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Banking & Financial Services

Banking union: The Banking union package is based on two pillars, the Single Supervisory Mechanism (**SSM**) and the Single Resolution Mechanism (**SRM**), while the Single Rule Book (**SRB**) is the foundation on which the Banking union is built.

- **SRB:** The SRB consists of a series of texts imposing rules that all EU banks must comply with. The rules are formed by three pieces of legislation:
 - Capital requirements: The so-called CRD IV package is composed of Regulation 575/2013 on prudential requirements for credit institutions and investment firms (**CRR**) and Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (**CRD IV**). The CRD IV package has implemented new global standards for bank capital (the Basel III accords) into EU law.
 - In Luxembourg, bill of law 6660 contemplates the swift implementation of CRD IV into Luxembourg law. Furthermore, in January 2014, the *Commission de Surveillance du Secteur Financier* (CSSF) published Circular 14/582 to announce the publication of the European Bank Authority (EBA) guidelines on retail deposits. This CSSF circular states that the EU Commission is required to adopt a delegated regulation on liquidity ratio which will provide detailed rules on the liquidity assets, cash outflows and cash inflows needed to calculate the precise liquidity coverage requirement.
 - Deposit guarantee scheme: Directive 2014/49/EU of 16 April 2014 on deposit guarantee schemes ensures improved protection for depositors whose banks have failed and confirms that €100,000 is an appropriate level of deposit protection.
 - Recovery and Resolution framework: Directive 2014/59/EU of 15 May 2014 (BRRD) is aimed at establishing a framework for the recovery and resolution of credit institutions and investment firms. The BRRD provides for a complete framework for the crisis management of banks, ensuring the early intervention of supervisors to manage banks' financial difficulties and, in the worst case scenario, making sure that the appropriate tools are in place to manage a crisis effectively (bank resolution).

- **SSM:** The SSM Regulation 1024/2013 of 15 October 2013 has given the European Central Bank (ECB) a supervisory role and powers in respect of credit institutions. The ECB assumed its role on 4 November 2014. In addition, Regulation 468/2014 of the ECB of 16 April 2014 establishes the framework for cooperation within the SSM between the ECB and national competent authorities and with national designated authorities (SSM Framework Regulation) and supplements the SSM Regulation. The SSM Framework provides for detailed procedures for the SSM. Finally, in 2014, the ECB adopted regulations and decisions covering various issues including ECB supervisory fees, the powers of the ECB to impose sanctions, the establishment of a Mediation Panel and the implementation of a separation between the monetary policy and supervision functions of the ECB.
- **The SRM,** which was established by Regulation 806/2014 of 15 July 2014, will apply to banks falling within the scope of the SRM. In the event that banks fail despite stronger supervision, the mechanism will allow bank resolution to be managed effectively through a Single Resolution Board and a Single Resolution Fund financed by the banking sector. The purpose of the SRM is to ensure the orderly resolution of failing banks with minimal costs for taxpayers and a minimal impact on the economy.

MiFID & MiFIR: The new framework comprising Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID II) and Regulation 600/2014 of 15 May 2014 on markets in financial instruments (MiFIR) is aimed at making financial markets more efficient, resilient and transparent. It introduces a market structure which closes loopholes, ensures that trading, wherever appropriate, takes place on regulated platforms and regulates high frequency trading. It improves the transparency and oversight of financial markets and addresses the issue of excessive price volatility on commodity derivatives markets. The new framework will improve conditions for competition in the trading and clearing of financial instruments. The revised MiFID also strengthens the protection of investors by introducing robust organisational and conduct requirements and by strengthening the role of management bodies. In addition, it increases the role and supervisory powers of regulators and establishes powers to prohibit or restrict the marketing and distribution of certain products in well-defined circumstances. The revised MiFID also introduces a minimum common regulatory framework to be applied by Member States when they require third-country firms to establish a branch when they intend to serve retail clients or retail clients who have requested to be treated as professional clients in their jurisdiction. Member States must adopt by 3 July 2016 the measures implementing MiFID II into national law and must apply these provisions from 3 January 2017. [Read more...](#)

In Luxembourg, CSSF Circular 14/585 has implemented the ESMA guidelines on remuneration policies and practices into the Luxembourg regulatory framework. The aim of the ESMA guidelines, which deal with conflicts of interest and inducements, is to promote stronger convergence of the interests of clients with those of investment firms as well as to prevent mis-selling.

