This consolidated text was drawn up by the CSSF for information purposes only. In case of discrepancies between the French and the English consolidated texts, the texts published in the Journal officiel du Grand-Duché de Luxembourg are the sole authoritative and universally valid versions.

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  – making divers other amendments to the Law on the financial sector and the Law on the accounts of credit institutions;

  (Mém. A 1994, No 39)

– by the Law of 9 May 1996 on the netting of debts in the financial sector, amending the Law of 5 April 1993 on the financial sector, as amended;

  (Mém. A 1996, No 35)

– by the Law of 11 June 1997
  1. transposing Directive 94/19/EC on deposit-guarantee schemes into the Law of 5 April 1993 on the financial sector, as amended, and
  2. amending the Law of 24 March 1989 on Banque et Caisse d'Épargne de l'État, Luxembourg, as amended;

  (Mém. A 1997, No 47)

– by the Law of 21 November 1997 on banks issuing covered bonds;

  (Mém. A 1997, No 94)

– by the Law of 12 March 1998
  – amending the Law of 5 April 1993 on the financial sector for the purposes of transposing Directive 93/22/EEC (the "investment services" directive);
  – amending Article 113 of the Commercial Code;

  (Mém. A 1998, No 23)

– by the Law of 11 August 1998 creating and introducing into the Penal Code the offence of membership of a criminal organisation and the offence of money laundering and amending:
  (1) the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended;
  (2) the Law of 5 April 1993 on the financial sector, as amended;
  (3) the Law of 6 December 1991 on the insurance sector, as amended;
  (4) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
  (5) the Law of 20 April 1977 on gaming and betting on sporting events;
  (6) the Law of 28 June 1984 on the organisation of the profession of company auditor;
  (7) the Code of Criminal Procedure;

  (Mém. A 1998, No 73)

– by the Law of 29 April 1999 transposing Directive 97/5/EC on cross-border credit transfers into the Law of 5 April 1993 on the financial sector, as amended;

  (Mém. A 1999, No 53)

– by the Law of 29 April 1999
  – transposing Directive 95/26/EC on the reinforcement of prudential supervision into the Law of 5 April 1993 on the financial sector, as amended, and into the Law of 30 March 1988 relating to undertakings for collective investment, as amended;
  – partially transposing Article 7 of Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions into the Law of 5 April 1993 on the financial sector, as amended;
  – making divers other amendments to the Law of 5 April 1993 on the financial sector, as amended;
  – amending the Grand-ducal Regulation of 19 July 1983 on fiduciary contracts of credit institutions;

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– by the Law of 31 May 1999 governing the domiciliation of companies and
  – amending and supplementing certain provisions of the Law of 10 August 1915 on commercial companies, as amended;
  – amending and supplementing certain provisions of the Law of 23 December 1909 which establishes a trade and companies register, as amended;
  – amending and supplementing the Law of 28 December 1988 regulating access to the occupations of skilled tradesman, merchant and manufacturer and certain liberal professions, as amended;
  – supplementing the Law of 12 July 1977 on holding companies;

- amending and supplementing certain provisions of the Law of 5 April 1993 on the financial sector, as amended;
- supplementing the Law of 6 December 1991 on the insurance sector, as amended;

(Mém. A 1999, No 77)

- by the Law of 22 June 2000 amending certain provisions, relating specifically to banks issuing mortgage bonds, in the Law of 5 April 1993 on the financial sector;

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- by the Law of 27 July 2000 transposing Directive 97/9/EC on investor-compensation schemes and amending the Law of 5 April 1993 on the financial sector, as amended;

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- by the Law of 12 January 2001 transposing Directive 98/26/EC on settlement finality in payment and securities settlement systems into the Law of 5 April 1993 on the financial sector, as amended, and supplementing the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier");

(Mém. A 2001, No 16)

- by the Law of 1 August 2001
  - on the transfer of ownership under guarantees;
  - amending and supplementing the Law of 21 December 1994 on borrowing by credit institutions against security pledging;
  - amending and supplementing the Law of 5 April 1993 on the financial sector, as amended;
  - amending and supplementing the Law of 21 June 1984 on financial futures traded on the Luxembourg Stock Exchange and financial futures traded in by credit institutions;

(Mém. A 2001, No 106)

- by the Law of 1 August 2001
  - transposing Article 1 of Directive 98/33/EC amending Directives 77/780/EEC, 89/647/EEC and 93/6/EEC, and partially transposing Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries, into the Law of 5 April 1993 on the financial sector, as amended;
  - amending Article 8 of the Law of 23 December 1998 relating to the supervision of securities markets;

(Mém. A 2001, No 112)

- by the Law of 13 January 2002
  - approving the International Convention for the Suppression of Counterfeiting Currency and the Protocol thereto, signed in Geneva on 20 April 1929;
  - amending divers provisions of the Penal Code and of the Code of Criminal Procedure;

(Mém. A 2002, No 5)

- by the Law of 14 May 2002 transposing into the Law of 5 April 1993 on the financial sector, as amended:
  - Directive 2000/28/EC amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions;
  - Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions;

(Mém. A 2002, No 51)

- by the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings and amending divers other statutory provisions;

(Mém. A 2002, No 149)

- by the Law of 2 August 2003
  - amending the Law of 5 April 1993 on the financial sector, as amended;
  - amending the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  - amending Law of 31 May 1999 governing the domiciliation of companies, as amended;

(Mém. A 2003, No 112)

- by the Law of 19 March 2004 transposing into the Law of 5 April 1993 on the financial sector, as amended, Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions;

(Mém. A 2004, No. 45 and Mém. A 2004, No 54)

– by the Law of 22 March 2004 on securitisation and amending
  – the Law of 5 April 1993 on the financial sector, as amended;
  – the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  – the Law of 27 July 2003 on the trust and fiduciary contracts;
  – the Law of 4 December 1967 on income tax, as amended;
  – the Law of 16 October 1934 on wealth tax, as amended;
  – the Law of 12 February 1979 on value added tax, as amended;

(Mém. A 2004, No 46)

– by the Law of 12 November 2004 on the fight against money laundering and terrorist financing, transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, and amending:
  1. the Penal Code;
  2. the Code of Criminal Procedure;
  3. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
  4. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  5. the Law of 5 April 1993 on the financial sector, as amended;
  6. the Law of 6 December 1991 on the insurance sector, as amended;
  7. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
  8. the Law of 10 August 1991 on the legal profession, as amended;
  9. the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;
  10. the Law of 10 June 1999 on the organisation of the accounting profession;
  11. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;
  12. the General Fiscal Code ("*Abgabenordnung*");

(Mém. A 2004, No 183)

– by the Law of 5 August 2005 on financial collateral arrangements
  - transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
  - amending the Commercial Code;
  - amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;
  - amending the Law of 5 April 1993 on the financial sector;
  - amending Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of Grand-ducal Regulation of 17 February 1971 on the circulation of securities;
  - repealing the Law of 21 December 1994 concerning repurchase agreements;
  - repealing the Law of 1 August 2001 on the transfer of ownership for security purposes;

(Mém. A 2005, No 128)

– by the Law of 5 November 2006 relating to the supervision of financial conglomerates
  1. transposing into the Law of 5 April 1993 on the financial sector, as amended and into the Law of 6 December 1991 on the insurance sector, as amended, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, and amending Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC of the Council and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council;
  2. amending
     – the Law of 6 December 1991 on the insurance sector, as amended;
     – the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2006, No 197)

– by the Law of 18 December 2006 implementing Directive 2002/65/EC concerning the distance marketing of consumer financial services and amending:
  – the Law of 27 July 1997 on insurance contracts;
  – the Law of 14 August 2000 on electronic commerce;
  – Article 63 of the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2006, No 223)

– by the Law of 13 July 2007 on markets in financial instruments and transposing:
  – Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC

– Article 52 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive,

and amending:

– the Law of 5 April 1993 on the financial sector, as amended;
– the Law of 20 December 2002 relating to undertakings for collective investment, as amended,
– the Law of 12 November 2004 on the fight against money laundering and terrorist financing;
– the Law of 31 May 1999 governing the domiciliation of companies, as amended;
– the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
– the Law of 6 December 1991 on the insurance sector, as amended;
– the Law of 3 September 1996 concerning the involontary dispossesion of bearer securities;
– the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg;

and repealing:

– the Law of 23 December 1998 relating to the supervision of securities markets, as amended;
– the Law of 21 June 1984 on financial futures, as amended;

(Mém. A 2007, No 116)

– by the Law of 7 November 2007 transposing into the Law of 5 April 1993 on the financial sector, as amended, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast);

(Mém. A 2007, No 196)

– by the Law of 17 July 2008
  – transposing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
  – transposing Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis

and amending:

1. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
2. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
3. the Law of 5 April 1993 on the financial sector, as amended;
4. the Law of 6 December 1991 on the insurance sector, as amended;
5. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
6. the Law of 10 August 1991 on the legal profession, as amended;
7. the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;
8. the Law of 10 June 1999 on the organisation of the accounting profession;

(Mém. A 2008, No 106)

– by the Law of 17 July 2008 relating to acquisitions in the financial sector and transposing, into the Law of 5 April 1993 on the financial sector, as amended, and into the Law of 6 December 1991 on the insurance sector, as amended, Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector;

(Mém. A 2008, No 108)

– by the Law of 24 October 2008 improving the legislative framework of the Luxembourg financial centre and amending
  - the provisions relating to mortgage bonds in the Law of 5 April 1993 on the financial sector, as amended;
  - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  - the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg;
  - the Law of 6 December 1991 on the insurance sector, as amended;

(Mém. A 2008, No 161)

– by the Law of 29 May 2009 amending the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2009, No 122)

– by the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems and
  - transposing Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, and 2006/48/EC and repealing Directive 97/5/EC;
  - amending:
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 18 December 2006 on financial services provided at distance;
    - the Law of 15 December 2000 on postal services and financial postal services, as amended;
    - the Law of 13 July 2007 on markets in financial instruments;
    - the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"*)*, as amended;
    - the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;
    - the Law of 6 December 1991 on the insurance sector, as amended
  - repealing title VII of the Law of 14 August 2000 on electronic commerce, as amended;

(Mém. A 2009, No 215)

– by the Law of 18 December 2009 concerning the audit profession and:
  – transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC;
  – organising the audit profession;
  – amending certain other legal provisions, and
  – repealing the Law of 28 June 1984 on the organisation of the profession of company auditor, as amended;

(Mém. A 2010, No 22)

– by the Law of 27 October 2010
  - enhancing the anti-money laundering and counter terrorist financing legal framework;
  - organising the controls of physical transport of cash entering, transiting through or leaving the Grand Duchy of Luxembourg;
  - implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing;

  amending:
  1. the Penal Code;
  2. the Code of Criminal Procedure;
  3. the Law of 7 March 1980 on the organisation of the judicial system, as amended;
  4. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
  5. the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended;
  6. the Law of 11 April 1985 approving the Convention on the Physical Protection of Nuclear Material, opened for signature at Vienna and New York on 3 March 1980, as amended;
  7. the Law of 31 January 1948 on the regulation of air navigation, as amended;
  8. the Law of 20 June 2001 on extradition;
  9. the Law of 17 March 2004 on the European arrest warrant and surrender procedures between Member States of the European Union;
  10. the Law of 8 August 2000 concerning mutual legal assistance in criminal matters;
  11. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  12. the Law of 5 April 1993 on the financial sector, as amended;
  13. the Law of 6 December 1991 on the insurance sector, as amended;
  14. the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
  15. the Law of 10 August 1991 on the legal profession, as amended;
  16. the Law of 10 June 1999 on the organisation of the accounting profession, as amended;
  17. the Law of 18 December 2009 concerning the audit profession;
  18. the Law of 20 April 1977 on gaming and betting on sporting events, as amended;

19. the Law of 17 March 1992 approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, as amended;
20. the Law of 14 June 2001 approving the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990, as amended;

(Mém. A 2010, No 193)

– by the Law of 28 April 2011
- transposing Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management;
- transposing for credit institutions Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
- completing the transposition of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes and the payout delay;
- amending the Law of 5 April 1993 on the financial sector, as amended;
- amending the Law of 17 June 1992 relating to the accounts of credit institutions, as amended;
- amending the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier");
- amending the Law of 31 May 1999 governing the domiciliation of companies;
- amending the Law of 13 July 2007 on markets in financial instruments, as amended;
- amending the Law of 11 January 2008 on transparency requirements in relation to issuers of securities;
- amending the Law of 10 November 2009 on payment services;

(Mém. A 2011, No 81)

– by the Law of 20 May 2011
- transposing:
- Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC;
- Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on the financial collateral arrangements as regards linked systems and credit claims;
- amending:
- the Law of 10 November 2009 on payment services, on the activity of electronic money institutions and settlement finality in payment and securities settlement systems;
- the Law of 5 August 2005 on financial collateral arrangements;
- the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

(Mém. A 2011, No 104)

– by the Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies and amending:
1) the Law of 5 April 1993 on the financial sector, as amended;
2) the Law of 8 December 1994 relating to:
– the annual accounts and consolidated accounts of insurance and reinsurance undertakings incorporated under Luxembourg law;
– the requirements with respect to the drawing-up and publication of accounting documents of branches of insurance undertakings under foreign law;

(Mém. A 2011, No 223)

– by the Law of 21 December 2012[1] relating to the Family Office activity and amending:
- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

(Mém. A 2012, No 274)

[1] Referred to hereafter as "Law of 21 December 2012 relating to the Family Office activity"

– by the Law of 21 December 2012[2] transposing Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and amending:

1. the Law of 6 December 1991 on the insurance sector, as amended;
2. the Law of 5 April 1993 on the financial sector, as amended;
3. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
4. the Law of 22 March 2004 on securitisation, as amended;
5. the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
6. the Law of 10 July 2005 on prospectuses for securities, as amended;
7. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended
8. the Law of 9 May 2006 on market abuse, as amended;
9. the Law of 13 February 2007 relating to specialised investment funds, as amended;
10. the Law of 13 July 2007 on markets in financial instruments, as amended;
11. the Law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
12. the Law of 10 November 2009 on payment services, as amended;
13. the Law of 17 December 2010 relating to undertakings for collective investment;

(Mém. A 2012, No 275)

– by the Law of 6 April 2013 on dematerialised securities and amending:
- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"*)*, as amended
- the Law of 10 August 1915 on commercial companies, as amended;
- the Law of 3 September 1996 concerning the involuntary dispossession of bearer securities, as amended;
- the Law of 1 August 2001 on the circulation of securities and other fungible instruments, as amended;
- the Law of 20 December 2002 relating to undertakings for collective investment, as amended;
- the Law of 17 December 2010 relating to undertakings for collective investment;
- the Law of 13 February 2007 relating to specialised investment funds, as amended;
- the Law of 22 March 2004 on securitisation, as amended;

(Mém. A 2013, No 71)

– by the Law of 27 June 2013 relating to the banks issuing covered bonds and amending the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2013, No 111)

– by the Law of 12 July 2013 on alternative investment fund managers and
  – transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
  – amending:
    - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
    - the Law of 13 February 2007 relating to specialised investment funds, as amended;
    - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
    - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
    - the Law of 13 July 2005 concerning the activities and supervision of the institutions for occupational retirement provision;
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    - the Law of 10 August 1915 on commercial companies, as amended;
    - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;

[2] Referred to hereafter as "Law of 21 December 2012"

- the Commercial Code;
- the Law of 4 December 1967 on income tax, as amended;
- the Law of 1 December 1936 on business tax, as amended;
- the Law of 16 October 1934 on fiscal adjustment, as amended;
- the Law of 16 October 1934 on the valuation of assets and values, as amended;
- the Law of 12 February 1979 on value added tax, as amended;

(Mém. A 2013, No 119)

– by the Law of 23 July 2015:
  – transposing Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013;
  – transposing Articles 2 and 3 of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011;
  – transposing Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011;
  – amending:
    1. the Law of 5 April 1993 on the financial sector, as amended;
    2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    3. the Law of 12 July 2013 on alternative investment fund managers;

(Mém. A 2015, No 149)

– by the Law of 25 July 2015 on electronic archiving and amending:
1. Article 1334 of the Civil Code;
2. Article 16 of the Commercial Code;
3. the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2015, No 150)

– by the Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes,
1. transposing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council;
2. transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes;
3. amending:
   (a) the Law of 5 April 1993 on the financial sector, as amended;
   (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
   (c) the Law of 5 August 2005 on financial collateral arrangements:
      - transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
      - amending the Commercial Code;
      - amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;
      - amending the Law of 5 April 1993 on the financial sector;
      - amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;
      - repealing the Law of 21 December 1994 concerning repurchase agreements;
      - repealing the Law of 1 August 2001 on the transfer of ownership for security purposes;
   (d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids; and
   (e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies;

(Mém. A 2015, No 246)

– by the Law of 23 July 2016 on reserved alternative investment funds and amending:
1. the Law of 16 October 1934 on wealth tax, as amended;
2. the Law of 1 December 1936 on municipal business tax, as amended;
3. the Law of 4 December 1967 on income tax, as amended;
4. the Law of 5 April 1993 on the financial sector, as amended;
5. the Law of 13 February 2007 relating to specialised investment funds, as amended, and
6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;

(Mém. A 2016, No 140)

– by the Law of 13 February 2018

1. transposing the provisions on the professional obligations and the powers of the supervisory authorities as regards the fight against money laundering and terrorist financing of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
2. implementing Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006;
3. amending:
   (a) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
   (b) the Law of 10 November 2009 on payment services, as amended;
   (c) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
   (d) the Law of 4 December 1990 on the organisation of bailiffs, as amended;
   (e) the Law of 10 August 1991 on the legal profession, as amended;
   (f) the Law of 5 April 1993 on the financial sector, as amended;
   (g) the Law of 10 June 1999 on the organisation of the accounting profession, as amended;
   (h) the Law of 21 December 2012 relating to the Family Office activity;
   (i) the Law of 7 December 2015 on the insurance sector, as amended;
   (j) the Law of 23 July 2016 concerning the audit profession;

(Mém. A 2018, No 131)

– by the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:

1. the Law of 5 April 1993 on the financial sector, as amended;
2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
5. the Law of 10 November 2009 on payment services, as amended;
6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
8. the Law of 7 December 2015 on the insurance sector, as amended;
9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
10. the Law of 23 December 2016 on market abuse;

(Mém. A 2018, No 150)

– by the Law of 30 May 2018 on markets in financial instruments and:

1. transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
2. transposing Article 6 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;
3. implementing Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;
4. amending:
   (a) the Law of 5 April 1993 on the financial sector, as amended;
   (b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
   (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
   (d) the Law of 7 December 2015 on the insurance sector, as amended; and
   (e) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services; and
5. repealing the Law of 13 July 2007 on markets in financial instruments, as amended, except for Article 37;

(Mém. A 2018, No 446)

– by the Law of 22 June 2018 amending the Law of 5 April 1993 on the financial sector, as amended, with respect to the introduction of renewable energy covered bonds;

(Mém. A 2018, No 521)

– by the Law of 25 July 2018
1. transposing Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy and amending the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
2. amending various provisions of the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2018, No 628)

– by the Law of 16 July 2019
1. implementing Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds;
2. implementing Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds;
3. implementing Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on the European long-term investment funds;
4. implementing Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;
5. implementing Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;
6. amending the Law of 5 April 1993 on the financial sector as amended;
7. amending the Law of 23 July 2016 on reserved alternative investment funds;

(Mém. A 2019, No 514)

– by the Law of 4 December 2019 amending:
1° the Law of 5 April 1993 on the financial sector, as amended;
2° the Law of 1 April 2015 establishing a Systemic Risk Committee and amending the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;
enacting macroprudential measures on residential mortgage loans;

(Mém. A 2019, No 811)

– by the Law of 22 January 2021 amending:
1° the Law of 5 April 1993 on the financial sector, as amended;
2° the Law of 6 April 2013 on dematerialised securities;

(Mém. A 2021, No 43)

– by the Law of 20 May 2021
1. transposing:
   (a) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; and
   (b) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC;
2. implementing Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012; and
3. amending:
   (a) the Law of 5 April 1993 on the financial sector, as amended;
   (b) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
   (c) the Law of 24 March 1989 on Banque et Caisse d'Épargne de l'État, Luxembourg, as amended;
   (d) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
   (e) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

(f) the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems, as amended; and
(g) the Law of 7 December 2015 on the insurance sector, as amended;

(Mém. A 2021, No 384)

– by the Law of 1 June 2021 amending:
1° the Law of 3 April 2020 implementing support for undertakings in temporary financial difficulty and amending the amended Law of 19 December 2014 on 1) social measures for independent professional artists and entertainment workers 2) promotion of artistic creation, as amended;
2° the Law of 18 April 2020 aiming to put in place a guarantee scheme for the Luxembourg economy in the framework of the COVID-19 pandemic, as amended;
3° the Law of 24 July 2020 aiming to stimulate business investments during COVID-19, as amended;
4° the Law of 5 April 1993 on the financial sector, as amended;

(Mém. A 2021, No 404)

– by the Law of 21 July 2021[3] amending
1° the Consumer Code;
2° the Law of 5 April 1993 on the financial sector, as amended;
3° the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
4° the Law of 22 March 2004 on securitisation, as amended;
5° the Law of 10 November 2009 on payment services, as amended;
6° the Law of 7 December 2015 on the insurance sector, as amended; and
7° the Law of 30 May 2018 on markets in financial instruments, as amended;

(Mém. A 2021, No 560)

– by the Law of 21 July 2021[4] amending:
1° the Penal Code;
2° the Law of 20 April 1977 on gaming and betting on sporting events, as amended;
3° the Law of 5 April 1993 on the financial sector, as amended;
4° the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;
5° the Law of 12 November 2002 on private security and surveillance activities, as amended;
6° the Law of 10 November 2009 on payment services, as amended;

in order to implement Council Regulation (EC) No 44/2009 of 18 December 2008 amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting and Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling euro coins unfit for circulation;

(Mém. A 2021, No 563)

[3] Referred to hereafter as "Law of 21 July 2021: A560".
[4] Referred to hereafter as "Law of 21 July 2021: A563".

– by the Law of 21 July 2021[5]:

1° amending:

(a) the Law of 5 April 1993 on the financial sector, as amended;
(b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
(c) the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
(d) the Law of 12 July 2013 on alternative investment fund managers, as amended;
(e) the Law of 7 December 2015 on the insurance sector, as amended;
(f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
(g) the Law of 30 May 2018 on markets in financial instruments, as amended;

2° transposing:

(a) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU;
(b) partially Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing;
(c) Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments; and
(d) Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis; and

3° implementing:

(a) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014;
(b) Article 4 of Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds;

(Mém. A 2021, No 566)

[5] Referred to hereafter as "Law of 21 July 2021: A566".

