BSP Newsletter

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SUMMARY

INTERNATIONAL FINANCIAL SANCTIONS I CSSF UPDATES ITS FAQ

On 30 September 2025, the CSSF published an updated version of its Frequently Asked Questions (FAQ) on international financial sanctions. This update replaces the previous version dated March 2022 and substantially expands the FAQ to reflect the current regulatory framework applicable in Luxembourg.

The revised FAQ provides detailed guidance for professionals under CSSF supervision on how to implement and comply with the law of 19 December 2020 (the "**2020 Law**") on restrictive measures in financial matters, the Grand-Ducal Regulation of 14 November 2022, and CSSF Regulation 12-02, as amended.

Main changes compared to the 2022 version

Expanded scope and structure

The FAQ now includes:

- 17 questions (previously 12) covering new topics such as indirect ownership, control below the 50% threshold, the treatment of homonyms, and the meaning of "without delay" when applying restrictive measures.
- New references to the Grand-ducal Regulation (question 1).

The CSSF now expressly includes the Grand-Ducal Regulation of 14 November 2022 as part of the applicable framework.

Clarified publication sources (question 2)

The CSSF now refers to both its own "Financial Crime" and "War in Ukraine" sections, as well as the Ministry of Finance's official portal, as the main official sources for sanctions-related documentation.

Clarification on consolidated lists (question 8)

The FAQ reiterates that no consolidated list exists at national level and refers to the CSSF's thematic sections, which provide access to the consolidated sanctions lists maintained by the European Union and the United Nations, as already set out in the CSSF's AML/CFT FAQ.

Integration of the FIU reporting obligation (question 9)

The FAQ explicitly clarifies that any suspicion of money laundering, terrorist financing, or circumvention of financial sanctions (including attempted circumvention) must be reported without delay to the Luxembourg Financial Intelligence Unit (FIU) via the goAML platform, in line with Article 5(1)(a) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing.

New reporting duties for credit institutions (question 12)

The FAQ introduces an explicit obligation for credit institutions to copy the CSSF on their annual reports to the Ministry of Finance regarding deposits exceeding EUR 100,000 held by sanctioned persons or entities subject to financial restrictive measures, under Articles 5g of Regulation (EU) No 833/2014 and 1z of Regulation (EU) No 765/2006. This clarification is grounded in Article 33(2) of CSSF Regulation 12-02 and Article 1 of the Grand-Ducal Regulation of 14 November 2022, which both require professionals to inform the competent authorities without delay and to send a copy of such notifications to the CSSF.

Independent reporting by all professionals in a contractual chain (question 13)

The FAQ confirms that when several professionals (e.g. depositary, transfer agent, intermediary) are contractually linked in the same operation, each remains individually responsible for reporting cases of financial restrictive measures to the Ministry of Finance and simultaneously copying the CSSF, even if another party in the chain has already done so. This approach ensures that both authorities receive complete and consistent information and enables the CSSF to assess the sector's overall compliance. Professionals are also expected to maintain adequate internal policies and procedures to identify and manage situations subject to financial restrictive measures.

Application of restrictive measures below 50% ownership (question 14)

The FAQ clarifies that financial restrictive measures under Regulations (EU) No 269/2014, 833/2014 and 765/2006 may apply even where a sanctioned person holds less than 50% of an entity's shares, provided

there is sufficient evidence that the person exercises control over the entity or its beneficial owner. The CSSF refers to the European Commission's consolidated FAQ, which recognises that control may also be established through de facto influence rather than shareholding alone. This approach was further confirmed by the General Court of the European Union (T-1106/23, 29 January 2025), which held that indicators such as veto rights, appointment powers or other contractual mechanisms may demonstrate effective control. In practice, this means that financial sector professionals must go beyond a simple shareholding analysis and assess whether a sanctioned person has the ability to influence or direct the entity, even with a minority stake.

Indirect ownership by sanctioned persons (question 15)

The FAQ confirms that financial restrictive measures also apply where a sanctioned individual or entity holds, directly or indirectly, more than 50% of the ownership or control in another entity. Such entities are to be treated as frozen assets, and the full set of EU restrictive measures applies. This clarification aims to prevent circumvention through intermediaries or layered ownership structures. Financial professionals are therefore required to perform enhanced due diligence on ownership and control chains to identify any indirect links with sanctioned persons and to apply the corresponding freezing, reporting, and notification obligations to the Ministry of Finance and the CSSF.

Handling of homonyms (question 16)

The FAQ provides guidance on cases where a client shares the same or a similar name as a listed person under UN, EU or national sanctions. Professionals must not rely solely on identical names to conclude a match but should conduct thorough due diligence to verify the client's identity, including checks of date and place of birth, nationality, address, and other distinguishing elements. In case of doubt, professionals are required to contact the Ministry of Finance and suspend any transactions until the situation is clarified.

Meaning of "without delay" (question 17)

The FAQ provides a detailed interpretation of the term "without delay" in the context of financial restrictive measures. It confirms that professionals are required to identify and apply such measures as soon as a relevant State, person, entity, or asset has been detected. According to the Ministry of Finance's guidelines, the term should be understood as ideally within a few hours of a United Nations designation, in order to prevent any movement or dissipation of funds subject to EU restrictive measures.

In line with United Nations Security Council Resolution 1373 (2001), the obligation also applies where there are reasonable grounds to suspect or believe that a person or entity is involved in terrorism or terrorist financing.

The same requirement applies to notifications to the Ministry of Finance and the CSSF under Article 33(2) of CSSF Regulation 12-02. Professionals should therefore ensure that their internal procedures and escalation mechanisms enable the detection, freezing, and reporting of relevant assets without delay, in accordance with Article 33(3) of the same Regulation.

The updated FAQ provides clearer operational guidance to professionals under CSSF supervision and reinforces the expectation that financial restrictive measures be implemented and reported without delay. It also confirms the close coordination between the CSSF and the Ministry of Finance in the monitoring and enforcement of international financial sanctions.

AML I CSSF UPDATES EDESK PROCEDURE AND FAQ FOR MARKET ENTRY FORM

Communication

On 30 September 2025, the CSSF published a communication on the AML/CFT Market Entry Form ("**MEF**"). The MEF aims at collecting standardised key information in relation to money laundering and terrorist financing risks which must be submitted by funds (to be) authorised (including ELTIFs irrespective of AIF type) and investment fund managers ("**IFMs**") (to be) authorised or registered that are supervised for AML/CFT purposes by the CSSF.

Requests triggering the submission of the MEF

- Fund: upon authorisation (including authorisation/registration under a European label, i.e. ELTIF, EuSEF or EuVECA)
- Fund: adding (a) sub-fund(s) **only if** at least one of the following events are triggered by the new sub-fund(s):
  - new initiator(s);
  - new founder(s);
  - sub-fund(s) designed for a limited number of investors;
  - additional/new type of investments
- ELTIF (other than Part II UCI, SIF, SICAR): upon notification of (a) new (change of) manager(s)/director(s), "RR" or "RC"
- IFM: upon authorisation
- IFM: modification of qualified shareholding
- IFM: upon registration as an AIFM pursuant to Article 3 of the AIFM Law.

These requests are also defined as "parent requests" which trigger the parallel submission of the MEF.

Initiation and submission

The CSSF reminds that the MEF must be initiated and submitted by the compliance officer in charge of the control of compliance with the professional ("**RC**") or the person responsible for compliance with the professional obligations ("**RR**").
Nevertheless, the completion of the MEF may also be assigned via eDesk to another employee of the respective entity or even third party, but the final responsibility for the correct completion remains with the RC and RR.

Removed sections

Since 23 September 2025, the sections "Portfolio Manager(s)" and "Investment Advisor(s)" for authorised and registered IFMs have been removed by the CSSF in the MEF. These sections have been removed by the CSSF in any already existing MEF with status "Draft" or "Reopened" (incl. MEF submitted before this date) even if they were completed beforehand. However, MEFs initiated before 23 September 2025 with the status "Closed" will retain these sections.

CSSF reminder

The CSSF also takes the opportunity to remind the persons responsible for the completion of the MEF that regular monitoring must be carried out on a MEF that has already been initiated (i.e. a draft MEF) but has not been submitted to the CSSF after one year. In that case such MEFs are expected to either be completed and submitted, or deleted.

FAQ update

On the same date, the CSSF updated the related FAQ for the MEF ("**FAQ**"). As stipulated in our last article on the FAQ, it provides clarifications on the circumstances in which the MEF must be submitted or updated, and on the information and documents required by the CSSF.

Overview of changes

The FAQ update includes revisions to the questions 1, 5 and 6. **Question 1** has removed the requirement for authorised investment fund managers ("**IFMs**") to complete and submit the MEF, in the case of (i) approval of an additional licence or a licence extension; and (ii) mergers.
Question 5 clarifies that managers/directors already approved within the same specific fund or IFM do not have to provide new documentation (CV, declaration of honour etc) when a new MEF is submitted.
Lastly, **question 6** clarifies that documentation for a new RC can only be submitted via the E-Desk if the RC changes at the same time as a trigger event for the submission of a MEF occurs.
The updated FAQ may be found here.

MIFID II/MIFIR REVIEW | LATEST DEVELOPMENTS

Draft amendment regulation to amend Commission Delegated Regulation (EU) 2017/567

The latest legislative amendments to MiFIR were introduced by Regulation (EU) No 2024/791 ("**MiFIR review**"). The MiFIR review removed barriers to the creation of three consolidated tape providers (for bonds, shares and ETFs and over-the-counter derivatives) and enhanced market transparency and competitiveness of EU markets in the global landscape. The parallel MiFID II amendment (Directive (EU) 2024/790) contains complementary provisions on consolidated tapes and transparency.

