DOMEX :

REGULATORY
& COMPLIANCE

REGWATCH SQUARE MANAGEMENT

REGULATORY NEWSLETTER

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PRESENTATION

Square Management offers a quarterly regulatory watch newsletter, providing you with an overview of the latest updates related to compliance and regulatory requirements. RegWatch covers the following topics :

INSURANCE 3-4

AML - FT 5

TAXATION - ACCOUNTING 6

DATA PRIVACY / CYBER SECURITY 7-8

SUSTAINABLE FINANCE 9-11

REPORTING / REGULATORY 12

INSURANCE

NEW CONTROL NORMS FOR SOLVA 2

To meet the requirements of Pillar 3 of the Solvency II Directive, relating to reporting obligations to their supervisory authorities, Regulation (EU) 2023/894 presents the new implementing technical standards to be applied by insurance and reinsurance.

This regulation modifies the existing QRT (Quantitative Reporting Templates), and introduces new models to be used for the communication of the information necessary for their control. Regulation 2023/895 presents the new procedures, formats and models to be used by insurance and reinsurance companies for the publication of their report on their solvency and financial situation.

We find as main changes:

- In-depth revision of the declaration models provided for in implementing regulation (EU) 2015/2450 to take into account emerging risks and changes in insurers' practices. We thus find the introduction of cyber underwriting risk
- Integration of climate risk in order to give an overview of the proportion of investments exposed to transition risks and physical risks related to climate change.
- New declaration models on premiums, claims and expenses for cross-border activities, taking into account the place of underwriting and the location of the risk, in order to guarantee equal treatment regardless of place of residence and nationality
- New model on non-life commitments allowing complete information relating to non-life products according to their category of attachment
- Risk-based reporting specifics for captive insurance and reinsurance companies
- New models to help supervisors assess partial and full internal model information

These rules will apply starting December 31st 2023.

For further information : Official Journal of the European Union - Official Journal of the European Union

INSURANCE PRODUCTS NEWS

During the last quarter, there was a wealth of insurance news. Thus, various publications have emerged regarding the distribution, transparency and termination of products.

NETWORK DISTRIBUTION OF INSURANCE PRODUCTS:

On April 3, 2023, the ACPR communicated its feedback following checks carried out with distributors (insurers, brokers) operating networks. It highlights the existence of shortcomings for professionals in the insurance sector and identifies three points for improvement:

- Selection: the regulator points out here the need to make a better selection of distribution partners, in particular to prevent certain risks of non-compliance.
- Monitoring: the requirement to be equipped with suitable subscription tools as well as monitoring of their use by the distribution network.
- Support: finally, the ACPR details the need to adopt an effective sales quality control system.

MORE TRANSPARENCY FOR PER AND LIFE INSURANCE:

Four years after the creation of the Retirement Savings Plan (PER), and after an initial initiative in favor of the transparency of costs in 2022, professionals have agreed to strengthen the transparency of costs for the PER and life insurance at the regard to consumers. From July 1, the information of savers has been reinforced. Insurers must now include in the fee information the indicator of the risk level of each unit of account, as well as the classification of the unit of account among eight categories of funds. These elements allow a better comparability of the offers of the insurers by admitting a greater level of detail.

EFFECTIVE DATE OF THE ONLINE TERMINATION MECHANISM:

Since June 1, 2023, it has been possible to terminate an insurance contract that can be concluded electronically online. The cumbersome and restrictive procedure known to the insured is then simplified. A decree of May 31, 2023 specifies the conditions for online termination, as well as the terms of its implementation:

- Access to online termination
- Information of the consumer on the conditions of termination
- Terminaison process

For further information : Service Public - Légifrance – Ministry of Economy, Finance, Industrial and Digital Sovereignty

AML - FT

EU COUNCIL ADOPTS NEW TRACEABILITY RULES FOR VIRTUAL ASSET TRANSFERS

On May 16th, 2023, the Council adopted updated rules extending the scope of the rules relating to transfers of funds, to virtual assets. This regulation is part of the set of legislative proposals aimed at strengthening the fight against money laundering and the financing of terrorism presented by the Commission in July 2021.