Central administration: CSSF Circular 14/597 has updated CSSF Circular 12/552 and provides for new obligations applying to credit institutions, such as the implementation of risk management policies to determine their asset encumbrance.

Prudential approval process for holders of key functions in credit institutions and investment firms:

In February 2014, the CSSF released a prudential procedure supplementing CSSF Circular 12/552. This procedure, which concerns holders of key functions (such as directors, members of the authorised management and persons in charge of internal control functions), describes new prudential requirements in terms of applications for authorisation and notifications. Details are given concerning the procedure to be followed and the information to be provided in terms of the appointment, resignation and dismissal of key functions holders.

Supervisory reporting requirements: CSSF Circular 14/593 is intended to provide an overview of the periodical reporting requirements applicable to credit institutions in Luxembourg from January 2014 onwards as well as the reporting formats and technical specifications. It repeals CSSF Circulars 14/586 and 13/570.

UCITS V directive: The UCITS V directive, published in the Official Journal of the EU on 28 August 2014 must be implemented by Member States at the latest by 18 March 2016. The new directive amends the UCITS regime in order to address issues regarding the depositary function, manager remuneration and administrative sanctions. [Read more...](#)

MiFID II: MiFID II is particularly relevant in the fund industry for investment firms by imposing suitability tests with regard to execution-only transactions when these apply to complex products, which now include structured UCITS and introducing new rules regarding inducement. [Read more...](#) For more information on MiFID, please also refer to our Banking & Financial Services section above.

CSSF circular on depositaries: CSSF Circular 14/587 dated 11 July 2014 is aimed at clarifying the depositary regime. The circular defines the new organisational provisions to be put in place for UCITS depositaries established in Luxembourg as well as for UCITS as regards the missions, obligations and rights in relation to the function of UCITS depositary. Luxembourg depositaries and UCITS must comply with its provisions by 31 December 2015 at the latest. [Read more...](#)

PRIIPs KID regulation: On 9 December 2014, the regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) was published in the Official Journal of the EU. The regulation introduces a new pan-European pre-contractual product disclosure document for PRIIPs and reforms the selling rules for PRIIPs. The regulation will be applicable from 16 December 2016. [Read more...](#)

Money market funds: In September 2013, the EU Commission published a proposal for a regulation on money market funds (MMFs). On the one hand, the proposed regulation introduces specific rules for MMFs that will supplement the rules already contained in the UCITS and AIFM regulations. On the other hand, the proposed regulation concerns MMFs which are established, managed and marketed in the EU with no margin granted to Member States to add any additional requirements in the areas covered by such proposed text. Voting within the ECON committee is expected to take place in the first quarter of 2015.

In December 2014, the CSSF published Circular 14/598 which implemented into Luxembourg law ESMA's "Opinion - Review of the CESR Guidelines on a Common Definition of European Money Market Funds" which was published on 22 August 2014 (ESMA/2014/1103 "ESMA's opinion"). ESMA's opinion or rather review and reconsideration of the former CESR guidelines on a common definition of European Money Market Funds was issued following the revision of the EU Regulation on Credit Agencies (CRA3 Regulation) and amends the former CESR guidelines in view of the assessment of the credit quality of money market instruments by fund managers of short-term money market funds (ST MMFs) and MMFs, whereas ESMA followed the distinction made between ST MMFs and MMFs that was introduced by the CESR guidelines.

