosure of inside information, and market manipulation.

Some of the key guidelines revolve around the following topics:

Proportionality and risk-based supervision

NCAs should tailor their supervisory practices and use their resources on a risk-based approach, while being forward-looking and responsive, particularly for new forms of market abuse (including monitoring non-traditional actors like miners, validators, and social media influencers).

Common supervisory culture and coordination

ESMA promotes cooperation and experience-sharing, exchanging best practices between NCAs, or

exchanges of experiences with authorities in other connected areas, such as those responsible for consumer protection or prevention and anti-money laundering.

Integrating dedicated measures into existing frameworks

NCAs are encouraged to use and adapt existing supervisory practices for the detection and prevention of market abuse under MAR, for instance including in the existing monitoring of manipulative practices, actions linked to the technology behind crypto-assets and their offering and evaluation.

Resource adequacy, monitoring and surveillance

surveillance should be both data-driven and event-based, leveraging public, regulatory, and reconciled on-/off-chain data, and include automated and human monitoring of web platforms, social media, and newsletters. ESMA recommends to NCAs to allocate trained staff and to invest in tailored surveillance tools.

Stakeholder engagement, education and promotion initiatives

NCAs are encouraged to proactively engage with stakeholders – e.g. industry participants, experts, and data providers – to identify emerging risks and develop effective responses. ESMA also recommends promoting market integrity initiatives to raise awareness of abusive practices and to encourage voluntary adoption of best practices by market

participants.

Notably, the MAR-related Guidelines repeatedly emphasise the widespread use of social media as a vehicle for disseminating false or misleading information. NCAs are encouraged to strengthen their monitoring and supervisory capabilities in this space, with a focus on identifying and deterring abusive practices early on.

Updated Q&As

On 17 and 20 June 2025, ESMA published updates of its questions and answers (“Q&A”) addressing key issues related to MiCA compliance and clarifications in response to market developments: [Custody agreements in the exercise of rights attached to crypto-assets](#) A crypto-asset service provider (“CASP”) providing custody services must ensure clients can exercise rights attached to their crypto-assets and immediately record any event affecting a client’s rights – such as changes to the underlying distributed ledger – in the client’s register of positions. CASPs must also ensure clients retain entitlement to any newly created assets or rights resulting from such events, unless the client has given prior express and signed consent to a different arrangement. CASPs must obtain explicit and affirmative agreement – for example, through a clearly presented clause or a pop-up confirmation – when seeking to derogate from this obligation and cannot rely on “terms of services” or any type of standard, non-negotiated user agreements.

[Commingling clients’ crypto-assets with crypto-](#)

[assets from other entities of the group when acting as custodian :](#)

To address potential risks due to information asymmetry and conflicts of interest, ESMA has clarified that CASPs providing custodian services to sister companies or other entities within the same corporate group must not commingle clients’ crypto-assets with such group assets.

Under Article 75(7) of MiCA, CASPs are required to keep clients’ assets in wallet addresses that are separate from their own proprietary holdings, or to avoid providing custody services to affiliates if risks cannot be properly managed. Although assets from sister companies are not classified as “own assets” *per se* under MiCA, ESMA warns that pooling them with client assets – such as in shared wallets – may expose CASPs to significant risks, including preferential access to sensitive information or group-level liquidity events that could adversely impact clients.

[Shared order book model](#)

Under MiCA, it is not permissible for an authorised CASP operating a trading platform to pool its order book with that of one or more non-EU platforms operated by entities not authorised under MiCA. ESMA clarifies that such a model would constitute unauthorized provision of a crypto-asset trading platform service within the EU, violating Article 59 of MiCA. Since managing an order book is a core element of operating a multilateral trading system under Article 3(18), all entities managing the shared order book must be MiCA-authorized CASPs.

Peer review

On 10 July 2025, ESMA published a [peer review](#) of the Maltese NCA’s authorisation of a CASP, highlighting some supervisory strengths but also gaps in risk assessment, particularly regarding governance, Web3 products, and the promotion of unregulated services which offers lessons for all NCAs across the EU.

Guidelines on CASP staff knowledge and competence

On 11 July 2025, ESMA published guidelines (the “[CASP Staff Guidelines](#)”) specifying the criteria for assessing the knowledge and competence of staff at CASPs who provide information or advice on crypto-assets and services. These Further Guidelines aim to ensure that client-facing staff possess an adequate level of professional qualifications and experience, as well as a clear understanding of the specific features and inherent risks of crypto-assets – such as high volatility and cyber threats.

The document offers concrete examples and assessment criteria that CASPs must apply to ensure compliance with their obligations under MiCA, ultimately enhancing investor protection and trust in crypto-asset markets. These guidelines will begin to apply six months after their publication in all EU official languages, and all NCAs must notify ESMA within two months as to whether they intend to comply.

Public statement

Finally on 11 July 2025, ESMA published a [public statement](#), reminding CASPs to clearly distinguish between regulated and unregulated services in all



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client communications, warning against the potential “halo effect” that can mislead clients about the protections available under MiCA.

LISTING ACT | VARIOUS DEVELOPMENTS

Further to the entry into force of the [Listing Act](#), ESMA published various **final reports** providing technical advice and updated its **Q&As**. These include:

- ESMA's final report on the technical advice concerning MAR and MiFID II SME growth markets
- ESMA's final report on the technical advice concerning the Prospectus Regulation and the RTS updating the commission delegated regulation on metadata
- ESMA's final report on civil prospectus liability, and
- ESMA's updates to **Q&A 2259** under the Prospectus Regulation.

Meanwhile, Luxembourg adopted the **law of 3 July 2025**, a significant step in aligning its national framework with the Listing Act's provisions.

Final Report on the technical advice concerning MAR and MiFID II SME Growth Market

On 7 May 2025, ESMA published its highly anticipated [final report](#) on technical advice in respect of the Market Abuse Regulation (MAR) and the part of MiFID II regarding SME growth markets. This report reflects ESMA's assessment and incorporates feedback received during a public consultation launched in December 2024. The advice aims to facilitate the effective implementation of the Listing Act, specifically related to these regulations.

In relation to MAR, the final report examines how inside information should be disclosed in a protracted

process, providing crucial clarification.

Disclosure Timing

ESMA noted that the amendments introduced by the Listing Act to the disclosure framework for protracted processes are expected to limit the use of the delay mechanism, as the obligation to disclose arises only once the events or circumstances become final and certain.

Protracted processes defined

ESMA clarified that 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"*.

Internal Processes

Capital increases, dividends, or management changes

Disclosure shall be made when the issuer's governing body formally decides, even if shareholder approval is pending.

Two-tier systems

Disclosure shall be made after supervisory board approval.

Management changes

For key management changes, disclosure should happen at the time of the formal appointment or

dismissal decision or upon contract signing if no formal board decision occurs. Resignations (e.g. of a CEO) are considered one-off events and must be disclosed immediately unless preceded by negotiations.

Third-party transactions (e.g., mergers)

Disclosure shall occur at the signing of a binding agreement, not just when a decision to proceed is made. If shareholder approval is required, disclosure shall happen at the governing body's decision.

Processes involving public authorities

ESMA confirms that issuers must disclose the filing of a request with a public authority if it constitutes inside information, unless they validly delay disclosure. For administrative proceedings, disclosure should occur as soon as the issuer is formally informed of the authority's final decision, even if earlier exchanges involved inside information. In judicial proceedings, ESMA clarifies that issuers cannot wait for a court decision to become final and non-appealable before disclosing inside information.

Takeovers

Issuers must follow the specific disclosure rules in the Takeover Directive and relevant national laws.

Other Clarifications

ESMA also provided proposals on financial reports, profit warnings, biotech trials, credit institutions and provided a non-exhaustive list of protracted processes.



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With respect to conditions to delay disclosure of inside information, ESMA explained that issuers should primarily assess inside information against their latest public announcement on the same matter. In limited cases, issuers may consider prior communications to give a full picture of the issue. ESMA also provided guidance on dealing with potential contrasts between the inside information to be delayed and the latest issuer's communication.

With respect to SME growth markets, ESMA proposed to keep the criteria which a multilateral trading facility should fulfil to register as a SME growth market unchanged, as they are fit for purpose and provide sufficient flexibility. In addition, ESMA, *inter alia*, suggested to limit the working capital statement requirement to share issuances only and proposed requiring that annual financial reports be audited.

Final report on the technical advice concerning the Prospectus Regulation and the RTS updating the Commission Delegated Regulation on metadata

On 12 June 2025, ESMA published its [final report](#) on technical advice pertaining to the Prospectus Regulation and the Commission Delegated Regulation ("CDR") on metadata. This reflects ESMA's assessment and feedback received during a public consultation launched in December 2024.

Key highlights from the final report include:

Flexible format for debt prospectuses

The strict format and sequence shall not apply to debt base prospectuses but only to standalone prospectuses relating to IPOs or "plain vanilla" debt

prospectuses prepared by a single issuer.

Streamlined non-equity disclosure

ESMA has revised the single non-equity registration document (Annex 6) and non-equity securities note (Annex 13) clearly indicating whether the provisions apply to retail only or wholesale only.

Proposed ESG disclosure

ESMA proposed new dedicated ESG disclosure annexes for non-equity securities advertised with ESG factors or pursuing ESG objectives. It clarified that the term "advertised" shall be read broadly so as to include both written and oral communications.

Clarified scrutiny and approval

ESMA provided detailed advice on the criteria and procedures for the scrutiny and approval of prospectuses.

Metadata alignment for ESAP

ESMA updated the technical standards on metadata to align with changes introduced by the Listing Act and regarding the implementation of the European Single Access Point (ESAP).

ESMA Q&A 2259

A significant point of clarity for issuers has emerged with ESMA's update to its Prospectus Regulation Q&As, specifically [Q&A 2259](#). This guidance directly addresses the interaction between the Listing Act's allowance for incorporating future financial information by reference (under Article 19(1)(b) of the Prospectus Regulation) and the standing obligation to publish a

supplement (under Article 23 of the Prospectus Regulation). ESMA confirms "*The obligation to produce a supplement under Article 23 of the Prospectus Regulation shall not apply to new annual or interim financial information when it is incorporated by reference under Article 19(1b)*".

Final report with advice concerning civil prospectus liability

In line with further changes introduced by the [Regulation \(EU\) 2024/2809](#) amending the Prospectus Regulation (the "**Prospectus Amending Regulation**") as part of the Listing Act, the European Commission (the "**EC**") was called upon to assess whether further harmonisation of the provisions on prospectus liability is warranted and, if so, to consider amendments to those liability provisions. The EC mandated ESMA to provide technical advice on civil liability regarding the information given in prospectuses to include an assessment and recommendations on whether further harmonisation should be considered.

ESMA's [final report](#) on civil prospectus liability, released in June 2025, offers a comprehensive review of liability regimes across EU Member States, highlighting key takeaways for the EC's assessment, particularly:

National variations

Considerable differences persist among Member States regarding who can claim damages, the standard of culpability, damage calculation, burden of proof, and limitation periods.

Liability not the primary barrier

Notably, the majority of respondents expressed that distinctions in national civil prospectus liability are not the paramount factor impeding cross-border capital market activities. Other factors, such as tax and administrative burdens, alongside cultural differences and a general lack of investment culture, are considered more influential.

No immediate harmonisation proposed

While acknowledging variations, ESMA **does not recommend immediate harmonisation** of Article 11 of the Prospectus Regulation. However, it points to **two areas** for future discussion should EC intend to contemplate the reform:

1. **safe harbour provisions** for forward-looking statements to encourage more disclosure, and
2. **harmonised rules** for determining applicable law in liability claims.

New law of 3 July 2025 on financial markets

The **recently enacted** law of 3 July 2025 (the "**New Law**") which was published on 8 July 2025 and which entered into force on 10 July 2025:

- implements Regulation (EU) 2024/791 (the "**MiFIR Amending Regulation**"), and
- transposes into Luxembourg law Directive (EU) 2024/790 (the "**MiFID II Amending Directive**"), Directive (EU) 2024/2811 (the "**Listing Act Directive**") and Directive (EU) 2023/2864 (the "**ESAP Directive**").

