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CACEIS European Regulatory Watch Newsletter

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INVESTOR SERVICES

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WORLD

IOSCO consults on International Standards on Fees and Expenses of Investment Funds

LUXEMBOURG

AIFM - CSSF issues an updated AIFM FAQ

CRD IV - COFIBU Report on Bill 6660

CRD IV - CSSF published two regulations on the transposition of Capital Requirement Directive IV

CRR - Implementation Law

Electronic Archiving - Law relating to electronic archiving

EMIR - CSSF publishes EMIR Questionnaire review

EMIR/CRA - Parliament issues EMIR and CRA bill no 6846

UCITS V/AIFM - Bill 6845, enacting the UCITS V Directive in the Luxembourg Law of 17 December 2010 and amending the law of 12 July 2013 on AIFMs, has been submitted to the Chamber of Deputies for adoption

FRANCE

Instruction DOC-2014-03 - AMF issued Instruction DOC-2014-03 on the procedure for marketing AIFs in France

Law n°2015-990 - "The Macron Law" for the growth, the economic activity and the equality of economic opportunity was published on August 7th, 2015

ITALY

UCITS V - Bank of Italy anticipates the application of the UCITS V regime

GERMANY

UCITS V - Publication of a draft Act on the implementation of the Directive

TAX

Tax Transparency Package - EU - Commission presents Tax Transparency Package 2.0 outlining EU business tax reforms

NEW CORPORATE TAX - LUXEMBOURG - Bill 6748

FATCA - LUXEMBOURG - First reporting deadline extended to 31 August 2015

FATCA - LUXEMBOURG - Official guidelines published

FATCA - LUXEMBOURG - Parliament adopted the law ratifying the US-Luxembourg Intergovernmental Agreement (the IGA) implementing FATCA on 1 July 2015

FATCA - ITALY

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INVESTOR SERVICES

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EUROPE

AIFMD

ESMA's advice on the application of the passport to non-EU AIFMs and AIFs

Background

On 21 July 2013, the final text of the AIFMD became effective across the EU (AVAILABLE HERE). The AIFMD makes provision for the passport, which is currently reserved to EU AIFMs and AIFs, to be potentially extended in future.

Under Article 67(4) of the AIFMD, ESMA was required to issue an advice on the application of the passport to the management and/or marketing of non-EU AIFs by EU AIFMs in the Member States and the management or/and marketing of AIFs by non-EU AIFMs in the Member States.

ESMA launched a call for evidence in November 2014 aimed at gathering information from EU and non-EU stakeholders on the functioning of the EU passport.

What's in there?

On 30 July 2015, ESMA issued an advice (ESMA/2015/1236 AVAILABLE HERE) on the application of the passport to non-EU AIFMs and AIFs in accordance with the rules set out in Article 35 and Articles 37 to 41 of the AIFMD.

This advice sets out ESMA's view on the application of the AIFMD passport mechanism to 6 non-EU countries.

ESMA's advice can be summarised as follow:

- ★ **Guernsey, Jersey, Switzerland:** ESMA is of the view that there are no significant obstacles impeding the application of the AIFMD passport in these countries.
- ★ **Hong Kong, Singapore:** ESMA advises to delay the decision on the potential application of the AIFMD passport because of a lack of information.
- ★ **United States:** ESMA advises to delay the decision on the application of the passport as conditions which might lead to a distortion of competition are addressed.

What's next?

ESMA will keep gathering intelligence on Malaysia, Egypt, Chile, Peru, India, China and Taiwan and will continue its efforts to agree on a Memorandum of Understanding with the authorities of these jurisdictions.

ESMA will also start assessing further non-EU countries not covered in this advice.

By 31 October 2015, the Commission should adopt a delegated act specifying the extension of the EU passport to non-EU AIFs and non-EU AIFMs for Guernsey, Jersey and Switzerland. However, ESMA advises the institutions to consider waiting until it has delivered positive advice on a sufficient number of non-EU countries, before introducing the passport in order to avoid any adverse market impact that a decision to extend the passport to only a few non-EU countries might have.

AIFMD

ESMA's opinion to the European Parliament, the Council and the Commission pursuant to Article 67(1) of the AIFMD

Background

On 21 July 2013, the final text of the AIFMD became effective across the EU.

AIMFD creates amongst others a harmonised framework, allowing EU-AIFM to passport their services throughout the EU on the basis of a single authorisation to the extent that they manage/market EU-AIFs.

In accordance with Articles 36 and 42 of the AIFMD, EU- AIFM managing non EU AIF and Non- EU AIFM managing EU or non- EU AIFs may market such AIFs in Member States subject to the National Private Placement Regime (NPPR) of each of the Member States. However, the AIFMD makes provision for the passport, which is currently reserved to EU AIFMs and AIFs, to be potentially extended in future.

Under Article 67(1) of the AIFMD, ESMA was required to submit the following opinions to the European Parliament, the Council and the Commission on:

- The functioning of the passport for EU AIFMs managing and/or marketing EU AIFs;
- The opinion on the functioning of the marketing of non- EU AIFs by EU AIFMs in the Member States and the management and/or marketing of AIFs by non- EU AIFMs in the Member States; and

ESMA launched a call for evidence in November 2014 aimed at gathering information from EU and non-EU stakeholders on the functioning of the EU passport.

What's in there?

On 30 July 2015, ESMA issued an opinion (2015/ESMA/1235) on both the functioning of the passport for EU AIFMs pursuant to Article 32 and 33 of the AIFMD, and that of the national private placement regimes set out in Articles 36 and 42 of the AIFMD.

THIS DOCUMENT IS NOW AVAILABLE ON THE ESMA WEBSITE HERE.

While ESMA is of the view that there is insufficient evidence to suggest that the AIFMD EU passport has raised major issues in terms of the functioning and implementation of the AIFMD framework, ESMA has identified several minor issues in relation to the use of the EU passport. These issues include:

- Divergent approaches with respect to marketing rules, including heterogeneity of fees charged by the NCAs where the AIFs are marketed and the definition of what constitutes a "professional investor";
- Varying interpretations of what constitute "marketing" and "material changes" under AIFMD in different Member States.

In relation to the timing of the assessment of the functioning of the NPPRs, ESMA is of the view that there is insufficient evidence to indicate that the NPPRs have raised major issues in terms of the functioning and implementation of the AIFMD framework.

However, ESMA also considers that the delay in the implementation of the AIFMD together with the delay in transposition in some Member States make a definitive assessment difficult.

As a result, there would be merit in the preparation of another opinion on the functioning of the NPPR Regime after a long period of implementation has passed in all Member States. This is however linked to the decision to be taken by the European Parliament, the Council and the Commission on whether to extend the passport to one or more non- EU countries in the meantime.

What's next?

ESMA believes that, after a long period of implementation in all Member States, a further opinion on the functioning of the passport is warranted.

CRR/CRD IV

The European Commission issues delegated regulation (EU) 2015/923 on own funds requirements supplementing CRR/CRD IV regulatory framework

Background

Following the 2008 crisis and in a view to safeguard the financial stability and to improve the quality and the quantity of core capital in the banking system, the commission was empowered to adopt delegated act complementing the existing banking regulatory framework.

On 26 June 2013, the European Parliament and the Council adopted Regulation (EU) No 575/2013 (CRR) and Directive 2013/36/EU (CRD IV) on prudential requirements for credit institutions and investment firms (jointly referred to as the CRD IV package which provides rules for direct holdings of an institution's own funds instruments by the institution itself and direct holdings of own funds instruments of other financial sector entities.

The CRD IV pack is a supervisory framework designed to shape prudential requirements in line with the Basel II and III framework and to set the standards on bank capital and liquidity adequacy.

The CRD IV and the CRR package is a recast and repeal of CRD package entered into force on 28 June 2013 (CRR) and 17 July 2013 (CRD IV) and has been applicable as from 1 January 2014.

Although CRD VI and CRR framework principally reflects Basel III, they also propose some important changes to the banking regulatory framework.

On 7 January 2014, the European Commission issued a delegated regulation (EU) No 241/2014 supplementing regulation (EU) No 575/2013.

What's in there?

On 17 June 2015, the European Commission adopted a subsequent delegated regulation (EU) 2015/923 which also supplements regulation (EU) No 575/2013 notably regarding the methodologies to be used for the deduction from common equity tier 1 items, the distribution of own funds instruments, goodwill and the minority interests to be included in consolidated common equity Tier 1 capital.

The scope of application of the delegated regulation (EU) N0 241/2014 is extended as follows:

- The conditions according to which indices shall be deemed to qualify as broad market indices, according to article 73(7) of Regulation (EU) No 575/2013;.
- The sub-consolidation calculation required in accordance to Article 84(2) and Articles 85 and 87 of the regulation (EU) No 575/2013 pursuant to article 84(4) of that Regulation.

Regulation (EU) No 575/2013 is supplemented with regards to regulatory technical standards for own funds requirements for institutions and investments firms; seven new articles (Articles 15a to 15j) are inserted, which shed light on material notions referred to in article 36(1) (f), (h) and (i) of Regulation (EU) No 575/2013; the main additions are with regards to the methodologies of deduc-

New Regulation
This has changed

tions to be made from common equity tier 1 item by intermediate entities or institutions. Hence the following definitions are provided:

- A definition of "intermediate entities" for the purpose of "indirect holdings" to be deducted from common equity tier one item by those entities. As such, collective investments schemes shall qualify as intermediate entities (Article 15a);
- Which products shall be deducted as synthetic holdings (Article 15b) ;
- How indirect holdings should be calculated (Article 15c) for the purpose of such deduction;
- The default and structured base approach to be used for the calculation of indirect holdings (Article 15d and 15e);
- How to calculate a synthetic holdings (Article 15f);
- How to calculate a significant investments (Article 15g);
- The order and the maximum amount of deductions permitted for indirect holdings of own funds instruments of financial sector entities.