ESMA guidelines on ETF and other UCITS issues: ESMA has published a revised version of its guidelines on exchange traded funds (ETF) and other UCITS which was first published in 2012. The main objective of the revised guidelines is to introduce a derogation from the diversification limit of 20% per issuer for all collateral instruments received by a UCITS. This means that UCITS will be allowed to hold as collateral transferable securities and money market instruments issued or guaranteed by a Member State of the European Union, one or more of its local authorities, a third country or a public international body to which one or more Member States belong for up to 100% of their net asset value, provided that the UCITS hold securities from at least six different issues and that the securities from any single issue should not account for more than 30% of the UCITS' net asset value. These revised guidelines have been applicable from 1 October 2014.

EMIR: The reporting of all derivative asset classes commenced on 12 February 2014. According to ESMA's list of central counterparties (CCPs) last updated in November 2014, 14 CCPs have now been authorised to offer services and activities in the European Union in accordance with Regulation (EU) 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR). Following the authorisation of the first CCPs, ESMA has developed draft regulatory technical standards identifying the first OTC derivative asset classes that will be subject to the clearing obligation. Furthermore, in early 2014, the EU Commission adopted regulatory technical standards on direct, substantial and foreseeable effect of contracts within the Union and to prevent the evasion of rules and obligations.

For AIFMD, please refer to the Private Equity section below.

Company law – Capital Markets

Non-financial disclosure by large companies: On 15 November 2014, Directive 2014/95 amending the accounting directive (2013/34/EU) as regards disclosure of non-financial and diversity information by certain large companies and groups was published. The directive entered into force on 5 December 2014 and Member States must implement it into national law by 6 December 2016. The directive main's objective is to increase EU companies' transparency and performance in respect of environmental and social matters. The companies in question (*i.e.* large EU public-interest entities, listed or unlisted) will therefore be required to disclose in their management report relevant and material information on, among other things, policies, outcomes and risks, relevant non-financial key performance indicators concerning environmental aspects, social and employee-related matters, anti-corruption and bribery issues as well as diversity on the boards of directors.

Market abuse EU new rules: The market abuse regulation (Regulation 596/2014, also known as MAR) and the directive on criminal sanctions for insider dealing and market manipulation (2014/57/EU, also known as CSMAD), collectively referred to as MAD II, were published in the Official Journal of the EU in June 2014. MAR, which does not require any implementation by Member States, will apply from 3 July 2016, except for certain provisions which have been in application since 2 July 2014. Member States must implement CSMAD into their national law by 3 July 2016. MAR allows for an improved adaptation of market abuse rules to the modern trading environment and provides a means of tackling market abuse practices more efficiently by reinforcing and/or clarifying the existing framework to protect market integrity and investors. MAR will repeal MAD with a view to ensuring a harmonised set of core rules. [Read more...](#)

Shareholders rights: In April 2014, the EU Commission adopted a proposal for a directive in order to review the so-called "shareholders directive" as regards the encouragement of long-term shareholder engagement. The key points addressed are increasing the engagement of institutional investors and asset managers, regulating directors' remuneration, improving shareholder protection on related party transactions and imposing more regulation on proxy advisors.

Proposal for a directive on single-member companies: In April 2014, the EU Commission adopted a proposal for a directive which is aimed at facilitating the creation of companies with a single shareholder across the EU and which makes it easier for businesses to establish subsidiaries across the EU. Furthermore, the objective is also to allow groups consisting of SMEs and larger companies to set up single-member subsidiaries according to the same main requirements across the EU. Its particular focus is on subsidiaries (*i.e.* companies in which another company holds all or parts of the shares or a majority of the voting rights, or has the right to appoint/remove a majority of the board members, or over which another company has the right to exercise a dominant influence) as this is the most frequently chosen legal form of establishment abroad.