As we outlined in our [previous newsletter](#) when the draft was first submitted to the Luxembourg Parliament (*Chambre des Députés*), this New Law amends several key pieces of Luxembourg legislation: the Luxembourg law of 5 April 1993 on financial sector (the "**Financial Sector Law**"), the Luxembourg law of 11 January 2008 on transparency requirements for issuers (the "**Transparency Law**") and the Luxembourg law of 30 May 2018 on markets in financial instruments (the "**MiFID Law**"). There were no significant changes between the initial draft law (Draft Law No. 8498) and the final adopted version.

TOWARD A PAPERLESS STATE: ELECTRONIC SIGNATURES SUPPORTING LUXEMBOURG'S DIGITAL TRANSFORMATION

Luxembourg is taking a significant step toward a fully digital government and legal system with three new key legal instruments: the [Law of 4 June 2025](#) on electronic signatures of acts in administrative matters, the [Grand-Ducal Regulation of 4 July 2025](#) regulating the electronic communication of documents and notifications during bankruptcy and reorganisation proceedings, and the [Draft law No. 8560](#) on electronic signatures for legislative and regulatory acts.

These legislative developments build on existing legislation, such as the **amended law of 14 August 2000** relating to electronic commerce, which already allows for the use of electronic signatures for private agreements under certain conditions.

While these new instruments promote the use of qualified electronic signatures, they do not render traditional signatures obsolete. Electronic signatures remain optional, and handwritten signatures continue to carry full legal value in all applicable contexts.

This article provides an overview of these three new instruments and explains the different types of electronic signatures under **the eIDAS Regulation (EU) No. 910/2014** on electronic identification and trust services.

Key legal instruments supporting Luxembourg's digital transition

Electronic signatures of acts in administrative matters: the Law of 4 June 2025

The Law of 4 June 2025 (formerly Draft law No. 8089)

grants full legal value to electronic signatures and seals when used in administrative acts, whether issued by public authorities or by individuals interacting with the administration.

This reform allows for document to be signed or sealed electronically without requiring a handwritten signature or a physical copy, as long as the process complies with the requirements of the EU eIDAS Regulation (explained below).

The law establishes the equality of electronic and handwritten signatures for administrative purposes. However, it leaves open the possibility for signatories to continue using traditional, wet ink signatures if preferred.

Certain measures initially proposed, such as a central platform or a unique administrative identifier, were removed during the legislative process following critical opinions from the Council of State, the CNPD, and other institutional stakeholders, primarily due to concerns over data protection and legal clarity.

Electronic communication in insolvency and restructuring proceedings: Grand-Ducal Regulation of 4 July 2025

Further contributing to Luxembourg's digital transition, the Grand-Ducal Regulation of 4 July 2025 establishes the legal framework for electronic communication of documents and notifications in the context of bankruptcy and reorganisation proceedings.

Under this regulation:

- Declarations of claims and reorganisation plans can now be submitted electronically.
- Notifications to creditors throughout the proceedings can be delivered via electronic means.
- When a signature is required, it must either be based on a high level of guarantee in accordance with Article 8(2) of the **eIDAS Regulation**, or take the form of a **Qualified Electronic Signature (QES)**

The regulation also reaffirms that a QES is equivalent to a handwritten signature, thereby ensuring the full legal validity and probative force of documents transmitted in this context.

This new legislative act enhances legal certainty and promotes procedural efficiency in judicial practice, particularly in commercial and insolvency matters.

Electronic signatures for legislative and regulatory acts: Draft Law No. 8560

Draft Law No. 8560, introduced in May 2025, aims to extend the legal framework to cover the use of electronic signatures for legislative and regulatory acts. This includes the Grand Duke's signature, as well as the signatures of all other parties involved in the normative process -ministers, Parliament, the Council of State, and other institutions.

This Draft Law addresses a legal gap by explicitly recognising the validity of electronic signatures in the adoption of binding legal texts, provided that such signatures meet the technical and legal standards of a **Qualified Electronic Signature** under eIDAS.

In its advisory opinion issued in February 2025, the Council of State emphasised the importance of adopting a specific legal framework for electronic signatures in the legislative and regulatory domain, given its distinct nature and the complexity of the normative procedure. This observation has been considered: Draft Law No.8560 is indeed distinct from both the Law of 4 June 2025 on electronic signatures of acts in administrative matters and the amended Law of 14 August 2000 relating to electronic commerce, and is specifically dedicated to this purpose.

A short recap on various types of electronic signature under eIDAS

The eIDAS Regulation (EU) No.910/2014, amended by the "eIDAS 2.0" Regulation No. 2024/1183, provides a harmonised legal framework across the European Union for electronic identification and trust services. It recognises three levels of electronic signatures, each offering different levels of legal protection:

- **A simple electronic signature (SES):** this can be a scanned image of a signature, a typed name, or a "click-to-sign". It has limited evidentiary value and no guaranteed identity verification.
- **An advanced electronic signature (AES):** this is uniquely linked to the signatory and capable of detecting changes to the signed date, but does not require a qualified certificate.
- **A qualified electronic signature (QES):** the highest level, based on a qualified certificate issued by a trusted service provider and created using a secure signature device. It is the only signature type with the

same legal effect as a handwritten signature across all EU Member States (article 25 (2) eIDAS Regulation (UE) No. 910/2014)

Similarly, a **qualified electronic seal** applies to legal entities (public administrations, ministries...), and ensures the authenticity and integrity of official documents

Conclusion

Luxembourg is building a robust and unified legal framework for electronic signatures that spans administrative, legislative, and judicial areas, while also supporting digital interactions with the private sector.

With the Law of 4 June 2025 now in force, and the Grand-Ducal Regulation of 4 July 2025 providing crucial support for digital communication in business restructuring and liquidation procedures, the foundation for a paperless state is in place. While not yet adopted, Draft Law No. 8560, is poised to complete the framework by formally enabling digital authentication for law-making processes.

These developments form a coherent and forward-thinking strategy that positions Luxembourg at the forefront of the EU's digital transformation, paving the way for future initiatives like the European Digital Identity Wallet (EUDI Wallet).

ECJ CASE LAW | THE GENERAL COURT CONFIRMED COMMISSION'S REVIEW OF NON-NOTIFIABLE LUXEMBOURG MERGER

In its judgment dated 2 July 2025 in case [T-289/24 *Brasserie Nationale and Munhowen SA vs. Commission*](#), the General Court of the European Union (EU) (the “**Court**”) upheld the decision of the European Commission (the “**Commission**”) to examine a merger project involving two Luxembourg-based entities active in the market of beverages production and distribution. Although the transaction did not meet the thresholds for EU-level notification under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “**Merger Regulation**”), it was referred to the Commission by the Luxembourg Competition Authority (*Autorité de la concurrence*) under Article 22 of the Merger Regulation.

Background to the dispute

On 31 January 2024, *Brasserie Nationale*, a Luxembourg beer and mineral water producer, announced its acquisition of sole control of Boissons Heintz, a Luxembourg wholesale distributor of beverages in Luxembourg, through the acquisition of all of the latter's shares by its subsidiary *Munhowen* (the “**Merger**”). In the absence of relevant turnover figures, the Merger did meet the European dimension within the meaning of Article 1, para. 3, of the Merger Regulation.

While, normally, the Merger would be treated by national competition authorities, the Grand Duchy of

Luxembourg did not have at the time of the Merger (nor does it have now) a legislation dedicated to the control of concentrations. It can be noted, on this, that a draft law on concentration has been proposed to the Luxembourg Parliament (*Chambre des députés*) (being Draft Law No. [8296](#)), without, however, having been adopted yet. Please see our [previous newsflash](#) on this topic.

In this context, on 7 February 2024, the Competition Authority used its faculty under Article 22 of the Merger Regulation to request that, absent a national law on control of concentrations, national competition authorities may request that a merger project be examined by the Commission. The council actually suspected that the Merger may affect trade between Member States and threaten to significantly affect competition within the Luxembourg territory, which are the conditions under which the referral in such provision can be triggered.

The issues at stake

Article 22 was expressly introduced to allow the Commission to review transactions that, despite lacking a European dimension, may significantly impede competition and affect trade between Member States. The matter was of immediate concern, considering the limited territorial extension of Luxembourg and the importance of *Brasserie Nationale* and *Boissons Heintz* as actors in,

respectively, the production and distribution of beer and other beverages.

Given this, the Commission accepted the referral and, following its analysis, concluded that the Merger may affect both the intercommunity trade as well as competition in the internal market. Luxembourg's Competition Authority was therefore vigilant enough to understand that the Merger might pose such risks and, pending the adoption of draft law No. 8296, refer the examination of the merger proposal to the Commission.

The findings of the Court

The applicants challenged not only the admissibility of the referral under Article 22 but also the Commission's substantive assessment. However, as is typical in merger control litigation, the Commission enjoys a wide margin of discretion, and only manifest errors can lead to annulment.

The Court found that, as stated by the Commission, the Merger was likely to affect trade between Member States. As consistently held in the Court's case-law, it is immaterial that a concentration might relate solely to the territory of a single Member State: what matters is whether the entity resulting from the Merger may prevent market access for other operators. In the present case, the Court considered that the merging entities, combining *Brasserie Nationale's* production activities with the distribution network of *Boissons*

Heintz, could effectively seclude the Luxembourg market by foreclosing competitors from accessing it. With respect to harming competition, the Court essentially upheld the Commission's structural concerns. First, it noted that the merging parties held significant combined market shares in both beverage production and distribution in Luxembourg. In addition, the scarcity of alternative distributors in the country increased the likelihood that competitors would face foreclosure from the market. It was also emphasised the absence of international players in Luxembourg's beverage sector. Whereas in larger Member States competition may be preserved by the presence of multiple large-scale producers and distributors, the Luxembourg market appeared more insulated and therefore more vulnerable to concentration effects. Furthermore, the degree of product substitutability in the relevant markets, particularly for beer and related beverages, was considered limited, meaning that consumers could not easily switch to comparable alternatives in the event of price increases or reductions in quality. The Court further observed that customers, being spread across the country and relatively atomised, lacked significant buyer power that could counterbalance the effects of the concentration. Finally, it found that the strengthened position of the merged entity could raise significant barriers to entry for new competitors, further reducing the competitive dynamics of the market. Taken together, these factors led the Court to conclude that the Commission had not committed a manifest error in determining that the Merger could significantly

impede effective competition, notwithstanding its national dimension and geographic scope. Significantly, the Court concluded the judgment by stressing the importance of the Commission's discretion under Article 22 of the Merger Regulation, as, in the absence of a Luxembourg regulation on the control of concentrations, it allowed apprehending the Merger's negative impact on competition and interstate trade.

The way forward

This judgment not only clarifies the scope of Article 22 of the Merger Regulation but also highlights the role of EU law in filling gaps in national frameworks. The referral mechanism worked as intended, allowing the Commission to scrutinise a transaction with potentially adverse effects on competition and interstate trade in a Member State lacking its own merger control regime. The future adoption of Draft Law No. 8296 would grant Luxembourg greater autonomy in overseeing such transactions. Until then, Article 22 was confirmed to be a critical tool for Member States without national merger regimes (like Luxembourg) to bring cross-border deals before the Commission.

ECJ CASE LAW | NO TO INVESTORS PURCHASING A MEMBER STATE'S CITIZENSHIP

In a landmark judgment adopted on 29 April 2025 in case [C-181/23](#) *Commission vs. Malta*, the Grand Chamber of the Court of Justice (the “**Court**”) of the European Union (EU) found that, by amending its citizenship legislation to facilitate the acquisition of the Maltese citizenship by wealthy individuals, such as investors, the Republic of Malta (“**Malta**”) failed to fulfil its obligations on the EU citizenship (Article 20 ff. TFEU) as well as the principles of sincere cooperation (Article 4, para. 3, TEU), mutual trust and recognition among Member States under the Treaty of the European Union (**TEU**) and Treaty on the Functioning of the European Union (**TFEU**).

Background to the dispute

In 2020, Malta amended the Maltese Citizenship Act to establish the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment (the “**2020 Investor Citizenship Scheme**”). The 2020 Investor Citizenship Scheme established that foreigners “providing exceptional services” to Malta could be naturalised as Maltese citizens. Among such exceptional services the scheme recognised the contributions of, *inter alios*, investors and entrepreneurs.