The formal adoption of this proposal in May 2023 being the last step of the legislative process. The EU wants to have a regulatory framework that meets the highest international standards for virtual asset trading. It aligns with the requirements of the Financial Action Task Force (FATF) regarding virtual asset service providers, including the obligation for them to accompany transfers of funds, information relating to the originator order and to the beneficiary of the transfer. The objective is to strengthen and harmonize the fight against money laundering, and to facilitate the traceability of transfers of virtual assets. The latter, used for illegal purposes, allowed the circumvention of international sanctions, the financing of organized crime and terrorist activities.

The new European regulation hinders this illicit use by an obligation of transparency on the transfers. The new rules impose the obligation on virtual asset service providers to collect, store and share information on the originator and the beneficiary of transfers, without conditions as to the amount of the transactions. This traceability on virtual assets will make it possible to integrate the monitoring of these transactions into the AML systems and tools in place within the first line of defense of financial institutions in Europe. It will make it possible to detect suspicious transactions, analyze them and alert second-line compliance services and the competent authorities.

This regulation strengthens the integrity, compliance, ethics and stability of the virtual asset transfer system in Europe; by strengthening supervision and transparency in this segment, it reduces the attractiveness and windfall effect of investing funds of illegal origin in these assets. It ensures harmonization of anti-money laundering legislation, and strengthens investor confidence in the virtual asset segment, in the capital market and in the European financial system.

For further information : European Council – European Parliament

TAXATION - ACCOUNTING

GREEN LIGHT FOR INSURANCE AND REINSURANCE CAPTIVES

Published in the Official Journal on June 9th, an accounting decree marks the emergence of a regulatory framework favorable to the development of captive insurance or reinsurance companies. Set up by commercial or industrial companies, captives are insurance companies that exclusively cover the risks of their parent entity or other entities belonging to the same group.

The decree specifies the tax framework for the resilience provision, i.e., the amount of money that must be mobilized to create a captive and have it approved by the ACPR. An entity will have to mobilize at least 1.3 million euros to create a reinsurance captive, this amount corresponding to the floor of the capital required to cover the reinsurance commitments made by the captive.

Each year, the captive may fund the resilience provision up to 90% of the amount of the profit resulting from the sum of the profits made by the captive on the risks it insures, in accordance with the calculation and provisioning rules specific to each category. of risks. In addition, the overall amount that can be provisioned may not exceed 10 times the average amount over the last 3 years of the minimum capital requirement (MCR) for setting up the captive, calculated in accordance with Solvency 2 regulations.

The captive therefore has the possibility of building up substantial reserves that will enable it to meet its insurance commitments in the event of a significant loss experience.

For tax purposes, the resilience provision set up each year may be deducted from the taxable profit. If the captive shows a negative technical result for a fiscal year, the provision will be used to offset this technical result. If at the end of 15 years the resilience provision has not been used to offset a negative technical result, it is reintegrated into taxable profits in the 16th year following its recognition.

For further information: Légifrance

DATA PRIVACY / CYBER SECURITY

CNIL PUBLISHES OF ITS ACTION PLAN RELATING TO ARTIFICIAL INTELLIGENCE

The CNIL is developing an action plan for the deployment of artificial intelligence (AI) systems that respect the privacy of individuals in response to recent news on AI, in particular so-called generative AI such as ChatGPT.

The CNIL has been undertaking work for several years to anticipate and deal with the problems that AI may raise. He plans to expand his work to augmented cameras in 2023 and expand to generative AI, large language models, and derivative applications (especially chatbots).

Its action plan is based on 4 components:

- Understand how AI systems work and how they impact people;
- Enable and oversee the development of an AI that respects privacy;
- Federate and support players in the innovative AI ecosystem in France and Europe;
- Audit and control AI systems and protect people.

In addition, this work will make it possible to prepare for the entry into application of the draft European AI regulation, currently under discussion.

The CNIL tries to respond to the challenges posed by artificial intelligence, in all its manifestations (classification, prediction, content generation, etc.). These questions will be at the center of its new AI service, which will also assist other CNIL divisions dealing with the use of these algorithms in various contexts.

The regulation of AI is a key area of the CNIL's activities because it responds to concerns about the preservation of freedoms, the acceleration of AI and recent developments in generative AI.

For further information : CNIL

ESMA LAUNCHES DATA STRATEGY FOR THE NEXT FIVE YEARS

June 16th 2023: ESMA[1], the EU's financial markets supervisor and regulator, released its 2023–2028 data strategy.

