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New CSSF AML/CTF investment market entry forms

On 7 November 2019, the CSSF issued a **press release** in relation to AML/CTF[1] entry forms to be used by funds and investment fund managers ("IFMs") supervised by the CSSF.

The aim of these forms is to collect standardised key information in relation to (i) money laundering and terrorist financing ("ML/TF") risks to which the professionals are exposed and (ii) the measures they put in place to mitigate these risks.

In accordance with the CSSF press release, the AML/CTF entry form must be completed and submitted to the CSSF by:

1. UCITS, Part II UCIs, SIFs, SICARs, ELTIFs, EUSEFs, EUVECAs or MMFs[2] in the following cases:

   - when submitting an application for the set-up of a new fund;

   - when requesting approval for an additional sub-fund. In practice, the CSSF seems to take a stricter approach by asking, in certain circumstances, for the form to be completed also for all new and existing sub-funds.

2. IFMs in the following cases:

   - when submitting an application for the set-up of an authorised or registered investment fund manager;

   - when requesting approval for an additional licence (e.g. for new investment strategies), a licence extension (e.g. for MiFID activities) or a change in the shareholder structure, if there has been any change to the information previously submitted.

AML/CTF forms must be accompanied by specific documents, the list of which depends on the ML/TF residual risk of the fund/IFM.

> 1"AML/CTF" refers to Anti-Money Laundering/Counter Terrorist Financing.
> 2"MMFs" refers to Money Market Funds.

CSSF FAQ: Persons involved in AML/CTF for investment funds/managers

On 25 November 2019, the CSSF issued an **FAQ** on persons involved in AML/CTF for a Luxembourg fund or investment fund manager ("IFM") supervised by the CSSF for AML/CTF purposes. The aim of the FAQ, which is currently composed of two questions, is to share the CSSF's interpretation of Article 4(1) of the **Law of 12 November 2004** on the fight against money laundering and terrorist financing, as amended ("AML Law").

While the FAQ is only applicable to entities subject to the CSSF's supervision, unregulated funds may nevertheless wish to take its provisions into account since they are subject to the AML Law as well.

In Question 1 of its FAQ, the CSSF recalls that in its view, every Luxembourg fund and IFM subject to AML/CTF supervision is legally required to appoint:

- a person from among the members of their management bodies, to be responsible for compliance with AML/CTF obligations, in French a "responsable du respect des obligations" ("RR"); and

- a compliance officer at the appropriate hierarchical level to ensure the control of compliance with AML/CTF obligations, in French a "responsable du contrôle du respect des obligations" ("RC").

In practice, the CSSF expects that any Luxembourg regulated fund designates:

- one of its governing body's members or the governing body (e.g. board of directors) in its entirety as RR (as a collegial and ultimate management body, it is in any case responsible for AML/CTF matters); and

- a member of the governing body or a third-party appointee (e.g. from the staff of the IFM of the fund) as RC who will be in charge of the day-to-day AML/CTF tasks. In cases where the RC is a third-party appointee, the CSSF provides additional guidance on the formalisation of the contractual relationship with the RC. In addition, the CSSF clarifies that the RC can, in exceptional circumstances, be located abroad if the IFM of the fund is not domiciled in Luxembourg.

Similar rules apply to any Luxembourg IFM supervised by the CSSF, which must designate:

- its governing body (e.g. board of directors) in its entirety or one of its members as RR; and

- the compliance officer at the appropriate hierarchical level in charge of AML/CTF aspects as RC. Based on the outcome of the national risk assessment of money laundering and terrorist financing issued in December 2018, the CSSF seems to depart from its previous position (as detailed in point 313 of CSSF Circular 18/698), in accordance with which the need to designate the RC must be assessed in light of the size and nature of activities of the IFM.

The CSSF adds that the above rules are general rules and may need to be adapted on a case-by-case basis since they do not address all possible scenarios.

Question 2 of the FAQ clarifies the conditions applicable for any person appointed as RR or RC. These conditions are based on those defined in Article 40 of **CSSF Regulation 12-02** of 14 December 2012 on AML/CTF.

AMLD V Implementation

In the context of the implementation process of AMLD V[1], on 8 August 2019, the Luxembourg government introduced a draft Bill of Law[2] ("Bill of Law"), which notably amends the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended ("**AML Law**").