More particularly, under the 2020 Investor Citizenship Scheme, foreign investors may apply for naturalisation, *inter alia*, by directly paying contributions (of at least EUR 600,000) to the government, purchasing residential properties (with a minimum value of EUR

700,000) or take on a lease of a residential property for a minimum annual rent of EUR 16,000 and for a minimum period of five years, making donations to a state or authorised non-governmental organisation, or legally residing in Malta for a 36 month-long period following the above mentioned contributions to the government, which could be drastically reduced to 12 months, again by contributing EUR 150,000 in addition to the government (i.e. for a total of EUR 750,000).

Estimating that the 2020 Investor Citizenship Scheme could breach the provisions on the EU citizenship, the European Commission (the “**Commission**”) triggered the pre-contentious procedure under Article 258 TFEU (infringement procedure) to inquire on the scheme’s legal consequences. Faced with Malta’s disagreement vis-à-vis its position, the Commission started a procedure against Malta before the Court.

The issues at stake

Since its outset, the case appeared sensitive, as it bore the risk of affecting the definition of the rules on the acquisition (and loss) of national citizenship, which is a sovereign prerogative of states, recognized in [international](#) as well as EU law (See for instance judgments of 7 July 1992, in case [C-369/90](#) *Micheletti* and of 12 March 2019, in case [C-221/17](#) *Tjebbes and Others*). However, the attribution of the citizenship of a Member State causes immediate legal consequences in the EU legal system, as Article 20 TFEU provides that Member States nationals are also EU citizens. The

EU citizenship grants the rights to move and reside freely within the whole EU territory,^[1] the economic freedoms,^[2] voting rights as well as the right to receive diplomatic protection by any other Member States.

Thus, the possible “commercialisation” of the citizenship of a Member State implied in the 2020 Investor Citizenship Scheme is relevant for EU and Member States. Wealthy individuals would benefit from a fast lane to acquire a national citizenship, thereby benefiting from the rights attached to the EU citizenship, despite failing to meet the core principles in national laws on the acquisition of citizenship (such as continuous residence in a country for some years).

The findings of the Court

In its judgment, the Court, like the Commission, accepted that the definition of the conditions for nationality is a prerogative of Member States, but developed the Commission’s approach based on the international law conception of citizenship as based on a “genuine link” between nationals and state. As a result, the Court stated that the core of the citizenship is a “special relationship” of solidarity and good faith between states and their nationals and reciprocity of rights and duties.

While this relationship exists in all states, the rights attaching to the EU citizenship are concrete expression of the solidarity among Member States and, as such, contribute essentially to the EU integration process. In this framework, Member States need to respect the

right of nationals of other Member States to access, reside and work on their territories, which often also involves the recognition of the education, formation and titles obtained elsewhere.

Such respect is based on the mutual recognition of the citizenship of other Member States, a duty which these accept to observe on grounds of the reciprocal trust they put on fellow Member States' policy choices in this area. Yet the 2020 Investor Citizenship Scheme would impose Member States to accept that citizens from other Member States be able to move, reside and work freely on their territories despite their citizenship resulting from an exchange for investments (or other payments),

The lack, in such EU citizens, of the special relationship of solidarity and good faith between states and nationals would impair the mutual trust and recognition among Member States, as, the Court seems to suggest, such persons gained a Member State's nationality due to their wealthy condition and the "complicity" of a national legislation allowing it.

The way forward

The judgment delivered by the Court is complex and will raise discussions for its extreme, though rigorous, legal reasoning affecting Member States' sovereign prerogative citizenship rights. The Court appears to dismiss the traditional genuine link principle used in international law (and considered by the Commission), to bring forward its own reasoning in a legitimate wish to state that the grounds of the EU citizenship are unique. Hence, applying thereto the principles of international law would be too limiting.

It is also significant that the Court preferred to ignore the opinion of Advocate General Collins advising rather to dismiss the Commission's action for failure to prove that, in order to lawfully grant national citizenship (and, consequently, the EU citizenship), Article 20 TFEU requires the existence of a genuine link between a Member State and an individual other than what domestic law may require.

Following this case, in the future Member States may find it difficult to enact legislations to "capitalise" on being part of the EU and attract investments. It is worth mentioning that Luxembourg does not have a direct citizenship-by-investment scheme akin to Malta's. Instead, Luxembourg offers a residence-by-investment route, which can eventually lead to citizenship provided naturalization requirements be respected (among which a 5-year-period continuous residence and knowledge of *Lëtzebuergesch*).

[1] Enshrined in Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

[2] Free movement of workers and services; freedom of establishment.



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HAGUE 2019 CONVENTION | ENTRY INTO FORCE IN THE UK AND LUXEMBOURG DRAFT LAW TO AMEND NEW CODE OF CIVIL PROCEDURE

On 1 July 2025, the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “**Hague 2019 Convention**”) will enter into force in the United Kingdom. The Contracting States include all EU Member States (except Denmark), Ukraine, Uruguay, and the United Kingdom. This marks a significant step in the re-establishment of a coherent framework for the cross-border recognition and enforcement of UK court judgments in the post-Brexit landscape.

The post-Brexit landscape left UK judgments facing fragmented and often challenging enforcement prospects within the European Union, primarily due to the UK's departure from the comprehensive framework of the Brussels I Recast Regulation and its non-accession to the Lugano Convention. Although the UK Government sought to mitigate these post-Brexit enforcement gaps by re-joining the Hague Convention on Choice of Court Agreements 2005 (the “**Hague 2005 Convention**”), a significant void persisted, as the Hague 2005 Convention applies only to **exclusive jurisdiction clauses** and the **recognition of judgments** arising specifically from such clauses. This left a wide array of UK judgments, particularly those not based on such clauses, without a clear and consistent pathway for recognition and enforcement across the EU.

Impact on recognition and enforcement: a complement to the Hague 2005 Convention

The Hague 2019 Convention helps to bridge this gap by complementing the Hague 2005 Convention with a broader enforceability regime. Notably for commercial parties, the Hague 2019 Convention covers judgments based on **non-exclusive jurisdiction clauses as well as asymmetric jurisdiction clauses**. Asymmetric jurisdiction clauses - commonly found in English law-governed, LMA-style facility agreements and other finance documents - allow one party (usually the lender) to choose between multiple courts, while the other party is restricted to a specific forum. Such clauses were outside the scope of the Hague 2005 Convention, which raised uncertainty regarding the enforceability of UK judgments issued pursuant to asymmetric or non-exclusive clauses in EU Member State courts. The Hague 2019 Convention now provides much-needed clarity and a pathway for the recognition and enforcement of these judgments. Of course, the Convention also operates in the reverse, establishing a similar framework for the enforcement of judgments from other Contracting States, including EU Member States, in the United Kingdom, thereby offering a more streamlined and predictable route for obtaining recognition and enforcement of EU judgments in the UK.

Luxembourg's integration of the Hague 2019 Convention

In anticipation of the entry into force of the Hague 2019 Convention, Draft Law No. [8550](#) (“**Draft Law**”) was submitted on 10 June 2025 to the Luxembourg Parliament (*Chambre des Députés*). The Draft Law proposes to amend article 679 of the New Code of Civil Procedure (“**NCPC**”) in order to explicitly include the Hague 2019 Convention into the **non-exhaustive list** of international treaties under this article. This legislative initiative aims to ensure clarity and **provide adequate visibility** of the Hague 2019 Convention for Luxembourgish courts, thereby facilitating the application of the **streamlined exequatur procedure** for the recognition and enforcement of judgments falling under the Convention, as opposed to the more general and often lengthier domestic regime.

A streamlined exequatur procedure offers a notable advantage over the general regime applicable in the absence of an international instrument like the Hague 2019 Convention. Under the streamlined exequatur procedure, the requesting party may submit an application for recognition or enforcement **directly to the President of the District Court**, who may issue an **ex parte order within a matter of weeks**. While the opposing party retains the right to contest the decision by filing an appeal with the Court of Appeals, doing so triggers adversarial proceedings under the regular written procedure - potentially lengthening the



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timeline but only at a secondary stage and skipping one degree of jurisdiction.

By contrast, under the general *exequatur* regime, proceedings are adversarial from the outset since the first instance. The case follows the standard civil written procedure, which may extend over several years, particularly where the judgment debtor actively resists enforcement. The judgment can then be appealed in front of the Court of Appeals

The streamlined route also significantly limits the Luxembourg court's discretion: no review on the merits of the foreign judgment is permitted, and enforcement can only be refused on the limited grounds exhaustively listed under the relevant international instrument.

The takeaway

The entry into force of the Hague 2019 Convention in the United Kingdom marks a pivotal development, significantly restoring legal certainty for the post-Brexit recognition and enforcement of UK judgments across the European Union. This is particularly impactful for the financial sector, as it provides a robust and predictable legal pathway to enforce judgments arising from English law financing agreements, including those incorporating complex asymmetrical jurisdiction clauses.

Luxembourg's proactive legislative response, through the proposed explicit inclusion of the Hague 2019 Convention in Article 679 of its New Code of Civil Procedure, while potentially not strictly necessary given the non-exhaustive nature of the existing list, is nonetheless a welcome development. This amendment

provides heightened clarity and visibility, ensuring that qualifying UK judgments will benefit from a streamlined and efficient *exequatur* procedure within Luxembourg. Such a forward-looking approach not only bolsters Luxembourg's appeal as a jurisdiction for seamless cross-border enforcement but also underscores its steadfast commitment to procedural efficiency and international legal cooperation.

ESAP & RATING ESG | WHAT ARE THE IMPLICATIONS OF THE DRAFT LAW 8567

Background

On 27 June 2025, the Luxembourg Parliament introduced **Draft Law No. 8567**, which aims to transpose and implement a set of recent EU directives and regulations that collectively establish and regulate the **European Single Access Point (ESAP)** – a centralised digital platform designed to provide streamlined access to information relevant to financial services, capital markets, and sustainability-related information – to enhance transparency and governance in **ESG rating activities** – and to clarify the conditions for authorisation applicable to distributors of insurance and reinsurance products.

Purpose and scope of the draft law

The Draft Law primarily aims to:

- Transpose **Directive (EU) 2023/2864** and implement related regulations establishing the **ESAP**, which centralises public access to financial services, capital markets, sustainability, and diversity-related information (the “ESAP Directive”).
- Implement **Regulation (EU) 2023/2859** establishing a **single European access point** providing centralised access to information published that is relevant for financial services, capital markets and sustainability (the ‘ESAP Regulation’).
- Implement **Regulation (EU) 2024/3005** on transparency and integrity of **Environmental, Social, and Governance rating activities** (the “ESG Rating Regulation”).

- Clarify authorisation conditions for insurance and reinsurance product distributors, allowing public-law institutions to obtain broker or agency authorisation.

The main highlights are listed below.

European Single Access Point (ESAP)

- The ESAP initiative is part of the Capital Markets Union and seeks to provide a centralised platform for public access to information on entities and their products that is publicly available and relevant to financial services, capital markets, sustainability and diversity.
- The Draft Law transposes the ESAP Directive and implements related regulations which amend 35 European directives/regulations affecting the laws of the financial sector.
- Information to be made available on the ESAP is collected from various designated agencies (collecting bodies). For certain texts, the ESAP Directive and the ESAP Regulation directly designate the collecting body. For other texts, Member States must designate at least one collection agency by 2028 or 2030.
- The ESAP will be fed by information that is already subject to publication under the applicable sectorial legislation. As the initial publication requirement already exists in Luxembourg law; the Draft Law only focuses on defining procedures for data collection and transmission to the ESAP.

Implementation of ESG Ratings Regulation (EU) 2004/3005

- The ESG Rating Regulation aims to improve the **integrity, transparency, comparability, accountability, reliability, good governance and independence** of ESG rating activities.
- It seeks to prevent greenwashing and misinformation by setting rules on the organisation and conduct of ESG rating activities.
- The Draft Law designates the **CSSF** as the competent authority in Luxembourg, under Article 30 of the Regulation and provides the powers available to it (for instance and as a matter of example to impose temporary bans and impose administrative fines on persons/entities who are non-compliant with the ESG Rating Regulation).
- It should be noted that for the ESG Rating Regulation, the main competence lies with the ESMA, which is responsible for the authorisation and supervision of ESG rating providers.

