Luxembourg Newsflash - 6 December 2018

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Anti-Money Laundering

The Luxembourg legal framework relating to AML/CTF has been substantially reshaped during 2018 with the implementation into Luxembourg law of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th AML Directive). Such implementation is about to be achieved and has been divided into the following seven pieces of legislation:

- the law of 23 December 2016 relating to the tax reform which introduced enhanced tax fraud and tax swindle as a new predicate offence to money laundering,
- the law of 13 February 2018 which has substantially amended the law of 12 November 2004 on AML/CTF (Read more…),
- the law of 1 August 2018 on the access to AML/CTF related information by the national tax authorities,
- the law of 10 August 2018 on information to be obtained and retained by fiduciary agents (Read more…),
- the law of 10 August 2018 on the organisation and cooperation of the Financial Intelligence Unit,
- bill of law 7216B on the register of beneficial ownership in fiduciary arrangements (still under discussion), and
- bill of law 7217 on the register of beneficial ownership of Luxembourg legal entities arrangements (still under discussion) Read more...

In addition, amendments are expected to be made to CSSF Regulation 12-02 and to the Grand-Ducal regulation of 1 February 2010 in the months to come.

This new legislation is further completed by the risk factor guidelines issued by the ESAs (ESMA, EIOPA and EBA). These guidelines were adopted in Luxembourg via CSSF Circular 17/661 and entered into force on 26 June 2018. In this context the EU Commission also adopted a Delegated Regulation on high risk third countries which has already been amended.

The ESAs Joint Committee has also issued an opinion on the use of innovative solutions in the customer due diligence process as regards

the remote verification of customers' identities entailing new risks regarding AML/CTF.

It is worth highlighting that the 4th AML Directive was recently amended by Directive (EU) 2018/843 (5th AML Directive), which must be implemented by Member States before 10 January 2020. The changes introduced by the 5th AML Directive to the registers of beneficial owners have already been, at least partially, reflected in bill of law 7217. Read more...

Furthermore, additional European legislation has recently been published in the Official Journal of the EU: (i) Directive (EU) 2018/1673 on combating money laundering by criminal law which establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering must be implemented by Member States by 3 December 2020, (ii) Regulation (EU) 2018/1672 on controls on cash entering or leaving the Union will apply from 3 June 2021, and (iii) Regulation (EU) 2018/1805 on mutual recognition of criminal asset freezing and confiscation orders will apply from 19 December 2020.

In addition, a draft directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences is still pending at EU level.

Finally, a new bill of law 7356 *inter alia* specifies the definitions of terrorist financing.

Securitisation

Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation will apply from 1 January 2019. In this respect, bill of law 7349 grants supervisory and sanctioning powers to Luxembourg authorities.

A proposal for a regulation creates a new type of financial instrument, the "sovereign bond-backed securities" (SBBS) and establishes a secure regime for SBBS transactions. The proposal provides rules for (i) the composition and structure of an SBBS issue, (ii) the notification and transparency requirements for the issuing entity, and (iii) the monitoring by national competent authorities.

Please refer to the section "Insurance Law".

Payment Services Directive 2 (PSD 2)

The law of 20 July 2018 on payment services (the 2018 Law) aims at implementing Directive (EU) 2015/2366 on payment services in the internal market (PSD 2) into Luxembourg law and therefore amends quite substantially the law of 10 November 2009 on payment services (LPS).

According to PSD 2, the 2018 Law pursues the overall objective of ensuring access to the market for new product service providers adapting rules to new and innovative technologies while enhancing the protection of consumers. In this respect, it sets out two new categories of service providers: (i) payment initiation service providers (PISPs) and (ii) account information service providers (AISPs) which are required to obtain authorisation from the Minister of Finance before carrying out their activities and fall within the scope of certain obligations such as set out under the 2018 Law (e.g. information requirements and rules pertaining to data access). As an example of rules which have led to the enhancement of consumer protection, the LPS provides for a new unconditional right to refund for direct debits in relation to non-authorised payment transactions where the payment was initiated by a PISP.

Ranking of unsecured debt instruments in insolvency hierarchy

The law of 25 July 2018 implements Directive (EU) 2017/2399 on the ranking of unsecured debt instruments in insolvency hierarchy into Luxembourg law. It sets forth the debt instruments with lower priority than the claims of unsecured creditors in the event of insolvency and requires the *Commission de Surveillance du Secteur Financier* (CSSF) to deliver a certificate in the event of establishment of branches in another Member State by a Luxembourg financial institution.

Inactive accounts

A new bill of law 7348 aims at setting out a legal framework regarding inactive bank accounts, safe-deposit boxes and unclaimed insurance policies and provides for specific professional requirements which banks and insurance companies will be subject to in relation thereto. It covers three main pillars, i.e. (i) the prevention and, where necessary, the monitoring of the inactivity of bank accounts, safe-deposit boxes and unclaimed insurance policies through information and research procedures, (ii) the deposit of unclaimed assets at the Luxembourg consignment office (*Caisse de consignation*) after a fixed time period of inactivity or escheat, and (iii) the restitution of the assets deposited at the Luxembourg consignment office.