As it is necessary to reflect and implement the amendments to MiFIR and MiFID II in Commission Delegated Regulation (EU) 2017/567 with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, the European Commission has published on 8 August 2025, a draft Commission Delegated Regulation which shall amend the Delegated Regulation (EU) 2017/567 by:

- Replacing the ***'free float'*** **criterion with the** ***'market capitalisation'*** **criterion** (with a EUR 100 million threshold for shares) in determining what constitutes a 'liquid market' and clarifying other issues regarding liquidity assessments for equity instruments.
- Deleting provisions that clarify what constitutes a "**reasonable commercial basis**" for trading venues and systematic internalisers, following changes to Article 13 of MiFIR and the introduction of a new empowerment for ESMA to develop regulatory technical standards on this concept.
- Deleting the provision specifying the **size specific to financial instruments** for systematic internalisers in respect of non-equity instruments, following the deletion of pre-trade transparency requirements for systematic internalisers in respect of non-equity instruments.
- Specifying what constitutes **post-trade risk reduction** ("**PTRR**") services for the purposes of the exemption in Article 31(1) MiFIR, which expands beyond portfolio compression services to exempt PTRR services from transparency requirements, trading obligations, and best execution requirements. The regulation specifies that PTRR services include portfolio compression, rebalancing, and basis risk optimisation.
- Deleting publication requirements for **portfolio compression services**, following the deletion of the obligation in Article 31 for investment firms and market operators to make public through an APA the volumes and timing of transactions subject to portfolio compressions.

Adoption by the European Commission is planned for the fourth quarter of 2025. The provisions relating to liquid markets for equity instruments will apply from 2 March 2026, while other provisions will have different application dates as specified in the regulation.

ESMA's Second Public Statement on transition for application of the

On 10 October 2025, ESMA issued its second public statement providing practical guidance to market participants on the transition for applying certain provisions following the MiFID II/MiFIR review. The statement addresses key areas including commodity derivatives and emission allowances position management, the new Systematic Internaliser regime, the single volume cap mechanism and revised transparency rules for bonds, structured finance products, emission allowances and equity instruments.

DORA | ESA GUIDE ON OVERSIGHT ACTIVITIES FOR CRITICAL ICT THIRD-PARTY PROVIDERS

The European Supervisory Authorities (being the EBA, EIOPA, and ESMA, **"ESAs**") have published a comprehensive **guide** (the "**Guide**") on oversight activities for critical Information and Communication Technology (ICT) third-party providers (**"CTPPs**") under the Digital Operational Resilience Act (Regulation (EU) 2022/2554) ("**DORA**"). This Guide provides a detailed framework for how the ESAs will oversee the most critical technology providers serving the EU financial sector, marking a significant step in strengthening digital operational resilience across European financial markets.

Why DORA oversight matters?

The DORA oversight framework represents a groundbreaking approach to managing ICT risks in the financial sector. Recognising the growing reliance of financial entities on external technology services, DORA introduces a comprehensive oversight mechanism for CTPPs. The framework addresses potential systemic and concentration risks arising from the financial sector's dependence on a limited number of ICT providers, with studies showing that more than 30% of significant banks' ICT budgets are allocated to just 10 providers.

The ESAs are empowered to oversee CTPPs on a pan-European scale. This oversight complements, rather than replaces, financial entities' own responsibilities for managing ICT-related risks and the supervision already exercised over them by competent authorities.

How the oversight framework works?

Designation of critical providers

The ESAs conduct an annual risk assessment to designate ICT third-party service providers as critical based on four key criteria:

- systemic impact on financial services,
- the systemic importance of financial entities relying on the provider,
- the degree of reliance on the provider's services, and
- the substitutability of the provider.

The assessment follows a two-step process, applying both quantitative and qualitative criteria to identify providers whose failure could significantly impact the EU financial sector.

Governance structure

The oversight framework operates through a clear governance structure: the Oversight Forum serves as the standing committee for DORA oversight, while the Joint Oversight Network monitors and coordinates oversight activities. For each CTPP, a Lead Overseer is appointed to manage oversight, supported by Joint Examination Teams composed of ESAs and competent authority staff who conduct day-to-day oversight activities.

Oversight activities and tools

The ESAs employ a range of proportionate, risk-based oversight tools: ongoing monitoring through regular interaction with CTPPs, information requests to address specific concerns, general investigations for formal risk area reviews, and on-site inspections for detailed examinations. The framework emphasizes transparency and evidence-based decision-making while protecting confidential information.

Recommendations and follow-up

Following examinations, the ESAs can issue non-binding recommendations to CTPPs addressing identified deficiencies in areas such as ICT security requirements, service terms and conditions, or subcontracting arrangements. CTPPs have 60 days to notify their intention to follow recommendations or provide reasoned explanations for non-compliance. If explanations are deemed insufficient, the ESAs may publicly disclose the CTPP's non-compliance, ensuring transparency and accountability in the process.

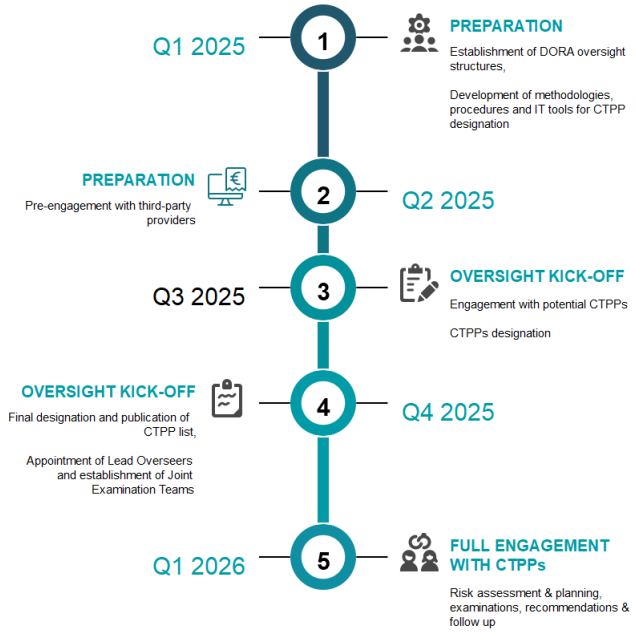
Expectations for CTPPs

The Guide establishes clear expectations for CTPPs regarding ESA interactions. Both EU and non-EU CTPPs must designate coordination points or establish EU subsidiaries with sufficient corporate substance to handle oversight. These entities must provide comprehensive information about services to EU financial entities, maintain adequate technical and

financial resources, employ appropriately skilled staff, and provide suitable facilities for on-site inspections.

The DORA oversight framework represents a significant evolution in financial sector regulation, establishing the first comprehensive EU-wide oversight mechanism for critical ICT service providers. By creating a structured, transparent, and proportionate approach to managing technology risks, the framework aims to enhance the digital operational resilience of the European financial system while fostering innovation and competition in the ICT services market.

First year of CTPPs oversight - timeline



Click here to view a larger version of the timeline

PACKAGE CRD VI AND EMIR 3 I TRANSPOSITION IN LUXEMBOURG LAW

The Draft Law No. 8627 (the "**Draft Law**"), was presented to the Luxembourg Parliament on 2 October 2025, aiming to transpose:

- the Capital Requirements Directive VI : Directive (EU) 2024/1619 of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (Directive 2013/36/EU) ("**CRD VI**"),
- the EMIR 3 Directive: Directive (EU) 2024/2994 of 27 November 2024 amending Directives 2009/65/EC, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk arising from exposures towards central counterparties and of counterparty risk in centrally cleared derivative transactions ("**EMIR 3 Directive**");

and to implement:

- the EMIR 3 Regulation, Regulation (EU) 2024/2987 of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets ("**EMIR 3 Regulation**", and together with the EMIR 3 Directive, "**EMIR 3 Package**").

Finally, the Draft Law introduces targeted amendments to several laws, such as, the amended law of 5 April 1993 on the financial sector and the amended law of 18 December 2015 relating to the failure of credit institutions and certain investment firms.

Third-country regime – core aspect of the CRD VI transposition

The main objective of the Draft Law is to transpose CRD VI, in particular the framework set out under Article 21c, into Luxembourg law. This provision, previously discussed in an earlier article (see July 2024 Newsletter), establishes that third-country firms providing cross-border core banking services into the EU - without operating through a subsidiary or a branch - will be required to establish a branch in a Member State, and obtain authorisation. The authorisation will become a condition for conducting banking activities within Luxembourg, subject to certain exemptions. The Draft Law provides some background on the scope of application of this rule.

EMIR 3 Package applicable in Luxembourg law

Furthermore, the Draft Law incorporates aspects of the EMIR 3 Directive and implement the EMIR 3 Regulation into Luxembourg's legal framework. It addresses, inter alia, issues concerning concentration risks arising from exposures to systemically important third-country central counterparties and it establishes a framework to monitor and reduce these risks. Banks are required to prepare plans, which will be reviewed by the CSSF. The CSSF may also mandate risk mitigation measures if the identified concentrations raise prudential concerns.

Next steps

The Draft Law is currently under consideration by the Luxembourg Parliament and must normally be passed by 10 January 2026.

CSRD | FY2024 SUPERVISORY FINDINGS AND FY2025 ENFORCEMENT PRIORITIES

The Corporate Sustainability Reporting Directive (CSRD), adopted on 14 December 2022, sets out a EU framework requiring certain companies to comply with sustainability reporting and due diligence obligations. Initially, Member States were required to transpose the CSRD into national law by 6 July 2024. To allow companies additional time to prepare, the **Stop-the-Clock Directive**, part of the EU's broader Omnibus package, was adopted on 15 April 2025, postponing the application of reporting obligations. Member States now have until 31 December 2025 to transpose the **CSRD** into national law.

In Luxembourg, **Draft Law No. 8370** to transpose the CSRD was introduced on 29 March 2024 and amended on 6 May 2025 to implement the Stop-the-Clock Directive. The draft law is still under review. Therefore, reporting under the CSRD and the European Sustainability Reporting Standards (ESRS), which set out the detailed rules on how companies should report under the CSRD, remains voluntary for FY 2024.

Despite the voluntary nature of reporting in Luxembourg, the first wave of CSRD/ESRS reporting across the EU has now concluded. Both the CSSF and ESMA have issued fact-finding reports on FY2024 sustainability reports, providing valuable insights into the quality and completeness of early disclosures. ESMA has also released its European Common Enforcement Priorities (ECEP) for FY2025, signalling key areas of supervisory focus for the year ahead. These reports offer important guidance for Luxembourg issuers as they prepare for reporting in future financial years.

CSSF fact-finding on FY2024: strong adoption but room for improvement

The CSSF's review of Luxembourg issuers preparing 2024 sustainability reports reveals strong voluntary early adoption, with approximately 60% following the full ESRS framework and around 63% obtaining limited assurance from auditors. This signals a clear commitment to sustainability reporting despite the absence of a national legal obligation at the time. The results of the CSSF's review of corporate practices can be found **here**.

