

BSP Newsletter

2026 October edition



**FINE-TUNED
LEGAL ADVICE
MADE IN
LUXEMBOURG**

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LISTING ACT | PROSPECTUS FORMAT, ESMA'S SEPTEMBER PACKAGE AND MAR MEASURES NOW IN FORCE

The Listing Act continues to take shape. Since our [January](#) and [April](#) newsletters, several measures we flagged as drafts or proposals have now been finalised, and related Market Abuse Regulation measures have entered into force. ESMA has also published a substantial new package of guidance on the Listing Act's prospectus reforms.

EU prospectus format now standardised

Prospectuses are about to look a lot more alike across the EU. [Commission Delegated Regulation \(EU\) 2026/1061](#) of 7 May 2026, published on 13 August 2026, amends Delegated Regulation (EU) 2019/980 to standardise the format and sequence of prospectuses and to streamline their content, scrutiny and approval. Three changes stand out for issuers preparing their next transaction:

- the separate retail and wholesale annexes for non-equity securities are gone: a single registration document and a single securities note now cover both, with retail- and wholesale-specific items simply flagged within that single framework.
- first-time public offerings of shares admitted to trading on a regulated market get their own dedicated "EU IPO prospectus" category, with a standardised format and sequence. It can be drawn up as a single document or as separate documents. Risk factors must now occupy a prominent position in every type of prospectus, not just IPO prospectuses.

- the scrutiny process is tighter. Competent authorities can no longer apply additional scrutiny criteria because they consider them necessary for investor protection. They may, however, set deadlines for issuers to submit revised drafts or supplementary information, giving at least 10 working days for an updated draft. The overall approval timeframe is 90 working days from the initial application, extended to 100 working days for SMEs, with a further extension of up to 30 working days available if the issuer requests it in writing.

ESMA's September package

On 9 September 2026, ESMA published a [package](#) of updated prospectus Q&As, a consultation on revised disclosure guidelines, and two final reports, all designed to bring existing guidance into line with the Listing Act.

The Q&A update is largely housekeeping: legal references have been refreshed, clarifications added where needed, and obsolete content stripped out. Some Q&As have been deleted because the legislation now answers the question directly, while others became redundant once their underlying legal basis was removed or expired.

The consultation essentially spring-cleans the guidelines to match the Listing Act. Five existing guidelines, each affected by disclosure requirements the Listing Act has removed or changed, are proposed for withdrawal, alongside two new guidelines, including

guidance on the management report. Guidance on profit forecasts, historical financial information and related party transactions is also being updated, while the separate risk factor guidelines are being folded into the revised disclosure framework. Comments are due by 9 November 2026, and ESMA expects to publish its final report and updated guidelines in the second quarter of 2027.

The two final reports close out separate strands of work:

- the first sets guidelines on when a supplement introduces a new type of security to a base prospectus, giving competent authorities a common methodology and issuers greater certainty. These guidelines take effect once translations into all official EU languages are available.
- the second finalises amendments to the technical standards on key financial information in a prospectus summary, aligning summary requirements with the Listing Act's revised disclosure framework and shortening the historical financial information requirements. ESMA has clarified that this RTS does not apply to EU Follow-on and EU Growth issuance prospectuses, which have their own separate summary regime under Article 7(12a) of the amended Prospectus Regulation. ESMA has submitted its final report to the European Commission, which will decide whether to adopt the amendments to Delegated Regulation (EU)

2019/979.

Delegated regulations entered into force

Three further delegated regulations we previously reported as drafts or pending adoption have since entered into force:

- [Commission Delegated Regulation \(EU\) 2026/773](#)
on the reduced content and standardised format of the EU Follow-on prospectus and the EU Growth issuance prospectus, covered in our April newsletter, entered into force on 18 June 2026.
- [Commission Delegated Regulation \(EU\) 2026/789](#)
on disclosure of inside information in protracted processes and delay of disclosure, covered in our January newsletter, entered into force on 19 July 2026.
- [Commission Delegated Regulation \(EU\) 2026/788](#)
on closed period trading permissions, cross-border trading venue designation and market manipulation indicators, covered in January, entered into force on 5 August 2026.

LUXEMBOURG MOVES TO RING-FENCE FUNDED SUB-PARTICIPANTS FROM LENDER INSOLVENCY

A new Draft Law is in the works, which would shield funded sub-participants from lender insolvency by ring-fencing the assets a lender owes them. On 30 July 2026, Draft Law No. 8813 (the “[Draft Law](#)”) was submitted to the Luxembourg Parliament (*Chambre des Députés*). It proposes a dedicated statutory regime for “*conventions de sous-participation en trésorerie*”, internationally known as funded sub-participations. Once enacted, it would place the assets owed by a Luxembourg lender to a participant in a protected estate, shielding them from the lender’s other creditors and the effects of its insolvency.

Background and context

Under a funded sub-participation arrangement, a participant pays the lender an amount corresponding to its share of a loan. In return, it receives a corresponding share of the repayments made by the borrower to the lender. As explained in the commentary to the Draft Law, this allows lenders to share loan risk, free up regulatory capital and preserve lending capacity without the cost and complexity of transferring the loan and its security to a third party.

The participant becomes a direct creditor of the lender, but not of the borrower. The lender remains the borrower’s sole counterparty, leaving the participant exposed to both the borrower’s credit risk and the lender’s insolvency risk. Absent the Draft Law, and without separate security, the participant would rank as

a simple unsecured creditor in proceedings under Part II (reorganisation and liquidation) of the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms. The Draft Law seeks to address this exposure.

Key provisions

A separate estate for the participant’s assets

Under Article 2 of the Draft Law, the assets owed by a lender to a participant, together with the related contractual obligations, would be kept outside the lender’s personal estate. They would instead form a dedicated estate held by the lender on a fiduciary basis for the participant’s benefit, separate from both its general assets and any other fiduciary estate it holds. In practice, this would mean that:

- the lender’s other creditors could not seize those assets, even outside insolvency proceedings; and
- the lender’s obligation to transfer those assets would remain unaffected by any reorganisation measure, insolvency proceeding or other situation of creditor concurrence concerning the lender.

The fiduciary characterisation also matters for bank resolution. Because it creates a fiduciary relationship between the lender and the participant, qualifying arrangements should fall within the existing exclusion for fiduciary-relationship liabilities from the bail-in tool under the Bank Recovery and Resolution Directive

(BRRD), with the rest of the resolution framework continuing to apply.

Which arrangements would qualify?

Under Article 1 of the Draft Law, a qualifying arrangement is a contract between a lender and a participant, where the participant provides cash to the lender and, in exchange, takes on all or part of the credit risk attached to a loan the lender has granted to a third-party borrower. Several boundaries define who and what the regime covers:

- only cash-funded sub-participations are covered - synthetic or unfunded arrangements fall outside the regime;
- credit institutions are the main target, but the regime is not limited to them - any Luxembourg lender qualifies, including financial sector professionals and loan or debt funds;
- individuals cannot act as lenders under the regime. In practice, they rarely act as lenders in sub-participation arrangements given the specific nature of sub-participated loans. Segregating assets for an individual would also raise legal and operational complexities, since an individual carries out both professional and private activities without being subject to an adapted accounting and operational framework; and
- nationality of the lender is what triggers protection in cross-border deals - so long as the lender is Luxembourg-based, the governing law chosen for

the sub-participation agreement makes no difference.

New and existing agreements: different starting points

Article 3 of the Draft Law draws a distinction between new and existing arrangements. Agreements entered into after the Draft Law comes into force would benefit from the regime automatically, unless the parties opt out. Earlier agreements would remain outside its scope by default, in line with the principle of non-retroactivity, but the parties could choose to opt in. This approach preserves contractual flexibility, particularly where the sub-participation is documented under foreign law.

What this means in practice

For participants, the proposed regime would mean no longer relying solely on the lender's general solvency for cash flows owed under a qualifying agreement. For lenders, it is worth reviewing standard documentation now: should the regime apply by default to new agreements, or should the parties opt out? For existing arrangements, would opting in benefit participants? Lenders should also consider whether their internal processes can properly track and evidence the amounts due to each participant.

Next steps and timeline

The Draft Law is currently before the Luxembourg Parliament, and the opinion of the *Conseil d'Etat* has been requested. BSP is closely monitoring the legislative process and is available to discuss what the proposed regime could mean for your existing arrangements and new transactions.

DISTANCE-SOLD FINANCIAL SERVICES | LUXEMBOURG TABLES ITS TRANSPOSITION OF THE NEW EU DIRECTIVE

Directive (EU) 2023/2673 - transposition into Luxembourg law

On 3 June 2026, the Luxembourg government tabled Draft Law n°8758 (the "**Draft Law**") before the Luxembourg Parliament (*Chambre des Députés*), transposing Directive (EU) 2023/2673 of 22 November 2023 (the "**Directive**") on financial services contracts concluded at a distance. The Draft Law amends the Consumer Code and the amended law of 27 July 1997 on insurance contracts (the "**Insurance Contract Law**"), and provides for its entry into force on 19 June 2026 - the date from which the Directive itself applies across the Union. Because parliamentary adoption is expected to follow that date, commentators have noted the provisions will apply with retroactive effect once enacted.

Background for adoption of the Directive

Before the Directive, two separate EU regimes applied to distance-sold consumer contracts:

- Directive 2011/83/EU governed distance contracts generally, such as online sales of goods and services, but expressly excluded financial services.
- Directive 2002/65/EC filled that gap, laying down dedicated rules on pre-contractual information and withdrawal specifically for financial services sold at a distance, such as loans, insurance, investment and payment products.

The Directive has been adopted to repeal the 2002 text

and to amend Directive 2011/83/EU by adding a new Chapter IIIa dedicated to distance-marketed financial services, substantially based on the 2002 text.

Consequently, a single instrument now covers distance contracts generally, whether or not they concern a financial service.

The Directive proposes a set of obligations for any business - bank, insurer, investment firm or otherwise - that supplies a banking, credit, insurance, pension, investment or payment service to a consumer at a distance (a "**Trader**").

What changes in Luxembourg law

Among the changes proposed by the Draft Law, some of the key impacts on Luxembourg law will be driven by the following aspects:

- **Extended pre-contractual information obligation** (new Article L.222-14 of the Consumer Code and Article 10 of the Insurance Contract Law). Traders will be required, among other items, to disclose the consequences of late or missed payment, notify that a price or premium was personalised using automated decision-making, to disclose the environmental or social objectives targeted by a financial service, and to notify that a telephone call may be recorded.
- **New obligation for adequate explanations** (new Article L.222-17-2 of the Consumer Code and Article 62-2-1 of the Insurance Contract Law). The Trader is required to explain, free of charge and before

conclusion, whether the proposed contract and any ancillary services suit the consumer's needs and financial situation, and to provide a right to human intervention where the Trader relies on automated tools such as chatbots or robo-advice.

- **An online withdrawal function** (new Articles L.222-10-2 and L.222-19-1 of the Consumer Code and Article 62-3-1 of the Insurance Contract Law). Online contracting interfaces will be required to embed a directly and continuously available, clearly labelled withdrawal mechanism, with a confirmation step and an acknowledgment of receipt. Unlike the other new rules, this function is not confined to financial products and applies to any distance contract concluded through an online interface.
- **A prohibition on manipulative online interfaces, or "dark patterns"** (new Article L.222-24 of the Consumer Code and Article 62-12 of the Insurance Contract Law). Traders are barred from designing online interfaces that distort a consumer's ability to make free and informed decisions. The Directive sets a minimum standard, requiring Member States to prohibit at least one of the three practices listed in Article 16 of the Directive (i.e. biased prominence of certain choices, repeated re-prompting of an already-made choice, and making unsubscribing harder than subscribing). **Luxembourg opted for the highest level of consumer protection:** the Draft Law prohibits all three practices, aligning it with the equivalent prohibition under the Digital Services

Act and with the French and German transpositions.

Luxembourg Consumer Union opinion

In [an opinion published in August 2026](#), the *Union Luxembourgeoise des Consommateurs* ("ULC") broadly endorsed the Draft Law as a faithful transposition, while raising two reservations. ULC noted that:

- the regime carries no dedicated civil sanction: enforcement rests on the CSSF's existing administrative powers and on cessation or injunction actions under the Consumer Code, with no equivalent to the nullity or forfeiture-of-interest sanctions introduced in the parallel transposition of another piece of European legislation, the new Consumer Credit Directive (EU) 2023/2225. ULC flagged the inconsistency given how closely the two directives were negotiated and drafted together; and
- drawing on the experience of France and Germany, where equivalent withdrawal functions have already been implemented, there is considerable variation in practice: certain Traders only surface the withdrawal button after an order is placed or delivered, certain Traders restrict access to withdrawal information to logged-in account holders, and terminology ranges from language tracking the Directive to generic "return" or "change your mind" labels. The ULC has called for implementation guidance to secure a consistent approach in Luxembourg.

Recommended action for in-scope entities

Because the Draft Law is expected to apply

retroactively from 19 June 2026 despite its later passage, in-scope firms marketing to consumers at a distance should act promptly rather than await final adoption. Traders' compliance and product teams should update pre-contractual disclosures, build or adapt an online withdrawal function, document a process for adequate explanations with human escalation for automated tools, and review online journeys and consent flows for manipulative interface practices.

RCS AND RBE COMPLIANCE | LUXEMBOURG BUSINESS REGISTER LAUNCHES THE SANCTIONS PHASE

Luxembourg entities face escalating sanctions - from public warnings to deregistration - for inaccurate RCS and RBE filings. As of 21 September 2026, the Luxembourg Business Registers ("**LBR**") is progressively rolling out the sanctions phase of its compliance mechanism for the Luxembourg Trade and Companies Register ("**RCS**") and the Register of Beneficial Owners ("**RBE**"). Companies must now pay particular attention to the accuracy and currency of their registered information.

This new phase follows the Luxembourg law of 23 January 2025, which strengthened LBR's mandate to monitor and enforce compliance. It aims to improve the quality, reliability, and integrity of registered data, so that public authorities, economic operators, and other users can rely on accurate, up-to-date, and directly usable information on entities registered in Luxembourg. Nonprofit organisations (ASBLs) and foundations are not, however, subject to enforcement proceedings at this stage, as awareness-raising efforts are still underway.

From automated checks to formal enforcement

Since January 2026, LBR has implemented an automated process for monitoring the RCS and RBE databases, in order to detect erroneous or outdated data, the failure to record data required by law, or the failure to file a required document.

As a reminder, data recorded in the RCS or the RBE must be adequate, accurate, and current, in

accordance with Article 1 of the amended law of 19 December 2002 on the register of commerce and companies as well as the accounting and annual accounts of undertakings (the "**RCS Law**"), and Article 4 of the amended law of 13 January 2019 establishing a Register of Beneficial Owners (the "**RBE Law**").

LBR initially adopted a preventive approach: automated reminders by email, communication, support, and the option for entities to voluntarily regularise their situation.

After several months devoted to this phase, LBR is now moving to the sanctions phase.

What happens when a deficiency is identified?

Where LBR identifies one or more deficiencies in the file of a registered entity - namely that information is missing, outdated, or incorrect, or that a filing required by law has not been made - it sends the person or entity concerned a request by registered letter to regularise its file.

The date on which this letter is sent, referred to as "**Date T**", marks the starting point of the procedure.

The update request:

- lists all the deficiencies identified by LBR, based on automated data monitoring;
- reminds the entity of the 30-day period within which to fully regularise its file, before the administrative measures and sanctions become applicable;
- informs the registered entity of the various administrative measures and sanctions it may face if

it fails to update its file as soon as possible;

- indicates the remedies available to the registered entity that wishes to challenge LBR's decision.

The entity then has 30 days from Date T to regularise its file.

Failing that, the measures set out below will be progressively implemented and will accumulate depending on the time elapsed since Date T:

- T + 30 days - a warning is displayed on the LBR portal.
- T + 60 days - outstanding deficiencies appear on RCS/RBE extracts and certificates.
- T + 7 months - a daily penalty of EUR 40 applies, for a maximum of 90 days, i.e. up to EUR 3,600.
- T + 12 months - ex officio deregistration.
- After deregistration - referral to the State Prosecutor and, where the statutory conditions are met, potentially a PDAL (*procédure de dissolution administrative sans liquidation*).

It is important to bear in mind that the procedure continues even if the registered letter is not actually delivered, and the absence of an effective registered office can itself constitute a deficiency.

It is never too late to regularise

The entity may regularise its file at any stage of the procedure.

If all deficiencies are regularised:

- the procedure ends immediately;
- the measures already applied are lifted, in accordance with the applicable legal provisions;
- however, any penalty payment already accrued remains due.

In the event of only partial regularisation, the procedure continues until full regularisation is achieved. Any new deficiencies identified during the course of the procedure may also be added to it.

Administrative decisions taken by LBR in connection with the compliance procedure may be appealed before the Lower Administrative Tribunal (*Tribunal administratif*) within a period of three months.

Why this matters for your business

The launch of the sanctions phase represents a fundamental shift from voluntary compliance to active enforcement. For Luxembourg entities, the practical implications are significant: inaccurate or outdated filings will no longer be treated as mere administrative oversights. Public warnings on the LBR portal, annotations on official extracts and certificates, daily penalties of up to EUR 3,600, and ultimately ex officio deregistration create real reputational and operational risks. Boards and compliance teams should treat this as a priority: audit your RCS and RBE filings now, verify that all registered information is current, and establish internal processes to keep filings up to date on an ongoing basis.

SHAREHOLDERS' PERSONAL DATA | ECJ CURBS PUBLIC DISCLOSURE

In its preliminary ruling in Case [C-798/24](#), *Jautiva* (*Jautiva* is a fictitious name assigned by European Court of Justice (the “ECJ”), the ECJ upheld that EU law does not, in itself, require public disclosure of information on all shareholders of a public limited liability company under Directive (EU) 2017/1132 relating to certain aspects of company law (the “Directive”), while unrestricted access to such data constitutes a serious interference with the rights guaranteed by Articles 7 and 8 of the EU Charter of Fundamental Rights (the “Charter”).

Background: the facts of the main proceedings

Minority shareholders of a Latvian public limited liability company challenged the publication in the national companies register of their personal data - name, personal identification number, contact address and, where provided, email address, together with the class, number and nominal value of their shares and the attached voting rights. The claimants argued that the Latvian legislature had never examined or justified the need for such public disclosure. Relying on the [WM and Sovim SA v. Luxembourg Business Registers](#) judgment of the ECJ, they added that the disclosure was, in any event, unjustified and disproportionate, since they hold no management or controlling role in the company and are not its beneficial owners. The Latvian Constitutional Court referred questions to the ECJ on Article 14(d) of the Directive and EU data protection law.

No duty under EU law to disclose all (including minority) shareholders

By its first question, the referring court asked, in essence, whether Article 14(d) of the Directive must be interpreted as requiring the disclosure of information relating to all shareholders of the companies concerned, including minority shareholders. Answering in the negative, the ECJ relied, first, on the wording and context of the Directive: Article 14(d) makes no reference to shareholders, but refers only to persons who are authorised to represent the company or who take part in its administration, supervision or control. A shareholder's status derives solely from ownership of shares. Indeed, several provisions of the Directive, such as Articles 64(3) and 95(2), distinguish the administrative and management bodies - which may bind the company vis-à-vis third parties - from the general meeting of shareholders.

The Court then examined whether such disclosure serves the objectives of the disclosure requirements: the protection of third parties' interest and legal certainty. Since minority shareholders can neither represent the company nor take part in its management or supervision, disclosing their data serves no useful purpose in light of those objectives. Article 14(d) of the Directive therefore does not require the disclosure of information concerning all shareholders, including minority shareholders.

Unconditional public access to shareholder data

precluded by the GDPR and the Charter

The ECJ then assessed the regime under the GDPR, read in light of Articles 7 (respect for private life) and 8 (protection of personal data) of the Charter. Those rights are not absolute: under Article 52(1) of the Charter, limitations may be imposed, provided that they are laid down by law, respect the essence of the rights and observe the principle of proportionality. The legislation must also contain clear and precise rules and minimum safeguards, so that data subjects are effectively protected against the risk of misuse. In the case at hand, the information made public could enable a profile of a shareholder's financial situation and investments to be built up - all the more so as the data was available online to a potentially unlimited number of persons, including unidentified users, and could subsequently be retained and disseminated. The ECJ therefore regarded the disclosure as a serious interference with the rights protected by Articles 7 and 8 of the Charter.

The Court then assessed proportionality against the objectives of general interest relied on in justification of the Latvian regime:

- the objective of general interest consisting in ensuring a transparent business environment to protect third parties' interest – which, the Court reiterated, is not served by the disclosure of data on all shareholders, in particular minority shareholders;
- the objective of general interest consisting in

preventing money laundering and terrorist and proliferation financing - although increased transparency may contribute to this objective, combating money laundering is primarily a matter for public authorities and obliged entities such as credit or financial institutions, which are subject to specific due diligence obligations; and

- the objective of general interest consisting in facilitating the implementation of sanctions - for which disclosure could be limited to persons included on sanctions lists or to persons demonstrating a legitimate interest.