THE TEXT OF THE REGULATION IS AVAILABLE HERE.

The Regulation entered into force on 7 July 2015.

CSDR

ESMA issues consultation paper on RTS on the CSD Regulation

Background

On 7 March 2012, the European Commission proposed a Regulation on improving securities settlement in the European Zone and on central depositories (CSDs) and amending Directives 98/26/EC and 2014/65/EU and regulation (EU) No 236/2012 (CSDR).

CSDR are systemically important infrastructures in modern securities markets. They perform decisive services that allow at minimum the registration, safekeeping of transfer of securities (that exist to a large extent only in book entry form) in exchange for cash and efficient processing of securities transactions in financial markets. Since they are at the end of the settlement chain, CSDs witnesses all settlements fails occurring during the settlement process, and as such are a key element in ensuring the settlement discipline.

CSDR establishes amongst other a buy-in process and under article 7(15) (c) to (h) grants to ESMA the power to draft technical standards specifying the process for the operation of Buy-in, including the timeframe to deliver the financial instruments.

On 17 September 2014, the CSD Regulation (EU) (CSDR) 909/2014 entered into force.

On 18 December 2014, ESMA issued a first consultation paper (CP) (ESMA/2014/1563), which demonstrated that there is currently no steady approach to buy-in by the CSDs, CCPs and trading venues.

THE FIRST CP IS AVAILABLE HERE.

What's in there?

On 30 June 2015, ESMA published a second CP (CP) (ESMA/2015/1065) focusing on the buy-in provisions set forth in the draft RTS. With this second CP, ESMA is further seeking input and quantitative elements from stakeholders concerning 3 different options:

1. Trading level party executing the buy-in. The party at the origin of the transaction is responsible for the buy-in;
2. Trading level executing the buy-in with fallback option. The party at the origin of the transaction is responsible for the buy-in as in option 1, but if the trading party does not perform the buy-in, the participant would be responsible for paying the compensation.
3. CSD participant level executing the buy-in. The participant is responsible for the buy-in process. When the buy-in is not possible the participant would be responsible for the payment of the cash compensation.

THE SECOND CP IS AVAILABLE HERE

What's next?

The Deadline for submission was 6th August 2015. The comments will be published following the close of consultation.

ESMA will consider stakeholder's feedbacks when finalising the RTS for submission to the EC in September 2015.

CSDR

ESMA advises Commission on implementation of CSD Regulation

Background

See background on CSDR above.

On 23 June 2014, the European Securities and Markets Authority (ESMA) received a provisional request from the European Commission (EC) to provide technical advice to assist the EC on the possible content of the delegated acts required by two CSDR provisions:

- Penalties for settlement fails; and
- The substantial importance of a CSD's activities.

What's in there?

On 5 August 2015, ESMA published its technical advice on the implementation of the CSD (Central Securities Depository) Regulation.

In relation to the penalties for settlement fails, ESMA has analysed the penalty mechanisms that are currently in place in some markets at CSD and CCP (Central Counterparty) level in and out of the Union. ESMA recommended that the cash penalties should relate to the value of the transaction that fails to settle and should be proportionate and take into consideration the specificities of the different asset types, the liquidity and category of transactions.

In relation to the substantial importance of a CSD, ESMA believes that the criteria should be linked to the quantitative assessment of the following services:

- Notary Service (proposed threshold 15%);
- Central Maintenance Service (proposed threshold 15%); and
- Settlement Service (proposed threshold 15%).

Following the authorisation of CSDs and the collection of the relevant data by CSDs, ESMA is of the opinion that the indicators for substantial importance should be recalculated on the basis of all the above indicators.

THE ESMA TECHNICAL ADVICE IS AVAILABLE HERE.

What's next?

ESMA is aware of the need to use consistent data at EU level for the calculation of the indicators for determining substantial importance.

It may therefore be necessary to establish a mechanism for the collection, processing and aggregation of the data necessary for the calculation of the indicators.

ESMA is currently analysing the most appropriate way to establish such a mechanism.

ELTIFs

ESMA launches consultation on draft RTS under ELTIFs Regulation

Background

On 1 March 2015, the European Parliament adopted a legislative resolution on the ELTIF Proposal. Under the same procedure, the Council adopted the ELTIF Regulation on 20 April 2015. The ELTIF Regulation was published in the Official Journal on 19 May 2015 and entered into force on 9 June 2015. It will apply from 9 December 2015 onwards.

ELTIFs are designed to increase the amount of non-bank finance available for companies investing in the real economy of the European Union. They are also intended to allow investors to put money into companies and infrastructure projects for the long term. As such, ELTIFs are an important element of the efforts being put in place at European level to boost long- term investments.

Articles 9(3), 18(7), 21(3), 25(3) and 26(2) of the ELTIF Regulation provide that ESMA shall develop draft regulatory technical standards (RTS) on various subjects that are critical for the functioning of the Regulation. The RTS should determine:

- ★ The criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
- ★ The circumstances in which the life of an ELTIF is considered sufficient in length;
- ★ The criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets;
- ★ The costs disclosure; and
- ★ The facilities available to retail investors.

What's in there?

On 30 July 2015, ESMA launched a consultation on draft RTS under the ELTIF Regulation.

The consultation paper represents the first step in the development of the draft RTS and sets out proposals for their content on which ESMA is seeking the views of external stakeholders.

What's next?

ESMA will consider all comments received by 14 October 2015. Responses to this consultation paper will help ESMA in finalising the draft RTS to be submitted to the European Commission.

EMIR

ESMA's Report on the extension of the scope of EMIR interoperability arrangements to ETD and OTC derivatives

Background

On 4 July 2012, the European Market Infrastructure Regulation (EMIR) (AVAILABLE HERE) was adopted by the European Parliament and the Council on OTC derivatives, Central Counterparties (CCPs) and trade repositories ("EMIR"), and entered into force on 16 August 2012.

The Regulation, directly applicable and enforceable throughout the EU, aims to increase financial stability and safety by preventing the situation where a collapse of one financial firm can cause the collapse of other financial firms.

Article 85(3)(d) of EMIR empowers the European Securities and Markets Authority (ESMA) to publish reports on over-the-counter (OTC) derivatives, CCPs and trade repositories.

On 20 March 2013 and on 4 June 2013, ESMA published guidelines and recommendations on interoperability arrangements under title V of EMIR.

Although recital 73 of EMIR restricts the scope of interoperability arrangements to transferable securities and money markets instruments, the ESMA Guidelines and recommendations which cross-refer all EMIR provisions, already apply to interoperability arrangements on OTC Derivatives in case interoperability arrangements are established.

What's in there?

On 1st July 2015 ESMA issued a Final Report (FR) (ESMA 2015/1067) on the extension of the scope of interoperability arrangements to transactions in classes of financial instrument other than transferable securities and money-market instrument under Title V of EMIR.

In its report, ESMA accesses the reasons for potential extension of the interoperability arrangements on over-the-counter (OTC) derivatives and exchanged traded (ETD) derivatives and analyses

ESMA
Alternative
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BVI
KAGB
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measures
Kapitalanlagegesetzbuch
Consultation
AIFM-Richtlinie
Managers
implementing
Directive
possible
EU
to
Fund
Investmentfonds
Manager
Rates
Europäischen
draft
advice
Beaufsichtigung
Transparenz
countries
Concepts
directive
Richtlinien
supervision
Hebelfinanzierung
Interview
Fonds
and

the relevant costs linked to the extension of each categories.

ESMA then concluded that the EMIR provision related to interoperability arrangements should be extended to ETD only, since the potential benefits of the extension overcome the potential cost. A further extension to OTC Derivatives should be assessed at a later stage.

The ESMA guidelines and recommendations should be then revised to access whether specific guidelines or recommendations will be needed for interoperability arrangements on OTC derivatives.

THE ESMA REPORT IS AVAILABLE HERE.

What's next?

The ESMA Final Report shall be submitted to the Commission, the European Parliament and the Council for endorsement and implementation of the ESMA's recommendations.

EMIR

ESRB's Report on the assessment of the pro-cyclical implications margin and determination of haircuts under EMIR

Background

See background on EMIR above.

Article 24(1) of Commission delegated regulation (EU) 153/2013 establishes the confidence intervals that a CCP shall at least respect for the calculation of initial margin; the initial margin should be calculated based on data covering at least 12 months.

Article 28(1) of the RTS (EU) 153/2013 establishes three options for a CCP to limit procyclicality in margin requirements.

(a) Applying of a margin buffer at least equal to 25%;
(b) Assigning at least a 25% weight to stressed observations in lookback periods calculated in accordance with Article 26;
(c) Ensuring that margin requirements are not lower than those that would be calculated using volatility estimated over a 10 year historical lookback period.

According to EBA's report on pro-cyclicality of capital requirements under the internal ratings based approach 12/2013, pro-cyclicality is defined as the positive feedback mechanism between the financial and the real sector economy.

What's in there?

On 28 July 2015, the ESRB published its report as its contribution toward this assessment.

