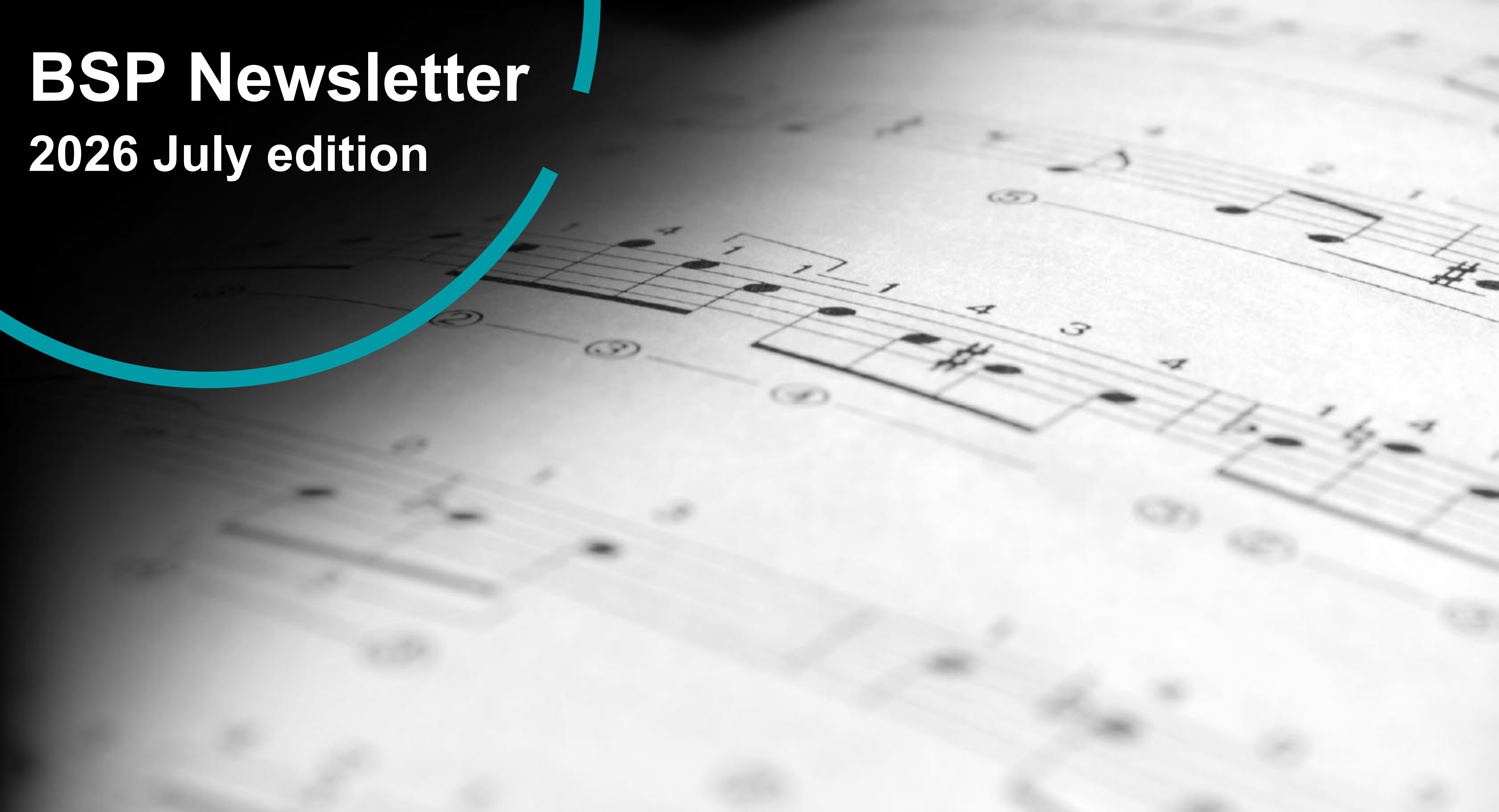
BSP Newsletter

2026 July edition



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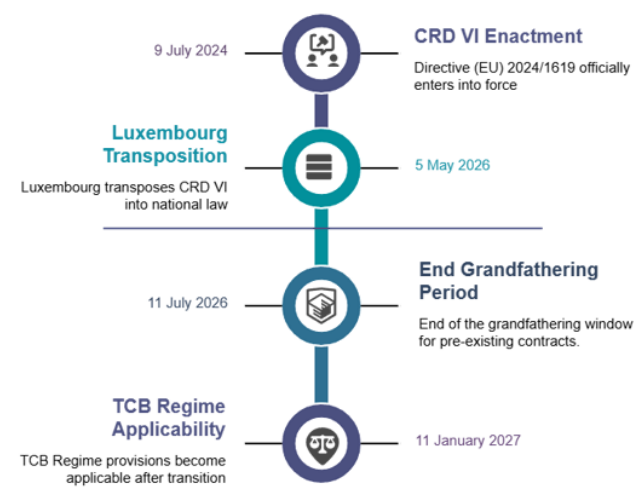
CRD VI THIRD-COUNTRY BRANCH REGIME | LUXEMBOURG TRANSPOSES THE NEW FRAMEWORK FOR NON-EU BANKS

With the expiry of the grandfathering period under Directive (EU) 2024/1619 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (the "**CRD VI Directive**") coming to an end, attention now turns to the Luxembourg implementation of the Third-Country Branch regime (the "**TCB Regime**").

The law of 5 May 2026 (the "**CRD VI Law**") transposes the TCB Regime into Luxembourg law, by amending the law of 5 April 1993 on the financial sector (the "**LFS**"). The TCB Regime will enter into force on 11 January 2027.

Key Dates for CRD VI Implementation



Recall of the Luxembourg law status: a permissive regime

Prior to the transposition of the CRD VI Directive, the cross-border provision of banking services by third-country firms and the establishment of their branches in Luxembourg were governed primarily by the LFS and CSSF Circular 11/515.

Under the previous regime, third-country credit institutions wishing to provide banking services in Luxembourg on a permanent basis were authorised by the CSSF and established a branch in Luxembourg pursuant to Article 32 of the LFS.

Separately, Article 32(5) of the LFS allowed third-country firms not established in Luxembourg to provide banking services on an occasional and temporary cross-border basis, subject to prior written CSSF authorisation but without the need to establish a branch. CSSF Circular 11/515 set out the conditions governing this "light-touch" authorisation.

A third path also existed in practice, though it was not expressly articulated in the LFS. Under the framework applicable to investment services, governed by Article 32-1 of the LFS, CSSF Circular 19/716 and CSSF Circular 20/743, a service was deemed to be provided "in Luxembourg" only where the place of its "characteristic performance" (i.e., the essential service for which payment is due) was Luxembourg. Where that condition was not met, no branch requirement or prior authorisation applied. An analogous territorial logic was applied in relation to CSSF Circular 11/515 for banking services, drawing on the European Commission's interpretative communication of 20 June 1997 on the freedom to provide services in the banking sector (97/C 209/04). Under that approach, the mere fact that activities were directed at Luxembourg clients, or that clients were domiciled there, was not in itself sufficient to treat the activity as being carried on within the Luxembourg territory; what mattered was the place where the service was actually performed.

The preparatory works to the CRD VI Law have confirmed this reading. They state that, "in accordance with existing practice", where a banking activity is carried out wholly and exclusively at a distance from a third country with no relevant connecting factor to Luxembourg, it may be regarded as provided outside Luxembourg. This constitutes an acknowledgment of Luxembourg's established administrative practice and confirms that the territoriality of banking services was already assessed on a basis broadly aligned with the characteristic performance test applicable under MiFID II. The new Article 32-3 of the LFS does not seem to depart from this approach.

What happens next?

Article 32(5) LFS has been repealed, along with the specific provisions of Article 32 that formerly applied to third-country credit institutions.

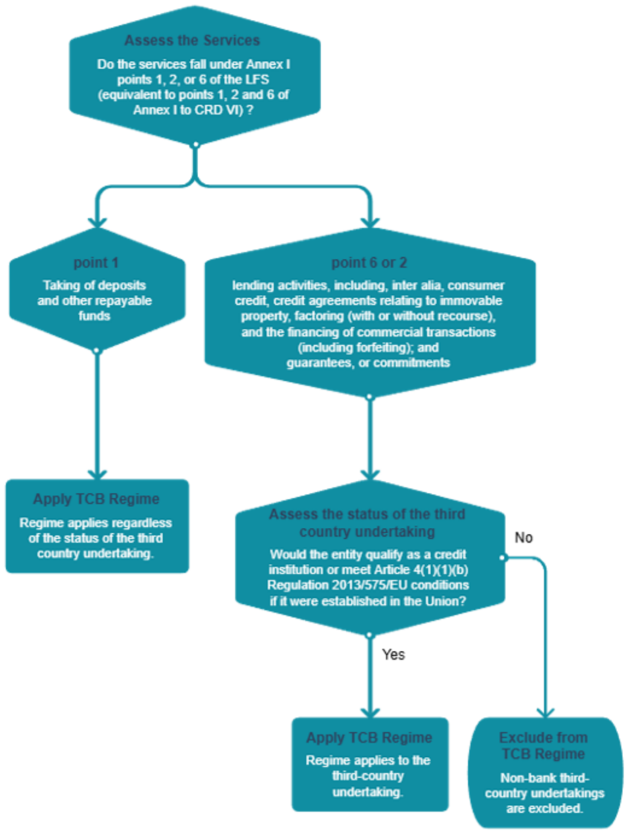
Pursuant to Article 32-3 LFS, third-country undertakings wishing to provide core banking services in Luxembourg will be required to establish an authorised branch and obtain prior authorisation from the CSSF. The CSSF must, before granting authorisation, consult the Luxembourg AML/CFT supervisory authority and obtain written confirmation from it, a requirement not provided for under the CRD VI Directive. The CSSF retains the power to require, on a case-by-case basis, that a third-country branch be converted into a subsidiary. The CSSF may also decide that existing third-country branch authorisations granted no later than 10 January 2027 under the former Article 32 of the LFS remain valid, provided that the branches comply with the requirements of the new framework.

The CRD VI Law reflects both the material and personal scope of the TCB Regime as set out in the CRD VI Directive, together with the main exceptions and limitations to the regime.

TCB Regime scope: art. 32-2 LFS

It is necessary to assess, on the one hand, the relevant services that are provided and, on the other hand, the third-country undertaking carrying out those.

Do you fall within the scope of TCB Regime?



Article 32-2 (2) LFS reproduces the MiFID carve-out contained in Article 21c(4) of the CRD VI Directive.

Territorially, the CRD VI Directive does not clarify when a service is considered to be "provided in" a Member State for the purpose of triggering the branch requirement. The new Article 32-3 of the LFS appears to follow the same pre-law of 5 May 2026 territorial approach as mentioned above based on the "characteristic performance" test, under which, where a banking activity is performed entirely remotely from a third country, with no relevant connecting factor to Luxembourg, it may be regarded as provided outside Luxembourg and therefore fall outside the scope of the branch requirement.

Exemptions

Exemptions are set out in Article 32-4 LFS and they are consistent with the CRD VI Directive:

- **reverse solicitation**, the Luxembourg preparatory works clarify that the burden of proof lies squarely on the third-country firm, which must be able to document at all times that the client took the initiative. The CSSF may require group entities established in Luxembourg to provide information to verify genuine reverse solicitation. Whether a new product category is being marketed must be assessed case by case. The reverse solicitation exemption is conceptually uncertain and practically difficult to apply: its key terms are undefined, its interpretation varies across Member States. A critical unresolved question for the loan markets is whether the initiative can be exercised by a third party acting on the borrower's behalf,
- **interbank operations**,
- **intragroup transactions.**

Grandfathering

Consistent with the CRD VI Directive, following Article 73 LFS, the TCB Regime does not apply to contracts entered into before 11 July 2026. Following the parliamentary preparatory works, the stated objective is to "preserve the vested rights of clients under existing contracts". The preparatory works state that "the implementation of the terms of a framework agreement concluded before 11 July 2026 is covered by the derogation". However, the treatment of amendments or restatements and other contractual changes of a pre-11 July 2026 contract remains uncertain.

Conclusion

Luxembourg has transposed the CRD VI TCB Regime largely in line with the CRD VI Directive, subject to a few Luxembourg-specific adjustments including for instance additional AML/CFT involvement in the CSSF authorisation process. The preparatory works also indicate an intention to preserve a certain territorial approach.

SECURITISATION | LUXEMBOURG MOVES TO MODERNISE ITS SECURITISATION FRAMEWORK - AGAIN

New draft law proposes broader financing options, active management and cross-compartment flexibility.

Luxembourg's securitisation framework is widely regarded as one of the most versatile in Europe, offering a combination of structural flexibility, investor protection and legal certainty that few competing regimes can match. The legislature is now looking to raise the bar once more.

On 8 June 2026, Draft Law No. 8761 (the "**Draft Law**") was submitted to the Luxembourg Parliament (*Chambre des députés*), proposing targeted amendments to the Luxembourg law of 22 March 2004 on securitisation (the "**Securitisation Law**"). When enacted, the Draft Law will open up new financing channels, extend active management to all asset classes and unlock cross-compartment investment structures within a single vehicle. It builds directly on the reforms introduced by the Luxembourg law of 25 February 2022 (the "**2022 Law**") and seeks to address structuring questions that have emerged in practice since then.

Background and context

The 2022 Law brought significant changes to the securitisation framework: it broadened available financing methods, introduced active management for debt portfolios and expanded the catalogue of corporate forms open to securitisation undertakings. The Draft Law continues in the same direction. The official commentary makes clear that the proposed changes are intended to accompany structural developments already made possible by the 2022 Law and strengthen the competitiveness of the legal framework for securitisation in Luxembourg.

Key amendments

Broader financing options

Article 1 of the Securitisation Law is proposed to be amended to permit securitisation undertakings to finance themselves through any form of "financing or other financial commitment", beyond traditional loans and financial instruments. The commentary identifies the incompatibility of traditional loans and financial instruments with Islamic finance principles as a key driver of this change. One important limitation remains: public offerings remain restricted to the issuance of financial instruments.

Cross-compartment investments

Under new Article 59-1, a compartment of a securitisation undertaking may make direct or indirect investments in one or several other compartments of the same entity, provided that such investments are permitted by the constitutional documents, management regulations and the issuance documents. Circular investments whereby a compartment invests in another compartment which has already invested in the first compartment are prohibited. This option draws on a concept already recognised under legislative frameworks governing SIFs and RAIFs.

Active management

If the Draft Law is enacted in its current form, Article 61-1 will be replaced in its entirety. The existing restriction confining active management to a pool of debt securities, financial debt instruments and receivables will be removed, allowing active management to extend to all asset classes, including equity positions, provided that the instruments issued to finance the acquisition of the relevant risk basket are not offered to the public. As the official commentary explains, this amendment responds to the need to ensure a level playing field with foreign securitisation regimes that have long permitted active management of portfolios comprising equity positions. Recognising that a passively managed portfolio cannot remain entirely static over the life of a transaction, the Draft Law also lists seven categories of portfolio operations that do not constitute active management:

- the replacement of defaulted or at-risk assets;
- the replacement of assets that no longer meet the applicable eligibility criteria;
- the replacement of assets that do not conform to the representations or warranties given by the transferor;
- the addition of assets during the initial portfolio ramp-up phase, provided it does not exceed one third of the total transaction duration;
- the addition of assets under ongoing issuance programmes;

- the replacement of matured or early-redeemed assets; and
- marginal adjustments to portfolio composition, asset allocation, risk exposure or investment duration. Securitisation undertakings carrying out only these types of operations would not be treated as actively managing their portfolio and would therefore remain free to offer their financing instruments to the public.