INVESTMENT FUNDS NON-AUTHORISED | NEW CSSF CIRCULAR 25/894

Background

On 27 June 2025, the new circular [Circular CSSF 25/894](#) – Information to be submitted to the CSSF in relation to investment funds non-authorized by the CSSF (the “**Circular**”) entered into force. The Circular focuses on transparency, risk assessment, and oversight of investment funds that operate without direct CSSF authorisation but still impact the Luxembourg financial market.

Notably the Circular repeals the Circular [CSSF 15/612](#) published on 5 May 2015.

Key Points of Circular 25/894

Scope of Applicability

The Circular applies broadly to all Luxembourg Investment Fund Managers (IFMs) that manage a fund that is not authorised by the CSSF, setting out information that must be reported to the CSSF regarding the funds they manage.

Information Submission Requirements

Entities must submit comprehensive data covering fund identification, investment strategy, risk profile, marketing practices, and details about the fund manager. This is critical for transparency and risk management.

Furthermore, if applicable, the IFM should indicate additional service providers of the fund such as the UCI administrator(s) and portfolio management delegate(s) and sub-delegate(s).

Submission Process

All information must be submitted electronically through the CSSF’s dedicated portal. Accuracy and completeness are essential when filling out the forms. The forms required to be filled out and submitted are available [here](#).

Regulatory Importance

Compliance with the Circular allows the CSSF to fulfil its duty of communicating to the ESMA all AIFs managed by Luxembourg AIFMs the CSSF will actively monitor adherence to these requirements.

Next Steps

Next step for IFMs after the introduction of this Circular will be to check fund portfolios and identify any investment funds not authorised by the CSSF, and to subsequently submit the required information to the CSSF within the defined time frame. In relation to authorised funds that have already been reported on, no new action is required unless there has been a substantial change to the information already submitted.

Additional Information

A FAQ (only in French) has been published by the CSSF in order to provide additional information on the implementation of the new Circular 25/894 and the repealing of Circular 15/612. The FAQ is available [here](#).

AIFM LAW | CSSF FAQ UPDATE

On 20 May 2025, the CSSF published Version 24 of its [FAQ](#) on the law of 12 July 2013 on alternative investment fund managers (“**AIFM Law**”). This document provides updated guidance on the interpretation and application of various provisions of the AIFM Law, including revised definitions, clarification of delegation and outsourcing rules, and the removal of outdated content. Version 24 replaces the previous version dated 18 October 2023.

The FAQ in a nutshell

Revised definition of “AIFM”

The CSSF has clarified that the AIFM Law applies to both external and internal AIFMs, and now explicitly states that registered AIFMs are subject only to paragraphs 3 and 4 of Article 3 of the AIFM Law and also potentially Article 50 (sets out the supervisory and investigatory powers of the CSSF), unless they opt in for full authorisation under the AIFM Law.

Explicit reference to RAIFs

The CSSF has clarified that RAIFs established under the law of 23 July 2016, though not subject to direct authorisation, qualify as AIFs if they meet the criteria of Article 1(39) of the AIFM Law. While this was implicit in previous versions, it is now explicitly confirmed across several questions, including in the context of local marketing rules (e.g. question 12), to eliminate any ambiguity regarding their eligibility for distribution to well-informed investors.

Strengthened depositary verification obligations

The answer to question 10.E has been materially revised. Previously, depositaries were allowed to rely on the records maintained by third-party custodians of financial instruments (e.g. prime brokers) provided certain due diligence and access conditions were met. Under the revised guidance, depositaries must now obtain end-of-day positions directly from such third parties on a fund-by-fund or compartment basis and use this information to verify that the financial instruments held by the third party match the accounts maintained in their own books.

PRIIPs KID publication requirements

The CSSF has expanded its guidance on how PRIIPs KIDs must be made available to retail investors. In addition to confirming the acceptable delivery methods (paper, durable medium, or website), the FAQ now clarifies that if a PRIIPs manufacturer uses a third-party or aggregator website to host the KID, this is only permissible if the access is unconditional, free of charge, not time-limited, and specifically dedicated to the AIF in question. The website address must be disclosed in both the prospectus and the KID itself, and the manufacturer must regularly verify that it remains active and up to date. These clarifications aim to ensure consistent access and transparency for retail investors.

Cash account eligibility clarified

A new question (question 10.L) specifies that all cash of a Luxembourg AIF must be held in accounts opened in the name of the AIF, its AIFM (acting on its behalf),

or its depositary (also acting on its behalf). These accounts must be opened with entities eligible under Article 19(7) of the AIFM Law, namely EU-authorised credit institutions, central banks, or third country authorised banks, as further defined in Article 86(a) of the AIFMD-CDR and Article 18(1) of Directive 2006/73/EC. This clarification reinforces the limited scope of eligible institutions permitted to hold AIF cash.

Controls on illiquid asset acquisitions

A new question (question 10.M) confirms that checks and controls must be carried out by Luxembourg depositaries prior to the acquisition of illiquid assets (i.e. ex-ante). This is to ensure compliance with the requirements applicable to both (i) their safekeeping duties regarding ownership verification and record keeping (Article 90 of the AIFMD-CDR), and (ii) their duties regarding the timely settlement of transactions (Article 96 of the AIFMD-CDR). The CSSF outlines the expected process as follows:

- **Prior to payment:** prior notification of the transaction by the AIFM to the depositary with supporting documents (in draft form, where applicable);
- **At the time of payment:** consistency checks between payment instructions and the documents referred to above;
- **After payment:** verification of the effective ownership of the assets by the relevant AIF based on the final executed transaction documents and,



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where applicable, extracts from external registers (e.g. land register, commercial register, etc.).

The CSSF has also made several additional editorial adjustments throughout the FAQ, including updated legal references and aligned terminology (e.g. use of “authorised” instead of “regulated”) to ensure consistency with the AIFMD and Luxembourg legal framework. In this context, the CSSF has also deleted Section 8 and various related legacy questions that dealt with transitional provisions, first-time reporting deadlines, passporting dates, and pre-AIFMD marketing regimes. These deletions concern provisions that had become obsolete and are no longer applicable to current market participants. These changes do not affect the substance of the rules but aim to enhance legal clarity and interpretive coherence.

UCI ADMINISTRATOR | FAQ CIRCULAR CSSF 22/811 UPDATE

The CSSF published on 17 April 2025 a [4th version](#) of the FAQ in order to add a question 6.1. The question raised relates to the notion of “central administration” within the meaning of the 2010 Law, the 2007 Law and the 2004 Law and whether it is identical to the notion of “UCI administration” within the meaning of the [CSSF Circular 22/811](#) on authorisation and organisation of entities acting as UCI administrator (“**UCIA Circular**”).

The answer is no. According to Article 88 of the 2010 Law (relating to undertakings for collective investment), Article 3 of the 2007 Law (relating to specialised investment funds (“**SIF**”) and Article 1(3) of the 2004 Law (relating to the investment company in risk capital “**SICAR**”), the central administration of Part II UCIs, SIFs or SICARs must be situated in Luxembourg. The notion of “central administration” within the meaning of the 2010 Law, the 2007 Law and the 2004 Law should be interpreted by reference to the notion of “central administration” as referred to in the Law of 10 August 1915 on commercial companies (meaning the “decision-making centre” and an “administrative centre”) and is therefore broader than the notion of “UCI administration” within the meaning of the UCIA Circular.

The notion of *UCI* administration activity as used in the UCIA Circular 22/811 encompasses the performance of registrar, NAV calculation and accounting and client communication functions.

Q&AS ON PRIIPS KID | JOINT COMMITTEE OF ESAS UPDATES: MAY 2025

On 5 May 2025, the Joint Committee of the European Supervisory Authorities (**ESAs**) (that is, the EBA, EIOPA and ESMA) published an [updated version](#) of its Q&As (JC 2023 22) on the Regulation on key information document (**KID**) requirements for packaged retail and insurance-based investment products (PRIIPs) (1286/2014) (**PRIIPs Regulation**) and related delegated acts. The Q&As contain updates on the following.

Market risk assessment – MRM class determination.

The updated Q&A provides further details and clarifications in **Question 9** regarding how the Market Risk Measure (MRM) class should be calculated, as well as the revisions that should be made to the Key Information Document (KID) if the MRM changes. These refinements aim to ensure more accurate and comparable MRM classifications, reducing variability in risk disclosures

Performance scenarios.

Several clarifications were introduced in **Questions 24, 25 and 26** of the updated Q&A to improve the methodology for calculating performance scenarios, including:

Question 24

ESAs clarified the use of the 99th percentile for one year and the 95th percentile for other holding periods as part of the definition of and calculation method for

inferring, the stressed volatility in Category 2 and 3 PRIIPs products.

Question 25

Further clarifications on calculation is performed for the intermediate holding periods, then the duration of the intermediate holding period should be used as the length of the fixed sub-interval (i.e. the sub-interval referred to in point 7(a) of Annex IV of the PRIIPs Delegated Regulation). This is also the case for the decreasing sub-interval (i.e. the sub-interval referred to in point 7(b) of Annex IV of the PRIIPs Regulation), but this is only relevant for intermediate holding periods that are longer than one year.

Question 26

The ESAs addressed the interpretation of the term “1 year” and ‘> 1 year’ in the context of the stress scenario table under paragraph 18 of Annex IV of the PRIIPs Delegated Regulation (Level 2), with more focus on the interpretation of the term “1 year” concluding that the table mentioned in point 18(a) of Annex IV of the PRIIPs Delegated Regulation should be used to calculate the formula described in point 18(c) of the same Annex, taking into account the holding period for which this calculation is intended, i.e. the recommended holding period and intermediate period(s) if any. The figures in the table for the label ‘1 year’ should be applied for the calculation of the stress scenario where the holding period is 1 year or less.

These clarifications will be particularly relevant for manufacturers of structured products and funds with flexible investment policies.

Calculation of the summary cost indicators.

With respect to cost disclosures, the Q&A also updates **Question 6** on guidance on the calculation of the summary cost indicators referred in point 90 of Annex VI of the PRIIPs Regulation. In this regard, per the updated Q&As, entry costs should be included in the table(s) referred to in Article 5 of the PRIIPs Regulation that contain an indication of the total costs in monetary and percentage terms in the case that the retail investor invests, respectively EUR 10,000 (for all PRIIPs except regular premium insurance-based investment products), or EUR 1,000 yearly (for regular premium insurance-based investment products) during different holding periods, including the recommended holding period. These updates are intended to harmonise cost disclosure practices across the industry, enhancing comparability for retail investors.

Conclusion

These clarifications further refine the implementation of the PRIIPs Regulation, aiming to improve consistency, transparency, and comparability in risk, performance, and cost disclosures. Manufacturers and distributors of PRIIPs should review the updated Q&A in detail to ensure that their KIDs remain compliant, especially in the context of structured products, funds with limited performance histories, and products featuring early



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redemption options.

COLLECTIVE INVESTMENT SCHEMES | IOSCO REVISED LIQUIDITY RISK MANAGEMENT RECOMMENDATIONS AND RELATED GUIDANCE

The International Organization of Securities Commissions (IOSCO) has published the following final reports on 26 May 2025:

- [Final revised Recommendations for Liquidity Risk Management for Collective Investment Schemes](#) as an update to their earlier 2018 recommendations (the “**Revised Liquidity Recommendations**”).
- [Final Guidance for Open-ended Funds \(OEF\) for Effective Implementation of the Recommendations for Liquidity Risk Management](#) (the “**Implementation Guidance**”).

Background

In December 2023, the Financial Stability Board (“**FSB**”) published its *Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-ended Funds* (the “**Revised FSB Recommendations**”) and, to support the greater use of and greater consistency in the use of anti-dilution liquidity management tools (“**LMTs**”) by OEFs, IOSCO published its *Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes* (the “**IOSCO ADT Guidance**”).

The Revised Liquidity Recommendations, amend the IOSCO 2018 Liquidity Recommendations (the “**2018 Recommendations**”). The aim of the revisions is to

operationalise the Revised FSB Recommendations and incorporate other changes to reflect market and policy developments since the publication of the IOSCO 2018 Liquidity Recommendations.

Revised highlights

The Revised Liquidity Recommendations make changes to most of the recommendations, and we have chosen the following to highlight.