ESRB's opinion on the 'efficiency of margin requirements and the need to define additional capacity intervention' is made on the basis of a twofold perspective: (a) the actual performance of the EMIR provisions and (b) a qualitative analysis of the existing provision.

- From the past perspective: given that margining and haircuts requirements have formally been set out by CCPs pursuant to EMIR only for a short period of time (since 2014), the implementation of EMIR does not represent a significant evidence of pro-cyclical implications deriving from margining and haircuts requirements of CCPs.
- From the qualitative standpoint, ESRB is of the view that the overall anti-cyclical toolbox included in EMIR could be significantly enhanced by filling the following gaps:
  - Binding guidance on the implementation of Article 28(1)(a), (b) and (c) of the RTS (EU) 153/2013;
  - Using a less flexible framework for calibrating collateral haircuts;
  - The ESRB proposes that the EMIR provision contains a minimum length for the lookback periods to be taken into account when estimating stress or predefined minimum haircuts;
  - Providing more granular transparency requirements on pro-cyclicality;
  - Giving a definition of pro-cyclicality in the EMIR level 1 text.
  - Reviewing further EMIR in 2018, specifically on macroprudential use of margin and haircuts to address and prevent systemic risks; macro-prudential and competent authorities should have a role for the setting and calibrating of margin and haircut requirements which shall go beyond the minimums requirements set by EMIR.

THE ESRB'S REPORT IS AVAILABLE HERE.

What's next?

The report shall be submitted to the European Commission.

EMIR

ESMA's general Report on recommendations to change EMIR Framework (Four reports included

Background

See more background on EMIR above.

Article 85 of EMIR ("European Market Infrastructure Regulation") requires the European Commission (the Commission), in cooperation with the European Securities and Markets Authority (ESMA) to review and prepare a general report on the Regulation by 17 August 2015. The Commission has already published its review on EMIR on 3 February 2015.

IT CAN BE FOUND HERE.

What's in there?

On 13 August 2015, ESMA published its general report focused on the functioning of the EMIR framework. This includes four reports.

Three of the reports cover the areas of non- financial counterparties, pro-cyclicality and the segregation and portability for CCPs. The fourth reports responds to the Commission's review, which include suggestions on the amendment of EMIR with regards to the clearing obligation, the recognition of third country Central Counterparties (CCPs) and the supervision and enforcement procedures for trade repositories.

The main points for the ESMA's Reports as required under Art. 85 of EMIR are as followed:

1. **Non- Financial counterparties "NFCs" (Report No.1)**
   - ESMA recommends for the removal of the hedging criteria from EMIR. The use of other measures to determine the systemic relevance of NFCs are preferred. This would allow regulators to identify the few NFCs with the highest

systemic importance while greatly simplifying the process and reducing the compliance costs for the majority of small and medium NFCs, which pose limited risks to the system overall.

2. Limiting Pro-cyclicality (Report No.2)
   - ESMA suggests to further specify rules for implementing the counter- cyclical tools adopted by CCPs for margins and collateral, including regular testing and transparency on the results to further improve their effectiveness.
3. Segregation and Portability (Report No.3)
   - ESMA identifies differences in CCP practices in the implementation of the relevant provisions. In order to promote convergent practices and achieve a level playing field, ESMA recommends for the introduction of clarifications and more detailed requirements through the use of Regulatory Technical Standards (RTS), along with incentives related to margin period of risk depending on the safety of the chosen account structure. Furthermore, proposals to monitor the take- up of the different types of account models to confirm adequacy and efficiency have been put forth by ESMA.

In Response to the Commission's EMIR Review, ESMA has provided recommendations to amend the EMIR framework in a number of areas. These include:

- ★The amendment of EMIR to streamline the process for determining clearing obligations and to introduce tools that allow the suspension of the clearing obligation in cases of certain market conditions. The removal of frontloading requirement is also recommended;
- ★Rethinking of the entire equivalence and recognition process of the third country CCPs. This would increase its efficiency and effectiveness, as well as to better respond to regulatory differences between third countries. It is proposed that the jurisdiction decision should be governed by RTS. Any recognition process should also include additional risk- based considerations to allow it to deny or suspend the recognition of a third country CCP;
- ★To improve the supervision of Trade Repositories by changing ESMA's supervisory and enforcement powers and procedures. These include increases in fine levels, broadening of the enforcement decisions available to ESMA, appropriate timeframes to consider applications in the registration process and clarifying TR's obligations in relation to data quality and reconciliation and supervisory reporting.

What's next?

The general report is submitted to the Commission and is expected to be reviewed by the European Parliament shortly.

MiFID II

MiFID II/MiFIR draft Technical Standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities

Background

On 15 May 2014, Directive 2014/65/EC on markets in financial instruments ("MiFID II") (AVAILABLE HERE) was adopted by the European Parliament and Council. MiFID II delegate and confer powers to the European Commission to adopt regulatory technical standards (RTS) and implementing technical standards (ITS) on various topics.

On 19 December 2014, ESMA issued a discussion paper (ESMA 2015/548) (AVAILABLE HERE) with the aim to develop (i) implementing measures in respect of the authorisation of investment firms and (ii) to adjust MiFID provisions and procedures for passporting to existing standards. The consultation period closed on 2 March 2015.

What's in there?

On 29 June 2015, ESMA published a final report (FR) on the authorisation, passporting, registration of third country firms and on the cooperation between competent authorities (ESMA 2015/1006) (AVAILABLE HERE).

This FR is composed of 4 draft regulatory technical standards ("RTS") and 2 draft implementing technical standards ("ITS"), the response to the consultation paper as well as a cost-benefit analysis. This news focuses on RTS and ITS' content.

The draft RTS1 sets forth the rules pertaining to the documentation to be provided by firms seeking for authorisation under MiFID.

- ★The draft ITS2 set out common standards templates and procedure to ensure a uniform mechanism in respect of the authorisation of investment firms. It is accompanied by 3 templates: "Application form for authorisation as an Investment Firm", "List of members of the management body" and "Notification on changes to the membership of the management body".
- ★The draft RTS3 concerns information that investment firms should notify to the competent home authorities if they wish to perform investment activities or investment services in another Member State.
- ★The draft ITS4 sets out the rules that investment firms have to follow when providing investment or services under the right of freedom to provide services or under the right of establishment. It sets out the standard forms, procedure and templates required. It is accompanied by 13 templates concerning "forms for the passport notification", "form for the communication notification between competent authorities" and "form for the termination of the operation of a branch or the cessation of the use of a tied agent established in another Member State".
- ★The draft RTS5 sets out the necessary information for registration of a third country firms and the format of information to be provided to the client.
- ★The draft RTS6 concerns the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verification and investigations in order to monitor market participants.

What's next?

A decision of the Commission in respect of the endorsement of the draft RTS and ITS is expected at the beginning of Q4 2015.

OMNIBUS II

ESMA's final report on draft RTS on prospectus related issues under the Omnibus II Directive

Background

The Directive 2014/51/EU (THE "OMNIBUS II DIRECTIVE") requires the European Securities and Markets Authorities ("ESMA") to elaborate regulatory technical standards ("RTS") concerning four topics present in Directive 2003/71/EC (THE "PROSPECTUS DIRECTIVE"): prospectus approval, incorporation of information by reference, prospectus publication and dissemination of advertisements.

Furthermore and as required by Article 10 of Regulation (EU) No 1095/2010 (THE "ESMA REGULATION), ESMA consulted stakeholders by a consultation paper during the preparation of the draft RTS.

What's in there?

On 25 June 2015, ESMA published its final report on draft RTS on prospectus related issues under the Omnibus II Directive.

The final report follows the same structure than the four main sections of the above mentioned consultation paper and focuses on the following points:

1. Draft RTS on procedures for approval of prospectuses (section III.1 of the Final Report);
2. Draft RTS on the information to be incorporated by reference (section III.2 of the Final report);
3. Draft RTS on the provisions relating to the publication of the prospectus in Article 14(1)-(4) of the Prospectus Directive (section III.3 of the Final Report);
4. Draft RTS on dissemination of advertisements and the provisions present in Article 15 (4) of the Prospectus Directive (section III.4 of the Final Report).

ESMA'S FINAL REPORT IS AVAILABLE HERE.

The final report has been submitted to the European Commission on July 1st, 2015.

What's next?

The Commission has three months from 1 July 2015 to decide whether to approve ESMA's draft RTS.

PROSPECTUS DIRECTIVE

EBA (European Banking Authority) issues consultation paper on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

Background

On 5 September 2007, Directive 2007/44/EC was adopted by the European Parliament and the Council, establishing the legal framework for the prudential assessment of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm. This Directive amended the European Directives applicable to credit institutions, investment firms, and insurance and reinsurance undertakings.

In 2008, the former three EU financial Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of acquisitions of qualifying holdings.

What's in there?

On 3 July 2015, the three European Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority) launched a public consultation on updated Guidelines for the prudential assessment of acquisitions of qualifying holdings (JC/CP/2015/003).

These guidelines develop further the assessment process defined in the EU legislative framework and harmonise across the EU the conditions under which the proposed acquirer of a qualifying holding in a financial institution is required to notify its decision to the competent authority that is responsible for the prudential supervision of the undertaking.

Furthermore, they aim at ensuring that the acquirer readily knows what information will be required, in order to allow the competent authorities to assess the proposed acquisition in a complete and timely manner.

THE CONSULTATION PAPER AND DRAFT JOINT GUIDELINES ARE AVAILABLE HERE.

What's next?