Given the seriousness of the interference, the absence of safeguards against misuse and the availability of less restrictive measures, the Latvian regime was found to be neither necessary nor proportionate in relation to the objectives of general interest, where access to such data is not subject to any conditions, such as demonstrating a legitimate interest.

A Luxembourg lens: shareholder privacy built into the framework

For a Luxembourg public limited liability company (*société anonyme*), shareholders can take comfort in a framework that structurally protects their privacy.

The identity of shareholders holding registered shares is recorded solely in an internal register kept at the company's registered office - it is not subject to public disclosure through the Luxembourg Trade and Companies Register (*Registre de commerce et des sociétés*, the "RCS"). Furthermore, as a matter of law, under Article 6 of the Luxembourg law of 19 December

2002 on the RCS, the registration requirements for a *société anonyme* cover the company name, legal form, registered office, corporate object, share capital, directors, auditors and similar corporate data, but do not include any obligation to disclose the identity of shareholders. While anyone may freely obtain an extract from the RCS, the information contained therein is limited to the corporate particulars mentioned above – one will search in vain for any shareholder name, shareholding or voting right in such extract.

Luxembourg law thus already embodies the very principles upheld by the ECJ in *Jautiva*: a shareholder of a Luxembourg *société anonyme* is not exposed to any public disclosure of personal data merely by virtue of share ownership.

To a parliamentary question addressed to the Minister of Justice in September 2026 concerning the *Jautiva* ruling, the Minister confirmed that an in-depth analysis of its implications for Luxembourg law is under way. The question addressed to the Minister specifically targeted the framework applicable to SARLs, given that the identity, address and shareholding of their shareholders are disclosed through the RCS, noting that current legislation already allows a professional address to be registered in lieu of a private address. The Minister noted that the ruling does not cover SARLs and SARL-S, and that it remains uncertain whether, or to what extent, the Court's reasoning could be transposed to these corporate forms, which follow a different logic from that of the *société anonyme*. At this stage, the Government does not consider that the ruling directly calls into question the publicity regime

applicable to SARL and SARL-S shareholders, while noting that Luxembourg has already acted upon the [WM and Sovim SA v. Luxembourg Business Registers](#) judgment with regard to access to information held in the Register of Beneficial Owners, by making such access conditional upon the demonstration of a legitimate interest. The Ministry of Justice confirmed that it intends to keep the data made public limited to what is necessary and will continue to monitor closely the Court's case law on this topic.

WHEN AI ENTERS THE WORKPLACE | LEGAL CHALLENGES FOR EMPLOYERS

Artificial intelligence is now becoming part of everyday business life in Luxembourg. According to STATEC and CSSF 2026 data, **22%** of Luxembourg companies already integrate AI into their business (**28%** in the financial sector), and **60%** of respondents consider generative AI to be an opportunity. In addition, **90%** of Luxembourg workers are exposed to AI, with an estimated replacement risk of **14%**.

This transformation comes with a dense legal framework that every employer now needs to master.

A multi-layered legal framework

Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "**GDPR**") remains the baseline whenever AI involves the processing of employees' personal data, requiring compliance with the principles of lawfulness, transparency, data minimisation, purpose limitation, security, and the **prohibition of automated individual decision-making**.

Regulation (EU) 2024/1689 of 13 June 2024 on artificial intelligence (the "**AI Act**"), the world's first comprehensive AI framework based on a risk-based approach (prohibited, high-risk, limited, minimal), has been progressively applicable since **2 February 2025**. All obligations under the AI Act are expected to be in force by the end of 2027.

Under the AI Act, employers most often act as "deployers", bearing obligations of compliant use,

human oversight, relevance of input data, log retention and informing employees. Employers must also ensure a **sufficient level of AI literacy** among their staff, taking into account their technical knowledge and the context of use. This is likely the most significant obligation arising from the AI Act, and the one that will require the most practical adjustments from employers. Added to these provisions is Directive (EU) 2024/2831 of 23 October 2024 on improving working conditions in platform work (the "**Platform Work Directive**"), whose transposition into Luxembourg law is the subject of Draft Law [No. 8699](#) of 10 February 2026, to be transposed by **2 December 2026**, and which includes strict prohibitions on data processing and the use of AI tools.

Recruitment, monitoring and sanctions: the risk areas

Under the AI Act, AI systems used for **recruitment and candidate selection** are classified as high-risk systems, while **emotion recognition in the workplace** is outright prohibited.

In this respect, Luxembourg's Labour Code prohibits discrimination at every stage of the employment relationship, reversing the burden of proof in favour of the employee, which exposes employers to litigation risk in the event of algorithmic bias, even unintentional. Article 22 of the GDPR also prohibits decisions **based solely on automated processing** that produce significant legal effects, subject to exceptions, in which

case the employee retains a right to meaningful human intervention and to challenge the decision.

On **monitoring**, employers must have a legal basis, generally legitimate interest, and must inform the staff delegation or, failing that, the Labour and Mines Inspectorate, about the purpose, methods and retention period of the data. Above 150 employees, monitoring of an employee's output or performance requires co-decision with the staff delegation.

The AI Act further classifies as high-risk any systems used to **monitor and evaluate employees' performance and behaviour**.

On the **disciplinary** side, using AI to influence working conditions, promotion, dismissal or task allocation is also classified as high-risk under the AI Act, calling for caution before any sanction based, even partially, on an AI tool.

Adapting the business

Employment contracts should include dedicated clauses covering the use of generative AI tools, confidentiality of sensitive data, intellectual property ownership of AI-generated content, transparency on performance-monitoring tools, and a loyalty obligation requiring human review before any official use of AI output.

A dedicated **AI policy** could also formalise authorised tools, permissible data inputs, verification obligations and applicable sanctions.

Finally, **training staff** on how AI works and its

associated risks forms part of the employer's obligations of AI literacy, information and transparency.

Key takeaways

As part of implementing their obligations under the AI Act, employers are advised to prioritise the following:

- the GDPR applies in full to the use of AI in the workplace;
- employers are subject to "deployer" obligations under the AI Act, particularly for high-risk systems;
- AI use must be governed to avoid "shadow AI" and preserve business confidentiality;
- staff training is essential; and
- AI should remain a support to human decision-making, not a substitute for it.

REDEPLOYMENT PAY | LUXEMBOURG CLOSES AN EQUALITY GAP

Draft Law No. 8804 extends the external redeployment allowance and fixes an inequality between employers. In Luxembourg, the external redeployment allowance becomes almost automatic, but reimbursement stays limited to smaller employers.

Background and scope

Draft Law No. [8804](#) (the **Draft Law**) has been submitted to the Luxembourg Parliament (*Chambre des Députés*) on 24 July 2026. It amends Articles L. 551-1 and L. 551-3 of the Labour Code, which govern the external occupational redeployment of employees found unfit for their last position.

The Draft Law follows judgment No. 00195 delivered on 24 October 2025 by the Constitutional Court, referred to it by the Labour Court of Esch-sur-Alzette. The Court held that it breached the constitutional principle of equality before the law for the lump-sum redeployment allowance to be payable, among employers with at least 25 employees, only to those exempted from internal redeployment due to serious hardship, while excluding those exempted because they already met the employment quotas for disabled or redeployed workers set out in Article L. 562-3 of the Labour Code.

To remedy this unequal treatment, the Draft Law goes beyond the specific case decided by the Court and generalises the principle that a lump-sum allowance is payable whenever an employee is the subject of an external redeployment decision by the Joint

Redeployment Committee.

A lump-sum allowance that becomes almost automatic

Article L. 551-1 of the Labour Code is supplemented to provide that, upon notification of the external redeployment decision by the Joint Redeployment Committee, the employer must pay the employee a lump-sum allowance that increases with length of service: one month's salary after five years of continuous service, two months after ten years, three months after fifteen years, and four months after twenty years or more.

The allowance is calculated on the basis of the gross salary actually paid to the employee over the twelve months preceding notification of the decision, including ordinary bonuses and supplements but excluding overtime pay, gratuities and expense allowances.

Reimbursement by the Employment Fund limited to smaller employers

A key point for employers: where the lump-sum allowance is payable following an exemption from internal redeployment granted by the Joint Redeployment Committee on grounds of serious hardship, it is only reimbursed by the Employment Fund to employers with a total workforce not exceeding forty-nine employees, assessed as at the date of notification of the decision. For multi-site businesses, headcount is assessed on a site-by-site basis.

It is for the employer to prove that it meets this

threshold, and the reimbursement request must be filed, on pain of being time-barred, within six months of notification of the Joint Redeployment Committee's decision.

Mid-sized and larger employers that already meet the employment quotas for disabled or redeployed workers, and were previously excluded from any compensation obligation, will now have to pay this allowance without any possibility of reimbursement.

Exclusions that remain in place

The Draft Law preserves certain exceptions to the obligation to pay a lump-sum allowance: it remains excluded where external redeployment follows the employer's refusal to carry out internal redeployment (a refusal that continues to trigger the compensatory levy owed to the Employment Fund), or where the employee concerned is, at the time the Joint Redeployment Committee is seised, affected by the cessation of the employer's activity or serving a notice period following dismissal or resignation.

The Draft Law also clarifies that payment of the compensatory levy by an employer who refused internal redeployment does not, where applicable, relieve it of its obligation to pay the lump-sum allowance.

Conclusion

This Draft Law, currently before the Council of State for its opinion, implements the consequences of the Constitutional Court's judgment of 24 October 2025 by



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aligning the treatment of employees subject to external occupational redeployment. Employers with at least 25 employees, particularly those already meeting their employment quotas, should review their budget planning for such situations, as reimbursement by the Employment Fund remains limited to businesses with fewer than fifty employees.

TOWARDS A NEW INCREASE IN THE MINIMUM SOCIAL WAGE IN 2027

The Draft Law amending Article L. 222-9 of the Labour Code proposes an increase of the minimum social wage of 3.8% as from 1 January 2027.

Background and scope

The Draft Law No. [8837](#) amending Article L. 222-9 of the Labour Code (the “**Draft Law**”) has been prepared by the Minister of Labour and proposes to adjust the rate of the minimum social wage (the “**MSW**”) to reflect the change in average wages recorded during 2024 and 2025. The Draft Law was submitted to the Luxembourg Parliament (*Chambre des Députés*) on 5 October 2026.

Under Article L. 222-2(1) of the Labour Code, the level of the MSW is set by law. Article L. 222-2(2) requires the Government, every two years, to submit to the Luxembourg Parliament a report on general economic and income trends, accompanied, where applicable, by a draft law raising the level of the MSW. This power to propose an increase of the MSW does not, however, entail any legal obligation to raise the entire salary scale within companies.

The indicator used to measure the change in average wages, namely the average hourly wage of the reference population reduced to index 100 of the sliding wage scale, shows an increase of 3.8% between 2023 and 2025. At its meeting of 27 March 2026, the Government in Council considered that economic and social conditions allowed for an increase of the MSW.

An increase set against a mixed economic backdrop

The biennial report on general economic and income trends accompanying the Draft Law paints a mixed picture of the Luxembourg economy for 2024 and 2025: after near-stagnation in 2023 (+0.1%), GDP in volume grew by only 0.4% in 2024 and 0.6% in 2025, remaining below euro area growth for the fourth consecutive year.

The average wage cost rose by 3.5% in 2024 and then 4.4% in 2025, following a marked slowdown in inflation (+2.1% in 2024 and +2.3% in 2025, compared with +6.3% in 2022). The unemployment rate, after a low of 4.8% in 2022, increased to 6.0% in 2025.

The proposed new amounts

In practical terms, the Draft Law provides that, for a full-time unskilled adult employee, the monthly MSW, currently set at EUR 2,771.33 gross (index 992.24), would increase to **EUR 2,876.60 gross**, an additional EUR 105.27. The skilled MSW, which is 20% higher, would reach approximately **EUR 3,451.96 gross** per month, an increase of EUR 126.33 compared with the EUR 3,325.59 currently applicable. These amounts remain subject to any applicable indexation adjustments.

A slightly smaller share of employees affected

As at 31 January 2026, 70,383 employees (excluding civil servants), or 15.5% of employees on the labour market, were paid close to the MSW, a proportion

slightly down from the 15.9% recorded a year earlier. The sectors most affected remain accommodation and food services (48.2% of employees in the sector) and trade, which accounts for the largest number of employees paid close to the MSW (16,881 employees, or 24% of all employees paid close to the MSW).

Taking into account the employment growth estimated at 1.6% for 2026, the explanatory memorandum estimates that 71,415 employees will be paid close to the MSW as at 31 December 2026.

A significant cost for businesses

According to the explanatory memorandum, the total wage increase resulting from the MSW revaluation is estimated at EUR 89.45 million. In addition, the increase in the employer's share of social security contributions is estimated at EUR 23.61 million, resulting both from the wage increase for employees paid close to the MSW and from the change in the contribution ceiling (set at five times the MSW).

The total annual additional cost of this 3.8% MSW revaluation is thus estimated at EUR 113.05 million for Luxembourg businesses as a whole.

Conclusion

This Draft Law, which forms part of the biennial MSW adjustment mechanism set out in Article L. 222-2 of the Labour Code, is expected to result in a significant increase in wage costs for employers with employees paid close to the minimum wage, particularly in the accommodation, food service and trade sectors.



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Affected businesses are advised to start anticipating the budgetary impact of this revaluation now, ahead of its expected entry into force on 1 January 2027.

POSTED WORKERS | A SIMPLER, CLEARER FRAMEWORK

Draft Law No. 8805 simplifies procedures for businesses and clarifies the rules on posting workers to Luxembourg.

In Luxembourg, posting is getting simpler for businesses, while checks and fines are stepped up, particularly in road transport.

Background and scope

Draft Law [No. 8805](#) (the “**Draft Law**”) has been submitted to the Luxembourg Parliament (*Chambre des Députés*) on 24 July 2026. It introduces a new Article L. 142-3bis into the Labour Code and amends Articles L. 142-2, L. 142-3, L. 143-2, L. 144-6, L. 145-1, L. 145-4 and L. 145-6 of the same code.

The Draft Law pursues a twofold objective. First, it addresses the observations raised by the European Commission regarding the transposition of Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers (the “**Directive**”). Second, it improves and clarifies certain provisions of the Labour Code relating to posting, in particular in the road transport sector.

The European Commission had indeed sent Luxembourg a supplementary letter of formal notice raising three points of non-compliance: excessive obligations imposed on the service recipient in cases of subcontracting, an unrealistic documentary requirement regarding the posted worker's employment contract, and grounds for refusing to notify sanctions that went beyond what the Directive allows.

The end of obligations imposed on service recipients

Under the current regime, where a service provider uses a direct subcontractor that posts workers, the service recipient must verify that the subcontractor has duly sent its posting declaration to the Labour and Mines Inspectorate (“**ITM**”) and appointed a reference person. Failing that, the recipient must itself submit a declaration together with a copy of the service agreement.

The European Commission considered this mechanism disproportionate: the Directive assigns no role to the service recipient, and shifting this burden is liable to deter the use of service providers established in other Member States, thereby hindering the freedom to provide services.

The Draft Law accordingly repeals paragraph 2 of Article L. 142-2 of the Labour Code. Luxembourg-based principals and service recipients will therefore be relieved of this verification and fallback obligation, which should significantly simplify the management of subcontracting chains involving foreign service providers.

An equivalent document to the employment contract that is easier to produce

Article L. 142-3, point 5°, of the Labour Code currently requires the service provider to keep a copy of the posted worker's employment contract “or any equivalent document”, which had to be issued by the competent control authority of the country in which the

posting undertaking is established.

The European Commission noted that, in practice, this equivalent document is generally issued by the employer itself rather than by a control authority, and that no such authority even exists in every Member State. This requirement therefore made compliance impossible for many foreign service providers.

The Draft Law removes the reference to the control authority of the country of origin, while reinstating the words “or any equivalent document”, which had been inadvertently deleted in a previous reform. Service providers posting workers to Luxembourg will accordingly find it easier to comply with their documentary obligations.

New exemptions for short-term interventions

The Draft Law introduces a new Article L. 142-3bis exempting certain posted workers from the declaration obligations set out in Articles L. 142-2 and L. 142-3. This covers employees of a foreign undertaking carrying out maintenance, servicing or repair work on machinery, installations or equipment (including related software), as well as employees travelling to Luxembourg as trainers, lecturers or speakers, or to attend training sessions, conferences, business meetings, trade fairs or exhibitions.

This exemption is strictly limited: the activities concerned must not exceed forty hours per month, and it does not apply in any event to activities in the construction sector.

Stronger enforcement tools

The maximum amount of the administrative fine applicable in posting matters, currently set at EUR 50,000 under Article L. 143-2, is increased to EUR 75,000. This increase reflects the Government's stated aim of strengthening the fight against social dumping. Article L. 144-6 on the cross-border enforcement of sanctions is also rewritten to limit the grounds for refusing to notify a decision to those cases expressly provided for by the Directive, which only allows grounds based on disproportionate recovery costs, a low fine amount, or a breach of defence rights to justify a refusal to enforce a sanction, not a refusal to notify one.

A reinforced regime for road transport

The Draft Law also incorporates the posting-related provisions that were previously included in Draft Law No. [7319](#), so as to consolidate all posting-related amendments within a single text.

Article L. 145-1 of the Labour Code is amended to extend the scope of the posting regime to all undertakings carrying out professional passenger or goods transport by road and established outside Luxembourg, including those established in a third country, without further distinguishing according to whether they are covered by certain specific European or international instruments.

Article L. 145-4 further clarifies the arrangements for the posting declaration:

- undertakings subject to the binding EU rules under Directive (EU) 2020/1057 must declare the posting

via the public interface connected to the Internal Market Information System (IMI);

- other undertakings, including those established in third countries not covered by those rules, must now make this declaration via the ITM's dedicated electronic platform (e-Détachement).

This Draft Law, currently before the Council of State for its opinion, reflects the Government's intention to bring Luxembourg legislation into full compliance with EU law, while strengthening the tools available to control and sanction posting, in particular in the road transport sector.

LUXEMBOURG IMMIGRATION | NEW FIRST RESIDENCE PERMIT PROCEDURE AS OF 1 OCTOBER 2026

As of 1 October 2026, the procedure for applying for a first residence permit for third-country nationals wishing to settle in Luxembourg changed to align with the practices of other EU Member States. As indicated in a press release published by the Ministry of Foreign and European Affairs on 23 September last, this reform replaces the former procedure of applying in advance for a temporary residence authorisation (AST), with an application for a long-stay (D) visa to be filed with Luxembourg's or Belgium's diplomatic representations abroad.

Who is affected?

The reform applies to all third-country nationals (outside the EU/EEA/Switzerland) wishing to settle in Luxembourg for more than 90 days, including for employment, study or family reunification purposes. It does not apply to EU citizens and their family members, nationals of Iceland, Norway, Liechtenstein and Switzerland, UK nationals covered by the Withdrawal Agreement, applications to replace, renew or change the category of an existing residence permit, applications for a residence permit filed directly within Luxembourg territory, or applicants for international protection.

How will it work in practice?

From 1 October 2026, applicants must personally submit their application to the Embassy of the Grand Duchy of Luxembourg or, where Luxembourg is not represented, to the competent Belgian embassy, rather

than to the General Directorate of Immigration. They will receive a D visa valid for six months, allowing them to enter Luxembourg and travel within the Schengen area pending issuance of their residence permit. After arrival, within three days, applicants must file an arrival declaration with their municipality of residence and submit their residence permit application to the General Directorate of Immigration.

Practical note

Employers and individuals with immigration processes pending or planned for third-country nationals should now comply with the new procedure in place. Our Immigration team remains available to assist you.

ESG RATINGS REGULATION | NEW DELEGATED REGULATION SETS OUT SEPARATION REQUIREMENTS FOR ESG RATING PROVIDERS

New rules require ESG rating providers to separate their rating activities from other business lines through tiered organisational safeguards.

[Commission Delegated Regulation \(EU\) 2026/872](#) of 21 April 2026 (the "**Delegated Regulation**") sets out regulatory technical standards ("**RTS**") specifying the measures and safeguards that ESG rating providers must implement to separate their ESG rating activities from other activities under [Regulation \(EU\) 2024/3005](#) (the "**ESG Ratings Regulation**"). The Delegated Regulation was published in the Official Journal of the European Union on 28 July 2026.

The Delegated Regulation entered into force on 17 August 2026 and applies from 2 July 2026, in line with the application date of the ESG Ratings Regulation. It is binding in its entirety and directly applicable in all Member States.

The Delegated Regulation applies to all ESG rating providers that carry on, by way of derogation under Article 16(2) of the ESG Ratings Regulation, one or more of the activities referred to in Article 16(1), points (d) or (f), alongside their ESG rating activities. Its three substantive articles set out a tiered framework of separation measures:

Separation of rating staff

All ESG rating providers relying on the derogation must establish separate organisational structures with specific reporting lines and specific allocations of

functions and responsibilities to ensure that employees directly involved in assessing a rated item are not involved in any of the listed activities. Providers must implement physical separation measures and require those employees to submit an annual self-declaration confirming their non-involvement.