The CIS Design Process Recommendations

Recommendation 3 – Consistency of OEF asset liquidity and redemption terms

The Revised Liquidity Recommendations shifted their focus on introducing a more structured, granular approach to aligning redemption terms with underlying asset liquidity, thus marking a significant evolution from the broader principles set out in the 2018 Recommendations.

Subject	Revised Liquidity Recommendations	2018 Recommendations
New fund classification system	<ul style="list-style-type: none"> • Category 1: Mainly liquid assets – daily dealing acceptable. • Category 2: Mainly less liquid assets – daily dealing may be acceptable <i>only if</i> robust anti-dilution tools are used (as per Rec. 7). • Category 3: Significant allocation to illiquid assets – lower redemption frequency and/or long notice/settlement periods expected. <p>OEFs that do not clearly fall into (only) one of the three main categories are subject to indicative guidelines, including local laws and regulations which may have different requirements, i.e. OEFs:</p> <ul style="list-style-type: none"> • investing more than 50% of assets under management in either liquid assets or less liquid assets is likely to constitute “mainly investing” in that category of assets; • investing more than 30% of assets under management in illiquid assets is likely to constitute “allocating a significant proportion” to that category of asset. 	In contrast, the 2018 Recommendations emphasized case-by-case assessments without outlining structural expectations based on asset liquidity proportions.
Stress testing, asset categorisation & redemption tools	The Revised Liquidity Recommendations are more operational : asset and portfolio liquidity must be assessed holistically , using factors like market depth, time to trade, and valuation certainty in both normal and stressed conditions.	While the 2018 Recommendations advocated similar principles, the 2025 update mandates a clearer, procedural link between these assessments and redemption terms. Notably, stress testing and investor behaviour (e.g. first-mover incentives) must feed directly into decisions on: <ul style="list-style-type: none"> • Redemption frequency • Notice periods • Settlement timeframes • Use of lock-ups or redemption caps It also introduces an explicit expectation to manage cliff-edge effects (e.g. when crossing liquidity thresholds triggers fund reclassification), with re-categorisations expected to be rare and based on long-term assessments.
Expanded toolbox of redemption constraints	The Revised Liquidity Recommendations go further in describing the architecture of redemption mechanics: <ul style="list-style-type: none"> • Notice periods and lock-ups for illiquid assets • Redemption caps to prevent fire sales • Settlement flexibility linked to liquidity assessments 	Whereas the 2018 Recommendations acknowledged the usefulness of such LMTs, the 2025 guidance provides a structured rationale for when and how to apply them—especially in Categories 2 and 3.
Valuation and liability considerations	The Revised Liquidity Recommendations add nance around how valuation procedures should reflect liquidity under stress, highlighting how delays in revaluation can incentivize early redemption—potentially destabilizing the fund. It also integrates liability-side analysis , asking managers to factor in: <ul style="list-style-type: none"> • Historical redemption patterns • Investor concentration • Margin and collateral call risks 	This is a clear step forward from the 2018 Recommendations’ focus on asset-side liquidity alone and aligns better with systemic risk monitoring goals.

[Click here to view a larger version of the table](#)

Liquidity Management Tools and Measures Recommendations

Recommendation 6 - General consideration of anti-dilution LMTs, quantity-based LMTs and other liquidity management measures in both normal and stress

conditions

In comparison to recommendation 17 from the 2018 Recommendations, recommendation 6 from the Revised Liquidity Recommendations portrays a shift in focus and structure.

Recommendations	Revised Liquidity Recommendations	2018 Recommendations
Clear categorisation of tools	<ul style="list-style-type: none"> Revised Liquidity Recommendations introduce a structured framework dividing LMTs into two clear categories: <ul style="list-style-type: none"> anti-dilution LMTs (e.g. swing pricing, dual pricing, anti-dilution levies), quantity-based LMTs (e.g. redemption gates, suspensions, extended notice periods). 	2018 Recommendations mention individual tools but do not group them into strategic categories, making the approach more descriptive than prescriptive.
Use in both normal and stressed conditions	Revised Liquidity Recommendations explicitly encourage using certain tools (especially anti-dilution LMTs) during normal market conditions to normalize their application and avoid sudden shocks.	2018 Recommendations focus more on using tools reactively in stressed market conditions.
Emphasis on anti-dilution and investor protection	Revised Liquidity Recommendations explicitly encourage using certain tools (especially anti-dilution LMTs) during normal market conditions to normalize their application and avoid sudden shocks.	2018 Recommendations also acknowledge these goals but did not place as much strategic weight on them.
Operational and governance considerations	Revised Liquidity Recommendations include detailed guidance on governance, cost, disclosure, and operational feasibility of applying	2018 Recommendations mention complexity and legal permissibility but lacked the operational depth now emphasized.
Reduced reliance on quantity-based tools	Revised Liquidity Recommendations explicitly warn against over-reliance on quantity-based LMTs like suspensions or redemption gates, citing the risk of investor pre-emption and damage to market confidence.	2018 Recommendations presented these tools more neutrally, without cautioning against dependency.
New tools introduced	Soft closures and alternative liquidity sources (e.g. borrowing, interfund lending) are discussed in the Revised Liquidity Recommendations, offering a broader toolbox.	These were not mentioned in the 2018 Recommendations.
Consistent integration into fund strategy	Revised Liquidity Recommendations stress that funds must not rely solely on LMTs for liquidity management and that their design phase should already consider liquidity needs holistically.	2018 Recommendations do not frame LMTs within the overall design and ongoing management of the fund strategy as systematically.

[Click here to view a larger version of the table](#)

The Revised Liquidity Recommendations reflect a more proactive, structured, and investor-focused approach to liquidity risk. It promotes **ongoing integration of LMTs** into fund operations and governance rather than limiting their role to crisis management.

Following: implementation review

IOSCO expects that securities regulators will actively promote the implementation of the Revised Liquidity Recommendations by responsible entities within the context of the relevant collective investment scheme (CIS) in their respective jurisdictions. Hence, the implementation of the recommendations (as revised) may vary from jurisdiction-to-jurisdiction, depending on local conditions and circumstances.

IOSCO will review progress by member jurisdictions in implementing the Revised Liquidity Recommendations and the Implementation Guidance. The review process will begin with a stocktake, to be completed by the end of 2026, of the measures and practices adopted and planned by member jurisdictions. IOSCO will aim to coordinate this stocktake with the FSB's stocktake of the measures and practices adopted and planned to implement the Revised FSB Recommendations, to provide a comprehensive picture. The findings from this stocktake will feed into an assessment of whether implemented reforms have sufficiently addressed risks to financial stability, including, if appropriate, whether to refine existing tools or develop additional tools for use by responsible entities across the relevant jurisdictions.

EU STARTUP AND SCALEUP STRATEGY | "CHOOSE EUROPE TO START AND SCALE"

On 28 May 2025, the European Commission adopted its [EU Startup and Scaleup Strategy](#) (the "**Strategy**") - a coordinated EU-level framework designed to support the creation, growth and internationalisation of innovative startups and scaleups. The Strategy sets out 26 legislative, regulatory and financial measures intended to transform Europe into a global leader in tech-driven entrepreneurship.

The Strategy in a nutshell

Between 2008 and 2021, nearly 30 % of European unicorns relocated outside the EU, and only 8 % of global scaleups are Europe-based. In response, the Strategy focuses on five priority areas: fostering innovation-friendly regulation, improving access to finance, accelerating market uptake, attracting and retaining talent, and ensuring startups can access infrastructure and innovation ecosystems across Europe.

Regulatory and structural reforms

To address fragmentation within the Single Market, the Commission will propose an optional "**28th regime**": a standalone EU-wide corporate legal framework tailored to startups and scaleups. This regime will operate in parallel with national company laws and offer simplified procedures across Member States. It is expected to reduce the cost of failure, streamline legal and tax obligations, and allow for incorporation within 48 hours (Q1 2026).

A **European Business Wallet** will be introduced by Q4

2025. This tool will provide all EU economic operators with a digital identity and a secure way to share verified data and credentials, facilitating cross-border interaction with administrations.

The upcoming **European Innovation Act** (Q1 2026) will create an EU framework for regulatory sandboxes – supervised environments where new products, services or models, can be tested without triggering all regulatory requirements. This may offer fund managers opportunities to support early-stage ventures in sensitive sectors (e.g. fintech, AI, biotech), under some conditions.

The Act will also introduce a voluntary **Innovation Stress Test**. This tool will help Member States assess whether new or revised laws could unintentionally hinder innovation.

Further reforms are planned in strategic sectors. The Commission will introduce or revise legislation to reduce regulatory complexity in biotechnology, life sciences, advanced materials and defence (starting 2025). It will also revise the Standardisation Regulation by Q2 2026 to make EU standards more accessible to startups and SMEs.

Better finance for startups and scaleups

The Strategy confirms that access to late-stage and scaleup capital remains a structural weakness across the EU. To address this, the Commission will support the launch of the **Scaleup Europe Fund** in 2026. This fund will be structured as a market-based, privately

managed and co-financed vehicle. It will focus on direct equity investments in strategic sectors such as deep tech, AI, semiconductors, and biotechnology—areas typically requiring funding rounds above EUR 50 million. These are capital-intensive technologies where EU companies still rely heavily on non-European investors.

The Scaleup Europe Fund will complement existing initiatives such as InvestEU and the European Tech Champions Initiative (ETCI), and will be anchored operationally and financially by the European Investment Bank Group (EIB). This initiative seeks to help EU-based scaleups stay and expand within the Single Market.

In parallel, the Commission will develop a **European Innovation Investment Pact**, expected in 2026. Coordinated with the EIB Group and institutional investors (notably pension funds and insurers), the Pact will encourage long-term voluntary commitments to invest in EU venture capital funds, fund-of-funds structures and unlisted scaleups. Its objective is to channel private capital into high-growth sectors and deepen the EU private investment ecosystem.

Finally, the Commission will revise the definition of "**undertaking in difficulty**" under EU State aid rules (Q2 2025), which currently excludes many growth-stage companies—particularly in capital-intensive industries—from public support schemes. The reform aims to enable these companies to benefit from co-investment mechanisms without being



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mischaracterised as distressed entities.

The Commission will report on the implementation of the Strategy by end-2027 and calls on the European Parliament, the Council and Member States to fully support the 26 announced measures.

G7 AGREEMENT I PILLAR TWO AND US RULES COEXISTENCE

On 28 June 2025, the G7 issued a [“statement on global minimum taxes”](#) sharing a common understanding on the co-existence of Pillar 2 and US minimum tax rules. In practice, US parented groups would be excluded from the Income Inclusion Rule and the Undertaxed Profits Rules. This comes with the members’ commitment to tackle any risk posed by this coexistence to the level playing field and base erosion/profit shifting. The G7 also commits to work towards simplification on the Pillar Two administration and alignment towards a more favourable treatment of tax credits.

Background

On 20 December 2021, the OECD and G20 Inclusive Framework on Base Erosion and Profit Shifting (“**BEPS**”) issued Model Rules for the implementation of Pillar Two designed to guarantee a minimum level of taxation of a multinational enterprise (“**MNE**”) group. The OECD/G20 Inclusive Framework on BEPS represents 140 countries and jurisdictions. At EU level, Council Directive (EU) 2022/2523, based on the OECD Model Rules, was released on 14 December 2022 and had to be transposed by EU Member States by 31 December 2023.

Under Pillar Two, MNEs taxed below a 15% effective tax rate in a jurisdiction, are subject to a top-up tax. The latter is levied at the level of the ultimate parent entity (“**UPE**”) or intermediate parent entity through the Income Inclusion Rule (“**IIR**”) and where the parent

entities do not apply the IIR, entities within the scope of Pillar Two are liable to the top-up tax through the Undertaxed Profits Rules (“**UTPR**”). Participating jurisdictions are given priority to levy top-up tax arising in their jurisdictions through a qualified domestic top-up tax (“**QDMTT**”). The OECD maintains a list of qualifying top-up taxes and a peer-review process shall be implemented. Non qualifying status of taxes levied by a country allows other countries to levy the top-up tax.

At US level, a global minimum tax was implemented in 2017 under the so-called Global Intangible Low Taxed Income (“**GILTI**”). Although it inspired Pillar Two, due to technical differences GILTI was not considered as equivalent to Pillar Two, thus leading to continuous discussions between the US and the OECD/G20 Inclusive Framework. Notable differences include a jurisdictional approach for Pillar Two while GILTI applies a worldwide approach and a minimum effective tax rate of 15% for Pillar Two while GILTI applies a lower effective tax rate.