The European Supervisory Authorities (ESAs) held a public hearing on the draft Guidelines at the EBA premises in London on 20 August 2015.

The deadline for the submission of comments is 2 October 2015. All contributions received will be published following the close of the consultation.

PRIIPS

ESA's Joint's committee publish a Technical Discussion Paper concerning Risk and Reward and Cost Disclosures in KIDs for PRIIPs

Background

The Regulation (EU) No 1286/2014 of the European Parliament and of the Council on Key information documents for Packaged Retail and Insurance-based Investment Products (PRIIPs) came into force on 29 December 2014 and empowers the three European Supervisory Authorities ("ESAs") to prepare draft Regulatory Technical Standards ("RTS") in specific fields.

On 17 November 2014, the ESAs published a first discussion paper (AVAILABLE HERE) which was a preparatory step in the preparation of the RTS, setting out early thinking on the part of the ESAs and gathering feedback and reactions from stakeholders relating to the PRIIPs Regulation.

What's in there?

On 23 June 2015, the ESAs published a technical discussion paper concerning risk, performance scenarios and cost disclosures in key information documents ("KID") for PRIIPs, taking into account some feedback of the first discussion paper on the following points:

1. RISK AND REWARD

In the first discussion paper, the ESAs mentioned three risks to be taken into account for the risk indicator: market, credit and liquidity risk. They considered multiple approaches concerning the said risk indicators.

The technical discussion paper presents four different approaches:

- ⭑The first approach is a qualitatively based indicator combining credit and market risk, complemented by a quantitative market risk measure;
- ⭑The second approach is an indicator separating market risk and credit risk;
- ⭑The third approach is an indicator based on quantitative market and credit risk measures, calculated by using forward looking simulation models;
- ⭑The fourth and last approach relates to a two-level indicator where the first level roughly separates products based on their qualitative characteristics and the second level defines the risk based on a quantitative assessment.

Four approaches are considered, as well, for performance scenarios.

- ⭑The first approach is to allow the manufacturer of a PRIIP to decide which scenarios to present in the KID ("what-if manufacturer choice").
- ⭑The second approach is to prescribe which scenarios should be included in the KID ("what- if prescribed approach").
- ⭑The third approach is the one taking probabilities of outcomes into consideration in the scenario selection ("probability approach").
- ⭑The fourth approach is a combination of the above mentioned approaches ("combined approach").

2. COSTS

The cost section primary objective is to designate the various types of costs related to the different types of PRIIPs and to identify the specific issues concerning the calculation of some of these costs .

The second part of the cost section aims to carefully consider the different ways of aggregating these different types of costs, including the different possible definitions of the overall cost ratio and the possible ways of calculating the cumulative effect of costs.

One should note that the list of costs identified in the case of funds is inspired by the UCITS example; however it includes different types of costs which were excluded from the "ongoing charge figures" of UCITS such as the transaction costs.

Finally, two main possible approaches are presented concerning the aggregation of the costs of the different types of PRIIPS: the Reduction in Yield ("RIY") and Total Cost Ratio ("TCR").
Regarding the cumulative effect of cost, the assumptions on growth rates and the interaction with the reward section of the KID are also considered.

THE TECHNICAL DISCUSSION PAPER IS AVAILABLE HERE.

The Joint Committee was looking for feedback from all concerned stakeholders by 17 August 2015.

What's next?

Following the outcome of this discussion paper, the ESAs shall launch a final consultation paper establishing the draft RTS under Article 8 in the autumn of 2015. Separate consultation papers will, as well, be published for the RTS to be developed under Articles 10 and 13.
Furthermore, as specified in the PRIIPs Regulation, the draft RTS on Article 8 will be finalised and submitted to the European Commission by 31 March 2016.

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RULES
official
RULE BOOK

SFTs

The Council Presidency and the EU Parliament reach an agreement on new rules for more transparency on SFTs Regulation

Background

On 29 January 2014, the European Commission published a proposal for a regulation on reporting and transparency of securities financing transactions (AVAILABLE HERE).

On 23 March 2015, European Parliament's Committee on Economic and Monetary Affairs (ECON) voted on the report backing transparency rules on lending, repurchase transactions, reverse repurchase transactions and re-use of securities and extended the conditions that are to be observed when financial instruments received as collateral are being re-used.
On 8 April 2015, the ECON published its report on the proposed Regulation on reporting and transparency of securities financing transactions ("SFTs") (AVAILABLE HERE).

This regulation aim at enhancing financial stability by ensuring setting out reporting obligations and by preventing banks and other financial intermediaries from circumvent regulation by shifting parts of their activities to the less-regulated shadow banking sector.

What's in there?

On 17 June 2015, the council of the presidency and the European Parliament reached an agreement on a regulation to improve the transparency of the securities lending and repurchase transactions.

The draft regulation introduces measures to improve transparency in three principal areas:

- ⭑The monitoring events likely to create systemic risks in the financial system linked to securities financing transactions by establishing reporting requirement on SFTs transactions to recognized EU trade repositories;

- ⋆The disclosure of information by investment funds on their use of SFTs to the underlying investors whose assets are lent, in regular reports and pre-investments documents;
- ⋆Minimum conditions to be met on the re-use of collateral (rehypothecation activities, a practice by banks or brokers of reusing for their own purposes collateral pledged by their clients) such as disclosure on risks and the obligation to obtain prior consent.

The text of the amended proposal can be found HERE.

What's next?

The text is awaiting Parliament vote at first reading. Implementation is expected to follow later this year.

SOLVENCY II

EIOPA publishes the 2nd set of Solvency II Technical Standards and Guidelines

Background

On 25 November 2009, Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II") was adopted by the European Parliament and the Council. The aim of the solvency regime established by Solvency II is to ensure the financial soundness of insurance undertakings, and in particular to ensure that they can survive difficult periods.

In that context, the European Insurance and Occupational Pensions Authority ("EIOPA") published on 27 November 2014 several consultation papers on its Set 2 of the Solvency II Implementing Technical Standards ("ITS") and Guidelines. In the cover letter attached to them, EIOPA explained the nature of the guidelines and ITS proposed and invited stakeholders to submit their comments before 2 March 2015.

What's in there?

On 6 July 2015 (and based on the responses received), EIOPA published the second set of draft Implementing Technical Standards (ITS) and

FOLLOW THE GUIDELINES

Guidelines for Solvency II. The set covers the following areas from all three Solvency II pillars:

- ⋆*Pillar 1 (Quantitative requirements): Guidelines on the valuation of assets and liabilities; Guidelines on the implementation of the long term guarantee measures; Implementing Technical Standard on the list of regional governments and local authorities; Implementing Technical Standard on the index for the equity dampener; Implementing Technical Standard on the currency shock for currencies pegged to the EURO; Implementing Technical Standard on the standard deviations for health insurance obligations subject to health risk equalisation systems (HRES).*
- ⋆*Pillar 2 (Governance and Supervision): Guidelines on the extension of the recovery period; Implementing Technical Standard on procedures when assessing external credit assessments; Implementing Technical Standard on supervisory transparency and accountability; Implementing Technical Standard on capital add-ons;*
- ⋆*Pillar 3 (Reporting and Disclosure): Guidelines on methods to determine the market share for the purpose of exemptions to supervisory reporting; Guidelines on reporting for financial stability purposes; Guidelines on reporting and disclosure; Guidelines on exchange of information on a systematic basis within colleges; Guidelines on Third Country Breaches; Implementing Technical Standard on the templates for the submission of information to the supervisory authorities; Implementing Technical Standard on procedures, formats and templates of the Solvency and Financial Condition Report; Implementing Technical Standard on exchange of information on a systematic basis within colleges.*

The press release can be found HERE.

What's next?

The XBRL Taxonomy based on the ITS on supervisory reporting was released on 30th July 2015 (HERE).

SRD

The European Parliament has approved the draft shareholder right directive II

Background

On 11 July 2007, Directive 2007/36/EC of the European Parliament and of the Council was adopted (AVAILABLE HERE).

This Directive sets out requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meeting of listed European Union companies and is also referred to as Shareholders Directive I (SRD1).

It aims at tackle shortcomings of shareholders rights to enable shareholders regardless of their residence into the EU, to exercise their voting rights.

On 9 April 2014, the European Commission proposed a draft proposal to the European Parliament and Council, to strengthen shareholder engagement by amending SRD1, introducing a "say on pay" for Europe largest companies, shareholder right directive.

THE SHAREHOLDER RIGHTS DIRECTIVE II (SHD2) IS AVAILABLE HERE.

What's in there?

On 8 July 2015, the Legal affair committee of the European Parliament has adopted the draft legislation in a view to enhance the transparency between remuneration policies and improve shareholder engagement in listed companies.

The amendments to SRD1 are mainly as followed:

- ⋆The scope of the Directive is enlarged:
  - To establish specific requirements in order to facilitate shareholders' engagement in the long-term (the identification of shareholders, the transmission of information and the facilitation of the exercise of shareholder rights);
  - To add transparency on the engagement policies of institutional investors and asset managers and on the activities of proxy advisors.

- Disclosure required from asset managers: The Directive lays down the information that the asset shall disclose to the public annually inclusion of long-term performance and non-financial criteria in the investment decisions, portfolio turnover, conflict of interests, proxy advisors…) and specific information to be disclosed annually to institutional investors (portfolio composition, costs, securities lending policy...).

- The text also foresees certain disclosure requirements in relation with remuneration report, related party transactions, and subsidies received and tax ruling.

