



25 July 2023

**LuxCMA's view in relation to the European Commission referring Luxembourg to the Court of Justice of the European Union for failing to correctly transpose ATAD.**

According to a press release published by the European Commission (the "Commission") on 14 July 2023<sup>1</sup>, the Commission referred Luxembourg to the Court of Justice of the European Union (CJEU) for failing to correctly transpose the interest limitation rules 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 referral is the result of the Commission considering Luxembourg's response to the Commission's reasoned opinion of 2 December 2021 unsatisfactory. Luxembourg issued a draft law that would have amended the interest limitation rules to bring it in line with the Commission's view but the draft law has not been implemented and the interest limitation rules currently remain unchanged.

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, including the fact that the Commission itself excluded such securitisation companies from the scope of its proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021) 565 final of 22 December 2021), which contains a similar list of exclusions as ATAD.

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<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3456](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3456)

## ATAD I SECURITISATION

Nevertheless, even if Luxembourg were to amend the interest limitation rules in reaction to the referral, we would not expect this change 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 typically 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 any amendment of the Luxembourg interest limitation rules 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 aims to become the single point of contact for authorities, associations, market practitioners and other actors.

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