The *Commissariat aux Assurances* (CAA) and the *Commission de Surveillance du Secteur Financier* (CSSF) are entrusted with supervisory and sanctioning powers for non-compliance with the requirements provided for under bill of law 7348.

European Account Preservation Order Procedure	Regulation (EU) 655/2014 establishing a European account preservation order procedure was implemented into Luxembourg law by the law of 13 June 2017. It is supplemented by the law of 18 July 2018 which provides rules for the validation procedure of the order.
Central Securities Depository (CSD)	The law of 6 June 2018 implements Regulation (EU) 909/2014 to the extent that it entrusts the *Commissariat aux Assurances* (CAA) and the *Commission de Surveillance du Secteur Financier* (CSSF) with supervisory and sanctioning powers.
MiFID	Directive (EU) 2014/65 (MiFID 2) was implemented into Luxembourg law through the law of 30 May 2018 whereas the MiFID 2 Delegated Directive (EU) 2017/593 was implemented into Luxembourg law through the Grand-Ducal regulation of 30 May 2018. Read more...
Securities	A new bill of law 7363 which amends the law of 1 August 2001 on securities circulation provides that securities may be registered on accounts and transferred via electronic and secured mechanisms such as blockchain. Such bill strengthens the position of the Luxembourg financial centre as a competent centre for Fintech.
European crowdfunding service providers (ECSP)	A proposal for a Regulation on ECSP for business establishes a set of rules for crowdfunding platforms where they operate in their home country or across the EU single market. It also provides for requirements that crowdfunding service providers will have to meet in order to receive authorisation and it creates a single point of entry for authorisation and supervision by ESMA.
EU Commission Work programme (banking and financial services aspects)	European legislative proposals which will amend the Bank Recovery and Resolution Directive (BRRD), Capital Requirement Directive and Regulation (CRD 4 and CRR), European Market Infrastructure Regulation (EMIR), MiFID 2, Securities Financing Transactions Regulation (SFTR) and Supervisory Resolution Mechanism (SRM) have been classified as priorities by the EU Commission Work programme for 2019.

Professional secrecy and outsourcing

Through the law of 27 February 2018 implementing Regulation 2015/751 on interchange commissions for card based payments, Luxembourg has relaxed the rules on professional secrecy for banks, investment firms, other regulated professionals of the financial sector, payment institutions, electronic money institutions and insurance undertakings to facilitate outsourcing arrangements. Read more...

EMIR 2 about to be adopted

The legislative proposal to amend EMIR as published by the EU Commission in May 2017 has moved towards trilogue discussions between the EU Commission, the EU Parliament and the Council of the EU. The legislative proposal, as part of the EU Commission's Regulatory Fitness and Performance Programme, does not contain fundamental changes to the core requirements of EMIR, but suggests simplifying certain rules and eliminating disproportionate costs and burdens on certain derivative counterparties (e.g. clearing obligations for non-financial counterparties for classes of derivatives above certain clearing thresholds). The legislative proposal for a regulation to amend EMIR follows a review of EMIR conducted by the EU Commission in 2016.

Bridging the pension gap

Please refer to the section "Insurance Law".

Review of the supervisory powers of the ESAs

Please refer to the section "Fund Formation".

Prudential guidance on substance requirements in Luxembourg

On 23 August 2018, the CSSF published Circular 18/698 concerning the approval process and organisation of Luxembourg fund management companies and specific requirements applicable to both fund management companies and transfer agents in the fight against money laundering and terrorist financing. The increase in the number of Luxembourg alternative investment fund managers, together with the efforts to bring about regulatory convergence in a Brexit context, has led to the creation of a new circular applicable to all Luxembourg fund management companies, whether UCITS, AIFMs or even the entities known as "Chapter 16 management companies". The provisions of the new Circular mirror to a large extent the administrative practice developed by the CSSF since the introduction of the AIFMD, but also contain some new requirements. Read more… CSSF Circular 18/698 entered into force with immediate effect and repealed CSSF Circular 12/546 on substance which addressed UCITS management companies only.

Clarifications for the Luxembourg non-UCITS depositary industry

On 23 August 2018, the CSSF published Circular 18/697 that is addressed to Luxembourg credit institutions, investment firms and certain professionals of the financial sector acting as depositaries for non-UCITS. The new Circular clarifies certain rules provided in the Luxembourg AIFM law and the AIFMD Level 2 measures. It also provides clarification on certain aspects beyond these rules by notably providing guidance to be followed by depositaries when servicing investment funds investing in non-traditional assets (e.g. real estate, non-listed companies, tangible assets, financial derivative instruments, etc.). Read more… The new Circular will enter into force on 1 January 2019.

