

WILDGEN NEWSLETTER

September 2016

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LUXEMBOURG LAW FIRM

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SEPTEMBER 2016

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ABOUT WILDGEN

Since 1923, WILDGEN, Partners in Law has been at the heart of law practice in Luxembourg. It is today one of the best known and well-respected law firms in Luxembourg, possessing a strong track record and continuing to offer sound technical expertise.

As a full-service business law firm, we represent Fortune 500 companies and a wide variety of closely and publicly held corporations, partnerships, emerging businesses and individuals, investment funds, private equity houses as well as leading banking and financial institutions and leading insurance and reinsurance service providers.

We enjoy a solid reputation in a wide range of practice areas:

Administrative Law, Aviation & Maritime, Banking & Finance, Capital Markets, Corporate Finance, Corporate Law, Employment and Pensions, Energy, Insurance & Reinsurance, Intellectual Property & Telecommunications, Media and Technologies, Investment Funds, Islamic Finance, Litigation and Arbitration, Mergers & Acquisitions, Private Equity and Venture Capital, Restructuring & Insolvency, Real Estate, Securitisation, Tax.

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NEW RULES APPLICABLE TO THE MARKET ABUSE FRAMEWORK

Matthias Schmidt (Senior Associate) - September 2016



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On 3 July 2016, Regulation (EU) No 596/2014 of 16 April 2014 on market abuse (the “**Market Abuse Regulation**”) became directly applicable in Luxembourg. The aim of the Market Abuse Regulation is to provide for harmonised and strengthened rules across the European Union regarding the prevention, detection and sanctioning of market abuse by replacing the existing legal framework set out in Directive 2003/6/EC, as transposed into Luxembourg law by the law of 9 May 2006 on market abuse (the “**Market Abuse Law**”) and by enhancing market integrity and investor protection. In this context, the Luxembourg Minister of Finance introduced the bill of law No 7022 into the legislative process on 29 July 2016 (the “**Bill of Law**”), the objective of which is to ensure the proper application of the Market Abuse Regulation and the transposition into Luxembourg law of Directive 2014/57/EU of 16 April 2014, on criminal sanctions for market abuse (the “**Market Abuse Directive II**”).

Although the Bill of Law foresees the abolishment of the Market Abuse Law, the legal frameworks of both the Market Abuse Regulation and of the Market Abuse Law should be simultaneously applicable until the latter is formally repealed. However, in the event of a conflict between the Market Abuse Regulation and the Market Abuse Law, the provisions of the Market Abuse Regulation prevail. The Commission de Surveillance du Secteur Financier (“CSSF”) has prepared a substitution table indicating the relevant provisions of the Market Abuse Regulation and the Market Abuse Law¹.

I. MARKET ABUSE REGULATION

While the Market Abuse Regulation mainly contains provisions clarifying and detailing the existing legal framework, it also introduces some key changes. Those key changes include extending the scope of the instruments subject to the market abuse

¹ http://www.cssf.lu/fileadmin/files/MAF/Abus_de_marche/Substitution_table.pdf

regime, for example financial instruments admitted to trading on unregulated markets such as multilateral trading facilities (MTF) - in Luxembourg the Euro MTF - and other organised trading facilities (OTF) in a Member State.

Issuers having their financial instruments listed on the Euro MTF are therefore now required to comply with all reporting and disclosure obligations, in an attempt to prevent market abuse in the form of insider dealing and market manipulation, being (i) the immediate² disclosure of “inside information”³, (ii) the drawing-up and constant updating of an ‘insider list’ under a specific format⁴ and (iii) the notification of transactions exceeding EUR 5,000 per calendar year carried out by such persons who effect managerial responsibilities of an issuer (e.g., directors, senior officers...) along with persons closely associated with them, relating to financial instruments of that issuer⁵. The Luxembourg Stock Exchange recently published a list of frequently asked questions regarding the impact of the Market Abuse Regulation on issuers listing on the Luxembourg Stock Exchange Markets, their obligations to comply and the recommendations given by the Luxembourg Stock Exchange in this respect. This information is available on the Luxembourg Stock Exchange website. (...)

[The full article can be read on our website.](#)

² Except where it is in the issuer’s legitimate interests to have the inside information disclosure postponed, provided that such a postponement is not likely to mislead the public and that the issuer is able to ensure the confidentiality of this information – see article 17.4 of the Market Abuse Regulation.

³ This information consists, in particular, of “information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments”– see article 7.1 (a) of the Market Abuse Regulation.

⁴ Such lists should contain information on: (i) the identity of the persons having access to inside information, (ii) the reason for having those persons included in these lists, (iii) the date and time of day when those persons had access to inside information and (iv) the date on which these lists were established or updated – see article 18 of the Market Abuse Regulation.

⁵ On this matter, the Commission Delegated Regulation (EU) 1016/522 dated 17 December 2015 provides (non-exhaustive) examples of transactions that are to be notified under the scope of this obligation.

