

## Banks and investment firms

# Regulatory update

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## AML

### 1. Grand-Ducal Regulation of 5 August 2015

**This text** amends the Grand-Ducal Regulation of 1 February 2010 providing details on certain provisions of the AML Law of 12 November 2004.

This Grand-Ducal Regulation supplements Article 2 relating to simplified due diligence obligations regarding online payment services or electronic money.

## Automatic exchange of information

### 2. Luxembourg draft law

The **Draft Law N° 6858** on Automatic Exchange of Information and the transposition into national law of the Council Directive 2014/107/UE of 9 December 2014 has been published on 14 August 2015.

The present draft aims also at introducing into Luxembourg law the Common Reporting Standard (CRS). The CRS requires reporting on investment income, account balances, and sales proceeds from financial assets, whether held by individuals or entities. Financial institutions that must report under the CRS include banks, custodians, brokers, and some collective investment vehicles and insurance companies.

The draft relates moreover to the approval of the Multilateral competent authority agreement on automatic exchange of information relating to financial accounts. On 29 October 2014, 51 jurisdictions, including Luxembourg, signed this Multilateral agreement which ensures the implementation of this standard between the signatory jurisdictions. Luxembourg is committed to implement the automatic exchange as from 2017 for the period relating to 2016.

(no. 3) dated 1st October 2014/ESMA/2014/1185, we expect final reports on draft technical standards related to certain credit OTC derivative classes and foreign-exchange non-deliverable forward (FX NDF) OTC derivatives.

## BRRD/DGSD

### 3. Transposition in Luxembourg law

The **Draft Law N° 6866** has been published on 3 September and implements in Luxembourg Law:

- Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (DGSD); and
- Directive 2014/49/EU of 16 April 2014 on deposit guarantee schemes (BRRD).

The scope of the draft Law is :

- Luxembourg credit institutions and investment firms;
- Luxembourg financial institutions which are subsidiaries of a credit institution, an investment firm or a financial holding company, on which a EU consolidated prudential supervision is exercised;
- Certain holding companies; and
- Luxembourg branches of non EU institutions.

## **BRRD**

Key elements of this Directive are:

- Preparation and prevention: Institutions are required to draw up a recovery plan, while the resolution authority (CSSF) has to prepare resolution plans based on information provided by institutions;
- Early intervention: CSSF is accorded an expanded set of powers to enable them to intervene if an institutions faces financial distress;
- Resolution: The objective of the resolution is to minimise the extend to which the cost of a bank failure is borne by Members states and taxpayers;
- Cooperation and coordination between national authorities.

## **DGSD**

Key improvements introduces by DGSD are:

- DGSs are required to be supervised on an ongoing basis and to perform regular stress tests of their systems;
- Depositors will no longer have to submit an application for repayment if their deposits become unavailable, the determination of their eligibility for repayment is further simplified and harmonised;
- The time limit for paying out depositors in the event of bank deposits becoming unavailable will be reduced from the current 20 working days to seven working days by 2024.

The implementation deadlines of these Directives are overdue.

The new Law will repeal Part V of the Law of 5 April 1993 on the financial sector (LFS). The amended LFS will deal only with authorisation, exercise and supervision of credit institutions and PSFs in normal course of business, while the new Law will deal with institutions in crisis.

## **CRD IV/CRR**

### **4. Capital buffer rates**

The **CSSF Regulation N°15-01** has been published on 14 August 2015. It transposes Article 140 of Directive 2013/36/EU on the calculation of institution-specific countercyclical capital buffer rates.

### **5. CSSF Regulation Pillar II**

The CSSF Regulation N° 15-02 has been published on 14 August 2015. The aim of this regulation, so called "CSSF Regulation Pillar II", is to provide granular provisions of CRD IV on the following areas:

- Governance and risks treatment,
- Processes for evaluating the adequacy of internal capital and liquidity,
- Monitoring and evaluation of supervisory measures.

## 6. Disclosure on countercyclical capital buffer

On 19 September 2015, **Commission Delegated Regulation (EU) 2015/1555 of 28 May 2015** supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer in accordance with Article 440, was published.

Pursuant to Article 440 of Regulation (EU) No 575/2013, this Regulation specifies regulatory technical standards for the following disclosure requirements for institutions in relation to their compliance with the requirement for a countercyclical capital buffer referred to in Chapter 4 of Title VII of Directive 2013/36/EU:

- Disclosure of the geographical distribution of credit exposures
- Disclosure of the amount of institution specific countercyclical buffer

This Regulation shall apply from **1 January 2016**.

## 7. Net Stable Funding Requirements and Leverage Ratio

On 19 August 2015 the European Banking Authority (EBA) has announced that it will incorporate an additional analysis into its calibration reports on Net Stable Funding Requirements and Leverage Ratio. The announcement follows a request by the European Commission (EC) to obtain further advice to ensure that its possible future policy actions in this area are well informed:

It has been requested by the European Commission to conduct further analysis on proportionality, the scope of application and impact on markets of the calibration of Net Stable Funding Requirements (NSFR) and Leverage Ratio (LR). The analysis on proportionality will be based on an assessment of the impact of the requirements on banks with different business models and will also specifically aim to cover potential future reporting requirements. The EBA will try to incorporate these aspects into its NSFR and LR calibration reports to the maximum extent possible and taking into account constraints in data availability;

The delivery date for the calibration report on the LR is likely to be advanced to July 2016. The calibration report on NSFR will in principle be delivered by the end of 2015.