Additional controls for investment, credit and insurance activities

Providers engaged in investment services and activities, credit institution activities, or insurance or reinsurance activities must implement additional safeguards. These include role-based digital access controls, information barriers with watermarking methods and data classification, policies for managing confidential information, regular training, contractual compliance obligations and compliance monitoring. The adequacy of these measures must be assessed at least once every 24 months.

Specific safeguards for benchmark providers

Providers authorised to provide benchmarks (article 16 (3) of the ESG Ratings Regulation) must, in addition to the above mentioned measures, ensure that compensation arrangements for rating staff are not affected by conflicts of interest linked to benchmark activities, that *ESG* ratings are produced independently of benchmark outputs, and that any actual or potential conflicts of interest are documented before the provider enters into a client contract.

The Delegated Regulation is the latest in a series of regulatory developments under the ESG Ratings Regulation that we have been closely tracking. For a comprehensive overview of all five delegated regulations adopted by the Commission - including their scope, key compliance deadlines and the transitional regime.

See our earlier article ["ESG | Commission adopted final delegated RTS regulation within its broader ESG Rating regulation package"](#).

For further background on the transposition of the ESG Ratings Regulation and the European Single Access Point (ESAP) into Luxembourg law through Draft Law No. 8567, see our article ["ESAP & rating ESG | What are the implications of Draft Law 8567"](#).

SFDR I UPDATE OF CSSF'S FAQ ON SUSTAINABLE FINANCE DISCLOSURE REGULATION

On 21 July 2026, the CSSF clarified under Q1 of the [FAQ on Sustainable Finance Disclosure](#) that changes to article 8 and 9 SFDR RTS precontractual templates must follow the same regime as any other changes made to the prospectus or issuing document (with some that could be considered as material). Indeed, when included in the prospectus /issuing document, the templates form an integral part of the prospectus/ issuing document. There are no specific requirements in the SFDSR regarding the review of precontractual disclosures made in accordance with articles 8 and 9 SFDR.

As such according to applicable laws and regulations, the prospectus / issuing document including its annexed templates should include the information needed for investor to be able to make a proper judgment of the investment they are making.

Funds that are under the supervision of the CSSF must file any changes to the prospectus/ issuing document via the “e-identification procedure for UCI prospectus and offering documents” (following the same procedure as for other prospectus / issuing document change).

Only material changes according to [CSSF circular 14/591](#) and assessed on a case-by-case basis, must be submitted to the CSSF for review and authorisation. Material changes include, but are not limited to, the below:

- material changes to the fund/ sub-fund in the context of the ESMA guidelines on fund names using ESG

- or sustainability -related terms,
- changes in the SFDR classification,
- material change in the SFDR criteria set up (meaning strategy, index, methodology, investment objective or material variation in the threshold).

EU DIGITAL MARKETS ACT | APPLE CONFIRMED AS GATEKEEPER FOR THE APP STORE AND IOS

On 8 July 2026, in joined cases [T-1079/23](#), [T-1080/23](#) and [T-214/24](#), *Apple v. European Commission*, the General Court of the European Union (the “**Court**”) dismissed Apple’s challenges relating to its designation as a gatekeeper under the Digital Markets Act (the “**DMA**”). The case raises focused questions concerning the operation of the gatekeeper designation mechanism and the treatment of iMessage. Apple’s extensive challenge therefore offered the Court an opportunity to clarify further both the scope and the operation of several provisions of the DMA.

Background to the dispute

An enterprise meeting certain quantitative thresholds is presumed to satisfy the requirements for designation as a gatekeeper in respect of the relevant core platform services (“**CPS**”). In broad terms, “gatekeepers” are providers of CPSs which, by reason of their size, reach and position within the digital economy, may act as important gateways between business users and end users. The underlying substantive conditions can broadly be summarised as follows: the enterprise

- has a significant impact on the internal market,
- provides a CPS that constitutes an important gateway between business users and end users, and;
- enjoys an entrenched and durable position, or is likely to do so (as more broadly explained in other [contributions](#))

In July 2023, in accordance with Article 3(3) DMA, Apple notified the Commission that the Article 3(2) thresholds were met in relation to the iOS App Store, iOS, Safari and iMessage. Apple nevertheless argued that iMessage should not be characterised as a number-independent interpersonal communications service (“**NIICS**”) (which is a messaging service operating without a number) and sought to rebut the gatekeeper presumptions relating to that service. Apple further submitted that its five application stores associated with iPhone, iPad, Apple Watch, Mac and Apple TV constituted separate CPSs, with the result that only the iOS App Store met the relevant quantitative thresholds.

On 5 September 2023, the Commission designated Apple as a gatekeeper in relation to the App Store, iOS and Safari, while opening a market investigation concerning iMessage. In February 2024 it closed that investigation, concluding that Apple should not be designated as a gatekeeper in respect of iMessage, although it continued to regard iMessage as a NIICS and hence as a CPS. Apple challenged the decision before the Court, including in its action a challenge to the legality of Article 6(7) of DMA, providing gatekeepers to ensure free of charge interoperability in relation to operating systems with, *inter alios*, service providers and Commission’s confirmation of iMessage as a NIICS.

The findings of the Court

The Court dismissed all the arguments raised by Apple. First, it rejected Apple’s qualification of the App Store as being fragmented in separate application stores associated with Apple’s several devices, with only the iOS App Store individually meeting the quantitative gatekeeper thresholds. The Court agreed with the Commission that the five stores should instead be regarded as a sole CPS. The key point, for this finding, was the function of the service rather than the characteristics of the device through which it is accessed. Under the DMA, an application store performs an online intermediation function by connecting business users, namely app developers, with end users in order to facilitate the distribution of software applications. That function remains essentially the same whether the application is being distributed to any Apple device. Consequently, an enterprise cannot necessarily fragment a functionally unified platform service according to the device or technical environment through which it is supplied in order to assess DMA thresholds separately.

The Court then held inadmissible the pleas on Article 6(7) DMA, which requires gatekeepers to permit, free of charge, effective interoperability with certain hardware and software features controlled through their operating systems. Apple argued that the application of those obligations to iOS disproportionately interfered with certain fundamental rights, notably its right to property, and sought under

Article 277 of the Treaty on the Functioning of the European Union (TFEU) to challenge the legality of Article 6(7) incidentally in its action against the designation decision. The Court recalled that such a plea may concern a provision which either constitutes the legal basis of the contested decision or has a sufficiently direct legal connection with it. Neither condition was satisfied: Apple's designation was based on Article 3 DMA, while the obligations under Article 6(7) arose from the DMA itself once Apple had been designated and did not result from the designation decision. The legality of Article 6(7) could therefore not be challenged incidentally in the proceedings against that decision.

The Court finally held inadmissible Apple's challenges concerning the classification of iMessage as a NIICS and hence as a CPS. Since the Commission had ultimately not designated Apple as a gatekeeper in relation to iMessage, none of the DMA obligations applied to that service. The classification, standing alone, therefore produced no binding legal effects capable of altering Apple's legal position. The Court further noted that national authorities applying the European Electronic Communications Code were not bound by the Commission's classification adopted for DMA purposes.

The way forward

The judgment provides several useful clarifications. First, for DMA purposes, the identification of a CPS is functional: technically distinct versions of a platform service may constitute a single CPS where they perform essentially the same intermediary function for

business and end users. This approach gives the Commission some meaningful room to prevent technical segmentation of services from undermining the gatekeeper thresholds. Second, most significantly from an institutional perspective, the Court restated that claimants, like Apple, could not challenge, under Article 277 TFEU, specific provisions of the DMA, such as Article 6(7), which did not specifically form the basis for the Commission's decision. In the same way, Commission's classifications (such as the qualification of iMessage as NIICS), are not independently challengeable under Article 263 TFEU, unless they affect the applicant's legal position.

EU DIGITAL MARKETS ACT | MICROSOFT NOT DESIGNATED AS GATEKEEPER IN RELATION TO EDGE

On 2 September 2026, in Case [T-357/24](#), *Opera Norway. v. European Commission*, the General Court of the European Union (the “**Court**”) delivered a judgment on an action for annulment brought by Opera Norway (“**Opera**”) against a decision of the European Commission (the “**Commission**”), adopted pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (the “**DMA**”). The Court rejected in full Opera’s request for annulment of the Commission’s decision not to designate Microsoft as a gatekeeper under the DMA with respect to Edge, Microsoft’s web browser.

Background to the dispute

The DMA establishes a harmonised regulatory framework for the designation of gatekeepers, namely enterprises providing core platform services (“**CPSs**”) which, subject to the other conditions laid down by the regulation, constitute important gateways for business users to reach end users. As further explored in [previous newsletter](#), under Article 3(1) DMA, designation as a gatekeeper involves three substantive conditions, as the enterprise must:

- have a significant impact on the internal market,
- provide a CPS which is an important gateway for business users to reach end users, and; enjoy an entrenched and durable position, or foreseeably do so. In turn, Article 3(2) translates those qualitative concepts into quantitative presumptions. In

particular, the “important gateway” condition is presumed where the CPS has at least 45 million monthly active end users in the European Union (EU) and 10,000 yearly active business users established in the EU.

In conformity with Article 3(3) of the DMA, enterprises meeting the Article 3(2) thresholds must notify the Commission, but under Article 3(5) they can try to rebut the Article 3(2) presumption, on the basis of circumstances in which the relevant CPS operates, thus demonstrating that they do not satisfy Article 3(1) requirements. Against this backdrop, on 3 July 2023 Microsoft notified to the Commission that it met the thresholds vis-à-vis several of its CPS, comprising Windows, Microsoft Advertising, Bing (Microsoft’s search engine) and Edge (Microsoft’s web browser). At the same time, it also sought to rebut the presumption that some of those services satisfied the gatekeeper conditions. After investigation, on 12 February 2024, the Commission concluded that Edge was not an important gateway for business users to reach end users and therefore declined to designate Microsoft as a gatekeeper. The decision was challenged by Opera, the provider of the competing Opera web browser.

The issues at stake

Compared with other recent litigation concerning the DMA, the case raises a relatively focused question concerning the operation of the gatekeeper designation mechanism itself. Opera’s challenge offered the Court

an opportunity to clarify both the strength of the presumptions arising from the quantitative thresholds under Article 3(2) DMA and the scope of the mechanism under Article 3(5) allowing an enterprise exceptionally to rebut those presumptions.

The findings of the Court

Though Opera was not the addressee of the Commission’s decision, the Court considered its action admissible. Had Microsoft been designated as a gatekeeper in relation to Edge, the DMA (Article 6(3)) would have imposed, *inter alia*, obligations concerning browser choice, from which Opera, as one of the principal competing browser providers, could have benefited. The Commission’s non-designation decision therefore directly affected Opera’s legal situation by preventing it from benefiting from obligations which would otherwise have applied to Microsoft. As regards individual concern, the Court also took into account the potential substantial effect of the decision on Opera’s competitive position and its participation in the Commission’s market investigation. Opera was consequently directly and individually concerned within the meaning of Article 263 TFEU.

Though Opera was not the direct addressee of the Commission’s decision, the Court considered its action admissible. Under Article 6(3) DMA, gatekeepers are required to provide users with a browser choice screen, materially displaying the several alternatives available. The removal of Microsoft’s designation

would therefore deprive Opera, one of the principal web browsers and a competitor of Microsoft itself, of the opportunity to have its browser displayed on screen, together with competitors. As such, the Commission's decision directly prevented Opera from benefiting from a regulatory obligation which would otherwise have assisted it in reaching Edge users, resulting in Opera's being individually and directly concerned within the meaning of Article 263 TFEU and the *Plaumann* case-law.

On the merits, Opera's arguments were rejected in full. The Court acknowledged that, on the facts of the case, Edge exceeded the quantitative thresholds under Article 3(2) DMA, but this only gave rise to a rebuttable presumption that it constituted an important gateway. Article 3(5) expressly allows enterprises to demonstrate that, because of the circumstances in which the relevant CPS operates, requirements under Article 3(1) are not satisfied. In assessing the claim of rebuttal, the Commission is not limited to reconsidering the figures underlying the thresholds themselves but may examine other factors which concretely and specifically call the resulting presumption into question. In this framework, the presumption could be rebutted considering the actual scale of usage of the CPS, which may result from checking the number of web-page views. As a result, Edge accounted for approximately 5.8% of web-page views across devices in Europe, considerably below Chrome and Safari. Furthermore, although Edge benefits from its integration with Windows and Microsoft had adopted various practices to encourage its use, those

advantages had not translated into correspondingly significant usage of Edge. Furthermore, Edge relies on Blink, the open-source browser engine also used by Chrome and Opera, thereby limiting Microsoft's independent control over an important component determining how web content is rendered.

The findings of the Commission on actual scale of usage were also confirmed by responses received from business users and other market participants, fewer than one third of whom regarded Edge as important or crucial. All these elements confirmed that the existence of a powerful ecosystem may be relevant when assessing whether a CPS constitutes an important gateway, but does not by itself establish such a position where actual user behaviour points in the opposite direction. The Court therefore confirmed that Edge did not constitute an important gateway for business users to reach end users and dismissed Opera's action in its entirety.

The way forward

The judgment provides an important clarification of the DMA gatekeeper designation mechanism. Meeting the quantitative thresholds under Article 3(2) DMA does not automatically result in designation: the presumptions established by that provision are genuinely rebuttable under Article 3(5), and the Commission may take into account qualitative as well as quantitative circumstances capable of demonstrating that a CPS does not, in practice, constitute an important gateway between business users and end users. The judgment is also noteworthy from an institutional perspective, as it confirms that

competitors may, in appropriate circumstances, have standing to challenge a Commission decision declining to designate another undertaking as a gatekeeper, notwithstanding that they are not the addressees of that decision. In an ecosystem involving gatekeepers, business users, end users and competing service providers, the finding may therefore prove significant for future DMA litigation.

SPORTS | WITH GREAT (SELF-REGULATORY) POWER COMES GREAT RESPONSIBILITY: ANOTHER CJEU YELLOW CARD TO FIFA

On 16 July 2026, in case [C-209/23](#), *FT and RRC Sports GmbH v FIFA*, the Court of Justice of the European Union (the “**Court**”) adopted a preliminary ruling relating to the legality and compatibility with European Union (EU) law of the FIFA Football Agent Regulations (the “**FIFA Rules**”). The judgment is the latest in a series of major rulings delivered in recent years concerning the compatibility with EU law of rules adopted by FIFA and other international football governing bodies.

Background to the dispute

Adopted in 2022, the FIFA Rules establish a worldwide regulatory framework for agents involved in international transfers of players and coaches and govern, *inter alia*, agents’ remuneration, licensing requirements, approaches to potential clients and the collection and publication of information, including transactions and even sanctions. FT, a football agent, and RRC Sports GmbH, a German company engaged in football-agent activities, promptly brought proceedings before the Landgericht Mainz, seeking an injunction preventing FIFA from applying several FIFA Rules. On 30 March 2023, the Landgericht Mainz referred the matter to the Court, seeking guidance on the compatibility of several of the FIFA Rules with the EU rules on competition, i.e. Articles 101 and 102 of the Treaty on the Functioning of the European Union (“**TFEU**”), the freedom to provide services under Article

56 TFEU and the general data protection regulation (“**GDPR**”).

The issues at stake

The stakes for FIFA were high, as previous rulings addressing (such as, *inter alia*, case [C-333/21](#), case [C-650/22](#), and case [C-600/23](#)) had cast shadow over FIFA’s self-regulatory initiatives and judgments of international sporting bodies for their doubtful compatibility with EU law. The case therefore raised the broader question of how far FIFA may extend its regulatory authority beyond the organisation of football itself into the economically significant adjacent market for football agents. Although FIFA relied on several objectives connected with the functioning of that market, including information asymmetries and other market failures, the case required the CJEU to distinguish purely economic objectives from legitimate public-interest aims, such as professional and ethical standards, protection of clients, prevention of conflicts of interest and integrity of the transfer system.

The findings of the Court

The CJEU did not consider the FIFA Rules collectively as having an anticompetitive object. As regards, for instance, the cap on agents’ service fees, the Court considered that it could not be classified as restrictive by object merely because it imposed a maximum remuneration, since competition could continue below that ceiling. More problematic for the Court are notably

the FIFA Rules on approaching clients, which overprotect incumbent agents by allowing outside agents to approach potential clients only during the final two months of the duration of exclusive representation agreements in force. As incumbent agent may renegotiate or renew the agreement any time before that period, the competitive advantage of incumbent agents is inherently harmful to competition, so that such rule could be qualified as a restriction of competition by its object.

As the Court found that the majority of the FIFA Rules may restrict competition by effect rather than by object, it examined the applicability of the Meca-Medina (case [C-519/04](#) P) and Wouters (case [C-309/99](#)) case-law, according to which restrictive effects of rules of sports associations may fall outside Article 101(1) TFEU if they pursue legitimate objectives in the public interest and restrictions are genuinely necessary and proportionate. The CJEU nevertheless distinguished between legitimate public-interest objectives and certain purely economic objectives invoked by FIFA, such as addressing information asymmetries or improving the functioning of the agents’ market, which could not as such satisfy that test. Such restrictions may nevertheless qualify for exemption under Article 101(3) TFEU if its cumulative conditions are fulfilled, including the existence of genuine efficiency gains. Also in this case, the CJEU expressed scepticism that FIFA Rules such as those on approaching potential

clients, affording competitive advantages to incumbents, could achieve a genuine efficiency gain.

As in previous cases, the Court acknowledged that FIFA holds a dominant position under Article 102 TFEU as, at the same time, it organises the football ecosystem, carries out economic activities connected therewith and exercises regulatory, supervisory and sanctioning powers. The risk exists, therefore, that the FIFA Rules create the conditions for exclusionary abuses, where FIFA's regulatory powers are used to steer or limit competition in the football-agent market according to economic interests of FIFA; or clubs and leagues affiliated indirectly therewith. Furthermore, exploitative abuses would also be possible through rules on licensing, involving payment of fees, to access the international transfer market, notwithstanding agents do not themselves supply services to FIFA. The Court also acknowledged that the introduction of FIFA Rules on licence conditions, restrictions to representation and approach to potential clients may affect agents established in Member States to provide cross-border services, as their profession was previously unregulated (or less strictly regulated). Those restrictions may in principle be justified by objectives such as preventing conflicts of interest and protecting clients. By contrast, the Court considered that preserving the contractual stability of the relationship between agents and clients is essentially an economic objective and cannot, by itself, justify a restriction on Article 56 TFEU.

The Court was even more categorical on the application of the GDPR. Certain FIFA Rules concern

the collection and disclosure of substantial information concerning agents, their clients, transactions, remuneration and sanctions. This could be aligned with Article 6(1)(f) GDPR, which allows processing necessary for the legitimate interests pursued by the controller or a third party, unless overridden by the rights and interests of the data subject. However, the processing must still satisfy necessity and proportionality, which FIFA's Rules, imposing an indiscriminate and systematic disclosure of details concerning all transactions involving agents, would not meet. Likewise, indiscriminate publication of all sanctions irrespective of their seriousness failed the required balancing exercise. While publication of sufficiently serious sanctions may be justified, the same could not be assumed for all sanctions without regard to their seriousness, the harm caused or the passage of time.

The way forward

Following the ruling, the matter returns to the Landgericht Mainz, which must apply the Court's interpretation and determine whether the individual FIFA Rules are compatible with the relevant requirements of EU law. Importantly, the judgment does not question FIFA's ability, in principle, to regulate football agents. Rather, it confirms that such regulatory autonomy must be exercised within the limits imposed by EU competition law, the freedom to provide services and data-protection rules. FIFA may pursue legitimate objectives such as professional and ethical standards, protection of clients, prevention of conflicts of interest and integrity of the transfer system,

but restrictions imposed for those purposes must satisfy the applicable requirements of necessity and proportionality. Purely economic objectives, by contrast, cannot merely by virtue of being pursued through sporting regulation constitute a public-interest justification for restrictions otherwise caught by EU law. In that sense, the judgment provides another reminder that, with great self-regulatory power comes great responsibility: sporting autonomy remains recognised, but its exercise is subject to effective scrutiny under EU law.

