

9 December 2021



**LuxCMA's view in relation to the European Commission calling Luxembourg to amend its legislation transposing the Anti-Tax Avoidance Directive**

According to the December infringement package published by the European Commission (the "Commission"), the Commission sent a reasoned opinion to Luxembourg asking it to correctly transpose the interest limitation rule of the Anti-Tax Avoidance Directive (Article 4 of the Council Directive (EU) 2016/1164). Under current Luxembourg law, securitisation companies covered by Regulation (EU) 2017/2042 of 12 December 2017 (EU Securitisation Regulation) are excluded from the scope of the interest limitation rules. The reasoned opinion follows a formal notice sent to Luxembourg on 14 May 2020.

Luxembourg has two months to respond to the reasoned opinion. If Luxembourg does not address the criticism by amending the rules, the Commission may decide to refer the case to the Court of Justice of the European Union.

While LuxCMA believes that there are valid reasons for the exclusion of securitisation companies covered by the EU Securitisation Regulation from the scope of the Luxembourg interest limitation rules, we would not expect a possible change in Luxembourg tax law to have a significant impact on the Luxembourg securitisation market as the vast majority of the EU securitisation transactions receive only interest income and similar types of income (e.g. financing income on derivatives or synthetic transactions that should, in our view, generally also qualify as interest income) and, therefore, are generally not impacted by the interest limitation rules.

LuxCMA is of the view that the successful business of structured product securitisations or fund securitisations will also not be impacted by possible law change as these structures usually do not meet the conditions of the EU

Securitisation Regulation. We expect that any change in the Luxembourg law to not be retroactive but to only be applicable going forward.

LuxCMA is closely monitoring this issue and will inform its members accordingly.

All those who would like to become a LuxCMA member should visit [www.luxcma.com](http://www.luxcma.com) or contact [info@luxcma.lu](mailto:info@luxcma.lu).

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## ABOUT LUXCMA

The Luxembourg Capital Markets Association (LuxCMA) represents the common interest of all stakeholders of the primary capital markets industry of Luxembourg. Its mission is to promote Luxembourg's capital markets, provide networking and collaboration opportunities and foster innovation in the industry. LuxCMA's is to become the single point of contact for authorities, associations, market practitioners and other actors.

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