– by the Law of 8 December 2021 relating to the issue of covered bonds (*lettres de gage*), and:

1° transposing Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU;

2° implementing Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds; and

3° amending:

(a) the Law of 5 April 1993 on the financial sector, as amended;

(b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

(c) the Law of 17 December 2010 relating to undertakings for collective investment, as amended; and

(d) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;

(Mém. A 2021, No 845)

- by the Law of 15 March 2023:

1° amending:

(a) the Law of 5 April 1993 on the financial sector, as amended;

(b) the Law of 5 August 2005 on financial collateral arrangements, as amended;

(c) the Law of 30 May 2018 on markets in financial instruments, as amended;

2° implementing Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU;

(Mém. A 2023, No 147)

- by the Law of 15 July 2024 on the transfer of non-performing loans, and:

1° transposing Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers, and amending Directives 2008/48/EC and 2014/17/EU;

2° implementing Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities;

3° amending:

(a) the Consumer Code;

(b) the Law of 5 April 1993 on the financial sector, as amended;

(c) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

(d) the Law of 22 March 2004 on securitisation and amending

- the Law of 5 April 1993 on the financial sector, as amended;
- the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
- the Law of 27 July 2003 on trusts and fiduciary contracts;
- the Law of 4 December 1967 on income tax, as amended;
- the Law of 16 October 1934 on wealth tax, as amended;
- the Law of 12 February 1979 on value added tax, as amended;

(e) the Law of 5 August 2005 on financial collateral arrangements, as amended;

(f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;

(Mém. A 2024, No 292)

- by the Law 20 December 2024[6]:

1° transposing Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024 amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities;

[6] Referred to hereafter as "Law of 20 December 2024: A585".

2° implementing Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor;
3° amending:
(a) the Law of 5 April 1993 on the financial sector, as amended;
(b) the Law of 16 April 2003 on compulsory insurance against civil liability in respect of motor vehicles, as amended;
(c) the Law of 19 December 2014 on the implementation of the future package – first part (2015);
(d) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
(e) the Law of 8 December 2021 relating to the issue of covered bonds;

(Mém. A 2024, No 585)

- by the Law 20 December 2024[7] amending:

1° the Law of 6 April 2013 on dematerialised securities, as amended;
2° the Law of 5 April 1993 on the financial sector, as amended;
3° the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

(Mém. A 2024, No 597)

- by the Law of 1 July 2024 amending:

1° the Law of 5 April 1993 on the financial sector, as amended;
2° the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended;
3° the Law of 10 November 2009 on payment services, as amended;
4° the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
5° the Law of 12 July 2013 on alternative investment fund managers, as amended;
6° the Law of 7 December 2015 on the insurance sector, as amended;
7° the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
8° the Law of 30 May 2018 on markets in financial instruments, as amended;
9° the Law of 16 July 2019 on the operationalisation of European regulations in the area of financial services, as amended,

with a view to implementing Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 and to transpose Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector;

(Mém. A 2024, No 271)

- by the Law of 6 February 2025:

1° implementing Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules;
2° implementing Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937;
3° implementing Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849;
4° transposing Article 38 of Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849;
5° implementing Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds

[7] Referred to hereafter as "Law of 20 December 2024: A597".

6° amending:
   (a) the Law of 16 July 2019 on the operationalisation of European regulations in the area of financial services, as amended;
   (b) the Law of 5 April 1993 on the financial sector, as amended;
   (c) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
   (d) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
   (e) the Law of 10 November 2009 on payment services, as amended;
   (f) the Law of 7 December 2015 on the insurance sector, as amended.

(Mém. A 2025, No 38)

(Law of 13 July 2007)

"Article 1. Definitions

Unless otherwise prescribed, for the purposes of this Law:

1. "tied agent" shall mean a natural or legal person who, under the full and unconditional responsibility of only one credit institution or investment firm on whose behalf it acts,

   - promotes investment and ancillary services to clients and prospective clients, or
   - canvasses clients or potential clients, or
   - receives and transmits instructions or orders from the client in respect of investment services or financial instruments, or
   - places financial instruments, or
   - provides advice to clients or potential clients in respect of those financial instruments or services;

(Law of 30 May 2018)

"1a. "direct electronic access" shall mean a direct electronic access as defined in point (1) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

(Law of 15 July 2024)

"1a-1. "credit purchaser" shall mean a credit purchaser within the meaning of Article 1, point 2°, of the Law of 15 July 2024 on the transfer of non-performing loans;

1a-2. "credit servicing activities" shall mean one or more of the following activities:

(a) collecting or recovering from the borrower any payments due related to a creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself;

(b) renegotiating with the borrower any terms and conditions related to a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3, point (f), of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Directive 87/102/EEC of the Council (hereinafter "Directive 2008/48/EC") or in Article 4, point (5), of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (hereinafter "Directive 2014/17/EU");

(c) administering any complaints relating to a creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself;

(d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself;"

(Law of 30 May 2018)

"1b. "APA" or "approved publication arrangement" shall mean any person as defined in "point (34) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (hereinafter "Regulation (EU) No 600/2014");"[8]"

(Law of 30 May 2018)

"1c. "ARM" or "approved reporting mechanism" shall mean any person as defined in "point (36) of Article 2(1) of Regulation (EU) No 600/2014;"[9] "

(Law of 21 July 2021: A566)

"1d. "APA with a derogation" shall mean an APA as defined in accordance with the delegated act referred to in Article 2(3) of Regulation (EU) No 600/2014. In Luxembourg, they are the persons referred to in the first subparagraph of Article 29-7(1);"

[8] Law of 21 July 2021: A566

[9] Law of 21 July 2021: A566

(Law of 21 July 2021: A566)

"1e. "ARM with a derogation" shall mean an ARM as defined in accordance with the delegated act referred to in Article 2(3) of Regulation (EU) No 600/2014. In Luxembourg, they are the persons referred to in the second subparagraph of Article 29-7(1);"

2. "competent authority" shall mean a national authority which is empowered by law or regulation to supervise credit institutions", investment firms ", "APAs with a derogation or ARMs with a derogation"[10] "[11] "as well as, where applicable, financial holding companies and mixed financial holding companies"[12]. In Luxembourg, the supervision "of these entities"[13] comes under the remit of the CSSF;

(Law of 20 May 2021)

"2-1. "resolution authority" shall mean a resolution authority as defined in point (8) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;"

(Law of 23 July 2015)

"2a. "central banks of the European System of Central Banks (ESCB)" shall mean ESCB central banks as defined in point (45) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions "and amending Regulation (EU) No 648/2012 (hereinafter "Regulation (EU) No 575/2013)"[14];"

(Law of 23 July 2015)

"2b. "central banks" shall mean central banks as defined in point (46) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 8 December 2021)

"2b-1. "bank issuing covered bonds" shall mean a credit institution the principal activity of which is the issue of covered bonds in accordance with Article 12-1;"

(Law of 30 May 2018)

"2c. "depositary receipts" shall mean depositary receipts as defined in point (4) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

(Law of 21 July 2021: A566)

"2d. "make-whole clause" shall mean a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond an amount equal to the sum of the net present value of the remaining coupon payments expected until maturity and the principal amount of the bond to be redeemed;"

3. "client" shall mean a natural or legal person to whom a credit institution or a PFS provides the services referred to in this Law;

4. "retail client"[15] shall mean a client other than a professional client;

5. "professional client" shall mean a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the criteria set out in Annex III;

"6. "CSSF" shall mean the *Commission de surveillance du secteur financier* [Commission for Supervision of the Financial Sector];"[16]

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[10] Law of 21 July 2021: A566

[11] Law of 30 May 2018

[12] Law of 23 July 2015

[13] Law of 30 May 2018

[14] Law of 21 July 2021: A566

[15] Law of 30 May 2018

[16] Law of 28 April 2011. The Commission de surveillance du secteur financier is referred to as "CSSF" in the entire text

(Law of 23 July 2015)

"6a. "financial holding company" shall mean a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)

"6b. "parent financial holding company in Luxembourg" shall mean a financial holding company set up in Luxembourg which is not itself a subsidiary of an institution authorised in Luxembourg or of a financial holding company or mixed financial holding company set up in Luxembourg;"

(Law of 23 July 2015)

"6c. "EU parent financial holding company" shall mean an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)

"6d. "mixed financial holding company" shall mean a mixed financial holding company as defined in "point (15) of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (hereinafter "Directive 2002/87/EC")"[17];"

(Law of 23 July 2015)

"6e. "parent mixed financial holding company in Luxembourg" shall mean a mixed financial holding company set up in Luxembourg which is not itself a subsidiary of an institution authorised in Luxembourg, or of a financial holding company or mixed financial holding company set up in Luxembourg;"

(Law of 20 May 2021)

"6e-1. "parent financial holding company in a Member State" shall mean a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;

6e-2. "parent mixed financial holding company in a Member State" shall mean a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)

"6f. "EU parent mixed financial holding company" shall mean an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013." "By way of derogation from the foregoing, as regards investment firm groups, an "EU parent mixed financial holding company" shall be a parent undertaking of an investment firm group which is a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;"[18]

(Law of 21 July 2021: A566)

"6f-1. "investment holding company" shall mean an investment holding company as defined in point (23) of Article 4(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (hereinafter "Regulation (EU) 2019/2033");

6f-2. "EU parent investment holding company" shall mean an EU parent investment holding company as defined in point (57) of Article 4(1) of Regulation (EU) 2019/2033;"

(Law of 23 July 2015)

"6g. "mixed activity holding company" shall mean a mixed activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;"

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[17] Law of 21 July 2021: A566

[18] Law of 21 July 2021: A566

"6h. "investment advice" shall mean the provision of personal recommendations to a client, either upon its request, or at the initiative of the credit institution or the investment firm, in respect of one or more transactions relating to financial instruments;"[19]

(Law of 15 July 2024)

"6i. "non-performing loan" shall mean a non-performing loan within the meaning of Article 1, point 7°, of the Law of 15 July 2024 on the transfer of non-performing loans;"

7. "control" shall mean "the relationship between a parent undertaking and a subsidiary, as described in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (hereinafter "Directive 2013/34/EU"), or in the accounting standards to which a credit insitution or an investment firm is subject under Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, or a similar relationship between any natural or legal person and an undertaking"[20];

(…)[21]

(Law of 30 May 2018)

"7b. "central securities depository" or "CSD" shall mean a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, hereinafter referred to as "Regulation (EU) No 909/2014";"

(Law of 30 May 2018)

"7c. "structured deposit" shall mean a deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

1. an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate benchmark;
2. a financial instrument or combination of financial instruments;
3. a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
4. a foreign exchange rate or combination of foreign exchange rates;"

(Law of 21 July 2021: A566)

"7d. "authorised management" shall mean natural persons who exercise executive functions within a credit institution, an investment firm, a market operator, or a data reporting services provider as defined in point (36a) of Article 2(1) of Regulation (EU) No 600/2014, and who are responsible and accountable to the management body for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of investment products and services to clients by the investment firm and its personnel and, where appropriate, the credit institution and its personnel;"

8. "insurance undertaking" shall mean an insurance undertaking "within the meaning of point (5) of Article 4(1) of Regulation (EU) No 575/2013."[22] In Luxembourg, this refers to persons whose activities fall within the meaning of Article 25(1)(e) of the Law of 6 December 1991 on the insurance sector as amended;

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[19] Law of 23 July 2015

[20] Law of 21 July 2021: A566

[21] Law of 21 July 2021: A566

[22] Law of 23 July 2015

9. "investment firm" shall mean a person as defined in Article 4(1)(1) of "Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereinafter "Directive 2014/65/EU), excluding credit institutions;"[23]. (…)[24]

"9a. "CRR investment firm" shall mean an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU, that falls under the scope of paragraph 2 or 5 of Article 1 of Regulation (EU) 2019/2033, including those referred to in Article 57-1 of this Law;"[25]

(Law of 21 July 2021: A566)

"9a-1. "IFR investment firm" shall mean an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU that falls under the scope of Article 1(1) of Regulation (EU) 2019/2033 and that is not a CRR investment firm;

9a-2. "non-SNI IFR investment firm" shall mean an IFR investment firm that does not meet the conditions for qualifying as small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033;

9a-3. "parent investment firm in Luxembourg" shall mean an investment firm in Luxembourg which is part of an investment firm group and which has as subsidiary an investment firm or a financial institution as defined in point (14) of Article 4(1) of Regulation (EU) 2019/2033 or which holds a participation in such an investment firm or financial institution, and which is not itself a subsidiary of another investment firm authorised in any Member State, or of an investment holding company or mixed financial holding company set up in any Member State;

9a-4. "EU parent investment firm" shall mean a Union parent investment firm as defined in point (56) of Article 4(1) of Regulation (EU) 2019/2033;"

(Law of 30 May 2018)

"9b. "third-country firm" shall mean a firm that would be a credit institution providing investment services or performing investment activities or an investment firm if its head office or registered office were located within the European Union;"

"10. "reinsurance undertaking" shall mean a reinsurance undertaking as defined in point (6) of Article 4(1) of Regulation (EU) No 575/2013. In Luxembourg, this refers to persons whose activities fall within the meaning of Article 25(1)(ii) of the Law of 6 December 1991 on the insurance sector, as amended;"[26]

(Law of 23 July 2015)

"10a. "ancillary services undertaking" shall mean an (…)[27] undertaking ", the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more credit institutions or one or more investment firms"[28];"

11. ""parent undertaking" shall mean a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;"[29]

"11a. "CRR institution" shall mean a credit institution or a CRR investment firm;"[30]

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[23] Law of 21 July 2021: A566
[24] Law of 21 July 2021: A566
[25] Law of 21 July 2021: A566
[26] Law of 23 July 2015
[27] Law of 21 July 2021: A566
[28] Law of 21 July 2021: A566
[29] Law of 23 July 2015
[30] Law of 21 July 2021: A566

(Law of 23 July 2015)

"11b. "systemically important institution" or "SII" shall mean an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or a CRR institution the failure or malfunction of which could lead to systemic risk;"

(Law of 23 July 2015)

"11c. "global systemically important institution" or "G-SII" shall mean a G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013;"[31]

(Law of 20 May 2021)

"11d. "non-EU global systemically important institution" or "non-EU G-SII" shall mean a non-EU G-SII as defined in point (134) of Article 4(1) of Regulation (EU) No 575/2013;"

12. "credit institution" shall mean a credit institution "as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013."[32] (…)[33] "Credit institutions may be called either credit institutions or banks;"[34]

"13. "financial institution" shall mean a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013; (…)[35]„[36]

(Law of 23 July 2015)

"13a. "parent institution in Luxembourg" shall mean a CRR institution authorised in Luxembourg which has a CRR institution or a financial institution as a subsidiary or which holds a participation in such a CRR institution or financial institution, and which is not itself a subsidiary of another CRR institution authorised in Luxembourg, or of a financial holding company or mixed financial holding company set up in Luxembourg;"

(Law of 23 July 2015)

"13b. "EU parent institution" shall mean an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 20 May 2021)

"13c. "parent institution in a Member State" shall mean parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;"

14. "Member State" shall mean a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union;

15. "host Member State" shall mean the Member State other than the home Member State in which a credit institution or an investment firm has a branch or performs services and/or activities set out in Annexes I and II". By way of derogation from the above, for the purposes of Subsection 2b of Section 2 of Chapter 2 of Part I, the host Member State shall mean the Member State, other than the home Member State, in which a credit servicer has established a branch or where it provides credit servicing activities, and in any event where the borrower resides, or its registered office is situated or, if it has no registered office, the Member State in which its head office is situated"[37];

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[31] Law of 20 May 2021

[32] Law of 23 July 2015

[33] Law of 21 July 2021: A566

[34] Law of 21 July 2021: A566

[35] Law of 21 July 2021: A566

[36] Law of 23 July 2015

[37] Law of 15 July 2024

16. "home Member State" shall mean the Member State in which a credit institution "or"[38] "investment firm (…)[39] "[40] is authorised". By way of derogation from the above, for the purposes of Subsection 2b of Section 2 of Chapter 2 of Part I, the home Member State shall mean, with respect to a credit servicer, the Member State in which its registered office is situated or, if it has no registered office, the Member State in which its head office is situated or, with respect to a credit purchaser, the Member State in which the credit purchaser or its representative resides, or its registered office is situated or, if it has no registered office, the Member State in which its head office is situated"[41];

17. "execution of orders on behalf of clients" shall mean acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients. "The execution of orders includes the conclusion of agreements to sell financial instruments issued by a credit institution or an investment firm at the moment of their issuance;"[42]

(Law of 23 July 2015)
"17a. "specific liquidity requirements" shall mean specific liquidity requirements as defined in Article 105 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions ", amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (hereinafter "Directive 2013/36/EU)"[43];"

"18. "subsidiary" shall mean a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;"[44]

(Law of 23 July 2015)
"18a. "own funds" shall mean own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)
"18b. "common equity tier 1 capital" shall mean common equity tier 1 capital as defined in Article 50 of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)
"18c. "Additional Tier 1 capital" shall mean Additional Tier 1 capital as defined in Article 61 of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)
"18d. "tier 2 capital" shall mean tier 2 capital as defined in Article 71 of Regulation (EU) No 575/2013;"

(Law of 21 July 2021: A566)
"18d-1. "electronic format" shall mean any durable medium other than paper;"

(Law of 15 July 2024)
"18d-2. "credit servicer" shall mean a credit servicer within the meaning of Article 1, point 14°, of the Law of 15 July 2024 on the transfer of non-performing loans";

"18e. "portfolio management" shall mean managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;"[45]

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[38] Law of 21 July 2021: A566
[39] Law of 21 July 2021: A566
[40] Law of 30 May 2018
[41] Law of 15 July 2024
[42] Law of 30 May 2018
[43] Law of 21 July 2021: A566
[44] Law of 23 July 2015
[45] Law of 23 July 2015

(Law of 21 July 2021: A566)

"18e-1. "group" shall mean a group as defined in point (11) of Article 2 of Directive 2013/34/EU;

18e-2. "investment firm group" shall mean an investment firm group as defined in point (25) of Article 4(1) of Regulation (EU) 2019/2033;"

(Law of 20 May 2021)

"18e-"3"[46]. "third-country group" shall mean a group as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013 of which the parent undertaking is established in a third country;"

(Law of 30 May 2018)

"18f. "agricultural commodity derivatives" shall mean derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1, to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, hereinafter referred to as "Regulation (EU) No 1308/2013" ", as well as to products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000"[47];"

19. "financial instruments" shall mean the instruments referred to in Annex II, Section B ", including such instruments issued by means of distributed ledger technology, as defined in point (1) of Article 2 of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU"[48];

20. "money market instruments" shall mean those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(Law of 30 May 2018)

"20a. "systematic internaliser" shall mean a systematic internaliser as defined in point (27) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

"21. "close links" shall mean a situation in which two or more natural or legal persons are linked by:

1. participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
2. "control" which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22(1) and (2) of Directive 2013/34/EU (…)[49], or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;
3. a permanent link of both or all of them to the same person by a control relationship;"[50]

"22. "regulated market" shall mean the regulated market as defined in "point (31) of Article 1 of the Law of 30 May 2018 on markets in financial instruments"[51];"[52]

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[46] Law of 21 July 2021: A566

[47] Law of 21 July 2021: A566

[48] Law of 15 March 2023

[49] Law of 21 July 2021: A566

[50] Law of 30 May 2018

[51] Law of 30 May 2018

[52] Law of 23 July 2015

23. "MTF" shall mean a multilateral trading facility within the meaning of "point (32) of Article 1 of the Law of 30 May 2018 on markets in financial instruments"[53];

(Law of 30 May 2018)

"23-1. "dealing on own account" shall mean trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

23-2. "market operator" shall mean a market operator as defined in point (36) of Article 1 of the Law of 30 May 2018 on markets in financial instruments. In Luxembourg, it refers to the persons authorised in accordance with Article 27;"

(Law of 23 July 2015)

"23a. "management body" shall mean administrative, managerial and supervisory bodies;"

(Law of 30 May 2018)

"23b. "OTF" shall mean an organised trading facility as defined in point (38) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

24. ""participation" shall mean the participation as defined in point (35) of Article 4(1) of Regulation (EU) No 575/2013;"[54]

"25. "qualifying holding" shall mean any direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights, in accordance with "Articles 8, 9 and 10"[55] of the Law of 11 January 2008 on transparency requirements", as amended,"[56] and the conditions regarding the consolidation of voting rights as set out in Article 11(4) and (5) of this Law, or which makes it possible to exercise a significant influence over the management of that undertaking.