Under the current version of the Bill of Law, major amendments to the AML Law will include, amongst others:

- extension of the scope of the AML Law to additional professionals, such as virtual assets service providers and, where the value of the transaction or a series of linked transactions amounts to EUR 10,000 or more, persons involved in the trading, intermediation and storing of works of art;

- extension of the category of "financial institutions" to all persons subject to CSSF supervision for anti-money laundering and counter terrorist financing ("AML/CTF") purposes, thus harmonising the sanction regime, and in particular the administrative fines applicable to professionals supervised by the CSSF;

- specific enhanced due diligence measures for business relationships and transactions involving high risk countries[3];

- addition of new factors potentially evidencing a higher risk in Annex IV of the AML Law[4];

- harmonisation of powers, including the sanction regime, of supervisory authorities and self-regulatory bodies;

- enhanced national and international cooperation between Luxembourg and foreign competent authorities;

- enhanced protection of whistleblowers.

As well as implementing certain provisions of AMLD V, the Bill of Law also embeds in the AML Law certain provisions of (i) the Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the AML Law, as amended, and (ii), the **CSSF Regulation 12-02** on AML/CTF (e.g. KYC documentation, internal controls and training of personnel). Furthermore, the Bill of Law enforces certain recommendations of the FATF[5] (relating notably to due diligence obligations).

Finally but not least, no transition period is currently provided under the Bill of Law which, once adopted, would therefore be applicable four days after publication.

> 1"AMLD V" refers to **Directive (EU) 2018/843** of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
> 2**Bill of Law 7467** implementing certain provisions of the AMLD V.
> 3While AMLD V restricts this obligation to high-risk third countries as identified as such by the European Commission, the Bill of Law extends this obligation to any country identified as high risk by the European Commission, the FATF, the supervisory authorities or the professionals in the context of their risk assessment.
> 4Namely, (i) customers who are third country nationals applying for residence rights or citizenship in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities, and (ii) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species.
> 5The recommendations setting forth International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation adopted by the Financial Action Task Force ("FATF") on 16 February 2012 and last updated in June 2019.

eDesk mandate for law firms/legal advisors

As from 11 December 2019, investment funds can sign a mandate in order to authorise their respective law firm or legal advisor to proceed with the formalities and to liaise on their behalf on the CSSF eDesk platform, and to provide the CSSF with any information concerning them.

The mandate notably empowers law firms or legal advisors to complete the CSSF PRIIPs assessment[1] on behalf of a fund. The mandate is available on eDesk in English and in French.

It includes an undertaking by the investment fund:

- to verify on a regular basis (at least once a year) the data released on eDesk; and

- to inform the CSSF immediately if it notices that an information, request or assessment transmitted to the CSSF and/or the data released on eDesk regarding the fund is incomplete, inaccurate or false.

No similar mandate is currently available on eDesk to act on behalf of managers (eg. AIFMs and UCITS management companies).

1See the article "**PRIIPs assessment: New CSSF press release**" in this Newsletter.

Brexit: New deadlines for CSSF notifications

In light of the fact that the date for a potential Hard Brexit[1] has been postponed until 31 January 2020[2], the CSSF has published a new **Press Release (19/54)** in relation to the mandatory notifications in the context of a Hard Brexit. This Press Release amends the previous deadlines provided by the CSSF for the submission of the Brexit notifications.

All affected entities that have not yet done so, are invited to notify the CSSF through the CSSF eDesk Portal at their earliest convenience of their intention and way forward to continue to provide services in Luxembourg in the case of a Hard Brexit.

As a reminder, for investment firms and managers, the targeted entities are firms licensed under the AIFM or the UCITS Directive and/or the related regulated Luxembourg AIFs that are currently providing services in Luxembourg under a valid EU passport and that are planning to continue to provide services under the relevant passports of the AIFM or the UCITS Directive, i.e.:

- UK AIFM licensed under AIFM Directive;

- Luxembourg regulated AIF managed by a UK AIFM licensed under the AIFM Directive;

- UK management company licensed under UCITS Directive;

- UK UCITS marketed in Luxembourg under the UCITS Directive.

In addition, by 15 January 2020 at the latest, these entities are required to submit to the CSSF:

- the corresponding application for authorisation or, as the case may be,

the corresponding notification or information on any action taken otherwise, depending on the nature of the activities they intend to pursue after the occurrence of a Hard Brexit and/or the steps undertaken to address the loss of passporting rights.

