



Luxembourg newsflash

21 July 2014

BCL Regulation 2014/No.17 of 21 July 2014 concerning the collection of statistical data from financial companies amending BCL Regulation 2011/No.8 of 29 April 2011 concerning the collection of statistical data from companies which grant loans or issue debt securities or derivative financial instruments to affiliates

Background

In accordance with the statute of the European System of Central Banks (“**ESCB**”) and the European Central Bank (“**ECB**”), the ECB is required, with the assistance of national central banks, to collect statistical information necessary to undertake the tasks of the ESCB. Each central bank of the ESCB is therefore required to transmit to the ECB comprehensive and high quality statistical data on its country balance-of-payments and international investment position.

In this context, and in order to implement the ECB’s guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the ECB in the field of balance of payments and international investment position statistics and the international reserves template (“**Guideline ECB 2004**”), the *Banque Centrale du Luxembourg* (“**BCL**”) adopted on 29 April 2011 Regulation 2011/No.8 (“**Regulation 2011/No.8**”) setting out reporting obligations for companies which grant loans or issue debt securities or derivative financial instruments of which the proceeds are used to finance their affiliates directly or indirectly.

Following the release by the ECB of its Guideline ECB/2011/23 of 9 December 2011 on the statistical requirements of the ECB in the fields of external statistics (“**Guideline ECB 2011**”) repealing Guideline ECB 2004, the scope of the obligation to collect statistical information has been broadened considerably, in particular as regards the businesses that have now become subject to reporting statistical obligations. BCL has implemented Guideline ECB 2011 by way of its Regulation 2014/No.17¹ (“**Regulation 2014/No.17**”).

¹ Mémorial A n° 156 of 11 August 2014.

Scope of application

To achieve the extension of the scope of application, Regulation 2014/No.17 has introduced the concept of “financial companies” (as defined below). So far, under Regulation 2011/No.8, only private companies whose main activity consists in the granting of loans or the issuance of debt securities and derivative financial instruments on behalf of their affiliates have been subject to reporting obligations. A financial company for the purposes of Regulation 2014/No.17 is defined as a Luxembourg resident company whose object includes at least one of the following elements:

- investment in any company or undertaking for any kind of investment;
- acquisition by subscription, purchase, exchange or in any other way of securities, shares and other equity investments, bonds, receivables, certificates of deposits and other debt instruments and in general all financial instruments issued by a public or private entity;
- direct or indirect investment in the acquisition and management of a real estate portfolio, patents or other intellectual property rights whatever the nature or the origin;
- borrowing in any form;
- lending funds to its shareholders, subsidiaries, affiliated companies, and/or any other entity

(hereinafter collectively referred to as “**Financial Companies**”).

Reporting obligations

The reporting obligations are twofold and consist of an initial notification and the filing of periodic statistical reports.

1. Initial notification

Any Financial Company whose quarterly balance sheet total exceeds the threshold of € 500 million shall inform the BCL within one month after the above threshold has been exceeded. The initial notification is not subject to specific formal requirements and may take the form of a letter sent to the BCL.

2. Statistical reports

Financial Companies must submit to the BCL the following reports in accordance with a specific calendar as determined by the BCL:

- a quarterly statistical balance sheet (“Report S2.16”);
- a quarterly information on transactions (“Report S2.17”);
- a monthly security-by-security reporting (“Report TPTIBS”).

The above reports must be based on the unconsolidated balance sheet. It should further be noted that the nomenclature of certain formats have been amended and that new breakdowns have been introduced by Regulation 2014/No.17.

Financial Companies shall transmit any reports in a format prescribed by the BCL and further described in the annexes to Regulation 2014/No.17 using one of the electronic transmission

channels required by the BCL (currently the only available channels for transmission are those offered by Cetrel and the Luxembourg Stock Exchange (Fundsquare)). However, the BCL is also willing to accept a new secure transmission channel that is accepted by both the BCL and the reporting agents.

Exemption

In the interests of sound administrative practice and equal treatment, the BCL may, upon receipt of the initial notification, exempt, entirely or partially, one or several reporting agents from their ongoing reporting obligations by way of a reasoned decision.

To date, the BCL has decided only to exempt relevant companies with a total balance sheet of less than € 500 million or its equivalent in a foreign currency. Under Regulation 2014/No.17, this exemption has become automatic.

Also exempted are Financial Companies which are currently subject to data collection obligations that cover the inherent needs for external statistics such as credit institutions, collective investment undertakings, venture capital firms (SICAR), securitisation vehicles and insurance and reinsurance companies.

Entry into force and transitional provisions

The Regulation 2014/No.17 shall enter into force on 1 December 2014.

Relevant companies which have already been subject to the reporting obligations under Regulation 2011/No.8 must provide the first transmission of required information relating to the period from December 2014 to 21 January 2015.

Relevant companies which so far have not been subject to Regulation 2011/No.8 benefit from an additional 6-month period to provide the first reports; their reports from December 2014 to May 2015 must be transmitted by 26 June 2015 at the latest.

Important remark

The reporting obligations imposed by Regulation 2011/No.8 as amended by Regulation 2014/No.17 are without prejudice to other reporting obligations vis-à-vis STATEC to which Luxembourg entities (*i.e.* not only Financial Companies) may be subject.

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