THE MORTGAGE CREDIT DIRECTIVE: BILL 7025 SUBMITTED TO THE LUXEMBOURG PARLIAMENT

*Michel Bulach (Partner), Charles Krier (Director), Hawa Mahamoud (Junior Associate) -
September 2016*



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Following the entry into force of the Mortgage Credit Directive (“MCD”)¹ on 21 March 2014², bill 7025 transposing the MCD and amending the Luxembourg Consumer Code was submitted to the Luxembourg Parliament on 29 July 2016 by Luxembourg’s Minister of Finance Pierre Gramegna.

Bill 7025 is composed of a single article that amends the Luxembourg Consumer Code by adding a new *Chapter 6* named *Mortgage Credit Agreements* (new *articles L.226-1* to *L.226-45* of the Consumer Code).

After having outlined the rather considerable number of discretionary matters contained in the MCD according to which Member States retain discretion as to whether or not and how to apply certain of its provisions³, the present publication aims at summarizing the transposition into Luxembourg law of the main provisions of the MCD. Overall, it can be noted that Luxembourg has chosen a rather pragmatic way to implement the MCD into national legislation, by not retaining a number of options provided for in the MCD.

PRE-CONTRACTUAL REQUIREMENTS AND REFLECTION PERIOD:

Consumers must be given personalized information without undue delay (after having supplied information on their needs, financial situation and preferences) and in good time before they are bound

¹ Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property

² For more information: <http://www.wildgen.lu/publications/articles/mortgage-credit-directive-luxembourgs-retail-bankers>

³ For more information: <http://www.wildgen.lu/publications/articles/mortgage-credit-directive-luxembourgs-retail-bankers>

by any credit agreement or offer. Such information must be given through the European Standardized Information Sheet (ESIS), which will be introduced in Luxembourg by means of a Grand-Ducal Regulation on the basis of Annex II of the MCD.

In this regard, the MCD has given flexibility to Member States to provide a period of at least seven days to the consumer either in the form of a reflection period beforehand, or in the form of a withdrawal period after its commitment, or a combination of the two.

According to the new article L.226-8 of the Luxembourg Consumer Code, consumers will be allowed a reflection period of 14 calendar days to compare offers available on the markets, assess their implications and make an informed decision. In fact, it appears from the commentaries on bill 7025 that “taking into account the importance of the formalities surrounding the conclusion of a mortgage credit agreement, notably the notarial procedure related to such an agreement, it is impracticable to provide a withdrawal right after the conclusion of the agreement”. (...)

[The full article can be read on our website.](#)

EU NEW DIRECTIVE ON THE PROTECTION OF TRADE SECRETS

Emmanuelle Ragot (Partner), Florence Delille (Senior Associate), Léa Bidani (Junior Associate) - August 2016



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Launched in 2013 by the European Commission and after two years of debate and revision and with the participation of the Commission's as a facilitator, the negotiating teams of the European Parliament and Council reached a preliminary agreement on the text of the directive on trade secrets (the "Directive") and a revised version of the Directive was published in December 2015.

The Directive dated 8 June 2016⁴, published in the Official Journal of the European Union on 15 June 2016⁵ will entry in force on 5 July 2016.



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Member States will have a maximum of two years to adopt and incorporate the new provisions into national law, i.e. until 9 June 2018 at the latest. The Directive will be binding all Member States, required to enact domestic legislation with certain minimum requirements of protection for trade secrets.

The Directive lays down common measures against the unlawful acquisition, use and disclosure of trade secrets and further aims at ensuring a smooth functioning of the internal market. The Directive provides measures preventing the disclosure of information, in order to protect the confidentiality of trade secrets. (...)

[The full article can be read on our website.](#)



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⁴ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJEU 15.06.2016, L157/1

⁵ OJEU L157/1 of 15 June 2016

ENTREPRENEURS AND TRADE SECRETS IN 5 POINTS

Jackye Elombo (Partner) - September 2016



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Far from the controversy raised by the Luxleaks and Panama Papers scandals and the acquisition of confidential information, the key to success for entrepreneurs can in reality depend on their secrets; the great idea they had one day in the bath, the secret ingredient in a recipe revealed by their grandmother, or long years of research leading to the creation of the perfect product.

The concept of “trade secrets” and their protection or infringement depends on whether one is an employer or an employee. On the entrepreneur-employer’s side, in their relationship with their employees, trade secrets are disclosed, shared, created or developed in a context of mutual trust which is an essential part of the employment relationship, in order for the business to prosper. On the employee’s side, trade secrets may be the experience acquired throughout the employment relationship or their technical skills, i.e. know-how. The European parliament recently adopted a new directive which seeks to protect trade secrets. The directive defines trade secrets and also sets limits on the protection of those secrets, particularly as regards employees. The directive therefore does not seek to prevent the lawful use of know-how acquired throughout an employee’s career.

