

PRESS RELEASE 15/36

EMIR QUESTIONNAIRE - TO ALL LUXEMBOURG INVESTMENT VEHICLES AND LUXEMBOURG MANAGERS

In September 2014, the CSSF addressed a questionnaire on the Regulation (EU) n°648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") to a sample of entities subject to the prudential supervision of the CSSF ("sample entities").

The aim of this questionnaire was to assess the compliance of those entities with EMIR.

Main conclusions drawn from the responses to the questionnaire

The review of the responses to the questionnaire revealed that management companies and AIFMs¹ have to generally improve their processes in order to fully comply with their obligations under EMIR.

The CSSF specifically notes the following points

- The sample entities usually estimate that they comply with their reporting obligation under EMIR in a satisfactory manner. However, based on information received from trade repositories, a significant number of reports are rejected, meaning that the reporting of derivative contracts to the trade depositories is not correctly done.
- The sample entities generally wrongly consider that derivative contracts concluded for hedging purposes are not covered by EMIR. However, EMIR applies to derivative contracts concluded for investment purposes as well as for hedging purposes.
- The sample entities have generally not put in place an adequate oversight in case of delegation, taking into account their obligations in the context of delegation under EMIR. The CSSF would like to remind that, regardless of any delegation, entities subject to EMIR remain ultimately responsible of their obligations under EMIR and this also in the event of delegation.

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

Next step

Beside the above areas of improvement, the responses to the questionnaire indicate that most of the sample entities are doing their best to manage their obligations under EMIR. However, some of the sample entities are, according to their answers, not meeting their obligations under EMIR in a satisfactory manner. The CSSF will contact those potentially problematic sample entities before the end of this year. Within the same period, the CSSF will further contact certain entities with a significant number of rejection reports at trade repositories. Entities that are not contacted by the CSSF within this timeframe, are not considered by the CSSF at high risk with respect to their obligations under EMIR.

Luxembourg, 11 August 2015

¹ AIFMs : Alternative Investment Fund Managers