Subordination

The Draft Law revises Article 64(1)(5) to establish a clearer subordination hierarchy: debt instruments with a non-fixed yield rank behind both fixed-rate debt instruments and debt instruments bearing interest determined by reference to a benchmark rate plus a fixed margin. Those latter two categories are treated as ranking *pari passu*.

Insolvency ring-fencing of securitisation fund assets

The Draft Law amends Article 17 to confirm that, upon the bankruptcy of a management company, the assets of any securitisation fund under its management fall outside the management company's insolvency estate (*masse*) and are not available to satisfy its creditors. This clarification is modelled on similar protections found in the fund legislation, in particular Article 101(5) of the UCI Law of 17 December 2010, which provides that assets managed under that provision do not form part of the management company's estate in the event of its bankruptcy.

Security interests and guarantees

The Draft Law amends Article 61(3) to replace the existing general restriction with three specific cases in which a securitisation undertaking is permitted to grant security interests or guarantees over its assets:

- first, in respect of its own obligations;
- second, to guarantee obligations of a third party that are directly or indirectly linked to the securitisation transaction; and
- third, to guarantee third-party obligations in connection with a direct or indirect investment in the securitisation transaction.

As the official commentary explains, the broadening of financing methods by the 2022 Law led to the emergence of new structuring patterns, which in turn created a need to clarify the circumstances in which securitisation undertakings may grant security over their assets. The revised provision is intended to accompany those structural developments and reinforce legal certainty.

What this means for you

The Draft Law will give practitioners additional flexibility when structuring securitisation transactions in Luxembourg. The broader financing concept should prove particularly relevant for transactions in which conventional debt instruments are not available, notably in the Islamic finance space. The extension of active management to all asset classes, including equity positions, will bring the Luxembourg framework into closer alignment with competing foreign regimes.

The ability for compartments to invest in one another will facilitate the setting up of multi-layer platforms within a single vehicle. Finally, the clarification of the rules on security interests and guarantees should resolve the interpretive difficulty that has arisen in the structuring of financing transactions.

Next steps and timeline

The Draft Law is currently before the Luxembourg Parliament and the opinion of the *Conseil d'Etat* has been requested. BSP is closely monitoring the legislative process and is available to discuss how the proposed amendments may affect your existing structures or the opportunities they may create for future transactions.

MAR | STOR AUDITS, PUBLIC DISCLOSURE AND INSIDER LIST

Three recent developments under the Market Abuse Regulation (Regulation (EU) No 596/2014) ("**MAR**") warrant attention.

- On 8 May 2026, the ESMA published an update to its Questions and Answers on MAR (the "**Q&A**") clarifying the annual audit obligation under Commission Delegated Regulation (EU) 2016/957 (the "**RTS on STORs**").
- On 16 April 2026, the Court of Justice of the European Union ("**CJEU**") ruled in Case C-229/24 (*TK, OP v Riksåklagaren - Brännelius*) that information must be disclosed in the specific manner prescribed by MAR and its implementing regulation before it ceases to qualify as "inside information".
- On 12 June 2026, Regulation (EU) 2026/1291 (the "**New ITS**"), introduces revised insider list templates that apply to all MAR issuers from 5 July 2026.

Stor audits: internal auditors permitted

Article 16(2) of MAR requires persons professionally arranging or executing transactions ("**PPAETs**") and trading venues to establish effective arrangements, systems and procedures to detect and report suspicious orders and transactions ("**STORs**"). Article 2(5)(b) of the RTS on STORs further requires those persons to conduct an annual audit of those arrangements, systems and procedures.

Two questions had been left open by the text of the RTS on STORs: whether the annual audit must be conducted by an external auditor, and how the "internal review" mentioned in the same provision relates to the audit requirement. The Q&A addresses both questions directly.

On the audit, ESMA confirms that the RTS on STORs does not explicitly specify whether the annual audit should be external or internal. PPAETs and trading venues may therefore conduct the required annual audit either internally or externally. Where the audit is carried out internally, ESMA expects it to be performed by an independent function. On the internal review, ESMA clarifies that the reference to an "internal review" in Article 2(5)(b) should be understood as a complementary exercise to the audit - not as an alternative to it or a substitute for it.

What counts as valid public disclosure of inside information?

The facts of Brännelius case

On 14 May 2018, a municipal contracting authority in Umeå, Sweden sent letters to a number of tenderers, including a listed company (the "**Issuer**"), notifying them that the contract would not be awarded to them. TK and OP, employees of a firm that assisted the Issuer in the tender process, received or became aware of this information and subsequently sold shares in the Issuer before the Issuer made a public disclosure. Swedish prosecutors charged TK and OP with insider dealing under MAR. The central question referred to the CJEU by the *Högsta domstolen* (Swedish Supreme Court) was whether the letters sent to the tenderers by the contracting authority constituted "public" disclosure of the relevant information, such that the information had ceased to be inside information by the time TK and OP traded.

The ruling

The CJEU held that, in order for information to be considered to have been "made public" - and thereby to have ceased to be inside information within the meaning of Article 7(1)(a) of MAR - it is necessary for public disclosure to have taken place in the manner and in compliance with the requirements laid down in Article 17 of MAR and Article 2(1) of Regulation (EU) 2016/1055 (the "**Implementing Regulation**"), which sets out the technical means for appropriate public disclosure of inside information.

The Court therefore rejected the argument that disclosure to a defined, limited group of recipients - even under a statutory procedure such as public procurement notification - satisfies the MAR standard of public disclosure. Equally, information that is theoretically obtainable on request, or that has been communicated in a context that falls outside the specific channel and technical means prescribed by MAR and the Implementing Regulation, does not cease to be inside information for these purposes.

Insider list templates: simplified and harmonised

On 12 June 2026, Regulation (EU) 2026/1291 introduced revised insider list templates that repeal and replace Commission Implementing Regulation (EU)

2022/ for the purposes of Article 18 of MAR, as amended by Regulation (EU) 2024/2809 (the "**Listing Act**").

The principal change is the **extension of the alleviated format** to all insider lists drawn up under Article 18(1) of MAR, irrespective of whether the issuer is admitted to trading on an SME growth market. Previously, under Regulation (EU) 2022/1210, a more detailed and burdensome format was required for standard issuers, while the alleviated format was reserved strictly for SME growth market issuers. Under the New ITS, a single harmonised template applies to both categories of issuer, reflecting the Listing Act's broader objective of reducing administrative burdens on public market issuers.

The New ITS also introduce the following changes to the content and structure of insider lists.

Reduction of personal data fields

The obligation to record personal telephone numbers and personal home addresses is removed entirely from the templates. Furthermore, the requirement to record a birth surname has been restricted; it is now only required if it differs from the individual's current surname, rather than being a mandatory standalone field for everyone. The company name and address for third-party service providers are also no longer required to appear as a separate field in the template itself, being instead captured within the function and reason field. Issuers that have encountered reluctance from insiders to provide this level of personal information will find the revised requirements materially easier to administer.

Third-party service provider contact person

The New ITS codify at EU level the approach whereby, where a legal person acts on behalf of or on the account of an entity and has access to inside information, that entity is required to include in its insider list the details of only one natural person acting as a contact person for the third-party service provider, rather than listing every individual at the service provider with access to the relevant inside information.

Treatment of permanent insiders

Under the previous framework, the permanent insiders' section contained a single field recording the date and time of inclusion. The New ITS replace this structure by introducing separate "**Obtained**" and "**Ceased**" fields to log the specific start and end timestamps of an individual's permanent insider status. This allows the template to function dynamically as a continuous historical log, preserving a complete audit trail of permanent access over time within a single record without requiring the deletion of historical entries when a person's permanent status ends.

LUXSE RULES & REGULATIONS AND TRADING MANUAL | JUNE 2026 UPDATES

The Luxembourg Stock Exchange (the "**LuxSE**") has published updated versions of its Rules & Regulations (“**R&R**") and Trading Manual (“**TM**"), both effective June 2026. The updates touch **three** distinct areas:

- alignment with the EU Listing Act package,
- preparation for the shift to T+1 settlement, and
- a series of targeted housekeeping amendments.

EU Listing Act alignment

Amendments to the R&R are designed to ensure the ongoing compliance of LuxSE's R&R with EU legislation, in light of the upcoming entry into force and application of amendments to the EU's Prospectus Regulation and MiFID II introduced by the Listing Act package.

T+1 settlement

The TM has been updated in anticipation of the EU move to a one-day settlement cycle. The new T+1 provisions have been published now to give market participants advance notice; they will not take effect until 11 October 2027, in line with the timeline set at EU level.

Housekeeping amendments

A series of targeted clarifications modernise existing provisions. These include updated guidance on the treatment of sukuk instruments, revised market transfer procedures, and amended prospectus publication requirements.

The updated R&R and TM are available in full on the LuxSE website together with a factsheet in which LuxSE provides a precise breakdown of the amendments.

FOREIGN INVESTMENT SCREENING I NEW EU FRAMEWORK: FROM COORDINATION TO HARMONISATION

Regulation (EU) 2026/1386 of 17 June 2026 on the screening of foreign investments in the Union (the "**Regulation**") restructures the Member States' framework for the assessment of foreign investments, notably making screening mechanisms mandatory across all Member States, introducing a common minimum scope of screening and strengthening notification and cooperation mechanisms at EU level.

Why was reform considered necessary?

The reform, repealing its predecessor Regulation (EU) 2019/452, builds on the experience gained since the entry into application of 2019 regulation, implemented in Luxembourg by the law of 14 July 2023, which revealed significant divergences between Member States in terms of the scope, thresholds and criteria of screening mechanisms, as well as the applicable procedures. Against a backdrop of increasing geopolitical tensions, the new framework seeks to enhance harmonisation through common substantive and procedural rules and ensure greater consistency across the Union while fostering legal certainty for foreign investors.

Key changes at a glance

Recalibration of the regulatory scope of foreign investment screening

One of the most significant changes introduced by the Regulation is the recalibration of the scope of the regulation around the concept of foreign investment rather than foreign *direct* investment, which allowed to encompass certain investments made through EU-based entities controlled by foreign investors. The reform may also be viewed in the context of the Xella judgment and the questions it raised regarding the interaction between screening of foreign investments and the freedom of establishment. The renewed policy approach reflects the lawmaker's view that investments made through such entities may present the same risks to security or public order as investments made directly by foreign investors. Essential in this is the acknowledgment that controlling foreign investors may affect Union targets even where such influence is exercised through an EU-established subsidiary. As a result, such investments should not escape scrutiny solely because of the structure through which they are made.

In a similar fashion, the Regulation introduces a wide definition of the beneficial owner, allowing screening authorities to look beyond formal ownership structures and identify the persons who ultimately exercise influence over, or benefit from, a foreign investment, including beneficiaries of trusts.

Introduction of a common minimum scope of screening

Each Member State shall ensure that its screening mechanism imposes a prior authorisation requirement for foreign investments where the Union target established in its territory carries out activities in certain strategically sensitive sectors, including but not limited to:

- the development, production or commercialisation of dual-use and military goods and technologies;
- semiconductor, quantum and certain artificial intelligence technologies;
- activities relating to strategic raw materials, including exploration, extraction, processing and recycling;
- transport, energy or digital infrastructure assessed as critical.

This marks a significant departure from the current framework, under which Member States retain broad discretion as to which transactions are subject to screening. At the same time, the Regulation follows a minimum harmonisation approach, allowing Member States to extend their screening mechanisms beyond this common baseline through additional sectors or more stringent national requirements, including prior authorisation for investments outside the common minimum scope.

Greenfield investments, occurring where foreign investors set up new facilities or undertakings in the Union, fall within the Regulation's scope but are not subject to a mandatory prior authorisation requirement, leaving Member States free to determine whether such investments should be subject to screening.

Strengthened cooperation and notification

obligations

The new Regulation strengthens the cooperation framework by introducing specific mandatory notification obligations. Notification is mandatory for foreign investments subject to prior authorisation under the common minimum scope where the foreign investor is controlled by a third-country government, subject to Union restrictive measures, or previously involved in a prohibited or non-compliant investment. Notification also applies upon initiation of an in-depth investigation where the Union target has a cross-border presence or Union interest project involvement, or exceptionally where measures are imposed without such investigation.

Beyond these mandatory notification triggers, the Regulation preserves Member States' discretion to notify, on a duly justified basis, any foreign investment considered likely to negatively affect security or public order of at least one other Member State, even where none of the mandatory notification conditions are met. During the procedures, Member State shall interact through comments, and the Commission retains the power to issue opinions.

Screening decisions and mitigating measures

Where a foreign investment is considered likely to negatively affect the security or public order of a Member State, the latter shall adopt a screening decision either authorising the transaction subject to appropriate mitigating measures or, where necessary, prohibiting the investment or requiring its unwinding. The list of mitigating measures provided in the Regulation is wide and conceived to adapt to the specificities of each case reflecting a preference for addressing identified risks through targeted safeguards. In line with the principle of proportionality and the objective of preserving an open investment environment in the Union, prohibition or unwinding should remain a measure of last resort, reserved for situations where the identified risks cannot be adequately addressed through mitigation measures or other available safeguards.

What remains outside the scope?

As explicitly recognised by the Regulation, internal restructurings fall outside its scope, unless they involve the introduction into the ownership chain of a new legal entity established in a third country that was not previously represented upstream of the Union target. This exclusion preserves flexibility for genuine intra-group reorganisations and avoids unnecessary regulatory burden for purely internal restructuring operations.

Portfolio investments are excluded insofar as they are made purely for financial investment purposes and without any intention to influence management or control. Foreign investments made in the context of recovery or resolution tools are also excluded.

Looking ahead

The Regulation was published in the Official Journal of the European Union on 26 June 2026. The new rules will apply 18 months after entry into force of the Regulation, during which transition period Luxembourg and the other Member States, including Luxembourg, will revisit their respective screening regimes in light of the new framework.

GAMBLING I CJEU CLARIFIES PRIVATE LAW CONSEQUENCES OF UNLICENSED GAMBLING SERVICES

In its judgment in Case C-440/23, European Lotto and Betting and Deutsche Lotto-und Sportwetten, the Court of Justice of the European Union (the "*Court*") was called upon to clarify the relationship between the freedom to provide services under Article 56 TFEU and national rules restricting the provision of gambling services.

Confirming a settled line of case-law, according to which gambling services may be subject to national restrictions and are not eligible for mutual recognition, the judgment provides useful guidance on the private-law consequences of unlicensed gambling services. As such, the judgment may be of particular significance for jurisdictions which, like Luxembourg, are currently in the process of reforming their legal framework and where little guidance is offered by national case-law.

Background to the dispute

The dispute arose in connection with online gambling services, consisting of online virtual slot-machine games and betting on the results of lottery draws, offered to customers in the Federal Republic of Germany by companies established in Malta and holding licences issued by the Maltese Gaming Authority. A player residing in Germany made use of those services during a period in which German law generally prohibited online games of chance, subject only to certain exceptions, such as sports and horse-race betting and certain lotteries.

