Luxembourg: Clouds on the financial sector
NAMUR, 30 SEPTEMBER 2011
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Introduction

Control over data

Control over resources

SUMMARY
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
WHAT CLOUD COMPUTING MEANS

From an IT perspective

- On-demand use of shared technical resources
- User does not own (or entirely own) the resources
- User pays only for the resources used
- Cloud praised for agility, scalability, security, reduced costs

From a legal perspective

- User does not control (or entirely control) the resources
- Exact location of user data uncertain/impossible to determine with certain types of cloud
- (Currently) not regulated by specific Luxembourg statute/regulation
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
ISSUES RAISED BY CLOUD

No legal regime...
No specific Luxembourg law provisions restrict or prohibit the recourse by companies to cloud computing per se

...but legal questions
Lack of control over the IT system and data that is typical to cloud may create legal issues to Luxembourg financial sector professionals (PFSs)
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR IT AND THE LUXEMBOURG FINANCIAL SECTOR

LUXEMBOURG FINANCIAL SECTOR IT RULES ARE INDEED ALL ABOUT...

confidentiality
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
IT AND THE LUXEMBOURG FINANCIAL SECTOR

...AND control
Control over data

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Cloud should not result in disclosure, dissemination of information covered by banking secrecy...
Cloud can also create compliance issues with data protection rules

WHAT LAW SAYS

Data protection act 2002, article 22(1)

The controller must implement all appropriate technical and organisational measures to ensure the protection of the data against accidental or unlawful destruction or accidental loss, falsification, unauthorised dissemination or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

SECURITY OBLIGATION

Users who process personal data have a duty to guarantee the safety and confidentiality of such data

SANCTIONS

Criminal sanctions apply in the event of non compliance (i.e. failure to protect the data or avoid unauthorised access by third parties)
MONITORING OF ENTRY TO FACILITIES
Duty to prevent any unauthorised person from accessing the facilities used for data processing

MONITORING OF MEDIA
Duty to prevent data media from being read, copied, amended or moved by any authorised persons

MONITORING OF MEMORY
Duty to prevent the unauthorised introduction, access, alteration or destruction of data

MONITORING OF USAGE
Duty to prevent data processing systems from being used by unauthorised person using data transmission facilities

MONITORING OF TRANSMISSION
Duty to guarantee the traceability of the identity of third parties to whom the data can be transmitted through networks

MONITORING OF INTRODUCTION
Duty to guarantee that traceability of the identity of the persons who have accessed to the information system and the data

MONITORING OF AVAILABILITY
Duty to safeguard data through backup copies
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
CONTROL OVER DATA, COMPLIANCE ISSUES

Cloud can make it difficult or impossible for PFSs to implement sufficient security measures or to evidence that adequate measures have been implemented particularly for public cloud (less true for private/community clouds). The importance of contractual framework (mandatory provisions, subject to criminal sanctions).
Control over resources

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CONTROL OVER RESOURCES

Cloud can cause PFSs to lose (complete) control over IT systems

ACTS OF OPERATION
OF CERTAIN REGULATED ENTITIES’ IT SYSTEMS
ARE SUBJECT TO RESTRICTIONS
Including for banks, PFSs, UCIs,
pension funds, insurance/re- companies

Financial sector rules
impose restrictions on cloud users
CLOUD & THE LAW

CONTROL OVER RESOURCES

SPECIFIC LICENCES REQUIRED TO OPERATE CLOUD USED BY PFSs

Cloud operators would need to obtain the so-called OSIS/OSIP licence (PFS certified).

Luxembourg authorities would most likely impose conditions to the issuance of such licence, if used to provide cloud services.

Financial sector rules may impose restrictions on cloud operators.
Why there is a need to regulate financial sector clouds in Luxembourg...
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
OUTSOURCING RULES

PFSs can use cloud operators only if...

1. LOCATED IN LUXEMBOURG
2. PFS CERTIFIED (specific financial sector license)

NOTE: LUXEMBOURG CLOUD OPERATORS SERVING FOREIGN BANKS ALSO NEED TO BE PFS CERTIFIED
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
OUTSOURCING RULES

PFSs cannot use Luxembourg, non PFS certified cloud operators
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
OUTSOURCING RULES

PFSs cannot use foreign, third-party cloud operators
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
OUTSOURCING RULES

RESTRICTIONS EXIST TO THE OUTSOURCING BY PFSs OF THEIR IT FUNCTION TO A FOREIGN PARENT/GROUP ENTITY, IN PARTICULAR...

**Group outsourcing is subject to...**

1. OUTSOURCING PROVIDER BEING A PARENT/SISTER
2. NO ACCESS TO READABLE DATA
3. PRIOR AUTHORISATION OF THE REGULATOR (CSSF)
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
OUTSOURCING RULES

PFS certified cloud operators cannot outsource to, nor use the infrastructure of...

1. FOREIGN CLOUD OPERATORS (#2)
2. LUX. NON-PFS CERTIFIED CLOUD OPERATORS (#3)
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
CURRENT ACCEPTABLE SETUP? (1)

**PFS certified cloud operators may use the infrastructure of...**

PFS CERTIFIED IT PROVIDERS (#1, #2)

CLOUD OPERATOR SIMPLY AS AN IaaS, SaaS OR APPLICATION PROVIDER

FEASIBILITY ALSO DEPENDS ON THE BUSINESS MODEL OF IT PROVIDERS #1 AND #2 (PROHIBITION TO OUTSOURCE LICENSED ACTIVITY)

BUSINESS MODEL CAN REMAIN THAT OF A CLOUD, BUT IS THIS STILL A CLOUD?
LUXEMBOURG: CLOUDS ON THE FINANCIAL SECTOR
CURRENT ACCEPTABLE SETUP? (2)

PFSs can also use cloud if...

1. THROUGH A PFS CERTIFIED CLOUD OPERATOR
2. ALL SYSTEMS ARE OPERATED BY THE LATTER
3. ALL SYSTEMS ARE IN LUXEMBOURG

Pretty limited...
Current framework is too restrictive and calls for a review (new regulations?)
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