Key areas for improvement identified by the CSSF

The CSSF identified several areas requiring improvement:

- Inconsistent connection between material topics and impacts, risks and opportunities (IROs) making it difficult for users to understand.
- Excessive number of IROs per issuer (averaging 39 per issuer) with unclear connection to material topics.
- Limited disclosure of unmitigated (gross) impacts. This prevents users from understanding the true scale of a company's adverse impacts before any mitigation efforts are considered.
- Only 26% disclosed anticipated financial effects and 58% provided time horizons, limiting forward-looking analysis.

ESMA fact-finding on FY2024: EU-wide perspective

ESMA's fact-finding exercise covered 91 issuers across 23 Member States. About 66% reported under the ESRS as mandatory following CSRD-driven amendments, while the remaining 34% voluntarily adopted the ESRS framework in Member States where the CSRD had not yet been transposed. The results of ESMA's review of corporate practices can be found **here**.

Around 62% of issuers met the IRO-1 objective (relating to the identification of material IROs), though many disclosures were boilerplate and lacked issuer-specific judgements.

ESMA encouraged issuers to avoid boilerplate language, map IROs to ESRS topics and sub-topics and clearly signpost entity-specific disclosures.

ESMA: ECEP for FY2025

ESMA addressed the following topics for FY 2025 ECEP in its **statement**:

- **IFRS financial statements** - issuers should transparently disclose how global tensions impact financial performance, valuations, impairments, tax assets and going concern assumptions.
- **Sustainability statements (ESRS/CSRD)** - issuers should clearly describe their double materiality assessment (DMA) and how material IROs were

identified, ensuring disclosures are specific and not boilerplate.

- **ESEF (European Single Electronic Format) Reporting** - ESMA continues to identify common errors found in the Statement of Cash Flows in digital filings.

Outlook and next steps

The sustainability reporting landscape continues to evolve. With the Omnibus package potentially reshaping the CSRD's scope and European Financial Reporting Advisory Group (EFRAG) preparing updates to the ESRS, companies must adapt to shifting requirements. The CSSF encourages issuers to stay ahead by monitoring legislative developments and refining compliance plans, while ESMA advises issuers, auditors and supervisors to integrate the findings into their FY2025 reporting cycle.

EU INSOLVENCY REGULATION | ANNEXES UPDATED TO REFLECT LUXEMBOURG PROCEDURES

Regulation (EU) 2025/2073 of 8 October 2025 amending Regulation (EU) 2015/848 on insolvency proceedings to replace its Annexes A and B was published in the Official Journal on 17 October 2025 (the "**Amendment Regulation**"). The Amendment Regulation updates the lists of insolvency proceedings and insolvency practitioners applying to each Member State, as outlined in Annexes A and B of Regulation 2015/848 ("**Insolvency Regulation**").

For Luxembourg, Annex A now includes the following judicial reorganisation proceedings:

- judicial reorganisation proceedings in the form of a collective agreement (*réorganisation judiciaire par accord collectif*),
- judicial reorganisation proceedings in the form of a transfer by court order (*réorganisation judiciaire par transfert par décision de justice*), and
- reorganisation procedure in the form of a mutual agreement (*réorganisation judiciaire aux fins d'obtenir un sursis en vue de permettre la conclusion d'un accord amiable*).

Annex B is also updated to include Luxembourg *mandataires de justice* as an insolvency practitioner.

These changes matter because the Regulation's definitions of *"insolvency proceedings"* and *"insolvency practitioners"* refer to Annexes A and B. The update therefore brings the Insolvency Regulation in line with recent national insolvency reforms, including those introduced in Luxembourg through the law of 7 August 2023 on business preservation and modernisation of bankruptcy law.

The inclusion of Luxembourg's judicial reorganisation proceedings in Annex A means that these procedures will now benefit from the full scope of the Insolvency Regulation. This is particularly important as it ensures that Luxembourg reorganisation proceedings opened in respect of a debtor will be automatically recognised in all other EU Member States (except Denmark) without the need for any special procedure.

Similarly, the recognition of the *mandataire de justice* as an insolvency practitioner under Annex B ensures that these court-appointed agents will have the powers and standing necessary to act effectively in cross-border insolvency situations throughout the EU.

The Amendment Regulation will enter into force on 6 November 2025 and will be directly applicable in all Member States.

NON-AUTHORISED FUNDS I CSSF FAQ ON CIRCULAR CSSF 25/894 UPDATED

Publication

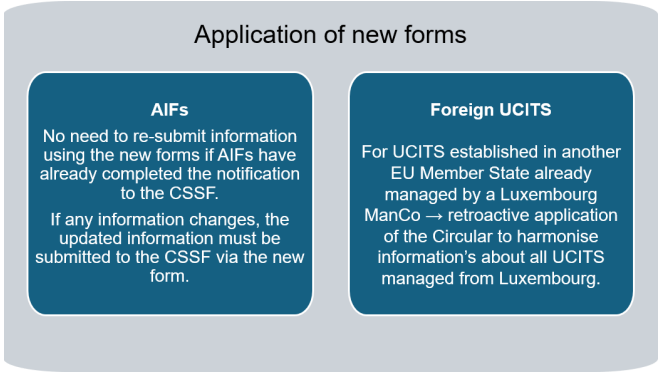
The CSSF officially published Circular 25/894 (the "**Circular**") on 26 June 2025, setting out a broader framework and expanded notification obligations for Luxembourg investment fund managers ("**IFMs**") managing funds that are not authorised by the CSSF.
In principle, the Circular states that IFMs must notify the CSSF, via the eDesk portal, of:

- the funds under management, whether already established or in the process of being constituted;
- any material changes relating to these funds; and
- the cessation of management of an AIF.

For further information read our previous newsletter.
On 3 October 2025, the CSSF updated its Q&A pertaining to the Circular to provide clarifications on three specific points.

Key updates

The retroactivity of the Circular



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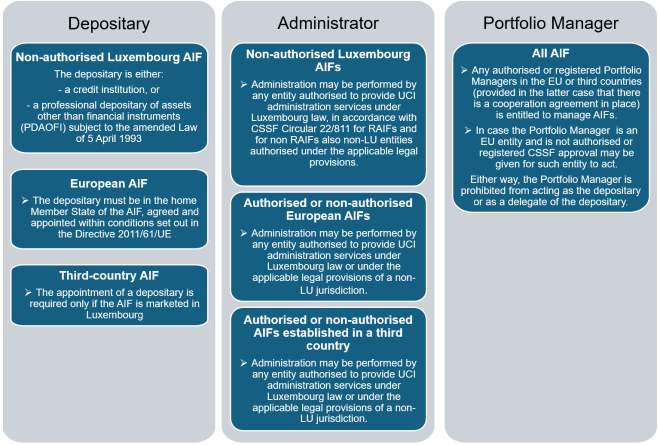
Deadline for submissions

- If the fund has not yet been established but the IFM has already started managing it: the information must be submitted no later than 10 working days following the fund's establishment.
- In the event of a cessation of management: the information must be submitted to the CSSF from the date the cessation occurs and no later than 10 working days after the termination of the IFM mandate.

The FAQ set out the acceptable configurations in terms of service providers, the funds and their IFMs:

Luxembourg AIFM and AIF



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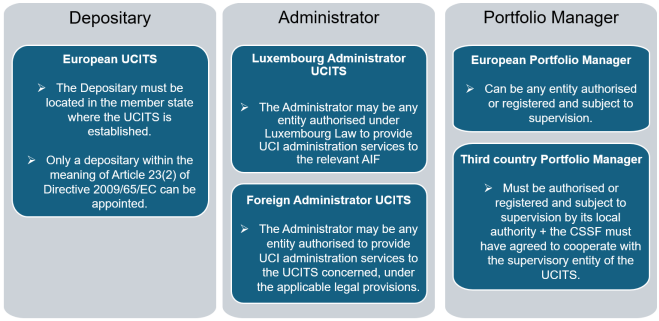
ManCo15 and European UCITS



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LUXEMBOURG DRAFT LAW 8628 I AMENDMENTS TO UCITS LAW

Luxembourg Draft Law No. 8628 (the "**Draft Law**") transposes Directive (EU) 2024/927 into the law of 17 December 2010 on undertakings for collective investment (the "**UCI Law**") and the law of 12 July 2013 on alternative investment fund managers (the "**AIFM Law**"), focusing on delegation, liquidity risk management, supervisory reporting, depositary and custody services, and lending by AIFs. The Draft Law amends both regimes to harmonise with the EU framework and strengthen investor protection.

The following summarises the key changes being proposed to the UCI Law.

Depositary and custody services

The Draft Law inserts a definition of "central securities depository" ("**CSD**") by reference to the Regulation 909/2014 on improving securities settlement and central securities depositaries ("**CSDR**") and clarifies that issuer CSD services are not a depositary delegation whereas investor CSD services are a delegation.

Liquidity management tools (LMT) framework

The Draft Law introduces a comprehensive LMT regime for UCITS:

- it creates a new Chapter 5bis (Article 52-1) requiring UCITS to select at least two appropriate LMTs from Annex III (other than suspension and side pockets), provided that money market funds may select one.
- annex III lists and defines LMTs: suspension; redemption gates; extended notice; redemption fees; swing pricing; dual pricing; anti-dilution levies; redemption in kind and side pockets.
- redemption in kind when used as a LMT is limited to professional investors and if the redemption in kind corresponds to a proportion of the assets held by the UCITS (subject to narrow exceptions).
- policies/procedures for activating/deactivating selected LMTs and operational arrangements are required and should be communicated to the CSSF.

Supervisory powers and cross-border coordination

The Draft Law updates Article 12 to authorise UCITS to activate/deactivate suspension and other LMTs and empowers the CSSF, in exceptional circumstances and after consultation, to require activation/deactivation of suspensions when needed for investor protection or financial stability.

If suspension is activated, the CSSF is to be informed without delay. Similarly, if any of the other LMTs (other than side pockets) are activated outside of the normal course of business, the CSSF is to be notified.

In the case of side pockets, the CSSF is to be informed prior to activation or deactivation.

The Draft Law further introduces cross-border request/refusal processes for suspension of UCITS by regulatory authorities and notification flows to home and host regulators.