Collection of statistical data from financial companies: In July 2014, the Luxembourg Central Bank (LCB) published Regulation 2014/17 concerning the collection of statistical data from financial companies amending LCB Regulation 2011/8 of 29 April 2011 concerning the collection of statistics from companies which grant loans or issue debt securities or derivative instruments to affiliates. Essentially, Regulation 2014/17 has a broader scope, *i.e.* companies falling within the definition of a financial company are subject to the LCB statistical reporting obligations. However, financial companies, which are already subject to data collection covering the inherent needs with respect to external statistics, such as credit institutions, collective investment undertakings, SICARs, securitisation vehicles and insurance and reinsurance companies, are exempt from LCB reporting obligations. Regulation 2014/17 entered into force on 1 December 2014. [Read more...](#)

AIFMD: In June 2014, the EU Commission published delegated Regulation 694/2014 dated 17 December 2013 supplementing the alternative investment fund managers directive (AIFMD) with respect to regulatory technical standards determining types of alternative investment fund managers (AIFMs). This regulation clarifies when an AIFM is to be considered the manager of open-ended alternative investment fund(s) (AIF(s)) and/or closed-ended AIF(s).

In addition, ESMA has issued a Q&A on the application of the AIFMD intended to provide common supervisory approaches and practices in the application of the AIFMD and its implementing measures. The topics covered include among other things: remuneration rules, notifications of AIFs and AIFMs, reporting to national competent authorities, MiFID services under Article 6(4) of the AIFMD, depositaries, calculation of leverage, delegation and calculation of the value of assets under management. This Q&A was last updated in November 2014.

In Luxembourg, the CSSF has published guidance under Article 42 of the AIFMD as to the notifications to be processed by non-EU AIFMs intending to market their EU and non-EU AIFs to professional investors in Luxembourg. [Read more...](#)

Finally, the CSSF's AIFMD Q&A was last updated in December 2014 and provided, *inter alia*, guidance in respect of notifications under Article 37 concerning the marketing in Luxembourg without a passport of a non-EU AIF by an authorised AIFM established in Luxembourg or in the EU. [Read more...](#)

EU long-term investment funds: Following the publication in June 2013 of a proposal for a regulation on EU long-term investment funds (ELTIFs) to boost long-term investment in the EU economy, a provisional agreement was reached in November 2014. This proposal is aimed at introducing a new investment fund framework designed for investors who wish to invest in companies and projects over the long term. The ELTIF regime relies on three core features: specific product rules covering eligible assets and their diversification, regulatory requirements applicable to entities permitted to manage and market ELTIFs, *i.e.* an authorised AIFM, and alignment between the ELTIFs investment horizon and the redemption expectations of investors. [Read more...](#)

European venture capital funds and European social entrepreneurship funds: In May 2014, the EU Commission requested ESMA to provide technical advice on the implementing measures of Regulations 346/2013 on European Social Entrepreneurship Funds (EuSEF) and 345/2013 on European Venture Capital Funds (EuVECA). ESMA is expected to provide the advice to the Commission by 30 April 2015. The advice will focus on the following issues: types of goods and services, methods of production for goods and services and financial support embodying a social objective, conflicts of interest of EuSEF and EuVECA managers; methods for the measurement of the social impact and the information that EuSEF managers should provide to investors.

New bearer shares regime: A law dated 28 July 2014 introduced a depositary regime regarding bearer shares. The aim of the law is to ensure transparency of bearer shareholdings in Luxembourg companies, *i.e.* public limited companies, partnerships limited by shares and investment funds. The law concerns both bearer shares which are already in existence and those which may be issued after its entry into force. To comply with the law, a depositary, which fulfils certain conditions, must be appointed and bearer shares must be deposited and registered with such depositary. Ownership of bearer shares will be evidenced by a registration in the depositary's register (the mere holding of a bearer share certificate will no longer be sufficient in this respect). With respect to bearer shares which have already been issued, a depositary must be appointed within six months following the entry into force of the law (*i.e.* at the latest by 18 February 2015). Within 18 months following the entry into force of the law, any bearer shares issued must have been deposited with the depositary appointed, if this is not the case the rights attached to them will be suspended and bearer shares not deposited at the conclusion of this 18-month period will be cancelled. [Read more...](#)

Central securities depositories: Regulation 909/2014 of 23 July 2014 on improving securities settlement (CSDs Regulation) is aimed at increasing the safety as well as the efficiency of securities settlement and settlement infrastructures by introducing common securities settlement standards across the EU. The key issues are, *inter alia*, the provision of shorter settlement periods, deterrent settlement penalties measures, common prudential and conduct of business rules for CSDs, increased prudential and supervisory requirements for CSDs and other institutions providing banking services ancillary to securities settlement.