After losing several stakes, the player sought restitution of the sums lost before the German courts. The claims were subsequently assigned to a third party, which brought the proceedings before the Maltese courts against the Maltese operators. The referring Maltese court asked, in essence, whether Article 56 TFEU precluded German legislation prohibiting the organisation of such online gambling services where the operator was licensed in another Member State, and, the civil-law consequences of that prohibition, including the nullity of the gambling contract and the consequent recovery of the lost stakes.

The issues at stake

In a consolidated line of case-law, the Court had already established that gambling activities, whether offered on a land-based or online basis, constitute services for the purposes of Article 56 TFEU and that national legislation restricting their provision may amount to a restriction on the freedom to provide services. However, in the absence of EU harmonisation and in light of the moral, cultural and social differences existing across the Union, Member States have been recognised as enjoying a broad discretion in regulating gambling activities, provided that the restrictions imposed are justified by overriding reasons in the public interest, including consumer protection, the prevention of fraud and the preservation of public order.

The Court's proportionality assessment, which is often more stringent in other areas of the internal market, is therefore adapted to the specific nature of gambling services. In practice, the Court verifies whether the national measures pursue legitimate objectives, are suitable for attaining them and are applied in a consistent and non-discriminatory manner, while also ensuring protection against arbitrary decision-making. Conversely, the Court does not require Member States to recognise authorisations granted in other Member States. National legislation in this area generally follows three models: imposing authorisation requirements on gambling service providers; granting exclusive rights to a public or state-controlled operator; or, as in the case at stake, prohibiting gambling activities subject to limited exceptions, generally for sports betting and certain lotteries.

Against this background, the question whether Germany was required to take account of the authorisation obtained in Malta, or whether it remained free to impose its own restrictions on gambling services accessible to persons residing on its territory, was central to the determination of the possible private-law consequences. This context was further complicated by the later evolution of German law, which moved from a general prohibition towards a system of prior authorisation. Since the relevant facts, namely the player's loss of stakes in Germany, occurred before the entry into force of the new legislation, the referring court asked, in substance, whether that subsequent reform could affect the compatibility of the previous prohibition with EU law.

In this context, the practical focus of the case was on the consequences of illegality under national civil law. If the German prohibition was compatible with EU law, the gambling contract could be treated as null and void under national law. This, in turn, could pave the way for the player, or the assignee of the player's claim, to seek restitution of the stakes lost. The issue was therefore whether such restitution would itself undermine the freedom to provide services or the legal certainty of operators licensed elsewhere in the Union.

The judgment is particularly relevant for Luxembourg in light of the law of 20 April 1977 on the operation of games of chance and bets relating to sporting events (the "**Law of 1977**"), as amended. Similarly to the previous German legislation, the Luxembourg framework reflects a restrictive policy approach, under which gambling activities are, in principle, prohibited unless expressly authorised, while Luxembourg's *Loterie Nationale* is granted exclusive rights in relation to certain betting and lottery activities. However, as the Law of 1977 was conceived in a very different technological context, it does not provide a modern and comprehensive regime for online gambling. This leaves a degree of uncertainty as to the treatment of online gambling services offered by non-Luxembourg operators, even where licensed in another Member State, and creates interpretative difficulties in a field where national case-law offers very limited guidance.

The findings of the Court

The judgment is particularly strict towards online gambling, which the Court treats as presenting higher risks than its land-based counterpart. These risks include permanent accessibility, anonymity, the absence of social control, the potentially unlimited frequency of play and the attractiveness of online gambling to young or vulnerable persons.

Against that background, the Court held that EU law does not preclude national legislation prohibiting online casino games, online slot-machine games and certain forms of online betting, such as betting on the results of lottery draws, even where the operators concerned are licensed in another Member State. The fact that an operator is lawfully established and supervised elsewhere in the Union is not sufficient, in itself, to render the host Member State's prohibition inconsistent or disproportionate.

The Court also rejected the idea that the subsequent reform of German law necessarily undermined the previous prohibition regime. The replacement of a prohibition by a system of prior authorisation may form part of a controlled expansion policy designed to steer players towards an authorised gambling offer. Such a development does not, in itself, prove that the earlier prohibition was incoherent or incompatible with Article 56 TFEU.

Most importantly, the Court held that EU law does not preclude the civil-law consequences attached to the breach of a compatible national prohibition. If the applicable national law treats contracts concluded in breach of the gambling prohibition as null and void, EU law does not prevent such nullity. Nor does EU law preclude an action for restitution of the stakes lost.

Finally, the Court rejected the argument that the player's claim necessarily amounted to an abuse of rights under EU law. The mere fact that the player participated in the prohibited games, even though the operator held a licence in another Member State, is not sufficient to establish such abuse. Any question of bad faith remains a matter for national law.

The way forward

The judgment confirms that gambling remains one of the areas in which the Court's review under Article 56 TFEU is comparatively deferential to national regulatory choices. Proportionality review is not abandoned, but its intensity is shaped by the sensitive nature of gambling, the absence of EU harmonisation and the discretion afforded to Member States in determining their desired level of protection.

For operators, the lesson is clear. As confirmed in previous case-law, a licence granted in one Member State does not create a passport allowing online gambling services to be offered freely throughout the Union. Where the target Member State prohibits certain games, reserves them to a monopoly, or requires prior authorisation, the operator remains exposed to national enforcement and, potentially, to civil claims by players. The judgment therefore sharpens the practical risk analysis: in the gambling sector, the freedom to provide services does not operate with the same liberalising force as in many other areas of the internal market.

The impact of the judgment on Luxembourg remains uncertain. An extensive interpretation of the Law of 1977, extending its prohibition to online gambling services, could suggest that such a regime is not, in itself, incompatible with Article 56 TFEU, provided that it pursues legitimate objectives and is applied coherently. Operators established and licensed in another Member State could then face the risk that gambling contracts concluded with Luxembourg-resident players are challenged as unlawful, with possible claims for restitution of stakes.

At present, Luxembourg does not appear to have developed a systematic enforcement practice against online gambling operators established abroad, which may create a perception of practical tolerance. However, the judgment also shows that the risk may arise from private litigation rather than public enforcement, especially where players, or specialised recovery entities, seek restitution of losses on the basis that the underlying gambling contracts were void under national law.

From a Luxembourg law perspective, the way forward is therefore legislative clarification. This process is already reflected in Draft Law No. 8679 and proposal No. 8650, currently under parliamentary discussion. A modernised regime would usefully address online gambling expressly, distinguish between operators, suppliers and passive accessibility, and clarify the scope of any prohibition, authorisation requirement or monopoly. Until such clarification is adopted, legal advice in this area will necessarily remain cautious: the risk may be low in practice, but it is difficult to exclude in law.

DIGITAL SINGLE MARKET AND COPYRIGHT I CJEU DELIVERS SETBACK FOR META

On 12 May 2026, in Case C-797/23, *Meta Platforms Ireland Ltd v Autorità per le Garanzie nelle Comunicazioni ("**AGCOM**")*, the Court of Justice of the European Union ("the **Court**") delivered a preliminary ruling on interpretation in proceedings between Meta Platforms Ireland Ltd ("**Meta**") and AGCOM, the Italian communications regulatory authority, concerning the lawfulness of a decision adopted by AGCOM, defining the criteria to be used to determine fair compensation for the online use of press publications.

The case is the Court's first major ruling on the scope and implementation of the exclusive rights of press publishers under Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market ("the **Directive**").

Background to the dispute

The case arose in the context of section 15 of the Directive, which demands Member States implementing it to grant press publishers exclusive rights to authorise or prohibit the online reproduction and publication of their press publications by information society service providers ("**ISSP**"), such as Meta. Italy implemented section 15 through national legislation providing, besides exclusive rights, also a right to fair compensation for press publishers. In this framework, the Italian transposing legislation empowered AGCOM to define benchmark criteria for determining such compensation, to intervene where the parties failed to agree as well as to supervise compliance with information obligations imposed on online ISSP.

Meta challenged the Italian regulator's decision laying down the criteria for determining fair compensation, arguing, in essence, that section 15 acknowledges press publishers' exclusive rights, not an additional remuneration right. Hence, the Italian transposing legislation would create a mechanism disadvantageous and unduly interfering with several of Meta's fundamental rights. On this basis, the referring Italian court sought the interpretation of the Court on section 15 of the Directive, together with section 16 (freedom to conduct a business) of the Charter of Fundamental Rights of the European Union (CFR).

The issues at stake

The case raises questions about the relationship between press publishers' related rights over their digital content and the freedoms of large ISSP, most notably operators of social networks and search engines, to conduct their business. The entry into force of the Directive itself was controversial and sparked large digital protests not only among ISSP, but by certain Member States (some of which even sought the annulment of certain provisions of the Directive). Central to the dispute was the issue of the structural imbalance between press publishers and large platform operators, particularly the information asymmetry. Only platforms actually have access to the data needed to assess the economic value of the use of press content, leaving publishers in a certain vacuum where they are unable to have a complete view over the economic characteristics of contracts. Furthermore, ISSP often enjoy a contractual power substantially higher than that of their counterparts, among which press publishers. These aspects were clear to the Italian lawmakers when the transposition legislation was adopted. Significantly, instead of affording the responsibilities of the mechanism upon government structures, AGCOM was deemed to be the best broker for its independence between ISSP and press publishers.

The findings of the Court

The Court first recalled that the rights under section 15 of the Directive are of a preventive nature, in that any use of the publications which they protect requires the prior consent of rightsholders. Publishers of press publications may make their consent subject to any remuneration which they deem appropriate or, conversely, should retain the possibility of authorising those uses for free, including through non-exclusive free licences. In this framework, the Court held that section 15 does not prevent Member States from establishing a system intended to ensure fair remuneration, provided that such remuneration is linked to the authorisation granted by the publisher.

The Court generally accepted that, as provided under the transposing legislation, ISSP are required to, *inter alia*, enter into negotiations with press publishers, during which they need to refrain from reducing the visibility of the relevant contents. As ISSP are often the only parties holding the information needed to assess the economic value of the online use of press publications, such obligations essentially are aimed at correcting the imbalances between press publishers and online platforms. In this framework, granting AGCOM regulatory powers, such as setting benchmark criteria, assisting the parties in fixing the remuneration, monitoring compliance and imposing penalties, may also fall within the Member States' discretion to define the detailed rules for implementing section 15.

At the same time, the Court did not refrain from acknowledging that the obligations imposed on providers may limit the freedom to conduct a business protected by section 16 of the Chart. However, it considered that such limitations may be justified under section 52 thereof, since they pursue objectives recognised by EU law: ensuring a well-functioning and fair marketplace for copyright, such as enabling publishers to recoup their investments, protecting intellectual property and safeguarding freedom and pluralism of the media.

The way forward

The judgment confirms that the EU copyright framework does not merely recognise formal rights in favour of press publishers: those rights must also be capable of effective exercise in an economic environment marked by strong asymmetries between publishers and large digital platforms. It also should be read as part of the wider EU effort to contain the capacity of very large online platforms to impose unilateral economic conditions on more vulnerable market participants.

Its significance lies in the Court's acceptance that regulatory intervention may be needed to restore balance where contractual freedom alone would not guarantee the effective protection of EU rights, especially where Big Techs are involved, displaying their informational and contractual leverage. This is particularly relevant in the press and publishing sector, where the economic sustainability of journalism is closely connected to democratic pluralism. The Court's reasoning may therefore resonate beyond press publishers alone, including in future disputes concerning the use of protected content by digital platforms and, potentially, by artificial intelligence systems.

EU DIGITAL MARKETS ACT I PARTIAL SETBACK FOR THE EUROPEAN COMMISSION IN GENERAL COURT'S JUDGMENT OVER META'S COMPLAINT

On 3 June 2026, in Case T-1078/23, *Meta Platforms, Inc. v European Commission*, the General Court of the European Union (the "**Court**") delivered a judgment on an action for annulment brought by Meta Platforms, Inc. ("**Meta**") against a decision of the European Commission (the "**Commission**") adopted pursuant to Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (the "**DMA**").

In its ruling, the Court dismissed Meta's action in so far as it concerned the designation of Messenger as a core platform service, but upheld it with respect to Marketplace, finding that the Commission had failed to take proper account of relevant changes made to that service before the adoption of the contested decision and had not adequately stated the reasons for its assessment.

Background to the dispute

The DMA establishes a harmonised regulatory framework for the designation and supervision of so-called "gatekeepers" in the digital sector. These are providers of core platform services ("**CPS**") which, by reason of their size, reach and position within the digital economy, may act as important gateways between business users and end users. The DMA reflects the concern that, in highly digitalised markets, certain platform operators may acquire a structural position enabling them to influence the conditions under which businesses reach customers and users access digital services. It therefore sets out a series of obligations intended to prevent unfair practices and preserve the contestability of digital markets.

Under Article 3 of the DMA, an undertaking may be designated as a gatekeeper where three cumulative conditions are met: it has a significant impact on the internal market; it provides a CPS which is an important gateway for business users to reach end users; and it enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future. These conditions are presumed to be satisfied where certain quantitative thresholds are met, including thresholds relating to turnover or market capitalisation, the provision of the CPS in at least three Member States, and the number of monthly active end users and yearly active business users in the Union.

Against this background, on 3 July 2023, Meta notified the Commission that several services provided within its digital ecosystem fell within the scope of the DMA. Meta accepted that certain services constituted CPS, but argued, in substance, that Messenger and Marketplace should not be designated as separate CPS for which Meta would be treated as a gatekeeper. In particular, Meta disputed the Commission's assessment that those services individually constituted important gateways for business users to reach end users.

By its decision of 5 September 2023, the Commission rejected Meta's arguments and designated Meta as a gatekeeper in respect of several CPS, including Messenger and Marketplace. The Commission considered that the relevant quantitative thresholds were met and that Meta had not put forward sufficiently substantiated arguments capable of rebutting the statutory presumptions under the DMA. Meta brought an action for annulment before the General Court, seeking partial annulment of the Commission's decision insofar as it concerned Messenger and Marketplace.

The issues at stake

The case must be read against the broader background of the DMA, which seeks to address the structural role acquired by certain large digital platforms in the digital economy. Core platform services may benefit from strong economies of scale, network effects, data advantages, user lock-in and vertical integration. Where those services become gateways between business users and end users, their providers may acquire the ability to influence the conditions of access to markets and to weaken market contestability.

This regulatory concern is particularly relevant where the same undertaking both controls a platform infrastructure and competes, directly or indirectly, with business users depending on that infrastructure. In such circumstances, the issue is not limited to the existence of market power in the traditional competition-law sense. It also concerns the risk that the architecture of the ecosystem itself may allow the gatekeeper to preserve or extend its position, including through self-preferencing, restrictions on interoperability, limitations on access to data, or other practices capable of increasing dependency on the platform. As end-users of CPS are regularly required to provide their consent to third parties' use of personal data, mainly for profiling purposes, the rise of the Big Tech also presents challenges for fundamental rights (as the Court had previously addressed).