Updates related to Management Companies

The Draft Law proposes material amendments to Chapter 15 (Management Companies) of the UCI Law, strengthening substance requirements, delegation oversight and supervisory reporting obligations:

- UCITS Management Companies will now be allowed to carry out the ancillary services of reception and transmission of orders (bringing the regime into line with that applicable to AIFMs), any other function or activity already carried out by a Management Company in relation to a UCITS it manages or in relation to the services it provides and administration of benchmarks (except in relation to the UCITS they manage).
- The conduct of the Management Company's business must be determined by at least two natural persons who are either employed full-time by the Management Company or are dedicated full-time to the management of the Management Company or are executive members or members of the management body and are domiciled in the EU. Article 27 relating to self-managed SICAVs contains similar provisions. The requirement for two full time persons was already generally required by Luxembourg practice therefore will be of limited impact.
- The UCI Law is to be amended to provide specifically for what has to be included in the programme of activities to be submitted with a request for authorisation and to stipulate the information that the Management Company must

provide regarding the arrangements made to delegate and sub-delegate functions to third parties.

- A new provision has been added requiring Management Companies to notify the CSSF, prior to its implementation, of any substantial change in the conditions of the initial authorisation.
- Article 110 of the UCI Law is modified to provide for similar provisions as apply pursuant to the AIFM Law to delegation. A Management Company shall notify the CSSF prior to delegation taking effect and must be able to objectively justify its entire delegation structure to the CSSF.
- It is now clarified that if distributors are acting on their own behalf when distributing UCITS this is not a delegation from the Management Company.
- The Management Company is now obliged pursuant to a new Article 110 (4) to ensure that the functions listed in annex II to the UCI Law as well as the ancillary services are provided in accordance with the provisions of the UCI Law, regardless of delegation.
- With regard to third party Management Companies a new Article 111 (2) provides that such Management Companies, where they intend to manage a UCITS on the initiative of a third party, use the name of a third party initiator or appoint a third party initiator as a delegate shall take account of any conflicts of interest and provide the CSSF with detailed explanations and evidence of its compliance with rules regarding conflicts of interest.

Reporting and cooperation

- The Draft Law adds a new Article 117-1 imposing on UCITs Management Companies periodic reporting on markets/instruments, liquidity arrangements, risk profile, stress testing, delegation details, and marketing geography. The reporting is to be done to the home regulator of the UCITS who, in turn must share with EU authorities, the European Systemic Risk Board ("ESRB") whenever necessary for the performance of their tasks and the European System of Central Banks for statistical purposes.
- CSSF can require additional reporting if necessary, in which case ESMA shall be informed.
- New provisions have been added throughout the UCI Law to ensure cooperation not alone between the CSSF and other competent regulatory authorities but also with ESMA and the ESRB.

Other UCITS updates

In derogation of the law of 10 August 1915 on Commercial Companies, the Draft Law provides that the governing body of a UCITS SICAV is not required to have an auditor's report drawn up in case of issuance of shares in exchange for a contribution in kind. This will ensure complete consistency between FCPs and SICAVs.

A new Article 41-1 is introduced specifying that when a Management Company or self-managed SICAV is exposed to a securitisation transaction that no longer complies with the requirements set out in the Regulation 2017/2402 relating to securitisation, it must act and, if necessary, take corrective measures in the best interests of investors.

Amendments to Article 49 specify that when a UCITS activates a side pocket the segregated assets are excluded from the calculation of the investment limits.

The UCITS name will be considered as key information to be fair, clear and not misleading.

Conclusion

Draft Law No. 8628, while still subject to change as it goes through the legislative process, delivers a faithful transposition of Directive 2024/927 insofar as it relates to UCITS. Most of the above changes are intended to enter into effect on 16 April 2026 while the provisions relating to periodic reporting under Article 117-1 are due to take effect on 16 April 2027.

LUXEMBOURG DRAFT LAW 8628 | AMENDMENTS TO AIFM LAW

Luxembourg Draft Law No. 8628 (the "**Draft Law**") transposes Directive (EU) 2024/927 into the Law of 17 December 2010 on undertakings for collective investment (the "**UCI Law**") and the Law of 12 July 2013 on alternative investment fund managers (the "**AIFM Law**"), focusing on delegation, liquidity risk management, supervisory reporting, depositary and custody services, and lending by AIFs. The Draft Law amends both regimes to harmonise with the EU framework and strengthen investor protection.
The following summarises the key changes being proposed to the AIFM Law.

Lending by AIFs: Core Regulatory Framework

The Draft Law establishes a comprehensive regime for lending by AIFs, transposing the full suite of Directive (EU) 2024/927's harmonised loan-lending framework, including concentration limits, leverage caps, risk processes, prohibited loans to affiliates, grant-and-sell ban, and retention requirements.

- AIFMs will be required to have effective policies, procedures and processes in place for loan origination as well as for assessing credit risk and for managing and monitoring their credit portfolio.
- A 20% single-borrower cap is imposed when the borrower is a financial undertaking, AIF, or UCITS with new Articles 14 (6) and 14(7) specifying the terms and conditions for applying such cap.
- Article 14(8) sets leverage caps for loan-granting AIFs: 175% for open-ended AIFs, 300% for closed-ended AIFs.
- Loans to the manager, its staff, the depositary or its delegates, and the manager's delegates or group are prohibited (with a narrow exception for financial undertakings financing third parties).
- All loan proceeds net of fees will be required to be allocated to the AIF and the costs and commissions associated with loan management must be disclosed to investors.
- There will be a ban on "grant and sell" strategies where loans are originated for the sole purpose of selling those loans to third parties.
- Subject to certain targeted exemptions an AIF will be required to retain 5% of the notional value of a loan that it has originated and is selling to a third party.
- A new Article 15(3) Imposes a default closed-ended structure for loan-granting AIFs. Derogations may be allowed provided the manager can demonstrate to the CSSF that it has implemented an adequate liquidity management system for the open-ended AIF it intends to manage.
- The legislator has taken up the choice given in Directive 2024/927 to allow Member States to prohibit AIFs from granting loans to consumers. Thus, a new article 4-1 specifies that AIFs that grant loans are not authorised to grant loans in Luxembourg to consumers and AIFs are not authorised to manage loans granted to such consumers. The commentary on the Draft Law makes clear that this prohibition applies on the territory of Luxembourg and does not prohibit Luxembourg AIFs from granting loans or managing consumer credit in another Member State if that Member State has not specifically prohibited this on its territory.

Liquidity Management Tools ("LMTs") for AIFs

The Draft Law introduces a comprehensive LMT regime:

- A new Annex V lists and defines LMTs: suspension; redemption gates; extended notice; redemption fees; swing pricing; dual pricing; anti-dilution levies; redemption in kind and side pockets.
- Managers managing open-ended AIFs will be required to select at least two appropriate LMTs from Annex V (other than suspension and side pockets), provided that money market funds may select one. The selection may not consist solely of swing pricing and dual pricing.
- Redemption in kind, when used as an LMT, is limited to professional investors and if the redemption in kind corresponds to a proportion of the assets held by the AIF (subject to narrow exceptions).
- Policies/procedures for activating/deactivating selected LMTs and operational arrangements are required and should be communicated to the CSSF.
- Article 15-1(2) provides that a manager managing an open-ended AIF may, in the interests of investors, activate/deactivate suspension and other LMTs including side pockets. The CSSF is empowered, in

exceptional circumstances and after consultation, to require activation/deactivation of suspensions when needed for investor protection or financial stability.

- Suspension and side pockets should only be used in exceptional cases where circumstances so require, and it is justified in the interests of investors.
- If suspension is activated, the CSSF is to be informed without delay. Similarly, if any of the other LMTs (other than side pockets) are activated outside of the normal course of business the CSSF is to be notified.
- In the case of side pockets, the CSSF is to be informed prior to activation or deactivation.
- The CSSF shall inform the host members states of the relevant AIFM, ESMA and where there are potential risks to the stability and integrity of the financial system, the ESRB (European Systemic Risk Board), of any such notification received.
- Managers who manage open-ended AIFs may use additional liquidity management tools in addition to those set out in Annex V.

Extension of AIFM Activities

In order to enhance legal certainty, Annex 1 of the AIFM Law is amended to specify that the management of AIFs may also include the activities of granting loans on behalf of the AIF and managing ad hoc securitisation structures. The commentary to the Draft Law specifies that the inclusion of the additional activity of lending should be interpreted as also covering cross-border lending.

The Draft Law also amends Article 5 of the AIFM Law which sets out the conditions for taking out the activity of an alternative investment fund manager, in a number of respects.

Non-Core Services – Functions and Activities for the benefit of third parties

- A new point (iv) is added to the list of non-core services, allowing an AIFM to carry out for the benefit of any third party, any function or activity already performed by the manager in relation to an AIF that it manages or in relation to the services it provides in accordance with this paragraph, provided that any potential conflict of interest is appropriately managed.
- The commentary on the Draft Law, reflecting the recitals of Directive 2024/927, highlights that the intention of such clause is to support the international competitiveness of EU managers by allowing economies of scale and contributing to the diversification of revenue sources.
- Examples of the type of services involved could include human resources or IT services for portfolio management, services related to anti-money laundering, certain corporate services or marketing services for funds.
- The commentary provides that the concept of third party must be interpreted broadly to include not only other AIFs but also structures such as co-investment vehicles, intermediary vehicles or carried interest vehicles.
- In order to be able to provide such activities, functions or services to third parties for the first time the manager must have an authorisation within the meaning of the new Article 5(4)(b)(iv) and the CSSF should be informed when they begin to offer these additional services.
- The commentary also points out that following the entry into force of Regulation (EU) 2023/1114 on markets in crypto-assets, a manager may also provide crypto-asset services equivalent to investment portfolio management and ancillary services for which it is authorised.
- Article 5(5)(b) is to be deleted thus removing the prohibition on managers providing ancillary activities referred to in Article 5(4)(b) (i.e. the non-core services) without also being authorised to carry out discretionary portfolio management in accordance with Article 5(4)(a).

Ancillary Activities -Administration of benchmarks

A new point 5(4)(c) is added allowing external AIFMs to administer benchmarks in accordance with Regulation 2016/1011 on benchmarks. Such AIFMs will not however be authorised to administer benchmarks used in the AIFs they manage (Article 5(5)(e)).

Ancillary Activities - Credit Management Activities

A new point 5(4)(d) is added allowing external AIFMs to provide credit management activities in accordance with Directive 2021/2167 on credit managers and credit purchasers.

AIFM Authorisation Application

Article 6 of the Draft Law is amended to provide more precision in respect of the information to be included in

an application for authorisation as an AIFM. For the most part the information to be provided is already requested pursuant to Luxembourg administrative practice but as regards delegation the law will now be quite prescriptive in terms of the specific information to be provided on delegates, the human and technical resources used to monitor delegates and the periodic monitoring measures to be used.