Clarification of the scope of the UCITS and AIFMD depositary regimes

In February 2018, the Luxembourg legislator clarified the scope of the UCITS and the AIFMD depositary regimes. In accordance with the clarifications made, only Part II UCIs which are distributed to retail investors in Luxembourg will fall within the scope of the more stringent UCITS-like depositary regime. All other Part II UCIs remain within the scope of the AIFMD depositary regime. The extent of the application of the AIFMD depositary regime will depend on whether or not the AIFM of such Part II UCI is considered to be a sub-threshold AIFM or whether it is located in a third country. Read more… The respective

amendments to the Luxembourg UCI law entered into force on 5 March 2018 and are also meant to clarify the confusion created in 2016 when changes were introduced to the depositary regime for Part II UCIs following the implementation of the UCITS V Directive.

Clarification on certain obligations of depositaries relating to the delegation of safekeeping functions

On 30 October 2018, two amending Commission Delegated Regulations on safekeeping duties of depositaries were published in the Official Journal of the EU with the aim of clarifying certain obligations of depositaries relating to the delegation of safekeeping functions to third parties. The two new EU Regulations will amend already existing Level 2 measures for the AIFMD and the UCITS Directive in the context of asset segregation and the information flow between the depositary and a third party to whom safekeeping functions have been delegated. In 2017, ESMA invited the EU Commission to clarify certain obligations of depositaries relating to the delegation of safekeeping functions to third parties. Back to 2017… Depositaries have time to implement the new requirements until 1 April 2020, when the two EU Regulations become applicable. EU Regulations are legislative acts that must be applied in their entirety throughout the EU without further implementation into national law by any EU Member State.

Reporting obligations for non-regulated AIFs

In May 2018, the Central Bank of Luxembourg (BCL) published a circular (Circular BCL 2018/241) on the new statistical data collection for non-regulated alternative investment funds. Data collection occurs in a manner similar to the data collection already required for regulated investment funds. Non-regulated alternative investment funds may benefit from a derogation granted by the BCL if their total assets under management remain below the threshold of EUR 500 million. All non-regulated alternative investment funds must however register with the BCL.

PRIIPs KID under review

The PRIIPs KID is a mandatory three-page A4 information document to be provided to retail consumers prior to the purchase of investment products qualifying as so-called *packaged retail and insurance-based investment products* (PRIIPs). The PRIIPs KID became a mandatory document as from 1 January 2018 and is intended to enable retail investors to compare products and make a more informed investment decision. As UCITS are exempted from the PRIIPs KID obligations until 31 December 2019, but will need to prepare a PRIIPs KID as of 1 January 2020, the ESAs launched a public consultation on 8 November 2018 proposing targeted amendments to the PRIIPs Delegated Regulation which would provide for the appropriate application of the PRIIPs KID requirements by UCITS and relevant non-UCITS funds and

address certain specific issues that have arisen from the practical application of detailed technical requirements. In order to allow the EU co-legislators, who adopted the PRIIPs Delegated Regulation only in 2017, to scrutinise amendments before the end of the current legislative term and to provide sufficient time for market participants to implement the necessary changes, the ESAs intend to conclude their review during the course of the first quarter of 2019.

Uncertain future of the UCITS KIID

The PRIIPs Regulation provides for a review by the EU Commission by 31 December 2018 to assess whether (i) the exemption for the UCITS KIID until 31 December 2019 will be prolonged, whether (ii) the UCITS KIID will be replaced by the PRIIPs KID, or whether (iii) the UCITS KIID will be considered equivalent to the PRIIPs KID. On 3 December 2018, ECON, the EU Parliament's Committee on Economic and Monetary Affairs, approved a proposal to delay the application of the PRIIPs Regulation to UCITS and consequently the replacement of the UCITS KIID by two years. At the time of this publication, the ECON's proposal has not yet been voted on by the EU Parliament. In the event of an affirmative vote, the Council of the EU will have to agree with the tabled amendments as well. Considering the urgent need to provide market participants with legal certainty, political pressure is high to find an agreement among the EU's co-legislators before the end of the legislative period of the current EU Parliament in April 2019.

Sustainable finance

On 24 May 2018, the EU Commission published a number of legislative proposals on sustainable finance as a follow-up to its Action Plan published in March 2018. The aim of the reform is to integrate environmental, social and governance considerations into the investment decision-making process in a consistent manner across industry sectors. The EU Commission has adopted legislative proposals for (i) a regulation on the establishment of a framework to facilitate sustainable investment, (ii) a regulation on disclosures relating to sustainable investments and sustainability risks, (iii) a regulation amending the Benchmarks Regulation on low carbon benchmarks and positive carbon impact benchmarks, and two proposals for amending two Commission Delegated Regulations concerning suitability assessments, one under MiFID 2 and one under the IDD. The legislative proposals form part of the EU Commission's Capital Markets Union initiative. It is currently being reviewed by the EU Parliament and the Council of the EU. At the time of this publication, the proposals are still pending.

In August 2018, the EU Commission sought technical advice from ESMA and EIOPA in order to supplement the legislative proposals by amending or, where necessary, introducing Level 2 measures under

the UCITS Directive, the AIFMD, MiFID 2, Solvency 2 and the IDD with the aim of incorporating sustainability risks into the decisions taken and processes applied by financial market participants subject to those rules. The EU Commission requested ESMA and EIOPA to revert with their advice by April 2019.