The DMA was introduced as an *ex-ante* instrument to address those risks before they crystallise into durable market closure. It operates alongside EU and national competition rules, which remain applicable and allow competition authorities to intervene *ex post* in cases of anticompetitive conduct, such as abuses of dominance or anticompetitive agreements. The DMA's logic is therefore complementary, but distinct: once an undertaking is designated as a gatekeeper in respect of a given core platform service, it becomes subject to specific obligations designed to preserve fairness and contestability.

Against that background, the issues at stake in this case were more precise, as the General Court was not required to rule on Meta's business model as such, nor on the overall legality of data-driven advertising. The question was whether the Commission had lawfully designated Meta as a gatekeeper in respect of two specific services: Messenger and Marketplace.

This distinction was important because the obligations imposed on a gatekeeper under the DMA depend on the nature of the core platform service concerned. Messenger was assessed as a number-independent interpersonal communications service ("**NIICS**"), a category for which the DMA provides, in particular, interoperability-related obligations. Marketplace, by contrast, was assessed as an online intermediation service ("**OIS**"), a category which raises different issues concerning the relationship between the platform, business users and end users.

Recognising Messenger and Marketplace as separate core platform services therefore had significant practical consequences. It extended the scope of Meta's DMA obligations beyond its broader social networking ecosystem and required compliance to be assessed service by service. The central question was thus whether the Commission had correctly identified those services as distinct core platform services and whether it had adequately established that they constituted important gateways for business users to reach end users.

The findings of the Court

The judgment raised several crucial questions concerning the application of the DMA designation mechanism. Regarding Messenger, the Court had to determine whether this could validly be treated as a CPS distinct from Facebook. This required assessing whether Messenger had sufficient functional autonomy, despite its integration with Meta's broader social networking ecosystem. Furthermore, the Court had to examine whether the Commission was entitled to conclude that Messenger individually constituted an important gateway for business users to reach end users. This involved, among other things, the question whether the Commission had to exclude from Messenger's user base those end users who were also Facebook users.

The Court first confirmed that Messenger could be regarded as a NIICS distinct from Facebook. In order to conclude this, it attached importance to several factors, including the existence of standalone Messenger applications, the possibility of using Messenger independently from Facebook and the fact that Meta promotes tools specific to Messenger, allowing businesses to interact with users. Thus the Court rejected the argument that Messenger's integration within the broader Facebook ecosystem prevented it from being classified as a separate CPS. In substance, functional links between services do not necessarily preclude the Commission from identifying a distinct core platform service where that service has its own characteristics and use cases.

The General Court also confirmed that the Commission had not erred in finding that Messenger individually constituted an "important gateway" for business users to reach end users. In particular, the Commission was not required to count only those Messenger users who were not also users of Facebook. The overlap between user bases did not, in itself, deprive Messenger of its importance as a separate channel through which business users may reach end users.

The Court further held that the Commission was not required to open a market investigation before confirming the designation of Messenger. Meta's arguments were not considered sufficiently substantiated to manifestly call into question the presumptions laid down by the DMA. The Court also rejected Meta's arguments based on breach of the rights of defence.

With respect to **Marketplace**, the Court had to assess whether this could properly be classified as an online intermediation service. Central to this analysis was the methodology employed to identify business users on the platform. Since the applicable terms of service restricted Marketplace to consumer sellers and had removed the ability for business pages to create listings from January 2023, the Commission was unable to rely on official user categories. It instead applied a so-called "power sellers proxy", treating users who published a high number of listings of the same kind as de facto business users. On the basis of this methodology, the Commission identified over 100,000 such users in each of the years 2020, 2021 and 2022, thereby satisfying the threshold of 10,000 yearly active business users under Article 3(2)(b) of the DMA.

The analysis was complicated, however, by the fact that prior to the adoption of the Commission's decision of 5 September 2023, the gatekeeper implemented changes to Marketplace capping the number of listings a user could publish per month to a maximum of 20 in the same category. Those changes were duly notified to the Commission, along with the submission that, under the Commission's own proxy, no business users would remain on Marketplace once they took effect. Despite having been so informed, the Commission's decision described those changes merely as "future limitations" in the process of being implemented, without conducting any specific analysis of their impact on the classification of Marketplace as an online intermediation service.

The Court held that the Commission erred in law by relying solely on data relating to the three years preceding the designation, without properly taking into account those changes. The Commission actually could not disregard relevant factual developments occurring before the adoption of the decision, especially where those developments could affect whether the service met the legal definition of an online intermediation service. The Court also found that the Commission had failed to state sufficient reasons. The decision did not contain a concrete analysis of the changes made to Marketplace, nor did it explain their effect on the finding that Marketplace enabled business users to offer goods or services to consumers. The Court considered that the reasoning relied upon by the Commission was hypothetical and incomplete.

As a result, the Court concluded that the Commission's decision did not allow Meta to understand the reasons why Marketplace had been classified as an online intermediation service, nor did it allow the EU Courts to exercise their power of review. The decision was therefore annulled in so far as it designated Meta as a gatekeeper for Marketplace.

The way forward

The judgment is a partial setback for the Commission, but not a rejection of the designation framework under the DMA. On Messenger, the General Court's reasoning confirms that the Commission may identify distinct core platform services within a broader digital ecosystem, even where those services are technically or commercially connected. This has consequences for gatekeepers operating integrated ecosystems, since the analysis may be conducted service by service rather than only at the level of the platform group. On Marketplace, the judgment is a useful reminder that the Commission's designation powers are not mechanical. Even if the DMA relies on quantitative thresholds and presumptions, the Commission must fully engage with the factual developments submitted by the undertaking concerned.

At the same time, the judgment should not be overstated, as the annulment concerning Marketplace appears closely linked to the specific reasoning deficiencies identified by the Court and to the timing of the changes made by Meta before the Commission's decision. As such, it does not prevent the Commission from adopting a new decision, provided that it substantiates its analysis adequately and takes account of the relevant facts. From this standpoint, it will be interesting to see whether the Commission appeals the judgment before the Court of Justice (limited to points of law) and, in such case, the outcome thereof.

ESG | COMMISSION ADOPTED FINAL DELEGATED RTS REGULATION WITHIN ITS BROADER ESG RATING REGULATION PACKAGE

The European Commission has now adopted all sets of delegated regulations under the ESG Ratings Regulation.

What the ESG Ratings Regulation does - ESMA at the centre of a new supervisory regime

The Regulation, which entered into force on 2 January 2025, places ESMA at the centre of a new supervisory regime for ESG rating providers in the EU - as discussed in our earlier article on the subject.

Non-EU providers may access the EU market through three approaches:

- recognition by ESMA under Article 12, where the home jurisdiction meets specified conditions;
- endorsement by an authorised EU group affiliate under Article 11;
- or an equivalence decision by the Commission. Each route carries distinct requirements that third-country providers should assess at the earliest opportunity.

The delegated regulations: adopted and awaiting Official Journal publication

The regulatory technical standards ("RTS") underlying the delegated regulations were developed by ESMA following a public consultation in May 2025, with a Final Report published in October 2025.

The Commission adopted five delegated regulations in the framework of the ESG Ratings Regulation, across three tranches:

- C(2026)2495 (21 April 2026): specifies the measures and safeguards ESG rating providers must implement to separate their rating activities from other business activities (Article 16).
- C(2026)2503 (21 April 2026): specifies which elements of ESG rating products must be disclosed to the public, to users, to rated items, and to issuers of rated items (Annex **III**).
- C(2026)2580 (24 April 2026): establishes the fees charged by ESMA to ESG rating providers, covering authorisation, recognition, and ongoing supervisory fees.
- C(2026)2579 (24 April 2026): sets out the procedural rules for the fines and periodic penalty payments that ESMA may impose on ESG rating providers for infringements of Regulation (EU) 2024/3005.
- C(2026)3334 [LM2] (26 May 2026): specifies the information to be included in applications for authorisation (Article 6(3)) and recognition (Article 12(9)), covering organisational structure, ownership, senior management, staffing, and operational arrangements, with additional requirements for third-country providers.

As at the date of this newsletter, none of the five delegated regulations have yet been published in the Official Journal of the European Union. Each remains subject to the scrutiny period by the Council of the EU and the European Parliament. Absent an objection from either institution, publication in the Official Journal will follow. C(2026)2495 and C(2026)2503 will each enter into force 20 days after their publication; C(2026)3334 will enter into force the day after publication.

All five are designed to apply from 2 July 2026. Providers should continue to monitor the Official Journal and ESMA's website closely, as the application templates published by ESMA remain subject to change while scrutiny continues.

The key deadlines and events

The Regulation **has applied** since **2 July 2026**. From that date, any entity that professionally issues, publishes, or distributes ESG ratings in the EU must be authorised or recognised by ESMA.

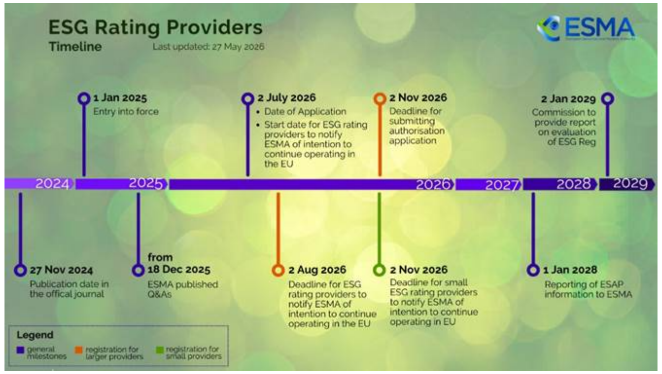
Under Article 43(1) of the Regulation, the transitional provision, providers that were already operating in the EU on 2 January 2025 (the date the ESG Regulation entered into force) have one month from the application date to notify ESMA of their intention to continue. That window closes on **2 August 2026**.

On notification, those providers are placed on ESMA's public register on a temporary basis and may continue operating while their application is assessed.

The full application for authorisation or recognition must then be submitted within four months from 2 July 2026, i.e. by **2 November 2026** at the latest; failing which the provider must cease EU operations.

ESG

Smaller providers falling within the proportionate regime under Article 5 of the ESG Rating Regulation benefit from an extended notification deadline, also of **2 November 2026**.



Source: https://www.esma.europa.eu/esmas-activities/investors-and-issuers/esg-rating-providers

ESG | CSSF COMMUNICATION ON THE ESG RATINGS REGULATION AND NEW SFDR DISCLOSURE REQUIREMENTS

On 1 July 2026, the CSSF published a communication drawing market participants' attention to two key developments arising from the ESG Ratings Regulation (Regulation (EU) 2024/3005)

ESG Rating disclosure

First, the Regulation began to apply on 2 July 2026.
Second, Article 49 [LM1] of the Regulation amends Article 13 of the SFDR (Regulation (EU) 2019/2088): financial market participants and financial advisers in scope of the SFDR that issue or disclose an ESG rating (as defined in Article 3(1)) [LM2] in their marketing communications must (a) publish on their website the information required by point 1 of Annex III of the ESG Ratings Regulation and (b) include a link to those website disclosures in the relevant marketing communications.
The CSSF expects full compliance as from 2 July 2026.

Transitional period for full authorisation

The communication also addresses the transitional period from 2 July to 2 November 2026, during which providers already active in the EU on 2 January 2025 must submit a full application for authorisation or recognition to ESMA. Consistent with the ESMA public statement issued on the same date, the CSSF acknowledges that during this period third-party distributors may continue to publish or distribute ESG ratings issued by providers that have notified ESMA of their intention to continue operating in the EU, until ESMA adopts a decision on the relevant authorisation, recognition, or registration.
The CSSF has indicated it will adopt a proportionate supervisory approach, taking into account remaining uncertainties - including that several delegated regulations under the ESG Ratings Regulation (including C(2026)3334) have not yet been published in the Official Journal.

For a detailed breakdown of what this means for you, please refer to our full article on our website.

VALUATION | CSSF FEEDBACK REPORT

The CSSF expects all Investment Fund Managers (“IFMs) to self-assess their valuation frameworks and remediate gaps. Supervisory follow-up is expected.

Background

The CSSF has published a Feedback Report following its thematic review of the valuation frameworks applied by Luxembourg-domiciled investment fund managers to less liquid and illiquid assets. The review, conducted over 2024 and 2025, covered AIFMs and UCITS management companies managing funds invested in private equity, real estate, infrastructure, private debt, and fund of funds strategies.

The review builds on earlier supervisory work, including the ESMA Common Supervisory Action of 2022, and takes into account the recently published IOSCO Final Report on Valuing Collective Investment Schemes (June 2026). Importantly, the CSSF has asked all IFMs, including those not covered by the ESMA review, to benchmark their frameworks against these findings and implement corrective measures where gaps are identified.

Key findings and actions required

The CSSF's findings are structured around two main areas: valuation policies and procedures and, valuation controls. We set out below the principal observations and the specific actions the CSSF expects IFMs to take.

Pre-launch and new asset onboarding reviews

IFMs must ensure their written valuation policies formally require a structured review before launching any new (sub-)fund or investing in a new asset type. This review should confirm that:

- appropriate valuation methodologies are in place for the new fund or asset type;
- ongoing pricing and data sources will be available at the required NAV calculation frequency; and
- independent valuation can be maintained throughout the full investment lifecycle, from acquisition to disposal.

The CSSF has highlighted that absent or insufficient pre-launch checks have contributed in a limited number of cases to modified audit opinions on fund financial statements. This is an area requiring immediate attention where gaps exist.

Valuation frequency alignment

Valuation policies must include controls to ensure that the frequency at which individual assets are valued aligns with the NAV calculation frequency of the fund. For assets that fall outside the definition of "financial instruments", such as real estate and private equity, valuations must be triggered not only annually but also whenever there is evidence that the last determined value is no longer fair or proper. IFMs should verify that the necessary controls exist to make this assessment at each NAV calculation date.

Valuation methodologies and model governance

Valuation approaches and methods (reference was made in particular to the market approach, the income approach and the replacement cost approach) must be adequately described and documented in written policies for each asset type. Where models are used, policies must clearly explain and justify the model, its underlying data and assumptions, the rationale for its use, and its inherent limitations. In addition:

- senior management approval is required before any model is put into use;
- models must be subject to at minimum annual review by senior management;
- any material change to a model (such as a change in the method of calculating the discount rate) must be independently validated and approved by senior management; and
- all steps in the above process must be appropriately documented.

The CSSF has observed in limited cases that senior management approval was not obtained prior to model use and that adequate periodic review processes were not in place. IFMs should audit their model governance arrangements accordingly. The CSSF also observed that where valuation standards (such as IPEV guidelines for private equity or RICS standards for investments in real estate) are used that they should be consistently applied in order to ensure a reliable valuation on an ongoing basis.

Valuations under stressed market conditions

IFMs must ensure that their valuation policies address how assets will be valued under exceptional situations and stressed market conditions, including idiosyncratic events affecting individual holdings. The CSSF does not require a separate policy document for these circumstances, but expects existing policies to:

- provide clear and actionable valuation methodologies applicable across all market conditions;
- enable IFMs to adapt their approaches flexibly and swiftly, for example, moving from a transaction-based to a model-based approach for real estate valuations in a market dislocation; and
- incorporate lessons learnt from past market stress episodes as part of the periodic review of valuation policies.