A new Article 6 (5) provides that the CSSF shall inform ESMA on a quarterly basis of the authorisations of AIFMs granted or withdrawn as well as of any changes to the list of AIFs managed or marketed in the EU by authorised AIFMs.

It is now specified in Article 7 that the conduct of the AIFM's business must be determined by at least two natural persons who are either employed full-time by the AIFM or are dedicated full-time to the management of the AIFM or are executive members or members of the management body and are domiciled in the EU. The requirement for two full time persons was already generally required by Luxembourg practice therefore will be of limited impact.

Third Party AIFMs

With regard to third party AIFMs a new Article 13(2)(a) provides that such management companies, where they intend to manage AIFs on the initiative of a third party, use the name of a third party initiator or appoint a third party initiator as a delegate shall take account of any conflicts of interest and provide the CSSF with detailed explanations and evidence of its compliance with the rules on conflicts of interest.

Delegation and Distribution

Article 18 relating to delegation is amended to specify that the delegation of any of the functions set out in Annex 1 or of any the ancillary or non-core functions referred to in Article 5(4) is subject to prior notification to the CSSF.

It is also specified that that the AIFM is obliged to ensure that the functions listed in annex I as well as the ancillary or non-core services are provided in accordance with the provisions of the AIFM Law, regardless of delegation or the regulatory status or geography of the delegate.

A new paragraph 18(7) clarifies that where the marketing function referred to in point 2(b) of Annex 1 of the AIFM Law is carried out by one or more distributors acting on their own behalf and marketing the AIF in accordance with MIFID II or through insurance-based investment products, this shall not be considered a delegation.

Depositary Services

Article 21(5a) of Directive 2011/61 gives the home Member State of an AIF the option of allowing a depositary established in another Member State to be appointed as the depositary of the AIF when certain conditions are met. Luxembourg does not meet those conditions therefore Luxembourg AIFs must continue to appoint Luxembourg established depositaries. However, the Draft Law proposes amendments to Article 19

- to ensure that a Luxembourg AIFM can manage a non-domestic AIF that has appointed a depositary in a Member State other than that of the AIF, and
- to allow a Luxembourg depositary to be appointed to a non-domestic AIF.

The Draft Law also inserts a definition of "central securities depository" ("**CSD**") by reference to the Regulation 909/2014 on improving securities settlement and central securities depositaries ("**CSDR**") and clarifies that issuer CSD services are not a depositary delegation whereas investor CSD services are a delegation.

Reporting, Transparency, and Cooperation

The list of pre contractual information to be provided to investors prior to an investment in an AIF is supplemented by the following points:

- The **name of an AIF** should be accurate, clear and not misleading. Thus, it is considered essential to emphasise that it is important pre-contractual information.
- The **terms and conditions** in force with investors regarding redemption, and the possible use and conditions of use of LMTs selected in accordance with the AIFM Law.
- A **list of fees, charges and commissions** incurred by the AIFM in connection with the operation of the AIF and which must be directly or indirectly allocated to the AIF.

In terms of periodic information to be provided to investors the following has been added:

- the composition of the loan portfolio;

- on an annual basis all fees, charges and commissions that have been directly or indirectly borne by investors;
- on an annual basis any parent company, subsidiary or special purpose entity used in connection with the AIF's investments by or on behalf of the AIFM.

The reporting to the CSSF (Annex IV reporting) has been amended to remove restrictions aimed at focusing on the main transactions and exposures or counterparties and to add other categories of data to be reported (including in relation to delegates and the oversight of delegates and the list of Member States in which units of an AIF are effectively marketed).

A new paragraph in Article 24(5) provides that the CSSF may impose additional reporting requirements upon the request of ESMA and where necessary to ensure the stability and integrity of the financial system or to promote long-term sustainable growth.

There are extensive changes to Article 53 of the AIFM Law relating to cooperation between competent authorities and elsewhere in the AIFM Law to allow for extensive sharing of information and increase cooperation not alone with other competent authorities but also with ESMA, EBA, EIOPA, and the ESCB (Central banks of the European System).

Other Changes

A new Article 15-2 is introduced specifying that when an AIFM is exposed to a securitisation transaction that no longer complies with the requirements set out in the Regulation 2017/2402 relating to securitisation, it must act and, if necessary, take corrective measures in the best interests of investors.

In relation to third country AIFs and AIFMs the Draft Law replaces references in various articles to FATF non-cooperative lists with "high-risk third country" in accordance the AML directive 2015/849 and, in addition includes references to EU list of non-cooperative countries and territories for tax purposes.

A new Article 46(4) is added to allow the marketing in Luxembourg of EU AIFs that invest primarily in the shares of a given company to the employees of that company or its affiliated entities as part of employee savings plans or employee participation schemes. When such an AIF is marketed on a cross-border basis in Luxembourg no additional requirements beyond those applicable in the AIFs' home Member State will be imposed.

Transitional Provisions and Entry into Force

A new Article 58(7) provides for transitional provisions and related conditions applicable to the granting of loans by AIFs and to AIFs granting loans established prior to the adoption of Directive 2024/927.

16 April 2026 is set as the date of entry into force of the changes to the AIFM Law except for those provisions relating to the changes to reporting to the CSSF which will enter into force on 16 April 2027.

2026 LUXEMBOURG BUDGET ANNOUNCED | TAX MEASURES TO COME

On 8 October 2025, the Luxembourg Minister of Finance presented the 2026 budget (the "**Budget Law**") oriented towards growth and social cohesion. The Budget Law provides for significant investments in innovation and infrastructure. On the tax side, it sets the 2026 agenda and has been complemented by further announcements and legislative action.

Competitiveness

Tax credit for investment in startups by individuals

A draft law was introduced on 4 April 2025 providing for a tax credit of up to EUR 100,000 for individuals investing in innovative startups (see our article on latest developments) with entry into force planned for 2026. An additional tax measure has been announced to further stimulate investments in startups by individuals.

Overhaul of the carried interest tax regime

A draft law was introduced on 24 July 2025 enhancing the Luxembourg carried interest regime providing clearer and attractive conditions (see our previous newsflash) with entry into force planned for fiscal year 2026.

Double tax treaties network

The Government announced its intention to further develop the Luxembourg double tax treaty network to bring the Luxembourg double tax treaties to 100 (currently 86 treaties are in force).

OECD and EU initiatives

Luxembourg will continue its involvement in ongoing EU and international tax reforms including Pillar 1 and 2. The development of the EU capital markets also represents a key opportunity for Luxembourg.

New investment vehicle

The Minister of Finance has announced the introduction of a real estate investment trust.

Individuals

A single tax class for individuals

A key measure in the 2023-2028 governmental coalition program for individuals' taxation is the introduction of a single taxation class. This would replace the current three-class system which relies on the personal situation of the taxpayer. According to current governmental plans, a draft law should be filed in 2026 with entry into force on 1 January 2028. A 20-year transition period should allow taxpayers currently benefiting from class 2 to maintain their current taxation class.

Pension system reform

On 3 September 2025, the Luxembourg government and social partners agreed on reforming certain aspects of the Luxembourg pension system. While the legal retirement age is maintained at 65, early retirement age will gradually be increased as from 2026. The reform also includes an increase of pension contributions from 24% to 25,5% as from 2026. Draft Law No 8634 has been submitted to the Luxembourg Parliament (*Chambre des Députés*) on 10 October 2025 introducing amendments to the pension regime.

On 15 October 2025, the Government submitted Draft Law No 8640 to the Luxembourg Parliament (*Chambre des Députés*) introducing **dedicated tax measures effective from fiscal year 2026**. First, an increase from EUR 3,200 to EUR 4,500 per year of the tax-deductible amount for contributions to eligible personal pension savings schemes. Second, to provide an incentive for individuals eligible for early retirement to maintain professional activity, a new tax deduction of EUR 9,000 per year (granted monthly) will be available. This tax deduction would be granted until the statutory retirement age of 65 is reached.

Other measures

The Budget Law also includes:

The revaluation coefficients applicable to the acquisition price of certain assets upon disposal or liquidation, designed to remove monetary gains, will be updated for fiscal year 2026.

An increase of the maximum **CO2 tax credit** for individuals (employees, retirees and self-employed) from EUR 192 to EUR 216 effective from fiscal year 2026.

Excise duties on tobacco are generally increased as from 1 January 2026.

TAX EXEMPTION ON INTEREST | NEW SPECIFIC GOVERNMENT BONDS

On 8 October 2025, Draft Law No. 8633 was submitted to the Luxembourg Parliament (*Chambre des Députés*) (the "**Draft Law**") to introduce a new tax exemption on interest earned by Luxembourg resident individuals on certain specific bonds issued by a State.

To meet its NATO defence spending commitments, the Luxembourg government plans to raise funding through the issuance of a new "defence bond".

Under the proposed legislation, interest earned by Luxembourg-resident individuals on qualifying government bonds would be fully exempt from personal income tax, whether through assessment or via the 20% final withholding tax regime established under the Luxembourg law of 23 December 2005 (*Loi Relibi*). The exemption will take effect for the 2026 tax year.

It should be noted that, with a view to ensuring compliance with European law, all bonds that satisfy the various stipulated conditions may benefit from the interest exemption provided by the Draft Law, and not solely those issued by Luxembourg.

A targeted, full and temporary tax exemption

The Draft Law introduces a temporary and targeted tax measure by amending two key pieces of Luxembourg tax legislation:

- The amended Luxembourg law of 4 December 1967 on income tax (*LIR*), through the insertion of a new Article 115, point 15b;
- The amended Luxembourg law of 23 December 2005 introducing a final withholding tax on certain interest income from savings, by adding a new Article 5bis.

To benefit from the full exemption, two sets of conditions must be met:

- those relating to the nature of the bond, and
- those relating to the status of the bondholder.

Material scope of the exemption: conditions relating to the nature of the bond

The exemption applies only to bonds that meet the following cumulative conditions:

- the income-generating claim must be in the form of a bond issue;
- the issuer must be a sovereign State which, at the time of issuance, holds the highest credit rating according to the scale used by at least two internationally recognised credit rating agencies (Moody's, S&P Global Ratings, Fitch Ratings, DBRS Morningstar, Scope Ratings or Credit Reform Rating);
- the bond must be denominated in euro;
- both the issuance and subscription of the bond must occur between 15 January and 15 February 2026 (inclusive); and
- the bond must have a maturity of three years.