In the July 2023 Administrative Guidance, the OECD introduced a transitional UTPR safe harbour for the first years of UTPR’s application (financial years beginning on or before 31 December 2025 and ending before 31 December 2026). This effectively excludes from the UTPR UPE’s subject to corporate tax at a rate of at least 20% and gives more time to reach an agreement with the US. However, in January 2025 the US stated that they are not bound by preexisting positions with respect to the Global tax agreement. In

addition, the US proposed domestic legislation, specifically the so called “Section 899” foreseeing an increase in domestic withholding tax rates, with treaty override provision, for payments to residents of countries applying “unfair foreign taxes”. The latter included the UTPR, digital services taxes and taxes deemed discriminatory or extraterritorial by the US Treasury.

The G7 statement and OECD response

The statement recalls the history that led to the shared understanding. First, the US concerns about Pillar 2 and their proposal to recognize the US global minimum tax rules with corresponding exclusion of US parented groups from the IIR and the UTPR. Second, the recent legislative developments at US level which notably include an increase in GILTI’s effective tax rate and the removal of Section 899. Finally, the G7 took note of the broad implementation of the QDMTT.

The key point of the statement is the understanding that a coexistence of Pillar Two and the US global minimum tax rules would preserve the progress made by the Inclusive Framework as well as stabilise the international tax system. This G7 consensus relies on the following principles:

- A coexistence of Pillar Two and US rules implies excluding US parented groups from the IIR and UTPR for their US and non-US profits. This comes with the commitment to address any potential risks to the level playing field or BEPS risks resulting from

this coexistence.

- A commitment to work towards (i) material simplification of the overall Pillar Two administration and compliance framework and (ii) an alignment of the Pillar Two treatment of substance-based non-refundable tax credits with the treatment of refundable tax credits.

In its statement, the G7 acknowledges that further discussions need to take place within the Inclusive Framework. On the same day, the OECD issued a statement welcoming the G7 declarations and the coming engagement with the OECD Inclusive Framework. The OECD considers that both the US and the OECD global minimum taxes are vital for the international tax system and that the G7 statement falls within the initial objective to set mutually agreed limitations on corporate tax competition and safeguard national tax bases. The statement also recalls that from the taxpayers' perspective, the cooperation among sovereign nations is essential to enhance tax policy certainty and reduce risks of double taxation.

Way forward

The G7 statement moves forward the discussion on the compatibility of the US global minimum tax and Pillar Two through coexistence and commitment to fill in any gaps in the level playing field. This is a first step, which needs to be further discussed and agreed within the Inclusive Framework then translated in the Pillar Two rules. The proposal includes benefits for a large audience of MNEs within the scope Pillar Two. First, it outlines the need for simplification in Pillar Two

administration and compliance obligations. In addition, it proposes changes in the Pillar Two treatment of non-refundable tax credits through an alignment with the treatment of refundable tax credits. Under current rules, non-refundable tax credits are treated as a reduction in income tax while qualified refundable tax credits are treated as an income therefore having less impact on potential top tax liability than the former. Such evolution is of particular importance in a context where tax credits are a favoured policy tool to tackle high priority matters such as environmental issues and enhance R&D expenses. This is especially relevant for Luxembourg MNEs subject to Pillar Two as Luxembourg investment tax credits are non-refundable.

ECOFIN REPORT | TAX DECLUTTERING PRINCIPLES FORCE UNSHELL DISCONTINUATION

During the ECOFIN meeting of 20 June 2025, the EU Council approved its bi-annual report on the evolution of tax initiatives and officialised the discontinuation of its work on the Unshell Proposal.

Background

On 22 December 2021, the European Commission released a legislative proposal for a Council Directive (the “**Unshell Proposal**”) laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU on administrative cooperation in the field of taxation (“**DAC**”).

The proposal aimed at identifying shell entities through a series of tests (broadly targeting entities receiving passing income in a cross-border context with a low level of economic substance), denying certain tax benefits to these shell entities and ensuring that EU Member States exchange relevant information under the DAC.

The Unshell Proposal remained under discussion amongst EU Member States without reaching a consensus to move the legislative process forward. By the end of 2023 Member States’ representatives at the ECOFIN started contemplating a two-step approach to move forward the proposal. First, ensuring an exchange of information and secondly, at a later stage, agreeing on the tax consequences attached to the shell qualification (see our [January 2024 Newsletter for more details](#)).

Unshell proposal victim of the decluttering initiative

According to the ECOFIN report, during discussions held in 2024, the objective of the Unshell Proposal was unanimously shared but the technical aspects and redundancy with DAC 6 were amongst the contentious points. DAC 6 provides for the exchange of information between EU Member States of potentially aggressive cross-border tax arrangements to be identified through a series of hallmarks.

While the proposal was still in discussion, the EU Council approved in March 2025 its conclusions on setting a tax decluttering and simplification agenda to contribute to the EU’s competitiveness. These conclusions rely on four principles:

1. reduce reporting, administrative and compliance burdens for member states’ administrations and taxpayers;
2. eliminate outdated and overlapping tax rules;
3. increase the clarity of tax legislation; and
4. streamlining and improving the application of tax rules, procedures and reporting requirements.

The Unshell Proposal was identified as a matter to be reconsidered in light of these principles and the discussions were held on 27 May 2025 between representatives of the EU Member States with following conclusions:

- the objectives of the Unshell Proposal converge with

those of DAC 6;

- the information to be exchanged under the Unshell Proposal overlaps with those of DAC 6 and both proceeding through separate systems would lead to the same information being received twice;
- simply clarifying and amending the DAC 6 hallmarks could reach the objectives intended under the Unshell Proposal.

On this basis, the EU Council decided to no longer analyse the Unshell Proposal and focus on an update of the DAC. The new proposal should take into account the decluttering principles and not create “undue administrative” burden.

In the meantime, the EU Commission is undertaking a review of the DAC and the anti-tax avoidance directive (“**ATAD**”) with its report to the EU Council still expected in 2025. These reviews have been integrated within the simplification agenda and involve merging or coordinating overlapping rules, reducing fragmentation in rules while maintaining the “EU tax acquis”. New initiatives are then to be presented in 2026.

Conclusion

The Unshell Proposal attracted a lot of criticism since inception from Member States and other stakeholders notably due to its one size fits all approach to economic substance and lack of clear tax consequences.

Integration with DAC 6 hints at an exchange of information only approach with potential tax



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consequences left in the hands of individuals Member States but evolutions should still be monitored in the context of the ATAD review.

TAX MEASURES IN FAVOUR OF THE LUXEMBOURG REAL ESTATE SECTOR | LEGISLATIVE UPDATE

The [law of 22 May 2024](#) provided for both short term tax measures (applicable for fiscal year 2024) in favour of the Luxembourg real estate market and long term tax measures applicable as from 2025 (please refer to our [previous newflash](#)).

To support the ongoing recovery of the real estate sector, the law of 4 April 2025 extended the temporary tax measures until 30 June 2025 (please refer to our [previous newsletter](#)). In order to take into account situations in which a notarial deed cannot be signed before 30 June 2025, the law of 27 June 2025 amending (i) the amended income tax law of 4 December 1967; (ii) the amended law of 22 May 2024 introducing a package of measures to enhance real estate investments (the “**Law**”) applies the benefit of the temporary tax measures to reservation contracts (*contrats de réservation*) or sales agreements (*compromis de vente*) registered no later than 30 June 2025 with the Registration Duties, Estates and VAT Authority (*Administration de l’enregistrement, des domaines et de la TVA*) (“**AEDT**”), provided that the acquisition is formalised by a notarial deed signed between 1 July 2025 and 30 September 2025.

Temporary tax measures concerned

Allowance for registration and transcription duties for investment in rental properties by individuals

This allowance is dedicated to investments in rental properties sold in future state of completion (VEFA) and amounts to EUR 20,000 per individual. The Law

extends this benefit to purchasers who have registered the reservation contract referred to in Article 1601-13 of the Luxembourg Civil Code with the AEDT by 30 June 2025 at the latest. However, to benefit from the reduction of the taxable basis and the rental tax credit, the notarial deed relating to the reservation contract must be signed no later than 30 September 2025.

Reduced tax rate for capital gains on Luxembourg real estate realised until 30 September 2025, provided that a sale agreement has been registered by 30 June 2025 at the latest

Capital gains realized by individuals in the context of the management of their private assets on Luxembourg real estate held for more than two years will be subject to a quarter of the global rate applicable to the taxpayer instead of half the global rate.

Neutralisation of real estate capital gains

Individuals realising real estate capital gains at least 2 years after the asset’s acquisition will be granted a rollover relief if proceeds are reinvested in real estate rented under the condition of Article 49 of the law of 7 August 2023 (i.e., social rental) or in real estate falling within the A+ class for energy performance, thermal insulation and environmental performance as defined in the Grand-Ducal decree of 9 June 2021. The Law extends the duration of the regime until 30 September 2025, provided that a sale agreement has been registered by 30 June 2025 at the latest.

The special deduction for rental income derived from real estate acquired in future state of

completion (VEFA)

Consisting in special deduction corresponding to a 4% deemed amortisation of the real estate asset on the same basis as the existing 2% amortisation for rented buildings is extended until 30 September 2025, provided that the preliminary contract referred to in Article 1601-13 of the Civil Code has been registered by 30 June 2025 at the latest.

Adjustment to long term tax measures

The law of 22 May 2024 provided for an increase of the holding period to determine the tax regime applicable to real estate capital gains from 2 to 5 years as from 1 January 2025. The law of 4 April 2025 postponed its application date to 1 July 2025.

This 5-year period applies to buildings constructed between 1 July 2025 and 30 September 2025, provided that a sale agreement has been registered no later than 30 June 2025 with the AEDT.

Perpetuation of the allowance for registration and transcription duties for the acquisition of the main residence (“*Bëllegen Akt*”)

As mentioned above, the regime established by the Law applies to all temporary tax measures covered by the law of 22 May 2024 providing a first package of measures to enhance real estate investments, with the exception of the allowance for registration and transcription duties for the acquisition of the main residence (“*Bëllegen Akt*”), which is maintained at EUR 40,000 in accordance with the provisions of [law of](#)



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[3 July 2025](#) amending the amended law of 30 July 2002 setting out various tax measures designed to encourage the marketing and acquisition of building land and residential property.

Purchasers will benefit from the provisions of the Law as of 1 July 2025, the date on which the temporary measure to increase the tax credit expires.

Please also refer to our [article on VEFA rental properties](#).

VEFA RENTAL PROPERTIES | EXTENSION OF THE DEPRECIATION REGIME

On 30 June 2025, the government issued a [Grand-Ducal Regulation](#) aiming at amending the existing Grand-Ducal Regulation of 19 November 1999 implementing Article 106, paragraphs 3 and 4 of the Luxembourg income tax law (“LITL”), which provides the depreciation regime and rates applicable to rental real estate (“**Grand-Ducal Regulation**”).

The Grand-Ducal Regulation, which entered into force on 1 July 2025, foresees a temporary extension of the 2% depreciation regime to rental real estate acquired under a sale in future state of completion agreement (*vente en l'état futur d'achèvement* – “**VEFA**”) under specific conditions and within a defined time frame.

The key highlight of the regulation is that the 2% depreciation rate would apply to buildings or parts of buildings allocated to rental housing and acquired under a VEFA, subject to:

- a preliminary agreement (e.g., *compromis de vente*) signed and registered with the Luxembourg Registration Administration by 30 June 2025; and
- a final notarial deed executed between 1 July and 30 September 2025.

This measure ensures that taxpayers who commit to a VEFA agreement before the deadline retain the benefit of the 2% depreciation regime, even if the final acquisition cannot be notarised on time due to procedural or administrative delay.

To note that the draft version of the regulation to the Chamber of Commerce has been particularly

welcomed by the Chamber of Commerce as a pragmatic step to support the real estate sector and they further encouraged the government to consider extending other housing related tax benefits, including reduced registration duties. The *Conseil d'Etat* also issued a favourable opinion.

Please also refer to our [article on tax measures for real estate sector](#).