So what do the provisions of this directive mean for entrepreneurs in practice? Here we present an analysis of this question, broken down into 5 points.

1. Not everything is a trade secret
2. The holder of the secret is not necessarily the creator of the secret
3. Protection of secrets concerns only the unlawful nature of the appropriation, use or disclosure
4. Infringement of trade secrecy is not always sanctioned
5. Protection of trade secrets cannot take precedence over the freedom to work or to conduct a business (...)

[The full article can be read on our website.](#)

WILDGEN'S NEWS

SEPTEMBER 2016

WILDGEN ELECTS FRANÇOIS BROUXEL AS MANAGING PARTNER



Luxembourg Wildgen law firm is pleased to announce the appointment of François Brouxel to the position of Managing Partner, succeeding Pierre Metzler.

Active for more than 25 years in the Luxembourg legal sector, François Brouxel joined Wildgen in 1992 and quickly became a partner. Currently leading the Corporate Practice Group, Brouxel will now focus on the

direction and strategy of Wildgen and become its manager and spokesman.

In his new role, Brouxel can count on the support of Pierre Metzler, the previous Managing Partner, who will now take on the role of Senior Partner, as well as all the partners and managers of the firm.

About his election, Brouxel says, 'I am honoured by the confidence shown by my partners. Four years after the creation of the Managing Partner role, we notice a positive impact for the firm both in terms of its management and development. We are today, more than ever, a key innovative player in the Luxembourg legal sector. I will of course ensure continuity of this success and bring my own experience.'

'I am pleased that François succeeds me. His election opens up opportunities for innovation and growth for the firm. All the partners, starting with me, are confident in the ability of François to accompany and support the strategic development of Wildgen', says Metzler.

Should you have any question, or want to congratulate François, do not hesitate to contact him. He will be delighted to share with you about his projects as the new Wildgen Managing Partner!

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BROCHURES

AUGUST 2016

TABLEAU COMPARATIF (VERSION CONSOLIDÉE) 



Wildgen propose une version consolidée du tableau comparatif des anciennes et nouvelles dispositions du Code civil, de la loi concernant les sociétés commerciales et de la loi RCS. Ce tableau reprend l'intégralité de la loi modifiée du 10 août 1915 concernant les sociétés commerciales.

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JULY 2016

THE REFORM OF THE LUXEMBOURG COMPANY LAW REGIME 

The Reform of the Luxembourg
Company Law Regime



On July 13, 2016 the Luxembourg parliament adopted the bill of law 5730 modernising and amending the law of August 10, 1915 on commercial companies, the Civil Code and the law of December 19, 2002 on the trade and companies' register and on the accounting and annual accounts of undertakings. This memo aims to explain this modernisation.

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JULY 2016

MODERNISATION DU DROIT DES SOCIÉTÉS LUXEMBOURGEOIS 

Modernisation du droit des
sociétés luxembourgeois



Le Projet de Loi 5730 portant modernisation de loi du 10 août 1915 sur les sociétés commerciales a été voté le 13 juillet dernier par la Chambre des Députés.

Notre mémo explique cette modernisation et plus particulièrement les mesures concernant l'ensemble des sociétés ainsi que les modifications apportées au régime des

sociétés anonymes et des sociétés à responsabilités limitée, formes sociales les plus communément rencontrées à Luxembourg.

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WILDGEN'S EVENTS

11 OCTOBER 2016

LEARN AT LUNCH - LA PROTECTION DE L'EMPLOYEUR CONTRE L'ABSENTÉISME



Wildgen a le plaisir de vous inviter à son "Learn at lunch" traitant de la "Protection de l'employeur contre l'absentéisme". Au cours de cette session Me. Jackye Elombo abordera des moyens légaux et des mesures de protection et de gestion de la maladie des employés.

Jackye Elombo, Associée, dirige le département droit du travail au sein de Wildgen. Avocate au barreau de Luxembourg, elle conseille ses clients sur les relations professionnelles, impliquant le droit du travail, le droit commercial, le droit des contrats ou le droit des actionnaires et les assiste dans une gestion rapide et efficace des problèmes sur le lieu de travail. Ses clients apprécient sa capacité à traduire des questions juridiques complexes en termes simples et actions pragmatiques. Jackye représente ses clients dans leurs défis opérationnels et stratégiques, dans leurs négociations ainsi que devant les cours et tribunaux luxembourgeois.

DETAILS PRATIQUES

Mardi 11 octobre 2016

12:30 Accueil

12:45 Présentation et lunch

13:45 Questions / réponses

Session en langue française - Participation gratuite - Nombre limité de places.

Parking le plus proche : "Parking des Martyrs 'Rousegaertchen'" (situé à 2 minutes à pied de l'étude).

[Plus d'informations sur notre site internet](#)

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