- Remuneration policy: article 9 establishes remuneration policy requirements as regards as directors and to be submitted to vote of the general meeting of the shareholders. Member State may decide that the vote is advisory (rather than binding).

THE TEXT OF THE ADOPTED PROPOSAL CAN BE FOUND HERE.

What's next?

The council shall adopt the text in the next months.

WORLD

IOSCO Consults on International Standards on Fees and Expenses of Investment Funds

Background

In November 2004, IOSCO (International Organization of Securities Commissions) published its paper on International Regulatory Standards on Fees and Expenses of Investment Funds (AVAILABLE HERE). This paper was aimed at identifying common international best practices standards in the area of fees and expenses in investment funds through the identification of the goals that regulators should seek to achieve when dealing with some of the issues raised by fees and expenses.

What's in there?

On 24 June 2015, IOSCO published its consultation report on Elements of International Regulatory Standards on Fees and Expenses of Investment Funds. This report refers to the recommendations included in the paper of 2004 and seeks to determine whether these standards are still up-to-date.

More precisely, this report takes into account all regulatory developments having occurred at national and/or regional level and, on that basis, it consults on key issues such as types of permitted fees and expenses, performance-related fees, disclosure of fees and expenses, transaction costs, hard and soft commissions on transactions.

The press release is available HERE and the consultation report is available HERE.

What's next?

The deadline for comments indicated by the consultation paper is the 23 September 2015.

LUXEMBOURG

AIFM

CSSF issues an updated AIFM FAQ

Background

On 21 July 2013, Directive 2003/41/EC "AIFMD" became effective across the EU (available here). By 22 July 2014, all existing EU AIFMs meeting certain thresholds were to request an authorization in their respective home competent authorities and should demonstrate full compliance with the Directive.

On 12 July 2013, the AIFMD was transposed into national law in Luxembourg.

Since then, the Commission de Surveillance du Secteur Financier (CSSF) has published and updated a Frequently Asked Questions (FAQ) on a regular basis, providing its views on the implementation of the Directive. Articles 5 to 19 of the law of 12 July 2013 (the 2013 AIFM Law) lay down the legal conditions which must be met to be granted authorisation as AIFM.

The scope of the AIFMD covers portfolio management and risk management (the core activities of an AIFM) as well as other functions including but not limited to depositary, valuation, administration, reporting to investors and regulators, and marketing of AIFs. Its focus is on regulating the AIFM rather than the AIF.

What's in there?

On 10 August 2015, question 14 o) and 14 s) and 21 were published. Question 14 addresses the question when non-EU AIFM have to report to the CSSF under the requirements of article 24 (1), (2), & (4) of the AIFMD and question 21 addresses the definition of "marketing and reverse solicitation".

Reporting requirement under article 24 (1), (2), and (4):

- A non-EU AIFM will have to report to the CSSF under the requirements of article 24 (1), (2) and (4) of the AIFMD only if this non-EU AIFM is marketing AIFs to professional investors in Luxembourg and as long as non-EU AIFMs cannot benefit from the passport regime;
- In addition, a Non-EU AIFM managing or marketing a feeder (whether EU AIF or non EU AIF) in Luxembourg, is subject to article 24 (1), (2) and (4) of the AIFMD for the non EU-master AIF (s) of such feeder, even if the non-EU master AIF(s) is (are) not marketed in the EU.

MARKETING - REVERSE SOLICITATION

Given that there is no guidance on a European level regarding what marketing exactly consists in, the guidance and position of the different national competent authorities may vary. The same applies in relation to the concept of "reverse solicitation".

- Marketing: in relation to the definition of marketing, under article 1(9) of the Law of 2013, "marketing" takes place when the AIF, the AIFM or an intermediary on their behalf seeks to raise capital by actively making units or shares of an AIF available for firm purchase by a potential investor. Question 21 clarifies the concepts of marketing and reverse solicitation in the context of Luxembourg Law.

⋆Reverse solicitation consists in providing information regarding an AIF and making units or shares of that AIF available for purchase to a potential investor following an initiative of that investor or an agent of that investor without any solicitation made by the AIF or its AIFM in relation to the relevant AIF.

Question 21 of the FAQ further clarifies that investments made in the context of discretionary mandate, investments advisory agreement, collective portfolio management and secondary trading (unless the context of indirect offering on placement through intermediaries acting on behalf the AIFM or AIF) are not to be considered as marketing.

The most updated version of the FAQ is not available at the moment but shall be provided as soon as practicable.

What's next?

The FAQ document may be subject to further updates by the CSSF.

CRD IV

COFIBU Report on Bill 6660

Background

On 28 February 2014, Bill 6660 (AVAILABLE HERE) was brought by the Luxembourg government to the Luxembourg Parliament (*"Chambre des Députés"*).

Bill 6660 aims to transpose EU directives - in particular Directive 2013/36/EU of 26 June 2013 ("CRD IV") - into Luxembourg law. In this context, Bill 6660 also proposes abolishing legal provisions whose object is now covered by Regulation (No) 575/2013 on prudential requirements for credit institutions and investment firms ("CRR").

In view of the aforementioned objectives, Bill 6660 amends the Luxembourg law of 5 April 1993 on the financial sector and the Luxembourg law of 12 July 2013 on alternative investment fund managers (the "AIFM law").

The amendment to the AIFM law aims to fully transpose into Luxembourg law Article 6(6) of the AIFMD, which provides for the application of Articles 2(2), 12, 13 and 19 of MiFID to AIFMs providing also discretionary portfolio management and/or other non-core services. The same provision is contained in Article 6(4) of Directive 2009/65/EC (the "UCITS Directive") and has been transposed into Luxembourg legislation in the second sub-paragraph of Article 101(4) of the UCITS law.

By way of a direct reference to the above provision of the UCITS law, Bill 6660 therefore transposes into Luxembourg legislation Article 6(6) of the AIFMD, which was forgotten upon the adoption of the AIFM law, in order to ensure a level playing field for AIFMs, UCITS management companies and investment firms providing similar services as regards their own funds requirements (compliance with the CRD IV capital adequacy requirements).

Bill 6660 was, to a large extent, embraced by the European Central Bank and the Luxembourg Chamber of Commerce and was subsequently submitted to the Luxembourg Conseil d'Etat, which raised a series of formal objections.

Following several amendments adopted by the Finance and Budget Commission, the Conseil d'Etat withdrew its formal objections and sent its supplementary opinion to the Finance and Budget Commission on 19 May 2015.

Note: Article 61 of Bill 6660 makes reference to Article 101(2) of the UCITS law; however, the correct reference is to Article 101(4) of the UCITS law.

What's in there?

On 22 June 2015, the Finance and Budget Commission of the Luxembourg Parliament published its report on Bill 6660. In its report, the Finance and Budget Commission commented mainly on the supplementary opinion of the Conseil d'Etat. Its comments concerned mostly the wording of the Bill and did not make any substantial changes to the proposal.

THE REPORT OF THE FINANCE AND BUDGET COMMISSION IS AVAILABLE HERE.

On 2 July 2015, a debate as well as a first vote on Bill 6660 was held in Parliament. The vote was positive

What's next?

A second vote on Bill 6660 will take place in the coming weeks in view of its formal adoption.

CRD IV

CSSF published two regulations on the transposition of Capital Requirement Directive IV

Background

On 16 May 2013, the European parliament and the Council issued a Directive 2013/36/EU (AVAILABLE HERE) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV). This directive has been transposed in Luxembourg's legislation through the law from 25 July 2015 modifying the law from 5 April 1993 relating to the financial sector.

Concerning the transposition of CRD IV, the CSSF is the competent authority to issue regulation tending to monitor and supervise the entities falling into the scope of the directive.

What's in there?

On 14 August 2015, the CSSF issued two regulations regarding the faithful transposition of the CRD IV:

⋆The first Regulation no.15-01 (AVAILABLE HERE) concerns the transposition of the Article 140 of CRD IV relating to the calculation of institution-specific countercyclical capital buffer rates;

- The second Regulation no.15-02 (AVAILABLE HERE) concerns:
  - The prudential supervision and evaluation process that applies to credit (CRR) institutions;
  - The definitions, governance and risk management and
  - The assessments of the adequation of internal prudential requirements with liquidities;
  - The technical criteria linked to the organisation and risk management.

What's next?

The two regulations entered into force three days after the publication in the Memorial on 19 August 2015.

CRR

CRR implementation law

Background

On 1 January 2014, Regulation (EU) 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms, the Capital Requirements Regulation ("CRR") (AVAILABLE HERE) came into force. It applies to all Luxembourg credit institutions and to certain investment firms defined as being within its scope (the "CRR institutions").

The CRR is one of two instruments adopted at the level of the European Union to implement the Basel III agreement on the regulatory framework for banks together with the Capital Requirement Directive IV (CDR IV) Directive 2013/36/EU of 26 June 2013 (AVAILABLE HERE) which is in the process of being transposed into Luxembourg law.

What's in there?

The law of 23 July 2015 (the "Law") has been published on 31 July 2015, in the Memorial (AVAILABLE HERE). The Law modifies the law of 5 April 1993 relating to the financial sector by introducing CRR rules.

Besides, the Law align capital requirements applying to AIFM and Management Companies providing portfolio management services by implanting article 6.6 AIFMD into the law of 12 July 2013. It thus rectifies an omission in the transposition of AIFMD rules in Luxembourg.

What's next?

The law shall enter into force 3 days after its publication on the Memorial.