DRAFT LAW NO 8546 | EXCHANGE OF INFORMATION INTERACTION WITH LEGAL PRIVILEGE, WEALTH MANAGEMENT COMPANY AND TAX CREDIT FOR SINGLE PARENTS

On 27 May 2025, Draft Law No. [8546](#) was submitted to the Luxembourg Parliament (*Chambre des Députés*) (the “**Draft Law**”) to introduce several changes in the tax landscape. It notably updates the rules on exchange of information following the recent ECJ ruling, allowed legal forms for the private wealth management company and an update to the tax credit for single parents.

EU exchange of information on demand and lawyers’ legal privilege

Under the Draft Law, Luxembourg tax authorities receiving a request of information from another EU Member State will not be allowed to issue an injunction decision against a Luxembourg lawyer to share information held on a third party, to the extent the lawyer is acting within the framework of his profession, in judicial representation or as advisor.

This amendment follows the European Court of Justice (“**ECJ**”) decision in case C-432/23 dated 26 September 2024 delivered following a request for preliminary ruling from the Luxembourg Higher Administrative Court. The ECJ found that requiring lawyers to disclose all client communications for EU tax information exchanges constitutes unjustifiable interference with lawyer-client privilege protected under Article 7 of the EU Charter of Fundamental Rights (for more details on the case, please refer to [our October 2024 Newsletter](#)). The Higher Administrative Court delivered its decision

on 12 December 2024 and disregarded the contentious domestic legislation.

The Draft Law intends to amend the law of 25 November 2014 providing for the procedure applicable to the exchange of information upon request in tax matters. The State Council requested an update of the Draft Law to extend the scope of the exclusion beyond the EU framework and revise the rules governing domestic exchange of information. In its opinion, delivered in the context of the ongoing legislative process, the Luxembourg Bar Association considers that the ECJ ruling should also apply to requests for information to lawyers under domestic legislation.

Under the Draft Law, the limitation only applies to lawyers falling within the scope of the law of 10 August 1991 on the profession of lawyer and is not intended to apply to other professionals benefiting from a legal privilege.

Additional legal form for the private wealth management company

The private wealth management company (*société de gestion de patrimoine familiale*) is a tax-exempt vehicle dedicated to holding financial assets of private individuals and assimilated structures.

The Draft Law intends to add, as an authorized legal form, the simplified joint stock company (*société par actions simplifiée*). Currently allowed legal forms include the public limited company (*société anonyme*),

private limited company (*société à responsabilité limitée*), the partnership limited by shares (*société en commandite par actions*), and the cooperative company organized as a public limited company (*société coopérative organisée sous forme d’une société anonyme*).

Participative bonus: single annual communication to the tax authorities

The participative bonus is a partially tax-exempt remuneration paid to employees that depends on the employer’s profit (see our [July 2024 Newsflash](#) on recent changes to the regime).

Under current legislation, the employer must inform the Luxembourg tax authorities each time a participative bonus is put at the disposal of the employee. The Draft Law proposes to implement, as from fiscal year 2025, a one-time communication by employers to the Luxembourg tax authorities of all the beneficiaries of the bonus. The list must be communicated before 1st March of the year following the payment.

Tax credit for taxpayers with children under joint parental authority and alternating residence

Taxpayers living with at least one child are entitled to a tax relief under Article 123 of the Luxembourg income tax law (“**LITL**”). The entitlement of single parents with joint parental authority and alternating residence was updated in 2024 and in certain case both parents would have to agree on the beneficiary of the tax relief.

The situation was considered unsatisfactory as recently split couples could have difficulties agreeing on the beneficiary and technical hurdles prevented the split of the tax credit. Thus, a motion was voted by the parliament in 2024 to provide relief to the second parent.

To provide temporary relief to the second parent not eligible to the above-described measure, the Draft Law extends the tax credit under Article 123bis LITL for fiscal years 2025 and 2026. This tax credit is ordinarily granted to the taxpayers supporting their children during the two years following their departure from the household and depends on the taxpayer's income with a maximum amount of EUR 922,5.

Administrative cooperation in the context of land tax reform

The Draft Law implements a secured exchange of information between the Luxembourg tax authorities and the Land Registry and Topography Administration to allow the latter to maintain up-to-date information on real estate data.

DOUBLE TAX TREATY | LUXEMBOURG – OMAN: LEGISLATIVE UPDATE

On 16 October 2024, the Grand Duchy of Luxembourg and the Sultanate of Oman signed a convention for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance (the “**DTT**”). For more information, please refer to our previous newsletter on this topic [here](#).

Council of State and Chamber of Commerce Opinions

The Council of State (*Conseil d’Etat*) and the Chamber of Commerce (*Chambre de commerce*) issued favorable opinions on 3 June 2025 and 24 June 2025, respectively.

Parliamentary approval

On 25 June 2025, the Chamber of Deputies approved the Draft Law, thereby ratifying the DTT.

The [Law](#) was enacted on 4 July 2025 and was published in the *Journal Officiel du Grand-Duché de Luxembourg* on 7 July 2025.

Entry into force

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

VAT I DRAFT DIRECTIVE ON VAT RULES FOR DISTANCE SALES OF IMPORTED GOODS

On 13 May 2025, the Council announced that it has reached an agreement on the VAT rules for distance sales of imported goods and import VAT.

In the future, foreign traders or platforms will be made liable for import VAT and VAT on distance sales of imported goods in the Member State of the final destination of the goods. The Council expects these new rules to encourage the use of the Import One-Stop-Shop (IOSS), which serves as a single point of contact for importers of goods from third countries into the European Union. Foreign traders or platforms that decide not to use the IOSS will have to be registered in each Member State.

The IOSS system allows VAT to be paid in advance (when the consumer buys the goods) rather than at the border. In this way, it protects Member States' tax revenues and strengthens compliance with VAT rules on imports. It also shifts the burden of VAT collection from purchasers to platforms, an objective which the Council also hopes to achieve for customs duties as part of its reform of the Union's Customs Code.

Under the applicable special legislative procedure, the European Parliament will be consulted on the agreed text and asked to deliver its opinion. Then, the text will need to be formally and unanimously adopted by the Council before being published in the EU's Official Journal and entering into force.

ECJ CASE LAW | VAT TREATMENT OF SUCCESS FEES CHARGED BY LAWYER

On 8 May 2025, Advocate General Kokott (AG Kokott) handed down her Opinion in the case [C-744/23](#), *T.P.T. v Financial Bulgaria' EOOD* on the Value-Added Tax (VAT) treatment of a contingency fee, paid in the event of a successful legal case.

In the case at hand, a one-person law firm provided legal services to a plaintiff client, for free, pursuant to Bulgarian law on assistance in legal matters. The law firm was a taxable person registered for VAT in Bulgaria. Following a judgment in the plaintiff's favour, the national court ordered the defending party to pay the law firm's fees, exclusive of VAT. The law firm requested a review of that order, arguing that the fee should not be subject to 20% VAT.

Following a request for a preliminary ruling, AG Kokott considered under what circumstances a supply of services by a taxable person without consideration may still be considered a transaction which is subject to VAT within the meaning of the VAT Directive.

First, AG Kokott considered that the fact that no fee is due in the event of an unsuccessful outcome does not imply that the supply of services is free of charge and outside the scope of VAT. On the contrary, AG Kokott concludes that the service in the present case was an advisory service supplied for consideration in the form of an as yet uncertain fee from a third party, to which the law firm is entitled by operation of Bulgarian law. AG Kokott added that in this case, there existed a direct link between the service provided and the remuneration, regardless of the fact that the

remuneration was paid by a third party (the unsuccessful defendant). The payment therefore did amount to consideration for a service.

AG Kokott stressed that the direct link between a service and the remuneration is, in her view, not called into question by the uncertainty as to the specific amount of the consideration. Crucially for other transactions which may utilise contingency fees, AG Kokott makes clear that (definitive) certainty as to the amount of the consideration is not required for a taxable transaction to exist.

AG Kokott also took the opportunity to distinguish this case from the decisions in *Bařtová* (C-432/15) and *Tolsma* (C-16/93). The *Tolsma* case concerned a street performer and the VAT treatment of the remuneration of his performances. AG Kokott highlighted the fact that while the payments by passers-by were voluntary and uncertain, the true distinguishing factor was that the passers-by's motivations were unknowable and subjective, such as joy or sympathy. Thus, in the absence of a contractual or statutory link between the service performed and the remuneration, the street performance is not a taxable transaction and not subject to tax.

The *Bařtová* case concerned the question of whether the prize paid to a winner of a horse race could be regarded as consideration for a service provided by the owner of the successful horse. AG Kokott criticises the reasoning of the Court of Justice of the European Union (ECJ) which found this prize was not subject to

VAT on the basis of the degree of uncertainty. AG Kokott took the view that uncertainty does not determine whether there has been a supply of a service for consideration, as demonstrated in the case of the law firm's contingency fee. Nevertheless, AG Kokott still argues that *Bařtová* was correctly decided, even if for other reasons than those brought forward by the ECJ at the time, and that is because the prize does not relate to an activity (for example, participation in a race), but is solely an award or prize given for winning. According to AG Kokott, winning a race is not a service, that is to say, it is not a consumable benefit that the winner can provide to another person.

AG Kokott's opinion is a welcome opportunity for ECJ to clarify the impact of uncertainty on the VAT treatment of certain transactions, either by rejecting AG Kokott's reasoning in this case, by adopting the AG's distinction between participating in and winning a race, or by taking this opportunity to overturn *Bařtová*.

LUXEMBOURG CASE LAW I “COMPARABLE TAXATION” REQUIREMENT FOR THE DOMESTIC PARTICIPATION EXEMPTION REGIME

Key takeaways

On 23 May 2025, the Luxembourg Lower Administrative Court (*Tribunal administratif*), in its judgment (no. 49212), overturned a unitary value (“UV”) tax assessment that had denied the net wealth tax exemption provided under § 60 of the Valuation Law (*Bewertungsgesetz*, “**BewG**”) for a participation held in a Delaware (USA) subsidiary. The Luxembourg direct tax authorities (*Administration des contributions directes*, “**ACD**”) had rejected the application of the exemption on the grounds that the subsidiary was not subject to comparable taxation, i.e. not fully subject to a tax corresponding to the Luxembourg corporate income tax (“**CIT**”). This decision provides valuable clarification on how to assess the “comparable taxation” requirement for entities located outside the European Union.

Facts of the case

A Luxembourg tax resident company held a 100% ownership in its U.S. subsidiary, which was tax resident in Delaware (USA). In its 2018 tax returns, the company claimed an exemption for the participation when declaring its net wealth tax and determining its unitary value as at 1 January 2018. The ACD rejected the exemption request, arguing that the U.S. entity was not fully subject to a comparable tax due to insufficient supporting evidence. The ACD argued that the U.S. subsidiary was located in a “preferential tax

jurisdiction” and questioned the reliability of the documentation provided. In particular, they argued that, in the absence of a formal federal tax assessment and proof of payment, the comparability of the foreign tax could not be demonstrated. The taxpayer on the other hand argued that the concept of a “preferential tax jurisdiction” has no legal basis in Luxembourg tax law. It submitted a certificate of tax residence, the US federal corporate income tax return for FY 2018 (self-assessment), which showed an effective tax rate of 15.48% on the taxable income depicted therein and evidence of tax payments for that fiscal year.

Decision of the Lower Administrative Court

The Court upheld the taxpayer’s position and clarified how the notion of “comparable taxation” under § 60 BewG should be interpreted.

The Court confirmed that in order to be considered as fully subject to a tax corresponding to the Luxembourg corporate income tax within the meaning of § 60 BewG:

- the foreign company must not benefit from a full or partial subjective exemption, i.e., an exemption explicitly provided for by law (in line with prior case law, *Tribunal administratif*, 19 May 2022, no. 17634); and
- the effective tax rate of the foreign company must exceed half of the Luxembourg CIT (exceed 9% for

FY 2021). The effective tax rate is defined as the ratio of tax due on the taxable income. In this case, the Court held that the Delaware subsidiary’s 15.48 % rate satisfies the comparability threshold.

The Court also emphasized that a federal tax assessment is not required, given that the United States operates under a self-assessment tax system. Therefore, the absence of a formal federal assessment is irrelevant. Furthermore, the Court underlined that evidence of comparable taxation is not restricted to any specific form. No appeal has been filed against the judgment, and it is thus final.