ESMA will seek to promote the adoption of innovative data-related technologies, lower reporting compliance costs for regulated businesses, enable the efficient use of data at the EU and national levels, and increase public access to data during the next five years.

In order to clearly articulate ESMA's data vision and objectives, the ESMA Data Strategy 2023–2028 first lays out the internal and external motives for the report. It then goes into detail on how ESMA plans to expand its data capabilities to guarantee the timely and successful completion of the tasks and projects specified. And to achieve its strategic objectives:

- enhance ESMA's role as data hub, focusing on improved data, information accessibility, interoperability and usability, along with data harmonization and standardization;
- contribute to providing relevant, useful and understandable information to the market in machine-readable form, and facilitate its use, including by retail investors;
- enable cutting-edge, smart and effective data-driven supervision;
- pursue thought leadership and collaboration on data standards, technologies, and reporting innovations;
- promote efficiency, transparency, and cooperation in data policy, and reduce reporting burdens; and
- systematically use data for evidence-based policy development, supervision and risk assessment.

Future Steps ESMA has already begun expanding its data capabilities and putting some of the first anticipated deliverables into practice, and it will keep doing so. This document, including the implementation plan section, is intended to be reviewed over time when new legal, technological, or other relevant sorts of developments necessitate their attention in a way that would necessitate alterations to the ESMA Data Strategy 2023–2028.

For further information: ESMA

1 : European Securities and Markets Authority

SUSTAINABLE FINANCE

THE AMF PUBLISHES THE SUMMARY OF SPOT CONTROLS ON COMPLIANCE WITH CONTRACTUAL EXTRA-FINANCIAL COMMITMENTS OF PMC FUNDS

Among its monitoring and surveillance missions, the AMF conducts controls and in particular controls called SPOT (Supervision of Operational and Thematic Practices). These controls are carried out more quickly than traditional controls carried out by the AMF and relate to specific topics, which can be defined beforehand in accordance with the annual priorities.

In the continuity of the SPOT checks carried out by the AMF on the SRI management system of portfolio management companies (SGP) and the integration of ESG criteria, the AMF published in June 2023 the summary of its SPOT control on compliance with the contractual extra-financial commitments of the funds managed by the AMCs. Following the receipt by these AMCs of a questionnaire covering various ESG/SRI topics, the AMF chose a panel of five AMCs in order to carry out an in-depth check on the systems related to ESG/SRI. This summary highlights the good and bad practices implemented within these AMCs.

Thus, the AMF carried out a review of the organization and resources implemented in terms of ESG/SRI, ESG management and rating methodologies, the investment and divestment system for ESG/SRI funds, information provided in relation to contractual extra-financial commitments and the compliance and internal control system relating to extra-financial commitments. Following the review of these five major themes, the AMF presents a system which; in the years to come; will have to be consolidated because it remains too weak in certain areas.

Through this summary, the AMF presents a favorable organizational and human framework for the panel of AMCs that were reviewed. Nevertheless, it notes several points for improvement that AMCs will have to take into account for the months and years to come, particularly with regard to the consistency of the initial investment universes with the investment policy of the funds, but also of the compliance and internal control.

Consequently, the AMF shows us through this control that while major changes have indeed taken place within AMCs in order to integrate the new obligations emanating from regulations related to extra-financial commitments, internal processes still have a long way to go. to go in terms of sustainability.

For further information: AMF

CSRD : EURO COMMISSION PUBLISHES NEW ESRS NORMS

New information has emerged in the context of the Corporate Sustainability Reporting Directive (CSRD). Stalled since mid-April, the CSRD (which as a reminder, aims to make companies more responsible by requiring them to disclose their impact on people and the planet) is finally set to move forward.

The European Commission (EC) launched on June 9th 2023 a 4-week period of public feedback on the draft Delegated Act for the first set of European Sustainability Reporting Standards (ESRS). The draft act in itself is somehow different from the initial proposals put forth by the European Financial Reporting Advisory Group (EFRAG) in November 2022. As a reminder, the EFRAG was mandated by the EC to develop sustainability standards (ESRS) as a basis for the CSRD and had developed a set of 12 general standards for all companies.

In this Delegated Act, important modifications have been made which defines the exact content of the information to be provided by companies.