Reducing barriers for the cross-border distribution of investment funds

On 12 March 2018, the EU Commission published two legislative proposals with the aim of reducing barriers to the cross-border distribution of investment funds within the EU, thus reducing the cost of going cross-border, while at the same time deepening the single marketing procedure for investment funds. The proposed legislative pack suggests introducing (i) a harmonised definition of pre-marketing and laying down the conditions under which an EU AIFM may engage in pre-marketing, (ii) more transparency as to the marketing requirements at national and EU level, (iii) rules that modernise the requirements for providing facilities to retail investors, and (iv) harmonisation of the procedures and requirements for updating notifications of the use of the marketing passport (or for de-registration as the case may be). Read more… The two legislative proposals form part of the EU Commission's Capital Markets Union initiative. In June 2018, the Council of the EU published its negotiation stance in view of the trilogue discussions among the EU co-legislators. At the time of this publication, the legislative proposals are still being reviewed in the EU Parliament. However, it may be assumed that the trilogue discussions will start without further delay once the EU Parliament has adopted its stance. There seems to be a political willingness to find an agreement among the EU co-legislators before the end of the legislative term of the current EU Parliament in April 2019.

Review of the supervisory powers of the ESAs

The proposal to strengthen the powers of the ESAs (EBA, ESMA and EIOPA) as published by the EU Commission in September 2017 remains challenged. Quite a number of the proposals, such as the direct supervisory powers for ESMA, the funding of the ESAs and the powers of the supervisory board are politically sensitive. While both the EU Parliament and the Council of the EU had several amendments to the EU Commission's proposal tabled in 2018, neither of the two legislative bodies have yet succeeded in adopting a negotiation stance for further discussions within trilogue sessions. At the time of this publication, the legislative proposal is still pending. Considering the extent of the discussions, it is to be assumed that the legislative proposal will not be adopted before the end of the current legislative term of the EU Parliament in April 2019.

On 20 September 2017, the EU Commission published a package of legislative proposals to reform the EU's supervisory structure to further

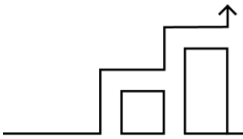
strengthen and integrate EU financial market supervision. In order to achieve this goal, the EU Commission proposed that the coordination role for all three ESAs be reinforced and that ESMA be equipped with new direct supervisory powers. Back to 2017…

Bridging the pension gap

Please refer to the section “Insurance Law”.

Further delays for the AIFMD 2

The external contractor appointed by the EU Commission in 2017 launched a survey among financial market participants during spring 2018 based on which the report on the functioning of the AIFMD that was solicited by the EU Commission was to be produced by October 2018. The report has not yet been made available publicly. According to EU sources the EU Commission intends to launch a corresponding public consultation in early 2019 and will base its recommendations for a review of the AIFMD on this report and the outcome of such public consultation.



Company Law – Capital Markets

Company conversions, mergers and divisions

In April 2018, the EU Commission published a proposal for a directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions that contains new harmonised rules. The aim of such proposal is to make it easier for companies to merge, divide or move within the EU without incurring unnecessary burdens and costs provided that the relevant transaction is not artificial or abusive and that the interests of employees, shareholders and creditors are protected. The procedure for cross-border mergers is also adapted to include additional protections for shareholders and creditors while the actual procedure for cross-border mergers will remain unchanged from a general perspective.

The newly created procedures for cross-border conversions and divisions will mainly follow the process already in place for the cross-border merger directive, but will be adapted to take into account the risk of potential abuses.

Digital company law

In April 2018, the EU Commission published a proposal for a directive amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law. The objective of such proposal is to enable companies to register, file and update their data in the registers fully online, without the need to appear physically before a business registry or intermediary, unless fraud is suspected.

Business licence

In July 2018, the business licences for the professions of counsel and economic counsel have been replaced by a business licence for "commercial activities and services". The existing business licences for these professions remain valid and in force but will be considered to be general authorisations for "commercial activities and services", meaning that professional qualifications are no longer required for the exercise of such activities. Read more…

Prospectus

In June 2018, a bill of law was deposited with the Parliament to implement the 2017 EU Prospectus Regulation which repeals the law of 10 July 2005 on prospectuses for securities. The relevant provisions of Regulation (EU) 2017/1129 must be implemented by 21 July 2019 at the latest. Luxembourg has decided to exempt offers to the public of securities for a total amount of less than EUR 8 million from the obligation to publish a prospectus. However, to ensure appropriate protection for investors, this exemption is conditional on the availability to the public of an information notice for bids for a total amount of EUR 5 million or more.