Conclusion

As the notion of being “fully subject to a tax corresponding to the Luxembourg corporate CIT” is not defined in the law *per se*, but solely referred to in parliamentary materials, this judgment provides welcome clarification regarding shareholdings in non-EU entities.

The scope of this decision should not be limited to net wealth tax solely as it’s underlying reasoning could also be used for the interpretation and application of the Articles 147 and 166 of the Luxembourg Income Tax Law, which respectively govern the Luxembourg participation exemption regime for withholding tax exemption and corporate income tax exemption.

LUXEMBOURG CASE LAW | INTEREST RATE RENEGOTIATION WITHOUT TRANSFER PRICING UPDATE LEADS TO REQUALIFICATION

In a significant ruling on 6 June 2025 (Case n° 47100), the Luxembourg Lower Administrative Court (the "**Lower Administrative Court**"), ruled on the interest rates applied by a Luxembourg company performing financial intermediation activities (falling within the scope of the Luxembourg Circular L.I.R. n°56/1 – 56bis/1 issued on 27 December 2016 on the tax treatment of companies engaged in intra-group financing transactions, the "**Circular**") and their requalification into hidden dividend distributions/capital contributions.

The ruling, which upheld the position of the Luxembourg Tax Administration ("**LTA**"), illustrates the importance of updating the transfer pricing ("**TP**") documentation following an interest rate renegotiation.

Facts

In 2010, a Luxembourg company (the "**Company**") granted fixed-interest EUR loans ("**IBLs**") to its 65%-owned French subsidiary ("**FrenchCo**") which were funded by USD-denominated bonds ("**Bonds**") issued to its sole shareholder (the "**Shareholder**"). The IBLs carried a fixed interest rate of 12% p.a., while the Bonds bore a variable interest rate linked to the interest income and other gains derived from the IBLs (including foreign exchange).

In 2018, due to FrenchCo's financial difficulties, the Company granted a partial waiver of accrued interest for 2017 and early 2018. The interest rate was then

reduced from 12% to 6%, part of the loan was converted into equity and the shareholding was restructured. In return, the Company received certain guarantees and held FrenchCo through another company. All the amendments were documented by a settlement agreement and the negotiation process documented by a term sheet.

In 2020, the LTA issued a notice indicating its intention to adjust the 2017 tax return and raising concerns about the compliance of the Company with the arm's length principle. In response, the Company submitted a rectified tax return along with a TP study supporting an arm's length margin of 0.147% (or rounded to 0.15%) and an arm's length interest rate ranging from 7.97% to 14.2% for the IBLs.

The LTA subsequently issued a 2017 tax assessment, requalifying (i) the debt waiver and rate reduction to 6% of the IBLs as hidden capital contributions and (ii) the excess interest deductions, arising from the application of an 11.85% interest rate on the Bonds as hidden dividend distributions. The Company filed a complaint and subsequently a petition before the Lower Administrative Court, which ultimately upheld the LTA's position.

The decision of the Lower Administrative Court

On the substance of the case, the Lower Administrative Court held that the TP study submitted by the Company defined an arm's length interest rate

range between 7.97% and 14.2%, while the rate applied in 2017 following a debt waiver was 6% and thus, fell outside the defined range. As this reduced rate was lower than what independent parties would have agreed under comparable conditions, the Lower Administrative Court concluded that it conferred an advantage solely motivated by the shareholding relationship. Despite the argumentation put forward by the Company, pertaining to the financial distress of FrenchCo, its economic interest in the restructuring and the objective to "*preserve its investment*", the Lower Administrative Court found no evidence that the consideration received was adequate or equivalent to the loss in net assets resulting from the debt reduction. It also considered that the Company had not demonstrated that a third-party lender would have accepted such a significant rate decrease.

The Lower Administrative Court furthermore emphasised the absence of an updated TP study that addressed the new economic circumstances and supported a revised arm's length range justifying the application of a renegotiated interest rate. Without such documentation, neither the LTA nor the Lower Administrative Court could verify whether the 6% rate would have been acceptable under market conditions.

Finally, it rejected the claim that the involvement of a third-party shareholder in the restructuring altered the intragroup nature of the transaction or automatically made the revised interest rate compliant with the arm's



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length principle.

Key takeaway

This decision serves as an important reminder for all companies with intra-group financing arrangements: **renegotiating the terms of a loan requires an updated transfer pricing analysis.**

Such update is required even when the negotiation is justified by significant economic changes; if a revised interest rate falls outside the arm's length range of interest rates as determined by the original TP documentation, an updated transfer pricing analysis is essential.

The Tribunal's decision is pending confirmation as an appeal has been lodged.

LUXEMBOURG CASE LAW I COMMERCIAL NATURE OF ACTIVITIES PERFORMED BY A LIMITED PARTNERSHIP

On 6 June 2025, the Lower Administrative Court (*Tribunal administratif*) issued two similar judgments in cases n° 49747 and 49749, rejecting the appeals lodged by a Luxembourg limited partnership (*société en commandite simple*) against decisions of the director of the tax authorities and confirming the tax assessments issued to them.

Background

In these cases, the question which arose before the Lower Administrative Court was whether or not a limited partnership set up to acquire, finance, and distribute a film production was to be regarded as conducting a commercial activity within the meaning of Article 14 of the Luxembourg income tax law dated 4th December 1967 (the “LITL”), making it subject to municipal business tax.

The limited partnership claimed that its operations were limited to passive asset holding and that all production and distribution activities had been outsourced. It further argued that it operated similarly to an alternative investment funds (AIFs) and should therefore not be treated as a commercial entity under Article 14 of the LITL.

The Lower Administrative Court, however, upheld the tax authorities’ position. It found that the limited partnership had engaged in structured and active steps to produce and exploit a film, including entering into financing and production agreements, and assigning distribution rights for compensation. These actions,

although focused on a single film, demonstrated an intention to generate profit and participate in the general economic life.

The judges concluded that the company met all the criteria of a commercial enterprise: independence, profit motive, permanence, and participation in the general economic life. The fact that revenues were ultimately distributed to investors did not negate the commercial nature of the activities at the entity level.

Interestingly the Administrative Court in particularly ruled, by reference to German case law and legal doctrine, that, in case of doubt on the commercial nature of an activity, it is decisive to assess whether, in the public’s opinion (*Verkehrsanschauung*), the activity in question constitutes a commercial activity and goes beyond the mere management of private wealth.

Takeaways

These decisions clarify that a dedicated special purpose vehicle (SPV), even for a single project, may be deemed to carry out commercial activities and thus be liable for municipal business tax.

LUXEMBOURG CASE LAW | CHARACTERISTICS TO BE RETAINED FOR THE PURPOSES OF THE DETERMINATION OF THE RENTAL VALUE OF AN ACCOMMODATION

Key takeaways

On 13 May 2025, the Luxembourg Higher Administrative Court (*Cour Administrative*) handed down a decision, within the context of an *ex officio* taxation (i.e. *procédure de taxation d'office*), on the relevant characteristics that shall be retained for the purposes of the determination of an accommodation's rental value (i.e., *valeur locative*).

Facts of the case

From 2011 to 2019, Mr A. rented an entire building from the company AA (hereinafter the '**Lessor**'), comprising 4 dwellings, of which (i) 3 were sublet (hereinafter '**Dwellings no. 2-4**'), and (ii) the last one was kept by Mr A. (hereafter '**Dwelling no. 1**') for his own private use during the same period. In 2021, the tax office proceeded with an *ex officio* taxation in accordance with §217 of the Luxembourg general law on taxation (hereafter '**AO**'), for the period in dispute, of the rental income received in respect of Dwellings no. 2-4, resulting in a reduction of the deductible rental expenses considered in connection with the said sublet properties (hereinafter the '**Rental Expenses**'), resulting in an increase of the net taxable rental income in the hands of Mr. A. (tax charge contested by the latter).

More specifically, Mr. A. contested the allocation of the Rental Expenses retained by the tax office between Dwellings no. 2-4 on the one hand (i.e. charges

deductible for tax purposes from the disputed gross rental income), and Dwelling no. 1 on the other hand (i.e. charges treated as non-tax deductible expenses). Based on a valuation report provided at first instance (hereinafter the '**Valuation Report**'), Mr. A. complained that the tax office had overestimated the rental value for Dwelling no. 1, resulting in an underestimated right to deduct the Rental Expenses relating to Dwellings no. 2-4, considered as tax deductible.

Nonetheless, neither the tax office nor the Lower Administrative Court (*Tribunal administratif*) recognised the overestimation of Dwelling no. 1 argued by the taxpayer.

Outcome of the Higher Administrative Court's ruling

General principle of *ex officio* taxation

The Higher Administrative Court points out that **the exact determination of tax bases is a matter of public policy, and that this obliges the tax authorities to endeavour to determine the tax base on the basis of the taxpayer's actual tax situation.** However, the *ex officio* taxation procedure provided for in §217 of the AO allows the tax office to estimate a taxpayer's tax basis, in the event that expenses that are undeniably real cannot be accurately quantified (i.e., decision of the Higher Admin. Court. dated 25 April 2023, no. 47680C).

Further, the Higher Administrative Court recalls that the tax office and the director involved in the control are required to use the *ex officio* taxation with discernment in order to determine an estimation of a taxpayer's taxation as close as possible to the latter's actual tax bases in accordance with the principles of proportionality and contributory capacity (i.e., decision of the Const. Court, dated 10 November 2023, no. 00185).

Quantum of *ex officio* taxation in the present case

In accordance with these principles of proportionality and contributory capacity, the Higher Administrative Court states that the quantum of taxation must be determined on the basis of the market price of Dwelling no. 1 (i.e., the so-called 'rental value'). More specifically, the Higher Administrative Court **ruled that the characteristics relevant to Dwelling No. 1** (i.e., the unhealthy and unsafe aspects of the accommodation and its lack of windows) **must necessarily be taken into consideration in accordance with the principle of economic realism and that the judges at first instance were therefore wrong not to have retained such characteristics.**

Impact of the Valuation Report on the Higher Administrative Court's ruling

In order to determine the rental value of Dwelling No. 1, the Higher Administrative Court mainly relied on the

Valuation Report submitted *ex-post* by Mr. A., which included an exhaustive description of the entire building and Dwelling No. 1 (i.e., a property of 22.7 sqm consisting of a bedroom and a bathroom with no windows and no private access located on the ground floor of the building with the right of access by the Lessor for the purpose of running a restaurant), **thus severely impacting the liquidity of Dwelling No. 1 on the market.**

The Higher Administrative Court also upheld the conclusion in the Valuation Report by virtue of which Dwelling No. 1 could be solely used as additional premises for a commercial activity. Consequently, the Court rejects the rental value estimates provided by the government representative over the first instance trial, which refer exclusively to practical rents for studio flats used for residential purposes only.

LUXEMBOURG CASE LAW I MANDATE REQUIREMENTS IN THE CONTEXT OF A TAX CLAIM

In a judgment dated 6 March 2025 (No. 51780C), the Higher Luxembourg Administrative Court addressed the issue of whether a tax claim filed by a third party was admissible without a written mandate existing at the time of filing.

The case involved a company that had submitted a claim on 16 March 2021 via a third-party service provider. A power of attorney was only produced later, dated 15 July 2021, but stated to be effective as of 16 December 2020, date of the contested tax assessments. The Director rejected the claim for lack of legal standing, arguing that the mandate must exist at the time of filing and cannot be backdated. The Administrative Court confirmed this reasoning.

The Administrative Court, however, adopted a less formalistic approach. While it reaffirmed that a special and express mandate must exist when the claim is filed, it held that the written confirmation of that mandate can be submitted later, if it clearly demonstrates that such authority was granted before the claim was lodged.

The Court criticised the administration's excessive formalism, stressing that procedural rules should not be applied in a way that prevents access to the claims process and, ultimately, to judicial review. Relying on constitutional principles such as access to justice and the right to an effective remedy, the Court found that a rigid interpretation of mandate requirements may disproportionately disadvantage the taxpayer.

Based on the substance of the written mandate, along

with supporting circumstances (including prior communication and payment for services), the Court concluded that a valid mandate had indeed been given prior to the claim and declared the initial claim admissible.



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