Personal scope of the exemption: conditions relating to the bondholder

The exemption is limited to bondholders who are Luxembourg tax resident individuals acting within the management of their private wealth.

In other words, the following are expressly excluded from the benefit of the exemption:

- Legal entities;
- Non-resident individuals (the latter would, in any case, generally not be taxed on interest income derived from said bonds, even if issued by the Luxembourg government, as Luxembourg does not apply withholding tax on interest);
- Resident individuals acting in the context of a professional activity (commercial, agricultural, forestry or liberal professions).

Estimated fiscal impact

According to the financial note attached to the Draft Law, the government estimates that a bond issuance of EUR 150,000,000 at an annual interest rate of 2% over three years, assuming all exemption criteria are met, would result in a revenue shortfall of approximately EUR 1,800,000 for the State Treasury (*Trésorerie de l'Etat*).

FLAT-RATE WITHHOLDING TAX I NEW THRESHOLD FOR CERTAIN OCCASIONAL WAGES

In July 2025, the Luxembourg government drew up a draft Grand-Ducal Regulation (the "**Draft Regulation**") amending the Grand-Ducal Regulation of 9 January 1974 on the determination of tax withholding on salaries and pensions (the "**Regulation**").

Context: flat-rate withholding tax for occasional work

Article 27 of the Regulation provides for the possibility for an employer who, for occasional work, is required to hire temporary staff, to proceed with a flat rate withholding tax on the wages paid for such occasional work. Accordingly, when benefiting from the simplified regime, the employer is no longer required to obtain a tax withholding form or to make monthly wage declarations to the social security authorities, thereby reducing the administrative and tax burden associated with the employment of occasional workers.

Eligibility conditions

To benefit from this simplified regime, the employer must obtain an authorisation issued by the competent tax office. The issuance of this authorisation is subject to the fulfilment of three conditions set out in Article 28, paragraph 1 of the Regulation.

1. **Employer must bear the flat-rate withholding tax**
2. **Maximum 18 consecutive days per employee**
   The non-regular hiring period may not exceed 18 consecutive working days for the same employee, except for occasional work carried out by pupils or students during school holidays or mandatory internships.
3. **Hourly wage cap (net of tax and social security)**

Proposed amendment of the hourly wage cap

Since 1 January 2023, Article 28, paragraph 1 (c) of the Regulation has required that the net hourly wage must not exceed the amount of EUR 16.- for the employer to apply the flat-rate wage tax withholding regime.

However, as of 1 May 2025, the statutory minimum wage for unskilled workers has been increased to EUR 2,703.74 per month, which corresponds to an hourly wage of EUR 15.6285. This means that any future adjustment to the salary index would push the minimum hourly wage beyond the current EUR 16.- threshold. Consequently, employers would no longer be able to guarantee access to the occasional work regime for the affected employees.

The Draft Regulation aims to preserve access to the simplified regime by raising the wage cap from EUR 16.- to EUR 18.- per hour.

The new threshold is set to take effect on 1 January 2026.

START-UP INVESTMENTS | TAX CREDIT FOR INDIVIDUALS: COUNCIL OF STATE OPINION

Background

On 4 April 2025, Draft Law 8526 (the "**Draft Law**") was submitted to the Luxembourg Parliament (*Chambre des Députés*) and intends to introduce, as from fiscal year 2026, a tax credit for private individuals investing in Luxembourg startups amounting to 20% of their equity investment. Please see our previous newsletter here.

On 17 June 2025, the Luxembourg Council of State issued its opinion on this Draft Law. This opinion is important as it highlights key constitutional and practical issues in the implementation of the proposed Draft Law and brings forward substantial recommendations that may shape the final version of the law as well as future tax incentives.

Misalignment between scope and objective

The Council of State notes that the start-up tax credit as foreseen in the Draft Law is subject to a series of conditions and questions whether these requirements may be too strict for the proposed measure to effectively achieve its intended objective.

Exclusion of transparent entities

Eligibility is limited to individuals directly holding shares, excluding investments through tax transparent vehicles (e.g. partnerships, SCSps). The Council of State reminds that under Article 175 of the Luxembourg Income Tax Law (LIR), such entities are not separate taxable persons and are taxed at the level of their partners. Since both types of investors (investing directly or through tax transparent vehicles) are taxed similarly, this exclusion may breach Article 15 of the Constitution (equality before the law). The Council of State finds no objective justification for such different treatment.

Timing of capital contributions

The requirement that contributions be fully paid by year-end is considered too restrictive, especially for late-year capital increases. The Council of State suggests allowing a 12-month payment period from the subscription date.

Definition of "associated enterprises"

The proposed definition mixes elements of "related" (*entrepriseliée*) and "associated" (*entreprise associée*) enterprises and is circular and unclear. The Council of State formally opposes the current drafting on grounds of legal certainty and recommends either adopting existing LIR definitions or incorporating any new concepts directly into the statutory text.

Innovation requirement

Start-ups must show R&D expenses of at least 15% of total costs, certified by a statutory auditor or accountant. The Council of State notes that Draft Law 8314 (on R&D and innovation aid) already defines innovative enterprises as those certified by the national agency for research, development and innovation. For simplification purposes, the Council of State proposes that entities already holding this label should be exempt from additional certification. Draft Law 8314 has since been enacted and published in the Official Journal on 13 June 2025.

Sectoral exclusions

The Council of State highlights inconsistent treatment between chartered accountants (excluded) and accountants (not excluded), potentially contrary to the equality principle of the Constitution.

Employee investors

The tax credit is not available to individuals employed by the start-up during the relevant tax year. The Council of State considers this rule disproportionate, as employees often play a key financial and operational role. The Council of State considers that this exclusion is insufficiently justified and may conflict with the principle of equality before the law, in accordance with Article 15 of the Constitution.

Investment ceiling

The law sets a EUR 1.5 million cap per entity on eligible private investments. The Council of State supports excluding account 115 contributions (capital contributions without issue of shares), consistent with case law (see our previous newsletter here regarding account 115 contributions not taken into account for the Luxembourg participation exemption), but recommends explicitly stating this in the law and clarifying how the cap applies once reached.

Conclusion

Following the Council of State's opinion, the Chamber of Civil Servants and Public Employees (*Chambre des fonctionnaires et employés publics*) issued its opinion on 11 July 2025, and the Chamber of Trades (*Chambre des métiers*) on 3 October 2025.

The Draft Law is currently under review by the Finance and Budget Committee, where the Rapporteur is examining the opinions issued by the Council of State.

ECJ CASE LAW I PILLAR TWO: PRELIMINARY QUESTION ON THE VALIDITY OF THE DIRECTIVE REFERRED TO ECJ

On 31 July 2025, the Belgian Constitutional Court referred a request for a preliminary ruling to the European Court of Justice (the "**ECJ**") on the compatibility of Council Directive 2022/2553 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (the "**Pillar Two Directive**").

The American Free Enterprise Chamber (the "**AmFree**") brought a challenge against the Belgian implementation of the Pillar Two Directive, seeking the annulment in particular of the Undertaxed Profits Rule ("**UTPR**"). In this context, the Belgian Constitutional Court posed the following question to the ECJ: "Do Articles 12 to 14 of the Pillar Two Directive in so far as those provisions require Member States to subject constituents of an MNE group established in the Union to UTPR top-up tax, which would render those entities liable to tax on under-taxed profits realised by other constituent entities in another jurisdiction, without any distinction being made according to the financial capacity of those taxable constituent entities, infringe Articles 15, 16, 17, 20 and 21 of the Charter of Fundamental Rights of the European Union, the principle of legal certainty and the principal of fiscal territory?"

As a reminder, the Pillar Two Directive aims to establish a global minimum effective rate of tax of 15% for large multinational or domestic groups. The UTPR acts as a backstop to the Income Inclusion Rule (the "**IIR**") by allocating to group entities in another jurisdiction an additional tax (top-up tax) when low-taxed income is not caught by the IIR at the level of the parent company.

According to the applicants, the obligation to pay UTPR top-up tax restricts the Belgian company's freedom to dispose of its economic, technical and financial resources in a disproportionate manner. The applicants also claim that the UPTR discriminates between two categories of entities, that are objectively in different situations, are being treated the same, namely Belgian entities that are subject to UTPR top-up tax and that are loss-making, and Belgian entities that are subject to the same UTPR top-up tax but are making a profit. Such difference in treatment is not justified according to the applicants and may infringe the principle of "ability to pay" (in French: *capacité contributive*).

All these arguments, inter alia, will be examined by the ECJ and a judgment may be expected within two years.

Since a decision of the ECJ will be binding not only in Belgium but across all EU Member States, the outcome is to be followed closely, as the CJEU's judgment could have significant implications for the implementation of Pillar II (particularly the UTPR rule) throughout the European Union.

ECJ CASE LAW I ADVOCATE GENERAL CLARIFIES LIMITS OF JOINT VAT LIABILITY FOR THIRD PARTIES

Background

On 4 September 2025, Advocate General Kokott (AG Kokott) delivered her Opinion in the case C-121/24, *Vaniz EOOD*, on the conditions under which a third party may be held jointly and severally liable for unpaid VAT under national law, based on EU VAT legislation.

The case at hand concerned *Vaniz EOOD*, a taxable person established in Bulgaria, who had carried out transactions with a supplier who had declared but never paid the VAT due. The supplier was subsequently declared insolvent, dissolved and removed from the Bulgarian commercial register. The Bulgarian tax authorities tried to recover the unpaid VAT directly from Vaniz, relying on national rules imposing joint and several liability, arguing that Vaniz "*knew or should have known*" that the VAT collected by its supplier would not be paid.

Preliminary question & legal framework

In the context of a request for a preliminary ruling, the competent Bulgarian administrative court, asked whether national rules making a third party jointly liable for VAT were compatible with Directive 2006/112/EC (VAT Directive), in particular Articles 205 and 273 thereof, and the general principles of legal certainty and proportionality.

AG Kokott was invited to assess the compatibility of such national provisions with the VAT Directive, in particular Article 205, which allows Member States to provide for joint and several liability, and Article 273, which allows Member States to establish rules to ensure the accurate recovery of VAT and to prevent fraud.

Opinion of AG Kokott

First, AG Kokott noted that the EU framework allows joint and several liability only as an accessory mechanism, in accordance with the principles of proportionality and legal certainty. In her opinion, the national legislation exceeded the scope of the VAT Directive, in that it allowed the tax authorities to transfer primary liability for VAT to a third party after the dissolution of the actual debtor and the extinction of the tax debt.