## CSDR

## 8. ESMA Final Technical Standards

The CSD Regulation harmonises the authorisation and supervision of central securities depositories (CSDs) within the EU. It provides organisational, conduct of business and prudential requirements to ensure CSDs are safe, efficient and sound. It also introduces a settlement discipline regime, including measures to prevent and address settlement fails, such as a mandatory buy-in and cash penalties as well as reporting requirements for internalised settlement. **ESMA's Technical Standards**, which translate CSDR provisions into applicable rules, cover:

### Harmonised CSD requirements

- cooperation requirements among authorities;
- requirements for the recognition of third-country CSDs, ensuring a level playing field;
- requirements for EU CSDs covering risk monitoring tools, record keeping, investment policy, reconciliation measures;
- requirements regarding non-discriminatory access to CSDs by participants, issuers, CCPs and trading venues, or between CSDs, as well as access by CSDs to CCPs and trading venues; and

### Internalised settlement reporting

- requirements on how to report internalised settlements to national regulators to allow proper risk monitoring.

## DGSD

### 9. ESMA opinion on cash contributions

The ESMA published on 25 September its opinion on the **recognition requirements of cash contributions to the Deposit Guarantee Scheme (DGS) in IFRS accounts**. This opinion is limited to the accounting treatment of ex-ante non-refundable cash contributions to the DGS for which the obligating event is identified at a single point in time. Based on the analysis of the existing IFRS requirements, ESMA concluded that as soon as the obligating event of a non-refundable cash contribution to a DGS is identified, the contribution must be recognised as an expense in full. ESMA expects the national competent authorities to take corrective actions whenever they identify material mis-statements in the application of these requirements.

## MAD/MAR

### 10.ESMA Final Technical Standards

**ESMA's MAR Technical Standards** will strengthen the existing market abuse framework by extending its scope to new markets, platforms and behaviours. They contain prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these. The Technical Standards focus on:

- the conditions under which transactions in buy-back programmes and stabilisation measures are not considered market abuse;
- requirements for market participants conducting market soundings and for competent authorities establishing accepted market practices;
- specific requirements to report suspicious orders and transactions;
- rules for public disclosure of insider information and the delays of such;
- specific formats for establishing insider lists and for the notification and disclosure of managers' transactions; and
- specific arrangements on how to present investment recommendations or other information recommending or suggesting an investment strategy.

## MCD

### 11. Passport notifications

Article 32 of the Mortgage Credit Directive (MCD) provides that passport notifications will need to be exchanged between national authorities competent for the registration and/or supervision of mortgage credit intermediaries across the EU Member States. The European Banking Authority (**EBA**) **Guidelines** published on 11 August 2015 formalise the notification process between the national authorities in the home and host Member States.

They will ensure that information on the provision of services and the establishment of branches, as well as on the transmission of notifications, the registrations, and the notifications of changes is shared consistently across the EU.

The Guidelines also include template notification forms for exercising the freedom to provide services and freedom of establishment, as foreseen in Article 32 of the MCD. They apply from 21 March 2016, the transposition date of the MCD.

## MIFID II

### 12. ESMA Final Technical Standards

The **new rules**, once implemented, will bring the majority of non-equity products into a robust regulatory regime and move a significant part of OTC trading onto regulated platforms. The key rules introduce:

#### Fairer, safer and more efficient markets

- tests to determine whether a non-financial firm's speculative investment activities are so great that it should be subject to MiFID II;
- ranges for the new EU-wide commodity derivatives position limits regime;
- rules governing high-frequency-trading, imposing a strict set of organisational requirements on investment firms and trading venues;
- provisions regulating the non-discriminatory access to central counterparties (CCPs), trading venues and benchmarks, designed to increase competition;
- provisions requiring trading venues to offer disaggregated data on a reasonable commercial basis;

#### Greater transparency

- thresholds for the pre- and post-trade transparency regimes extended to equity-like instruments, bonds, derivatives, structured finance products and emission allowances;
- a newly introduced liquidity assessment for non-equity instruments;
- a newly-introduced trading obligation for shares and certain derivatives to be traded only on regulated platforms and, in the case of shares, systematic internalisers, instead of over-the-counter;
- a double volume cap mechanism to limit dark trading and reshape the use of waivers for shares and equity-like instruments;
- newly introduced reporting requirements for commodity derivatives; and

#### Stronger investor protection

- improved disclosure to strengthen the best execution regime.

## Tax

### 13. Amendments to Parent-Subsidiaries Directive

On 5 August 2015, the draft law (no. 6847) transposing the amendments to the Parent-Subsidiaries Directive was presented to the Luxembourg Parliament. This draft law is also an opportunity for Luxembourg to propose new favourable tax measures for taxpayers concerning, amongst others: the respective expansion of the scope of the tax consolidation, exit tax and tax credit for investment regimes. [Download the full alert](#)

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