Escalation processes

In the event of significant valuation issues, whether fund-specific or market-driven, IFMs must ensure timely escalation to both the senior management of the IFM and the board or governing body of the relevant fund. The CSSF stresses that fund boards bear ultimate responsibility for fund governance and must be proactively informed of material valuation difficulties so that they can exercise effective oversight and, where necessary, direct remediation. Valuation policies should expressly provide for this dual escalation obligation.

Pre-investment valuation controls

AIFMs should implement risk-based pre-investment valuation checks prior to acquiring less liquid or illiquid assets. These checks should confirm that the relevant asset can be reliably valued post-acquisition in accordance with the fund's offering document, applicable regulation, and existing valuation policies. Written policies should clearly set out the allocation of responsibilities for these checks and the role of the internal valuation function, calibrated to the risk profile of the targeted investment.

Oversight of third-party valuers

Where AIFMs rely on third-party experts or valuation service providers to support their internal valuation function, they must maintain specific, documented controls over the inputs and reports received from those parties. These controls should verify the reliability and reasonableness of the data feeding into valuation models. IFMs must also:

- conduct thorough due diligence on third-party providers at the time of appointment; and
- maintain ongoing oversight throughout the engagement, particularly where potential conflicts of interest may arise, for example, where a provider performs multiple delegated functions with fee structures linked to the fund's NAV.

Overall CSSF expectation and next steps

The CSSF has made clear that it expects all IFMs, not merely those reviewed in the sample, to conduct a self-benchmarking exercise against the observations set out in the Feedback Report and to implement remediation where needed. IFMs that were assessed in the context of the 2022 ESMA Common Supervisory Action should also verify that all remediation committed to by 31 December 2023 has been completed and documented. Firms that have not yet addressed previously identified gaps should anticipate follow-up supervisory engagement.

CROSS-BORDER FUND MARKETING | WHAT FUND MANAGERS NEED TO KNOW ABOUT ESMA'S LATEST REVIEW?

ESMA flags persistent gaps in cross-border fund marketing compliance

ESMA's cross-border fund marketing review confirms that, almost four years after the cross-border distribution of funds regime entered into force, many managers still fall short of regulatory expectations. ESMA has published its [latest review of the cross-border distribution rules]() applicable to UCITS and AIFMs under Regulation (EU) 2019/1156 on the cross-border distribution of collective investment undertakings (the "**CBDF Regulation**"). The review identifies persistent compliance gaps in marketing communications, supervisory divergence among national competent authorities ("**NCAs**"), and heightened scrutiny of environmental, social and governance ("**ESG**") claims.

Background: the cross-border distribution framework

The CBDF Regulation has applied since 2 August 2021. It aims to facilitate the cross-border marketing of UCITS and AIFs while enhancing investor protection through harmonised marketing standards.
This framework introduced:

- harmonised notification and de-notification procedures for UCITS and AIFs;
- common rules governing marketing communications;
- enhanced transparency regarding national marketing requirements;
- an ESMA central database of cross-border marketed funds;
- a mandate for ESMA to develop Guidelines on marketing communications.

Under Article 8 of the CBDF Regulation, ESMA must periodically assess the application of national marketing requirements and the effectiveness of the framework. Its 2025 report provides a detailed assessment of supervisory practices across Member States and highlights areas where compliance remains weak.

Key findings: what ESMA identified

ESMA's review highlights that the main recurring breaches fall into three areas: notification and passporting, marketing material standards, and ESG and sustainability claims.
The most common breaches include:

- marketing communications not being clearly identifiable as marketing material;
- information that is not fair, clear and not misleading;
- unbalanced presentation of risks and rewards;
- inconsistent information between marketing materials and legal documentation;
- deficiencies in ESG-related disclosures;
- failure to provide mandatory information regarding investor rights and access to fund documentation.

Supervisory divergence remains across Member States

Most NCAs now apply a risk-based supervisory approach and conduct marketing reviews on a case-by-case basis. However, only a limited number of jurisdictions continue to perform systematic ex-ante reviews of marketing communications. Belgium remains the most notable example, requiring prior verification of certain marketing communications before use.
ESMA also identified continuing differences in local requirements, including:

- translation requirements for KIDs and KIIDs;
- national filing fees in certain jurisdictions;
- additional requirements relating to de-notification procedures;
- specific retail investor marketing conditions in some Member States.

Fund managers therefore cannot rely solely on compliance with the EU-level framework and should continue to assess host-state requirements before launching marketing activities.

ESG and sustainability claims remain a supervisory priority

ESMA identified ESG-related marketing as one of the highest-risk areas for investor protection. The review contains multiple examples of supervisory findings where:

- SFDR Article 6 funds were presented as sustainable or ESG-focused;
- marketing materials overstated ESG integration compared to the disclosures contained in prospectuses or other legal documents;
- sustainability reports or ESG ratings were used in a manner inconsistent with the fund's regulatory classification;
- references to responsible investment initiatives, including the UN Principles for Responsible Investment (UN PRI), were made despite sustainability considerations not being integrated into investment decisions.
- The report reinforces ESMA's expectation that all sustainability-related statements must be fully substantiated and strictly aligned with the fund's legal and regulatory documentation.

Increased focus on forward-looking statements and performance claims

The report also highlights supervisory concerns regarding performance projections and return expectations. NCAs identified examples where:

- marketing materials referred to expected annual returns without adequate risk disclosures;
- future performance forecasts were presented without the mandatory warnings required by the ESMA Guidelines on marketing communications;
- performance objectives and return targets appeared in marketing communications despite not being included in the fund's legal documentation.

Fund managers should therefore ensure that any forward-looking statements are clearly identified as estimates, supported by reasonable assumptions, and accompanied by appropriate risk disclosures.

Next steps and timeline

Based on the ESMA findings, fund managers and management companies should pay attention to the following points before launching new cross-border marketing activity or reviewing existing arrangements:

- Notification and local requirements
- Marketing communications
- Mandatory investor disclosures
- ESG and sustainability claims
- Forward-looking statements

ESMA's next report on cross-border distribution will be submitted to the European Parliament, the Council and the Commission by mid-2028. In the meantime, fund managers should conduct an internal review of their cross-border marketing arrangements against the ESMA Guidelines on marketing communications and the findings in this report without delay in order to avoid regulatory sanctions.

UCI | CSSF UPDATED FAQ ON CRYPTO-ASSETS

On 24 April 2026, the CSSF published Version 8 of its FAQ on Crypto-Assets for Undertakings for Collective Investment (the "**FAQ**").

Following the significant amendments introduced by Version 7 of the FAQ in connection with the entry into application of Regulation (EU) 2023/1114 on markets in crypto-assets ("**MiCAR**"), Version 8 is limited to an amendment to Question 1. This amendment provides further clarification on the regulatory treatment of indirect crypto-asset investments by UCITS.

Clarification regarding indirect crypto-asset investments by UCITS (Question 1)

The previous version of the FAQ (Version 7) permitted UCITS to invest indirectly in crypto-assets, subject to a maximum exposure of 10% of their net asset value (NAV), through transferable securities that do not embed derivatives.

The updated FAQ further clarifies the regulatory treatment of these investments by providing that indirect investments in crypto-assets do not necessarily fall within Article 41(2)(a) of the law of 17 December 2010, provided that the relevant instruments qualify as transferable securities pursuant to Article 41(1)(a) to (d) of the same law.

Article 41(2)(a) relates to transferable securities or money market instruments other than those that are eligible pursuant to Articles 41(1)(a) to (d) (often referred to as the "trash ratio").

This amendment provides further clarification on the application of the UCITS eligible assets regime to financial instruments providing indirect exposure to crypto-assets.

LUXEMBOURG CASE LAW | MANDAT APPARENT AND FUND REDEMPTIONS

An AIFM may be bound by a redemption order accepted by an unauthorised employee - and the redeeming investor becomes a creditor once payment falls due.

In a significant ruling for the Luxembourg investment funds industry, the *Cour de cassation* on 27 March 2025 upheld the decision of the court of appeal that the doctrine of apparent authority (*Mandat apparent*) can bind an AIFM to a redemption order accepted by an unauthorised employee, and that an investor who legitimately relied on that acceptance becomes a fund creditor once the payment deadline passes unpaid.

Background

The case arose from a redemption request submitted on 18 June 2020 by a foreign investor (the **"Defendant"**) seeking to exit a specialised investment fund (the **"SIF"**) governed by the Luxembourg law of 13 February 2007 on specialised investment funds, managed by a Luxembourg AIFM acting as *gérant commandité* (the **"Claimant"**). The District Court of Luxembourg had ordered the AIFM to pay the Defendant the amount representing the value of the redeemed units; the Court of Appeal confirmed that judgment.

The redemption request was submitted in accordance with clause 2.6 of Part II of the fund's Private Placement Memorandum, and was found to have been validly accepted by the AIFM - execution being due by end of October 2020 at the latest - giving rise to a claim for USD 8,887,407.26 plus late payment interest under Chapter 1 of the Luxembourg law of 18 April 2004 on payment deadlines and late payment interest (the "2004 Law"), running from 31 October 2020. The AIFM refused payment and challenged the decision.

The doctrine of Mandat apparent confirmed in a professional context

The AIFM raised four of its five grounds of cassation against the Court of Appeal's application of the *Mandat apparent* doctrine under Articles 1984 and 1998 of the Civil Code.

Under Article 1984 of the Civil Code, a mandate arises when one person empowers another to act on their behalf; it is formed upon acceptance by the mandatee. Under Article 1998, the mandator is bound by acts within the scope of authority given and is only bound beyond that scope to the extent of express or tacit ratification.

The *Mandat apparent* doctrine, developed by case law, qualifies the strictness of Article 1998(2) on grounds of equity and legal certainty. Under it, an entity may be bound vis-à-vis a third party when that third party could legitimately believe, considering the circumstances, that the person with whom it contracted had authority to bind the entity.

The AIFM's core argument was that the doctrine has a strict and narrow application , when the third party is a professional investor, requiring not only legitimate belief but also an absence of excusable error in failing to verify the agent's authority. The *Cour de cassation* rejected both grounds, holding that the submissions did no more than contest the Court of Appeal's sovereign assessment of the factual and evidentiary elements - an assessment within the exclusive power of the judges on the merits and beyond the *Cour decassation*'s review.

This confirms a principle well established in Luxembourg case law: the sole condition for applying the *Mandat apparent* doctrine is the third party's legitimate belief in the agent's authority (*Cour d'appel*, 18 March 1993, No. 13 502). The professional status of the third party is one factor in the factual assessment; it does not create an autonomous legal barrier to the doctrine's application.

This position also aligns with the Court of Appeal's own formulation, as cited with approval:"*both the quality of the parties and the factual circumstances authorised [the Defendant] not to verify further the reality or extent of the authority to represent [the AIFM].*"

The investor/creditor distinction

The fifth ground raised a distinct and important issue under Article 11(1)(f) of the Luxembourg law of 12 July 2013 on alternative investment fund managers (the **"AIFM Law"**). That provision requires AIFM managers to always treat all AIF investors fairly and prohibits preferential treatment of any investor unless disclosed in the fund's management regulations or constitutional documents.

The AIFM argued that ordering payment to the Defendant amounted to preferential treatment over other investors in the same position. The *Cour de cassation* dismissed this ground: having established as a matter of fact that the redemption had been accepted and that payment should have been made before November 2020, the Court of Appeal was entitled to conclude that, due to the non-payment at that date, the Defendant no longer held the status of *investor* but had acquired that of *creditor* of the investment fund.

This distinction carries major practical consequences. The equal treatment principle under Article 11(1)(f) of the AIFM Law protects investors *as investors*. Once a valid redemption is accepted and the redemption proceeds become due and unpaid, the former investor steps out of the fund's investor pool and into the position of an ordinary creditor. Its claim is no longer subject to fund liquidity constraints, equal treatment rules, or the *pro rata* treatment applicable to investors - it is governed by ordinary debt law, including the late payment interest regime under the 2004 Law.

The Court of Appeal had articulated this clearly: "*in November 2020, [the Defendant] is no longer an investor but a creditor of the Fund*".

Next steps

Fund managers should promptly review their internal delegation and authority frameworks to ensure that only duly authorised personnel handle redemption requests and confirmations.

Where a redemption has been validly accepted, payment must be made within the contractual deadline. Overdue amounts may accrue late payment interest under the 2004 Law from the due date.

For investors, a validly accepted redemption order that goes unpaid gives rise to a debt claim governed by ordinary law, regardless of the fund's liquidity position.

COMPETITION I GOOGLE ANDROID (PART I): THE RECORD FINE AND THE ROAD TO THE COURT OF JUSTICE

On 2 July 2026, the Court of Justice of the European Union dismissed the appeal brought by Google LLC and Alphabet Inc. against the judgment of the General Court in the Google Android case, confirming the fine of EUR 4.125 billion imposed on Google for abuse of dominant position in relation to the Android mobile ecosystem. The judgment is significant not only because of the size of the fine, but also because it confirms the Commission's ability to challenge contractual and technical restrictions used by dominant digital platforms to protect and reinforce their position across connected markets.

The case sits at the intersection of traditional competition law and the more recent EU regulatory framework applicable to digital platforms, including the Digital Markets Act, which is aimed precisely at preventing gatekeepers from using entrenched ecosystem advantages to foreclose competition.

Background to the dispute

The case originates from the Commission's decision of 18 July 2018 in Case AT.40099- Google Android. The Commission found that Google had imposed anticompetitive contractual restrictions on original equipment manufacturers and mobile network operators in order to protect and strengthen its dominant position on national markets for general search services within the EEA.

In its analysis, the Commission stated that Google acquired the company that had developed Android in 2005, at a time when mobile internet use was expected to become increasingly important for online search. By July 2018, most smart mobile devices used in Europe and worldwide ran on Android. Although Android's source code was made available under an open-source licence, Google's proprietary apps and services, including Play Store, Google Search and Chrome, were not part of that open-source layer and were made available to manufacturers through agreements with Google.

The Commission identified four sets of contractual restrictions. First, under Mobile Application Distribution Agreements, Google required manufacturers to pre-install Google Search in order to obtain a licence for the Play Store. Second, Google required the pre-installation of Chrome together with Google Search and the Play Store. Third, under Anti-Fragmentation Agreements, manufacturers wishing to pre-install Google apps were prevented from selling devices running Android versions not approved by Google. Fourth, under certain Revenue Share Agreements, Google granted payments to manufacturers and mobile network operators on condition that they did not pre-install competing general search services on an agreed portfolio of devices.

The Commission considered these practices to be separate abuses and, at the same time, part of a single and continuous infringement of Article 102 TFEU, because they pursued the common objective of protecting and strengthening Google's dominant position in general search services and its related advertising revenues. The original fine imposed by the Commission amounted to EUR 4.342 billion.

Google and Alphabet challenged the decision before the General Court. By judgment of 14 September 2022, the General Court largely upheld the Commission's decision, annulling it in part in relation to the portfolio-based Revenue Share Agreements and reducing the fine to EUR 4.125 billion. Alphabet was held jointly and severally liable for part of the fine, amounting to approximately EUR 1.52 billion. Google and Alphabet then appealed to the Court of Justice, seeking the annulment of the General Court judgment, annulment of the Commission decision or, in the alternative, a further reduction of the fine.