But the law includes exemptions:

- The points 5, 9, 10, 11 and 12 from the Article 60 concerning the definitions won't be applicable until the 1st January 2016;
- The Articles 27, 28 and 33 point 8 (excluding the reference to the (iii) and point 9) will be applicable as the regulation concerning the liquidity coverage requirement for Credit Institutions (2015/61/EU, AVAILABLE HERE) will come into force.

ELECTRONIC ARCHIVING

Law relating to electronic archiving

Background

In June 2012, the European Commission issued a draft proposal for a European Regulation in relation to the recognition of the probative value of electronic documents and the mutual recognition of such copies within the European Union (COM 2012/ 238) (AVAILABLE HERE).

On 13 February 2013, the Luxembourg government proposed a draft law no. 6543 on electronic archiving (AVAILABLE HERE). It aims to provide clear guidelines on the creation and storage of electronic copies of paper originals, ensure high fidelity and durability of such copies and recognize their legal value.

Under current code civil rules, it is already possible to create electronic copies of original paper documents that have a legal value. In order to do so, the copies have to be created in accordance with a number of criteria laid out in the article 3 of the Grand-Ducal decree of 22th December 1986 (AVAILABLE HERE). However this decree tends to be obsolete and does no longer match with current technological practices in this respect.

What's in there?

On 2 July 2015, the Luxembourg Chamber of Deputies unanimously adopted the draft bill of law 6543 on electronic archiving amending Articles 1333 and 1334 of the civil code, Article 16 of the commercial code the law of 5 April 1993 on the financial sector as amended and replacing the Grand Ducal Regulation of 22 December 1986.

The bill's aims at:

- Updating the criteria for electronic archiving to match the current technical environment by recognising the legal value of the dematerialised documents and establishing a legal presumption of the copies' conformity to the original document;
- Defining the rules required for the dematerialisation of the original copies and the storage of those copies and digital original copies;
- Specifying in which cases the electronic copies will be deemed to be equivalent to paper copies even if paper versions still exist.

In addition, the bill creates a new Professional from the Financial Sector (PFS) status for service provider specialised in digitalising and archiving (ie "Prestataire de services de dématérialisation et de conservation") and set forth the rules applying to their activity.

THE TEXT OF THE DRAFT BILL CAN BE FOUND HERE (only the French version is available at the date of publication of this news).

What's next?

Following the dispense granted by the Council of State to the Chamber of Deputies to proceed to a second vote, the draft bill published on the 4th of August 2015 shall enter into force the 1st November 2015.

EMIR

CSSF publishes EMIR Questionnaire review

Background

On 4 July 2012, Regulation (EU) No 648/2012 (AVAILABLE HERE) was adopted by the European Parliament and the Council on OTC derivatives, central counterparties and trade repositories

QUESTIONNAIRE
REVIEW
DATA
OPINION

("EMIR"), and entered into force on 16 August 2012.

The Regulation, directly applicable and enforceable throughout the EU, will considerably increase financial stability and safety by preventing the situation where a collapse of one financial firm can cause the collapse of other financial firms.

EMIR introduces new obligations on financial counterparties and non-financial counterparties concluding over the counter (OTC) derivative and exchange traded derivatives (ETD).

EMIR lays down clearing and bilateral risk-management requirements for OTC derivatives contracted and reporting obligations for derivatives contracts, ETD and OTC, to a trade repository (TR).

In September 2014, the CSSF addressed a questionnaire on EMIR to a sample of entities subject to the prudential supervision of the CSSF in Luxembourg.

The CSSF developed its questionnaire to assess the compliance of the supervised entities with the EMIR regulation framework.

What's in there?

On 11 August 2015, CSSF published the review it received on the EMIR Questionnaire.

The review revealed that the management companies and AIFMs have to improve their processes in order to fully comply with the EMIR regulation.

The following points are outlined in particular:

- **Reporting requirements:** entities usually estimate that they satisfactorily comply with their reporting obligation under EMIR. However, based on a significant number of rejection reports received from trade repositories, reporting of derivative's transactions to trade repositories is not correctly done.
- **Clearing obligation:** entities wrongly consider that derivatives contracts concluded for hedging purposes are not subject to EMIR obligations. However, the EMIR regulation applies to derivatives concluded for investment purposes as well as for hedging purposes.
- EMIR trade reporting rules allow one counterparty in a derivative trade to delegate its reporting obligation to the other counterparty. Entities generally have not put in place an adequate oversight in case of delegation, considering their EMIR obligations. However, entities, regardless of any delegation, remain ultimately responsible of their EMIR obligations.

Finally, the CSSF noticed that management companies or AIFMs authorised to perform discretionary portfolio management, do not report derivative contracts within the framework of their discretionary portfolio management activity. This is not in line with the EMIR regulation and entities should address the issue rapidly.

THE PRESS RELEASE OF THIS REVIEW CAN BE FOUND HERE.

What's next?

The review has led CSSF to conclude that most of the entities contacted are doing their best to manage their EMIR obligations. The CSSF however, has also identified entities that are not satisfactory in meeting their EMIR obligations.

The CSSF will only revert to those potentially problematic entities before the end of this year.

The CSSF will contact a sample of entities which fall within this unsatisfactory scope.

Entities that are not contacted by the CSSF within this timeframe are not considered by the CSSF at high risk with respect to their EMIR obligations.

EMIR/CRA

Parliament issues EMIR and CRA bill no.6846

Background

On 4 July 2012, Regulation (EU) No 648/2012 (AVAILABLE HERE) was adopted by the European Parliament and the Council on OTC derivatives, central counterparties and trade repositories ("EMIR") and entered into force on 16 August 2012.

The Regulation, directly applicable and enforceable throughout the EU, considerably increases financial stability and safety by preventing the situation where a collapse of one financial firm can cause the collapse of other financial firms.

As a regulation is directly applicable and binding to Member States, EMIR does not need to be transposed into Luxembourg Legislation.

On 21 May 2013, EU Directive 2013/14 and EU regulation 462 /2013 modifying regulation 1060/2009 on credit rating agencies were adopted, aiming at reducing reliance on external credit ratings.

What's in there?

On 5 August 2015, the Luxembourg Chamber of Deputies issued a bill no.6846 ("the Bill" - AVAILABLE HERE) on the enactment of several European regulations as well as on modification on current laws.

The main amendments brought by the Bill are the following:

EMIR

- Under article 22 of Chapter 2 of EMIR, Member States are left with the obligation to designate the national competent authority responsible for carrying out EMIR duties for the authorisation, monitoring and supervision of CCPs established in the EU. In Luxembourg, the CSSF and the commissariat aux assurances shall be the competent authorities in charge of the supervision of the clearing obligation, the reporting and the risk mitigation of OTC derivatives and the registration of trade repositories.

CREDIT RATING ("CRAS")

- Article 2-1 of the modified law of 23 December 1998 regarding the creation of a supervisory commission of the financial sector is modified: the CSSF will supervise the adequation of the credit risks assessment of investment firms, alternative investment managers, management companies amongst other entities and ensure that they do not over-rely on credit rating and to encourage them to reduce this reliance.
- In the same manner, it modifies the law of 17 December 2010 concerning UCITS V. Management companies should implement methods in order to mitigate and monitor at any time the risks linked to the positions taken.

THE TEXT OF THE DRAFT BILL IS AVAILABLE HERE.

What's next?

If the Bill passes the receivable test in plenary session, it will be sent back to the relevant commission in the Chamber of Deputies.

UCITS V/AIFMs

Bill 6845, enacting the UCITS V Directive in the Luxembourg Law of 17 December 2010 and amending the law of 12 July 2013 on AIFMs, has been submitted to the Chamber of Deputies for adoption

Background

On 17 December 2010, the law relating to undertakings for collective investment in transferrable securities was published in Mémorial A, implementing in Luxembourg and recasting Directive 2009/65/EC of the European Parliament and the Council of 13 July 2009 ("THE LAW", AVAILABLE HERE).

On 23 July 2014, the European Parliament and the Council adopted Directive 2014/91/EU – "the UCITS V Directive" – amending Directive 2009/65/EC (AVAILABLE HERE).

By 18 March 2016, Member States shall notify to the Commission and ESMA the laws, regulations and provisions enacting the UCITS V provisions in their national laws (under article 99 of the UCITS V Directive).

What's in there?

On 5 August 2015, the Luxembourg's Minister of Finance submitted bill n0 6845 ("the Bill") to the Luxembourg parliament.

The Bill implements the UCITS V Directive into the law. As a result, the principal additions made to the Law are as follows:

- New requirements on depositaries of UCITS inserted under Chapters 2, 3, 4 of part I of the Law;
- New requirements on remuneration policies in management companies of UCITS inserted under Chapter 15 part IV of the Law also applicable to self-managed SICAVs under article 27 of part I of the Law;
- New administrative and criminal sanctions regime inserted under Chapter 20 of part V of the Law;
- Requirement of a whistle blowing procedure inserted under Chapter 20 of part V of the Law (article 149).

The new UCITS V provisions will come into force on 18 March 2016.