For the purpose of Articles 6 and 18 of this Law, rights or shares which credit institutions or investment firms may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under 6 of Section A of Annex II of this Law shall not be taken into consideration, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition."[57]

26. "third country" shall mean a state other than a Member State;

(Law of 30 May 2018)

"26-1. "trading venue" shall mean a trading venue as defined in point (43) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

(Law of 20 May 2021)

"26-2. "gender neutral remuneration policy" shall mean a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;"

(Law of 23 July 2015)

"26a. "trading book" shall mean "all positions in financial instruments and commodities held by a credit institution or an investment firm either with trading intent or to hedge positions held with trading intent in accordance with Article 104 of Regulation (EU) No 575/2012 with respect to CRR institutions;"[58]"

(Law of 23 July 2015)

"26b. "securitisation position" shall mean the securitisation position as defined in point (62) of Article 4(1) of Regulation (EU) No 575/2013;"

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[53] Law of 30 May 2018

[54] Law of 23 July 2015

[55] Law of 23 July 2015

[56] Law of 23 July 2015

[57] Law of 17 July 2008

[58] Law of 21 July 2021: A566

(…)[59]

(Law of 23 July 2015)
"26c. "discretionary pension benefits" shall mean discretionary pension benefits as defined in point (73) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)
"26d. "internal capital adequacy assessment process" shall mean the internal capital adequacy assessment process as defined in Article 73 of Directive 2013/36/EU;"

(Law of 23 July 2015)
"26e. "supervisory review and evaluation process" shall mean the supervisory review and evaluation process as defined in Title VII, Section III, Chapter 2 of Directive 2013/36/EU;"

(Law of 30 May 2018)
"26f. "wholesale energy product" shall mean wholesale energy products as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;"

27. ""professionals of the financial sector" shall mean credit institutions and PFS;"[60]

"28. "PFS" shall mean a group composed of:

- investment firms referred to in Part I, Chapter 2, Section 2, Subsection 1;
- specialised PFS referred to either in Part I, Chapter 2, Section 2, Subsection 2 or in Article 13 and which do not belong to the categories of the first and third indent of this definition;
- support PFS referred to in Part I, Chapter 2, Section 2, Subsection 3;"[61]

(Law of 15 July 2024)
"- credit servicers referred to in Part I, Chapter 2, Section 2, Subsection 2b;"

(…)[62]

(Law of 21 July 2021: A566)
"28-1. "compliance with the group capital test" shall mean compliance by a parent undertaking in an IFR investment firm group with the requirements of Article 8 of Regulation (EU) 2019/2033;"

(Law of 23 July 2015)
"28a. "liquidity risk" shall mean the liquidity risk as defined in Article 86 of Directive 2013/36/EU;"

(Law of 23 July 2015)
"28b. "operational risk" shall mean the operational risk as defined in point (52) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 23 July 2015)
"28c. "systemic risk" shall mean the systemic risk as defined in point (11) of Article 4(1) of Regulation (EU) No 575/2013;"

29. "ancillary service" shall mean the services referred to in Annex II, Section C;

30. "investment service" or "investment activity" shall mean any of the services and activities listed in Section A of Annex II relating to any of the financial instruments listed in Section B of Annex II;

(Law of 23 July 2015)
"30a. "consolidated situation" shall mean the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013". "By way of derogation from the foregoing, for the

[59] Law of 21 July 2021: A566
[60] Law of 10 November 2009
[61] Law of 28 April 2011
[62] Law of 21 July 2021: A566

purposes of Chapter 3a of Part III, "consolidated situation" shall be a consolidated situation as defined in point (11) of Article 4(1) of Regulation (EU) 2019/2033;"[63]

"31. "UCITS management company" shall mean a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). In Luxembourg, this refers to any person within the meaning of Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended;"[64]

32. "branch" shall mean a place of business other than the head office which is a part of a credit institution or an investment firm, which has no legal personality and which performs directly, entirely or in part transactions related to the activity of credit institutions or provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by a credit institution or investment firm with headquarters in another Member State shall be regarded as a single branch;

(Law of 23 July 2015)
"32a. "consolidating supervisor" shall mean a consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 30 May 2018)
"32a-1. "durable medium" shall mean any instrument which:

1. enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
2. allows the unchanged reproduction of the information stored;"

"32b. "consolidated basis" shall mean on the basis of the consolidated situation;"[65]

(Law of 23 July 2015)
"32c. "sub-consolidated basis" shall mean sub-consolidated basis as defined in point (49) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 30 May 2018)
"32c-1. "multilateral system" shall mean a multilateral system as defined in point (51) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;

32c-2. "high-frequency algorithmic trading technique" shall mean a high-frequency algorithmic trading technique as defined in point (52) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

(Law of 21 July 2021: A566)
"32c-3. "market maker" shall mean market maker as defined in point (53) of Article 1 of the Law of 30 May 2018 on markets in financial instruments, as amended;"

(Law of 23 July 2015)
"32d. "securitisation" shall mean securitisation as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013;"

(Law of 30 May 2018)
"32d-1. "algorithmic trading" shall mean algorithmic trading as defined in point (54) of Article 1 of the Law of 30 May 2018 on markets in financial instruments;"

33. "transferable securities" shall mean those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

[63] Law of 21 July 2021: A566
[64] Law of 23 July 2015
[65] Law of 21 July 2021: A566

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;

"(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;"[66]"

(Law of 30 May 2018)

"34. "cross-selling practice" shall mean the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package."

(Law of 10 November 2009)

""Article 1-1. Scope"[67]

(1) This Law shall apply to credit institutions and PFS.

(2) It shall not apply to:

(a) insurance or reinsurance undertakings governed by the Law of 6 December 1991 on the insurance sector, as amended;

(b) persons which provide investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

(c) persons which provide a service under this Law, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service, unless otherwise provided;

(d) persons which provide a service under Chapter 2 of Part I of this Law where that service is provided in an incidental manner in the course of a professional activity and if the latter is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

"(e) "without prejudice to letters (a), (i), (j) or (k),"[68] persons providing investment services or performing investment activities consisting in dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons:

(i) are market makers;
(ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
(iii) apply a high-frequency algorithmic trading technique; or
(iv) deal on own account when executing client orders;"[69]

(f) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

(g) persons which provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for

[66] Law of 30 May 2018
[67] Law of 13 July 2007
[68] Law of 21 July 2021: A566
[69] Law of 30 May 2018

their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

(h) the members of the European System of Central Banks nor to other national bodies performing similar functions "in the European Union, nor to other public bodies charged with or intervening in the management of the public debt in the European Union, nor to international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems"[70];

(i) undertakings for collective investment governed by the Law of 13 February 2007 relating to specialised investment funds or the Law of 17 December 2010 relating to undertakings for collective investment, as amended, nor to their managers (…)[71]; " "Managers" means management companies referred to in Chapters 15, 16, 17, or 18, respectively, of the Law of 17 December 2010 relating to undertakings for collective investment."[72]

(j) pension funds governed by the Law of 13 July 2005 on institutions for occupational retirement provision in the form of sepcav or assep nor to pension funds subject to the supervision of the *Commissariat aux Assurances*, nor to their (…)[73] liability managers;

"(k) persons, on the one hand, dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders, or, on the other hand, providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business, provided that:"[74]

"(i) for each of those cases individually and on an aggregate basis, the activity is ancillary to their main business, when considered on a group basis;

(ii) those persons are not part of a group the main business of which is the provision of investment services, the performance of any activity listed in Annex I, or acting as a market maker for commodity derivatives;

(iii) those persons do not apply a high-frequency algorithmic trading technique; and

(iv) those persons report upon request to the CSSF the basis on which they have assessed that their activity under this letter is ancillary to their main business;"[75]

(l) persons providing investment advice in the course of providing another professional activity not covered by Subsections 1 and 2 of Chapter 2 of Part I of this Law provided that the provision of such advice is not specifically remunerated;

(…)[76]

(Law of 21 July 2021: A566)

"(m) crowdfunding service providers as defined in letter (e) of Article 2(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937;"

(o) undertakings within the meaning of the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), nor to their managers;

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[70] Law of 30 May 2018

[71] Repealed by the Law of 21 December 2012

[72] Law of 21 December 2012

[73] Repealed by the Law of 21 December 2012

[74] Law of 30 May 2018

[75] Law of 21 July 2021: A566

[76] Law of 30 May 2018

(p) securitisation undertakings, nor to fiduciary-representatives having dealings with such undertakings;

(q) payment institutions governed by the Law of 10 November 2009 on payment services;

(Law of 30 May 2018)

"(r) operators with compliance obligations under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, hereinafter referred to as "Directive 2003/87/EC", who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, provided that those persons do not apply a high-frequency algorithmic trading technique;"

(Law of 30 May 2018)

"(s) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC or Article 2(4) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, when carrying out their tasks under those Directives, under Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, under Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, or under network codes or guidelines adopted pursuant to those regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks. That exemption shall apply to persons engaged in the activities set out in this letter only where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities. That exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights;"

(Law of 30 May 2018)

"(t) CSDs except as provided for by Article 73 of Regulation (EU) No 909/2014;"

(Law of 15 July 2024)

"(u) the service of creditors' rights under a non-performing credit agreement, or of the non-performing credit agreement itself, performed by notaries, bailiffs or lawyers;"

"(v)"[77] other persons carrying on any activity the taking up and pursuit of which are governed by special laws.

(3) The rights conferred by "Directive 2014/65/EU"[78] on credit institutions and investment firms shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for "by the Treaty on the Functioning of the European Union (TFEU) and by Protocol No 4 on the Statute"[79] of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions."

[77] Law of 15 July 2024

[78] Law of 30 May 2018

[79] Law of 30 May 2018

PART I: Access to professional activities in the financial sector

Chapter I: Authorisation of banks or credit institutions established under Luxembourg law.

"Section 1: Provisions of general application"[80]

"Article 1-2."[81] Scope

(Law of 13 July 2007)
"This chapter shall apply to all credit institutions incorporated under Luxembourg law."

Article 2. Authorisation requirement

(1) No (…)[82] person established under Luxembourg law may carry on the business of a credit institution without holding a written authorisation "in accordance with Article 14 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (hereinafter "Regulation (EU) No 1024/2013")."[83]

(2) No person may be authorised to carry on the business of a credit institution either through another person or as an intermediary for the carrying-on of such business.

(3) "No person other than a credit institution, whose activity includes granting credits for its own account, may carry on the business of taking deposits or other repayable funds from the public."[84] This prohibition shall not apply to the taking of deposits or other funds repayable by the State, by local authorities or by public international bodies of which one or more "Member States"[85] are members, or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

(Law of 21 July 2021: A566)
"(4) No person other than a credit institution may carry on the business of currency exchange dealers consisting of operations involving the purchase or sale of foreign currencies in cash. The credit institutions which carry on this activity shall issue to clients, in respect of each operation, a statement indicating the amounts in the currencies dealt in, the rates applied and the date of the operation."

(Law of 21 July 2021: A566)
"Article 2-1. Specific requirements for authorisation of undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

(1) Undertakings whose activity meets the conditions referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and which already have an authorisation pursuant to Part I, Chapter 2, Section 2, Subsection 1, shall submit an application for authorisation in accordance with Article 2, at the latest on the day when either of the following events takes place:

1. the average of monthly total assets, calculated over a period of 12 consecutive months, is equal to or exceeds 30 billion euros; or
2. the average of monthly total assets calculated over a period of 12 consecutive months is less than 30 billion euros, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than 30 billion euros and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds 30 billion euros, both calculated as an average over a period of 12 consecutive months.

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[80] Law of 21 November 1997
[81] Law of 10 November 2009
[82] Repealed by the Law of 13 July 2007
[83] Law of 21 July 2021: A560
[84] Law of 21 December 2012
[85] Law of 13 July 2007

(2) The undertakings referred to in paragraph 1 may continue carrying out the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 until a decision is taken about their application for authorisation as referred to in paragraph 1. The authorisation pursuant to Part I, Chapter 2, Section 2, Subsection 1 shall be suspended.

(3) The process to obtain a reauthorisation shall be as streamlined as possible and the information from existing authorisations shall be taken into account."

Article 3. Authorisation procedure

(1) Authorisation shall be granted upon written application, following an investigation by the "CSSF"[86] to establish whether the conditions laid down by the present Law are fulfilled. "The application for authorisation shall not be examined in terms of the economic needs of the market."[87]

(2) "The CSSF shall consult the relevant competent authorities of the Member States responsible for the supervision of the credit institutions, investment firms, insurance undertakings or management companies of UCITS, prior to granting authorisation to a credit institution which is:

- a subsidiary of a credit institution, investment firm, insurance undertaking or UCITS management company authorised in another Member State, or
- a subsidiary of the parent undertaking of a credit institution, investment firm, insurance undertaking or UCITS management company authorised in the European Union, or
- controlled by the same natural or legal persons as control a credit institution, investment firm, insurance undertaking or UCITS management company authorised in the European Union."[88]

(Law of 5 November 2006)

"The CSSF consults these competent authorities in particular when assessing the suitability of the shareholders and the reputation and professional qualification of the directors of the credit institution requesting the authorisation, when the shareholder is one of the institutions referred to "in the previous subparagraph"[89] or when the directors involved in the management of the credit institution requesting authorisation also take part in the management of one of the institutions referred to "in the previous subparagraph"[90]. For these purposes, the CSSF and the other relevant competent authorities shall inform each other of any useful information relating to the granting of the authorisation and subsequently for the assessment of the ongoing compliance with operating conditions."

(3) The authorisation shall be granted for an unlimited period of time.

(4) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof and by a programme of operations indicating the type and volume of business envisaged, the administrative and accounting structure of the institution in question "and parent undertakings, financial holding companies and mixed financial holding companies within the group"[91].

(Law of 20 May 2021)

"Applications for authorisation shall be accompanied by a description of the arrangements, processes and mechanisms referred to in Article 5(1a)."

"(5) Authorisation, granted by the CSSF after investigation of the file, shall be required before any change is made to the object, name or legal form of the institution in question and for the

[86] Law of 28 April 2011
[87] Law of 23 July 2015
[88] Law of 13 July 2007
[89] Law of 13 July 2007
[90] Law of 13 July 2007
[91] Law of 20 May 2021

setting up or acquisition of any subsidiary in Luxembourg and subsidiary and branch abroad, without prejudice to the application of Article 33."[92]

(Law of 20 May 2021)

"(5a) Authorisation to commence the activity of a credit institution shall be refused where the arrangements, processes and mechanisms referred to in Article 5(1a) do not enable sound and effective risk management by that institution."

(6) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. "The absence of a decision within six months of submission of an application for authorisation which includes all the elements necessary for a decision shall be deemed equivalent to a notification of refusal."[93] Such a decision shall in any event be adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. (…)[94]

(7) ""Without prejudice to section 3 of this chapter, Chapter 2 of Title II of the Law of 10 November 2009 on payment services and "Articles 20(2) and 32(2) of the Law of 30 May 2018 on markets in financial instruments (…)[95],"[96]„[97] credit institutions authorised in Luxembourg are *ipso jure* authorised:

- to perform all the activities listed in Annex I;
- to provide all the investment services and to perform all the investment activities listed in Section A of Annex II;
- to provide all ancillary services listed in Section C of Annex II, (…)[98] "and"[99]

(…)[100]

- to perform any other activity falling under the scope of this Law."[101]

(Law of 30 May 2018)

"(8) Credit institutions shall comply at all times with the conditions for initial authorisation and shall notify the CSSF of any material changes to the conditions for initial authorisation.

The CSSF shall have in place appropriate procedures to monitor that credit institutions comply with the obligation under the first subparagraph.

The CSSF shall monitor the activities of credit institutions relating to the provision of investment services or performance of investment activities in order to ensure compliance with the provisions relating to the operating conditions that apply to the provision of investment services or performance of investment activities."

Article 4. The legal form of the institution

"Authorisation may only be granted to a legal person incorporated under Luxembourg law which is established in the form of a public-law institution, a *société anonyme* [public limited company], a *société*

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[92] Law of 28 April 2011
[93] Law of 23 July 2015
[94] Law of 21 July 2021: A560
[95] Law of 21 July 2021: A566
[96] Law of 30 May 2018
[97] Law of 10 November 2009
[98] Law of 30 May 2018
[99] Law of 21 July 2021: A566
[100] Law of 21 July 2021: A566
[101] Law of 13 July 2007

en commandite par actions [limited partnership with a share capital] or a *société coopérative* [cooperative society]."[102]

Article 5. Central administration and infrastructure

(1) Authorisation shall be subject to the production of evidence showing the existence in Luxembourg of the central administration "and of the registered office"[103] of the institution in respect of which authorisation is sought.

(Law of 7 November 2007)

(1a) "Credit institutions shall have robust internal governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures ", network and information systems that are set up and managed in accordance with Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, hereinafter "Regulation (EU) 2022/2554" "[104] "and remuneration policies and practices allowing and promoting a sound and effective risk management"[105] (…)[106].."

(Law of 20 May 2021)

"The remuneration policies and practices referred to in the first subparagraph shall be gender neutral."

(Law of 23 July 2015)

"(1b) The internal control mechanisms and administrative and accounting procedures referred to in paragpaph 1a shall permit the checking of their compliance with Regulation (EU) No 575/2013, this Law and their implementing measures."

"(2) The credit institution shall meet the organisational requirements referred to in Article 37-1 when providing investment services and/or performing investment activities. When exercising its activity of depositary bank of undertakings for collective investment, pension funds, undertakings governed by the Law of 15 June 2004 relating to the investment company in risk capital, the credit institution shall not be submitted to the afore-mentioned requirements."[107]

(Law of 7 November 2007)

"(3) The internal governance arrangements, processes, procedures and mechanisms referred to in this article shall be comprehensive and proportionate to the nature, scale and complexity "of the risks inherent in the business model and the credit institution's activities."[108] "

(Law of 20 December 2024: A585)

"(4) Where the arrangements referred to in paragraph 1a, first subparagraph, are introduced by a credit institution, the criteria set out in Article 7(1), Article 38-1, first to fifth subparagraphs, Articles 38-2 to 38-9, Article 51(4), Article 53-9(2) and (3), Articles 53-12 to 53-23, Article 53-28(2) and Article 53-52 shall be taken into account."

Article 6. Shareholdings

"(1) Authorisation shall be subject to communication to the CSSF of the identities of the shareholders or members, whether direct or indirect, whether natural or legal persons, that

[102] Law of 13 July 2007
[103] Law of 13 July 2007
[104] Law of 1 July 2024
[105] Law of 28 October 2011
[106] Law of 1 July 2024
[107] Law of 10 November 2009
[108] Law of 23 July 2015

have qualifying holdings in the institution to be authorised and of the amounts of those holdings "or, where there are no qualifying holdings, of the 20 largest shareholders or members."[109]

Authorisation shall be refused if, taking into account the need to ensure the sound and prudent management of the credit institution, the suitability of those shareholders or members is not satisfactory" "in accordance with"[110] the criteria laid down in Article 6(9) (…)[111]."[112]

The concept of sound and prudent management is assessed in accordance with the criteria listed in paragraph 9.

(2) Authorisation is subject to the conditions that the structure of the institution's direct and indirect shareholders be transparent and organised in such manner that the authorities responsible for the prudential supervision of the institution and, if appropriate of the group "as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013"[113] to which it belongs, be clearly identifiable; that this supervision can be exercised without hindrance; and that supervision on a consolidated group basis "as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013"[114] to which the institution belongs be ensured "or that the internal arrangements, the distribution of tasks within the group and the supervisory mechanisms of the group are adequate for the purposes of a consolidated supervision of the group"[115].

(3) Where close links exist between the credit institution to be authorised and other natural or legal persons, the authorisation shall only be granted if those links do not prevent the CSSF from effectively exercising its supervisory functions.

(4) Authorisation shall be refused if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, prevent the CSSF from effectively exercising its supervisory functions. Authorisation shall also be refused if difficulties involved in the enforcement of these provisions prevent the CSSF from effectively exercising its supervisory functions.

(5) Any natural or legal person or such persons acting in concert (hereinafter the "proposed acquirer"), who has taken a decision to either acquire, directly or indirectly a qualifying holding in a credit institution or to further increase, directly or indirectly such a qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 33 1/3% or 50% or so that the credit institution would become their subsidiary (hereinafter the "proposed acquisition"), is required to first notify in writing such decision to the CSSF and is required to indicate the size of the intended holding and the relevant information referred to in paragraph 6.

(Law of 20 May 2021)

"(5a) Where the assessment referred to in paragraph 5 takes place concurrently with the approval of a financial holding company or mixed financial holding company referred to in Article 21a of Directive 2013/36/EU, the CSSF, in its capacity as competent authority for the purposes of paragraph 5, shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period referred to in the second subparagraph of paragraph 7 shall be suspended for a period exceeding 20 working days until the procedure set out in Article 21a of Directive 2013/36/EU is complete."

(6) The CSSF shall make publicly available a list specifying the information that is necessary to carry out the assessment referred to in paragraph 9 (hereinafter the "assessment") and that

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[109] Law of 23 July 2015

[110] Law of 20 May 2021

[111] Law of 20 May 2021

[112] Law of 23 July 2015

[113] Law of 20 December 2024: A585

[114] Law of 20 May 2021

[115] Law of 20 December 2024: A585

must be provided to it at the time of notification. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

(7) The CSSF shall, promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in paragraph 8, acknowledge receipt thereof in writing to the proposed acquirer.

The CSSF shall have a maximum of 60 working days as from the date of the sending of the acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in paragraph 6 (hereinafter the "assessment period"), to carry out the assessment.

The CSSF shall indicate the date of expiry of the assessment period in the acknowledgement of receipt it sends to the proposed acquirer.

(8) The CSSF may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the CSSF and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted.

The interruption shall not exceed 20 working days. Any further requests by the CSSF for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

The CSSF may extend the interruption up to thirty working days if the proposed acquirer is:

(a) situated or regulated in a third country; or

(b) not subject to supervision under "Directive 2013/36/EU "or Directive"[116] 2009/65/EC, 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) or"2014/65/EU"[117]."[118]

(9) In assessing the notification provided for in paragraph 5 and the information referred to in paragraph 8, the CSSF shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the credit institution, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

"(b) the reputation, knowledge, skills and experience of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;"[119]

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

(d) whether the credit institution in which an acquisition is proposed will be able to comply and continue to comply with the prudential requirements based on "Directive 2013/36/EU, Regulation (EU) No 575/2013, and where applicable, other provisions of EU law, in particular Directives 2002/87/EC and 2009/110/EC"[120] and, in particular,

[116] Law of 25 July 2018
[117] Law of 30 May 2018
[118] Law of 23 July 2015
[119] Law of 23 July 2015
[120] Law of 23 July 2015

whether the group "as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013"[121] of which it will become a part following the acquisition has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(Law of 30 May 2018)

"In assessing the notification provided for in paragraph 5 and the information referred to in paragraph 8, the CSSF shall not examine the proposed acquisition in terms of the economic needs of the market."

(10) The CSSF shall work in full consultation with the other relevant competent authorities when carrying out the assessment if the proposed acquirer is one of the following:

(a) a credit institution, investment firm, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, investment firm, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

(c) a natural or legal person controlling a credit institution, investment firm, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

The CSSF shall, without undue delay, provide the other relevant competent authorities with any information which is essential or relevant for the assessment. In this regard, the CSSF shall communicate, upon request, all relevant information and shall communicate on its own initiative all essential information.

A decision by the CSSF shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

(11) If the CSSF, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision.

The CSSF may only oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 9 or if the information provided by the proposed acquirer is incomplete.

The CSSF may make available to the public, on its own initiative or at the request of the proposed acquirer, an appropriate statement of the reasons for the decision.

(12) If the CSSF does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(13) The CSSF may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding paragraphs 7 and 8, where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the CSSF, it shall treat the proposed acquirers in a non-discriminatory manner.