Grand Ducal regulation on advance tax confirmation: In November 2014, the tax administration indicated its intention to maintain a tax ruling practice, albeit within a new legal framework. Indeed, as of 1 January 2015, the procedure for obtaining an Advance Tax Confirmation (ATC) is subject to the Grand Ducal regulation of 23 December 2014. The regulation lays down the requirements that a request for advance tax confirmation (ruling) must fulfil. The regulation establishes a commission for the approval of each ATC. Furthermore, the 2015 Budget law and the law introducing measures for the future (*paquet d'avenir*) of 19 December 2014 set several conditions for the validation of ATCs such as the payment of a fee for each application reviewed by the commission. The application of these stricter conditions is intended to ensure a harmonised interpretation of tax laws and enhanced legal certainty at national and international levels. [Read more...](#)

Law of 25 November 2014 on savings income and automatic exchange of information: The law of 25 November 2014 amending the law of 21 June 2005 and the law of 23 December 2005 on savings taxation implements the automatic exchange of information on savings income under the Savings Directive 2003/48 replacing the existing 30% withholding tax as from 1 January 2015.

4th amendment to the double tax treaty signed between France and Luxembourg: On 5 September 2014, the Luxembourg and French Finance Ministers signed a 4th amendment to the Luxembourg-France Double Tax Treaty dated 1 April 1958. According to the amendment, capital gains derived from the alienation of shares, units or other rights in a company, fiduciary or any other institution or entity whose assets consist of more than 50% of their value, directly or indirectly through one or more companies, fiduciaries, institutions or other entities, of real estate situated in the other contracting State are taxable only in that other State. The same treatment applies to rights on said real estate. The new provisions may possibly be applied as from 1 January 2015 at the earliest. [Read more...](#)

The new EU parent-subsidiary directive 2014/86/EU: The Council Directive 2011/96/EU of 30 November 2011 (the “Directive”) eliminates double taxation between group companies in the European Union by exempting under certain conditions dividends and other profit distributions paid by subsidiaries to their parent companies from withholding tax and exempting such income at the level of the parent company. However, the Directive was amended on 8 July 2014 by Council Directive 2014/86/EU in order to avoid situations of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States. The amending directive has not yet been implemented into Luxembourg law. [Read more...](#)

Luxembourg concludes intergovernmental agreement with the US on FATCA: On 28 March 2014, the governments of Luxembourg and the United States signed an intergovernmental agreement (“IGA”) on the implementation of the Foreign Account Tax Compliance Act (“FATCA”) in Luxembourg.

The IGA is aimed at facilitating the exchange of information on Specified US Persons, as defined by FATCA, between Luxembourg and the United States, while at the same time easing the compliance obligations for, amongst others, Luxembourg financial institutions by specifying local exemptions and classifications deemed compliant with no reporting duties. The IGA has not yet been implemented into Luxembourg law. [Read more...](#)

Employment Law

Disloyal activity of former employees: The Luxembourg Court of Appeal has made two rulings on post-contractual obligations incumbent on former employees with respect to disloyal activity. The lesson learnt from the Court’s rulings is that the mere obligation of loyalty resulting from the Civil Code is not sufficient to assert the subject matter jurisdiction of labour courts in relation to events occurring after the termination of the contractual relation given that this obligation is terminated with the employment contract in question, in the absence of contractual provisions to the contrary. Employers must specify the post-contractual obligations applicable to their employees in the employment contract in order to avoid any discussions with regard to the subject matter jurisdiction of the court competent to hear the dispute in the case of litigation. [Read more...](#)