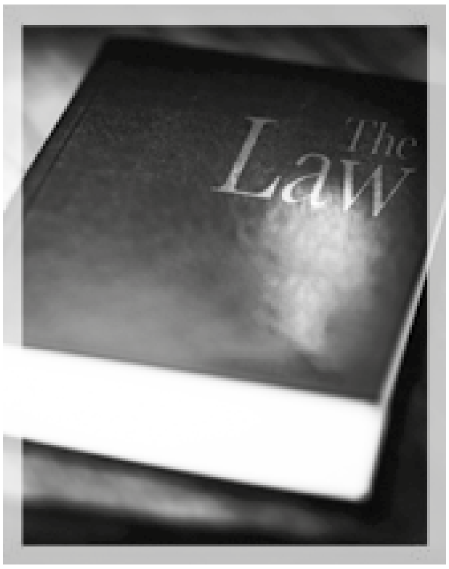
The Bill introduces other changes into Luxembourg law, such as:

- The application of the new UCITS depositary regime to all part II UCIs;
- Authorised AIFMs must have their annual reports audited by a "réviseur d'entreprises agréé";
- The authorisation for AIFMs to passport to other EU Member States the services of portfolio management on a client-by-client basis, of investment advice and the services of reception and transmission of orders on financial instruments, subject to completing the notification process with the CSSF foreseen under the passport mechanism (Chapter 6 of the Law).

THE BILL CAN BE FOUND HERE.

What's next?

In accordance with article 55 of Title II of the Chamber of Deputies' regulation, the Bill shall be transmitted to the relevant commissions for discussion before it is tabled in the Chamber of Deputies.



FRANCE

INSTRUCTION DOC-2014-03

AMF issued Instruction DOC-2014-03 on the procedure for marketing AIFs in France

RÉPUBLIQUE FRANÇAISE
JOURNAL OFFICIEL
LOIS ET DÉCRETS

Background

On 25 June 2015, the AMF has issued an Instruction DOC-2014-03 which describes the procedure for marketing AIFs in France. The AMF position DOC-2014-04 issued on the same day explains the definition of the procedure for marketing units or shares of AIFs in France.

What's in there?

Before this AMF position, France was the only EU member state that required EU domiciled Alternative Investment Fund managers managing EU domiciled AIFs wishing to marketing to professionals investors in France under the AIFMD passport to appoint a Centralizing Agent.

The article 21 of AMF Instruction DOC-2014-03 limits the obligation to appoint a Centralizing Agent for AIFs. The obligation to appoint a centralizing agent in France by foreign domiciled AIFs has been limited to the following cases:

- Marketing of AIFs to retail investors;
- Marketing without the AIFMD passport (In the case of third country AIFs or European/third country AIFs managed by a third country Alternative Investment Fund Manager to both professionals and/or retail investors).

What's next?

The requirement of Centralizing Agent besides these specific cases is no longer in force since the publication of a Decree in the official French Gazette *Journal official* (10 June 2015).

LAW N° 2015-990

"The Macron Law" for the growth, the economic activity and the equality of economic opportunity was published on August 7th, 2015

Background

Law n°2015-990 of August 6th, 2015 for the growth, the economic activity and the equality of economic opportunity, commonly known as the "Macron Law", was published in the JORF of August 7th, 2015.

What's in there?

Several measures have been adopted as regards in particular the employee savings, the capital investment and the OPCI.

SIMPLIFICATION AND REINFORCEMENT OF THE EMPLOYEE SAVINGS (ARTICLES 149 À 166):

- Investment by default of the profit-sharing ("intéressement") in the Company savings plan (PEE);
- Creation of "Perco Plus" with a reduced "forfait social" on contributions in group retirement savings plan (PERCO) - rate reduce from 20% to 16% in case of investment of at least 7% of shares likely to be used in a PEA (Plan d'Epargne en Actions – French Personal Equity Plan) for the financing SMEs;
- Controlled management by default in the PERCO: the management will be piloted according to the age of the beneficiary, the money markets investments will be privileged only during the last few years before deadline of the PERCO;
- The contribution "forfait social" on amounts for profit sharings plan is reduced (8% during six years) for SME of less than 50 employees implementing an employee profit-sharing scheme ("participation" or "intéressement") for the first time;
- Possibility of paying into the PERCO until 10 days of leave not taken;
- Unilateral employer contribution ("abondement") into the PERCO;
- Improvement of the financial information about the employee savings.

DEVELOPMENT OF THE INVESTMENT IN COMPANIES:

- Possibility of opting for shares of venture capital within the framework of unit-linked life insurance contract (article 137);
- Creation of Free Partenary Company (SLP - société de libre partenariat) in front of "limited partnerships" of Anglo-saxon Law. The company would be able to delegate globally the management of its portfolio to a management company (article 145 - implementing provisions must be published very soon).

NEW MEASURES CONCERNING REAL ESTATE INVESTMENT SCHEME (OPCI):

- Possibility for OPCI to acquire, on an ancillary basis, directly or indirectly, for rent, the furniture, capital goods or any movable property allocated to buildings held and necessary for the functioning, the use and the exploitation of the latter by a third (article 139);
- OPCI can be held until 30% (instead of 10% previously) in the asset of company mutual fund (article 159).

THE LAW IS AVAILABLE HERE

ITALY

UCITS V

UCITS V - Bank of Italy anticipates the application of the UCITS V regime

Background

July 23rd 2014, the European Union adopts UCITS V Directive 2014/91/EU which amends the current 2009/65/EC Directive. Member States have until March 18th 2016 to implement the Directive.

Regolamento sulla gestione collettiva del risparmio issued by Bank of Italy on January 19th 2015 anticipates the application of the UCITS V regime in Italy in line with AIFMD/AIFMR. The new provisions shall be implemented by July 22th 2015.

ABI (Italian Banking Association) and Assogestioni (management companies association) are going to set up a standard agreement UCITS V compliant.

What's in there?

The Italian banks already depositaries of open-ended funds shall submit by July 22th to Bank of Italy a statement to declare themselves compliant to the new. The new regime - between the other requirements - implies for the depositaries a significant impact in terms of liabilities on the assets of their clients.

What's next?

It will go in depth the analysis of the relationship between what is stated by the Italian regulation for UCITS and the implementation of the Directive and the regulation UCITS V.

GERMANY

UCITS V

UCITS V - Publication of a draft Act on the implementation of the Directive

Background

On 3rd July 2015, the Federal Ministry of Finance has published a draft Act on the implementation of the Directive 2014/91/EU of the European Parliament and of the Council of 23rd July 2014 (UCITS V) amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (UCITS V Implementation Act - OGAW-V-Umsetzungsgesetz-OGAW-V-UmsG). A consultation period was given until 24 July 2015.

What's in there?

The draft OGAW-V-UmsG provides in particular modifications of the German Investment Act (KAGB-RefE). With regards to the obligations of a custodian when taking under custody Financial Instruments belonging to its UCITS-fund clients its obligations are by the modification of the KAGB aligned with the obligations of a custodian when taking under custody Financial Instruments belonging to its alternative investment fund (AIF)-clients, provisions already implemented into the KAGB with the transposition of the Alternative Investment Fund Directive 2011/61/EU (AIFMD). This principle also applies to the obligations of the custodian when giving the Financial Instruments belonging to its UCITS-clients into sub-custody to a Sub-Custodian.

Nonetheless a different approach between AIF-clients and UCITS-clients will be made with regard to the liability regime, as the liability provision regulating the liability of the custodian towards its UCITS-clients (§ 77 KAGB-RefE) will be modified. Differently to the possibility for the custodian of AIF-funds to contractually transfer the liability for the loss of Financial Instruments under custody at the Sub-Custodian towards the Sub-Custodian if this transfer is also agreed with the AIF-fund-client, § 77 KAGB-RefE will state in its paragraph 4 that any contractually arrangement excluding or limiting the liability of the custodian shall be null and void.

The German credit services sector (Deutsche Kreditwirtschaft) has sent a statement to the Federal Ministry of Finance within the consultation period asking inter alia to clarify in § 77 paragraph 4 KAGB-RefE that a contractually agreed exclusion or limitation of liability of the custodian shall only be null and void towards the investment company if the company is acting on behalf of its UCITS-funds and the respective investors. It shall still be possible for the custodian to contractually exclude or limit the liability towards an investment company if the company is acting on its own behalf

What's next?

The Federal Government will decide about the draft OGAW-V-UmsG after eventual modifications per "Kabinettsbeschluss" and will then publish a governmental draft of the OGAW-V-UmsG. The final OGAW-V-UmsG Act will have to be applicable latest on 18 March 2016, the date until when UCITS V will have to be transposed into national law.

UCITS
Directive
remuneration
management
depositary
rules
sanctions
liability

TAX

TAX TRANSPARENCY PACKAGE

Income
Business
Land
Sales
Goods and Services
Individual
TAX
Corporate
Property
Revenue
Profit
Commission
Personal
Capital

Commission presents Tax Transparency Package 2.0 outlining EU business tax reforms

Background

On 17 June 2015, the European Commission presented the Tax Transparency Package 2.0, which sets out a new approach to business taxation. The Package's overall goals are to provide fairer and more efficient taxation and to effectively tackle corporate tax avoidance.

What's in there?

The stated objectives of the Package are: re-establishing the link between taxation and where economic activity takes place; ensuring that Member States can correctly value corporate activity in their respective jurisdictions; creating a competitive and growth-friendly corporate tax environment for the European Union; and protecting the Single Market and securing a strong EU approach to external corporate tax issues.

This is last objective includes measures to implement recommendations from the OECD's base erosion and profit shifting (BEPS) project, deal with non-cooperative tax jurisdictions, and increase tax transparency.

The link is available HERE and HERE.

What's next?

The EC expects to achieve strong results in the EU over the next 18 months following completion of the BEPS project. In the medium-to-long term, the EC expects that strong political commitment will be necessary to achieve successful results on a post-BEPS corporate tax agenda for the EU.