LuxSE SOL

The Luxembourg Stock Exchange (LuxSE) offers the possibility to issuers to be admitted to the LuxSE's official list without being admitted to trading on one of its two markets (the regulated market and the Euro MTF). The LuxSE SOL is specifically designed for certain types of issuers who are looking for visibility and not trading (e.g. specialised investment funds, high yield bonds). The main features of the LuxSE SOL are: (i) a simplified registration process, (ii) no prospectus required, and (iii) the regulation in relation to admission to trading is not applicable. To be admitted to the LuxSE SOL, the following documents are required: (i) information notice, (ii) application form, (iii) undertaking letter, (iv) articles of incorporation, and (v) annual reports. As regards their ongoing obligations issuers are required to inform the LuxSE of any major events and corporate actions. It should be noted that issuers are not required to publish price sensitive information and financial statements under MAR.

LuxSE new Professional Segments

Two new Professional Segments are available on the Regulated Market and the Euro MTF. Issuers targeting professional investors can only apply to have their financial instruments admitted to trading in these new segments. These new Professional Segments are intended for professional investors only (i.e. retail investors are excluded). As a consequence, regarding MiFID 2, issuers that are required to be listed may now opt for a professional segment to demonstrate that they are not targeting any retail investors. In addition, regarding the PRIIPs Regulation, a KID will not be required as they will not sell any product to retail investors. These new Professional Segments open broader listing options in particular for investment vehicles the subscription of which are subject to investment restrictions (e.g. SIFs, RAIFs, SICARs, AIFs) and for which a listing has until now always involved the use of a so-called "deferred settlement procedure" and/or the application of forced redemption mechanisms.

Data Protection – Intellectual Property

Data protection

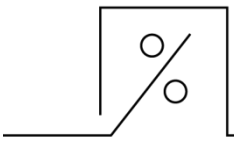
The law of 1 August 2018 on the organisation of the National Commission for Data Protection (*Commission Nationale pour la protection des données* (CNPD)) ensuring the proper application of the so-called GDPR (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data) entered into force on 20 August 2018 (the GDPR has been applicable since May 2018). The CNPD remains the supervisory authority in Luxembourg and may impose a full range of sanctions (e.g. administrative fines) on entities infringing the GDPR. Penalty payments may be imposed when certain conditions are met. These penalty payments may extend up to 5% of the average daily turnover achieved by the relevant entity during the previous financial year. The CNPD may also publish its decisions. In addition, the law of 1 August 2018 provides for the rules applicable to the monitoring of employees (please refer to the section "Employment Law" for more details). Finally, the *Commissariat du Gouvernement à la protection des banques de données de l'Etat* has been put in place to ensure coordination and data protection within State entities and public administrations. Read more…

Trade secrets

A bill of law on the protection of trade secrets was filed with the Luxembourg Parliament in August 2018. The bill of law aims to implement Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure the main objective of which is to put in place rules to ensure sufficient and consistent sanctions in the event of the unlawful acquisition, use or disclosure of a trade secret. The bill of law provides for the principle of full compensation for the damage suffered.

Protocol amending the Benelux Convention on Intellectual Property

The law of 20 July 2018 approving the Protocol dated 11 December 2017 amending the Benelux Convention on Intellectual Property (trademarks and design or model) as regards the implementation of Directive (EU) 2015/2436 was published in the Luxembourg Official Journal in July 2018. The purpose of the Directive is to modernise and simplify trademark registration systems. It also aims to strengthen the harmonisation of trademark legislation within the EU. The Protocol amends the Benelux Convention on Intellectual Property by implementing the Directive strictly. The Protocol provides that certification marks may be filed with the Benelux Office for Intellectual Property.



Tax Law

New IP tax regime

On 22 March 2018 the Luxembourg Parliament adopted the new IP Box Law. It offers an 80% exemption from corporate income tax and municipal business tax on the net income derived from eligible IP assets, leading to an effective tax rate of 5.202% (in Luxembourg City). The new scheme has been applicable from 1 January 2018. Read more…

New Double Tax Treaty between France and Luxembourg

On 20 March 2018, the governments of France and Luxembourg signed a new double tax treaty (Treaty) replacing the current treaty dated 1 April 1958. Although the Treaty is based on the 2017 OECD Model Tax Convention, it contains certain substantial derogations therefrom. The application of the Treaty early 2019 will require that the ratification process by the respective Parliaments, as well as the exchange of the notification thereof, be finalised by the end of this year. Read more…

Luxembourg bill of law on ATAD 1

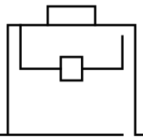
On 15 June 2018 Luxembourg approved the bill of law implementing the provisions of the Council Directive (EU) 2016/1164 – the so-called Anti-Tax Avoidance Directive (ATAD). The ATAD was adopted by the Council of the EU on 28 June 2016 in order to implement the OECD's recommendations in its Base Erosion and Profit Shifting (BEPS) Project. Accordingly, the ATAD provides for new rules to be adopted by all EU Member States in the following five specific areas: interest limitation rules, exit taxation rules, GAAR, CFC rules and hybrid mismatch rules. Read more…

Implementation of the MLI in Luxembourg

On 15 June 2018 the Luxembourg government approved the bill of law implementing the OECD's Multilateral Agreement (MLI). The MLI implements a number of tax treaty related measures provided for by the BEPS Project in the following areas: (i) Action 2: Hybrid mismatches; (ii) Action 6: Treaty abuse; (iii) Action 7: Avoidance of PE status; and (iv) Action 14: Dispute resolution. Read more…