(15) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit institution shall first notify in writing the CSSF, indicating the size of its intended holding. Such a person shall likewise inform the CSSF if it has taken the decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held

[121] Law of 20 May 2021

would fall below 20%, 33 1/3% or 50% or so that the credit institution would cease to be its subsidiary."[122]

"(16)"[123] On becoming aware of them, credit institutions shall inform the CSSF "without delay"[124] of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 5 and 15.[125] They shall also, at least once a year, inform the CSSF of the names of shareholders and members possessing qualifying holdings and the amounts of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to "companies whose transferable securities are admitted to trading on a regulated market".[126]

"(17)"[127] "Where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of a credit institution, the CSSF shall take appropriate measures to put an end to that situation. In particular, the CSSF may", without prejudice to Articles 3(6), 15(7), 38-12, 44-4, 53(1) and (2), 58-1, "59(1) and (2)"[128], 63 to 63-5 and 64-2,"[129] use its power of injunction or suspension or impose an administrative fine on the persons responsible for the administration or management "as well as the shareholders or members"[130] of the credit institution concerned, who act such as to jeopardise the sound and prudent management of the credit institution (…)[131]."[132]

(Law of 23 July 2015)

"Without prejudice to Articles 3(6), 15(7), 38-12, 44-4, 53(1) and (2), 58-1, "59(1) and (2)"[133], 63 to 63-5 and 64-2, similar measures shall apply to natural or legal persons that fail to comply with the obligation to provide prior information as set out in paragraph 5."

(Law of 17 July 2008)

"Where a holding is acquired despite the opposition of the CSSF, it may suspend the exercise of voting rights in relation to these shares or demand to the nullity of the votes cast or the possibility of their annulment without prejudice to any other penalties that may be applied."

Article 7. Professional repute and experience

(1) Authorisation shall be subject to the condition that the members "of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. "Credit institutions shall have the primary responsibility for ensuring that members of the management body fulfil these conditions."[134] The"[135] shareholders or members referred to in the preceding Article, shall produce evidence of their professional repute. Such good repute shall be assessed on the basis of police records and of

[122] Law of 17 July 2008
[123] Law of 17 July 2008
[124] Law of 30 May 2018
[125] Law of 17 July 2008
[126] Law of 13 July 2007
[127] Law of 13 July 2007
[128] Law of 27 February 2018
[129] Law of 23 July 2015
[130] Law of 30 May 2018
[131] Law of 23 July 2015
[132] Law of 13 July 2007
[133] Law of 27 February 2018
[134] Law of 20 May 2021
[135] Law of 23 July 2015

any evidence tending to show that the persons concerned are of good repute and offering every guarantee of irreproachable conduct on the part of those persons.

(Law of 30 May 2018)

"The credit institution shall notify the CSSF of all members of its management body and of any changes to its membership."

(Law of 20 May 2021)

"Where members of the management body do not fulfil the requirements set out in this paragraph, the CSSF shall have the power to remove such members from the management body. The CSSF shall in particular verify whether the requirements set out in this paragraph are still fulfilled where it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that credit institution."

(2) At least two persons must be responsible for the management of the institution. Those persons must be empowered effectively to determine the direction taken by the business and must possess adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy.

"(3) The authorisation shall be refused if the conditions under which it was granted are not met, and particularly if the members of the management body do not meet the conditions provided for in the first subparagraph of paragraph 1.

Any change in the persons as referred to in paragraph 1 shall be communicated in advance to the CSSF. The CSSF may request all such information as may be necessary regarding the persons who may be required to fulfil the legal requirements with respect to reputation and professional experience. The CSSF shall refuse the proposed change if these persons are of insufficient professional repute and, where applicable, of insufficient professional experience or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the sound and prudent management of the credit institution.

The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case may be filed within one month, or else shall be time-barred."[136]

(Law of 28 April 2011)

"(4) Granting the authorisation implies that the members "of the management body"[137] shall, on their own volition, notify in writing and in a complete, coherent and comprehensible form, to the CSSF any changes regarding the substantial information on which the CSSF based its investigation of the application for authorisation."

Article 8. Capital base

(1) Authorisation shall be conditional on the production of evidence showing the existence of a share capital of "8 700 000 euros"[138] "which is subscribed, fully paid-up and compliant with the conditions laid down in Article 28, or, where applicable, Article 29 of Regulation (EU) No 575/2013"[139] (…)[140]. "This amount"[141] may be modified by grand-ducal regulation.

(2) The "capital base"[142] of a credit institution may not be less than the amount of the authorised capital prescribed pursuant to the preceding paragraph. If the "capital base"[143] falls below that

[136] Law of 30 May 2018
[137] Law of 23 July 2015
[138] Law of 2 August 2003
[139] Law of 23 July 2015
[140] Law of 23 July 2015
[141] Law of 23 July 2015
[142] Law of 23 July 2015
[143] Law of 23 July 2015

amount, the CSSF may, where the circumstances so justify, allow the institution a limited period in which to rectify its situation or cease its activities.

Article 9. *(repealed by the Law of 13 July 2007)*

Article 10. External auditing

(1) "Authorisation shall be conditional on the institution having its annual accounts audited by one or more *réviseurs d'entreprises agréés* (approved statutory auditors) who can show that they possess adequate professional experience. Those *réviseurs d'entreprises agréés* (approved statutory auditors) shall be appointed by the body responsible for managing the credit institution."[144]

(2) "Any change in the *réviseurs d'entreprises agréés* (approved statutory auditors) must be authorised in advance by the CSSF in accordance with Article 7(3)."[145]

"(3) The rules in respect of *commissaires,* which may form a supervisory council as laid down in the Law on commercial companies, shall only apply to credit institutions where the Law on commercial companies mandatorily prescribes it even if there is an external auditor."[146]

(Law of 11 June 1997)
""Article 10-1. Fonds de Garantie des Dépôts Luxembourg membership

The authorisation shall be subject to the credit institution's membership in the Fonds de Garantie des Dépôts Luxembourg laid down in Article 154 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms."[147]"

"Article 10-2. Système d'Indemnisation des Investisseurs Luxembourg membership

The authorisation shall be subject to the credit institution's membership in the Système d'Indemnisation des Investisseurs Luxembourg laid down in Article 156 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms."[148]

Article 11. Withdrawal of authorisation

(1) The authorisation "may be withdrawn"[149] if the conditions for the grant thereof cease to be fulfilled.

(Law of 21 July 2021: A566)
"The authorisation may also be withdrawn if the credit institution uses its authorisation exclusively to engage in the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and has, for a period of five consecutive years, average total assets below the thresholds set out in that article. In that case, for the purposes of carrying on the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013, the authorisation suspended pursuant to the second sentence of Article 2-1(2) shall be reactivated, provided that the conditions for obtaining this authorisation are still met."

(2) "The agreement "may be withdrawn"[150] if the credit institution does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for the preceding six months."[151]

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[144] Law of 18 December 2009
[145] Law of 18 December 2009
[146] Law of 28 April 2011
[147] Law of 18 December 2015
[148] Law of 18 December 2015
[149] Law of 30 May 2018
[150] Law of 30 May 2018
[151] Law of 13 July 2007

(Law of 13 July 2007)

(3) "The authorisation "may be withdrawn"[152] if it has been obtained by making false statements or by any other irregular means."

"(4) The authorisation may be withdrawn if the credit institution:

(a) no longer meets the prudential requirements set out in Parts Three, Four or Six of Regulation (EU) No 575/2013", except for the requirements set out in Articles 92a and 92b of that regulation"[153];

(b) no longer meets the prudential requirements imposed under Article 53-1(2), second indent;

(c) no longer meets the specific liquidity requirements laid down in Article 105 of Directive 2013/36/EU which are imposed by the CSSF and the purpose of which is to capture liquidity risks to which a credit institution is or might be exposed; or

(d) can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors."[154]

(Law of 23 July 2015)

"(4a) The authorisation may be withdrawn in the circumstances laid down in Article 63-2(1)."

(…)[155]

"Section 2: Specific provisions relating to *caisses rurales* [rural banks]" [156]

Article 12. Specific provisions relating to *caisses rurales*

(1) The composite entity comprising the central credit institution of the *caisses rurales* and those *caisses rurales* which have been affiliated to that central institution since before 15 December 1977 or have resulted from any merger of such *caisses*, and which are still affiliated to the central institution, shall be regarded as forming a single credit institution. "Affiliation", for the purposes of this article, shall mean the holding of one or more shares in the capital of the central institution.

(2) The liabilities of the central institution and of the *caisses* affiliated thereto shall constitute joint and several liabilities.

(Law of 23 July 2015

"Articles 3(7), 31, 33, 34, 38 to 38-11, 45 and 46 "and Chapter 4, Section 3, and Chapter 5 of Part III"[157] shall apply to the whole as constituted by the central institution and the *caisses* affiliated thereto."

(3) The managing body of the central credit institution shall exercise administrative, technical and financial control over the organisation and management of each affiliated *caisse*. It shall be empowered to issue instructions to the managing bodies of the affiliated *caisses*.

"(4) The members of the management body and the persons in charge of the management of each *caisse* shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties."[158]

(Law of 11 June 1997)

""(5) Only the central credit institution shall become member of the Fonds de Garantie des Dépôts Luxembourg laid down in Article 154 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms. The protection offered by the Fonds de Garantie des

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[152] Law of 30 May 2018

[153] Law of 20 May 2021

[154] Law of 23 July 2015

[155] Law of 21 July 2021: A560

[156] Law of 21 November 1997

[157] Law of 20 May 2021

[158] Law of 23 July 2015

Dépôts Luxembourg shall cover not only the deposits constituted at the central institution but also the deposits in affiliated banks."

(Law of 21 November 1997)

"(6) Only the central credit institution shall participate in the Système d'Indemnisation des Investisseurs Luxembourg laid down in Article 156 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms. The protection offered by the Système d'Indemnisation des Investisseurs Luxembourg shall cover not only the deposits constituted at the central institution but also the deposits in affiliated banks." "[159]

(Law of 21 November 1997)

""Section 3: Specific provisions relating to banks issuing covered bonds

(...)[160]

"Article 12-1. Specific provisions relating to banks issuing covered bonds

Credit institutions whose principal activity consists in issuing covered bonds as laid down in Article 3 of the Law of 8 December 2021 relating to the issue of covered bonds shall be considered as banks issuing covered bonds. Banks issuing covered bonds may engage in other activities only insofar as they comply with Article 12-2."[161]

Article 12-2. Definition of incidental and ancillary activities of a bank issuing covered bonds

(1) Banks issuing covered bonds may engage in other banking and financial activities only in so far as these are incidental and ancillary to their main activity.

For the purposes of this provision, the following shall be regarded as incidental activities:

(a) purchasing and selling securities in their own name for the account of third parties, but excluding forward transactions;

(b) with a view to granting mortgage loans, loans to public entities or loans of the type referred to in "Article 3 of the Law of 8 December 2021 relating to the issue of covered bonds"[162]:
- receiving capital sums as deposits from third parties, with or without interest;
- taking out loans and furnishing security for such loans;
- issuing bonds which are not subject to the mandatory cover requirements laid down for covered bonds referred to in Article 12-1(1);

(c) providing custody and management services in respect of securities for the account of third parties;

(d) acquiring holdings in undertakings "other than renewable energy undertakings"[163], where such holdings are intended to promote operations carried out in accordance with "Article 3 of the Law of 8 December 2021 relating to the issue of covered bonds" [164] and the liability of the bank issuing covered bonds resulting from those holdings is limited by the legal form of the undertaking, provided however that each holding does not in total exceed one-third of the nominal value of all the shares in the undertaking in which the holding is acquired. A larger holding shall be authorised in so far as the corporate object of the undertaking is in essence - by virtue either of the law or of its statutes - to engage in operations of the same type as those which the bank issuing covered bonds is itself authorised to carry out; the total amount of such holdings may not exceed 20% of the issuing bank's own funds. "These rules shall apply without prejudice to the limits

[159] Law of 18 December 2015
[160] Law of 8 December 2021
[161] Law of 8 December 2021
[162] Law of 8 December 2021
[163] Law of 22 June 2018
[164] Law of 8 December 2021

for the acquisition and ownership of a qualifying holding outside the financial sector by the issuing bank arising from Regulation (EU) No 575/2013;"[165]

(Law of 22 June 2018)

"(e) acquiring holding in renewable energy undertakings, where such holdings are intended, in particular, to continue and promote the operations carried out in accordance with "Article 3 of the Law of 8 December 2021 relating to the issue of covered bonds" [166] and, in particular, to avoid losses on rights in rem in immoveable or moveable property or on charges on immoveable or moveable property that relate to renewable energy immoveable or moveable property, and that the liability of the banks issuing covered bonds resulting from those holdings is limited by the legal form of the undertaking, the amount of such holdings may not exceed 20% of the issuing bank's own funds. These rules shall apply without prejudice to the limits for the acquisition and ownership of a qualifying holding outside the financial sector by the issuing bank, as laid down in Regulation (EU) No 575/2013."

(2) Banks issuing covered bonds may use the funds available in order to:

(a) deposit them with other suitable credit institutions;

(b) redeem their mortgage bonds, public-sector covered bonds "and moveable-property covered bonds;

(c) purchase bills of exchange and cheques,

- securities, claims, Treasury bills and Treasury bonds the debtor in respect of which is a public entity,
- debt instruments in respect of which the payment of interest and the repayment of capital are guaranteed by a public entity,
- other debt instruments listed on a stock exchange;

(d) make advances against pledges of securities in accordance with internal rules to be laid down by the bank issuing covered bonds. Such rules shall specify the securities eligible to be accepted by way of pledge and fix the authorised amount of the advance;

(e) invest them in the form of investment units in assets invested in accordance with the principle of risk-spreading, where those units have been issued by a capital investment company or a foreign investment company which is subject to special official surveillance with a view to protecting holders of securities, provided that, under the terms of the contractual conditions or statutes of the capital investment company or investment company, the assets may be invested only in debt instruments of the type referred to in letter (c) and in bank deposits.

(3) Banks issuing covered bonds may acquire immoveable property and moveable property only with a view to avoiding losses on mortgages and in order to meet their own needs.

Article 12-3. *(repealed by the Law of 8 December 2021*)

Article 12-4. *(repealed by the Law of 8 December 2021)*

Subsection 2: *(repealed by the Law of 8 December 2021)*

Subsection 3: *(repealed by the Law of 8 December 2021)*

[165] Law of 22 June 2018

[166] Law of 8 December 2021

Section 4: *(repealed by the Law of 10 November 2009)*

Chapter 2: "Authorisation of PFS"[167] (…)[168]

Section 1: General provisions

Article 13. Scope

"This chapter shall apply to any natural person established in Luxembourg for professional reasons, as well as to any legal person governed by Luxembourg law whose regular occupation or business is to exercise a financial sector activity or one of the connected or ancillary activities referred to in Subsection 3 of Section 2 of this chapter on a professional basis."[169]

Article 14. Authorisation requirement

"(1) No person may have as a regular occupation or business an activity of the financial sector nor a connected or complementary activity of the financial sector within the meaning of Subsection 3 of Section 2 of this chapter without holding a written authorisation of (…)[170] the CSSF."[171]

(2) No person may be authorised to carry on any financial sector business either through another person or as an intermediary for the carrying-on of such business.

Article 15. Authorisation procedure

(1) Authorisation shall be granted upon written application, following an investigation by the CSSF to establish whether the conditions laid down by this Law are fulfilled. (…)[172]

(2) The authorisation shall be granted for an unlimited period of time.

Where authorisation is granted, the PFS may immediately start to carry on business.

"(3) The authorisation of an investment firm shall specify the investment services or activities listed in Section A of Annex II which it is authorised to provide. In addition, the authorisation may cover one or more ancillary services set out in Section C of Annex II "and one or more services "of an APA, an ARM or a CTP within the meaning of point (35) of Article 2(1) of Regulation (EU) No 600/2014, pursuant to Article 27b(2) of that regulation"[173] "[174]. The authorisation as investment firm may not be granted where only ancillary services are provided."[175]

"(4) "The CSSF shall consult the competent authorities of the Member States responsible for the supervision of the investment firms, credit institutions, insurance undertakings or UCITS management companies, prior to granting authorisation to a credit institution which is:

- a subsidiary of an investment firm, "market operator,"[176] credit institution, insurance undertaking or UCITS management company authorised in the European Union, or
- a subsidiary of the parent undertaking of an investment firm, credit institution, insurance undertaking or UCITS management company authorised in the European Union, or

[167] Law of 28 April 2011
[168] Repealed by the Law of 13 July 2007
[169] Law of 10 November 2009
[170] Law of 21 July 2021: A560
[171] Law of 13 July 2007
[172] Law of 12 July 2021: A566
[173] Law of 21 July 2021: A566
[174] Law of 30 May 2018
[175] Law of 13 July 2007
[176] Law of 30 May 2018

– controlled by the same persons, whether natural or legal, as an investment firm, a credit institution, an insurance undertaking or a UCITS management company authorised in the European Union."[177]

(Law of 30 May 2018)

"The CSSF shall consult the competent authorities of the Member States responsible for the supervision of credit institutions or insurance undertakings prior to granting an authorisation to a market operator which is any of the following:

1. a subsidiary of a credit institution or insurance undertaking authorised in the European Union;
2. a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the European Union;
3. controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the European Union."

The CSSF consults these competent authorities in particular when assessing the suitability of the shareholders and the reputation and professional qualification of the directors "of the entity"[178] requesting the authorisation, when the shareholder is one of the institutions referred to "in the first and second subparagraphs"[179] or when the directors involved in the management "of the entity"[180] requesting authorisation also take part in the management of one of the institutions referred to "in the first and second subparagraphs"[181]. For this purpose, the CSSF and the other relevant competent authorities shall inform each other of any useful information relating to the granting of the authorisation and subsequently for the assessment of the ongoing compliance with operating conditions."[182]

(5) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof and by a programme of operations indicating the type and volume of business envisaged and the administrative and accounting structure (…)[183].

(6) "Authorisation, granted by the CSSF after having investigated the file, shall be required before any change is made to the object, name or legal form of the institution in question and for the setting up or acquisition of any subsidiary in Luxembourg and subsidiary or branch abroad without prejudice to the application of Article 33."[184] "Investment firms shall obtain authorisation before extending their activities to other investment services or activities", to other ancillary services or one or several services "of an APA, an ARM or a CTP within the meaning of point (35) of Article 2(1) of Regulation (EU) No 600/2014, pursuant to Article 27b(2) of that regulation"[185], not covered by their initial authorisation"[186]."[187]

(7) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. Such a decision shall in any event be

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[177] Law of 13 July 2007
[178] Law of 30 May 2018
[179] Law of 30 May 2018
[180] Law of 30 May 2018
[181] Law of 30 May 2018
[182] Law of 5 November 2006
[183] Law of 30 May 2018
[184] Law of 28 April 2011
[185] Law of 21 July 2021: A566
[186] Law of 30 May 2018
[187] Law of 13 July 2007

adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. (…)[188]

(Law of 13 July 2007)

"(8) The application of the provisions of this article shall, where applicable, be adapted to the existence of measures decided by the authorities of the European Union and limiting or suspending the decisions regarding requests for authorisation submitted by third countries."

(Law of 30 May 2018)

"(9) PFS shall comply at all times with the conditions for initial authorisation and shall notify the CSSF of any material changes to the conditions for initial authorisation.

The CSSF shall have in place appropriate procedures to monitor that PFS comply with the obligation under the first subparagraph.

The CSSF shall monitor the activities of PFS in order to ensure compliance with the provisions relating to the operating conditions governing their activities."

Article 16. The legal form of the entity

Authorisation for any activity involving the management of funds of third parties may be granted only to legal persons having the form of a public entity or a commercial company.

Article 17. Central administration and infrastructure

"(1) The authorisation for an applicant which is a legal person is subject to the production of evidence of the existence in Luxembourg of the central administration and the registered office of the applicant. The authorisation for an applicant who is a natural person is subject to the production of evidence that this person effectively conducts business in Luxembourg and has his central administration in Luxembourg."[189]

(Law of 7 November 2007)

"(1a) "An investment firm"[190] shall have robust internal governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, "or the risks that it poses or might pose to others"[191] and adequate internal control mechanisms, including sound administrative and accounting procedures (…)[192]."

(Law of 23 July 2015)

"The internal control mechanisms and administrative and accounting procedures referred to in the first subparagraph of this paragraph shall permit the checking at all times of the (…)[193] investment firm's compliance with "Regulation (EU) 2019/2033 or, where applicable,"[194] Regulation (EU) No 575/2013, this Law and their implementing measures." "To this end, investment firms shall provide the CSSF, upon request, with all the information necessary for the assessment of the compliance of investment firms with these provisions."[195]

(Law of 28 October 2011)

""For CRR investment firms and non-SNI IFR investment firms as provided for in Article 38-15(2) and (3)"[196], the adequate internal control mechanisms laid down in the previous subparagraph include remuneration policies and practices allowing and promoting a sound and

[188] Law of 21 July 2021: A560
[189] Law of 13 July 2007
[190] Law of 30 May 2018
[191] Law of 21 July 2021: A566
[192] Law of 1 July 2024
[193] Law of 21 July 2021: A566
[194] Law of 21 July 2021: A566
[195] Law of 21 July 2021: A566
[196] Law of 21 July 2021: A566

effective risk management." "These remuneration policies and practices shall be gender neutral."[197]

"The internal governance arrangements, processes, procedures and mechanisms referred to in this article shall be comprehensive", proportionate"[198] and appropriate to the nature, scale and complexity "of the risks inherent in the business model and the investment firm's activities."[199] "[200]

(Law of 21 July 2021: A566)

"When the non-SNI IFR investment firms establish the arrangements referred to in the first subparagraph, the criteria set out in Articles 38-20, 38-21, 38-22, 38-23, 53-42 and 53-43 shall be taken into account."