Based on the information submitted and in accordance with the Brexit laws adopted in Luxembourg, the CSSF may on a case-by-case basis grant the above entities, the possibility to continue their activities in Luxembourg for a limited period of 12 months after the occurrence of a Hard Brexit ("Transitional Regime"). Affected UCIs and/or their managers will be informed of their right to benefit from the Transitional Regime within 10 business days of the submission of the aforesaid application/notification.

Entities that are currently authorised in the UK under both the UCITS Directive and the AIFM Directive will be required to proceed with a Brexit notification for both licences.

Entities that have already submitted an application for authorisation with the CSSF in anticipation of a Hard Brexit are nevertheless required to submit a Brexit notification to the CSSF.

Press Release 19/54 also invites affected entities to continue to take all necessary steps to prepare for and anticipate the consequences of a possible Hard Brexit, and to work on contingency planning, notably to ensure that customers and investors are adequately informed.

1"Hard Brexit" refers to a situation where the UK would leave the EU in an uncoordinated manner on 31 January 2020, i.e. without concluding a withdrawal agreement based on Article 50(2) of the Treaty on the EU.
2For more details on this extension, see the article "**Brexit postponed**" in the EU law, competition and antitrust section of this Newsletter and the article "**Brexit: CSSF communications updated**" in the Corporate, banking and finance section of this Newsletter.

EMIR: CSSF feedback on the EMIR IFM Questionnaire

On 14 October 2019, the CSSF published the results of the EMIR questionnaire which was sent to investment fund managers (including but not limited to UCITS ManCos and AIFMs) ("IFM") in August 2018.

The following points from the publication (i.e. **CSSF Press Release 19/49**) are highlighted:

- The supervision and oversight of the EMIR obligations by IFMs should be improved, especially when the EMIR obligations are delegated to another entity. In that latter case, IFMs must carry out initial and ongoing due diligence on the delegate to monitor their EMIR obligations appropriately. The arrangements concluded between the IFM and the delegate must clearly establish the roles and responsibilities of each party and ensure an adequate ongoing oversight by the IFM of the EMIR obligations that they have delegated.

- The lack of formalisation: adequate written procedures and arrangements must be in place to cover the supervision of all EMIR obligations even when a specific obligation does not apply further to the IFM's assessment. IFMs are required to document their assessments and to review on a regular basis the adequacy of their monitoring and oversight procedures.

The CSSF also reminds the IFMs that (i) EMIR applies to derivative contracts concluded for investment purposes as well as for hedging purposes and (ii) registered AIFMs are in scope of EMIR and under the supervision of the CSSF for the compliance with the provisions of EMIR.

The CSSF noticed that in general, the current monitoring and oversight are not compliant with EMIR requirements or with the EMIR requirements provided for by CSSF Circular 18/698, where relevant.

As a next step, the CSSF will assess compliance with the EMIR requirements as well as act to improve the data quality of trades reported to trade repositories.

Finally, the CSSF reminds IFMs that EMIR Refit entered into force on 17 June 2019 and in this context, IFMs must take it into consideration and amend their procedures to comply with all the amendments introduced by EMIR Refit.

PRIIPs assessment: New CSSF press release

On 11 December 2019, the CSSF published a new press release (**19/16**) in relation to the PRIIPs assessment document which all Part II UCIs, SIFs and SICARs had to complete via the eDesk platform by 31 October 2019.

The CSSF hereby confirms that:

- funds created after 31 October 2019 must also complete the assessment through the eDesk portal; and

- all information fields in the PRIIPs assessment completed through eDesk before 31 October 2019 must be kept up to date via the portal.

Investment funds can give a mandate to their law firm/legal advisor to complete the CSSF PRIIPs assessment on their behalf .

Benchmarks Regulation

Regulation (EU) 2019/2089 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks was published in the Official Journal of the European Union on 9 December 2019. It amends the Benchmarks Regulation **(EU) 2016/1011** ("BMR") by adding provisions with respect to EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

Article 51 of the BMR has been amended in order to extend the transitional provisions applicable to third country benchmarks until 31 December 2021. ESMA has updated Q 9.3 of its Q&A on BMR accordingly.

Additional transitional provisions have been added to Article 51 to allow the provision and the use of existing benchmarks that have been recognised as critical benchmarks for existing and new financial instruments, financial contracts, or for measuring the performance of investment funds until 31 December 2021 (instead of 1 January 2020), or where the index provider submits an application for authorisation, unless and until such authorisation is refused.