VAT Group

Bill of law 7278 implementing the VAT group into Luxembourg law was adopted on 26 July 2018 by the Luxembourg Parliament. This long-awaited VAT group regime, which entered into force on 31 July 2018, was necessary to replace the current Independent Group of Persons regime (previously used in the financial sector but now restricted to sectors of public interest) and to preserve the competitiveness of Luxembourg in relation to other EU Member States which have implemented similar VAT group regimes. Read more…



Employment Law

Reform concerning the early retirement solidarity scheme

As from 1 July 2018, only three early retirement schemes remain, more specifically (i) early retirement-adjustment, (ii) early retirement of shift workers and night workers, and (iii) phased retirement.

In principle, for each of the three remaining early retirement schemes, a minimum of five years of employment with the applicant company is required. Furthermore, the period of compensation for early retirement has been limited to three years, bearing in mind that it will end in any event at the age of 63 years. As regards the calculation of the early

retirement allowance, it should be noted that the latter will be calculated over the period of the last twelve months of employment.

Reform of Article L. 233-16 of the Luxembourg Labour Code

As from 1 January 2018, the duration of leave for certain types of special leave are as follows:

Type of leave	2017 Plan	2018 Plan
Bereavement of a second degree relative of the employee or of his or her spouse or civil partner	1 working day	No change
Bereavement of a minor	/	5 working days
Bereavement of a spouse, civil partner or first degree relative	3 working days	No change
Paternity leave	2 working days (at one time and immediately after the birth of the child)	10 working days (at one time and immediately after the birth of the child)
Adoption leave	2 working days	10 working days (adoption of a child below the age of 16)
Leave for each parent in the event of their child's marriage	2 working days	1 working day
Leave for each parent in the event of their child's civil partnership ceremony	2 working days	No working day
Relocation leave	2 working days	2 working days (every 3 years)
Employee's marriage	6 working days	3 working days
Employee's civil partnership ceremony	6 working days	1 working day

Reform of Articles L. 234-50 to L. 234-55 of the Luxembourg Labour Code

The law of 15 December 2017, which came into force on 1 January 2018, amended the provisions on family carer leave as follows:

2017 Plan	2018 Plan
2 days per year and per sick child under the age of 15, without the possibility of accumulating leave days over several years	▪ 12 days per child aged between 0 to 4 years (not yet attained) ▪ 18 days per child aged between 4 to 13 (not yet attained) ▪ 5 days per child aged between 13 to 18 (not yet attained), or 18 and hospitalised, with the possibility of splitting and carrying forward to the next period

Reform of Article L. 332-2 of the Luxembourg Labour Code

The law of 15 December 2017, which came into force on 1 January 2018, amended the provisions on maternity leave, more specifically on postnatal leave granting twelve weeks leave to every woman who gives birth.

Creation of a specific "parental representation leave"

The law of 1 August 2018 creating a national representation of parents was published on 20 September 2018 and came into force on 24 September 2018. According to this new legislation, employees who are members of the *National representation of parents of pupils in basic secondary and differentiated education in the Grand Duchy of Luxembourg* are entitled to parental representation leave. Parents who are members of the *National school board* are entitled to leave amounting to two half-days per month, and parents who are members of the *National parents' representation* are entitled to eight days leave per year in order to carry out the obligations arising from their respective mandates.

Reform concerning the remuneration of employees who are unable to work

The law of 8 April 2018 (Omnibus Law) amending various provisions of the Luxembourg Labour Code entered into force on 15 April 2018. The Omnibus Law provides, amongst others, that the employer must guarantee full continuation of salary payments to employees who are unable to work due to illness. The law differentiates in particular between situations where the employee, unable to work due to illness, has received his or her work schedule, in which case he or she will

receive his or her salary as would have been the case if he or she had worked, and the situation where the employee, unable to work due to illness has not received his or her work schedule, in which case he or she will receive a daily allowance calculated on the basis of the last salaries received.

Index increase

On 1 August 2018, the index applicable to employees' wages climbed from 794.54 to 814.40. This index increase resulted in a 2.5% increase in the gross salary paid to employees with employment contracts subject to Luxembourg law. Wage indexation is an automatic mechanism for the adjustment of salaries to keep pace with evolving living costs, as determined by the statistics and economic studies bureau STATEC. Read more…

Reform concerning the data protection and monitoring of employees

The law of 1 August 2018 establishing the National Commission for Data Protection and the general regime on data protection has amended Article L. 261-1 of the Luxembourg Labour Code regulating the monitoring of employees. Indeed, under the former wording, the processing of personal data for surveillance purposes at the workplace could only be carried out in five cases. The amended Article L. 261-1 of the Luxembourg Labour Code now states that an employer may process its employees' personal data for the purpose of monitoring, as long as such processing is carried out in compliance with the GDPR, in particular in accordance with the legal basis of its Article 6. Read more…

Reform concerning new rules on prolonged illness

The law of 10 August 2018 reforming the Luxembourg Labour Code and the Social Security Code regarding prolonged illness (2018 Law) aims to ensure the continuity of the employment contract in the event of prolonged illness and to introduce a gradual return to work for therapeutic reasons. The 2018 Law will enter into force on 1 September 2019.

