

Administrative measure of 1 October 2024 pursuant to Article 22(2)(g) of the amended Law of 11 January 2008 on transparency requirements for issuers

Luxembourg, 01 October 2024

Administrative measure concerning Alvotech

Administrative decision

After having examined the financial information published by Alvotech (the “Issuer”) as at 31 December 2022, the CSSF considers that the annual consolidated financial statements as at 31 December 2022 contain an erroneous recognition of deferred tax assets (“DTAs”).

This assessment relates only to the financial year examined by the CSSF and is made without prejudice of the CSSF assessment of the relevance of deferred tax assets recognition in 2023 or in subsequent financial years.

As at 31 December 2022, DTAs arising from tax losses carried forward, totalling USD 205 million, were recognised in the consolidated balance sheet of the Issuer.

The recognition of these DTAs is backed by the budgeted future taxable profits of its operating company, Alvotech hf. This operating company has however realised tax losses since its creation in 2013. As Alvotech hf is a subsidiary of the Issuer, these tax losses generate DTAs in the Issuer's consolidated financial statements.

The CSSF considers that, in the situation of the Issuer year-end 2022, there was not enough convincing evidence that sufficient taxable profit will be available against which the unused tax losses can be utilised by the Issuer, implying that DTAs arising from tax losses carried forward cannot be recognised as at 31 December 2022.

This assessment is based on paragraphs 34 to 36 of International Accounting Standard (“IAS”) 12 *Income Taxes* and on the public statement published by ESMA on 15 July 2019 (ref. ESMA32-63-743 - the “ESMA statement”) and setting out “expectations regarding the application of the requirements relating to the recognition of deferred tax assets (DTAs) arising from unused tax losses in IFRS financial statements”.

By publishing this statement, the CSSF wishes to inform the market that the recognition of deferred tax assets on 31 December 2022 is based on an incorrect application of the relevant financial reporting framework.

Legal framework

Article 22 of the Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ("Transparency law") provides that the CSSF is the competent authority to ensure that the provisions of this law are applied and is given all supervisory and investigatory powers that are necessary for the exercise of its functions. In that respect, the CSSF is, amongst others, in charge of examining that financial information referred to in such law is drawn up in accordance with the relevant reporting framework.

Article 22(2)(g) of the Transparency law provides that the CSSF's powers include the right to "make public the fact that an issuer (...) is failing to comply with its obligations".

Article 3(3) of the Transparency law requires the Issuer to prepare its consolidated annual financial statements "in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards". For the purpose of this regulation, 'international accounting standards' notably mean International Accounting Standards ("IAS") and International Financial Reporting Standards ("IFRS").

Context

In its mission for ensuring that the provisions of the Transparency law are applied, the CSSF examined the regulated financial information published by Alvotech for the year ended 31 December 2022, and more particularly its annual consolidated financial statements as at 31 December 2022 prepared in accordance with IFRS as adopted by the European Union.

During this examination, because it is a judgemental and material issue for the Issuer, the CSSF notably examined the recognition of DTAs arising from tax losses carryforwards.

On the basis of paragraphs 34 to 36 of IAS 12 and on the guidance and examples of positive and negative evidence included in the ESMA statement to support an assertion that it is probable that taxable profits will be available, the most relevant elements taken into account by the CSSF in assessing the recognition of deferred tax assets are as follows:

- Recent history of operating losses for tax purposes and no previous earnings history,
- History of significant variances of actual outcomes against business plans,
- Lack of reliability of the business plan due to its period length,
- Uncertainty regarding the main assumptions of the business plan (notably on planned market evolution),
- Material uncertainty related to the Issuer's going concern,
- New business opportunities.

According to the CSSF, the negative factors outweigh the positive ones when assessing the situation of the Issuer as at 31 December 2022.



Commission de Surveillance
du Secteur Financier

Appeal

A court action against this administrative decision may be lodged by the Issuer within three months with the "Tribunal administratif" (Administrative Court) according to Article 27 of the Transparency Law.