(Law of 20 December 2024: A585)

"Where the arrangements referred to in the first subparagraph are introduced by CRR investment firms, the criteria set out in Article 19(1a), Article 38-1, first to fifth subparagraphs, Articles 38-2 to 38-9, Article 51(4), Article 53-9(2) and (3), Articles 53-12 to 53-23, Article 53-28(2) and Article 53-52 shall be taken into account."[201]

"(2) "The investment firm shall fulfil the organisational requirements defined in Article 37-1 for the investment services provided and/or the investment activities performed, as well as for the ancillary services provided as referred to in Section C of Annex II."[202] "An investment firm operating an MTF or an OTF in Luxembourg shall in addition fulfil the requirements of Article 22 or 34 of the Law of 30 May 2018 on markets in financial instruments."[203]

A PFS other than an investment firm "and other than a credit servicer"[204] shall produce evidence that it has a sound administrative and accounting organisation and adequate internal control procedures."[205] "The administrative and accounting organisation and internal control procedures shall be comprehensive and proportionate to the nature, scale and complexity of the activities of a PFS other than an investment firm "and other than a credit servicer"[206] ."[207]

(…)[208]

Article 18. Shareholders

(1) Authorisation of legal persons shall be subject to communication to the CSSF of the identities of the shareholders or members, whether direct or indirect and whether natural or legal persons, that have qualifying holdings in the PFS to be authorised, and of the amounts of those holdings. (…)[209]

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[197] Law of 20 May 2021
[198] Law of 21 July 2021: A566
[199] Law of 23 July 2015
[200] Law of 10 November 2009
[201] Law of 20 December 2024: A585
[202] Law of 10 November 2009
[203] Law of 30 May 2018
[204] Law of 15 July 2024
[205] Law of 13 July 2007
[206] Law of 15 July 2024
[207] Law of 10 November 2009
[208] Law of 10 November 2009
[209] Repealed by the Law of 13 July 2007

"Authorisation shall be refused if, taking into account the need to ensure the sound and prudent management of the PFS, the suitability of those shareholders or members is not satisfactory."[210]

(Law of 17 July 2008)

"The concept of sound and prudent management is assessed in accordance with the criteria listed in paragraph 9."

"(2) Autorisation is subject to the conditions that the PFS' structure of direct and indirect shareholders be transparent and organised in such manner that the authorities responsible for the prudential supervision of the PFS and, if appropriate of the group to which it belongs, be clearly identifiable; that this supervision can be exercised without hindrance; and that supervision on a consolidated group basis be ensured "or that the internal arrangements, the distribution of tasks within the group and the supervisory mechanisms of the group are adequate for the purposes of a consolidated supervision of the group"[211].

(3) Where close links exist between the PFS to be authorised and other natural or legal persons, the authorisation shall only be granted if these links do not prevent the CSSF from effectively exercising its supervisory functions.

(4) Authorisation shall be refused if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the PFS has close links, prevent the CSSF from effectively exercising its supervisory functions. Authorisation shall also be refused if difficulties involved in the enforcement of these provisions prevent the CSSF from effectively exercising its supervisory mission.

(5) Any natural or legal person or such persons acting in concert (hereinafter the "proposed acquirer"), who has taken a decision to either acquire, directly or indirectly a qualifying holding in a PFS or to further increase, directly or indirectly such a qualifying holding as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 33 1/3% or 50% or so that the PFS would become their subsidiary (hereinafter the "proposed acquisition"), is required to first notify in writing such decision to the CSSF and is required to indicate the size of the intended holding and relevant information referred to in (6).

"Only where the entity in which the acquisition is proposed is an investment firm incorporated under Luxembourg law or a market operator incorporated under Luxembourg law operating an MTF or an OTF, shall paragraphs 6 to 8 and 10 to 14 apply."[212]

(6) The CSSF shall make publicly available a list specifying the information that is necessary to carry out the assessment referred to in (9) (hereinafter the "assessment") and that must be provided to it at the time of notification. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

(7) The CSSF shall, promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in (8), acknowledge receipt thereof in writing to the proposed acquirer.

The CSSF shall have a maximum of 60 working days as from the date of the sending of the acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in paragraph 6 (hereinafter the "assessment period"), to carry out the assessment.

The CSSF shall indicate the date of expiry of the assessment period in the acknowledgement of receipt it sends to the proposed acquirer.

(8) The CSSF may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to

[210] Law of 13 July 2007

[211] Law of 20 December 2024: A585

[212] Law of 30 May 2018

complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the CSSF and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted.

The interruption shall not exceed 20 working days. Any further requests by the CSSF for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

The CSSF may extend the interruption up to 30 working days if the proposed acquirer is:

(a) situated or regulated in a third country; or

(b) not subject to supervision under "Directive 2013/36/EU "or Directive"[213] 2009/65/EC, 2009/138/EC or "2014/65/EU"[214]."[215]

(9) In assessing the notification provided for in (5) and the information referred to in (8), the CSSF shall, in order to ensure the sound and prudent management of the PFS in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the PFS, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the PFS as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the PFS in which the acquisition is proposed;

(d) whether the PFS in which an acquisition is proposed will be able to comply and continue to comply with the prudential requirements based on this Law and, in particular, whether the group of which it will become a part following the acquisition has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(Law of 30 May 2018)

"In assessing the notification provided for in paragraph 5 and the information referred to in paragraph 8, the CSSF shall not examine the proposed acquisition in terms of the economic needs of the market."

(10) The CSSF shall work in full consultation with the other relevant competent authorities when carrying out the assessment if the proposed acquirer is one of the following:

(a) an investment firm, credit institution, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of an investment firm, credit institution, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

[213] Law of 25 July 2018

[214] Law of 30 May 2018

[215] Law of 23 July 2015

(c) a natural or legal person controlling a credit institution, investment firm, insurance undertaking, reinsurance undertaking or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

The CSSF shall, without undue delay, provide the relevant competent authorities with any information which is essential or relevant for the assessment. In this regard, the CSSF shall communicate upon request all relevant information and shall communicate on its own initiative all essential information. A decision by the CSSF shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

(11) If the CSSF, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision.

The CSSF may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in (9) or if the information provided by the proposed acquirer is incomplete.

The CSSF may make accessible to the public an appropriate statement of the reasons for the decision at its own initiative or at the request of the proposed acquirer.

(12) If the CSSF does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(13) The CSSF may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding (7) and (8), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the CSSF, it shall treat the proposed acquirers in a non-discriminatory manner.

(15) The CSSF shall have a maximum of three months from the date of the notification provided for in (5) to oppose such a plan if, in view of the need to ensure sound and prudent management of the PFS, they are not satisfied as to the suitability of the person concerned. If the CSSF does not oppose the plan, it may fix a deadline for its execution.

(16) Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a PFS shall first notify in writing the CSSF, indicating the size of its intended holding. Such a person shall likewise inform the CSSF if it proposes to reduce its qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20%, 33 1/3% or 50% or so that the PFS would cease to be its subsidiary."[216]

"(17)"[217] On becoming aware of them, PFS shall inform the CSSF "without delay"[218] of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in "(5) and (16)" [219].

They shall also, at least once a year, inform it of the names of shareholders and members possessing qualifying holdings and the amounts of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to "companies whose transferable securities are admitted to trading on a regulated market"[220].

(Law of 13 July 2007)

"(18)"[221] "Where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of a PFS, the

[216] Law of 17 July 2008
[217] Law of 17 July 2008
[218] Law of 30 May 2018
[219] Law of 17 July 2008
[220] Law of 13 July 2007
[221] Law of 17 July 2008

CSSF takes appropriate measures to put an end to that situation. In particular, the CSSF may use its power of injunction or suspension or impose an administrative fine on the persons responsible for the administration or management "as well as the shareholders and members"[222] of the PFS concerned, who act such as to jeopardise the sound and prudent management of the PFS(…)[223]."

(Law of 17 July 2008)

"Where the persons referred to in the first subparagraph of paragraph 5 fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding, the CSSF shall take appropriate measures to put an end to that situation."[224] "Where a holding is acquired despite the opposition of the CSSF, it may suspend the exercise of voting rights in relation to these shares or demand to the nullity of the votes cast or the possibility of their annulment without prejudice to any other penalties that may be applied."

"(19)"[225] The application of the provisions of this article shall, where applicable, be adapted to the existence of measures decided by the authorities of the European Union and limiting or suspending the decisions regarding the acquisition of holdings by direct or indirect parent undertakings governed by the law of a third country."

(Law of 15 July 2024)

"(20) This article shall not apply to credit servicers referred to in Section 2, Subsection 2b, of this Chapter."

(…)[226]

Article 19. Professional standing and experience

(1) In order to "obtain authorisation as PFS"[227] "other than an investment firm"[228], natural persons and, in the case of legal persons, the members of the "management bodies"[229], and the shareholders or members referred to in the preceding Article, must produce evidence of their professional standing. Such standing shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offering every guarantee of irreproachable conduct on the part of those persons.

(Law of 23 July 2015)

"(1a) In order to be authorised as (…)[230] investment firm, the natural persons and, in case of legal persons, the members of the management body shall at all times be of sufficiently good "professional"[231] repute and possess sufficient knowledge, skills and experience to perform their duties "and commit sufficient time to perform their duties"[232]. "Investment firms shall have the primary responsibility for ensuring that members of the management body fulfil these conditions."[233] The shareholders or members referred to in Article 18, shall produce evidence of their professional repute. Such good repute shall be assessed on the basis of police records

[222] Law of 30 May 2018
[223] Law of 30 May 2018
[224] Law of 30 May 2018
[225] Law of 17 July 2008
[226] Law of 21 July 2021: A566
[227] Law of 27 February 2018
[228] Law of 30 May 2018
[229] Law of 27 February 2018
[230] Law of 30 May 2018
[231] Law of 30 May 2018
[232] Law of 30 May 2018
[233] Law of 20 May 2021

and of any evidence tending to show that the persons concerned are of good repute and offering every guarantee of irreproachable conduct on the part of those persons."

(Law of 20 May 2021)

"Where members of the management body do not fulfil the requirements set out in this paragraph, the CSSF shall have the power to remove such members from the management body. The CSSF shall in particular verify whether the requirements set out in this paragraph are still fulfilled where it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that investment firm."

(Law of 30 May 2018)

"(1b) The PFS shall notify the CSSF of all members of its management body and of any changes to its membership. Market operators operating an MTF or an OTF and investment firms shall, in addition, provide all information needed to assess whether they comply with paragraph 1a and with Articles 38(4), 38-1, 38-2 and 38-8."

(2) The persons responsible for the management must be empowered effectively to determine the direction taken by the business and must possess adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy.

"(3) Where authorisation is granted to a legal person, the persons referred to in paragraph 2 shall be at least two in number. (…)[234] „[235]

"(4) The authorisation shall be refused if the conditions under which it was granted are not met, and, in particular, if it cannot be demonstrated that the persons referred to in this article comply with the conditions laid down in paragraphs 1 to 3, or if there are objective and demonstrable grounds for believing that the membership of the management body may pose a threat to the effective, sound and prudent management of the PFS and to the adequate consideration of the interest of its clients and the integrity of the market.

Any change in the persons as referred to in this article shall be communicated in advance to the CSSF. The CSSF may request all such information as may be necessary regarding the persons who may be required to fulfil the conditions referred to in paragraphs 1 to 3. The CSSF shall refuse the proposed change if it is not convinced that these persons comply with the conditions laid down in paragraphs 1 to 3, or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the effective, sound and prudent management of the PFS and to the adequate consideration of the interest of its clients and the integrity of the market.

The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case may be filed within one month, or else shall be time-barred."[236]

(Law of 28 April 2011)

"(5) Granting the authorisation implies that the members "of the management body"[237] or natural persons, where applicable, shall, on their own volition, notify in writing and in a complete, coherent and comprehensible form, to the CSSF any changes regarding the substantial information on which the CSSF based its investigation of the application for authorisation."

[234] Law of 21 July 2021: A566

[235] Law of 30 May 2018

[236] Law of 30 May 2018

[237] Law of 23 July 2015

Article 20. "Capital base and own assets"[238]

"(1) Authorisation for any professional activity in the financial sector (…)[239] precluding the applicant from managing funds for third parties shall be conditional on the production of evidence showing the existence of a subscribed and fully paid-up share capital amounting to not less than 50,000 euros where the applicant is a legal person or own assets amounting to not less than 50,000 euros where the applicant is a natural person."[240]

(2) Authorisation for any professional activity in the financial sector involving the applicant in the management of funds for third parties shall be conditional on the production of evidence showing the existence of a "subscribed and"[241] fully paid-up share capital amounting to not less than "125,000 euros"[242].

"(3) Where several PFS statuses are held concurrently, the applicant shall have a subscribed and fully paid-up share capital or own assets which is at least the amount of subscribed and fully paid-up share capital or own assets which is the highest among those requested for the different statuses concerned."[243]

"(3a) The subscribed and fully paid up share capital of an investment firm shall, in addition, be constituted in accordance with Article 9 of Regulation (EU) 2019/2033."[244]

(Law of 13 July 2007)

""(4) The subscribed and fully paid-up capital in the case of a legal person, and the own assets in the case of a natural person, shall be permanently available to the PFS and be invested in its own interest."[245] "

(Law of 28 April 2011)

""(5) The own assets of a PFS authorised as a natural person may not fall below the amount of the own assets required by the law. The "capital base"[246] of a PFS authorised as a legal person may not fall below the amount of the subscribed and fully paid-up share capital required by the law. If the own assets or the "capital base"[247] fall below this amount, the CSSF may, where the circumstances so justify, allow the PFS a limited period in which to rectify its situation or cease its activities.

"Capital base"[248] within the meaning of this paragraph means the subscribed and fully paid-up share capital, share premiums "relating thereto"[249], legally formed reserves, profits brought forward after deduction of possible losses for the current financial year. The subordinated borrowing or profits for the current financial year are not taken into account."[250]"

(Law of 21 December 2012)

"(6) Own assets within the meaning of this article (…)[251] means net assets of the applicant who is a natural person."

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[238] Law of 23 July 2015
[239] Law of 21 July 2021: A566
[240] Law of 21 December 2012
[241] Law of 21 December 2012
[242] Law of 13 July 2007
[243] Law of 21 December 2012
[244] Law of 21 July 2021: A566
[245] Law of 30 May 2018
[246] Law of 23 July 2015
[247] Law of 23 July 2015
[248] Law of 23 July 2015
[249] Law of 23 July 2015
[250] Law of 21 December 2012
[251] Law of 21 July 2021: A566

(…)[252]

Article 21. *(repealed by the Law of 13 July 2007)*

Article 22. External auditing

"(1) Authorisation shall be conditional on the PFS having its annual accounts audited by one or more *réviseurs d'entreprises agréés* (approved statutory auditors) who can show that they possess adequate professional experience. Those *réviseurs d'entreprises agréés* (approved statutory auditors) shall be appointed by the body responsible for managing the PFS."[253]

"(2) Any change in the *réviseurs d'entreprises agréés* (approved statutory auditors) must be authorised in advance by the CSSF in accordance with Article 19(4)."[254]

"(3) The rules in respect of *commissaires,* which may form a supervisory council as laid down in the Law on commercial companies, shall only apply to PFS where the Law on commercial companies mandatorily prescribes it even if there is an external auditor."[255]

"Article 22-1. Participation in the Système d'Indemnisation des Investisseurs Luxembourg

The authorisation shall be subject to the investment firm's participation in the Système d'Indemnisation des Investisseurs Luxembourg laid down in Article 156 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms."[256]

(Law of 30 May 2018)
"Market operators operating an MTF or an OTF in Luxembourg shall also participate in the Système d'Indemnisation des Investisseurs Luxembourg laid down in Article 156 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended. To this end, they shall be deemed equivalent to investment firms."

Article 23. "Withdrawal of authorisation and voluntary winding up"[257]

"(1) The authorisation, granted pursuant to this Law, may be withdrawn if:

1. the PFS does not make use of the authorisation within 12 months or expressly renounces the authorisation or has performed no activity for which it was granted authorisation for an ongoing period of six months;
2. the conditions under which authorisation was granted are no longer met;
3. the authorisation has been obtained by making false statements or by any other irregular means;
4. in the case of a market operator operating an MTF or an OTF or of an investment firm, it has seriously and systematically infringed one of the provisions governing the operating conditions applicable to it;
5. in the case of a specialised PFS or support PFS, it has seriously and systematically infringed any of Articles 36, 36-1 or 37."[258]

(…)[259]

(5) *(repealed by the Law of 21 July 2021: A560)*

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[252] Law of 21 July 2021: A566
[253] Law of 18 December 2009
[254] Law of 18 December 2009
[255] Law of 28 April 2011
[256] Law of 18 December 2015
[257] Law of 28 April 2011
[258] Law of 30 May 2018
[259] Law of 30 May 2018

(Law of 28 April 2011)

"(6) Without prejudice to the specific regime set out in "Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended"[260], the board of directors of a PFS notifies to the CSSF any project for the dissolution or voluntary winding up of the PFS in question with a notice period of at least one month before the convening of the general meeting which shall pronounce the dissolution or the winding up.

A closing balance sheet shall be drawn up and communicated to the CSSF. The conditions of the voluntary winding up shall also be communicated to the CSSF."

"Section 2: Specific provisions relating to certain categories of PFS

Subsection 1: Investment firms"[261]

Article 24. ***(repealed by the Law of 21 July 2021: A566)***

"Article 24-1. Reception and transmission of orders in relation to one or more financial instruments

(1) Authorisation of an investment firm for the provision of any investment service or activity referred to in point (1) of Annex II, Section A, shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 75,000 euros, where the investment firm is not permitted to hold client money or securities belonging to its clients.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of 150,000 euros, where the investment firm is permitted to hold client money or securities belonging to its clients.

(2) The activity referred in point (1) of Annex II, Section A, shall include bringing together two or more parties thereby bringing about a transaction between those parties.

Article 24-2. Execution of orders on behalf of clients

(1) Authorisation of an investment firm for the provision of any investment service or activity referred to in point (2) of Annex II, Section A, shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 75,000 euros, where the investment firm is not permitted to hold client money or securities belonging to its clients.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros, where the investment firm is permitted to hold client money or securities belonging to its clients.

(2) An investment firm authorised to carry on the activity referred to in paragraph 1 shall be automatically authorised to carry on, in addition, the activities referred to in Articles 24-1 and 24-5. Where it intends to carry on one or both of these activities, it shall previously inform the CSSF thereof.

Article 24-3. Dealing on own account

(1) Authorisation for the provision of any investment service or activity referred to in point (3) of Annex II, Section A, shall only be granted to legal persons and shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 750,000 euros.

(2) An investment firm authorised to carry on the activity referred to in paragraph 1 shall be automatically authorised to carry on, in addition, the activities referred to in Articles 24-1, 24-2, 24-4 and 24-5. Where it intends to carry on one or more of these activities, it shall previously inform the CSSF thereof.

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[260] Law of 27 February 2018

[261] Law of 12 March 1998

Article 24-4. Portfolio management

(1) Authorisation of an investment firm for the provision of any investment service or activity referred to in point (4) of Annex II, Section A, shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 75,000 euros, where the investment firm is not permitted to hold client money or securities belonging to its clients.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros, where the investment firm is permitted to hold client money or securities belonging to its clients.

(2) Only investment firms authorised to carry on the activity referred to in paragraph 1 can use the designation "private portfolio manager".

(3) An investment firm authorised to carry on the activity referred to in paragraph 1 shall be automatically authorised to carry on, in addition, the activities referred to in Articles 24-1, 24-2 and 24-5. Where it intends to carry on one or more of these activities, it shall previously inform the CSSF thereof.

Article 24-5. Investment advice

(1) Authorisation of an investment firm for the provision of any investment service or activity referred to in point (5) of Annex II, Section A, shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 75,000 euros, provided that this firm is not permitted to hold client money or securities belonging to its clients.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros, where this firm is permitted to hold client money or securities belonging to its clients.

(2) The mere provision of information is not covered by this article.

Article 24-6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis

Authorisation for the provision of any investment service or activity referred to in point (6) of Annex II, Section A, shall only be granted to legal persons and shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 750,000 euros.

Article 24-7. Placing of financial instruments without a firm commitment basis

Authorisation of an investment firm for the provision of any investment service or activity referred to in point (7) of Annex II, Section A, shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 75,000 euros, provided that this firm is not permitted to hold client money or securities belonging to its clients.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros, where this firm is permitted to hold client money or securities belonging to its clients.

Article 24-8. Operation of an MTF

(1) Authorisation for the provision of any investment service or activity referred to in point (8) of Annex II, Section A, shall only be granted to legal persons and shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros.

(2) Market operators as defined in point (23-2) of Article 1 shall be automatically authorised to operate an MTF in Luxembourg, provided that they comply with the provisions referred to in Chapter 1 of Title II of Directive 2014/65/EU.

Article 24-9. Operation of an OTF

(1) Authorisation for the provision of any investment service or activity referred to in point (9) of Annex II, Section A, shall only be granted to legal persons and shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 150,000 euros.

By way of derogation from the first subparagraph, authorisation of an investment firm for the provision of any investment service or activity referred to in point (9) of Annex II, Section A, shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 750,000 euros, where this firm engages in dealing on own account or is permitted to do so,

(2) Market operators as defined in point (23-2) of Article 1 shall be automatically authorised to operate an OTF in Luxembourg, provided that they comply with the provisions referred to in Chapter 1 of Title II of Directive 2014/65/EU."

"Subsection 2: Specialised PFS"[262]

"Article 25. Registrar agents

(1) Registrar agents are professionals whose business is to maintain the register of one or more financial instruments. The maintaining of the register includes the reception and execution of orders relating to such financial instruments, of which they are the necessary accessory.

(2) Authorisation to act as registrar agent shall only be granted to legal persons. It is conditional on the production of evidence of a "subscribed and fully paid-up"[263] share capital amounting to not less than 125,000 euros.

(3) Registrar agents are automatically authorised to perform the business of administrative agent of the financial sector and the business of client communication agent.

Article 26. Professional depositaries of financial instruments

(1) Professional depositaries of financial instruments are professionals who engage in the receipt into custody of financial instruments exclusively from the professionals of the financial sector, and who are entrusted with the safekeeping and administration thereof, including custodianship and related services, and with the task of facilitating their circulation.

(2) Authorisation to act as professional depositary of financial instruments shall only be granted to legal persons. It is conditional on the production of evidence of a "subscribed and fully paid-up"[264] share capital amounting to not less than 730,000 euros.

(Law of 12 July 2013)
"Article 26-1. Professional depositaries of assets other than financial instruments

(1) Professional depositaries of assets other than financial instruments are professionals whose activity consists in acting as depositary for:

- specialised investment funds within the meaning of the Law of 13 February 2007, as amended;
- investment companies in risk capital within the meaning of the Law of 15 June 2004, as amended;
- alternative investment funds within the meaning Directive 2011/61/EU;

which have no redemption right that can be exercised during five years as from the date of the initial investments and which, pursuant to their main investment policy, generally do not invest in assets which shall be held in custody pursuant to Article 19(8)(a) of the Law of 12 July 2013 on alternative investment fund managers or which generally invest in issuers or non-

[262] Law of 28 April 2011
[263] Law of 30 May 2018
[264] Law of 30 May 2018

listed companies in order to eventually acquire control thereof in accordance with Article 24 of the Law of 12 July 2013 on alternative investment fund managers.