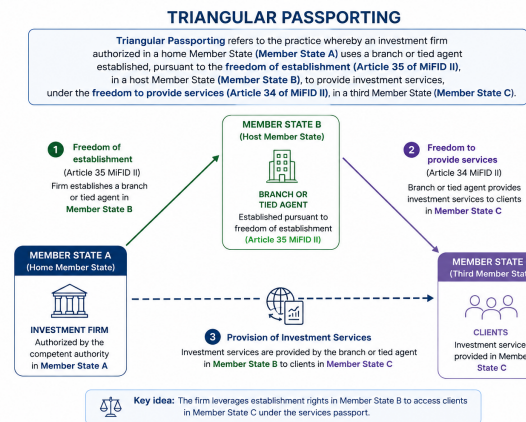
TRIANGULAR PASSPORTING I ESMA CLARIFIES THE RULES OF THE GAME

On 7 July 2026, ESMA published a supervisory briefing on “[Triangular Passporting](#)” under Directive 2014/65/EU on markets in financial instruments (“**MiFID II**”, the “**Briefing**”). Asset managers with MiFID permissions should review their cross-border structures now - ESMA expects full alignment with passporting rules. The Briefing aims to harmonise the supervisory practices of national competent authorities (“**NCA**s”) when dealing with so-called “triangular” passporting arrangements.

Scope

The Briefing is addressed to “firms” - referring to investment firms, including credit institutions, providing investment services or performing investment activities - and covers “investment services” as investment services and/or investment activities as well as ancillary services. Strictly speaking, it does not address investment funds, their management companies (UCITS/AIFs), or the cross-border distribution of fund units or shares, which are governed by separate regimes (the UCITS Directive, the AIFMD and the Regulation on the Cross-Border Distribution of Funds). However, the Briefing does have an impact on the fund industry, as many asset management groups house MiFID activities (portfolio management on behalf of third parties, investment advice and the reception and transmission of orders) within dedicated MiFID entities or within management companies holding additional authorisations.

What is “Triangular Passporting”?



The benefits of the briefing for fund managers

The Briefing is particularly relevant where an AIFM or UCITS management company also has **MiFID permissions** for services such as portfolio management, investment advice or other additional services.

For these managers, ESMA highlights several requirements.

Passport notification

The triangular arrangement should be expressly identified in the notification to the home NCA.

Consistency between notified and actual activities

ESMA expects the branch or tied agent to be fully operational in Member State B before providing cross-border services from B to C, with those services remaining within the scope of the firm's passporting notifications under both Articles 34 and 35 of MiFID II.

Substance

Firms should not use Triangular Passporting to circumvent supervisory competences or engage in “forum shopping”; establishing a branch or tied agent in Member State B solely to passport services to Member State C could be considered not in line with Article 35 of MiFID II.

Risk assessment

ESMA expects firms relying on Triangular Passporting to conduct and regularly review an internal risk assessment covering, for example, investor protection, anti-money laundering and terrorist financing, outsourcing responsibilities, and third-party risks.

Tied agents

The agreement between the firm and a tied agent is expected to explicitly authorise the tied agent to provide cross-border services on behalf of the firm. Indeed, Article 29(2) of MiFID II stipulates that where a firm “decides to appoint a tied agent it remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the investment firm.”

It is worth noting that Member States may also adopt more stringent provisions than those laid down in MiFID II regarding tied agents, under Article 29(6) MiFID II.

Client information

Clients in Member State C must be informed that services are provided through the branch/tied agent in Member State B and that the home-state NCA remains the competent authority. Article 75(1) of MiFID II requires Member States to ensure that firms adhere to one or more extra-judicial mechanisms for consumer complaints, and firms are expected to inform clients about complaints/redress procedures and applicable investor compensation schemes. Finally, firms are also expected to include such cross-border complaints in their complaints-handling procedure established under Article 26 of the MiFID II Delegated Regulation.

Supervision

The home NCA retains primary responsibility for organisational and conduct-of-business requirements relating to the firm's services abroad, while the NCA in Member State B is responsible only for the branch's/tied agent's conduct of business when providing services within Member State B. Under Article 86 of MiFID II, where investor interests or the orderly functioning of markets in the host Member State are at risk, the host NCA may take precautionary measures if those taken by the home NCA are insufficient or inadequate. NCAs are also required to cooperate with each other for the purposes of carrying out their duties under MiFID II, per Article 79(1) MiFID

II.

Broader relevance for the fund industry

Although the Briefing does not create a triangular passport regime for funds, its principles may be relevant by analogy to cross-border fund activities. It reflects a wider EU trend towards greater supervisory convergence, transparency and clearer allocation of responsibility between NCAs. This is also consistent with the European Commission's proposed "Market Integration and Supervision" package, which seeks to simplify cross-border passporting and marketing regimes for UCITS and AIFs.

Key considerations and practical recommendations

For asset management groups with **MiFID activities conducted through branches or tied agents in several Member States**, ESMA recommends:

- Mapping existing structures to identify triangular arrangements.
- Checking that actual activities correspond to passport notifications;
- Reviewing tied-agent agreements to ensure cross-border activities are expressly authorised.
- Updating client disclosures and complaints procedures to reflect the relevant service provider and competent authority.

AIFMD | LUXEMBOURG INTRODUCES STATUTORY COMPARTMENTS FOR SCSP AND SCS ALTERNATIVE INVESTMENT FUNDS

Luxembourg's proposed Article 28bis lets authorised-AIFM-managed SCSp/SCS funds create ring-fenced compartments without adopting a fund product law.

A new structuring option for Luxembourg partnership AIFs

On 30 July 2026, a draft law was published to amend the Luxembourg law of 12 July 2013 on alternative investment fund managers (the **"AIFM Law"**). The proposed amendment introduces a new Article 28bis, which creates a statutory compartmentalisation regime for Luxembourg common limited partnerships (*sociétés en commandite simple*, **"SCS"**) and special limited partnerships (*sociétés en commandite spéciale*, **"SCSp"**) that qualify as alternative investment funds (**"AIFs"**). Until now, statutory compartmentalisation has been available only to alternative investment funds established under one of Luxembourg's dedicated fund product laws - the SIF, RAIF, SICAR or Part 2 UCI regimes. Article 28bis changes that position by allowing partnership AIFs managed by a fully authorised AIFM to set up ring-fenced compartments.

Scope and eligibility

It is proposed that the new regime be inserted into the AIFM Law rather than the Luxembourg law of 10 August 1915 on commercial companies (the **"1915 Law"**). Its placement already defines its boundaries: Article 28bis will apply only where an SCS or SCSp qualifies as an AIF and is managed by a fully

authorised AIFM. Structures falling outside the AIF definition - such as certain co-investment or carried interest vehicles - cannot rely on the new provision. Similarly, partnerships managed by sub-threshold AIFMs remain outside its scope.

Practical significance - freedom from fund product law constraints

SIFs, Part 2 UCIs, SICARs and RAIFs are subject to risk-spreading requirements, borrowing restrictions and minimum net asset thresholds, most recently consolidated by CSSF Circular 25/901 of 19 December 2025.

A plain, unregulated AIF governed solely by the AIFM Law and the 1915 Law is not subject to these product-law constraints and therefore benefits from greater structural flexibility. Article 28bis will mean that such an AIF can now also benefit from statutory compartmentalisation - previously one of the main reasons for selecting a fund product law.

The proposed provision also interacts with the existing patrimonial segregation framework. Article 320-2 of the 1915 Law already grants the SCSp its own patrimony, protected against the personal creditors of, among others, the limited partners, the general partner, the AIFM and the depository. Article 28bis does not replace that regime; instead, it builds upon it by allowing the SCSp's asset pool to be subdivided into statutorily ring-fenced compartments. In practice,

sponsors obtain the legal certainty previously reserved to SCSPs established under the fund product laws, while retaining the flexibility of a plain SCSp governed solely by the AIFM Law.

The draft law refrains from imposing any compulsory prospectus or placement memorandum. The existing latitude under the AIFM Law regarding how and where investor disclosures are made is therefore retained. Each compartment may have its own annual report, on condition that the report also contains consolidated figures covering every compartment of the vehicle, in line with the approach already permitted for RAIFs and SIFs.

The new framework is expected to considerably broaden the structuring possibilities open to managers wishing to launch multi-compartment SCS or SCSp AIFs in Luxembourg.

Impact of the reform

Article 28bis will recalibrate the relationship between the AIFM Law and the fund product laws for partnership AIFs. Until the proposed amendment, compartmentalisation was reserved to vehicles established under the SIF, RAIF, SICAR or Part 2 UCI regimes.

The RAIF, governed by the Luxembourg law of 23 July 2016 on reserved alternative investment funds (the **"RAIF Law"**), was the most common choice, largely because it offered access to compartmentalisation

under Article 49 of the RAIF Law (modelled on Article 71 of the Luxembourg law of 13 February 2007 on specialised investment funds (the "**SIF Law**") without prior CSSF authorisation. By transplanting the core compartment mechanics into the AIFM Law itself, Article 28bis will eliminate what was, for many partnership-based fund launches, the single decisive factor in favour of the RAIF.

That said, the RAIF remains indispensable for certain vehicle types. Opaque corporate AIFs – in particular *sociétés anonymes* (SA) and *sociétés en commandite par actions* (SCA) structured as SICAVs – continue to depend on the RAIF regime mainly to access the applicable RAIF tax framework and for the variable nature of the capital. For those vehicles, Article 28bis is immaterial. Where the reform does produce tangible savings is in the partnership segment: sponsors that previously adopted the RAIF solely for compartmentalisation purposes will no longer inherit the regulatory overlay that comes with a fund product law – namely risk-spreading requirements, borrowing restrictions and minimum net asset thresholds. .

Going forward, the election of a fund product law for SCS or SCSp AIFs will therefore be driven by considerations such as risk-diversification obligations, regulatory labelling, or the need for a formal issuing document, rather than by the compartmentalisation question.

Next steps and timeline

The draft law No. [8814](#) was published on 30 July 2026 and is now subject to the ordinary Luxembourg legislative process, including review by the *Conseil*

d'Etat and debate in the Luxembourg Parliament (*Chambre des Députés*).

CSSF ISSUES FIRST FAQ ON TOKENISATION

Luxembourg funds can issue native tokens, but a consolidated view and careful control agent notification remain essential, says the CSSF.

On 2 October 2026, the CSSF published the first version of its [FAQ on tokenisation](#), aimed at Luxembourg undertakings for collective investment ("UCIs") and other market participants exploring distributed ledger technology ("DLT") for fund units and shares. The guidance confirms the technologically neutral approach the CSSF has thus far taken: the CSSF assesses tokenisation projects by reference to the underlying activity rather than the technology used.

Describe the whole project from day one

Entities considering a tokenisation project are encouraged to engage with the CSSF as early as possible and, when doing so for the first time, to provide a description of the whole project and the lifecycle of the assets involved, from issuance through to trading, settlement and distribution. This description should cover the legal qualification of the tokens, the role of every stakeholder, and details of all contractual arrangements, including outsourcing. The CSSF also expects a preliminary assessment of the licensing and notification requirements the project may trigger, since timing discrepancies between procedures, including the control agent notification, can affect the overall project schedule.

Native tokens confirmed

The FAQ confirms that Luxembourg UCIs may issue

native units or shares, meaning units or shares issued solely on DLT in the form of tokens, without first existing in another form. Such tokenised units or shares may be registered or dematerialised, since using DLT as the issuance and record-keeping infrastructure does not itself determine the legal form of the underlying securities. For registered tokenised units or shares, the usual UCI administrator ("UCIA") registrar function can be performed using DLT to maintain the register, while dematerialised tokenised units or shares still require an eligible entity to act as UCIA, in addition to complying with the law of 6 April 2013 on dematerialised securities.

Multiple UCIA's and the need for a consolidated view

Where a UCI issues both traditional and tokenised units or shares, multiple entities may act as UCIA for the registrar function in parallel, provided five conditions are met: no fragmentation of supervision or unjustified cost and complexity; proper disclosure of the operating model and its risks to investors, including each UCIA's role in the offering documents; and proper management of any additional risk arising from splitting the function. Importantly, the CSSF requires that one entity, whether the investment fund manager or one of the UCIA's, maintain a consolidated view of all units or shares issued by the UCI. This is essential so that other administration functions, such as net asset value calculation or distributions and capital calls, can be

performed correctly across both the tokenised and traditional pools. It is also to be noted that there while the registrar function and the control agent function are different noting prevents a single entity holding authorisations to perform both functions.

Control agent: notification, questions and cross-border aspects

Section II of the FAQ deals with the control agent role under Article 21a of the law of 6 April 2013 on dematerialised securities. Control agents are investment firms, credit institutions or settlement organisations that maintain the securities issuance account through DLT and are responsible for tracking and verifying the holding chain of securities held in securities accounts on the DLT. Entities wishing to act as control agent must notify the CSSF at least two months before starting the activity and must provide sufficient information for the CSSF to verify compliance with the legal requirements. Where elements of the activity are outsourced or supported by ICT third-party arrangements, a separate notification is required, generally three months before outsourcing starts, reduced to one month for outsourcing to a Luxembourg support PFS.

An entity established in another EEA Member State intending to notify the CSSF as control agent must first inform its home competent authority, keep the CSSF informed of any objection or comment from that authority, and ensure the CSSF can rely on



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cooperation from the home authority to verify compliance with Article 21a, both at the time of notification and throughout the activity's life.

The FAQ also briefly touches on digital operational resilience and outsourcing: control agent entities fall within the scope of DORA and must apply their DORA compliance framework to the activity, and a control agent may use third-party technical support, for example for smart contract development, subject to the usual ICT third-party notification requirements where the activity qualifies as a critical or important function.

ISLAMIC FINANCE | CSSF UPDATES GUIDANCE ON AUTHORISED INVESTMENT FUNDS

On 15 July 2026, the CSSF updated its [guidance](#) entitled “Authorised Investment Funds and Islamic Finance”, initially published on 11 May 2011 (the “Guidance”).

The Guidance remains a high-level overview of the Luxembourg regulatory landscape applicable to Shariah-compliant investment funds. While retaining the existing legal approach, the update extends the scope of the Guidance and adds an express reference to the applicable anti-money laundering and counter-terrorist financing (“**AML/CFT**”) framework and more detailed expectations relating to Shariah boards and prospectus disclosures.

Scope and regulatory framework

Luxembourg law does not provide for a separate regulatory regime for Shariah-compliant investment funds. Authorised Shariah-compliant investment funds are subject to the same European and Luxembourg legal and regulatory requirements as other Luxembourg investment funds. The CSSF does not determine whether the investment policy of a Shariah-compliant investment fund complies with Shariah principles.

The 2011 Guidance referred only to investment funds governed by the Law of 17 December 2010 relating to undertakings for collective investment and specialised investment funds governed by the Law of 13 February 2007.

The Guidance now expressly distinguishes between

investment funds authorised as products by the CSSF and vehicles which are not authorised as products by the CSSF.

In relation to authorised products, the revised Guidance expressly covers:

- undertakings for collective investment in transferable securities (UCITS);
- undertakings for collective investment governed by Part II of the Law of 17 December 2010 (Part II UCIs);
- specialised investment funds (SIFs); and
- investment companies in risk capital (SICARs).

In addition, the update confirms that authorised Shariah-compliant investment funds are subject to the Luxembourg AML/CFT framework, including the Law of 12 November 2004 and the related regulations, circulars and guidelines issued by the CSSF.

Governance of Shariah Boards

It is common practice for authorised Shariah-compliant investment funds to appoint a Shariah board to assess whether their investments comply with Shariah principles (a “**Shariah Board**”).

Where a Shariah Board is appointed, its role, competences and practical operation must be described in the prospectus.

A key change concerns the requirements applicable to the members of the Shariah Board. Under the 2011 Guidance, the good reputation and experience

requirements applied only where the Shariah Board had decision-making powers. The revised Guidance no longer draws this distinction. All members of the Shariah Board must be of sufficiently good reputation and sufficiently experienced in relation to the investment policy of the relevant fund. The identities of the members, and of any persons succeeding them, must be communicated to the CSSF forthwith.

The revised Guidance also expressly refers to the application of the general requirements relating to due diligence, delegation and conflicts of interest.

Prospectus disclosures

Authorised Shariah-compliant investment funds remain subject to the standard rules governing the presentation of their prospectuses and financial reports, without additional Shariah-specific presentation requirements. The CSSF nevertheless now expects the prospectus to include:

- information on how the investments are managed from a Shariah perspective, including any purification mechanisms;
- information on the Shariah Board, its members, powers, responsibilities and remuneration;
- information on the mechanisms used to ensure continuous compliance with Shariah principles and the frequency of the relevant monitoring reviews; and
- the Shariah risk factors specific to the fund’s strategy, portfolio and other key features.



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Additional Shariah-related information may also be provided in a separate report to investors, provided that the applicable standard disclosure requirements are met and the information is presented clearly and understandably.

Although the Guidance acknowledges that Shariah-compliant investment funds may also be established as vehicles not authorised as products by the CSSF, it does not further address the legal framework applicable to such vehicles.

CSSF FUND AUTHORISATION STATISTICS | HOW TO GET YOUR LUXEMBOURG FUND AUTHORISED FASTER

Seven filing mistakes are adding weeks to Luxembourg fund launches. Here is how to avoid them.

Most delays in Luxembourg fund authorisations are within the applicant's control, not the regulator's.

On 3 August 2026, the CSSF published [updated statistics](#), current as of 30 June 2026, on how long it takes to authorise a new regulated investment vehicle in Luxembourg. The figures confirm that processing time splits into two distinct components:

- the CSSF's own assessment period and
- the time taken by the applicant to respond.

A meaningful share of any delay sits on the applicant's side of that split.

While the CSSF frames its review of each application as an in-depth, public-interest exercise, not an administrative formality it is cognisant of the fact that the market requires some predictability on the time for authorisation. In this light the CSSF confirmed that it is investing in digital tools and standardised submissions to make timelines more predictable.

What is in scope

The statistics cover initial authorisations completed since 1 January 2020 for UCITS, specialised investment funds (SIFs) and undertakings for collective investment (UCIs) subject to [Part II of the Luxembourg law of 17 December 2010](#) relating to undertakings for collective investment. Investment companies in risk capital (SICARs), governed by the [Luxembourg law of](#)

[15 June 2004](#) relating to the investment company in risk capital, are excluded from the scope, along with statistical outliers such as withdrawn applications.

Processing time runs from the CSSF's receipt of the application to its authorisation or refusal decision and is measured in working days. It is not the same as time to market, which also includes pre-filing preparation and post-authorisation steps.

The seven mistakes that slow a filing down

The CSSF's published guidance identifies a consistent set of avoidable errors on the applicant side:

Filing before the project is finished

Incomplete forms or supporting documents, fragmented files returned for correction, and scope changes requiring a fresh filing are named as concrete causes of delay. File once, completely.

Under-explaining a complex structure

For complex projects, the CSSF recommends an explanatory memo proactively covering structure, investment policy, strategy, instruments and legal and regulatory compliance, together with careful prospectus (and KIID, where applicable) drafting.

Slow or partial replies to CSSF queries

The CSSF bundles its clarification requests and expects an exhaustive, consolidated response to maintain momentum in the review.

Sending unmarked revisions

Amended drafts sent during examination should be marked up, with mapping sheets where required.

Introducing new features mid-review

Substantial changes or new features introduced during examination are treated as a new project requiring a new application.

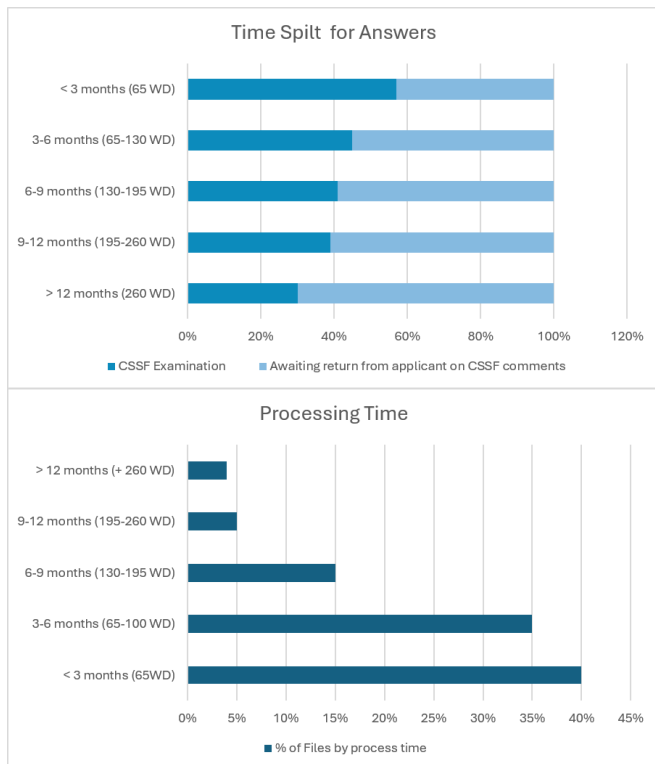
Delaying submission of final documents after approval

Once the CSSF notifies the end of the examination phase, it expects timely delivery of the final e-identified prospectus and the signed final documents requested in the end-of-examination letter. Up to one month after that letter is considered reasonable, and two months is the maximum, after which the CSSF can treat the application as abandoned.

Changing the prospectus after CSSF validation

The final prospectus submitted for e-identification must be strictly identical to the CSSF-validated version; any unapproved change is prohibited and invalidates the authorisation granted.