The issues at stake

The case required the Court to address several questions of wider importance for digital competition enforcement. The first was whether the Commission had to demonstrate, through a counterfactual analysis, that the challenged tying practices, in particular the pre-installation of Google Search and Chrome as a condition for access to the Play Store, were the specific cause of the exclusionary effects identified.

The second was whether the Commission had to show that the practices were capable of excluding competitors that were as efficient as Google. This point was particularly sensitive because recent case-law on abuse of dominance has attached increasing importance to effects-based analysis, while also leaving open the question whether an as-efficient competitor test is always necessary. The third issue concerned the legal treatment of Android fragmentation. Google argued that the anti-fragmentation obligations were necessary to preserve the integrity, compatibility and quality of the Android ecosystem. The Commission, by contrast, considered that those obligations hindered the development and commercialisation of Android forks, thereby limiting potential competition.

The fourth concerned the consequences of the partial annulment of the Commission decision by the General Court. Since the General Court had annulled the finding of abuse relating to portfolio-based Revenue Share Agreements, Google argued that the finding of a single and continuous infringement and the resulting fine should have been more substantially affected.

Read Part II

COMPETITION I GOOGLE ANDROID (PART II): THE COURT'S FINDINGS AND IMPLICATIONS FOR DIGITAL COMPETITION

On 2 July 2026, the Court of Justice of the European Union dismissed in full the appeal brought by Google LLC and Alphabet Inc. in the Google Android case, confirming the fine of EUR 4.125 billion. Beyond this historic sanction, the ruling provides important guidance on the legal standards applicable to exclusionary abuses in digital ecosystems. This article continues the analysis of the Google Android case-law by examining the Court's key findings and their implications for competition enforcement.

The findings of the Court

On the general legal test for exclusionary abuse, the Court recalled that Article 102 TFEU is intended to prevent conduct by a dominant undertaking which, through means other than normal competition, hinders the maintenance or growth of competition to the detriment of consumers. It confirmed that, to establish an exclusionary abuse, the competition authority must show two cumulative elements: first, that the conduct departs from competition on the merits; and second, that it is capable of producing exclusionary effects by making it more difficult for competitors to enter or remain on the market.

The Court then focused on the "as-efficient competitor" concept, confirming that an authority may use an as-efficient competitor analysis where appropriate, though such an analysis is not necessarily required for every type of conduct. In particular, tying, where a dominant undertaking makes access to one product conditional on obtaining another, may, in principle, constitute a means departing from competition on the merits without the need for a separate analysis of whether a hypothetical as-efficient competitor could replicate the conduct.

This point is particularly important in the Android context, as Google's position was not merely that of an efficient supplier offering attractive products. Google controlled key access points within the Android ecosystem, in particular the Play Store, which manufacturers needed in order to make commercially viable Android devices. The pre-installation of Google Search and Chrome therefore gave Google a significant advantage that competing search services and browsers could not easily offset through downloads or parallel distribution.

The Court also rejected Google's argument that the General Court had wrongly relied on the combined effects of practices, including Revenue Share Agreements, even though the portfolio-based Revenue Share Agreement abuse had been annulled. The General Court was entitled to take those agreements into account as part of the factual and economic context for assessing the effects of the other practices. The Court therefore accepted a contextual analysis of the Android ecosystem, rather than an isolated review of each contractual clause detached from the broader commercial strategy.

As regards the anti-fragmentation obligations, the Court rejected the argument that the General Court had rewritten the Commission's decision. It also rejected Google's challenge to the assessment of objective justifications. The Court recalled that it is for the dominant undertaking to show that conduct caught by Article 102 TFEU is objectively necessary or that its exclusionary effects are counterbalanced by efficiencies benefiting consumers. Google's arguments that the anti-fragmentation obligations were necessary to preserve the integrity and quality of Android were found to be, in substance, challenges to factual assessments which could not be reopened on appeal absent distortion of evidence.

Finally, the Court upheld the General Court's approach to the fine. The partial annulment concerning the portfolio-based Revenue Share Agreements did not require a more substantial reduction, since the General Court had found that the remaining abuses were established and formed part of a single and continuous infringement. The Court therefore confirmed the fine of EUR 4.125 billion.

The way forward

The judgment is likely to become a leading authority on the application of Article 102 TFEU to digital ecosystems. It confirms that competition law remains capable of addressing ecosystem-based strategies, even where the relevant practices are implemented through a combination of contractual arrangements, technical compatibility rules and default or pre-installation advantages. The Court confirmed that the effects of a practice may need to be assessed in the broader economic and technological context in which the dominant undertaking operates.

The judgment also clarifies the role and limits of the as-efficient competitor test. While confirming that exclusionary effects must be proven, the Court rejected the idea that the Commission must always prove that a hypothetical as-efficient rival would be foreclosed. This is particularly relevant in digital markets, where dominance may be reinforced by extreme network effects, access to essential distribution channels and data advantages, meaning that the competitive process may be distorted even before rivals have any realistic opportunity to become equally efficient.

Importantly, the ruling is consistent with the logic of the Digital Markets Act, even though the case was decided under Article 102 TFEU. The act seeks ex ante to prevent gatekeepers from leveraging control over core platform services to favour their own products or restrict business users and consumers. The Google Android judgment confirms, from the competition law side, why such conduct may be problematic: control over an ecosystem can be used not only to compete, but also to structure the conditions under which others may compete.

The case also shows the limits of ex post antitrust enforcement. The Commission decision was adopted in 2018, concerned conduct dating back to 2011, was reviewed by the General Court in 2022, and was finally confirmed by the Court of Justice in 2026. The judgment is therefore a major enforcement victory, but it also illustrates why the EU has moved towards ex ante regulation of gatekeepers through the Digital Markets Act: in fast-moving digital markets, a legally robust competition case may arrive only after market structures have already been significantly shaped.

Finally, the judgment should be read together with the Court's broader body of recent case-law on Article 102 TFEU, including Google Shopping. The emerging message is that dominant undertakings are entitled to compete vigorously and to protect their commercial interests, but not to use control over strategic access points to reduce consumer choice, deter innovation or prevent the emergence of competing services.

TRANSFER PRICING | PROPOSED REVISION TO CHAPTER VII OF THE OECD GUIDELINES ON INTRA-GROUP SERVICES

On 18 June 2026, the OECD released a Public Consultation Document proposing a revision of Chapter VII of the OECD Transfer Pricing Guidelines ("**TP Guidelines**") on intra-group services, which seeks to align the existing guidance with the foundational principles set out in Chapters **I-III**. The discussion draft covers the accurate delineation of intra-group services, the determination of arm's length charges, documentation requirements and include new examples. The revisions are not intended to change the general principles underlying the TP analysis of intra-group services and the guidance on low value-adding intra-group services ("**LVAS**") remains substantially unchanged.

Comments may be submitted until 22 July 2026, with a public consultation scheduled for November 2026.

Accurate delineation at the core of the analysis

The draft introduces the accurate delineation as the first step of the transfer pricing analysis for intra-group services, consistent with Section D.1 of Chapter I.

The guiding principle is that the characterisation of a transaction should be based on its commercial and financial reality rather than on the labels assigned by the parties. Accordingly, the existence of written agreements or service fee descriptions is not, in itself, evidence that services have been rendered. Conversely, the absence of formal arrangements does not preclude a finding that intra-group services have been provided.

The draft also highlights the importance of the functional analysis. The transfer pricing outcome may differ significantly depending on whether the service provider owns relevant assets, makes non-routine contributions and assumes most of the economically significant risks, as compared with a provider performing routine activities under the supervision of another party with limited risk.

Finally, the draft further clarifies that there should be no presumption that a service transaction can be reliably priced using a one-sided method, nor that either the service provider or the service recipient is the tested party. Both determinations should follow from the accurate delineation.

Clarifications on the "Benefit Test"

The benefit test requires an assessment of whether the activity of one group member provides another group member with economic or commercial value that enhances or maintains its business position, having regard to whether an independent enterprise would have been willing to pay for the activity or would have performed it in-house.

The draft provides several clarifications:

- a benefit may take the form of an expected increase in profitability, a reduction in expenses or an improvement in operations. It may arise during or after the period in which the activity is performed, provided that it was reasonably expected at the time of the transaction. Accordingly, a service may be regarded as having been rendered even where the expected benefit is ultimately not realised.
- where the expected benefit does not materialise, multi-year data may be relevant in assessing whether the benefit was reasonably expected.
- the fact that the recipient incurs losses during the years under analysis does not, in itself, mean that no intra-group service has been rendered.
- the benefit test and the determination of the arm's length remuneration remain separate analyses. The existence of an intra-group service should not be denied solely on the grounds that the related charge is not at arm's length.

Further guidance on "Shareholder-activities", "Incidental benefits" and "On-call services"

Shareholder activities

The draft further develops the distinction between shareholder activities and chargeable intra-group services. Shareholder activities are activities performed by an MNE solely because of its ownership interest in one or more associated enterprises and that benefit only the shareholder itself. As such, they do not justify a charge to other group members.

The OECD also distinguishes shareholder activities from the broader concept of "stewardship activities", which may include services provided to other group members, such as planning, emergency management or technical advice.

The draft clarifies that the mere fact that an activity is performed by the parent company's personnel, including senior management does not in itself make the activity a shareholder activity.

Where activities are performed by a shareholder other than solely because of its ownership interest, they may constitute chargeable intra-group services provided that the benefit test is satisfied. Where the parent company also benefits from the activity, the portion of costs attributable to that benefit should not be allocated to other group members.

Incidental benefits and passive association

The draft confirms that incidental benefits do not give rise to a chargeable intra-group service. A benefit is incidental where, at the time the activity is performed, any potential benefit is so indirect or remote that an independent enterprise would not be willing to pay for it.

Similarly, benefits arising solely from passive association with an MNE group, rather than from a specific activity performed for the recipient, do not satisfy the benefit test. This should be distinguished from situations where activities are undertaken to actively promote or enhance the MNE group's attributes for the benefit of particular group members.

On-call services

The draft introduces a new subsection addressing on-call services. It recognises that the mere availability of staff, expertise or equipment may itself constitute a service where an independent enterprise would be willing to pay for such availability, even where actual use is limited.

In assessing the benefit provided, the draft outlines that consideration may be given to the extent to which the service has been used over a period of several years.

Services provided in connection with other transactions

The draft provides additional guidance on situations where intra-group services are connected with other controlled transactions and where the service element may need to be evaluated separately.

For example, activities relating to the administration and enforcement of intellectual property rights should be distinguished from the development, enhancement, maintenance, protection or exploitation (DEMPE) of the underlying intangibles.

The draft also recognises that, in certain circumstances, it may be difficult to distinguish between the provision of services and a transfer of intangibles or rights in intangibles. For example, where a parent company provides strategic advice using proprietary know-how, frameworks or methodologies, the recipient may acquire the ability to independently apply that know-how. In such cases, the arrangement may involve a transfer of know-how rather than the provision of a service.

The characterisation of the transaction is relevant in determining the appropriate transfer pricing analysis and the most appropriate transfer pricing method.

Determination of the arm's length charge

Selection of the most appropriate method

The draft confirms that the most appropriate transfer pricing method should be selected in accordance with the guidance in Chapters I-III. **It should not be assumed that a cost-based method is always appropriate for intra-group services.** Instead, the method selection should be based on the economically relevant characteristics of the transaction, including the functions performed, risks assumed and the use of unique or valuable intangibles. The cost-plus and transaction net margin method (TNMM) remain an appropriate method, where supported by the facts and circumstances.

Pass-through costs

The draft provides additional guidance on pass-through costs. Whether a cost should be recharged with or without a mark-up depends on the facts and circumstances. A recharge without a mark-up may be appropriate where the provider acts solely as a paying entity and the recipient would otherwise have incurred the cost directly. Where the provider contributes value beyond that of a paying entity, a mark-up may be granted.

Transactional profit split method

For the first time, Chapter VII includes dedicated guidance on the transactional profit split method ("**TPSM**"). The draft mentions that TPSM may be appropriate where both parties make unique and valuable contributions, where operations are highly integrated, or where economically significant risks are shared.

Arm's length price and profit

The draft confirms that an arm's length outcome does not necessarily require the service provider to earn a profit. In certain circumstances, a recharge of relevant costs without a mark-up may be appropriate, although this is unlikely where the service provision constitutes the principal activity of the entity or where direct charging is feasible.

Documentation guidance

The draft introduces a dedicated documentation section supplementing Chapter V. While no mandatory minimum documentation requirement is established, the OECD identifies contemporaneous evidence supporting both the benefit test and the pricing analysis as potentially relevant, including service agreements, deliverables, allocation methodologies, cost calculations and supporting third-party invoices.

Low value-adding intra-group services

The draft leaves the existing LVAS framework largely unchanged, including the definition, the 5% mark-up, the cost pool methodology and the associated documentation requirements. It also reiterates that the 5% mark-up should not be used as a benchmark for services falling outside the LVAS regime.

Key takeaways

- **Benefit test documentation**: whether the documentation supports the expected benefit at the time the service was entered into, including in cases where the expected benefit did not materialise.
- **Allocation keys**: whether the allocation keys under the indirect-charge approaches are measurable, relevant to the service, verifiable and applied consistently.
- **On-call arrangements**: whether on-call or retainer arrangements have been appropriately characterised and whether the charge reflects the value of availability, assessed over multiple years where relevant.
- **Service/intangible characterisation**: whether service arrangements involving IP or methodologies confirm the applicable characterisation.
- **Method selection**: whether the choice of TP method and the identification of the tested party follow from the accurate delineation of the transaction (i.e., no particular method, including cost-based methods, is presumed to be the most appropriate for intra-group services).
- **Pass-through costs**: whether on a case-by-case basis the costs recharged without a mark-up are appropriately treated as pass-throughs (i.e., assess whether the intermediary contributes value).
- **LVAS mark-up**: whether the 5% LVAS mark-up is applied only for in-scope services and is not used as a general benchmark for services outside that scope.

LUXEMBOURG EMBRACES AMOUNT B I ACCEPTING OECD TRANSFER PRICING OUTCOMES FOR IN-SCOPE DISTRIBUTION ACTIVITIES

Background

On 13 April 2026, the Direct Tax Administration (*Administration des contributions directes*) (the "**DTA**") published Circular L.I.R. No. 56/2 - 56bis/2 (the "**Circular**"), confirming Luxembourg's adoption of the OECD's simplified and streamlined approach to the arm's length principle for baseline marketing and distribution activities, known as "Amount B".

The Circular is grounded in Articles 56 and 56bis of the Luxembourg law of 4 December 1967 on income tax, as amended (the "**L.I.R.**"), and implements the OECD Pillar One - Amount B Report (the "**Amount B Report**"), published on 19 February 2024 and supplemented on 17 July 2024. Amount B forms an annex to Chapter IV of the OECD Transfer Pricing Guidelines and applies to fiscal years beginning on or after 1 January 2025.

Luxembourg's position

Luxembourg will respect Amount B outcomes where a covered jurisdiction has introduced and correctly applied the framework. In practice, the DTA will:

- refrain from adjusting the remuneration of in-scope transactions where Amount B has been correctly applied in the covered jurisdiction;
- eliminate double taxation through a correlative adjustment; or
- eliminate double taxation via a mutual agreement procedure, if requested.