Professional depositaries of assets other than financial instruments may, through delegation, also ensure the safe-keeping of assets other than liquidities or financial instruments the custody of which may be ensured, where this mission is delegated to them by a single depositary of an alternative investment fund within the meaning of Directive 2011/61/EU.

(2) Authorisation to act as a professional depositary of assets other than financial instruments shall only be granted to legal persons. It is conditional on the production of evidence of a subscribed and fully paid-up share capital amounting to not less than 500,000 euros."

Article 27. Operators of a regulated market authorised in Luxembourg

(1) Operators of a regulated market in Luxembourg are persons who manage and/or operate the business of a regulated market authorised in Luxembourg, excluding investment firms operating an MTF "or an OTF"[265] in Luxembourg.

"(2) Authorisation to act as operator of a regulated market authorised in Luxembourg shall only be granted to legal persons. It is conditional on the production of evidence of a subscribed and fully paid-up share capital amounting to not less than 730,000 euros."[266]"[267]

Article 28. *(repealed by the Law of 2 August 2003)*

"Article 28-1."[268] *(repealed by the Law of 10 November 2009)*

Article 28-2. *(repealed by the Law of 21 July 2021: A566)*

"Article 28-3."[269] **Debt recovery**

The recovery of debts owed to third parties, to the extent that it is not reserved by law to bailiffs (*huissiers de justice*), shall be authorised only with the assent of the "Minister responsible for justice"[270].

(Law of 15 July 2024)

"This article shall not apply to persons providing credit servicing activities."

(Law of 2 August 2003)

"Article 28-4. Professionals performing lending operations

(1) Professionals performing lending operations are professionals engaging in the business of granting loans to the public for their own account.

(2) The following, in particular, shall be regarded as lending operations for the purposes of this article:

(a) financial leasing operations involving the leasing of moveable or immoveable property specifically purchased with a view to such leasing by the professional, who remains the owner thereof, where the contract reserves unto the lessee the right to acquire, either during the course of or at the end of the term of the lease, ownership of all or any part of the property leased in return for payment of a sum specified in the contract;

(b) factoring operations, either with or without recourse, whereby the professional purchases commercial debts and proceeds to collect them for his own account "when he

[265] Law of 30 May 2018
[266] Law of 30 May 2018
[267] Law of 13 July 2007
[268] Law of 2 August 2003
[269] Law of 2 August 2003
[270] Law of 30 May 2018

makes the funds available to the transferor before maturity or before payment of the transferred debts."[271]

(3) This article shall not apply to persons engaging in the granting of consumer credit, including financial leasing operations as defined in paragraph 2(a) of this article, where that activity is incidental to the pursuit of any activity covered by "the Law of 2 September 2011 regulating the access to the professions of craftsman, salesman, industrial as well as to some liberal professions, as amended"[272].

This article shall not apply to persons engaging in securitisation operations.

(Law of 15 July 2024)

"This article shall not apply to credit purchasers' activities governed by the Law of 15 July 2024 on the transfer of non-performing loans."

(4) Authorisation to act as a professional performing lending operations may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a "subscribed and fully paid-up"[273] share capital of not less than "730,000 euros"[274]."

(Law of 2 August 2003)

"Article 28-5. Professionals performing securities lending

(1) Professionals performing securities lending are professionals engaging in the business of lending or borrowing securities for their own account.

(2) Authorisation to act as a professional performing securities lending may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a "subscribed and fully paid-up"[275] share capital of not less than "730,000 euros"[276]."

(Law of 21 December 2012 relating to the Family Office activity)

"Article 28-6. Family Offices

(1) Those persons carrying out the activity of Family Office within the meaning of the Law of 21 December 2012 relating to the Family Office activity and not registered in one of the other regulated professions listed under Article 2 of the above-mentioned law are Family Offices and regarded as carrying on a business activity in the financial sector.

(2) Authorisation to exercise the activity of Family Office pursuant to this article may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a "subscribed and fully paid-up"[277] share capital of not less than 50,000 euros."

(Law of 2 August 2003)

"Article 28-7. Mutual savings fund administrators

(1) Mutual savings fund administrators are natural or legal persons engaging in the administration of one or more mutual savings funds. No person other than a mutual savings fund administrator may carry on, even in an incidental capacity, the business of administering mutual savings funds.

For the purposes of this article, "mutual savings fund" means any undivided fund of cash deposits administered for the account of joint savers numbering not less than 20 persons with a view to securing more favourable financial terms.

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[271] Law of 21 December 2012
[272] Law of 30 May 2018
[273] Law of 30 May 2018
[274] Law of 13 July 2007
[275] Law of 30 May 2018
[276] Law of 13 July 2007
[277] Law of 30 May 2018

(2) The mutual savings fund administrator and the savers shall be required to conclude in writing an administration agreement clearly setting out their respective obligations and the conditions governing withdrawal from the mutual savings fund.

(3) The assets of the mutual savings fund may be invested only in term or sight deposits and must be deposited for the account of the mutual savings fund with one or more credit institutions having their registered office in Luxembourg or in another "Member State"[278]. Each credit institution in which assets of the mutual savings fund are deposited must, upon the entry by the fund administrator into business relations, receive a copy of the administration agreement and must thereafter be provided with copies of any amendments made thereto.

(4) The mutual savings fund administrator shall be answerable to the savers in accordance with the general rules governing his mandate. He shall administer the mutual savings fund in accordance with the administration agreement and solely in the interests of the savers. He may make only the investments expressly provided for in the administration agreement. In no circumstances may he use the assets of the mutual savings fund for his own purposes.

(5) The expenses charged by the mutual savings fund administrator may not exceed those which are strictly necessary for the administration of that fund. The remuneration of the mutual savings fund administrator must be fixed in the administration agreement.

(6) Save in the liquidation situations provided for by the administration agreement, the savers may not require the mutual savings fund to be split, divided or dissolved.

(7) The mutual savings fund shall be in a state of liquidation:

- upon expiry of the period, if any, fixed by the administration agreement;
- in the event of cessation of the performance by the administrator of his duties, if he is not replaced within two months;
- in all other cases provided for by the administration agreement.

The administrator shall be required to advise the savers in writing of the fact or matter giving rise to the state of liquidation.

(8) Authorisation to act as a mutual savings fund administrator shall be conditional on the production of evidence showing the existence of a capital base amounting to not less than 125,000 euros."

Article 28-8. *(repealed by the Law of 12 July 2014)*

(Law of 31 May 1999)

""Article 28-9."[279] **Corporate domiciliation agents**

"(1) Corporate domiciliation agents referred as other professionals of the financial sector in the list of paragraph 1 of Article 1 of the Law of 31 May 1999 governing the domiciliation of companies and referred to in this article, are natural or legal persons who agree to the establishment at their address by one or more companies of a seat and who provide services of any kind connected with that activity. This article does not refer to the other persons listed in the above-mentioned list."[280]

"(2) Authorisation to act as a corporate domiciliation agent is conditional on the production of evidence showing the existence of a capital base of not less than 125,000 euros."[281] "

[278] Law of 13 July 2007
[279] Law of 28 April 2011
[280] Law of 21 December 2012
[281] Law of 13 July 2007

(Law of 2 August 2003)

""Article 28-10."[282] Professionals providing company incorporation and management services

(1) Professionals providing company incorporation and management services are natural and legal persons engaging in the provision of services relating to the formation or management of one or more companies.

(2) Authorisation to act as a professional providing company incorporation and management services shall be conditional on the production of evidence showing the existence of a capital base amounting to not less than "125,000 euros"[283].

(3) Corporate domiciliation agents as referred to in Article "28-9"[284] and the notaries and registered members of other regulated professions listed in Article 1(1) of the Law of 31 May 1999 governing the domiciliation of companies shall be automatically authorised to act, in addition, as professionals providing company incorporation and management services. In consequence, such persons shall not be subject to prior approval by (…)[285] the CSSF or to prudential supervision by the CSSF."

(Law of 6 April 2013)

"Subsection 2a: Special provisions applicable to central account keepers

Article 28-11. Central account keepers

(1) Central account keepers are persons whose activity is to keep securities issuance accounts for dematerialised securities.

(2) No person other than settlement organisations "and control agents"[286], within the meaning of the Law on dematerialised securities "and without prejudice to the second subparagraph of Article 1 of said law,"[287], may carry on the activity of central account keeper without an authorisation from (…)[288] the CSSF.

Article 28-12. Authorisation conditions

(1) Only the following may be authorised as central account keeper:

(a) credit institutions and investment firms incorporated under Luxembourg law;

(b) Luxembourg branches of credit institutions authorised in another Member State;

(c) Luxembourg branches of investment firms which are legal persons authorised in another Member State.

(2) In order to obtain authorisation, the applicant shall demonstrate that:

(a) at least one of the persons in charge of the management of the entity has adequate professional experience by virtue of their having previously carried on similar activities at a high level of responsibility and autonomy;

(b) it has robust internal governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and

[282] Law of 28 April 2011
[283] Law of 13 July 2007
[284] Law of 21 December 2012
[285] Law of 21 July 2021: A560
[286] Law of 20 December 2024: A597
[287] Law of 22 January 2021
[288] Law of 21 July 2021: A560

accounting procedures, as well as control and security arrangements for information processing systems suitable for the keeping of central accounts.

Keeping central accounts involves in particular:

- the registration in an issuance account of all the securities composing each issue admitted to its transactions;
- the mechanisms ensuring the circulation of securities by transfer from one account to another;
- the procedures which allow verifying that the total amount of each issue admitted to its transactions and registered in an issuance account is equal to the sum of the securities registered in the securities accounts of its account holders;
- making the necessary arrangements to allow the exercise of the rights attached to the securities registered in the securities account.

(3) Authorisation to act as a central account keeper is conditional on the production of evidence of a "subscribed and fully paid-up"[289] share capital of not less than 730,000 euros.

Article 28-13. Authorisation procedure

(1) The authorisation is granted upon written application and after investigation by the CSSF on the conditions required under this Law.

(2) The authorisation shall be granted for an unlimited period of time. When the authorisation is granted, the central account keeper may commence business immediately.

(3) The application for authorisation shall be accompanied by all the information necessary for its assessment and by a business programme stating the kind and volume of envisaged transactions, the accounting and administrative structure of the entity and the technical infrastructure and human resources for the processing of dematerialised securities transactions and, where appropriate, the corresponding cash transactions.

(4) The decision taken on an application for authorisation must be duly substantiated and notified to the applicant within six months of receipt of the application or, should the latter be incomplete, within six months of receipt of the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application, otherwise the absence of a decision implies a refusal. (…)[290]"

(Law of 15 July 2024)

"Subsection 2b: Special provisions relating to credit servicers

Article 28-14. Authorisation requirement

(1) No person may as their regular occupation or business activity perform credit servicing activities without holding a written authorisation of the CSSF.

(2) Authorisation shall only be granted to legal persons.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital amounting to not less than 75,000 euros, where the applicant is not authorised to receive and hold borrowers' funds in order to transfer them to credit purchasers.

It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital amounting to not less than 150,000 euros, where the applicant is authorised to receive and hold funds from borrowers in order to transfer them to credit purchasers.

(3) No person may be authorised to carry on the activity referred to in paragraph 1 either through another person or as an intermediary for the carrying-on of such activity.

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[289] Law of 30 May 2018

[290] Law of 21 July 2021: A560

(4) Where a credit servicer does not intend to receive and hold funds from borrowers as part of its business model, the credit servicer shall convey that intention in its application for the authorisation referred to in Article 28-15.

(5) In the event of receiving and holding funds from borrowers;

1. the applicant, in addition to the requirements for the granting of an authorisation set out in Article 17(1), in the first subparagraph of Article 28-14(2), and in Article 28-16, is required to have a separate account in a credit institution into which all funds received from borrowers are to be credited and kept until their channelling to the respective credit purchaser, under the conditions agreed with the credit purchaser;
2. the funds received from borrowers in accordance with this paragraph, shall be protected against the claims of the other creditors of the credit servicers, in the event of insolvency of the credit servicer, and are not part of the collective assets.
3. a payment shall be considered as having been paid to the credit purchaser where a borrower makes a payment to a credit servicer in order to, partially or totally, reimburse the amounts due related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself;
4. the credit servicer shall deliver a receipt or a letter of discharge to the borrower, on paper or another durable medium, whenever the credit servicer receives funds from the borrower, acknowledging the amounts received;
5. the credit servicer shall enter the funds received from borrowers in accounts separate from those relating to its own assets.

Receiving and holding funds from borrowers under this article shall not constitute third-party fund management for the purposes of this Law.

(6) An authorised credit servicer may continue exercising credit servicing activities for non-performing loans that become performing in the process of servicing the credit.

Article 28-15. Procedure for authorisation

(1) Authorisation shall be granted upon written application and following an investigation by the CSSF to establish whether the requirements laid down by this Law are fulfilled.

(2) The authorisation shall be granted for an unlimited period of time.

Where authorisation is granted, the credit servicer may immediately start to carry on business.

(3) The application for authorisation of credit servicers shall be accompanied by all the information necessary for its assessment, and in particular the following elements:

1. evidence of the applicant's legal status and a copy of its act of incorporation and of the company by-laws;
2. the address of the applicant's head office or its registered office;
3. the identity of the members of the applicant's management body and the persons who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013;
4. evidence that the applicant fulfils the conditions laid down in Article 28-16(1) and (4);
5. evidence that the persons who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013 fulfil the conditions laid down in Article 28(9);
6. evidence of the governance arrangements and internal control mechanisms referred to in Article 28-16(5);
7. evidence of the policy referred to in Article 28-16(6);
8. evidence of the internal procedures referred to in Article 28-16(7);
9. evidence of the procedures referred to in Article 28-16(8);
10. where relevant, evidence of the existence of a separate account in a credit institution as provided for in Article 28-14(5), point 1;

11. any outsourcing agreement referred to in Article 8(1) of the Law of 15 July 2024 on the transfer of non-performing loans.

(4) The CSSF shall assess within a period of 45 days of receipt of the application for authorisation, whether that application is complete.

The CSSF's decision taken on an application for authorisation must be duly substantiated and notified to the applicant within 90 days of receipt of the application or, should the latter be incomplete, of receipt of the required information. A decision shall, in any case, be taken within 12 months of the receipt of the application, otherwise the absence of a decision implies a refusal.

(5) The authorisation shall be refused where the conditions under which it is granted are not met, and, in particular, if it has not been proven that the conditions laid down in Article 17(1), in the first subparagraph of Article 28-14(2), in Article 28-14(5), point 1, and in Article 28-16.

(6) The credit servicer shall comply at all times with the conditions for initial authorisation and the provisions of the Law of 15 July 2024 on the transfer of non-performing loans. Any substantial amendment to the conditions to which the authorisation was subject must be notified to the CSSF.

(7) This article shall apply by way of derogation from Article 15.

Article 28-16. Requirements applicable to credit servicers

(1) In order to obtain and maintain authorisation as credit servicer, the members of its management body shall be at all times of sufficiently good repute.

Evidence of sufficient good repute of the members of the management body referred to in the first subparagraph shall be demonstrated by proving that:

1. they have a clean police record or other national equivalent in relation to relevant criminal offences, in particular those relating to property, financial services and activities, money laundering, usury, fraud, tax crimes, violation of professional secrecy or to physical integrity, and also in relation to any other offences under laws relating to companies, bankruptcy, insolvency or consumer protection;
2. the cumulative effects of minor incidents do not impinge on their good repute;
3. they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;
4. they are not subject to any ongoing insolvency procedure nor have they previously been declared bankrupt unless reinstated.

Where members of the management body do not fulfil the requirements set out in this paragraph, the CSSF shall have the power to remove such members from the management body.

(2) The persons in charge of the management must be empowered to effectively direct the business.

The persons referred to in the first subparagraph shall be at least at least two in number.

(3) Credit servicers shall notify to the CSSF the name of the members of their management body as well as any change to its membership.

Any change in the persons as referred to in this article shall be communicated in advance to the CSSF. The CSSF may request any necessary information regarding the persons who may be required to fulfil the conditions laid down in paragraphs 1 and 2. The CSSF shall refuse the proposed change if it is not convinced that these persons fulfil the requirements laid down in paragraphs 1 and 2 or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the effective, sound and prudent management of the credit servicer.

(4) The management body of the credit servicer as a whole shall have adequate knowledge and experience to conduct the business in a competent and responsible manner.

(5) The credit servicer shall have robust governance arrangements and adequate internal control mechanisms, including accounting and risk management procedures, which ensure respect for

borrower rights and compliance with the legal provisions governing a creditors' rights under a credit agreement, or the credit agreement itself, and with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

(6) The credit servicer shall apply an appropriate policy ensuring compliance with rules for the protection, and the fair and diligent treatment, of borrowers, including by taking into account their financial situation and the need for such borrowers to be referred to debt advice or social services.

(7) The credit servicer shall have in place adequate and specific internal procedures that ensure the recording and handling of complaints from borrowers.

(8) The credit servicer shall have in place adequate anti-money laundering and counter terrorist financing procedures in accordance with the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing.

(9) The persons who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013 in the credit servicer shall be of sufficiently good repute, which is demonstrated by fulfilling the conditions set out in paragraph 1, second subparagraph, points 1 and 4, of this article.

(10) The CSSF shall evaluate, by applying a risk-based approach, the implementation by a credit servicer of the requirements set out in paragraphs 5 to 8 based on the size, nature, scale and complexity of the activities of the credit servicer concerned.

The CSSF shall inform the competent authorities of the host Member State, or of the Member State where the credit was granted, when different from the host and the home Member States, of the results of the evaluation referred to in the first subparagraph upon request of one of those competent authorities, or where the CSSF considers it appropriate. The details of any administrative penalties or administrative measures imposed shall be transmitted by the CSSF to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.

When carrying out the evaluation referred to in the first subparagraph, the CSSF as competent authority of the home Member State, and the competent authorities of the host Member State and of the Member State where the credit was granted, when different from the host and the home Member States, shall exchange all information necessary to enable them to carry out their respective functions and duties laid down in Directive 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers, and amending Directives 2008/48/EC and 2014/17/EU (hereinafter, "Directive (UE) 2021/2167"). The same shall apply where the CSSF is the competent authority of the host Member State or of the Member State in which the credit was granted, when different from the host and home Member State, and the competent authority of the home Member State carries out the evaluation referred to in Article 22(3) of Directive (EU) 2021/2167.

(11) This article shall apply by way of derogation from Article 19.

Article 28-17. Withdrawal of authorisation

(1) By way of derogation from Article 23, the authorisation granted pursuant to this sub-section may be withdrawn where:

1. the credit servicer does not make use of the authorisation within 12 months from its grant or expressly renounces the authorisation or has performed no activity for which it was granted authorisation for an ongoing period of 12 months;
2. the conditions under which authorisation was granted are no longer met;
3. the authorisation has been obtained by making false statements or by any other irregular means;
4. the credit servicer committed a serious infringement of the applicable legal provisions, including the applicable provisions with regard to consumer protection, including the

applicable rules of the host Member State and of the Member State in which the credit was granted.

(2) Where an authorisation is withdrawn in accordance with paragraph 1, the CSSF shall immediately inform the competent authorities of the host Member State in cases where the credit servicer authorised pursuant to Article 28-14 provides services under Article 28-18, and also the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.

Article 28-18. Freedom to provide services and establishment of branches in another Member State

(1) Where a credit servicer authorised in Luxembourg wishes to establish a branch or provide services covered by its authorisation under Article 28-14 by way of provision of services in another Member State, and without prejudice to any restrictions or requirements established in the national law of the host Member State in accordance with Directive (EU) 2021/2167, including, where applicable, a prohibition on receiving and holding funds from borrowers, it shall communicate to the CSSF the following information:

1. the host Member State in which it intends to provide services and, where that information is already known to the credit servicer, the Member State where the credit was granted, when different from the host and the home Member States;
2. where applicable, the address of the credit servicer's branch established in the host Member State;
3. where applicable, the identity and address of the credit service provider within the meaning of Article 3, point 7, of Directive (EU) 2021/2167 in the host Member State;
4. the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;
5. where applicable, details of the measures taken to adapt the internal procedures, governance arrangements and internal control mechanisms of the credit servicer in order to ensure compliance with the laws applicable to a creditor's rights under a credit agreement or to the credit agreement itself;
6. a description of the procedure established in order to comply with the anti-money laundering and counter terrorist financing rules, whereby the national law of the host Member State transposing Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereinafter, "Directive (EU) 2015/849") has designated credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing;
7. that the credit servicer has appropriate means to communicate in the language of the host Member State or in the language of the credit agreement;
8. whether or not the credit servicer is authorised in its home Member State to receive and hold funds from borrowers.

(2) The CSSF shall, within 45 days of receipt of all information referred to in paragraph 1, communicate that information to the competent authorities of the host Member State. The CSSF shall thereafter inform the credit servicer of the date on which the information was communicated to the competent authorities of the host Member State and the date on which those competent authorities acknowledged receipt of the information. The CSSF shall also communicate all information referred to in paragraph 1 to the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.

In the absence of communication from the CSSF of the information in accordance with the first subparagraph, an action for judicial review may be lodged before the *Tribunal administratif* (Administrative Tribunal) within 3 months following the expiry of 45 days referred to in paragraph 1.

(3) The credit servicer authorised in Luxembourg may start providing services in the host Member State from the earlier of the following:

1. receipt of the communication from the competent authorities of the host Member State acknowledging receipt of the communication referred to in paragraph 2;
2. in the absence of any receipt of the communication referred to in point 1, after the expiry of 2 months from the date of submission of all information referred to in paragraph 1 to the competent authorities of the host Member State.

(4) The credit servicer shall inform the CSSF of any subsequent change to the information that is required to be communicated in accordance with paragraph 1. In such cases, the CSSF shall ensure compliance with the procedure set out in this article.

Article 28-19. Freedom to provide services and establishment of branches in Luxembourg by credit servicers authorised in another Member State

(1) A credit servicer having obtained an authorisation in accordance with Article 4(1) of Directive (EU) 2021/2167 in another Member State may provide those services that are covered by that authorisation in Luxembourg by way of provision of services or by establishing a branch, without prejudice to any restrictions or requirements applicable in Luxembourg in accordance with Directive (EU) 2021/2167, that are not related to other authorisation requirements of credit servicers, or to those established for the renegotiation of the terms and conditions related to a creditor's rights under a credit agreement or of the credit agreement itself.