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Source: CSSF, "Processing time of initial authorisations of regulated investment vehicles", published 3 August 2026.

What this means for you

For promoters and managers, the practical consequence is that the fastest route to authorisation is not pushing the regulator, it is controlling everything on your own side of the process:

- submit a complete file at filing,

- explain complexity proactively,
- respond to queries fully and quickly,
- mark up revisions clearly,
- avoid scope creep once examination has started, and
- deliver unchanged closing documents promptly after the end-of-examination letter.

TAX OMNIBUS | THE EUROPEAN COMMISSION PUBLISHES ITS DRAFT DIRECTIVE

In our [April 2026 edition](#), we reported on the European Commission's Tax Omnibus initiative (the "**Initiative**"), then at the call-for-evidence stage, and expected to result in a legislative proposal in the second quarter of 2026. On 24 June 2026, the Commission published that proposal for a Council Directive (the "**Proposal**"), registered as [COM\(2026\) 560](#) final, procedure 2026/0163 (CNS). The Proposal amends six existing EU tax directives rather than replacing them, confirming the simplification and consolidation approach announced at the Initiative stage. As with the Initiative, the Proposal is based on Article 115 of the Treaty on the Functioning of the European Union ("**TFEU**"), meaning it requires the Council's unanimous agreement following consultation, but not co-decision, of the European Parliament ("**EP**").

Scope of the Proposal

The Proposal amends:

- the Interest and Royalties Directive (2003/49/EC);
- the Merger Directive (2009/133/EC);
- the Parent-Subsidiary Directive (2011/96/EU);
- the Anti-Tax Avoidance Directive ("ATAD") ((EU) 2016/1164);
- the Tax Dispute Resolution Mechanisms Directive ((EU) 2017/1852); and
- the FASTER Directive on withholding tax relief ((EU) 2025/50).

Parent-Subsidiary Directive

The Proposal removes the minimum 10% shareholding and the minimum one-year holding period currently required for the dividend exemption and the related withholding tax exemption between EU companies, extending both to all EU shareholdings. Most of these changes would apply only from 1 January 2037.

Interest and Royalties Directive

Domestic authorisation procedures for the existing withholding tax exemption would be removed and the exemption aligned with the refund procedures under the FASTER Directive. A new safeguard is also introduced for interest and royalty payments leaving the EU towards related recipients in third countries that levy no, or a nominal zero, corporate tax on that income: the source Member State would have to apply either a withholding tax or a denial of deduction, subject to exceptions for recipients within the Pillar Two framework. This measure would also apply only from 1 January 2037.

Anti-Tax Avoidance Directive

The interest limitation rule is revised, including a new exclusion for certain low-risk third-party loans, a mandatory indexed EUR 3 million threshold, and temporary relief where a taxpayer's EBITDA falls sharply. The current option for Member States to choose between two methods of taxing controlled foreign companies is removed: only the category-based method (the so-called Model A) would remain

available, subject to a mandatory substance carve-out for EU/EEA subsidiaries. The general anti-abuse rule is extended to cover all taxes, not only corporate tax, and a new immediate expensing incentive is introduced for certain research and development assets. These changes would generally apply from 1 January 2029, other than the indexed EUR 3 million interest-limitation threshold, applying from 1 January 2032.

Other directives

The Merger Directive would be extended to certain additional merger and division structures; the Tax Dispute Resolution Mechanisms Directive would be clarified on procedural points; and the FASTER Directive would be adjusted so that fast-track withholding tax relief is not denied solely because a payment also relies on the Parent-Subsidiary or Interest and Royalties Directives.

Luxembourg impact

For Luxembourg, the proposed move to a single, category-based method for taxing controlled foreign companies and the new safeguard on interest and royalty payments to low-tax third countries are the two measures whose implementation should be monitored closely as both would depart from the current Luxembourg legislation, although the interest and royalty measure would not apply, if adopted, before 1 January 2037.

Next steps

The Proposal will now be examined by the Council and consulted on by the EP. As a directive under Article 115 TFEU, it requires the unanimous agreement of all 27 Member States, and any Member State may seek changes to the text during negotiation. If adopted, Member States would have until 31 December 2028 to transpose the directive, with general application from 1 January 2029, except for the provisions noted above applying from 2032 and 2037 respectively.

Conclusion

The Proposal marks the transition of the Tax Omnibus from a policy initiative to a concrete legislative text, confirming the broad direction previously announced by the Commission while adding detail on scope, exceptions and timing. Its final form, and the extent to which the 2029, 2032 and 2037 application dates are preserved, will depend on the outcome of negotiations in the Council over the coming months.

DAC | EUROPEAN COMMISSION PROPOSES RECAST OF THE DIRECTIVE ON ADMINISTRATIVE COOPERATION IN THE FIELD OF TAXATION

On 24 June 2026, the European Commission published proposal COM(2026)308 final to recast Directive 2011/16/EU on administrative cooperation in taxation (the "**DAC**"). The proposal would consolidate DAC1 to DAC9 into a single legal act and introduce targeted substantive amendments across several reporting regimes. Pending adoption, the existing DAC rules remain in force, but the recast would streamline the nine directives into one, cutting compliance costs and narrowing DAC6 obligations.

Background and context

The DAC is the main EU legislation on administrative cooperation in direct taxation. Since 2011, eight successive amendments have expanded its scope to financial accounts (DAC2), cross-border tax rulings (DAC3), MNE country-by-country reporting (DAC4), beneficial ownership (DAC5), reportable cross-border arrangements (DAC6), digital platform income (DAC7), crypto-assets (DAC8) and the global minimum tax (DAC9).

This has produced a fragmented, complex legal structure which, according to the Commission, undermines legal clarity and certainty, with certain requirements (notably under DAC4/DAC9, DAC6 and DAC7) generating large volumes of low-relevance information and disproportionate compliance burdens.

By codifying the nine directives into a single, more coherent instrument, the recast improves legal clarity

and introduces key simplifications that reduce administrative burdens and make the framework more efficient for both businesses and tax administrations.

One of the most impactful changes is the **reduction of reporting obligations**: the recast removes cross-border reporting requirements for roughly 3,000 MNE groups already subject to the 15% Pillar Two minimum tax, saving an estimated EUR 300 million annually, and eliminates reporting for all other companies (including SMEs) on arrangements of limited value to tax administrations.

DAC6 - the main proposed changes

A targeted Pillar 2 carve-out

The Commission's preferred package would exclude from DAC6 companies within scope of the Pillar 2 Directive, subject to conditions preserving the 15% minimum-tax outcome, including qualified domestic top-up taxation and the absence of refunds or other benefits undermining that result. Pillar 2 status is therefore not an automatic exemption without checking the detailed conditions.

Reporting period

The reporting period is amended in two ways: it now starts from the first concrete, verifiable implementation step (such as signing contracts that make the arrangement irreversible or legally binding), and the intermediary reporting deadline is extended from 30 to

90 days to ensure better quality and completeness of information.

Category A hallmarks would be deleted, while the Main Benefit Test would remain

The generic Category A hallmarks (confidentiality clauses, success-fee arrangements and substantially standardised arrangements) would be removed. The MBT would continue to apply to the remaining hallmarks subject to it, with the Commission's package envisaging guidance for more consistent application across Member States.

Further hallmark adjustments are proposed

For Hallmark C.1, the reference to OECD work on non-cooperative jurisdictions would be replaced by the EU's own process for assessing third-country jurisdictions. The criteria for Hallmark D.2, on non-transparent ownership chains, would be further specified through a Council implementing act.

Legal professional privilege would be revised in light of CJEU case law

In line with recent CJEU judgments, legal professional privilege would be understood to apply only to lawyers and other professionals legally authorised to ensure legal representation. Member States should therefore limit the waiver from filing information on a reportable cross-border arrangement to professionals authorised under national law to ensure legal

representation.

DAC7 - higher threshold for sellers of goods

The proposal would simplify the exclusion threshold for the sale of goods through digital platforms

The current test combines a 30-transaction activity threshold with a EUR 2,000 monetary threshold. The Commission proposes to remove the transaction threshold and raise the monetary threshold to EUR 3,000, avoiding reporting for low-value occasional sellers while retaining it for more material activity.

DAC4 and DAC9 - one group notification instead of overlapping notifications

A single notification would cover both country-by-country reporting and the Pillar 2 top-up tax information return.

The filing constituent entity of an MNE group could submit one notification, using a common standard form, on behalf of all EU-resident group entities, no later than the last day of the group's Reporting Fiscal Year, with the receiving Member State exchanging it with other Member States concerned.

This central-filing approach replaces duplicative entity-by-entity notifications and harmonises the timeline and information required for DAC4 and DAC9.

TIN verification - a centralised EU verification tool

The Commission would develop a digital and automated TIN verification tool.

Member State tax authorities would need electronic

confirmation of TIN validity in specified exchanges, while reporting entities could use the tool voluntarily, improving matching of exchanged information and reducing errors from incomplete or inaccurate identification data.

DAC1 - broader completeness of exchanges, but removal of life insurance products

The life insurance products category would be removed from DAC1.

The Commission considers that only a limited number of Member States exchange information under this category, which significantly overlaps with financial-account reporting under other DAC provisions.

Proposed timetable

Implementation is phased. The DAC6 amendments and DAC7 seller-threshold change are scheduled for transposition by 31 December 2027 and application from 1 January 2028. The more IT-intensive DAC4/DAC9 notification reform, TIN verification framework and DAC1 changes follow in a later 2030 phase. These dates may change during the legislative process.

What this means for you

Intermediaries and taxpayers should not change current reporting practices yet: the recast is only a proposal, and the existing DAC framework applies until new rules are adopted, transposed and applicable.

DRAFT LAW ON MANDATORY B2B E-INVOICING I A PHASED IMPLEMENTATION FROM 2028

On 30 July 2026, the Luxembourg Government submitted draft law No. [8815](#) (the “**Draft Law**”), extending the existing mandatory electronic invoicing framework beyond public procurement and concession contracts to certain domestic business-to-business (“**B2B**”) transactions.

The Draft Law amends the law of 16 May 2019 on electronic invoicing and the amended law of 12 February 1979 on VAT. It also aims to prepare Luxembourg businesses for the digital reporting requirements introduced at EU level under the VAT in the Digital Age (“**ViDA**”) Directive (EU) [2025/516](#) of 11 March 2025.

As the legislative process is still ongoing, the proposed implementation arrangements remain subject to further clarification and may be amended before their final adoption.

Scope of the new regime

The proposed rules would apply to domestic B2B transactions, where the supplier and customer are established in Luxembourg, the transaction is taxable in Luxembourg, and an invoicing obligation exists under Luxembourg VAT rules. Certain categories of invoices would be excluded from the regime, including invoices issued by occasional taxable persons, invoices issued to persons temporarily acquiring taxable person status under the housing VAT regime, and invoices relating to intra-EU B2C distance sales taxable in Luxembourg.

The proposed regime would therefore not constitute a general e-invoicing obligation for all invoices issued by Luxembourg businesses. Its application will depend on the characteristics of the relevant transaction and on the applicable VAT rules.

A compliant electronic invoice will be required

A key element of the reform is the distinction between an electronic invoice in the broad sense and a “**compliant electronic invoice**”.

A PDF sent by email may qualify as an electronic invoice in the broad VAT sense but would not constitute a compliant electronic invoice for the purposes of the proposed mandatory regime.

A compliant electronic invoice means an invoice issued, transmitted and received in a structured format capable of automated processing and comply with the applicable European standard and authorised syntax.

The compliant electronic invoice would constitute the legally relevant invoice, while a PDF could only serve as a readable representation or accompanying document.

A three-step implementation

The reform introduces a phased timetable:

- **From 1 January 2028:** all Luxembourg businesses within scope must be able to **receive and process** electronic invoices.
- **From 1 July 2028:** businesses that exceed at least two of three size thresholds (balance sheet total of

EUR 7,500,000, net turnover of EUR 15,000,000 and 50 full-time employees) at the closing date of their 2026 financial year must **issue and transmit** electronic invoices.

- **From 1 January 2029:** the issuance and transmission obligation will extend to all other businesses within the scope, including those that do not exceed the above thresholds or that are unable to provide the relevant size data for 2026.

The Draft Law also provides for transitional arrangements for the receipt of compliant electronic invoices during 2028. During this period, businesses that are not yet connected to the common delivery network may use transitional alternative technical solutions: until 30 June 2028 for businesses exceeding the size thresholds, and until 31 December 2028 for smaller businesses and those unable to provide the relevant size data for 2026.

Peppol as the common delivery network

The Draft Law provides for a common delivery network for the issuance, transmission and reception of compliant electronic invoices.

The Draft Law provides that the common delivery network will be determined by Grand-Ducal Regulation. The Luxembourg Government has indicated that the existing Peppol network used for public procurement is intended to be reused for this purpose.

Alternative technical solutions will also be available on a permanent basis for businesses with limited invoicing

volumes, subject to thresholds to be set by Grand-Ducal Regulation. Businesses exceeding those thresholds through alternative solutions would be subject to escalating per-invoice usage fees.

Impact on internal processes

The reform goes beyond the technical format of invoices. Businesses will need to ensure that their systems and internal procedures enable the receipt and processing of structured electronic invoices and, for Luxembourg-established issuers, the processing of return messages, including confirmations, rejections and error notifications.

No national real-time reporting at this stage

The proposed Luxembourg regime should be distinguished from the future EU digital reporting requirements under ViDA. At this stage, the Draft Law does not introduce a general real-time reporting obligation to the Luxembourg VAT authorities for domestic B2B invoices. However, from 1 July 2030, ViDA will introduce digital reporting requirements for intra-Community transactions based on electronic invoice data.

Practical impact

Businesses should start preparing ahead of 2028 by:

- identifying transactions falling within the scope of the new rules;
- determining their applicable issuance and transmission deadline;
- assessing the ability of their ERP and invoicing systems to generate and process compliant

structured invoices;

- reviewing master data and internal invoice workflows; and
- assessing the appropriate technical solution, including connection to Peppol network or, where applicable, an alternative solution.

Conclusion

The Draft Law would significantly extend Luxembourg's existing e-invoicing framework to domestic B2B transactions. The phased implementation provides businesses with a period to adapt their systems and procedures. Nevertheless, **1 January 2028 constitutes a key compliance date**, as businesses within scope would be required to receive and process compliant electronic invoices from that date.

REAL ESTATE | NEW TAX AND HOUSING MEASURES IN FAVOUR OF THE MARKET

On 16 July 2026, the Luxembourg Government announced a package of measures to support the real estate market. Three draft laws have been submitted to the Luxembourg Parliament (*Chambre des Députés*): they aim to increase the registration and transcription duties tax credit (*Bëllegen Akt*), introduce a temporary exemption from registration and transcription duties on purchases in the future state of completion (*vente en l'état futur d'achèvement*, “**VEFA**”) and raise the interest subsidy ceilings. Additionally, Draft Law No. [8775](#) removes the age condition for the higher housing savings (*épargne-logement*) deduction ceiling and the 2027 State budget, presented on 7 October 2026, amends the accelerated depreciation rules for rental housing. Other measures have been announced but are not yet presented in draft law.

Bëllegen Akt permanent increase

Draft Law No. [8806](#) provides for an increase of the *Bëllegen Akt* tax credit on registration and transcription duties from EUR 40,000 to EUR 45,000 per purchaser, on a permanent basis. The credit had already been raised to EUR 40,000, initially on a temporary basis, before being made permanent by the Luxembourg law of 3 July 2025.

The date of application would be 16 July 2026: the increase would apply to acquisitions of property intended for use as a dwelling documented by a notarial deed executed on or after that date.

Registration duty relief on VEFA acquisitions (2026–2029)

Draft Law No. [8807](#) provides that, for acquisitions of VEFA by individuals documented by a notarial deed executed between 16 July 2026 and 16 July 2029, registration and transcription duties would no longer be levied on the construction part where the works are no more than 80% complete at the time of acquisition. Duties would solely be maintained on the land part. The draft law covers dwellings, whereas the press release referred to the main residence; such that the exact scope will need to be monitored. For deeds executed before the law enters into force, the notary may request a recalculation and refund from the Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA*, “**AED**”).

Higher interest subsidy ceilings, with a boost for young buyers

Draft Law No. [8836](#), which amends the Luxembourg law of 7 August 2023 on individual housing aid (*loi du 7 août 2023 relative aux aides individuelles au logement*), raises the loan ceiling used to calculate the interest subsidy (*subvention d'intérêt*) from EUR 200,000 to EUR 250,000, and the increase per dependent child from EUR 20,000 to EUR 30,000, up to EUR 370,000 with four children or more. For a young buyer (*jeune acquéreur*), the ceiling would be EUR 300,000, up to EUR 420,000 with four children or more.

The Draft Law defines the young buyer as a person aged 35 or under at the date of the notarial deed documenting the acquisition or the VEFA or, where the applicant organises the construction of the dwelling, at the date of the declaration of the start of works. The general ceilings would apply from the first payment following the entry into force of the law. The young buyer ceilings would apply only if the deed, or the declaration of the start of works, is dated after the entry into force of the law, which is set at the first day of the month following publication in the *Journal officiel*.

A young buyer of housing intended for affordable sale (*vente abordable*) or cost-moderated sale (*vente à coût modéré*) within the meaning of the Luxembourg law of 7 August 2023 on affordable housing (*loi du 7 août 2023 relative au logement abordable*) would also become eligible for the home ownership grant (*prime d'accession à la propriété*).

Housing savings: age condition removed as from tax year 2027

Draft Law No. [8775](#), filed earlier, on 22 June 2026, and implementing the tripartite agreement of 8 June 2026, amends the ceiling for tax deductible contributions paid under housing savings contracts (*contrats d'épargne-logement*) taken out to finance the taxpayer's own home. The annual ceiling is currently EUR 1,344 for subscribers aged 18 to 40 at the beginning of the tax year, and EUR 672 for the others. The draft law removes the age condition and sets a uniform ceiling of

EUR 1,344. The ceiling is still increased by its own amount for the spouse (where taxed jointly) and for each child giving right to a child tax allowance (*modération d'impôt pour enfant*).

Accelerated depreciation for rental housing

The accelerated depreciation of rental housing under Article 32ter of the Luxembourg Income Tax Law would be increased from 4% to 6%, where the depreciable base of the whole building at completion does not exceed EUR 600,000 and completion dates back less than six years. The same would apply to renovation expenses exceeding 20% of the price, where the price of the whole building does not exceed EUR 600,000 and the renovation was completed after 31 December 2025 and less than six years ago. The 4% rate would be maintained, subject to a five-year (rather than six-year) completion test, for buildings acquired or constituted between 2021 and 2025 and, in 2026, for buildings whose depreciable base at completion exceeds EUR 600,000. Draft Law No. [8800](#) provides that the measure would apply from tax year 2026.

Three other announced measures not yet published

- **Reduced 8% VAT rate for social rental housing:** dwellings of 120 m² or less, capped price, rental yield of 4% or less, rental for at least ten years and an eligible tenant.
- **Housing Bond:** EUR 250 million bond in 2027 to finance affordable housing, with interest exempt from withholding tax.
- **Withholding tax on real estate capital gains:** from

tax year 2028, a withholding tax mechanism is planned, and the tax would be withheld when the transaction is carried out, instead of when the taxpayer declares his/her income.

Takeaways

The accelerated depreciation rules should apply as from tax year 2026. The updated housing savings ceiling would apply from tax year 2027. The *Bëllegen Akt* increase and the VEFA exemption apply to deeds executed from 16 July 2026. For the interest subsidy, the date of the deed relative to the entry into force of Draft Law No. 8836 will determine access to the young buyer ceilings. The three other measures should be monitored until a draft law is submitted.

LUXEMBOURG-FRANCE REMOTE WORKING | NEW GUIDANCE ON THE 34-DAY TAX RULE FOR CROSS-BORDER WORKERS

On 24 June 2026, the Luxembourg tax authorities (the “**LTA**”) issued an updated circular on remote work by cross-border employees ([Circular L.G. – Conv. D.I. No. 61](#), the “**Circular**”), explaining how the 34-day threshold is calculated, the consequences of exceeding it, its application to certain public-sector employees and the evidence required from taxpayers. The Circular replaces the previous circular issued in October 2020, which was based on a 29-day threshold. This threshold was increased to 34 days from fiscal year 2023 following an amendment to the tax treaty between France and Luxembourg (the “**Treaty**”). The Circular therefore clarifies an existing rule rather than introducing a new threshold and explain how the existing 34-day rule is applied in practice.

The general rule and related tolerance

Under Article 14 of the Treaty, employment income is generally taxable in the employee’s country of residence (e.g. France). However, where the work is physically performed in another country (e.g. Luxembourg), that country may also tax the corresponding salary. Accordingly, the employment income of a French resident working in Luxembourg is taxable in Luxembourg for the days worked there, with France providing relief from double taxation under the Treaty.