NEW CORPORATE TAX - LUXEMBOURG

Bill 6748

Background

On 5 August, the Luxembourg government released bill 6748 which includes proposed tax measures. Upon parliament approval, these measures would amend the existing Luxembourg participation exemption regime to incorporate the EU's latest changes to the Parent Subsidiary Directive, expand the Luxembourg tax unity regime and make other changes to Luxembourg corporate tax rules.

What's in there?

One of the main points to be changed by the implementation of the bill concerns the inclusion of an anti-hybrid provision in the Luxembourg participation exemption regime. More specifically, Article 147 and 166 of the Luxembourg Income Tax Law would be concerned by these changes.

In addition to the potential change of the Luxembourg participation exemption regime, the Luxembourg tax unity regime might be subject to change based on recent jurisprudence of the Court of Justice of the European Union. Consequently, the scope of the tax unity regime would be expanded.

Other new tax measures include investment tax credits, recovery of tax claims, exit taxation in case of migration, etc.

For more information on these topics, please CONSULT THE DOCUMENT HERE.

What's next?

The different tax measures regarding the participation exemption regime would apply to income received or distributed after 31 December 2015, whereas the new measures relating to exit taxation would take effect for tax year 2016. The other new tax measures would take effect for tax year 2015.

FATCA - LUXEMBOURG

FATCA first reporting deadline extended to 31 August 2015

Background

The initial reporting deadline of 30 June 2015 fixed by the law adopting the US-Luxembourg Intergovernmental Agreement (the IGA) and relative to "Foreign Account Tax Compliance Act" (FATCA), has been postponed to 31 August 2015.

What's in there?

On 1 July 2015, Luxembourg Parliament passed a law to adopt the US-Luxembourg Intergovernmental Agreement ("the Law").

According to the law, Luxembourg Reporting Financial Institutions (including those without any US Reportable Accounts) were supposed to submit their FATCA report for the financial year 2014 by 30 June 2015 the latest.

In a first place, the Luxembourg tax authorities had exceptionally extended this reporting deadline until 31 July 2015.

However, on 24 July, since the law was not published yet, the Administration des Contributions Directives in Luxembourg announced that the deadline for FATCA reporting for 2015 will be extended from 31 July to 31 August 2015.

For subsequent years, the normal deadline of 30 June should apply.

Finally, the law was published on 29 July 2015.

THE LINK IS AVAILABLE HERE.

What's next?

The Luxembourg Tax Authorities will subsequently issue their final implementation circulars.

FATCA - LUXEMBOURG

FATCA in Luxembourg: official guidelines published

Background

The law adopting the US-Luxembourg IGA ("the Law") has recently become effective. On 31 July 2015, the Luxembourg tax authorities published two circulars providing more guidance on the topic.

What's in there?

The two new circulars, ECHA - n° 2 providing comments on legal obligations and interpretations of technical terms under the IGA and ECHA n° 3 containing technical aspects and explaining the transmission of information, as well as updating the previous draft versions of the circulars.

Certain FATCA definitions and obligations in more details.

HERE, HERE and HERE.

What's next?

Financial Institutions subject to reporting obligations as set out in the Law and the circular must submit their reporting before 31 August 2015, even if Zero-Report.

The next level of automatic exchange of information will be reached with the entry into force of the European Directive implementing the Common Reporting Standards (CRS).

Last but not least, banks should not forget to look at the requirements under the QI agreement, which has been updated in 2014. In particular, the requirements to have a compliance program (including written policies and procedures) should not be underestimated.

FATCA
69.258
0.540 27/02
+0,78%
17:
0.088 27/02/
+0,13%
149.60
19:3
0.550

FATCA - LUXEMBOURG

Parliament adopted the law ratifying the US-Luxembourg Intergovernmental Agreement (the IGA) implementing FATCA on 1 July 2015

Background

On 1 July 2015, the Luxembourg Parliament adopted the law ratifying the IGA signed on 28 March 2014 under the terms of which FATCA will be applied in Luxembourg (the FATCA Law). In addition to the IGA itself, some new obligations and sanctions are developed in the FATCA Law, in particular the obligation to inform beforehand each reported individual. Reporting Luxembourg Financial Institutions should proceed to the first FATCA reporting by 31 July 2015 at the latest.

What's in there?

In addition to the IGA itself, some new obligations and sanctions are developed in the FATCA Law, among which:

- ★ Reporting Luxembourg Financial Institutions ("FIs") are required to file a report with the Luxembourg tax authorities even though they have not identified any US Reportable Accounts. In practice they will have to file a nil report;
- ★ The Luxembourg tax authorities have exceptionally postponed the deadline for the reporting to be done by Reporting Luxembourg FIs to the Luxembourg tax authorities to 31 July 2015; and
- ★ Reporting Luxembourg FIs should inform each reported individual that information will be collected and reported.

For more details, please also consider our PwC newsflash which you can access via the below hyperlink.

The links can be found HERE and HERE.

What's next?

Now that the FATCA law has been voted, we expect the Luxembourg tax authorities to issue their guidelines very soon.

FATCA - ITALY

Background

On January 10th 2014, Italy and the US entered into an Intergovernmental Agreement ("IGA") to implement FATCA into Italian law.

On July 7th 2015, the Law of June 18th 2015 n. 95 ratifying and implementing the Intergovernmental Agreement between Italy and the United States of America was published in the Gazzetta Ufficiale.

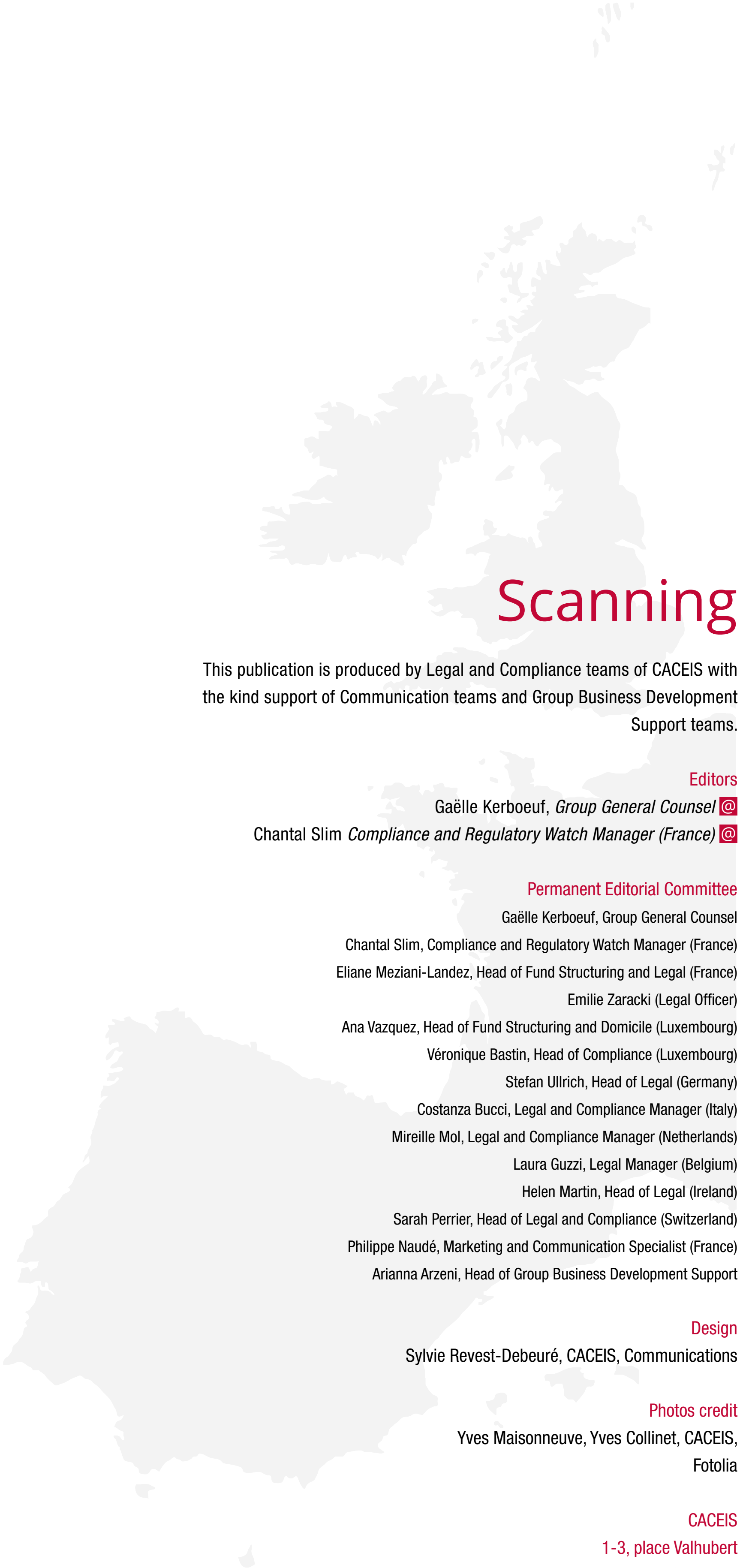
On August 6th 2015, it was implemented by the Decree of Italian Ministry of Economy.

What's in there?

On August 7th 2015 published the instructions that intermediaries shall use to transmit information to the Agenzia dell'Entrate under the FATCA agreement on the automatic exchange of data between Italy and USA.

What's next?

The Italian Intermediaries will send the first report to Italian Tax Authority.



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