This acceptance is nonetheless subject to three cumulative conditions being met:

- the other jurisdiction must appear on the OECD's list of covered jurisdictions, which is reviewed every five years;
- Luxembourg must have a double tax treaty in force with that jurisdiction; and
- the covered jurisdiction must have elected to apply Amount B to distributors operating in its market.

The Circular includes an illustrative table and an annexed list of 66 covered jurisdictions, as published by the OECD in June 2024.

Transactions in scope

Amount B covers two categories of eligible transactions:

- **wholesale buy-sell distribution**, where the distributor purchases goods from one or more associated enterprises for wholesale distribution to unrelated parties; and
- **sales agency and commissionaire arrangements**, where the agent or *commissionaire* facilitates the wholesale distribution of goods on behalf of one or more associated enterprises to unrelated parties.

To qualify, the arm's length price must be reliably determined using a one-sided transfer pricing method, with the distributor, agent or *commissionaire* as the tested party. Annual operating expenses must fall within a floor of 3% and a ceiling of 20-30% of annual net revenue.

Amount B does not apply to transactions involving intangibles, services, or commodities, nor where the eligible transaction cannot be accurately delineated.

Pricing methodology

The Transactional Net Margin Method is the reference pricing method under Amount B, with the return on sales as the net profit indicator. A segmented pricing matrix - based on industry category, operating asset intensity and operating expense intensity - produces an arm's length range. A cap-and-collar mechanism adjusts the result where the cost-based return exceeds predefined limits, and a data availability adjustment may apply based on the sovereign credit rating of the covered jurisdiction. The OECD provides an automated pricing tool for these calculations.

Reporting obligations

Taxpayers must disclose the application of Amount B in the relevant fiscal year's tax return. Supporting documentation must be available to demonstrate both the applicability of Amount B and the methodology applied, in line with Paragraph 171 of the General Tax Law (*loi générale des impôts*).

Next steps and timeline

Amount B applies to fiscal years beginning on or after

1 January 2025, meaning that affected groups should already be assessing its impact on current transfer pricing policies.
Groups should:

- identify distribution arrangements that fall within the scope of Amount B.
- verify whether the relevant counterparty jurisdiction appears on the OECD's list of covered jurisdictions and has elected to apply the framework.
- confirm that a double tax treaty is in force between Luxembourg and that jurisdiction.
- ensure that adequate transfer pricing documentation is in place to support the application of Amount B in the relevant tax return.

The OECD's list of covered jurisdictions is subject to review every five years, and groups should monitor any updates that may affect their position.
Luxembourg's adoption of the Amount B framework marks a significant step towards greater certainty and consistency in the transfer pricing treatment of routine distribution activities. By committing to respect Amount B outcomes determined in covered jurisdictions and offering both correlative adjustments and mutual agreement procedures to eliminate double taxation, the DTA has provided multinational groups with a more predictable environment for structuring their distribution arrangements even though the benefits are conditional.

TRANSFER PRICING AND VAT | NO TAXABLE SERVICE WITHOUT A DIRECT LEGAL NEXUS

In its judgment of 13 May 2026 in Case C-603/24, *Stellantis Portugal, S.A.* (successor to General Motors Portugal ("**GMP**")) v *Autoridade Tributária e Aduaneira*, the Court of Justice of the European Union ("**CJEU**") confirmed that transfer pricing adjustments implemented to achieve a predetermined profit margin for a group distributor do not automatically give rise to a VAT-taxable supply of services. The Court reiterated that VAT liability arises only where there is a sufficiently direct link between an identifiable service and the payment received under a legal relationship involving reciprocal obligations, which was not the case here.

The General Motors group and the 2004 transfer pricing agreement

GMP acted as the Portuguese national sales company for the General Motors group, purchasing vehicles from European group manufacturers and distributing them to independent dealers. Where vehicles required repairs, whether under recall campaigns, warranty obligations or roadside assistance programmes, the dealers carried out the work and invoiced GMP. GMP subsequently reported its distribution costs to the manufacturing entities, including repair-related expenses and its own operating costs.

Under a 2004 intragroup transfer pricing agreement, the manufacturing entities issued credit or debit notes adjusting the transfer prices originally charged for the vehicles in order to ensure that GMP achieved a predetermined profit margin. The Portuguese tax authority considered those adjustments to be consideration for repair services allegedly supplied by GMP to the manufacturing entities and issued a VAT assessment of approximately EUR 1.5 million. Following divergent decisions before the national courts, the Portuguese Supreme Administrative Court (*Supremo Tribunal Administrativo*) referred the matter to the CJEU.

The CJEU's reasoning: no direct connection between the adjustment and a specific service

The Court recalled its established case law that a supply of services is subject to VAT only where there is a direct link between the service provided and the consideration received. Such a link requires a legal relationship involving reciprocal obligations, with the payment constituting the actual countervalue of an identifiable service. On the basis of the information before it, the Court concluded that those conditions were not met, for several reasons.

No obligation to provide repair services

The transfer pricing agreement was designed to adjust vehicle transfer prices so as to preserve GMP's target profitability. It did not require GMP to provide repair services to the manufacturing entities in return for compensation.

Adjustment mechanism based on overall operating costs

The transfer pricing calculation took into account GMP's broader distribution cost base, including personnel, marketing and other operating expenses, rather than being linked specifically to repair expenditure. As a result, the adjustments could not be viewed as reimbursement for repair activities alone.

Absence of a direct link to repair costs

Depending on GMP's overall financial position, the mechanism could result in either a payment to GMP or an amount payable by GMP. Furthermore, once the predetermined margin was achieved, GMP was not guaranteed reimbursement of its repair-related expenditure. The Court concluded that the link between any repair services and the adjustments was, at most, only indirect.

The Court also dismissed the Portuguese government's alternative argument that GMP had acted as an intermediary for the original equipment manufacturers under Article 6(4) of the Sixth VAT Directive, finding no basis in the file to support that characterisation.

If not a service: an *a posteriori* modification of the purchase price

If the adjustments are characterised not as service remuneration but as an *a posteriori* modification to the vehicle purchase price, national authorities will need to assess the VAT implications for the taxable base of the original supply, pursuant to Article 11 of the Sixth VAT Directive.

What this means for you

The decision provides useful guidance on the interaction between transfer pricing mechanisms and VAT principles within multinational groups. In particular, it highlights the following practical considerations:

- **contractual substance remains decisive.** A transfer pricing mechanism designed to achieve a target profit margin will not be treated as consideration for services unless the relevant arrangements create genuine reciprocal obligations relating to an identifiable service.
- **broad cost-based calculations weaken the VAT connection.** Where adjustments are determined by reference to a distributor's overall operating costs rather than a specific activity, it becomes more difficult to establish the direct link required for VAT purposes.
- **two-way adjustment mechanisms may undermine the existence of consideration.** Arrangements capable of generating either a payment or a charge, depending on financial performance, are less likely to be regarded as remuneration for a specific service.
- **potential implications for the underlying supply.** Where a transfer pricing adjustment cannot be linked to a taxable service, tax authorities may instead examine whether it affects the taxable amount of the original supply of goods, potentially requiring VAT adjustments elsewhere in the supply chain

Groups operating guaranteed-margin transfer pricing arrangements in distribution or other intragroup supply chains should review whether their agreements are appropriately structured from a VAT perspective. BSP's tax team is available to advise.

CJEU CASE I VAT TREATMENT OF LOAN SERVICING

On 17 June 2026, the General Court of the European Union handed down a judgment in case T-184/25 – *Veronsaajien oikeudenvalvontayksikkö* v *A Oy* on the VAT treatment of loan servicing. The judgment has significant implications for Luxembourg securitisation transactions.

Facts of the case

A Oy is the main establishment of a Finnish banking group and the representative of its VAT group. A large proportion of its property loans were sold to B Oy, its wholly owned subsidiary which does not form part of the same VAT group, at market price, with all rights and obligations passing to B Oy.

Despite the transfer, A Oy remained solely responsible for the management of those loans - handling customer service, monitoring repayments, calculating rates and providing debt collection services - and invoiced B Oy for those services on a cost-plus basis.

A Oy applied to the Finnish Central Tax Board (*Keskusverolautakunta*) for a tax ruling. The Central Tax Board found the credit management services exempt from VAT. The Finnish Tax Recipients' Legal Services Unit appealed that ruling to the Finnish Supreme Administrative Court, which referred three preliminary questions to the Court of Justice of the European Union ("**CJEU**"), asking whether the services were exempt under Article 135(1)(b), (c) or (d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ("**VAT Directive**").

Findings of the Court

On the first question, the General Court held that the exemption under Article 135(1)(b) of the VAT Directive - covering the "**management of credit by the person granting it**" - does not apply to the management services provided by A Oy. The Court held that Article 135(1)(b) exempts the management of credit only where it remains linked to the original credit relationship between the lender and the borrower. Once a lender transfers its loans to a third party, that original legal relationship - which gave rise to the right to benefit from the exemption - ceases to exist, even though the original lender continues to perform the management services substantively. The management services then constitute separately invoiced services provided to the transferee for consideration and fall outside the scope of the exemption. This interpretation is confirmed by the objectives of the exemption: the difficulties connected with determining the tax base and the amount of deductible VAT, which typically arise within the original lender-borrower relationship, do not arise where management services are invoiced on a cost-plus basis to the transferee. It is further supported by the principle of fiscal neutrality, which requires that management services invoiced to a credit transferee be treated consistently for VAT purposes, regardless of whether the supplier is the original lender or any other person.

On the second question, the Court held that Article 135(1)(c) of the VAT Directive - covering **dealings in credit guarantees and other security for money** - does not apply to credit management services, even where the underlying credit serves as a guarantee for a bond issued by another financial institution. Credit management services cannot, as such, be classified as dealings in credit guarantees. Moreover, applying Article 135(1)(c) to such services would render redundant the personal restriction in Article 135(1)(b), which expressly limits the exemption for the management of credit to the person granting it.

On the third question, the Court held that Article 135(1)(d) of the VAT Directive - **covering transactions concerning debts** - does not apply to credit management services either. That provision concerns transactions involving the actual or potential transfer of ownership of funds, or transactions fulfilling the specific, essential functions of such a transfer - characteristics which credit management services do not possess. As with Article 135(1)(c), extending Article 135(1)(d) to cover such services would equally render the personal restriction in Article 135(1)(b) redundant.

What this means for Luxembourg securitisation transactions

This judgment is of considerable importance for securitisation transactions structured under

Luxembourg law. The Luxembourg securitisation framework is widely used by financial institutions to transfer loan portfolios to special purpose securitisation vehicles. Critically, the originator bank typically continues to service those loans after transfer - managing repayments, handling borrower queries and administering associated guarantees - in exchange for a servicing fee.

The General Court has now confirmed that such servicing fees are subject to VAT: the management of credit is only exempt where it forms part of the credit relationship between the current lender and the borrower - a link that is severed upon transfer. Since securitisation vehicles typically carry out VAT-exempt activities, they are generally unable to recover input VAT. Accordingly, any VAT charged on servicing fees represents an irrecoverable cost for the vehicle, potentially increasing the overall cost of the securitisation.

SINGLE TAX CLASS REFORM I GOVERNMENTAL AMENDMENTS TO THE DRAFT LAW

Key takeaways

On 9 June 2026, the Luxembourg Government submitted eleven amendments to draft law No. 8676 introducing the Single Tax Class and individual taxation as the default personal income tax regime from 2028 onwards. The amendments follow the Council of State's opinion of 5 May 2026 and primarily aim to address the constitutional and technical concerns raised during the legislative process.

While the overall structure remains unchanged, the amendments provide important clarifications regarding the operation of the transitional collective taxation regime (Tarif T), the consequences of opting for individual taxation, the treatment of internationally mobile taxpayers, and several technical aspects of the future system.

Clarification of the transitional regime and the election for individual taxation

The most significant amendments concern taxpayers who will remain eligible for collective taxation after the introduction of the Single Tax Class.

The Government has clarified the rules applicable to married couples and registered partners benefiting from the transitional regime available to relationships existing before 1 January 2028. In particular, the amended draft law simplifies the mechanism through which certain taxpayers may leave collective taxation.

For taxpayers who benefit from collective taxation only upon request, such as registered partners and certain cross-border couples, the absence of a request for collective taxation will automatically result in individual taxation. Importantly, this choice remains irrevocable. Once taxpayers leave the transitional collective taxation regime, they may no longer return to it.

The amendments therefore reinforce one of the key features of the reform: taxpayers will need to carefully assess the long-term implications of any decision to move to individual taxation.

Greater legal certainty for cross-border transitional situations

The amendments also provide additional guidance for situations involving changes of residence between Luxembourg and another jurisdiction.

The revised provisions confirm that taxpayers who qualified for the transitional regime before 2028 will not automatically lose access to collective taxation merely because they move abroad and subsequently return to Luxembourg. This clarification is particularly relevant for internationally mobile households and cross-border taxpayers whose residence status may evolve during the transition period.

In addition, the Government has introduced a targeted transitional measure to protect taxpayers affected by divorce or the death of a spouse shortly after the reform enters into force. Without this amendment, certain taxpayers who had elected individual taxation before the start of the new regime could have been excluded from the favourable five-year transitional protection available to divorced and widowed taxpayers. The amended draft law addresses this issue and ensures that access to the transitional regime is preserved in these circumstances.

Technical adjustments to the future tax framework

The amendment package also introduces several technical refinements intended to improve the operation of the future tax system.

Most notably, the Government replaced the original mechanism for adjusting tax brackets following future wage indexations. The amended draft law introduces an automatic adjustment mechanism, thereby addressing concerns raised by the Council of State and providing taxpayers with **greater predictability regarding future tax bracket developments**.

The amendments further refine a number of provisions relating to deductions and tax benefits. Certain deductions remain linked to the transitional collective taxation regime, while additional clarifications have been introduced regarding the allocation of child-related tax benefits and the deductibility of voluntary pension contributions paid on behalf of a spouse or partner.

Finally, several technical corrections have been made to provisions applicable to non-resident taxpayers in order to improve consistency and eliminate uncertainties.

Next steps

The amended draft law will now continue its legislative process before the Chamber of Deputies. Although further amendments remain possible, the Government's proposals confirm the overall direction of the reform while providing greater legal certainty regarding its implementation.

For taxpayers eligible for the transitional regime, the amendments highlight the importance of carefully considering any future election for individual taxation, particularly in light of its irrevocable nature.

For a more detailed overview of the objectives, structure, and practical implications of draft law No. 8676, please refer to our January 2026 newsletter dedicated on the introduction of the Single Tax Class.

NET WEALTH TAX | DEDUCTIBILITY OF INTRAGROUP DEBTS ARISING FROM A TAX-SHARING AGREEMENT

In a judgment of 20 May 2026 (No. 48972), the Lower Administrative Court (*Tribunal administratif*, the “**Tribunal**”), Fifth Chamber, overturned a decision of the Direct Tax Administration (the “**DTA**”) and ruled that debts recorded by a Luxembourg subsidiary under a private-law tax-sharing agreement can be deducted from its business assets for net wealth tax purposes.