(2) Where the competent authorities of the home Member State have communicated to the CSSF in its capacity as competent authority of the host Member State, the information referred to in Article 13(2) of Directive (EU) 2021/2167, the CSSF shall acknowledge receipt thereof without delay.

(3) The credit servicer authorised in another Member State may start providing services in Luxembourg from the earlier of the following:

1. receipt of the communication referred to in paragraph 2;
2. in the absence of any receipt of the communication referred to in point 1, after the expiry of 2 months from the date of submission of all information referred to in Article 13(2) of Directive (EU) 2021/2167 to the CSSF.

(4) Where the competent authorities of the home Member State of the credit servicer communicate any subsequent change to the information that must be communicated in accordance with Article 13(2) of Directive 2021/2167, the CSSF shall ensure compliance with the procedure set out in this article.

(5) The CSSF in its capacity as competent authority of the host Member State, shall record in the official list referred to in Article 52(1) the credit servicers which are authorised to provide credit servicing activities in Luxembourg in accordance with this article, and the details of their home Member State.

Article 28-20. Supervision of credit servicers which provide cross-border services

(1) The CSSF as competent authority of the home Member State, shall review and evaluate the ongoing compliance with the requirements of this subsection and of the Law of 15 July 2024 on the transfer of non-performing loans, by the credit servicers authorised in Luxembourg which perform credit servicing activities in another Member State.

The CSSF shall supervise, investigate and impose administrative penalties and administrative measures on credit servicers in accordance with Article 63-2c with respect to the exercise of their credit servicing activities in another Member State.

The CSSF shall communicate the measures imposed on these credit servicers to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.

(2) Where a credit servicer authorised in Luxembourg performs credit servicing activities in another Member State, the CSSF, as competent authority of the home Member State, and the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States, shall cooperate closely in the performance of their respective functions and duties under Directive (EU) 2021/2167, in particular when carrying out checks, investigations and on-site inspections.

The same shall apply where the CSSF is the competent authority of the host Member State, or, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.

(3) The CSSF as the competent authority of the home Member State, in the exercise of its functions and duties provided for in this subsection and in the Law of 15 July 2024 on the transfer of non-performing loans, shall ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up in, or of a credit service provider within the meaning of Article 3(7) of Directive (EU) 2021/2167 appointed, in a host Member State. The on-site inspections of a branch or of a credit service provider shall be conducted in accordance with the law of the Member State where the inspection is carried out.

(4) The CSSF as the competent authority of the host Member State, shall decide on the most appropriate measures to be taken in each individual case in order to meet the request of assistance by the competent authorities of the home Member State under Article 14(5) of Directive (EU) 2021/2167.

Where the CSSF as the competent authority of the host Member State decides to conduct on-site inspections on behalf of the competent authorities of the home Member State, it shall inform the competent authorities of the home Member State of the results thereof without delay.

(5) The CSSF as the competent authority of the home Member State, may also, on its own initiative, conduct checks, inspections and investigations in respect of credit servicing activities provided in Luxembourg by a credit servicer authorised in another Member State. In such a case, the CSSF shall provide the results of those checks, inspections and investigations to the competent authorities of the home Member State without delay.

(6) Where the CSSF as the competent authority of the host Member State has evidence that a credit servicer authorised in another Member State and performing credit servicing activities in Luxembourg infringes the applicable rules, it shall transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the CSSF as the competent authority of the home Member State regarding the credit servicer under national law, namely those applicable to the credit or the credit agreement.

(7) Where the CSSF as the competent authority of the Member State where the credit was granted, when different from the host and the home Member States, has evidence that a credit servicer authorised in another Member State infringes the obligations provided for in Directive (EU) 2021/2167, or in the national rules applicable to the credit or the credit agreement, it shall transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the CSSF as the competent authority of the Member State in which the credit was granted.

(8) The CSSF as the competent authority of the home Member State, shall communicate details of any procedure initiated in respect of the evidence provided by the competent authority of the host Member State, or of any administrative penalties and administrative measures taken against the credit servicer, or of a reasoned decision why no measures were taken, to the competent authorities of the host Member State that referred the evidence, no later than 2

months from the date of the request referred to in Article 14(9) of Directive (EU) 2021/2167. Where the CSSF initiated a procedure, it shall regularly inform the competent authorities of the host Member State about its status.

(9) Where a credit servicer continues to infringe the applicable rules, and after the CSSF as the competent authority of the host Member State has informed the home Member State thereof, the CSSF shall be entitled to impose the administrative penalties and administrative measures referred to in Article 63-2c when either of the following apply:

1. no adequate and effective steps were taken by the credit servicer to rectify the infringement in a reasonable time; or
2. in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers.

The CSSF as the competent authority of the host Member State may impose the administrative penalties and administrative measures referred to in the first subparagraph notwithstanding any administrative penalties and administrative measures already imposed by the competent authorities of the home Member State.

In addition, the CSSF as the competent authority of the host Member State may prohibit further activities in Luxembourg of a credit servicer that infringes the applicable rules, until such time as an adequate decision is taken by the competent authority of the home Member State or the credit servicer takes steps to remedy the infringement.

(10) The CSSF as the competent authority of the host Member State and of the Member State where the credit was granted, when different from the host and the home Member States, is given all necessary powers for the exercise of its functions and duties laid down in this subsection, referred to in Article 53.

Article 28-21. Handling of complaints

Credit servicers shall establish and maintain effective and transparent procedures for the handling of complaints from borrowers.

The treatment by credit servicers of complaints from borrowers shall be free of charge and credit servicers shall record the complaints and the measures taken to address them."

(Law of 2 August 2003)

"Subsection 3: Support PFS"[291]

(Law of 2 August 2003)

"Article 29-1 Client communication agents

""(1) Client communication agents are professionals engaging in the provision, on behalf of credit institutions, PFS, payment institutions, "electronic money institutions,"[292] insurance undertakings, reinsurance undertakings, pension funds, UCIs, SIFs, investment companies in risk capital (*sociétés d'investissement en capital à risque*) and authorised securitisation undertakings ", reserved alternative investment funds"[293] established under Luxembourg law or foreign law, of one or more of the following services:

– the production, in tangible form or in the form of electronic data, of confidential documents intended for the personal attention of clients of credit institutions, PFS, payment institutions, "electronic money institutions,"[294] insurance undertakings, reinsurance undertakings, contributors, members or beneficiaries of pension funds and

[291] Law of 28 April 2011
[292] Law of 25 July 2015
[293] Law of 21 July 2021: A566
[294] Law of 25 July 2015

investors in UCIs, SIFs, investment companies in risk capital, authorised securitisation undertakings "and reserved alternative investment funds"[295];

– the maintenance or destruction of documents referred to in the previous indent;

– the communication to persons referred to in the first indent, of documents or information relating to their assets and to the services offered by the professional in question;

(…)[296]

– the consolidation, pursuant to an express mandate given by the persons referred to in the first indent, of positions which the latter hold with diverse financial professionals"[297] ", without prejudice to the provisions of the Law of 10 November 2009 on payment services, as amended"[298].

(2) Authorisation to act as client communication agent shall only be granted to legal persons. It is conditional on the production of evidence of a "subscribed and fully paid-up"[299] share capital amounting to not less than 50,000 euros.

(3) (…)[300] „[301] "

(Law of 2 August 2003)

"Article 29-2. Administrative agents of the financial sector

"(1) Administrative agents of the financial sector are professionals who engage in the provision, on behalf of credit institutions, PFS, "payment institutions"[302], "electronic money institutions,"[303] UCIs, pension funds, "SIFs, investment companies in risk capital, authorised securitisation undertakings"[304], "reserved alternative investment funds,"[305] insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law, pursuant to a sub-contract, of administration services forming an integral part of the business activities of the originator.

This status does not govern the provision of technical services that are not likely to have an impact on the professional activity of the originator."[306]

(2) Authorisation to act as an administrative agent of the financial sector may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a "subscribed and fully paid-up"[307] share capital of not less than "125,000 euros"[308].

(3) Administrative agents of the financial sector shall be automatically authorised to act, in addition, as client communication agents."

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[295] Law of 21 July 2021: A566
[296] Law of 21 July 2021: A566
[297] Law of 28 April 2011
[298] Law of 21 July 2021: A566
[299] Law of 30 May 2018
[300] Repealed by the Law of 28 April 2011
[301] Law of 13 July 2007
[302] Law of 10 November 2009
[303] Law of 25 July 2015
[304] Law of 28 April 2011
[305] Law of 23 July 2016
[306] Law of 13 July 2007
[307] Law of 30 May 2018
[308] Law of 13 July 2007

(Law of 21 July 2021: A566)

"Article 29-3. IT systems and communication networks operators of the financial sector

(1) IT systems and communication networks operators of the financial sector are professionals who are responsible for the operation of IT systems and communication networks that are part of the IT and communication systems belonging to credit institutions, PFS, payment institutions, electronic money institutions, UCIs, pension funds, SIFs, investment companies in risk capital, authorised securitisation undertakings, reserved alternative investment funds, insurance undertakings or reinsurance undertakings established under Luxembourg law or foreign law.

The activity of IT systems and communication networks operator of the financial sector includes IT processing or transfer of data stored in the IT systems.

The IT systems and communication networks in question may either belong to the credit institution, PFS, payment institution, electronic money institution, UCI, pension fund, SIF, investment company in risk capital, authorised securitisation undertaking, reserved alternative investment fund, insurance undertaking or reinsurance undertaking established under Luxembourg law or foreign law, or be provided to them by the operator.

(2) IT systems and communication networks operators of the financial sector are also entitled to install and maintain the IT systems and communication networks referred to in paragraph 1.

(3) Authorisation to act as IT systems and communication networks operator shall only be granted to a legal person. It shall be conditional on the production of evidence of a subscribed and fully paid-up share capital of not less than 125,000 euros."

Article 29-4. *(repealed by the Law of 21 July 2021: A566)*

(Law of 25 July 2015)

"Article 29-5. Dematerialisation service providers of the financial sector

(1) Dematerialisation service providers of the financial sector are dematerialisation or conservation service providers within the meaning of the Law of 25 July 2015 on e-archiving in charge of the dematerialisation of documents on behalf of credit institutions, PFS, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital (SICARs), pension funds, authorised securitisation undertakings, "reserved alternative investment funds,"[309] insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law.

(2) Authorisation to act as dematerialisation service provider of the financial sector shall only be granted to legal persons. It shall be conditional on the production of evidence of a "subscribed and fully paid-up"[310] share capital of not less than 50,000 euros.

(3) The CSSF and ILNAS shall cooperate for the purpose of performing their respective tasks of supervising the dematerialisation service providers of the financial sector.

Article 29-6. Conservation service providers of the financial sector

(1) Conservation service providers of the financial sector are dematerialisation or conservation service providers within the meaning of the Law of 25 July 2015 on e-archiving in charge of the conservation of electronic documents on behalf of credit institutions, PFS, payment institutions, electronic money institutions, UCIs, SIFs, investment companies in risk capital (SICARs), pension funds, authorised securitisation undertakings, "reserved alternative investment funds,"[311] insurance undertakings or reinsurance undertakings, governed by Luxembourg law or by foreign law.

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[309] Law of 21 July 2021: A566

[310] Law of 30 May 2018

[311] Law of 21 July 2021: A566

(2) Authorisation to act as conservation service provider of the financial sector shall only be granted to legal persons. It shall be conditional on the production of evidence of a "subscribed and fully paid-up"[312] share capital of not less than 125,000 euros.

(3) The CSSF and ILNAS shall cooperate for the purpose of performing their respective tasks of supervising the conservation service providers of the financial sector.

(4) Activities of mere data storage which do not consist in storing a copy with probative value or a digital original within the meaning of the aforementioned Law of 25 July 2015 while guaranteeing its integrity do not fall within the scope of this article."

Subsection 4: repealed by the Law of 21 July 2021: A566

(Law of 21 July 2021: A566)

"Chapter 2a: Special provisions applicable to APAs and ARMs

Article 29-7. Authorisation procedure

(1) No person incorporated under Luxembourg law can carry on the activity of an APA with a derogation, as defined in point (1d) of Article 1, without holding a written authorisation of the CSSF in accordance with Title IVa of Regulation (EU) No 600/2014.

No person incorporated under Luxembourg law can carry on the activity of an ARM with a derogation, as defined in point (1e) of Article 1, without holding a written authorisation of the CSSF in accordance with Title IVa of Regulation (EU) No 600/2014.

No person may be authorised to carry on the activity of APA with a derogation or ARM with a derogation either through another person or as an intermediary for the carrying-on of that business.

The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case may be filed within one month, or else shall be time-barred.

(2) APAs with a derogation and ARMs with a derogation shall comply at all times with the conditions for initial authorisation and shall notify the CSSF of any material changes to the conditions for initial authorisation.

The CSSF shall have in place appropriate procedures to monitor that APAs with a derogation and ARMs with a derogation comply with the obligation under the first subparagraph.

The CSSF shall monitor the activities of APAs with a derogation and ARMs with a derogation in order to ensure compliance with the provisions relating to the operating conditions governing their activities.

Article 29-8. Reporting of infringements

(1) APAs with a derogation and ARMs with a derogation shall have in place appropriate procedures for their employees to report internally, through a specific, independent and autonomous channel, potential or actual infringements of this Law, of Regulation (EU) No 600/2014 or of their implementing measures.

(2) The procedures referred to in paragraph 1 shall include at least:

1. appropriate protection for employees who report infringements committed within the APA with a derogation or the ARM with a derogation at least against retaliation, discrimination or other types of unfair treatment;

2. protection of personal data concerning both, the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April

[312] Law of 30 May 2018

2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and

3. clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports infringements referred to in paragraph 1 committed within the APA with a derogation or the ARM with a derogation concerned, unless disclosure is required by or pursuant to a law.

Article 29-9. Transmission of data to an APA or an ARM

The transmission of data to an APA or an ARM in accordance with Articles 20, 21 and 26 of Regulation (EU) No 600/2014 shall not constitute a breach of the obligation of professional secrecy."

"Chapter 3: Authorisation for the establishment of branches and freedom to provide services in Luxembourg by credit institutions or PFS governed by foreign law"[313]

Article 30. Community credit institutions and investment firms

"(1) Without prejudice to the provisions of the law on markets in financial instruments, credit institutions and investment firms authorised in another Member State may exercise their activities in Luxembourg, "through the provision of services, the establishment of a branch or a tied agent, provided that their activities are covered by their authorisation and by Annex I or Annex II, Sections A or C"[314]. Credit institutions and investment firms may provide in Luxembourg ancillary services only together with an investment service or investment activity. The exercise of their activities is not subject to an authorisation by the Luxembourg authorities provided that these activities fulfil the requirements laid down in this article.

(2) In cases where credit institutions or investment firms referred to in paragraph 1 appoint a tied agent established in Luxembourg, that tied agent shall be assimilated to the Luxembourg branch and shall be subject to the provisions of this Law applicable to Luxembourg branches of EU credit institutions and investment firms."[315]

(Law of 30 May 2018)
"(3) The CSSF shall maintain the register of tied agents that are established in other Member States, used by credit institutions and investment firms of those Member States to provide investment services and activities in Luxembourg. This register shall be public."

Article 31. Community financial institutions

"(1) The provisions of Article 30 shall also apply to financial institutions of another Member State if they meet each of the following requirements:

- the financial institution is the subsidiary of a credit institution or the jointly owned subsidiary of several credit institutions;
- the legal status of the financial institution must be such as to be allowed to engage in the acquisition of participations or the exercise of activities referred to in "points 2 to 12 and 15"[316] of the list included in Annex I;
- the parent undertaking or undertakings shall be authorised as credit institutions in the Member State by the law of which the subsidiary is governed;
- the activities in question shall actually be carried on within the territory of the same Member State;
- the parent undertaking or undertakings shall hold 90% or more of the voting rights attaching to shares in the capital of the subsidiary;

[313] Law of 12 March 1998
[314] Law of 30 May 2018
[315] Law of 13 July 2007
[316] Law of 20 May 2011

– the parent undertaking or undertakings shall satisfy the competent authorities regarding the prudent management of the subsidiary and shall have declared, with the consent of the relevant competent authorities of the home Member State, that they jointly and severally guarantee the commitments entered into by the subsidiary;

– "the financial institution"[317] shall be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, "in accordance with Part III, Chapter 3 of this Law and Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of that regulation, for the control of large exposures provided for in Part Four of that regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that regulation."[318] "[319]

(Law of 23 July 2015)

"This provision shall apply equally to the subsidiaries of any financial institution referred to in the first subparagraph."

"Article 32. Third-country credit institutions and PFS incorporated under foreign law other than investment firms "and other than credit servicers"[320]"[321]

(1) "Without prejudice to Article 32-1, third-country credit institutions, for their banking activities, as well as PFS incorporated under foreign law other than investment firms"[322] "and other than credit servicers"[323] wishing to establish a branch in Luxembourg "shall be in possession of a written authorisation of the CSSF and"[324] shall be subject to the same authorisation rules as those applying to credit institutions and other professionals governed by Luxembourg law, as respectively covered by Chapters 1 and 2 of this Part.

(2) For the purposes of applying the preceding paragraph, compliance with the conditions for authorisation shall be assessed in relation to the foreign institution.

(3) Authorisation for an activity involving the applicant in the management of funds of third parties shall be granted to branches of companies governed by foreign law only if those companies are endowed with own funds which are separate and distinct from the assets of their shareholders. In addition, the branch must have at its permanent disposal an endowment capital or capital base equivalent to that required of a person governed by Luxembourg law who carries on the same activity.

(4) The requirement concerning professional standing and experience shall extend to those responsible for the management of the branch. In addition, the branch in question, instead of fulfilling the condition regarding central administration, shall be required to produce evidence of the existence of a satisfactory administrative infrastructure in Luxembourg.

(Law of 20 May 2021)

"(4a) A branch of a credit institution having its head office in a third country shall report at least annually to the CSSF the following information:

(a) the total assets corresponding to the activities of the branch authorised in Luxembourg;

(b) information on the liquid assets available to the branch, including availability of liquid assets in Member State currencies;

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[317] Law of 23 July 2015
[318] Law of 23 July 2015
[319] Law of 13 July 2007
[320] Law of 15 July 2024
[321] Law of 30 May 2018
[322] Law of 30 May 2018
[323] Law of 15 July 2024
[324] Law of 21 July 2021: A560

(c) the own funds that are at the disposal of the branch;

(d) the deposit protection arrangements available to depositors of the branch;

(e) the risk management arrangements;

(f) the governance arrangements, including key function holders for the activities of the branch;

(g) the recovery plans covering the branch; and

(h) any other information considered by the CSSF necessary to enable comprehensive monitoring of the activities of the branch."

(Law of 21 July 2021: A566)
"(4b) Supervision of the branches referred to in paragraph 1 shall be carried out by the CSSF."

(Law of 28 April 2011)
"(5) "Without prejudice to Article 32-1 of this Law and Title VIII of Regulation (EU) No 600/2014, the persons referred to in paragraph 1"[325], which are not established in Luxembourg but which occasionally and temporarily come to Luxembourg in order, among others, to collect deposits and other repayable funds from the public and to provide any other service under this Law, shall hold "a written"[326] authorisation from (…)[327] the CSSF. Obtaining the authorisation in Luxembourg is subject to the condition that the third-country "persons referred to in paragraph 1"[328], are subject to equivalent authorisation and supervisory rules as those of this Law in their home Member State."

(Law of 28 April 2011)
"(6) For the purposes of applying the preceding paragraph, the foreign institution is assessed on the compliance with the conditions required for the authorisation."

(Law of 30 May 2018)
"Article 32-1. Third-country firms providing investment services or performing investment activities

(1) Without prejudice to Title VIII of Regulation (EU) No 600/2010, third-country firms that wish to provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and to professional clients within the meaning of Annex III, Section A, may establish a branch in Luxembourg and "shall, for that purpose, be in possession of a written authorisation of the CSSF,"[329] shall be subject to the same authorisation rules as those applying to credit institutions and investment firms incorporated under Luxembourg law and shall comply with the provisions of Article 32(2) to (4). The branch of the third-country firm authorised in accordance with this subparagraph shall comply with Article 35(4) and, where applicable, with the obligations laid down in Articles 22 and 23, Article 24(1), Articles 26, 27, 34 and 35, Article 36(1) and Articles 37, 39 and 60 of the Law of 30 May 2018 on markets in financial instruments and with the obligations laid down in Articles 3 to 26 of Regulation (EU) No 600/2014, as well as with the obligations under the measures adopted pursuant thereto. The branch of the third-country firm shall be subject to the supervision of the CSSF. The CSSF may require branches of third-country firms authorised in accordance with this subparagraph to provide all the information it needs for the monitoring of the branches' compliance with the requirements of this subparagraph. The information to be provided by these branches is the same information as the CSSF requires for these purposes from credit institutions and investment firms authorised in Luxembourg. The CSSF shall have the right to examine the arrangements established by the branches of third-country firms and to request such changes

[325] Law of 30 May 2018
[326] Law of 21 July 2021: A560
[327] Law of 21 July 2021: A560
[328] Law of 30 May 2018
[329] Law of 21 July 2021: A560

as are needed to enable the CSSF to enforce the requirements of this subparagraph, with respect to the services and activities provided by the branch in Luxembourg.

In the absence of an equivalence decision taken by the European Commission in accordance with Article 47(1) of Regulation (EU) 600/2014 "or where such a decision has been adopted but either is no longer in effect or does not cover the services or activities concerned"[330], a third-country firm may also provide investment services or activities as well as ancillary services in Luxembourg to eligible counterparties and professional clients within the meaning of Annex III, Section A, provided that it has been authorised in its jurisdiction to provide the investment services and activities it wishes to provide in Luxembourg, that it is subject to a supervision and to authorisation rules that the CSSF deems equivalent to those laid down in this Law, and that cooperation between the CSSF and the supervisory authority of this firm is ensured.