The transitional provisions for EU-based index providers of existing benchmarks, which have not been recognised as critical benchmarks, remain unchanged. These benchmarks may be used by supervised entities until 1 January 2020 or, where the index provider submits an application for authorisation or registration, unless and until such authorisation or registration is refused. In order to enable EU supervised entities using benchmarks to be aware of which applications for authorisation/registration of EU-based index providers are pending, a list with those EU-based index providers is available on ESMA's website. ESMA will update this information until the first week of January 2020.

AIFM: Update of ESMA Q&A

On 4 December 2019, ESMA added a new question in its **Q&A on AIFMD**. The question relates to the reporting obligation for AIFMs, and to the reporting of the results of liquidity stress tests for closed-ended unleveraged AIFs in particular. In its answer, ESMA refers to the exemption provided for those funds in Article 16 (1) of the AIFM Directive and recommends that AIFMs which manage closed-ended unleveraged AIFs (i) indicate in the AIFM consolidated reporting template published by ESMA that the question is not applicable, and (ii) report in this field the fact that the relevant fund is a closed-ended unleveraged AIF.

However, in the event where an AIFM does decide to conduct liquidity stress tests for the unleveraged closed-ended AIFs that it manages, ESMA states that it should report the results of the liquidity stress tests in the same field.

Corporate, banking and finance

CSSF updates AML/CTF FAQs for individuals/investors

On 15 November 2019, the CSSF published an **updated version of the FAQs** regarding anti-money laundering and counter terrorist financing ("AML/CTF") addressed to individuals/investors.

The twenty Q&As serve as guidance on the essential concepts and relevant players involved in the fight against money laundering and terrorist financing ("ML/TF") and include references to the relevant legal and regulatory texts with respect to AML/CTF applicable to the financial sector. They specify, inter alia:

- the meaning of money laundering (and its stages) and terrorist financing;
- the meaning of international financial sanctions within the context of the fight against terrorist financing;
- the role of the Financial Action Task Force as an international AML/CTF standard-setter;
- the reasons for the fight against ML/TF;
- the concept of "politically exposed persons" and the risks related to them;
- common fraud mechanisms to which investors may be directly exposed;
- which authorities, investors/customers can contact in the event of a prejudice.

A set of Q&As is centred on the CSSF's role, explaining its responsibility for the preventive part of the fight against ML/TF, while the Financial Intelligence Unit of the Public Prosecutor's Office is competent from a criminal point of view. The CSSF's supervisory approach with respect to AML/CTF as well as its investigatory and sanctioning powers are also described.

Another set of Q&As explains the obligations of the professionals in the financial sector. They are required to comply with the obligations set out in AML/CTF texts, including those set out in Regulation (EU) 2015/847[1]. Further indications as to when and what kind of information and documents they are obliged to obtain and keep in relation to clients are also given, with a focus on the requirements stemming from the aforementioned Regulation.

> 1Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds.

AMLD V Implementation

In the context of the implementation process of AMLD V[1], on 8 August 2019, the Luxembourg government introduced a draft Bill of Law[2] ("Bill of Law"), which notably amends the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended ("**AML Law**").

Under the current version of the Bill of Law, major amendments to the AML Law will include, amongst others:

- extension of the scope of the AML Law to additional professionals, such as virtual assets service providers and, where the value of the transaction or a series of linked transactions amounts to EUR 10,000 or more, persons involved in the trading, intermediation and storing of works of art;
- extension of the category of "financial institutions" to all persons subject to CSSF supervision for anti-money laundering and counter terrorist financing ("AML/CTF") purposes, thus harmonising the sanction regime, and in particular the administrative fines applicable to professionals supervised by the CSSF;

- specific enhanced due diligence measures for business relationships and transactions involving high risk countries[3];

- addition of new factors potentially evidencing a higher risk in Annex IV of the AML Law[4];

- harmonisation of powers, including the sanction regime, of supervisory authorities and self-regulatory bodies;

- enhanced national and international cooperation between Luxembourg and foreign competent authorities;

- enhanced protection of whistleblowers.

As well as implementing certain provisions of AMLD V, the Bill of Law also embeds in the AML Law certain provisions of (i) the Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the AML Law, as amended, and (ii), the **CSSF Regulation 12-02** on AML/CTF (e.g. KYC documentation, internal controls and training of personnel). Furthermore, the Bill of Law enforces certain recommendations of the FATF[5] (relating notably to due diligence obligations).