Staff representative protected against dismissal: Under Luxembourg law, staff representatives are protected against dismissal. In a decision rendered on 6 November 2014, the Court of appeal overruled its previous case law and stated that the absence of the prior approval of the works council or prior authorisation of the Labour tribunal was constitutive of a substantive irregularity which rendered null and void the dismissal notified by the employer. To the best of our knowledge, an appeal before the Upper Court (*Cour de Cassation*) will be lodged against the decision rendered on 6 November 2014. [Read more...](#)

No salary index revision in 2014: The remuneration of employees working on Luxembourg territory is subject to an automatic indexation mechanism.

Although no precise date has been specified yet, it has been announced that the next index increase is expected to occur in or around April-May 2015. This will imply a mandatory increase in salaries by 2.5% as of the date at which the new salary index comes into force.

Introduction of age-management tools: On 3 April 2014, the government proposed a bill of law to enhance age management within companies. The bill of law provides for the introduction of new provisions within the Labour Code which will require companies with over 150 employees to establish an age-management plan aimed at keeping older employees in employment. The bill of law proposes a list of possible tools to be introduced into the plan (e.g. recruitment of elderly employees, training, implementation of health prevention measures, measures relating to the end of working life and to the transition from work to retirement, etc.). Furthermore, it is proposed that the employment contract will not terminate automatically by operation of the law when an employee reaches the age of 65 or receives a state old-age pension if the employee and the employer agree to continue the working relationship on a part-time basis.

Insurance & Reinsurance Law

Custody of transferable securities and liquid assets: Circular letter 14/08 of the *Commissariat aux assurances* (CAA) amending Circular letter 09/7 (relating to the custody of transferable securities and liquid assets used as assets underlying the technical provisions of insurance undertakings and pension funds subject to the prudential supervision of the CAA) has authorised the use of custodian banks situated outside of the EU provided certain conditions are met.

Licensing of insurance and reinsurance intermediaries and professionals of the insurance sector (PSAs): A Grand Ducal Regulation dated 8 October 2014 specifies the conditions under which a license may be issued to insurance and reinsurance intermediaries. It further determines the minimum amount of professional liability coverage applicable to Luxembourg PSAs.

Dispute Resolution

Madoff fraud: In the context of the Madoff fraud, an important judgment was handed down by the Luxembourg Court of Appeal on 15 July 2014 in relation to the Sicav LUXALPHA. The appeal judgment largely confirms the legal developments of the first instance judgment of the District Court dated 4 March 2010. It is inter alia confirmed that shareholders of a Luxembourg UCITS have no direct claim against the depositary bank on the basis of Article 36 of the Law of 20 December 2002 on undertakings for collective investment. [Read more...](#)

Theft of intangible assets: The unauthorised downloading of computer data and the photocopying of documents can be considered as theft under Article 461 of the Luxembourg Criminal Code. [Read more...](#)

CSSF alternative resolution of disputes: CSSF Circular 14/589 was published in June to provide further details in respect of Regulation 13-02 relating to out-of-court dispute settlements. CSSF Circular 14/589 clarifies the implementation of such regulation by providing details with regard to the procedure for complaints handling by professionals as well as with regard to the role of the professional management in charge of the complaints.

Cross-border debt recovery in civil and commercial matters: EU Regulation 655/2014 of 15 May 2014 establishing a European account preservation order procedure to facilitate cross-border debt recovery in civil and commercial matters introduces measures at EU level to prevent the disappearance of assets before the enforcement of a claim and to put forward appropriate proposals for improving the efficiency of the enforcement of judgments in the EU regarding bank accounts and debtors' assets. Creditors can guarantee their claims via a preservation order issued in a Member State. Such preservation order will be recognised in the other Member States without any special procedure being required and shall be enforceable in the other Member States without any declaration of enforceability.



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