Without the 34-day tolerance, employment income relating to any day worked from home in France would

generally be taxable in France. The tolerance hence allows a French resident normally working in Luxembourg to work from France for up to 34 days per calendar year without changing the usual place of taxation of their employment income. For Treaty purposes, the employment is treated as having been exercised in Luxembourg entirely, provided that the employee works outside Luxembourg for no more than 34 days in total.

Any day worked in a third country also counts towards the threshold as the corresponding employment income is, in principle, taxable in France, unless otherwise provided under the applicable tax treaty between France and that other country.

It should also be reminded that the tolerance only applies to income tax, that it does not create a right to remote work or determine the employee’s position for social security, employment law or immigration purposes.

Calculating the 34-day threshold

To calculate the 34 days:

- any day, or part of a day, worked outside Luxembourg counts as one full day towards the threshold;
- professional training days spent outside Luxembourg also count;
- holidays, non-working weekends, public holidays,

sickness days and qualifying cases of force majeure are excluded;

- the threshold is reduced proportionately for part-time employees and where the employment begins or ends during the year. The resulting figure is rounded down to the nearest whole day. For example, an employee working 75% of full time has a threshold of 25 days. An employee starting work on 1 July has a threshold of 17 days for that year.
- where an employee works part-time for only part of the year, both reductions apply. The threshold is therefore adjusted according to both the employee’s working time and the duration of the employment during the year; and
- the threshold is calculated for the entire calendar year and applies globally across all employment contracts held by the employee during that year.

Tax consequences of exceeding the threshold

Once the 34-day threshold is exceeded, the Treaty rules apply to all working days carried out outside from the start, i.e. not only to the days above the threshold. The benefit of the tolerance is therefore lost for the entire year. For a French resident employed in Luxembourg, the remuneration relating to all days worked in France during that year becomes taxable in France, while the remuneration relating to days worked in Luxembourg remains taxable in Luxembourg. The same consequence applies to public-sector employees

(meeting the conditions of Article 18(1)(b) as further detailed below). The remuneration relating to days worked in a third country is, in principle, taxable in France, unless otherwise provided under the applicable tax treaty between France and that country. The counting of days must be distinguished from the allocation of remuneration. Any day partly worked outside Luxembourg counts as one full day. However, once the threshold is exceeded, the remuneration for a split working day is allocated according to the time actually worked in each country. For example, an employee who has already worked 34 full days in France and then works half a day in France and half a day in Luxembourg will exceed the threshold, as the half day counts as one full day. The employee is therefore treated as having spent 35 days outside Luxembourg for the purpose of the threshold, while the remuneration corresponding to 34.5 working days becomes taxable in France.

Application to public-sector employees

The Circular also explains how the 34-day tolerance applies to certain French residents employed by the Luxembourg State or a Luxembourg public establishment, which was not addressed in the previous circular issued in 2020.

The tax treatment of public-sector remuneration is governed by Article 18 of the Treaty and depends, in particular on the employee's nationality. Under Article 18(1)(a), remuneration paid by the Luxembourg State or a Luxembourg public establishment is in principle taxable in Luxembourg. However, Article 18(1)(b) provides an exception for services performed in France

by an employee who is resident in France and holds only French nationality (i.e., without Luxembourg nationality). In that case, the remuneration in relation to services performed in France is in principle taxable in France. For the French resident holding French nationality, but no Luxembourg nationality, they may benefit from the 34-day tolerance as well, in which case the same rules as described above apply. For an employee who is resident in France and holds Luxembourg nationality, including dual French and Luxembourg nationality, the 34-day threshold is not relevant: the remuneration remains taxable in Luxembourg for services performed in France, irrespective of the number of days worked there.

Treatment of specific payments

The Circular also clarifies the treatment of certain payments:

- **Sickness and maternity payments:** payments made under the social security legislation of France or Luxembourg are taxable only in that country, irrespective of the 34-day threshold.
- **Overtime:** overtime generally follows the tax treatment of the employment to which it relates. If the threshold is exceeded, overtime relating to work performed in France becomes taxable in France. Overtime performed in a third country remains subject to any applicable tax treaty with that country.
- **Termination payments and notice-period remuneration:** the Circular links both categories to the country in which the employee would reasonably have continued to work had the employment not

been terminated or the employee not been released from the obligation to work. For termination payments, this differs from the previous circular, which provided that, where the payment was calculated by reference to the employee's previous period of employment, it should be allocated proportionately between the places where the employment was exercised during the preceding twelve months.

Documentation and burden of proof

The burden of proof remains on the taxpayer to demonstrate where they physically worked. The Circular confirms that evidence may include employment contracts or employer certificates, time records, travel tickets, hotel or car rental invoices, signed attendance lists for meetings or training, payment receipts, travel orders and any other relevant supporting documents.

Employees and employers should therefore keep accurate records of remote-working days, business trips, training days and days worked in more than one country throughout the year, rather than attempting to reconstruct this information during a tax audit.

Key takeaways

- **The new guidance:** the Circular replaces the previous circular issued in 2020. However, the 34-day threshold is not new and is applicable from fiscal year 2023.
- **Counting of the days:** any day, or part of a day, worked outside Luxembourg counts as one full day.
- **Exceeding the threshold:** if the employee works

outside Luxembourg for more than 34 days, the Treaty rules apply to all relevant working days during the year, not only to the days above the threshold.

- **Public-sector employees:** a French resident employed by the Luxembourg State or a Luxembourg public establishment may benefit from the tolerance if they hold French nationality without also holding Luxembourg nationality. Where the employee holds Luxembourg nationality, including dual French and Luxembourg nationality, the threshold is not relevant and the remuneration remains taxable in Luxembourg for services performed in France.
- **Supporting evidence:** taxpayers must be able to demonstrate that the conditions of the 34-day tolerance are met. Records showing where the employee worked should therefore be kept throughout the year.

CJEU CASE LAW | VAT GUARANTEE CALL MECHANISM AND THE RIGHT TO AN EFFECTIVE REMEDY

On 16 July 2026, the Court of Justice of the European Union (the “**CJEU**”) delivered its decision in Case [C-158/25](#) on the relationship between national mechanisms for the joint and several liability of company directors for unpaid VAT debts and the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union (the “**Charter**”).

Facts of the case

On 17 March 2018, the Luxembourg VAT administration (*Administration de l'enregistrement, des domaines et de la TVA*) (the “**VAT Administration**”) issued VAT assessments against a Luxembourg company (the “**Company**”) for the years 2014 to 2016. The appeal lodged by the Company against those assessments was declared inadmissible for being out of time, with the result that the assessments became final. The Company subsequently failed to pay the amounts of VAT due for those years.

The appellant, who served as the director responsible for the day-to-day management of the Company from April 2013 to February 2019, was notified by the VAT Administration, on 16 May 2019, of a guarantee call decision based on Articles 67-1 to 67-3 of the Luxembourg Law of 12 February 1979 on value added tax (the “**VAT Law**”), holding him personally liable, in his capacity as director, for the outstanding VAT amounts.

Before the Luxembourg courts, the appellant contested

the existence of the Company’s tax debt, arguing that, as a person called upon to guarantee payment of the tax assessments issued against the Company, the refusal to allow him to file a third-party objection against those assessments in his own name was incompatible with Article 47 of the Charter. The first instance court rejected this argument on the grounds that, in the absence of any action validly brought by the Company within the time limits laid down by the VAT Law, the tax assessments had become final and could no longer be challenged. It further held that the provisions of the VAT Law at issue did not constitute an implementation of EU law, and therefore Article 47 of the Charter did not apply.

On appeal, the Luxembourg Court of Cassation referred three questions to the CJEU for a preliminary ruling concerning :

- the applicability of the Charter to the guarantee call mechanism at issue,
- the ability for the director to challenge, incidentally, a final tax assessment notified to a company, and
- the scope of the arguments on which he could rely.

Findings of the court

First question: applicability of the Charter to the guarantee call mechanism

The first step in the CJEU’s reasoning was to determine whether the Charter applies at all to the guarantee call mechanism. Under Article 51(1) of the

Charter, its provisions apply to Member States only when they are implementing EU law, which presupposes a degree of connection between an EU legal measure and the national measure in question. The CJEU recalled that Articles 2 and 273 of Council Directive 2006/112 of 28 November 2006 on the common system of value added tax (the “**VAT Directive**”), read in conjunction with the relevant Treaty provisions, oblige each Member State to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing fraud. The Luxembourg guarantee call mechanism, which enables the tax authority to recover VAT unpaid by a taxable company from its directors, contributes to that obligation and therefore involves the implementation of EU law within the meaning of Article 51(1) of the Charter.

It follows that the requirements stemming from the right to an effective remedy, enshrined in Article 47 of the Charter, are applicable in proceedings brought by a company director against a guarantee call decision. This holds where national legislation provides that such a director is jointly and severally liable for payment of the VAT owed by the company in accordance with the provisions of the VAT Directive.

Second question: the right to challenge, as an incidental question, the company’s final tax assessment

A central issue in the case was the position of the

director vis-à-vis the tax assessment issued to the Company. Under the applicable Luxembourg legislation, a person subject to a guarantee call has no personal action against that assessment. Moreover, once the assessment has become final, its finality prevents that person from challenging, as an incidental question, the VAT assessment and the amount of the taxable company's tax liability for which he or she is held jointly and severally liable.

Against that background, the CJEU examined whether such a restriction is compatible with the Charter. Article 47 of the Charter requires that the holder of the right to an effective remedy be able to access a court with the power to consider all the issues of fact and of law that are relevant for resolving the case before it. Beyond the judicial stage, the rights of the defence must also be ensured in the course of the administrative procedure leading to the guarantee call decision: the addressee of a decision which significantly affects his or her interests must be placed in a position in which they can make known their views on the information on which the authorities intend to base their decision.

Nevertheless, the CJEU reiterated that the principle of respect for the rights of the defence is not an absolute prerogative but may be restricted, provided that the restrictions in fact correspond to objectives of public interest and do not constitute a disproportionate interference. As a general rule, respect for the rights of the defence does not preclude that tax authorities are bound by the findings of fact and the legal classifications which they have made in the context of a related administrative procedure initiated against a

third person, as the finality of an administrative decision contributes to legal certainty.

The CJEU has, however, clarified that the situation is different where the person concerned is, de facto, fully deprived of the right to call into question, in a useful and effective way, those findings of fact and those legal classifications. Such a deprivation would adversely affect the very essence of that person's rights of the defence.

Applying this principle to the present case, the tax assessment issued in the context of a related administrative procedure constitutes, for the purpose of the guarantee call procedure, evidence intended to establish the conditions for the director's joint and several liability. The person subject to a guarantee call must therefore be able to challenge that evidence.

That said, this does not mean that the person subject to a guarantee call must be included, in a personal capacity, in the taxation procedure brought against the legal person for which he or she is jointly and severally liable regarding the tax liability, nor does it confer a direct legal remedy against the tax assessment. It is sufficient that a remedy enables the person subject to a guarantee call, incidentally, to obtain effective judicial review of the findings of fact and legal classifications on which the guarantee call decision is based, provided that those findings and classifications are decisive for the outcome of the proceedings.

In addition, the recognition of the ability to challenge, as an incidental question, the tax assessment does not have any impact on the binding effect of the tax assessment vis-à-vis the company to whom that

assessment was issued and remains limited to the necessary arguments allowing the director concerned to effectively challenge his or her joint and several liability.

Third question: scope of the arguments that may be relied on

As regards the scope of the incidental challenge, the director may rely on all the findings of fact and legal classifications on which the competent authority based his or her joint and several liability, including those relating to the VAT assessment and the unpaid amount, provided that they are useful for his or her defence.

Scope of the decision

In this decision, the CJEU establishes a clear principle: a director held personally liable for unpaid VAT debts incurred by the company of which he or she was the director cannot be fully deprived of the right to call into question the findings of fact and the legal classifications on which his or her joint and several liability is based, even if the tax assessment containing these findings and classifications has become final vis-à-vis the company.

This decision confirmed that the Luxembourg guarantee call mechanism, as set out in Articles 67-1 to 67-3 of the VAT Law, is incompatible with the requirements of Article 47 of the Charter in so far as it does not allow the person subject to a guarantee call to challenge, as an incidental question, the findings of fact and legal classifications contained in the underlying tax assessment. This decision is likely to



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lead to an amendment of the Luxembourg legal framework to enable the person subject to a guarantee call to challenge, in support of his or her appeal, the findings of fact and legal classifications on which the competent authority relied, including those in relation to the VAT assessment and the unpaid amount for which that person is held liable.

ATAD 1 | ADVOCATE GENERAL KOKOTT BACKS LUXEMBOURG'S SECURITISATION CARVE-OUT AGAINST EU COMMISSION CHALLENGE

On 18 June 2026, Advocate General Juliane Kokott of the Court of Justice of the European Union ("CJEU") handed down a landmark Opinion in [Case C-138/24, EU Commission v. Grand Duchy of Luxembourg](#), recommending that the CJEU dismiss the EU Commission's infringement action over Luxembourg's exclusion of securitisation entities from the interest deduction limitation rule ("IDLR") under **ATAD 1** (Directive (EU) 2016/1164).

The Luxembourg interest limitation rule

Article 4 ATAD 1 limits the deductibility of a company's exceeding borrowing costs (interest expenses exceeding interest income); Luxembourg transposed this through Article 168bis LITL, introduced by the law of 21 December 2018.

Exceeding borrowing costs remain deductible up to the higher of 30% of Tax EBITDA and EUR 3 million.

Article 4(7) ATAD 1 lets Member States exclude "*financial undertakings*" from the IDLR, as defined by the eight categories in Article 2(5) ATAD 1 including credit institutions and investment firms, insurers and reinsurers, pension institutions, investment funds, and central counterparties and securities depositories.

Luxembourg extended this definition to securitisation entities covered by the Securitisation Regulation (Regulation (EU) 2017/2402), thereby excluding them from the IDLR under Article 168bis LITL.

The EU Commission considers that the list of financial

undertakings in Article 2(5) ATAD 1 is exhaustive and that Luxembourg therefore exceeded the discretion afforded to Member States by ATAD 1. It consequently brought infringement proceedings against Luxembourg under Article 258 TFEU for incorrect transposition of ATAD 1.

A tension between the ATAD 1 wording and purpose of the exclusion of "*financial undertakings*"

The Advocate General accepts that the wording of Article 2(5) ATAD 1 suggests an exhaustive list of "*financial undertakings*". However, she considers the purpose of the Article 4(7) exemption supports a broader interpretation.

For the Advocate General, the exemption is no accident, it reflects the specific characteristics of financial undertakings and a deliberate choice by the EU legislature to grant Member States discretion in applying the IDLR. But that discretion is not unfettered, it must be exercised within the bounds of EU primary law, including the principle of equal treatment under Article 20 of the Charter of Fundamental Rights of the European Union ("**Charter**").

Securitisation entities, comparable financial undertakings and equal treatment

The Advocate General considers securitisation entities comparable, for the purposes of the IDLR, to the "*financial undertakings*" expressly listed in Article 2(5)

ATAD 1. Both are predominantly financed through borrowed capital and generate income primarily from interest, making Tax EBITDA an inappropriate measure of their capacity to deduct borrowing costs.

This comparability is relevant in light of the EU principle of equal treatment, enshrined in Article 20 of the Charter, which requires comparable situations not to be treated differently unless the difference is objectively justified. In the Advocate General's view, applying the IDLR to securitisation entities while exempting comparable financial undertakings would result in unequal treatment absent such justification.

The Advocate General also points to the regulatory framework applicable to securitisation entities under the Securitisation Regulation, which imposes specific requirements relating, among other things, to due diligence, risk retention and transparency. The EU Commission argued that excluding securitisation entities from the IDLR could encourage highly leveraged structures. The Advocate General was not persuaded: those risks, she noted, are already tackled head-on at EU level through the Securitisation Regulation.

Accordingly, the Advocate General considers that Member States must respect the EU principle of equal treatment when exercising the discretion granted by ATAD 1. On this basis, Luxembourg's decision to include securitisation entities within its domestic definition of financial undertakings can be regarded as

an application of ATAD 1 consistent with EU primary law, rather than as an unlawful extension of the Directive.

What is at stake for Luxembourg?

Under Article 258 TFEU, the EU Commission is asking the CJEU to declare that Luxembourg has failed to fulfil its obligations under EU law. Should the CJEU find a breach, Luxembourg would then be required to take the necessary measures to comply with the judgment and bring its legislation into line with EU law.

In practice, this means the continued application of the exclusion under Article 168bis LITL could be called into question for Luxembourg securitisation entities. Depending on the measures Luxembourg takes to comply with the judgment, the interest limitation rule could end up applying to entities that currently benefit from the exemption.

The Advocate General's Opinion is therefore an important, albeit non-binding, signal in Luxembourg's favour – but the final outcome still rests with the CJEU's forthcoming judgment.

Key takeaway

- **The Advocate General recommends that the CJEU dismiss** the EU Commission's action in its entirety and order the EU Commission to bear the costs pursuant to Article 138(1) of the Rules of Procedure of the Court of Justice.
- **The Opinion is not binding on the CJEU**, which may depart from the Advocate General's conclusions. The proceedings therefore remain pending before the Court.

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

On 25 June 2026, the Higher Administrative Court (*Cour administrative*) issued two decisions in cases n° [53183C](#) and [53184C](#), dismissing the appeals lodged by two Luxembourg limited partnerships (*sociétés en commandite simple*) and confirming, on appeal, the judgments rendered by the Lower Administrative Court (*Tribunal administratif*) on 6 June 2025 in cases n° 49747 and 49749, which we had reported on in a [previous newsletter](#).

Background

As a reminder, the question at stake was whether limited partnerships set up to acquire, finance, and distribute a film production were to be regarded as conducting a commercial activity within the meaning of Article 14 of the Luxembourg income tax law dated 4 December 1967 (the “LITL”), making them subject to municipal business tax. The Lower Administrative Court had ruled in favour of the tax authorities, and both taxpayers appealed the first instance decisions.

The Administrative Court’s decisions

In both cases, the Higher Administrative Court confirmed that the taxpayers met all four positive criteria of Article 14, n° 1, LITL, namely independence, profit motive, permanence, and participation in the general economic life, and accordingly upheld their liability to municipal business tax. Since neither taxpayer put forward, on appeal, any argument capable of contradicting the lower court’s findings on independence and profit motive, the Court dismissed

those challenges as unsubstantiated, while noting, for completeness, that (i) the taxpayers’ corporate object (acquiring and holding rights in a commercial film) and their own correspondence with the tax authorities already evidenced a profit motive and that (ii) each partnership had acted in its own name and for its own account, bearing the risks of its activities as a whole, since its revenues depended on the film actually being produced.

The debate before the Court therefore centred on permanence and participation in the general economic life. On permanence, the Court accepted, following the taxpayers’ arguments, that neither partnership had any intention of repeating the production or distribution of another film, each having been incorporated for the sole purpose of a single film and belonging to a group that segregates assets on a per-project basis through a dedicated partnership for each film. The Court nonetheless held, by relying on German case law of the Federal Finance Court (*Bundesfinanzhof*) and legal doctrine, that permanence does not turn on an intention to generate income on a continuing basis, but on the repetition of the individual acts required to implement the initial decision, even where that decision itself was a one-off. On the facts, it found such repetition in the successive steps taken to give effect to the decision to produce and distribute a single film, including securing financing, entering into production and distribution agreements, obtaining bank and intra-group financing, contributing equity, incorporating a

dedicated production company, and negotiating ancillary contracts, including on music rights.

The Court then examined whether this activity nonetheless remained within the boundaries of private wealth management. Notably, in case n° 53183C, the Court found that the “licence” granted to the distributor in fact amounted, upon analysis of its terms (worldwide, 25-year exclusive rights, together with the taxpayer’s own accounting treatment of the transaction as a sale), to a disposal for tax purposes of a substantial part of the taxpayer’s property rights in the film, on the basis of § 11, n° 4 of the *Steueranpassungsgesetz* (StAnpG) governing the attribution of income and assets by reference to economic ownership rather than legal form. In case n° 53184C, the Court reached the same conclusion, finding that a perpetual, worldwide licence granted to the distributor in substance transferred the economic ownership of essentially all of the taxpayer’s property rights in the film. In both cases, the Court also noted that the taxpayer had itself incorporated a production company, which it considered inconsistent with mere passive asset holding, and rejected the argument that the taxpayer’s activity could not exceed that of the alternative investment fund (“AIF”) whose investment strategy it implemented, noting that the valuation report submitted by the taxpayer itself described that fund’s strategy as an active investment strategy generating a “distribution business”.

On participation in the general economic life, the Court

confirmed that this criterion is to be assessed at the level of the partnership itself, not at the level of the wider group to which it belongs, and that it was satisfied because the partnership had dealt with several parties active in the film industry, thereby acting on the relevant market in a manner perceptible to its subcontractors and lenders as a participant in the general exchange of goods and services.

The Court also confirmed, in both cases, that the tax authorities' circular n° 14/4 of 9 January 2015 and the ESMA guidelines of 13 August 2013 (ESMA/2013/611) invoked by the taxpayers are not legally binding and could not, as such, be relied upon to establish the illegality of the tax assessments.