AG Kokott further clarified that such liability cannot be based solely on the fact that the taxable person "*should have known*" of the risk of non-payment. As ruled by the ECJ Grand Chamber in the *Scialdone* case (C-574/15), the simple fact that VAT has not been paid, even if it has been declared, does not in itself constitute VAT fraud. Thus, the person who knew or should have known that its contractual partner would not pay the declared VAT cannot be accused of participating in fraud but can at most be accused of participating in that party's failure to pay. The 'participation in the failure to pay' of a taxable person does not present the same degree of seriousness as participation in VAT fraud and, according to AG Kokott, does not warrant a finding to the effect that the person committed VAT fraud personally, nor a refusal of the right to deduct input tax, nor the imposition of liability for third-party tax debts.

It is important to note that AG Kokott underlined that, in the present case, the debtor had already ceased to exist before the imposition of secondary liability: in her view, if a tax debt has ceased to exist under national law, liability for that debt cannot be transferred to a third party under EU law without violating the accessory nature of Article 205. This would create a new principal obligation, which is not provided for in the VAT Directive.

Conclusion of AG Kokott's Opinion

AG Kokott's therefore concludes that national measures imposing joint and several liability in such circumstances — if the original debtor has become insolvent, was deregistered and the debt extinguished — are incompatible with EU law. However, she left open the possibility of imposing liability where the third party actively participated in the fraud or engaged in abusive practices, which has not been established in the case at hand.

Next step

To conclude, AG Kokott's Opinion reflects a restrictive approach on the scope of joint and several liability for VAT, particularly in cases where tax authorities pursue third parties in response to an unrecovered tax liability. The ECJ's decision is expected in the coming months and should offer an opportunity to clarify the limits of national liability mechanisms under the VAT Directive.

ECJ CASE LAW I VAT AND TRANSFER PRICING ADJUSTMENT

On 4 September 2025, the ECJ delivered its decision in the Arcomet case (C-726/23) following a request for preliminary ruling on whether intragroup remuneration adjustment for services, determined under the transfer pricing ("**TP**") Transactional Net Margin Method ("**TNMM**"), is subject to VAT and whether tax authorities can subject the deduction right to the necessity of the services for taxpayer's taxable transactions.

This judgment directly addresses how TP adjustments (specifically under the TNMM) interact with VAT rules and deduction rights, providing valuable guidance for taxpayers.

Facts of the case

SC Arcomet Towercranes SRL, a Romanian company ("**Arcomet Romania**") engaged in reselling and sub renting cranes to its customers in Romania. In 2012, it entered into an agreement, effective since 2011, with its Belgian parent company, Arcomet Service NV Belgium ("**Arcomet Belgium**"). Arcomet Belgium provided finance, engineering, contract negotiation, crane fleet management, quality and safety management and bore the main economic risks associated with the activities of its subsidiary. Arcomet Romania had to purchase and hold all the goods necessary for the exercise of its activity and was responsible for the sale and rental of those goods and for the provision of services.

The remuneration was dependent on Arcomet Romania's annual operating profit margin, which, according to a benchmarking study, had to be situated between -0.71% and 2.74%. Both parties had to mutually agree annually on the position of Arcomet Romania with respect to the range by applying the TNMM as provided by the OECD transfer pricing guidelines ("**OECD TPG**"). An operating margin outside of the range resulted in an annual settlement invoice issued, either by Arcomet Belgium or by Arcomet Romania, to maintain the latter within such range.

Such mechanism illustrates a typical intragroup "profit margin" adjustment under the TNMM, where a taxpayer is remunerated based on a targeted arm's length profit margin.

For the years 2011, 2012 and 2013, Arcomet Romania's operating margin exceeded the range which resulted in the issuance of an annual invoice by Arcomet Belgium. The invoice was exclusive of VAT and declared by the issuer as relating to supplies of service. On the other hand, Arcomet Romania declared the 2011 and 2012 as relating to intra-Community purchases of services, applied the reverse charge mechanism and deducted the related VAT. For the third invoice, the Romanian company considered the transaction as falling outside the scope of VAT.

The Romanian tax authorities disagreed with this treatment. First, they considered that the 2013 invoice was also within the scope of VAT as an intra-Community purchase of service. Second, they denied the deduction right as it had not been demonstrated that those services were supplied and were necessary for the purpose of taxable transactions.

Proceedings before the Romanian courts resulted in a request for preliminary ruling:

Question 1: Does the amount invoiced by the principal company to an associated operating company, equal to the amount necessary to align the operating company's profit with the activities carried out and the risks assumed in accordance with the margin method of the OECD TPG, constitute a payment for a service which therefore falls within the scope of VAT?

Question 2: If the answer to the first question is in the affirmative, are the tax authorities entitled to require, in addition to the invoice, documents (for example, activity reports, [works] progress reports, and so forth) justifying the use of the services purchased for the purposes of the taxable person's taxable transactions, or must that analysis of the right to deduct VAT be based solely on the direct link between purchase and supply or [between purchase and] the taxable person's economic activity as a whole?

ECJ decision

On the **first question**, the ECJ found that the remuneration in respect of intra-group services, provided by a parent company to its subsidiary and contractually detailed, which is calculated in accordance with a method recommended by the OECD TPG and corresponding to part of the operating profit exceeding the predetermined threshold,

constitutes consideration for a supply of services falling within the scope of VAT.

The Court reached this conclusion by identifying a "supply of services for consideration" as defined in its previous case law as (i) a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance and (ii) a direct link between the services and the consideration.

In addressing the taxpayer's arguments, the Court added that (i) as the contract provided for detailed and precise rules, the **remuneration was not to be considered as uncertain** despite its variable nature, thus not affecting the direct link between the services and the remuneration, (ii) **the existence of a supply of services for consideration** is established based on all the circumstances characterizing the transaction concerned including notably its economic and commercial reality and added that "*transfer price is capable of constituting the actual consideration for a service supplied*". Regarding the reverse situation, of an equalization payment by Arcomet Belgium to Arcomet Romania, the Court denied that such contractual provision affects the direct link between the supply of services and the remuneration received in the case at hand limiting its analysis to the question under review.

On the **second question**, the Court found that the tax authority can require from a taxable person seeking the deduction of input VAT to submit documents other than the invoice in order to prove the existence of the services referred to in that invoice and their use for the purposes of its taxed transactions, **provided that the submission of that evidence is necessary and proportionate for that purpose**.

Conclusion

The ECJ sheds some light on how TP adjustments fit within the VAT framework. According to the ECJ, TP adjustments can constitute "*the actual consideration for a service supplied*" and fall within the scope of VAT where relevant conditions are met.

In practice, where a transfer adjustment can be anticipated, it should be provided for contractually and connected to the relevant services. This connection should be made clear in the invoice and relevant documentation in order to avoid doubt.

Further developments can be expected from the currently pending case Stellantis Portugal case (C-603/24) dealing with TP adjustments under the transfer pricing profit split method.

LUXEMBOURG CASE LAW I HIGH ADMINISTRATIVE COURT RULES ON LEGAL REMEDIES AGAINST TAX NOTIFICATIONS ISSUED UNDER § 100A AO

Key takeaways

On 6 August 2025, the Luxembourg Higher Administrative Court (*Cour administrative*) handed down a decision (n°52321C) whereby taxpayers cannot themselves request an *ex-post* review following the filing of an inaccurate tax return. From the Court's perspective, the decision to carry out a subsequent tax audit is indeed a discretionary decision that can only be undertaken by the tax administration, and which must be assessed based on the criteria of fairness and appropriateness set out in § 2 of *Steueranpassungsgesetz* (hereafter "**StAnpG**").

Facts of the case

In 2018, a Luxembourg-tax-resident company (hereafter the "Company" or the "**Taxpayer**") filed a claim against the Luxembourg Tax Administration (hereafter the "**LTA**") by application of § 228 *Abgabenordnung* (hereafter "AO") and submitted an amended tax return challenging a provisional 2016 tax assessment issued under § 100a *Abgabenordnung* (hereafter the "Provisional Tax Assessment"). The correction concerned the omission of a tax-exempt dividend under the Luxembourg participation exemption regime, despite correct treatment (retained in the 2016 inaccurate tax return) of the related qualifying participation for 2017 net wealth tax purposes (as being accepted by the LTA under the Provisional Tax Assessment). By way of reminder, a tax assessment issued under § 100a AO is considered provisional because it is automatically generated based on the taxpayer's filed return, without prior examination by the tax office. As a result, said tax assessment does not represent a final position, and during a five-year statute of limitation, the LTA retain full discretion to review the return, request further information, and issue a revised or final assessment (on the grounds of § 210 AO).

In the present case, the Director of the LTA rejected the claim as time-barred under the three-month deadline by application of § 228 AO. In 2020, bankruptcy proceedings were initiated against the Company for unpaid taxes related to the fully taxable dividend incurred in 2016.

In December 2021, the Company submitted a formal request to the Director of the LTA to consider the 2018 amended tax return for 2016, attaching both the amended return and a voluntary waiver of the 5-year statute of limitations. The Director of the LTA treated such request as a formal hierarchical appeal (*recours hiérarchique formel*) which was however rejected and dismissed in October 2022 by the latter on the grounds of the following: the request was considered (i) inadmissible due to being late when contesting the tax office's refusal to issue amended assessments under § 94(1) AO and (ii) unfounded when challenging the refusal to issue final assessments under the discretionary post-audit procedure of §100a AO.

In October 2022, the Taxpayer brought legal action against the rejection of the formal hierarchical appeal filed in December 2021 (hereafter the "**Formal Hierarchical Appeal**"), seeking a court order compelling the LTA to carry out a post-assessment review of the amended tax return for the 2016 fiscal year by virtue of § 94 (1) AO. The Taxpayer mainly argued that the Provisional Tax Assessment had not acquired the force of a final administrative decision before the expiry of the five-year statute of limitations. Nonetheless, the Taxpayer was dismissed at first instance and subsequently appealed the decision.

Outcome of the Higher Administrative Court's ruling

The main argument brought by the Taxpayer in front of the Higher Administrative Court is that the LTA does not have discretionary power, when it comes to reviewing an amended return still submitted within the 5-year limitation period by application of the provisions foreseen under § 94 (1) AO), and such a decision to proceed with a subsequent tax review should be necessarily conducted in line with the principles of fairness and appropriateness set out in § 2 of the StAnpG.