The 2018 Law introduces some legislative changes regarding the period during which the employee is entitled to receive full remuneration from the employer and from which point in time the National Health Fund (CNS) will take over. Under the former regime, if during any 12-month period an employee had 77 days of absence after the month during which the 77th absence occurred, the CNS started covering any sick leave the following month (with the 77 days verified on a monthly basis thereafter).

The new legal provisions require that as from 1 January 2019 the 12-month reference period will be increased to an 18-month reference

period. From that date on, during properly notified and certified absence for illness, employees are entitled to receive their full normal remuneration from the employer. This entitlement applies until the end of the calendar month in which the 77th calendar day of absence in an 18-month period falls.

Another amendment, which will be applicable as from 1 January 2019, is the increase in the duration of employee illness management. Currently, if an employee is still absent after he or she has exhausted his or her entitlement to sick leave paid by the employer, the employee is entitled to receive a benefit from the CNS. This benefit is payable for up to 52 weeks for any period of 104 weeks. However, this will only be applicable until 1 January 2019. From that day on, the benefit will be payable for up to 78 weeks instead of 52 for any period of 104 weeks.

The third amendment introduced by the 2018 Law entails that an employee who gradually resumes work due to therapeutic reasons will continue to be considered an employee who is unable to work.

Reform concerning the date of the social elections

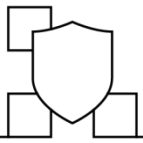
In order to avoid a clash with the parliamentary elections which were held in October 2018, the law of 7 May 2018, which entered into force on 18 May 2018, postponed the social elections to the probable date of 12 March 2019 (this date has been provided for by a draft Ministerial Order (*arrêté ministériel*), but still needs to be voted). Indeed, the elections for the employees' chamber as well as the elections for the staff delegations will be held on that date.

Reform concerning the guaranteed minimum income and the minimum social wage

The law of 28 July 2018 on social inclusion income (2018 Law) will enter into force on 1 January 2019. The social inclusion income (also called Revis) will replace the current guaranteed minimum income. The 2018 Law sets out the conditions for benefitting from the Revis. Amongst others, in order to be eligible to benefit from the Revis, the applicant must, first of all, be registered as a jobseeker with the Employment Development Agency (ADEM). The National Solidarity Fund (FNS) will solely be in charge of examining, granting and managing claims and pay revisions.

Moreover, bill of law 7381 submitted by the Luxembourg Parliament on 24 October 2018 aims to modify Article L. 222-9 of the Luxembourg Labour Code and to increase the minimum social wage by 1.1% as of January 2019.

The minimum monthly wage for a non-qualified worker would hence be increased from EUR 251.54 to EUR 254.31 at the weighted cost-of-living index 100 applicable on 1 January 1948.



Insurance Law

Insurance Distribution Directive (IDD)

The main purpose of the law of 10 August 2018 (2018 Law) is essentially to implement Directive (EU) 2016/97 on insurance distribution (IDD) into the law of 7 December 2015 on the insurance sector (2015 Law). The 2018 Law introduces similar protection mechanisms when buying insurance products as the protection offered by the revised market in financial instruments directive (MiFID 2). The Luxembourg legislator also took the opportunity to reshape the preferential right granted to insurance creditors. Read more…

The IDD entered into application as of 1 October 2018.

Packaged retail and insurance-based investment products (PRIIPs)

The law of 17 April 2018 laying down the rules for the proper application of Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) into Luxembourg law empowers the *Commissariat aux Assurances* (CAA) and the *Commission de Surveillance du Secteur Financier* (CSSF) to ensure compliance with PRIIPs, namely through sanctioning powers and administrative measures. The above authorities may further require prior notification of the Key Investment Document (KID) by the originators and sellers of retail and insurance-based packaged investment products.

Professional secrecy

Please refer to the section “Banking & Financial Services”.

Inactive accounts

Please refer to the section “Banking & Financial Services”.

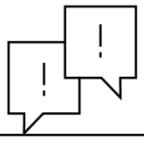
Solvency 2 – Securitisation

The EU Commission has adopted a delegated regulation aligning the Solvency 2 Delegated Regulation with the Securitisation Regulation. The Commission explains that investment in simple transparent securitisation will constitute a new asset class in which insurers can invest to diversify and increase the yield of their investment portfolios. The delegated regulation will now be discussed at the level of the EU Parliament and of the Council of the EU.

Bridging the pension gap

In June 2017, the EU Commission adopted a legislative proposal for a regulation on a pan-European Personal Pension Product (PEPP). In introducing a voluntary personal pension scheme that will offer consumers a new, simple and cost-effective pan-EU option to save for retirement, the proposal lays down the foundation for a PEPP market within the EU. Back to 2017… It is expected that the PEPP will be offered by a range of financial services companies, including insurers, banks, occupational pension funds, investment firms and asset managers. The legislative proposal forms part of the Capital Markets Union Action Plan published by the EU Commission in September 2015.