Finally but not least, no transition period is currently provided under the Bill of Law which, once adopted, would therefore be applicable four days after publication.

1"AMLD V" refers to **Directive (EU) 2018/843** of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
2**Bill of Law 7467** implementing certain provisions of the AMLD V.
3While AMLD V restricts this obligation to high-risk third countries as identified as such by the European Commission, the Bill of Law extends this obligation to any country identified as high risk by the European Commission, the FATF, the supervisory authorities or the professionals in the context of their risk assessment.
4Namely, (i) customers who are third country nationals applying for residence rights or citizenship in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities, and (ii) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species.
5The recommendations setting forth International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation adopted by the Financial Action Task Force ("FATF") on 16 February 2012 and last updated in June 2019.

Brexit: CSSF communications updated

Given the postponement of Brexit[1], the CSSF has indicated in its **Press Release (19/54)** that its previous communications regarding notification obligations for UK financial sector companies wishing to continue to provide services in Luxembourg in case of a Hard Brexit under the transitional regime resulting from the Brexit laws (see our Newsletter - **May 2019**) must now be read as taking 31 January 2020 as the reference date for a potential Hard Brexit[2].

As the CSSF has set out notably in **Press Release (19/33)** and in **Press Release (19/43)**, in order to benefit from the grandfathering regime for existing contractual arrangements in the banking, investment services and payment services sector, relevant UK entities must introduce a Brexit notification via the dedicated eDesk portal on its website. Press Release 19/54 again encourages UK entities who have not yet done so to submit this notification at their earliest convenience.

It must also be recalled that the continuation of activities by UK firms through the conclusion of new contracts following a Hard Brexit requires to submit an application for an authorisation to the CSSF.

1See the article "**Brexit Postponed**" in the EU law, competition and antitrust section of this Newsletter.
2See also the article "**Brexit: New deadlines for CSSF notifications**" in the Asset management and investment funds section of this Newsletter.

EU law, competition and antitrust

Brexit postponed

On 29 October 2019, the European Council adopted a **decision** ("Decision"), with the agreement of the UK, to extend the period under Article 50(3) of the Treaty on European Union in the context of the UK's intention to withdraw from the EU.

The extension will last until 31 January 2020 to allow more time for the ratification of the Withdrawal Agreement. Our **Newsletter - December 2018** discussed the Withdrawal Agreement as well as the Political Declaration with respect to the EU's future relationship with the UK. The Decision further sets out that certain revisions to the Withdrawal Agreement, notably regarding the Irish backstop solution as well as to the Political Declaration have been endorsed by the European Council.

For the duration of the extension, the UK remains a Member State of the EU with all the rights and obligations set out in the treaties and under EU law.

If no Withdrawal Agreement is signed by 31 January 2020 and no further extension is granted, the UK will leave the European Union in an uncoordinated manner on 1 February 2020 ("Hard Brexit"), a scenario which seems however less likely to occur in light of the recent general elections in the UK.

Luxembourg financial sector governance measures have been adapted to reflect the new 31 January 2020 deadline[1].

In **conclusions** adopted on 13 December 2019, the European Council has reiterated its commitment to an orderly UK withdrawal based on the Withdrawal Agreement as well as its desire to establish as close as possible a future relationship with the UK respecting previously agreed texts. It invited the Commission to work on a draft comprehensive negotiating mandate in this respect.

> 1See our articles in the Asset management and investment funds section ("**Brexit: New deadlines for CSSF** notifications") and the Corporate, banking and finance section ("**Brexit: CSSF communications updated**") of this Newsletter.

Tax

Amended 2018 DTT France - Luxembourg

On 10 October 2019, France and Luxembourg signed an amending protocol ("Amending Protocol") to the Luxembourg-France Double Tax Treaty ("DTT") which entered into force recently on 19 August 2019.

For more information on the DTT, please refer to our **April** 2018, **December** 2018 and **February** 2019 Newsletters.

The Amending Protocol put an end to uncertainties about the method used in France to mitigate double taxation with respect to Luxembourg-sourced income derived by French resident cross-border workers.

Prior to the Amending Protocol entering into force, France was to grant a tax credit for the French tax paid on the Luxembourg-sourced income equal to the amount of tax already incurred in Luxembourg. As a result of this so-called "credit method", French resident cross-border workers, in addition to the Luxembourg tax, were at risk of bearing the portion of the French tax exceeding the amount of Luxembourg tax due.