- The first notable change in the draft act is the introduction of a «materiality analysis» requirement. While the text reaffirms the mandatory nature of these standards, it conditions compliance on a preliminary materiality analysis. In other words, companies will disclose information if they consider an indicator to be relevant. For example, if air pollution can impact their performance or if the company's activities can affect air pollution. If either or both of these questions are answered positively, the company must disclose the information. Otherwise, they may abstain.
- The draft act also removes the obligation for companies to publish biodiversity preservation and restoration plans by 2030. Additionally, it introduces a new threshold, allowing companies with fewer than 750 employees additional time (one to two years) to disclose greenhouse gas emissions from their subcontractors.

As the publication of this draft act was delayed due to extensive debates in Europe, the consultation process is already revealing differences of opinion between certain companies on one hand and the advocates of a sustainable economy on the other hand.

The Commission plans to adopt the final version of the text by the end of August 2023. Then, the European Parliament and Council will have two months to review the text and decide whether or not to veto it.

To be continued....

For further information: European Commission – Les Echos

EU PUBLISHES NEW MEASURES FOR ITS SUSTAINABLE FINANCE FRAMEWORK

The European Commission has proposed on June 13, 2023 a new package of measures to strengthen the EU sustainable finance framework.

The package includes:

1) ADDITIONS TO THE EU TAXONOMY

The EU Taxonomy is a crucial tool for directing investments towards green activities. The Commission has approved new criteria for economic activities that contribute to non-climate environmental objectives such as water and marine resource sustainability, circular economy transition, pollution prevention, and biodiversity protection. Amendments to the EU Taxonomy Climate Delegated Act have also been adopted to expand on activities related to climate change mitigation and adaptation.

2) PROPOSED REGULATIONS FOR ESG RATING PROVIDERS

The Commission is proposing a regulation to improve reliability and transparency in the ESG ratings market. New organizational principles and rules on conflict-of-interest prevention will enhance the integrity of ESG rating providers' operations. The proposal also requires that ESG rating providers be authorized and supervised by the European Securities and Markets Authority (ESMA), ensuring the reliability of their services and protecting investors and market integrity.

3) INCREASE USABILITY OF THE SUSTAINABLE FINANCE FRAMEWORK

The Commission has developed targeted measures and initiatives to address implementation issues and has published the EU Taxonomy User Guide to help non-experts navigate the framework.

4) RECOMMENDATIONS ON TRANSITION FINANCE

The package focuses on facilitating transition finance for companies at different stages of sustainability, including small and medium-sized enterprises. It provides guidance and practical examples for companies and the financial sector and aims to help companies use the tools of the sustainable finance framework to channel investments into the transition.

The EU Taxonomy Delegated Acts and the proposal for regulation of ESG ratings providers will undergo scrutiny by the European Parliament and Council.

For further information: European Commission

REPORTING / REGULATORY

IFRS: NEW TAX RELIEF FOR CORPORATION TAX

Following the publication by the OECD of the second pillar rules in December 2021, the IASB has introduced new amendments concerning the temporary relief of the accounting for corporation taxes (IAS 12 standard).

The OECD initiative aims to ensure that large multinational companies are subject to a minimum tax rate of 15%.

As such, the IASB has introduced two new accounting rules concerning the recognition of deferred taxes, namely:

- the temporary exception; which means that, for the national jurisdictions applying these new tax rules, the recognition of deferred taxes will be temporarily suspended; and this to ensure the consistency of the financial statements while facilitating the implementation of these rules;
- targeted disclosure requirements; which aim to help investors better understand a company's income tax exposure arising from the reform, in particular before the entry into force of the legislation implementing these rules.

Companies can benefit from the temporary exception immediately, but are required to provide the information to investors for annual declarations as from January 1, 2023.

The second pillar rules provide governments with a framework to address the tax challenges arising from the digitalization of the global economy under the OECD/G20 framework agreement.

The new second pillar rules will encourage countries to incorporate the GloBE rules into their national legislation. These GloBE rules provide a coordinated taxation system aimed to ensure that large multinational companies (i.e., with revenue above EUR 750 million) pay a minimum level of tax of 15% on income from each of the jurisdictions in which they operate.

Thus, these rules create a "complementary tax" to be applied on profits in any jurisdiction whenever the effective tax rate, determined on a jurisdictional basis, is lower than the minimum rate of 15%.

For further information: IFRS - OCDE

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