Takeaways

These decisions confirm, at the level of the Higher Administrative Court, that a dedicated special purpose vehicle (SPV) may still be found to carry out a commercial activity and thus be liable for municipal business tax, even where it is set up for a single project and structured in the form of an otherwise tax transparent partnership as part of a group-wide asset segregation policy. The Court's reasoning remains fact-specific and turns on the cumulative assessment of all four criteria of Article 14 LITL, so the outcome continues to depend on the structure and concrete conduct of the vehicle in question, as already highlighted in our earlier newsletter on the underlying first instance judgments. They further illustrate that the drafting of a distribution or licence agreement and, importantly, its accounting treatment in the entity's own accounts, can determine whether an arrangement is

recharacterised, for tax purposes, as a disposal of substantially all rights in the underlying asset rather than as passive asset management.

CORPORATE INCOME TAX | STANDING OF AN INTEGRATED SUBSIDIARY TO CHALLENGE AN INVESTMENT TAX CREDIT DECISION

In a judgment dated 9 June 2026 ([No. 53689C](#)), the Higher Administrative Court (*Cour administrative*) held that a subsidiary forming part of a tax group under Article 164bis LIR has standing to challenge a decision concerning its investment tax credit (*bonification d'impôt pour investissement*), even where its corporate income tax liability is nil under the fiscal integration regime.

Fiscal integration and investment tax credit

Under Article 164bis LIR, Luxembourg companies may elect to form a tax group, whereby all taxable results are consolidated at the level of the parent company, which bears the corporate income tax and municipal business tax liability for the entire group. While each integrated subsidiary must determine its own investment tax credit based on its individual investments, only the parent company may claim the deduction of those credits against the group's overall tax liability.

Under the AO (*Abgabenordnung*), a taxpayer wishing to challenge a tax assessment (*Steuerbescheid*) must demonstrate a positive tax liability (§ 232(1) AO). An integrated subsidiary whose tax liability is nil therefore lacks standing on that basis. However, § 235, no. 5, AO provides a separate right to challenge decisions on tax advantages (*Steuervergünstigungen*), without requiring a positive tax liability. The central question was whether the investment tax credit qualifies as such

a *Steuervergünstigung*, and whether the subsidiary remains a taxable person ("**Steuerpflichtiger**") entitled to bring a claim under that provision.

The appellant, a Luxembourg *société anonyme*, had absorbed an integrated subsidiary (a *société à responsabilité limitée*) within a tax group headed by the appellant.

The disputed investment tax credit

In February 2022, the tax office refused to grant the investment tax credit in respect of certain project management and insurance costs, on the ground that they did not qualify as depreciable tangible assets under Article 152bis LIR. The subsidiary's claim was declared inadmissible by the Director of the Direct Tax Administration (*Administration des contributions directes*, "**DTA**") for lack of standing, on the basis that its corporate income tax had been fixed at nil. The Administrative Court upheld that decision, and the appellant subsequently appealed.

The DTA's Position

The DTA argued that:

- under § 232 AO, no standing exists in the absence of a positive tax liability;
- joint liability under § 114 AO was insufficient to confer standing;
- private-law agreements, such as the Tax Sharing Agreement, could not override the provisions of the

AO; and

- no separate decision existed within the meaning of § 235, no. 5, AO, the integrating entity being the sole tax subject entitled to claim the credit.

The Court's Analysis

The Higher Administrative Court ruled in favour of the appellant. Endorsing a prior judgment of 3 February 1999 (Nos. 10598 and 10883), it held that a tax assessment contains two legally distinct decisions, one on corporate income tax, and another on the investment tax credit, and that the latter constitutes a tax advantage (*Steuervergünstigung*) subject to a separate claim under § 235, no. 5, AO. The court further found that the integrated subsidiary qualifies as a taxable person ("**Steuerpflichtiger**") under §§ 97 and 114 AO, since it generates the entitlement to the tax credit through its own investments and remains jointly liable for the group's tax debts. The requirement of a positive tax liability under § 232(1) AO does not apply to claims concerning tax advantages.

The court noted that both the integrating entity and the integrated subsidiary could have standing concurrently, as no legal provision restricts the right to challenge to a single entity. Accordingly, the court reversed the Director's inadmissibility decision and remitted the case to the Director for a determination on the merits of the investment tax credit.

Consequences

For groups operating under Tax Sharing Agreements, this ruling is particularly relevant since the amount of the investment tax credit may directly affect the subsidiary's financial obligations under such arrangements. A subsidiary has a confirmed right to challenge that amount independently.

In broader terms, the judgment draws a clear procedural dividing line: the tax assessment itself (§ 232 AO) remains the preserve of the integrating entity, but any decision on a subsidiary's investment tax credit (§ 235, no. 5, AO) may be challenged by the subsidiary in its own right regardless of whether its tax liability is nil.

The ruling nonetheless highlights the shortcomings of the existing dispute framework for direct taxes. The court's reasoning turns on the absence of an express exclusion in § 235 AO, arguably a legislative gap rather than a deliberate policy choice, and on a broad reading of *Steuerpflichtiger* anchored in potential joint liability under § 114 AO. Rather than simplifying the procedural landscape, the decision adds a further layer of complexity to an area of law where legislative reform would be both welcome and desirable.

CROSS-BORDER TAX RECOVERY | LUXEMBOURG'S TAX RECEVEUR CAN PUSH LOCAL COMPANIES INTO BANKRUPTCY OVER FOREIGN TAX DEBTS

In two judgments dated 20 January 2026 (No. CAL-2025-01047) and 6 February 2026 (No. [CAL-2025-01046](#)), the Luxembourg Court of Appeal confirmed that the *receveur-préposé du bureau de recette des contributions de Luxembourg* (the “**Receveur**”) has standing to petition for the bankruptcy of a Luxembourg company to recover tax debts owed to another EU Member State. The Court overturned two first-instance decisions that had found the claims inadmissible, clarifying the reach of the mutual assistance mechanism under Directive 2010/24/EU. Luxembourg entities exposed to foreign tax claims should treat unpaid foreign EU tax debt as a genuine Luxembourg bankruptcy risk, not only a foreign enforcement matter.

Background and context

In the first case, the Receveur sought the bankruptcy of a Luxembourg *société anonyme* over EUR 81,238.09 owed to the German tax authorities. In the second, it sought the bankruptcy of a Luxembourg *société à responsabilité limitée* over EUR 945,175.- owed to the French tax authorities, after a *commandement de payer* (order for payment) and several *sommations à tiers détenteur* (third-party debt orders) had failed. Both petitions relied on the law of 21 July 2012 transposing Directive 2010/24/EU, which creates a mutual assistance framework for cross-border recovery of tax claims between EU Member

States.

In both cases, the Luxembourg district court (*Tribunal d'arrondissement de Luxembourg*) had declared the petitions inadmissible by judgments of 31 October 2025, holding that Article 442 of the *Code de commerce* reserves standing to a “creditor”, a status the Receveur lacked since it acted for a foreign tax authority rather than in its own right, and that a bankruptcy petition is not itself a recovery measure. The Receveur appealed both decisions.

The court's reasoning

The Court of Appeal reversed both judgments. It held that “creditor” under Article 442 should not be read strictly: what matters is the petitioner's genuine interest in the action. Under Article 15 of the 2012 transposition law, a foreign tax claim is treated as a Luxembourg claim, so the foreign authority need not assign its claim to the Luxembourg State; it instead obtains recovery assistance through the Receveur.

Domestically, the Receveur alone is responsible under Article 10 of the law of 27 July 1936 for pursuing recovery, and is personally and financially liable under the law of 8 June 1999 for want of diligence. “Recovery” under Article 20(3) of that law covers all operations by which a public accountant collects sums owed to the State, which necessarily includes acting in court, lodging a proof of debt in a bankruptcy, and initiating bankruptcy proceedings. The Court also

rejected the view that bankruptcy is merely an insolvency-finding device, describing it instead as a collective procedure for settling creditors' claims.

Finding both petitions admissible and well founded, and the case files complete enough to decide on the merits (Article 597 of the New Code of Civil Procedure), the Court declared both companies bankrupt, the conditions of cessation of payments and impaired creditworthiness under Article 437 of the *Code de commerce* being satisfied in each case.

Why this matters for clients

These decisions remove a defence argument that debtor companies had used against Luxembourg bankruptcy petitions brought to recover foreign EU tax debts, namely that the Receveur was not the true creditor under the foreign tax claim. Luxembourg entities carrying unresolved foreign tax exposure, including disputed amounts, should note that even claims consisting largely of penalties and late-payment interest did not prevent a bankruptcy order once the formal recovery conditions were met. The Receveur's role is confirmed to extend, under mutual assistance, to enforcing other EU Member States' tax claims with the same tools used for domestic debts, up to a bankruptcy petition.

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NEWSFLASH | 2027 STATE BUDGET | CORPORATE TAX RATE REDUCTION AND OTHER MEASURES

On 7 October 2026, the Government presented the State budget for 2027, with tax measures aimed at supporting businesses with a cut in corporate tax rate and a clear orientation towards investment. Most of the measures are set out in draft law No. [8800](#) on the 2027 budget (the “**Draft Budget Law**”) filed before the Luxembourg Parliament (*Chambre des Députés*) on the same date. Some were only announced in the budget speech or the budget documents with separate draft legislation to follow.

Companies, enterprises and investors

Legislative measures – corporate taxation

Corporate income tax (“CIT”) rate reduction as from tax year 2027: The CIT rate will be decreased by one percentage point:

- the 14% rate, applicable to companies with a taxable profit not exceeding EUR 175,000, is lowered to 13% and now applies up to EUR 200,000 of taxable profit;
- the 16% rate, applicable to a taxable profit exceeding EUR 200,000, is lowered to 15% and now applies to a taxable profit exceeding EUR 250,000;

For a company with its registered seat in Luxembourg-City, the aggregate rate (including the employment fund surcharge and the municipal business tax) with an annual taxable profit above EUR 250,000 would be 22.80% instead of 23.87% since 2025. This follows the one-point cut applicable from tax year 2025 and is

aligned with the governmental coalition programme to bring the Luxembourg CIT closer to the OECD average of 23.6% and to the EU average of 21.2% (see our [Newsflash](#) of 18 July 2024).

Unlimited carry forward of losses as from tax year 2027: The carry-forward of losses is currently limited to 17 years, except for losses of financial years closed between 1 January 1991 and 31 December 2016, which are deductible without time limit. The Draft Budget Law removes the 17-year limit, so that losses of financial years closed after 31 December 1990 can be carried forward without time limit as from tax year 2027.

Investment tax credit (“ITC”) increase as from tax year 2027: The ITC for investments and operating expenses made for the digital transformation or the ecological and energy transition of businesses (Article 152*bis*, § 3 of the Luxembourg income tax law or “**LITL**”) is granted on the basis of a certificate, provided that the conditions of the regime are met. It currently amounts to 18% of the investments and operating expenses covered by the certificate and to 6% for tangible depreciable assets; for those assets, it is added to the 12% global ITC (§ 7), where eligible, which brings the total to 18%. The Draft Budget Law intends to raise these two rates to 21% and 9% respectively, so that the total for tangible depreciable assets would reach 21% (9% plus 12%). For the conditions and the procedure, please see our [Newsflash](#) dedicated to the ITC.

Legislative measures – capital gains taxation for resident and non-resident investors

Extended holding period for capital gains on movable assets as from tax year 2027: Under Article 99*bis* LITL, a gain realised on assets other than real estate within six months of their acquisition is fully taxable as speculation gain. Article 100 LITL provides for a separate regime for the disposal, more than six months after acquisition, of a substantial participation, i.e. a direct or indirect holding of more than 10% in a company at any time during the five years before the disposal. The Draft Budget Law extends the six-month period to 12 months for speculation gains. It also extends to 12 months the period beyond which the carried interest linked to a participation in an alternative investment fund is no longer taxable (Article 99*bis*, 1a, No. 2, subject to Article 100), and for non-resident capital gains taxation on shares representing an important participation in a Luxembourg company (Article 156, No. 8, a LITL). It aligns the period in Article 100 LITL accordingly, so that the disposal of a substantial participation within 12 months by a resident taxpayer would fall under speculative gains tax regime. The budget speech presents the measure as a clearer support for long term investments instead of speculation. For Article 100, the taxation and its modalities remain unchanged.

Stock options: Draft law No. [8782](#), which would introduce a specific tax regime for stock option plans of young innovative companies, is still under legislative

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process (please see our dedicated [Newsflash](#)).

Announcement on tax-exempt business transfer

In the part of the budget speech dedicated to the support of small and medium-sized enterprises and crafts, described as the backbone of the economy, the Government announced that the transfer of a business by donation in direct line or to the partner will be tax-exempt, in order to secure the future of these businesses. Conditions and modalities remain to be specified, and the forthcoming legislative developments should be monitored as draft legislation on this specific measure is not yet available.

Individuals

Legislative measures – personal income tax

Tax scale adjusted to inflation as from tax year 2027 by one additional index bracket, which in principle means multiplying the brackets by 1.025. The scale would remain progressive from 0% to 42%: the 0% bracket would cover taxable income below EUR 13,565 (EUR 13,230 today) and the 42% rate would apply above EUR 240,803 (EUR 234,870 today). The tax scale applicable to tax class 1a is adjusted accordingly.

Increase of the CO₂ tax credit (*crédit d'impôt CO₂*, “CI-CO₂”) as from tax year 2027: for employees, pensioners and self-employed persons, the CI-CO₂ would rise from EUR 216 to EUR 240 per year. The full amount would be granted for gross income between EUR 936 (EUR 300 for pensioners) and EUR 40,000, then decrease gradually and no longer be granted from

EUR 80,000. The parliamentary documents link the increase to the rise of the CO₂ tax on 1st January 2027.

Tax credit for children in shared custody: A child tax bonus (*bonification d'impôt pour enfant*) may be claimed for a child living alternately with two parents who jointly exercise parental authority and both receive the family allowance; the claim is currently possible for tax years 2025 and 2026. The Draft Budget Law extends it to tax year 2027, other conditions being unchanged.

Minimum wage tax credit (*crédit d'impôt salaire social minimum*, “CISSM”): Draft Law No. [8775](#), implementing the tripartite agreement of 8 June 2026 (“*Resilienzpak 2026*”), would raise the CISSM from EUR 81 to EUR 179 per month from 1 January 2027, then to EUR 200 per month from 1 July 2027, for gross monthly wages between EUR 1,800 and EUR 3,000. Together with the 3.8% increase of the unskilled minimum wage on 1 January 2027, the aim is to keep the tax burden at zero for a class 1 taxpayer earning that wage and to increase their net purchasing power by about EUR 200 compared with June 2026.

Cost-of-living tax credit (*crédit d'impôt conjoncture*): For tax year 2026, Draft Law No. [8775](#) would retroactively reintroduce a temporary credit for employees, pensioners and self-employed persons for the period from 1 June to 31 December 2026. It broadly corresponds to a fictitious adjustment of the tax scale by one index bracket, ahead of the actual adjustment from 1 January 2027. For employees and pensioners, it is calculated on gross monthly income (from EUR 1,125, up to EUR 27.13 per month above

EUR 14,916) and paid by the employer or the pension fund while self-employed persons receive it upon assessment.

Real estate and housing

The Draft Budget Law includes real estate measures: it increases the accelerated depreciation of rental housing from 4% to 6% under conditions, with effect from tax year 2026. Other housing measures are contained in separate draft laws: Nos. [8806](#), [8807](#) and [8836](#), which follow the package announced on 16 July 2026, and No. [8775](#), which sets a uniform ceiling of EUR 1,344 for tax deductible housing savings contributions from tax year 2027. Further measures remain at the announcement stage (8% VAT rate for social housing, Housing Bond, withholding tax on real estate capital gains).

Please see our [Newsflash](#) to real estate measures for more details.

Excise duties and carbon

Legislative measures – tobacco, alcohol, energy

The Draft Budget Law intends to introduce the following changes as from 1 January 2027:

- **Tobacco:** raise the legal ceilings of the autonomous excise duty for cigarettes (ad valorem part from 20% to 30%) and fine-cut tobacco (ad valorem from 10% to 20%); specific part from EUR 35 to EUR 50 per kilogram). The effective rates are set by grand-ducal regulation.
- **Alcohol:** raise the consumption tax on ethyl alcohol from EUR 900 to EUR 1,037.4958 per hectolitre of

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pure alcohol.

- **CO2 tax:** raise the legal ceilings to allow a maximum carbon price of EUR 55 per tonne of CO2.
- **Biofuels:** raise the biofuel and renewable energy obligation in transport from 9% to 9.20% for 2027, in line with the national energy and climate plan.

Announcements

- **CO2 tax:** the budget documents envisage a rate of EUR 50 per tonne in 2027 (EUR 45 in 2026); the European system for buildings and road transport (ETS2) is expected from 2028.
- **Fuel prices:** the temporary reduction of fuel prices under the *Resilienzpak* expires in 2027.

Takeaways

The Draft Budget Law and recent legislative measures provide for a significant enhancement of the tax environment for companies and individuals, notably with lower corporate income tax rates and an adjustment of the tax scale to inflation.

- **Companies:** main CIT rate would be reduced from 16% to 15% as from 2027 and the investment tax credit rates would increase, in particular for investments in digital transformation and the ecological and energy transition.
- **Individuals:** the tax scale would be adjusted by one additional index bracket as from tax year 2027 accompanied by several targeted measures for lower wages.
- **Context:** the Draft Budget Law is part of a broader set of measures, including those of the tripartite

agreement of 8 June 2026 ("*Resilienzpak 2026*"), targeted [measures for the real estate market](#) and precedes the introduction of a [single tax class planned for 2028](#).

- **Local SMEs:** announced tax-free transfer of businesses by donation in direct line or to the partner is a strategic measure to secure the future of SMEs and craft businesses. Conditions and procedures should be monitored.

NEWSFLASH | EU CASE LAW | PSD GAAR ASSESSMENT: ECONOMIC SUBSTANCE YIELDS TO THE OVERALL PICTURE

On 15 October 2026, the Court of Justice of the European Union (“**CJEU**”) delivered its judgment in the Neo Group case, confirming that the genuine economic activity of a parent company does not, in itself, prevent the denial of the withholding tax exemption under the Parent-Subsidiary Directive (“**PSD**”) where the dividend distribution forms part of a wider non-genuine arrangement. Additionally, relevant indicia of abuse can be found outside the distributing company’s jurisdiction, and the abusive intention may be established at the level of another group company, rather than at the level of the distributing subsidiary itself.

Background

Neo Group UAB (“**NEO**”), a Lithuanian company, distributed EUR 15 million in dividends to its Cypriot parent, Retal Industries Ltd (“**Retal**”), in 2016 and 2017 without applying withholding tax. Another Lithuanian subsidiary distributed approximately EUR 13.49 million to Retal during the same period.

The Lithuanian tax authority challenged the exemption in light of a wider restructuring. Retal’s shares were sold by Clendon, a Belizean company, to PPH, a newly incorporated Cypriot company, for EUR 310.4 million, payable in 2027 without security. The ultimate controlling shareholder remained unchanged.

According to the tax authority, the restructuring artificially created indebtedness, enabling the ultimate shareholder to receive funds originating from the

Lithuanian dividends through subsequent distributions, loans and assignments of receivables. Its assessment relied particularly on the timing of the transactions and the correspondence between the amounts transferred. NEO disputed that assessment, arguing that the restructuring aimed to remove offshore entities from the group and relocate the management of the group’s parent company to Cyprus. It also maintained that Retal had already been entitled to the withholding tax exemption before the restructuring.

Importantly, the tax authority did not dispute Retal’s actual economic activity. The Lithuanian Tax Disputes Commission therefore sought clarification on whether the PSD’s general anti-abuse rule (“**GAAR**”) could apply despite the genuine nature of the immediate parent company.

The CJEU’s judgment

1. Economic substance does not exclude abuse

The Court recalled that denying PSD benefits requires two cumulative conditions: a **non-genuine arrangement**, not put into place for valid commercial reasons which reflect economic reality, and a main purpose, or one of the main purposes, of obtaining a **tax advantage that defeats the object or purpose of the Directive**.

The GAAR is not limited to conduit companies. Even where the immediate parent company carries on genuine economic activities, individual steps within a wider arrangement may be non-genuine.

Building on its judgment in Nordcurrent Group (C-228/24) (see our previous [Newsflash](#)), the Court reaffirmed that the PSD GAAR requires both a non-genuine arrangement lacking valid commercial reasons reflecting economic reality and a tax advantage that defeats the object or purpose of the Directive. While Nordcurrent Group clarified the scope and timing of the abuse assessment, Neo Group takes the analysis a step further: the genuine economic activity of the immediate parent company does not rule out abuse where that company forms part of a wider non-genuine arrangement.