Tax consolidation and net wealth tax

Under Article 164bis of the Luxembourg Income Tax Law (the “**LITL**”), Luxembourg companies can join a tax group, so that all their taxable profits are combined at the level of the parent company. The parent then pays corporate income tax (*impôt sur le revenu des collectivités*) and municipal business tax (*impôt commercial communal*) for the whole group. Net wealth tax (*impôt sur la fortune*), however, is not covered by this group regime: each subsidiary in the group remains liable for its own net wealth tax.

The claimant, a Luxembourg limited partnership by shares (*société en commandite par actions*), was a member of a tax group led by a public limited company (*société anonyme*) as the parent company.

The tax consolidation agreement

Since the law does not set out how the tax burden should be shared among group members, the claimant and the other subsidiaries entered into a private tax-sharing agreement (the “**Agreement**”) with the parent company. Under the Agreement:

- each subsidiary had to work out how much tax it would have paid if it had been taxed on its own, and record that amount as a debt owed to the parent company;
- if a subsidiary made a tax loss, no debt was recorded, but that loss was carried forward and taken into account when calculating future debts once the subsidiary returned to profit.

For the 2016 and 2017 tax years, the claimant recorded these debts and deducted them from its business assets in its net wealth tax returns as at 1 January 2017 and 1 January 2018.

The DTA’s position

In March 2022, the tax office (*bureau d’imposition*) refused the deduction, on the basis that the debts were really just the parent company's own corporate and municipal tax liabilities in disguise. The director of the DTA upheld that view on 23 February 2023.

The DTA put forward two arguments. First, under Paragraph 53a(1) of the valuation regulations (*Bewertungsdurchführungsverordnung*, the "**BewDV**"), only a taxpayer (*Steuerpflichtiger*) actually subject to a given tax can deduct the related debt. Since the claimant, as a group subsidiary, was no longer liable for corporate or municipal tax, it could not deduct these debts. Second, applying the substance-over-form principle (*wirtschaftliche Betrachtungsweise*) under the tax adaptation law (*Steueranpassungsgesetz*, the "**StAnpG**”), the DTA argued that the Agreement was simply a way of dressing up the parent's tax debts as intragroup debts to reduce the claimant’s taxable net wealth.

The Tribunal’s analysis

The Tribunal ruled in favour of the claimant and overturned the DTA's decision, applying the substance-over-form principle.

The Tribunal accepted that the debts arose from a private contract rather than from the law. However, it drew a clear distinction between the parent's own tax debt, calculated on the group's combined profit, and the financial risk that the Agreement was designed to cover. Under the group tax regime, the parent must pay tax on profits it did not earn itself, yet no legal mechanism requires the subsidiaries to provide it with the funds it needs. The Agreement addressed exactly that cash-flow and default risk, rather than the underlying tax debt itself.

Three factors led the Tribunal to find that the debts under the Agreement could not be treated as the parent's tax debts:

- the total debts recorded by the subsidiaries did not match the parent's actual tax bill, because the Agreement calculated each subsidiary's share as if it were taxed alone, without applying the specific adjustments that apply under the group tax regime;

- the fact that profitable subsidiaries recorded a debt while loss-making ones did not was consistent with the Agreement's purpose of covering financial risk and did not show that the arrangement was artificial;
- the DTA's reliance on the legal provision under which group members are jointly liable for the group's tax debts, was rejected. That rule exists solely to protect the tax authority from a default of the group head and does not address the financial risk that the parent bears towards its other creditors.

As for the DTA's argument that the arrangement amounted to an abuse of law, the Tribunal rejected it as well. The DTA had not even cited the relevant provisions and had not shown how its conditions were met, while the claimant had put forward sound non-tax reasons for entering into the Agreement.

The Tribunal concluded that the debts under the Agreement were neither the parent's tax debts nor notional tax debts of the claimant. Paragraph 53a(1) BewDV did not prevent their deduction and the other conditions for deductibility under Paragraph 62(1) of the valuation law (*Bewertungsgesetz*) were not in dispute.

Consequences

This judgment confirms that, where the law provides no mechanism for sharing the tax burden within a group, private tax-sharing agreements are a valid way of managing the financial risks that arise from group taxation and that debts created by such agreements remain contractual debts for net wealth tax purposes. Group subsidiaries with similar agreements may be able to deduct these debts from their business assets, provided the debts are real and legally enforceable. Groups that have not yet set out the sharing of tax-related financial risks in a written agreement may wish to consider doing so, making sure there are genuine non-tax reasons behind it.

This is a first-instance decision and the DTA may appeal to the Higher Administrative Court (*Cour administrative*). Practitioners and taxpayers should follow any further proceedings closely.

LUXEMBOURG CASE LAW | HIGHER ADMINISTRATIVE COURT RULES ON THE EXCLUSION OF FOREIGN REAL ESTATE AND RELATED DEBT FROM A LUXEMBOURG TAXPAYER'S NET WEALTH TAX BASE

Facts

In a judgment of 21 April 2026 (No. 52991C), the Higher Administrative Court (*Cour administrative*) dismissed an appeal brought by a Luxembourg *société à responsabilité limitée* (the "**Company**") acting through its liquidator. The Company held a 49.95% stake in a Polish entity (the "**Polish Entity**") comparable to a Luxembourg *société en commandite simple*. The Polish Entity was fiscally transparent under Polish and Luxembourg law and therefore disregarded for tax purposes. As a result, **its entire assets and liabilities** were deemed directly attributable to, and taxable in the hands of, the Company, including real property under construction in Poland financed by bank debt (the "**Immovable Property**"). For the financial years 2013 and 2014, the Company included those elements in its unitary value (*valeur unitaire*) for Luxembourg net wealth tax (*impôt sur la fortune*, "**NWT**") purposes. However, the tax authorities excluded both the asset and the related liability from the Company's NWT basis by virtue of the Luxembourg-Poland double tax treaty (the "**Lux-Poland DTT**"), a position upheld by the Lower Administrative Court (*Tribunal administratif)* on 30 April 2025 and confirmed on appeal.

Higher Administrative Court's reasoning

Domestic law and Tax Treaty framework

As a Luxembourg-resident capital company, the Company was subject to unlimited NWT on its worldwide fortune under the *Vermögenssteuergesetz* ("**VStG**") of 16 October 1934. Under Luxembourg domestic law, this includes assets held through fiscally transparent entities wherever located. The unitary value is determined under the *Bewertungsgesetz* ("**BewG**") of 16 October 1934, which excludes treaty-exempt assets from the taxable base (§§ 59 and 73 BewG). Under Articles 6(2) and 23(1) of the Lux-Poland DTT, Polish real estate is taxable exclusively in Poland and therefore exempt from Luxembourg NWT. As the Lux-Poland DTT is silent on debt-deductibility (as is the OECD Commentary on Article 22 of the OECD Model Tax Convention), Luxembourg domestic law fills the gap: §§ 62 and 74 BewG render non-deductible any debt economically linked to an exempt asset from NWT. The Higher Administrative Court confirmed the exclusion of both the Immovable Property and the financing debt.

Non-aggravation principle under the double tax treaty

The Company invoked the non-aggravation principle, relying on the Higher Administrative Court's prior judgment No. 19407C of 10 August 2005, under which a double tax treaty cannot worsen a taxpayer's domestic position. The Higher Administrative Court distinguished that case: in 2005, the double tax treaty risked blocking a deduction that domestic law would otherwise have permitted. Here, the non-deductibility of the financing debt flows directly from Luxembourg domestic law (§§ 62 and 74 BewG) as an automatic corollary of the asset's exemption - not from any prohibition in the DTT. The non-aggravation principle was therefore inapplicable.

Conformity with EU law - freedom of establishment

The Company argued that the combined effect of Luxembourg law and the Lux-Poland DTT breached the freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union ("**TFEU**")) or, alternatively, the free movement of capital (Articles 63-66 TFEU). The Court held that Article 49 TFEU applied: the 49.95% stake gave the Company decisive influence over the Polish Entity, qualifying the investment as an exercise of the freedom of establishment. This conclusion is unaffected by the Polish Entity's fiscal transparency, which is a purely tax characterisation that does not alter the commercial reality of the cross-border investment.

While acknowledging, with reference to several Court of Justice of the European Union ("**CJEU**") cases, e.g., *Marks & Spencer* (C-446/03), *Bevola and Jens W. Trock* (C-650/16) and *W AG* (C-538/20), that refusing to account for a transparent subsidiary's assets and liabilities could in principle constitute a disadvantageous treatment, the Higher Administrative Court rejected the challenge for lack of objective comparability. Applying *Timac Agro Deutschland* (C-388/14) and *W AG* (C-538/20), it held that, once Luxembourg had ceded taxing rights over the Polish property under the DTT, **a company holding a domestic debt-financed asset is not in an objectively comparable situation to one holding a treaty-exempt foreign asset**. No restriction on the freedom of establishment arose.

The so-called "definitive losses" exception developed under *Bevola and Jens W. Trock* (C-650/16) to address situations where a foreign permanent establishment generates losses that are permanently unrecoverable in the foreign state and cannot be taken into account at the level of the parent holding company in its state of residence was equally rejected: since Poland levies no NWT, no negative NWT basis could ever arise in that jurisdiction, and the Company already benefited from full NWT exemption under the Lux-Poland DTT - a further deduction in Luxembourg would amount to a double benefit. *Deutsche Shell* (C-293/06) was distinguished (the loss there was by nature only recognisable in the parent's state), as was *Heinrich Bauer Verlag* (C-360/06) (which concerned a differential valuation method, not a full exclusion). Finally, the Higher Administrative Court declined to refer a preliminary question to the CJEU, invoking the *acte clair* doctrine - which holds that a national court of last resort is not required to refer a question of EU law to the CJEU where the correct interpretation is so obvious as to leave no room for reasonable doubt, as established in CILFIT (C-283/81) and confirmed in Consorzio Italian Management (C-561/19) - as articulated in the CJEU's judgment in *Consorzio Italian Management* (C-561/19). The appeal was dismissed in its entirety.

Practical implications

This judgment establishes a clear symmetry principle: where a foreign asset is exempt from Luxembourg NWT under a double tax treaty, the related financing debt is correspondingly non-deductible under Luxembourg domestic law. EU law, in particular the freedom of establishment, does not override this outcome; where the other contracting State levies no equivalent net wealth tax, no definitive unrecoverable loss can arise, and no double taxation is suffered.

LUXEMBOURG CASE LAW | ADMINISTRATIVE COURT REQUALIFIES AN EXCESSIVE PROPERTY TAX RATE AS AN UNLAWFUL REMUNERATIVE CHARGE

The Municipality of Leudelange's property tax multiplier has been annulled as an unlawful remunerative charge with no basis in Luxembourg law. In a decision dated 19 May 2026 (Administrative Court, No. 53928C), the Luxembourg Administrative Court (*Cour administrative*) held that the exceptional increase of the Grundsteuer B1 multiplier adopted by the Municipality of Leudelange could no longer be regarded as a genuine property tax. The Court found that the measure had become a remunerative charge (*taxe rémunératoire*) - a levy designed to recover the cost of a specific public benefit from those considered to receive it, for which no legal basis exists under Luxembourg law.

Background and context

In 2021, the Municipality of Leudelange increased the multiplier applicable to Grundsteuer B1, the property tax category covering industrial and commercial properties, from **500% to 4,000%** for the 2022 tax year and maintained the same rate for 2023.

The municipality justified this significant increase by reference to two considerations:

- the anticipated costs of renovating the infrastructure located within its commercial activity zones; and
- the reduction of its municipal revenues following the reform of the municipal financing system introduced by the Luxembourg law of 14 December 2016 establishing the Municipal Equalisation Fund (*Fonds de dotation globale des communes*).

A company challenged the 2023 property tax assessment. The Administrative Tribunal annulled the assessment, and the municipality appealed before the Administrative Court.

The legal question

The central question was whether the disputed levy retained the legal character of a property tax or had, by reason of its purpose and structure, become a remunerative charge imposed on a defined category of property owners, for which no legal basis exists under Luxembourg law.

The Court's reasoning

The Administrative Court examined the true legal nature of the measure rather than its formal designation as a property tax.

The starting point was § 1 of the Abgabenordnung (AO, the General Tax Code applicable in Luxembourg), which defines a tax as a monetary contribution imposed without any direct counterpart for a specific public service or infrastructure. That absence of counterpart is an essential feature of any tax and distinguishes it from a remunerative charge (*taxe rémunératoire*), which is a levy designed to recover the cost of a specific public benefit from those considered to receive it.

While the Grundsteuergesetz (GrStG, the Luxembourg Property Tax Law) permits municipalities to apply different multipliers across property categories to reflect the varying burdens that different land uses place on the municipality, that differentiation has limits. It cannot go so far as to create a direct link between the levy and the cost of infrastructure provided to the taxpayers concerned.

The Court found that the municipality had expressly designed the 4,000% multiplier to finance the future renovation of infrastructure in its commercial zones, with the proceeds allocated almost exclusively to owners of B1 properties located in those zones. Critically, the municipality's own arguments and the figures it submitted made this direct link apparent on the face of the record. By establishing that direct link, and in effect admitting it, the municipality altered the legal nature of the measure. The levy no longer operated as a genuine property tax; it displayed instead the characteristics of a remunerative charge (*taxe rémunératoire*).

Luxembourg law provides no legal basis for municipalities to introduce such a charge through the property tax mechanism. The municipality could not rely on its fiscal autonomy to convert a general tax into an instrument for recovering specific infrastructure costs from a defined group of property owners. The Grand-Ducal decree approving the municipal deliberation was therefore also found to be unlawful.

A further practical lesson is that municipalities that publicly justify rate increases by reference to the specific costs of infrastructure serving a defined category of property owners risk having the measure recharacterized. The municipality's own statements that the B1 proceeds were intended to "*précisément couvrir les frais de rénovation des infrastructures*", were treated by the Administrative Court as the decisive basis for the requalification.

Conclusion

The Administrative Court confirmed the annulment of the 2023 property tax assessment, albeit on different legal grounds from those adopted at first instance. The Administrative Tribunal had annulled the assessment on substantive grounds, finding that the eight-fold increase in the B1 rate, imposed on B1 property owners alone while all other rates were left unchanged, violated the constitutionally protected principle of proportionality and the inherent principle of equality before taxation. The Administrative Court confirmed that outcome on a distinct substantive basis, requalifying the levy as an unlawful remunerative charge under § 1 AO.

The decision establishes an important limitation on municipal fiscal autonomy in Luxembourg. While municipalities enjoy broad discretion in fixing property tax rates and differentiating between categories of property, they cannot use the property tax mechanism to finance infrastructure intended to benefit a specific group of taxpayers.

Where a levy establishes such a direct connection between taxation and a particular public benefit, it ceases to satisfy the legal characteristics of a tax and becomes a **"remunerative charge"** (*taxe rémunératoire*), for which Luxembourg law currently provides no statutory basis.

What this means for you

Any company that paid the Leudelange Grundsteuer B1 at the 4,000% rate for the 2022 or 2023 tax years should assess whether it may have grounds to seek reimbursement or to challenge outstanding assessments.

More broadly, the decision provides useful authority since the Administrative Court's requalification analysis establishes that Luxembourg courts will look through the formal classification of a levy to examine its true legal nature: a municipality cannot convert a general property tax into an instrument for recovering specific infrastructure costs from a defined group of property owners, regardless of the breadth of its fiscal autonomy.

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