Overview of § 100a AO & § 94 AO

Given the arguments raised by the taxpayer, the Higher Administrative Court recalls the key provisions set forth in § 100a AO, which are as follows:

1. *The tax office may, subject to a subsequent review, determine the tax based solely on the tax return, without the need to state the reasons.*
2. *The issuance of a tax assessment notice within the meaning of § 210 constitutes the lifting of the reservation for subsequent review.*
3. *Upon expiration of the five-year limitation period, the reservation for subsequent review lapses, and the tax assessment becomes final.*

Additionally, the Court reminds that provisions under § 94 (1) AO foresee the following: *"Tax assessment (§§ 211, 212, 212a para. 1, 214, 215 and 215a) and individual administrative decisions (§ 235) may only be withdrawn or amended on the dual condition that the taxpayer expressly consents to this and that they are not barred from doing so in the context of a contentious appeal"*.

The Administrative Higher Court affirms LTA's full discretionary power in tax returns' investigations under §§ 100a and 94 (1) AO

The Administrative Higher Court reminds that LTA can exercise its discretionary power in issuing an administrative decision, such as the refusal of proceeding a subsequent tax audit by application of § 94 (1) AO, by fulfilling two main principles which are set out in § 2 StanpG which are the principles of fairness and appropriateness. In the present case, the Court explains that **none of the principles of fairness and appropriateness were infringed since it is clearly the legislator's intention and willingness to allow the LTA to undertake**, by its own initiative, any subsequent tax audit following the issuance of a Provisional Tax Assessment by virtue of § 100a AO. As a result, the Court confirms the **LTA are not legally bound by any strict obligation** to (i) conduct such a tax audit, or (ii) consider a rectified tax return, when requested by a taxpayer and even if **such a procedure could potentially reduce the taxpayer's tax burden**.

Deadline to undertake a legal remedy against a Tax Provisional Assessment and a Formal Hierarchical Appeal

The Administrative Higher Court specifies that the Provisional Tax Assessment shall have the same qualification of a definitive tax assessment with the meaning of § 211 AO (Draft law n°5757, p. 15). As a result, the correction of a Provisional Tax Assessment by way of filing of a rectified tax return shall be sought by virtue of the provisions under § 228 AO and within the 3-month delay following the notification of said tax assessment.

The same conclusion applies to a request filed by the taxpayer, by way of a formal hierarchical appeal, for a subsequent tax audit aimed at amending the Provisional Tax Assessment on the grounds of provisions set out in § 94(1) AO, regardless of the fact that the 5-year tax statute of limitations has not yet expired. In this particular instance and considering that the Company lodged a Formal Hierarchical Appeal against the Director's LTA years after the issuance of the Tax Provisional Assessment, such a claim was time-barred according to the Administrative Higher Court.

LUXEMBOURG CASE LAW I SCOPE OF LEGAL REMEDIES IN GUARANTEE ASSESSMENT CASES CLARIFIED

On 2 October 2025, the Higher Administrative Court (*Cour administrative*) issued a ruling in case n° 51646C (the "**Decision**"), regarding the extent to which a former manager of a Luxembourg resident company called in guarantee may challenge the underlying tax assessments of that company. While the Court ultimately confirmed the guarantee assessment (*appel en garantie*) after reviewing the company's tax assessments, the Decision is particularly significant for its interpretation of §119 of the General Tax Law (*Abgabenordnung*, "**AO**").

Background

The dispute involved a former manager of a Luxembourg resident private limited company (the "**Company**") who was held liable under a guarantee assessment issued on 29 September 2020, requiring her to pay the Company's tax debts.

These debts arose from tax assessments dated 20 March 2019, relating to alleged hidden profit distributions, which had been challenged through an administrative claim (*reclamation administrative*) filed on 18 June 2019 by the appellant in her capacity as sole manager.

On 10 August 2022, the director of the Luxembourg tax authorities (the "**LTA**") issued a decision rejecting the claim and confirming the disputed tax assessments. This decision was rendered after the bankruptcy of the Company, declared on 8 January 2020, at which point the appellant had been divested of managerial control in favour of the court-appointed curator.

As the curator did not lodge a judicial appeal, the Lower Administrative Court (*Tribunal administratif*) concluded that the director's decision had acquired *res judicata* effect, limiting the appellant to contesting only the lawfulness of the guarantee notice rather than the underlying tax liability.

The Higher Administrative Court, in its Decision, finally resolved the dispute, clarifying the circumstances under which a third party called in guarantee may contest underlying tax assessments despite the *res judicata* effect of these tax assessments vis-à-vis the company.

The decision: §119 AO and judicial review

On appeal, the Higher Administrative Court analysed the scope of §119 AO, which governs the procedural rights of a third party called in guarantee.

Under §119(1) AO, a person that is held personally liable for the tax of a company may exercise the same remedies and invoke the same arguments as the principal taxpayer (i.e. the company). However, §119(2) AO provides that if the company's liability has been definitively established, a third party who was able to appeal the assessment – either as the company's representative or in their own right – must accept it as binding.

The Lower Administrative Court had relied on this paragraph to bar the appellant's challenge, reasoning that the Company could have acted against the LTA's decision.

The Higher Administrative Court rejected this view, noting that the LTA's decision of 10 August 2022 was issued after the bankruptcy, when the appellant was legally prevented from acting on behalf of the Company. Accordingly, she was no longer "in a position to appeal" within the meaning of §119(2) AO.

The Court emphasized that a mere administrative claim is not an effective judicial remedy. The right to appeal requires the real possibility of a judicial challenge, consistent with constitutional principles ensuring access to a court and an effective remedy (Constitutional Court, 28 May 2019, No. 00146; Higher Administrative Court, 6 March 2025, No. 51780C; art. 2 of the revised Constitution).

The Court also rejected the State's argument that the bankruptcy had been deliberately orchestrated to avoid taxes, noting that the bankruptcy on confession complied with statutory requirements.

Thus, the exception in §119(2) AO could not be applied, and the appellant retained the right to contest the company's tax assessments underlying the guarantee notice.

Significance of the judgement

This judgment clarifies that the exclusion under §119(2) AO applies only when the third party actually had the ability to appeal the principal taxpayer's assessment. Where no such opportunity existed, a third party may still challenge the tax liability forming

the basis of the guarantee assessment.
The Court confirmed that a person called in guarantee can, in such circumstances, raise the same arguments as the principal taxpayer, including challenges to the tax classification of transactions (here, the alleged hidden profit distributions).
While the Decision confirms the lawfulness of the guarantee assessment, its primary importance lies in its clarification of §119 AO and the rights of third parties, ensuring they are not deprived of judicial review when circumstances make contesting the underlying tax impossible.

LUXEMBOURG CASE LAW I TAX AUTHORITIES FAIL TO PROVE PERMANENT ESTABLISHMENT ON NON-RESIDENT PARTNERS OF LUXEMBOURG PARTNERSHIP

In its judgment of 17 September 2025, the Lower Administrative Court (*Tribunal administratif*) delivered a significant decision (n°47603) on permanent establishment determination and commercial profit characterisation for non-resident professional service providers. The Court ruled that the Luxembourg Tax Authorities (*Administration des contributions directes*) ("**LTA**") wrongly concluded there was a Luxembourg permanent establishment for an English law firm, despite the firm's participation as general partner in a Luxembourg simple limited partnership (*société en commandite simple*).

The LTA requalified "the activity exercised in Luxembourg" as being a permanent establishment of the English firm and considered that it realised commercial profit through the Luxembourg permanent establishment. This characterisation had significant tax implications, subjecting the firm to both corporate income tax under Article 14 LIR and municipal business tax (*impôt commercial communal*).

This requalification was significant because the English firm argued it exercised exclusively civil professional activities as a law firm. The LTA contended that once a permanent establishment exists in Luxembourg, the income generated through that establishment must be characterised as commercial profit, irrespective of the underlying nature of the activities.

The Court emphasised that the burden of proving the existence of a permanent establishment with resulting tax consequences rests with the State and this allocation proved decisive. The State party had failed to establish that the English firm exercised an activity in Luxembourg which could be connected to a presence in Luxembourg meeting permanent establishment criteria.

The Court found that mere assertions by the State party were insufficient to establish that the English firm exercised activities in Luxembourg that would satisfy permanent establishment conditions. The DTA had argued that the Luxembourg partnership operated from Luxembourg with an official and effective Luxembourg address, and that the English firm had no separate website or professional premises. However, this evidence proved insufficient.

Central to the Court's reasoning was distinguishing between the activities of the Luxembourg partnership and those attributable to the English firm itself. The Court concluded that it does not emerge from elements submitted that the English firm has a Luxembourg permanent establishment, nor a permanent representative.

While partnerships are generally fiscally transparent for Luxembourg tax purposes, this transparency does not automatically attribute the partnership's physical presence to its partners for permanent establishment purposes. The Court required concrete evidence that the English firm itself exercised activities in Luxembourg through a fixed place of business at its disposal.

Having concluded that no permanent establishment existed, the Court held that the English firm cannot be considered as realising commercial profit in Luxembourg susceptible to being qualified as taxable domestic income. This conclusion eliminated both the corporate income tax liability and the municipal business tax liability that had been assessed.

The commercial profit characterisation was thus entirely dependent on the prior finding of a permanent establishment. Without that threshold being met, the question of whether the income should be characterised as commercial or liberal professional income became moot.

Conclusion

By reformation of the director's decision, the Court ruled that the DTA wrongly concluded there was a Luxembourg permanent establishment and referred the file for further proceedings. The decision reinforces that permanent establishment determinations require rigorous factual analysis rather than presumptions based on partnership structures alone, and that commercial profit characterisation depends on meeting this threshold requirement.

CONTRIBUTORS

Lejla Bešić, Marc-Alexandre Bieber, Yunus Cekici, Harun Cekici, Mikail Ceylan, Nuala Doyle, Gaëlle Felly, Ali Ganfoud, Deniz Güneş Türktaş, Elsa Jorro, Chloé Kaizer, Sophie Labruyère, Evelyn Maher, Camille Mascolo, Pol Mellina, Maria Natsiou, Elma Osmic-Badic, Marie Oster, Daniel Riedel, Guillaume Robert, Olivier Schank, Laura Simmonds, Elzbieta Tumko, Nicolas Widung