The Amending Protocol clarifies that French resident cross-border workers will benefit in France from a tax credit equal to the French taxes levied on the Luxembourg-sourced income (to the extent the latter has been subject to Luxembourg taxes).

On 16 December 2019, the Luxembourg Government tabled a bill (7505) before the Luxembourg Parliament setting out the draft legislation that will approve the Amending Protocol. The bill must now follow the legislative process.

Rulings: Limitation of validity period

On 14 October 2019, the Luxembourg 2020 draft budget law was tabled by the Finance Minister to the Parliament ("Draft Budget Law").

The Draft Budget Law introduces inter alia a new §29b into the Luxembourg General Tax Law dated 22 May 1931 (Abgabenordnung – "AO"), regarding the status of advance tax agreements ("ATA") issued before 1 January 2015.

As a reminder, in 2014, Luxembourg regulated the ATA practice by introducing a new procedure laid down in §29a AO which sets a maximum five year validity period for ATAs issued after 1 January 2015 (see our **October 2014 Newsletter** in this respect). ATAs granted before this date were in principle applicable indefinitely.

Now, the draft §29b AO, which aims at ensuring consistency between the old and new procedure, states that ATAs granted before 1 January 2015 will expire at the end of the tax year 2019 so that only ATAs granted under the new procedure will exist as from the fiscal year 2020. Any taxpayer affected by this change can nonetheless apply for a new ATA to cover subsequent tax years (up to five).

In this respect, the Luxembourg tax authorities ("LTA") provided some guidelines in their newsletter released on 3 December 2019 ("LTA Newsletter"), which remain subject to the adoption of the new provisions in their current form.

In particular, the LTA Newsletter seems to imply that taxpayers affected by the draft §29b AO have the opportunity to file an ATA for transactions already set up but which "have not yet produced all their effects". In any case, entities having a divergent fiscal year and for which the 2019 fiscal year closed before the end of the 2019 civil year, should have until the end of the 2020 fiscal year to apply for a new ATA.

Exchange of VAT payment data

On 8 November, the EU Council reached a general approach on a set of rules to facilitate detection of tax fraud in cross-border e-commerce transactions.

This set of new rules consists of two legislative texts:

(i) A proposal for a directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

(Doc. 15508/18) ;

(ii) A proposal for a regulation amending Regulation (EU) 904/2010 as regards measures to strengthen administrative co-operation in order to combat VAT fraud (Doc. 15509/18).

The objective of the proposals are (i) to put in place EU rules which will enable Member States to collect in a harmonised way the records made electronically available by the payment service providers and (ii) to set up a new central electronic system for the storage of the payment information and for the further processing of this information by anti-fraud officials in the Member States within the Eurofisc framework (Eurofisc is the network for the multilateral exchange of early-warning signals to fight VAT fraud, established pursuant to Chapter X of Regulation (EU) 904/2010).

The EU Council, without further discussion, should formally adopt these proposals once the text has undergone a legal and linguistic review.

Upcoming tax events

The following two major tax events are expected to occur in December 2019:

- The implementation of the Anti-Tax Avoidance Directive (EU) 2017/952 on hybrid mismatches ("ATAD 2") into Luxembourg law.

As a reminder, the aim of ATAD 2 is to combat hybrid mismatch arrangements that exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions in order to achieve double non-taxation.

A draft law implementing ATAD 2 into Luxembourg law was released back this summer and should be voted on before the year's end. This means that most of the provisions set out in ATAD 2 will be effective as of 1 January 2020.

- The implementation of (EU) Directive 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6") into Luxembourg law.

In a nutshell, DAC 6 obliges EU "intermediaries" (or taxpayers) to report cross-border arrangements that strongly present a risk of tax avoidance or abuse. The draft law implementing DAC 6 into Luxembourg law should be voted on the year's end.

Reporting should start as soon as 1 July 2020 (and by 31 August 2020 at the latest) for reportable cross-border arrangements whose first implementation step occurs between 25 June 2018 and 1 July 2020.

For reportable cross-border arrangements which triggering event occurs after 1 July 2020, the reporting shall be made within 30 days.

For further insight into ATAD2 and DAC 6 and related draft laws, please refer to our **Newsflash** dated 2 September 2019.