

LEGAL
GOVERNANCE
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GOVERNANCE SERVICES NEWSLETTER LUXEMBOURG

Q3 YEAR

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Welcome to our governance services newsletter for Q3 2026, reporting upon interesting topical developments which will impact doing business in Luxembourg.

RENEWED FOCUS ON CORPORATE SUBSTANCE AND REAL DECISION MAKING

A notable development during the spring of 2026 was a series of decisions¹ and commentaries reinforcing the importance of genuine Luxembourg substance and board decision making. Recent court decisions have highlighted that:

- formal board meetings alone are not sufficient;
- authorities are increasingly focused on *where* strategic decisions are actually made; and
- evidence of local management, active directors and genuine oversight remains critical.

For Luxembourg governance professionals this reinforces a continuing trend - effective governance is increasingly assessed based on factual behaviour rather than corporate formalities. What we are seeing is that the trend is towards increased investor expectations around independent oversight, governance frameworks, board coordination and transparent reporting.

We note that institutional investors are placing greater emphasis on governance quality and independent administration with private equity sponsors often outsourcing governance functions in Luxembourg. This is particularly significant for Luxembourg holding structures and private equity vehicles where governance arrangements are often scrutinised by tax and regulatory authorities.

VIRTUAL AND HYBRID SHAREHOLDER MEETINGS

Recent changes² to the Luxembourg law of 10 August 1915 on commercial companies, as amended, continue Luxembourg's efforts to align its corporate framework with European Union directives while preserving the flexibility that makes the jurisdiction attractive to international investors.

One significant change relates to the rules governing shareholder meetings. Clarity has been provided on the conditions under which companies may conduct fully virtual or hybrid general meetings. In the past, the rules regarding remote participation were narrowly interpreted by practitioners, causing uncertainty for multinationals whose shareholders are spread across numerous time zones. The new rules now explicitly permit electronic voting and remote participation without requiring a physical quorum at any single location, provided that the company's articles of incorporation authorise this approach and the necessary technical guardrails are in place.

ADMINISTRATIVE TRIBUNAL'S JUDGMENT OF 25 MARCH 2026 – GOVERNANCE IMPLICATIONS

The recent Administrative Tribunal's judgment of 25 March 2026³, though primarily relating to the taxation of share premium repayments, if it were to be confirmed on appeal, could potentially have important governance implications.

The Tribunal held that a repayment of share premium without a formal reduction of share capital does not benefit from the relevant withholding tax exemption. The court adopted a strict legal interpretation distinguishing share capital from share premium.

The decision reinforces the importance of:

- careful board consideration of distribution mechanics;
- formal corporate law procedures being stringently adhered to; and
- detailed documentation on transactions concerning distributions to shareholders.

Academic commentators have flagged that there is tension between this judgment and the content of the parliamentary preparatory work on the relevant provision of the income tax law and that accordingly, the decision may not be the last word on the matter. It has been reported that this decision will be appealed to

¹ Nantes Administrative Court of Appeal (France), 24 March 2026; Versailles Administrative Court of Appeal (France), 8 January 2026; Luxembourg Administrative Court, Case No. 50602C, 17 April 2025.

² The Law of 23 January 2023.

³ Luxembourg Administrative Tribunal (*Tribunal administratif*), 5th Chamber, 25 March 2026, Case No.45846a.

the Administrative Court. Ultimately, this decision created much legal uncertainty surrounding a common business transaction, and this uncertainty will persist until the Administrative Court decides otherwise.

RIGHT TO DISCONNECT – FROM POLICY TO A GOVERNANCE ISSUE

As of July 2026, Luxembourg employers face enforceable sanctions for non-compliance with the right to disconnect requirements, with fines of up to €25,000 possible⁴.

This has elevated the issue from a HR topic to a governance issue requiring board and senior management oversight.

Companies must implement clear frameworks covering:

- digital communications outside working hours;
- training and awareness;
- monitoring and compliance; and
- exceptional derogations and compensation mechanisms.

In this context, boards are increasingly being asked to oversee employee wellbeing and workplace culture risks as part of broader governance responsibilities.

HOW CAN WE HELP?

Mourant Governance Services can support clients by providing experienced Luxembourg based directors, coordinating board and committee meetings, preparing governance calendars and board materials, maintaining decision and action logs, and helping to ensure that governance processes operate effectively throughout the year. We can also undertake periodic reviews of existing governance arrangements to identify practical opportunities to strengthen board oversight, reporting and documentation.

Get in touch if you'd like to discuss any of the topics above or would like to arrange a meeting with our team.

CONTACTS



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⁴ Article L.312-10 of the Luxembourg Labour Code introduced by the Law of 28 June 2023 amending the Labour Code introducing the right to disconnect scheme.

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