NEO also relied on the Lithuania–Cyprus double tax treaty, which provided for a 0% withholding tax rate where the recipient company was the beneficial owner of the dividends and directly held at least 10% of the distributing company’s capital. While NEO argued that Retal qualified as beneficial owner, the Court clarified that such status would not, in itself, preclude the application of the PSD GAAR.

Advocate General Kokott reached a broadly similar conclusion in her opinion, although she placed greater emphasis on the exceptional nature of abuse where the immediate recipient is the genuine beneficial owner of the dividends.

2. Financial flows may provide indications of abuse

The Court held that the correspondence between the amounts transferred through successive transactions and the dividends initially distributed may constitute a

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relevant indication of a non-genuine arrangement. Transfers occurring continuously over a period may also be relevant, even if they do not take place immediately after the initial distribution.

This is a notable departure from the Advocate General's Opinion. She considered that, where the parent company is not a conduit company, neither the correspondence of amounts nor the proximity in time between distributions constitutes, as such, an indication of, or a condition for, abuse.

The Court nevertheless confirmed that such indications must be assessed in light of all relevant facts and circumstances and cannot, by themselves, establish even a presumption of abuse.

3. The entire chain of transactions matters, including steps outside the subsidiary's Member State

The Court confirmed that the source Member State may deny the PSD withholding tax exemption by reference to a wider non-genuine arrangement, even where the relevant transactions take place in another Member State and the tax advantage arises at another stage of the chain, including at the level of the ultimate shareholder.

The Advocate General had taken a more restrictive approach, distinguishing abuse of the PSD from abuse of another Member State's national tax legislation. The Court did not retain that distinction as an independent limitation on the GAAR.

In addition, the Court confirmed that this approach is consistent with the principle of proportionality. Since the anti-abuse rule concerns inherently cross-border

situations, an interpretation allowing an overall examination that includes transactions carried out outside the subsidiary's Member State is appropriate to attain the objective of combating abuse and does not go beyond what is necessary, as the abusive nature of such arrangements can often only be established through such an analysis.

Finally, as to the subjective element of abuse, namely the intention to obtain an advantage from EU rules by artificially creating the conditions for obtaining it, the Court held that the distributing subsidiary need not have been aware of the allegedly non-genuine arrangement, provided that the relevant awareness can be established at the level of at least one participating group company or the natural person benefiting from the tax advantage. On this point, the Court substantially followed the Advocate General.

Key takeaway

Following the judgement in the Nordcurrent Group case, the Neo Group case reinforces the importance of examining **the overall chain of transactions rather than the economic substance of the immediate dividend recipient in isolation.**

The correspondence and timing of financial flows, the commercial rationale of a restructuring even if it does not directly involve the distributing company, and the position of the ultimate beneficiary may all be relevant. However, the existence of a non-genuine arrangement and a tax advantage defeating the PSD's object or purpose must still be established: these indicia, taken alone, do not rise to the level of a presumption of abuse.

The CJEU did not determine whether the restructuring at issue was abusive, leaving that assessment to the referring body.

The judgment coincides with the recent European Commission's **Tax Omnibus proposal**, which notably seeks to ease access to PSD benefits by removing the minimum shareholding and holding-period requirements (see our recent [Newsflash](#)). Future easier access to PSD benefits does not remove the need to substantiate the commercial rationale and economic reality of the arrangements through which they are claimed.

IN CASE YOU MISSED IT!

LUXEMBOURG CASE LAW | ADMINISTRATIVE COURT CLARIFIES THE ARM'S LENGTH ANALYSIS OF DISTRESSED INTRA-GROUP DEBT RESTRUCTURING

On 22 July 2026, the Luxembourg Higher Administrative Court (*Cour administrative*) (the “**Court**”) (No. [53194C](#)) clarified the framework to assess the arm’s length character of a debt restructuring as well as the rules applicable to the accounting of debt and related interest for tax purposes.

Facts

In 2010, a Luxembourg company (the “**Company**”) granted a fixed-interest loan (“**IBLs**”) at 12% to its 65%-owned French subsidiary (“**FrenchCo**”), financed through bonds (the “**Bonds**”) issued to its sole shareholder. Following the FrenchCo’s financial difficulties, the various lenders entered into a debt restructuring involving the FrenchCo’s minority shareholder (the “**Minority Shareholder**”). The restructuring, implemented in March 2018, included, inter alia, a partial waiver of accrued interest in 2017 and 2018, the conversion of part of the debt into equity, the granting of additional guarantees, the reduction of the interest rate at 6%, and the contribution by the Company of its shares in the FrenchCo in exchange for a minority participation in a subsidiary of the Minority Shareholder.

The Luxembourg tax authorities (the “**LTA**”) considered that the partial waiver of accrued interest under the IBLs resulted in a hidden capital contribution to the FrenchCo and also denied the deduction of part of the

interest paid on the Bonds by recalculating the deductible interest on the basis of the depreciated market value of the Bonds rather than their nominal value. On 6 June 2025, the Tribunal upheld both adjustments (please see our previous [Newsflash](#) concerning the Tribunal decision).

Court’s decision

Interest waiver: undue advantage to a subsidiary or arm’s length restructuring?

The transaction under scrutiny for fiscal year 2017 was the waiver of interest for the period ranging from 16 October to 31 December 2017 while in first instance the analysis also covered the subsequent reduction in interest rate from 12% to 6%.

The Court recalled that the arm’s length principle requires verifying whether the conditions of an intra-group transaction correspond to those that would have been agreed and accepted between independent enterprises under comparable circumstances. Referring to paragraphs 9.27, 9.28, 1.122 and 5.37 of the 2017 OECD TP Guidelines, the Court held that the arm’s length character of a restructuring must reflect the economic circumstances at the time of the restructuring and the parties’ realistic options. Each concession, including an interest waiver, must be assessed against the arm’s length principle on an entity-by-entity basis, coordinated where the elements are economically linked.

Accordingly, the transfer pricing (“**TP**”) study, although supporting the arm’s length nature of the original 12% interest rate, could no longer serve as the relevant benchmark as it reflects the circumstances existing when the IBLs were granted in 2010, whereas the restructuring took place several years later in a significantly different economic environment.

The Court further observed that the Company had produced objective evidence demonstrating the FrenchCo’s severe financial difficulties, thereby supporting the conclusion that maintaining the original financing would increase the borrower’s risk of default or place it into insolvency with only a limited recovery rate. Accordingly, the Court considered that an independent lender may legitimately agree to waive part of its claim where such concession enables it to achieve a more favourable economic outcome than the other realistically available alternatives of maintaining the financing.

Finally, the Court refused to assess the waiver in isolation but considered the overall restructuring. First, the Company had also benefited from additional guarantees, converted part of the IBLs into equity and ultimately received a minority participation in another company of the Minority Shareholder. Secondly and contrary to the Tribunal, the Court considered the involvement of a third party, the Minority Shareholder, as further supporting the arm’s length character of the waiver.

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Accordingly, the Court concluded that the partial waiver of interest complied with the arm's length principle and could therefore not be requalified as a hidden capital contribution.

Deductibility of interest calculated on nominal value rather than depreciated market value

The second issue concerned the deductibility of the interest paid by the Company on Bonds issued to its shareholder. The LTA challenged the deduction of part of such interest on the basis that it should have been calculated by reference to the depreciated market value of the Bonds rather than their nominal value.

The Court rejected this approach. Referring to Article 23(4) of the Luxembourg Income Tax Law ("LITL"), read together with Article 23(3) LITL, it recalled that debts must, as a matter of principle, be valued at nominal value, unless a higher repayment obligation exists. Conversely, a debt cannot be valued below its nominal amount solely because its market value has decreased, unless there has been an actual debt release or it has become certain that the debt will never be repaid.

For the computation of the interest, the Court held that the accounting or market valuation of a debt is irrelevant and interest continues to accrue on the principal contractually owed by the debtor, irrespective of any accounting impairment or decrease in the market value of the debt. Accordingly, the LTA could not recalculate the deductible interest by reference to the depreciated market value of the Bonds, and the disallowed amount therefore remained deductible.

Key takeaways

- The arm's length character of an intra-group debt restructuring must be assessed in light of the economic circumstances and the realistically available alternatives existing at the time of the restructuring, rather than solely by reference to the initially agreed terms.
- A TP study prepared for the original financing may no longer constitute the relevant benchmark where the economic circumstances have fundamentally changed. In such cases, taxpayers should ensure that the commercial rationale for the restructuring is supported by appropriate evidence.
- The participation of an unrelated third party in the negotiation and implementation of a restructuring may constitute strong evidence that the arrangements reflect market behaviour and may therefore reinforce the arm's length nature of the transaction.
- For tax purposes, contractual interest continues to accrue on the nominal amount of a debt despite possible adjustments to the accounting value.

L.I.R. ANNOTÉE ET COMMENTÉE

La **L.I.R. annotée et commentée** constitue un ouvrage de référence pour comprendre et appliquer le droit fiscal luxembourgeois. Consacrée à l'interprétation pratique de la loi concernant l'impôt sur le revenu (LIR), elle apporte un éclairage approfondi sur les dispositions légales et leurs implications concrètes.

Dans le prolongement du *Livre des Impôts*, cet ouvrage propose une approche à la fois analytique et opérationnelle de la législation fiscale luxembourgeoise. Son édition entièrement annotée et commentée permet d'aborder chaque article de la LIR de manière structurée, en mettant en évidence sa portée juridique, ses enjeux et ses conséquences pratiques pour les contribuables, les entreprises et les professionnels de la fiscalité.

Chaque disposition fait l'objet de commentaires détaillés, enrichis de références bibliographiques pertinentes, d'analyses de jurisprudence et de renvois aux principales circulaires administratives luxembourgeoises. Cette approche croisée facilite la compréhension des textes et contribue à une interprétation rigoureuse de la réglementation en vigueur.

Au-delà de sa dimension doctrinale, **la L.I.R. annotée et commentée se veut un véritable outil de travail au quotidien**. Elle accompagne les professionnels dans leurs recherches, leurs analyses et la résolution de questions fiscales complexes, tout en offrant une ressource précieuse pour approfondir les

connaissances en matière de fiscalité directe au Luxembourg.

Cet ouvrage s'adresse notamment aux avocats, fiscalistes, experts-comptables, juristes d'entreprise, professionnels du chiffre, agents de l'administration, enseignants et étudiants qui souhaitent approfondir leur maîtrise de la **loi luxembourgeoise relative à l'impôt sur le revenu**.

Par la richesse de ses commentaires et la précision de ses références, la **L.I.R. annotée et commentée** s'impose ainsi comme une ressource essentielle pour toute personne amenée à interpréter ou à appliquer le droit fiscal luxembourgeois.

IN CASE YOU MISSED IT!

NEWSFLASH | CRD VI IN LUXEMBOURG: GRANDFATHERING HAS ENDED

What third-country banks need to do before January 2027

The grandfathering period under the sixth Capital Requirements Directive (Directive (EU) 2024/1619) of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, the "[CRD VI Directive](#)", expired on 11 July 2026. The CRD VI Directive, which entered into force on 9 July 2024, introduced, at European Economic Area level, a harmonised framework governing the cross-border provision of core banking services into the EU by third-country undertakings consisting in a general prohibition on such provision unless conducted through an authorised branch established in a Member State or through an EU-authorized subsidiary (the "**TCB Regime**"). As a result, new contractual arrangements entered into on or after 11 July 2026 no longer benefit from the grandfathering regime and will be required to comply with the TCB Regime once the Luxembourg provisions transposing Article 21c the CRD VI Directive become applicable on 11 January 2027.

The law of 5 May 2026 transposes the CRD VI Directive into Luxembourg law, and in particular the framework set out under Article 21c, by amending the law of 5 April 1993 on the financial sector ("**LFS**") and inserting a new Section 3 (Articles 32-2 to 32-19 LFS) into Part I, Chapter 3 of the LFS. The provisions of the LFS relating to the TCB Regime will apply as from 11

January 2027.

This article focuses on the core characteristics of the TCB Regime and on its transposition into Luxembourg law.

Recall of the Luxembourg Law Status: A permissive regime

Before the adoption of the CRD VI Directive, Member States were largely free to determine their own rules for market access by third-country institutions.

Prior to the transposition of the CRD VI Directive, the cross-border provision of banking services by third-country firms and the establishment of their branches in Luxembourg were governed primarily by the LFS and CSSF Circular 11/515. Regulated activities falling within the scope of the LFS required prior authorisation from the *Commission de Surveillance du Secteur Financier* (the "**CSSF**").

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

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

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

The preparatory works to the law of 5 May 2026 have confirmed this reading. They state that, "in accordance with existing practice", where a banking activity is carried out wholly and exclusively at a distance from a third country with no relevant connecting factor to Luxembourg, it may be regarded as provided outside Luxembourg. This constitutes an acknowledgment of Luxembourg's established administrative practice and confirms that the territoriality of banking services was already assessed on a basis broadly aligned with the

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characteristic performance test applicable under MiFID II. The new Article 32-3 of the LFS does not seem to depart from this approach. Luxembourg's permissive pre-CRD VI Directive regime, which allowed a number of non-EU institutions to access the market without establishing a permanent presence, thus reflected a deliberate and well-grounded territorial framework, rather than a mere regulatory gap.

What happens next?

Under the new TCB Regime, non-EU banks and other in-scope undertakings that do not benefit from an exemption and do not operate through an EU subsidiary must establish and obtain authorisation for a branch in each Member State where they wish to provide core banking services. There is no passporting - a separate authorisation is required in every relevant jurisdiction.

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

Pursuant to the new Article 32-3 LFS, third-country undertakings wishing to provide core banking services in Luxembourg will be required to establish an authorised branch and obtain prior authorisation from the CSSF. The CSSF must, before granting authorisation, consult the Luxembourg AML/CFT supervisory authority and obtain written confirmation from it, a requirement not provided for under the CRD VI Directive. The CSSF retains the power to require, on a case-by-case basis, that a third-country branch be converted into a subsidiary. The CSSF may also decide that existing third-country branch authorisations

granted no later than 10 January 2027 under the former Article 32 of the LFS remain valid, provided that the branches comply with the requirements of the new framework.

The law of 5 May 2026 reflects both the material and personal scope of the TCB Regime as set out in the CRD VI Directive, together with the main exceptions and limitations to the regime.

TCB Regime scope: new Article 32-2 LFS

The application of the TCB Regime is subject to both a material and a personal scope of application. It is necessary to assess, on the one hand, the relevant services that are provided and, on the other hand, the third-country undertaking carrying out those.

The core banking services subject to the branch establishment requirement are defined by reference to points 1, 2 and 6 of Annex I to the CRD VI Directive (transposed by reference to points 1, 2 and 6 of Annex I to the LFS). These services comprise:

1. the taking of deposits and other repayable funds;
2. lending activities, including, inter alia, consumer credit, credit agreements relating to immovable property, factoring (with or without recourse), and the financing of commercial transactions (including forfeiting); and
3. the provision of guarantees and commitments.

Where a third-country undertaking carries out activities listed under 1) within Luxembourg, the TCB Regime applies irrespective of whether that undertaking would qualify as a credit institution if established in the Union.

Where a third-country undertaking engages in activities listed under 2) and 3) the TCB Regime applies only if that undertaking would qualify as a credit institution or would satisfy the conditions set out in Article 4(1)(1)(b) [Regulation 2013/575/EU](#), as amended by the Regulation (EU) [2024/1623](#) of 31 May 2024, if it were established in the Union. This is an exclusion of non-bank third-country actors from establishing a third country branch.

Consistently with the 21 c) 4 the CRD VI Directive), the new Article 32-2 (2) LFS of the Article includes the MiFID carve out, providing that the establishment of a branch by a third-country credit institution is not subject to the requirements of the TCB Regime when it provides investment services or activities and accompanying ancillary services as listed in Annex II, sections A and C LFS.

Thus far, even if the presentation of the rule is made differently under the directive, the content is identical.

Territorially, the CRD VI Directive does not provide any interpretative guidance on when a service is considered to be "provided in" a Member State for the purpose of triggering the branch requirement. As noted above, the preparatory works to the Law of 5 May 2026 suggest that Luxembourg has favoured a territorial approach broadly aligned with that applicable under MiFID II, and inspired by the Commission's 1997 communication, by expressly referencing the "characteristic performance" test. The new Article 32-3 of the LFS does not seem to depart from this approach. Accordingly, where a banking activity is performed entirely remotely from a third country, with

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no relevant connecting factor to Luxembourg, it may be regarded as provided outside Luxembourg and therefore fall outside the scope of the branch requirement.

Exemptions

Exemptions are set out in Article 32-3 (2) LFS and they are consistent with the CRD VI Directive :

- **reverse solicitation**, namely where the client or counterparty as defined under the LFS approaches, on its own exclusive initiative, an undertaking established in a third country for the provision of core banking services. The exemption also covers the continuation of the requested service and closely related services. However, it does not apply where the undertaking markets additional unrelated services or acts through linked entities acting on its behalf. The Luxembourg preparatory works clarify that the burden of proof lies squarely on the third-country firm, which must be able to document at all times that the client took the initiative. The CSSF may require group entities established in Luxembourg to provide information to verify genuine reverse solicitation. Whether a new product category is being marketed must be assessed case by case. The reverse solicitation exemption is conceptually uncertain and practically difficult to apply: its key terms are undefined, its interpretation varies across Member States. A critical unresolved question for the loan markets is whether the initiative can be exercised by a third party acting on the borrower's behalf

- **interbank operations**, where core banking services are provided to a credit institution.
- **intragroup transactions**.

Grandfathering

Although the grandfathering cut-off has now passed, Article 73 LFS, consistently with Article 21c(5) of the CRD VI Directive, continues to protect contracts entered into before 11 July 2026. Contracts entered into on or after that date will be expected to comply with the TCB Regime from its application date on 11 January 2027.

The purpose of the grandfathering regime, as explained in the parliamentary preparatory works and reflected in the CRD VI Directive, is to preserve the vested rights of clients under existing contracts and to facilitate the transition to the new TCB Regime. The preparatory works further clarify that the implementation of the terms of a framework agreement concluded before 11 July 2026 remains covered by the derogation and does not trigger the branch requirement, even where the relevant steps are performed after that date.

However, no clarification has been provided on whether amendments or restatements of a pre-11 July 2026 contract would fall within or outside the grandfathering protection, or on what constitutes a new contract (for example, whether it covers accession of new lenders or extensions of maturity).

The central uncertainty - what triggers a change material enough to end grandfathering protection is now an immediate practical question for lenders and

borrowers reviewing their existing portfolios. The CRD VI Directive and the Luxembourg transposition leave this undefined. The Loan Market Association's (LMA) position is that only changes that affect the borrower's original rights or introduce genuinely new terms should qualify; technical and corrective amendments should not, and pre-built contractual mechanisms exercisable unilaterally by the borrower should be safe even if exercised on or after 11 July 2026. Material changes, such as an extension of term or an increase in a credit limit, are more likely to end grandfathering protection.

Conclusion

Luxembourg has transposed the TCB Regime largely in line with the CRD VI Directive, subject to a few Luxembourg-specific adjustments, including, for instance, the additional AML/CFT involvement in the CSSF authorisation process and an early commencement of reporting obligations from 11 January 2026. The preparatory works also indicate an intention to preserve a characteristic performance approach to territoriality, providing continuity with pre-existing practice. Now that the grandfathering cut-off of 11 July 2026 has passed, the outstanding practical questions, in particular the treatment of amendments and restatements to pre-cut-off contracts, are live and require careful attention as market participants prepare for the 11 January 2027 application date. For any arrangement that does not benefit from grandfathering, the first question is whether the activity is in scope at all, and if yes, the next question is whether an exemption applies. Significant uncertainties nonetheless remain as to how these rules will be



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applied in practice. These are uncertainties that only market experience and, in due course, guidance from competent authorities, will be able to resolve.

THOMSON REUTERS PRACTICAL LAW | REGULATION OF STATE AND SUPPLEMENTARY PENSION SCHEMES IN LUXEMBOURG

A Q&A guide to pensions law in Luxembourg.

The Q&A gives a high-level overview of the regulation of national government pensions and supplementary pensions. On national government pensions, it covers employer/employee contributions; national government pension age and monthly amount; and the public pensions body. On supplementary pensions, it covers the provision of supplementary schemes; the requirements to receive vested rights and disclosure/indexing/revaluation requirements; funding and solvency requirements; pension plan investment; member transfers; the regulatory body; applicable tax reliefs on contributions and approval/registration requirements; and the tax treatment of scheme investments and payments to members. Legal protection of employees' pension rights on a business transfer, together with participation in pension schemes, employer insolvency protection and overall scheme solvency, are also included.

National government pensions

1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions paid to the government

In Luxembourg, all persons engaged in a professional occupation (whether employed or self-employed) or drawing a work-related benefit (sickness benefit,

maternity benefit, workplace accident compensation, or unemployment benefit) are covered by the general pension insurance scheme.

Follow the link to read the full version of the [Pension Law Luxembourg Guide](#).

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