In June 2018, the Council of the EU agreed on its negotiation stance on the legislative proposal PEPP adopted by the EU Commission in June 2017. At the time of this publication, the vote in the EU Parliament is still pending.



Litigation

Draft reform of Luxembourg civil procedure

On 14 May 2018, bill of law 7307 regarding the strengthening of justice in civil and commercial matters was filed with the Luxembourg Parliament.

This bill of law seeks to make justice more accessible, timely and efficient and mainly plans to reform the jurisdiction of the courts and the conduct of proceedings in civil and commercial matters.

The major change concerns the increase of the competence rate of the *Justice de Paix* since the threshold of jurisdiction would be raised from EUR 10,000 to EUR 20,000 in civil and commercial matters.

This increase also concerns specific procedures such as the payment order procedure (Article 129 NPCC), the European order for payment procedure (Article 49 NPCC), and the European order for the attachment of bank accounts (Article 685-6 NPCC).

The rules of conduct of the proceedings would also be amended.

First, the pre-trial Judge would have exclusive jurisdiction to rule on procedural objections including jurisdiction and admissibility objections.

In addition, a simplified pre-trial procedure inspired by the judicial administrative procedure imposing strict deadlines would automatically apply for civil and commercial disputes valued at less than EUR 50,000 and opposing only one plaintiff and one defendant.

At the time of this publication, bill of law 7307 is still pending before the Luxembourg Parliament.

Attachment and third party declaration - authentic title

In a decision dated 21 February 2018, the Luxembourg District Court (Lux. TA 21 February 2018, docket 180460) has ruled that the claimant does not need to hold an enforceable title to sue the third party in order to obtain its declaration (*assignation en déclaration affirmative*).

The Court has indeed decided that there is no reason to allow attachment based on private title which is by nature not enforceable and to restrict this right when based on an authentic title. By the same reasoning, there are no grounds for different treatment of both situations provided for by Article 704 NCPC as regards the characteristics of the title which authorises the claimant to sue the third party.

The Court has also stated that the notion of authentic title includes the judgment, even if the judgment was rendered by a foreign judge.

As a result, a judicial decision constitutes an authentic title which makes it possible to sue the third party to obtain its declaration, with no requirement of enforceability.

This first instance judgment is currently subject to an appeal.

Commercial

Reform of commercial leases

The law of 3 February 2018, which came into force on 1 March 2018, introduced new rules on commercial leases. The law aims to promote commercial activity and to improve the protection of the tenants by introducing:

- a limitation of the rental guarantee, with a rental guarantee not exceeding six months' rent;
- a prohibition of the *pas de porte*; no additional amount must be paid by the tenant as a result of the signature of the commercial lease agreement;
- a prohibition of sub-lease rents in excess of the main rent, except in specific cases of investments made by the main tenant;
- reinforcement of the right of renewal; the landlord may not refuse the renewal of the lease except in specific situations restrictively listed by the law (if the landlord or his child(ren) decide(s) to live on the premises, if the landlord decides not to lease the premises any longer or if the landlord intends to rebuild or transform the rented premises). After nine years of occupancy, the landlord may refuse the renewal or terminate the lease, without providing any justification, if an eviction indemnity is paid to the tenant;
- abolishment of the *sursis commercial* and replacement by a single judicial suspension of up to nine months at the request of the tenant with regard to an eviction decision;
- a pre-emptive right for long-term tenants (at least 18 years of occupancy) in the event of the sale of the building in which the tenant operates.

The provisions of the law are applicable to current contracts, with the exception of the provisions on subletting, for which a transitional period of one year has been granted (1 March 2019), in order to allow main tenants to ensure that their sublease agreements are in compliance with the law.

Public Procurement

Implementation of the Directives on Public Procurement

The law of 8 April 2018 on public procurement implementing Directive (EU) 2014/24 on public procurement (repealing Directive (EU) 2004/18) and Directive (EU) 2014/25 on procurement by entities operating, in the water, energy, transport and postal services sectors (repealing Directive (EU) 2004/17), and the Grand-Ducal regulation of 8 April 2018 regarding the implementation of the law on public procurement of 8 April 2018, entered into force on 20 April 2018.

The new law and regulation clarify, consolidate and modernise the previous rules and provide mainly rules:

- to make quality a central aspect of public procurement by adopting a new definition of the criteria of the most economically advantageous tender;
- to promote social and environmental aspects, by (i) requiring that the proposed products or services address certain specific concerns regarding sustainable development and environmental protection, (ii) excluding economic operators if non-compliant with the applicable environmental, social and labour law, (iii) refusing to grant a contract to the tenderer who submitted the best offer, when the tender does not comply with the applicable legislation and obligations, and (iv) requesting more transparency as regards to the subcontractors;
- to simplify and dematerialise procedures for the public procurements above the European thresholds with electronic public procurement being mandatory as from 18 October 2018;
- to prevent conflicts of interest, favouritism and corruption.