(2) Third-country firms that wish to provide investment services or activities as well as ancillary services in Luxembourg to retail clients or professional clients within the meaning of Annex III, Section B, shall be required to establish a branch in Luxembourg. They "shall be in possession of a written authorisation of the CSSF,"[331] shall be subject to the same authorisation rules as credit institutions and investment firms incorporated under Luxembourg law and shall comply with the provisions of Article 32(2) to (4). Furthermore, authorisation shall be subject to the following requirements:

1. the provision of services for which the third-country firm requests authorisation is subject to authorisation and supervision in the third country where the firm is established and the requesting firm is properly authorised, whereby the competent authority pays due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism;
2. cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the CSSF and competent supervisory authorities of the third country where the requesting firm is established;
3. the branch complies with the initial capital requirements set out in the authorisation rules;
4. one or more persons are appointed to be responsible for the management of the branch and they comply with the requirements laid down in Article 19(1a), Article 38(4) and Articles 38-1, 38-2 and 38-8;
5. the third country where the requesting firm is established has signed an agreement with Luxembourg, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;
6. the branch shall participate in the Système d'Indemnisation des Investisseurs Luxembourg referred to in Article 156 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

The authorisation shall be granted upon written request and examination of the authorisation request by the CSSF. The requesting firm shall provide the CSSF with the following information:

1. the name of the authority responsible for its supervision in the third-country concerned, providing, when more than one authority is responsible for supervision, the details of the respective areas of competence;
2. all relevant details of the requesting firm, including the name, legal form, registered office and address, members of the management body, relevant shareholders, and a programme of operations setting out the investment services or activities as well as

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the ancillary services to be provided and the organisational structure of the branch, including a description of any outsourcing to third parties of essential operating functions;

3. the name of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with the requirements laid down in Article 19(1a), Article 38(4) and Articles 38-1, 38-2 and 38-8;

4. information about the initial capital of the branch.

Authorisation shall be granted only where the CSSF is satisfied that the conditions laid down in Article 1 are complied with and that the branch of the third-country firm will be able to comply with the provisions referred to in the "fourth and sixth subparagraphs"[332]. The decision taken regarding an application for authorisation shall be notified to the requesting firm within six months of submission of a complete application, failing which the absence of a decision shall be deemed to constitute notification of a refusal.

The branch of the third-country firm authorised in accordance with this paragraph shall comply with Article 35(4) and, where applicable, with the obligations laid down in Articles 22 and 23, Article 24(1), Articles 26, 27, 34 and 35, Article 36(1) and Articles 37, 39 and 60 of the Law of 30 May 2018 on markets in financial instruments and with the obligations laid down in Articles 3 to 26 of Regulation (EU) No 600/2014, as well as with the obligations under the measures adopted pursuant thereto. The branch of the third-country firm shall be subject to the supervision of the CSSF.

The CSSF may require branches of third-country firms authorised in accordance with this paragraph to provide all the information it needs for the monitoring of the branches' compliance with the requirements of the fourth subparagraph. The information to be provided by these branches is the same information as the CSSF requires for these purposes from credit institutions and investment firms authorised in Luxembourg. The CSSF shall have the right to examine the arrangements established by the branches of third-country firms and to request such changes as are needed to enable the CSSF to enforce the requirements of the fourth subparagraph, with respect to the services and activities provided by the branch in Luxembourg.

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"The branch of the third-country firm that is authorised in accordance with the third subparagraph shall report to the CSSF the following information on an annual basis:

1. the scale and scope of the services and activities carried out by the branch in Luxembourg;

2. for third-country firms performing the activity listed in point (3) of Section A of Annex II, their monthly minimum, average and maximum exposure to EU counterparties;

3. for third-country firms providing one or both of the services listed in point (6) of Section A of Annex II, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;

4. the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (1);

5. a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the Système d'indemnisation des investisseurs Luxembourg;

6. the risk management policy and arrangements applied by the branch for the services and activities referred to in point (1);

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7. the governance arrangements, including key function holders for the activities of the branch;

8. any other information considered by the CSSF to be necessary to enable comprehensive monitoring of the activities of the branch."

The authorisation may be withdrawn if the third-country firm:

1. does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months;

2. has obtained the authorisation by making false statements or by any other irregular means;

3. no longer meets the conditions under which authorisation was granted;

4. has seriously and systematically infringed the provisions "of this Law"[333] governing the operating conditions for investment firms and applicable to third-country firms.

(3) Where a client established or situated in the European Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this article shall not apply to the provision of that service or activity by the third country firm to that person including a relationship specifically relating to the provision of that service or activity. Reverse solicitation by these clients does not entitle the third-country firm to market new categories of investment products or investment services to these clients."

(Law of 21 July 2021: A566)

"Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the European Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client."

"Chapter 4: Authorisation for the establishment of branches and freedom to provide services in another (…)[334] Member State by credit institutions, investment firms or certain financial institutions governed by Luxembourg law"[335]

"Article 33. Establishment of branches in another Member State"[336]

(1) Any credit institution (…)[337] authorised in Luxembourg, or any financial institution governed by Luxembourg law corresponding to (…)[338] the conditions laid down in Article 31, which wishes to establish a branch within the territory of another (…)[339] Member State shall notify the CSSF in advance of its intention so to do, providing, together with such notification, the following information:

(a) the Member State within the territory of which it plans to establish a branch;

"(b) a programme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch and whether it envisages to appoint tied agents. The programme of operations specifies the banking activities, investment services, investment activities and ancillary services that the branch envisages to provide or exercise;"[340]

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[333] Law of 21 July 2021: A560

[334] Repealed by the Law of 13 July 2007

[335] Law of 12 March 1998

[336] Law of 13 July 2007

[337] Law of 30 May 2018

[338] Law of 13 July 2007

[339] Law of 13 July 2007

[340] Law of 13 July 2007

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

(Law of 25 July 2018)

"The CSSF shall check compliance by the financial institutions incorporated under Luxembourg law with the conditions set out in the first subparagraph of Article 31 and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in paragraph 2.

If a financial institution as referred to in the second subparagraph ceases to fulfil any of the conditions imposed, the CSSF shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State."

(Law of 30 May 2018)

"(1a) An investment firm authorised in Luxembourg wishing to establish a branch within the territory of another Member State or to use tied agents established in another Member State in which it has not established a branch, shall first notify the CSSF thereof and provide it with the following information:

1. the Member State within the territory of which it plans to establish a branch or the Member State in which it has not established a branch but plans to use tied agents established there;
2. a programme of operations setting out, inter alia, the investment services or activities as well as the ancillary services that the branch intends to offer;
3. where established, the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;
4. where tied agents are to be used in a Member State in which an investment firm has not established a branch, a description of the intended use of the tied agent(s) and an organisational structure, including reporting lines, indicating how the agent(s) fit into the corporate structure of the investment firm;
5. the address in the host Member State from which documents may be obtained;
6. the names of those responsible for the management of the branch or of the tied agent.

Where an investment firm uses a tied agent established in another Member State, such tied agent shall be assimilated to the branch, where one is established.

A credit institution wishing to use a tied agent established in another Member State to provide investment services or activities as well as ancillary services shall notify the CSSF thereof and provide it with the information referred to in the first subparagraph.

Tied agents shall be subject to the provisions of Directive 2014/65/EU relating to branches."

(2) Unless the CSSF has reason to doubt the adequacy of the administrative structure or the financial situation of the applicant professional, taking into account the activities envisaged, it shall, within three months of receiving all the information referred to in "paragraph 1 or 1a"[341], communicate that information to the competent authority of the host Member State and shall inform the applicant accordingly. (…)[342]

(Law of 23 July 2015)

"The CSSF shall also communicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 of the credit institution.

[341] Law of 21 July 2021: A566

[342] Law of 13 July 2007

The CSSF shall communicate", in the case referred to in paragraph 1,"[343] the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013 of the credit institution which is its parent undertaking."

"(3) In addition to the information referred to in paragraph 1, the CSSF shall also communicate to the competent authority of the host Member State the amount of own funds and solvency ratio of the applicant credit institution, as well as details on any deposit guarantee scheme and investor compensation scheme that aim to ensure the protection of depositors and investors of the branch of the applicant credit institution. It shall also communicate to the competent authority of the host Member State details of the investor compensation scheme of which the applicant investment firm is a member. In the event of a change on any of the information relating to the deposit guarantee scheme or investor compensation scheme, the CSSF shall notify the competent authority of the host Member State.

(4) Where the CSSF refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the applicant within three months of receiving that information. The decision concerning the refusal may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

(5) On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the CSSF, the branch may be established and commence business. "The same shall apply to the tied agent."[344]

(6) In the event of a change in any of the information communicated in accordance with paragraph 1, the credit institution shall give written notice of that change to the CSSF and the competent authority of the host Member State at least one month before implementing the change.

"In the event of a change in any of the information communicated in accordance with paragraph 1a, a credit institution or investment firm shall give written notice of that change to the CSSF at least one month before implementing the change. The CSSF shall inform the competent authority of the host Member State of that change."[345]

(7) Where a credit institution incorporated under Luxembourg law or an investment firm incorporated under Luxembourg law "referred to in "Article 24-8 or Article 24-9"[346] wishes to operate an MTF or an OTF"[347] in another Member State by means of a branch, the CSSF shall ensure that the applicant fulfils the provisions of Article 20 of the Law on markets in financial instruments before communicating the information to the competent authority of the host Member State.

The provisions "of Article 22 or 34 of the Law of 30 May 2018 on markets in financial instruments"[348] shall apply *mutatis mutandis*.

Credit institutions or investment firms that wish to operate an MTF "or an OTF"[349] in another Member State shall inform the CSSF beforehand. It shall communicate to the CSSF all information, including a programme of operations setting out, inter alia, the types of business envisaged, the operating rules and the organisational structure, necessary to assess compliance with the provisions of Article 20 of the Law on markets in financial instruments.

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[343] Law of 21 July 2021: A566
[344] Law of 30 May 2018
[345] Law of 30 May 2018
[346] Law of 21 July 2021: A566
[347] Law of 30 May 2018
[348] Law of 30 May 2018
[349] Law of 30 May 2018

The CSSF shall communicate to the competent authority of the host Member State in accordance with paragraph 2 the information only if it is not opposed to the plan. It shall inform the applicant thereof. The CSSF opposes the plan to operate the MTF "or the OTF"[350] if the requirements of Article 20 of the Law on markets in financial instruments are not fulfilled."[351]

"Article 34. Provision of services within the European Union

(1) Any credit institution authorised in Luxembourg or financial institution incorporated under Luxembourg law fulfilling Article 31, wishing to carry on business within the territory of another Member State for the first time in the form of provision of services, shall notify the CSSF of the activities listed in Annex I which it wishes to perform.

The CSSF shall communicate to the competent authority of the host Member State the notification referred to in the previous subparagraph, within one month of its reception.

(Law of 25 July 2018)
"The CSSF shall check compliance by the financial institutions incorporated under Luxembourg law with the conditions set out in the first subparagraph of Article 31 and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in the second subparagraph.

If a financial institution as referred to in the third subparagraph ceases to fulfil any of the conditions imposed, the CSSF shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State."

(2) An investment firm authorised in Luxembourg wishing to provide services or activities within the territory of another Member State for the first time or which wishes to change the range of services or activities so provided, shall communicate to the CSSF the following information:

(a) the Member State in which it intends to operate;

(b) a programme of operations stating in particular the investment services, investment activities as well as ancillary services which it intends to perform or exercise and whether it intends to use tied agents "established in Luxembourg. Where an investment firm intends to use tied agents, the investment firm shall communicate to the CSSF the identity of those tied agents."[352]

"Where an investment firm intends to use tied agents established in Luxembourg, in the territory of the Member State in which it intends to provide services, the CSSF shall, within one month from receipt of all the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 79(1) of Directive 2014/65/EU the identity of the tied agents that the investment firm intends to use to provide investment services and activities in that Member State."[353]

(3) The CSSF shall, within one month of receiving the information, forward it to the competent authority of the host Member State "designated as contact point in accordance with Article 79(1) of Directive 2014/65/EU"[354]. The investment firm may start to provide investment services, exercise investment activities and provide ancillary services in the host Member State as from the date on which the CSSF transmitted this information to the competent authority of the host Member State.

(4) In the event of a change in any of the information communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the CSSF at least one month

[350] Law of 30 May 2018
[351] Law of 13 July 2007
[352] Law of 30 May 2018
[353] Law of 30 May 2018
[354] Law of 30 May 2018

before implementing the change. The CSSF shall inform the competent authority of the host Member State of that change."[355]

(Law of 30 May 2018)

"(5) A credit institution authorised in Luxembourg wishing to provide investment services or activities as well as ancillary services through tied agents shall communicate to the CSSF the identity of those tied agents.

Where a credit institution intends to use tied agents established in Luxembourg, in the territory of the Member State in which it intends to provide services, the CSSF shall, within one month from receipt of all the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 79(1) of Directive 2014/65/EU the identity of the tied agents that the credit institution intends to use to provide services in that Member State."

(Law of 20 May 2021)

"Chapter 5: Approval of financial holding companies and mixed financial holding companies

Article 34-1. Definitions

For the purposes of this chapter, "group" shall refer to groups as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013.

Article 34-2. Approval of financial holding companies and mixed financial holding companies established in Luxembourg

(1) For the purposes of this article, the CSSF shall act in its capacity as competent authority of the Member State where financial holding companies and mixed financial holding companies are established.

(2) Parent financial holding companies in Luxembourg and parent mixed financial holding companies in Luxembourg shall seek approval in accordance with this article. Other financial holding companies or mixed financial holding companies, when established in Luxembourg, shall seek approval from the CSSF in accordance with this article where they are responsible for the application of this Law, Directive 2013/36/EU or Regulation (EU) No 575/2013 on a sub-consolidated basis.

(3) For the purposes of any approval request referred to in paragraph 2, the following information shall be provided to the CSSF and, where different, the consolidating supervisor:

1. the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;
2. information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in Article 51(4) on qualification of the management body;
3. information regarding compliance with the criteria set out in Article 6 concerning shareholders and members, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;
4. the internal organisation and distribution of tasks within the group;
5. any other information that may be necessary to carry out the assessments referred to in paragraphs 5 and 6.

(4) Where the approval of a financial holding company or mixed financial holding company referred to in paragraph 2 takes place concurrently with the assessment referred to in Article 22 of Directive 2013/36/EU, the CSSF for the purposes of that article shall coordinate, as appropriate, with the competent authority and with the consolidating supervisor.

[355] Law of 13 July 2007

(5) Approval may be granted to a financial holding company or mixed financial holding company pursuant to this article only where all of the following conditions are fulfilled:

1. the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by this Law, Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and, in particular, are effective to:

   (a) coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

   (b) prevent or manage intra-group conflicts; and

   (c) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

2. the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject. The assessment of that criterion shall take into account, in particular:

   (a) the position of the financial holding company or mixed financial holding company in a multi-layered group;

   (b) the shareholding structure; and

   (c) the role of the financial holding company or mixed financial holding company within the group;

3. the criteria set out in Article 6 and the requirements laid down in Article 51(4) are complied with.

(6) Approval of the financial holding company or mixed financial holding company under this article shall not be required where all of the following conditions are met:

1. the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to "credit institutions"[356] or financial institutions is to acquire holdings in subsidiaries;

2. the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by a resolution authority pursuant to Directive 2014/59/EU;

3. a subsidiary that is a credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

4. the financial holding company or mixed financial holding company does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are "credit institutions"[357] or financial institutions;

5. there is no impediment to the effective supervision of the group on a consolidated basis.

Financial holding companies or mixed financial holding companies exempted from approval in accordance with this paragraph shall not be excluded from the perimeter of consolidation as laid down in this Law, in Directive 2013/36/EU and in Regulation (EU) No 575/2013.

(7) Financial holding companies and mixed financial holding companies shall provide the consolidating supervisor with the information required to monitor on an ongoing basis the

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structural organisation of the group and compliance with the conditions referred to in paragraph 5 or, where applicable, paragraph 6.

(8) Where the consolidating supervisor has established that the conditions set out in paragraph 5 are not met or have ceased to be met, the financial holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensuring compliance with the requirements laid down in this Law and in Regulation (EU) No 575/2013 on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate.

The supervisory measures referred to in the first subparagraph may include:

1. suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;
2. issuing injunctions or penalties against the financial holding company, the mixed financial holding company or the persons responsible for the administration or management, subject to Articles 3(6), 38-12, 44-4, 53(1) and (2), 58-1, 59(1) and (2), 63 to 63-5 and 64-2;
3. giving instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary (…)[358] institutions;
4. designating on a temporary basis another financial holding company, mixed financial holding company or "credit institution"[359] within the group as responsible for ensuring compliance with the requirements laid down in this Law and in Regulation (EU) No 575/2013 on a consolidated basis;
5. restricting or prohibiting distributions or interest payments to shareholders;
6. requiring financial holding companies or mixed financial holding companies to divest from or reduce holdings in "credit institutions"[360] or other financial sector entities;
7. requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

(9) Where the consolidating supervisor has established that the conditions set out in paragraph 6 are no longer met, the financial holding company or mixed financial holding company shall seek approval.

(10) For the purpose of taking decisions on the approval and exemption from approval referred to in paragraphs 5 and 6, respectively, and the supervisory measures referred to in paragraphs 8 and 9, the CSSF shall work together in full consultation with the consolidating supervisor. The CSSF shall do everything within its powers to reach a joint decision with the consolidating supervisor within two months of receipt of that assessment.

The joint decision shall be duly documented and reasoned.

In the event of a disagreement, the CSSF shall refrain from taking a decision and shall refer the matter to the European Banking Authority, hereinafter the "EBA", in accordance with Article 19 of Regulation (EU) No 1093/2010. The competent authorities concerned shall adopt a joint decision in conformity with the decision of the EBA. The matter shall not be referred to the EBA after the two-month period referred to in the first subparagraph or after a joint decision has been reached.

(11) In the case of mixed financial holding companies, where the CSSF or the consolidating supervisor does not act as the coordinator determined in accordance with Article 10 of Directive

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2002/87/EC, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in paragraphs 5, 6, 8 and 9 of this article, as applicable.

Where the agreement of the coordinator is required, disagreements shall be referred to the relevant European Supervisory Authority, namely, the EBA or the European Insurance and Occupational Pensions Authority, hereinafter "EIOPA". Any decision taken in accordance with this paragraph shall be without prejudice to the obligations under Directive 2002/87/EC or 2009/138/EC.

Article 34-3. Approval of financial holding companies and mixed financial holding companies where the CSSF acts as consolidating supervisor

(1) For the purposes of this article, the CSSF shall act in its capacity as consolidating supervisor.

(2) Where the approval of a financial holding company or mixed financial holding company referred to in Article 21a(1) of Directive 2013/36/EU takes place concurrently with the assessment referred to in Article 22 of that directive, the CSSF shall coordinate, as appropriate, with the competent authority for the purposes of that article as well as with the competent authority in the Member State where the financial holding company or mixed financial holding company is established.

(3) The CSSF shall monitor compliance with the conditions referred to in paragraph 3 of Article 21a of Directive 2013/36/EU or, where applicable, paragraph 4 of that article of that directive on an ongoing basis. The CSSF shall share the information communicated to it pursuant to Article 21a(5) of Directive 2013/36/EU with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established.

(4) Where the CSSF has established that the conditions set out in Article 21a(3) of Directive 2013/36/EU are not met or have ceased to be met, it shall contact the competent authority in the Member State where the financial holding company or mixed financial holding company is established to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensuring compliance with the requirements laid down in Directive 2013/36/EU and in Regulation (EU) No 575/2013 on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate.

(5) Where the CSSF has established that the conditions set out in Article 21a(4) of Directive 2013/36/EU are no longer met, it shall contact the competent authority in the Member State where the financial holding company or mixed financial holding company is established in order for the financial holding company or the mixed financial holding company to seek approval in accordance with Article 21a of Directive 2013/36/EU.

(6) For the purpose of taking decisions on the approval and exemption from approval referred to in Article 21a(3) and (4) of Directive 2013/36/EU and the supervisory measures referred to in paragraphs 6 and 7 of that article, the CSSF shall work together in full consultation with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established. The CSSF shall prepare an assessment on the matters referred to in paragraphs 3, 4, 6 and 7 of Article 21a of Directive 2013/36/EU, as applicable, and shall forward that assessment to the competent authority in the Member State where the financial holding company or the mixed financial holding company is established. The CSSF shall do everything within its powers to reach a joint decision with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established within two months of receipt of that assessment.

The joint decision shall be duly documented and reasoned. The CSSF shall communicate the joint decision to the financial holding company or mixed financial holding company.

In the event of a disagreement, the CSSF shall refrain from taking a decision and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The competent authorities concerned shall adopt a joint decision in conformity with the decision of the EBA. The matter shall not be referred to the EBA after the two-month period referred to in the first subparagraph or after a joint decision has been reached.

(7) In the case of mixed financial holding companies, where the CSSF in its capacity as consolidating supervisor or the competent authority in the Member State where the mixed financial holding company is established does not act as the coordinator determined in accordance with Article 10 of Directive 2002/87/EC, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in paragraphs 3, 4, 6 and 7 of this article, as applicable.

Where the agreement of the coordinator is required, disagreements shall be referred to the relevant European Supervisory Authority, namely, the EBA or EIOPA. Any decision taken in accordance with this paragraph shall be without prejudice to the obligations under Directive 2002/87/EC or 2009/138/EC.

(8) Where approval of a financial holding company or mixed financial holding company is refused, the CSSF shall notify the applicant of the decision and the reasons therefor within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision.

A decision to grant or refuse approval shall, in any event, be taken within six months of receipt of the application. Refusal may be accompanied, where necessary, by any of the measures referred to in Article 21a(6) of Directive 2013/36/EU.

Chapter 6: Obligation to establish an intermediate EU parent undertaking

Article 34-4. Intermediate EU parent undertaking

(1) Where "a credit institution or an investment firm"[361] incorporated under Luxembourg law is part of a third-country group which has two or more "credit institutions or investment firms"[362] in the European Union, it shall ensure that this third-country group has a single intermediate EU parent undertaking.

(2) The CSSF and the competent authorities of the relevant Member States may allow the third-country group referred to in paragraph 1 to have two intermediate EU parent undertakings where they determine that the establishment of a single intermediate EU parent undertaking would:

1. be incompatible with a mandatory requirement for separation of activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third-country group has its head office; or
2. render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the relevant resolution authorities.

(3) An intermediate EU parent undertaking established in Luxembourg shall be a credit institution authorised in accordance with Article 2, or a financial holding company or mixed financial holding company that has been granted approval in accordance with Article 34-2.

By way of derogation from the first subparagraph, where none of "the institutions"[363] referred to in paragraph 1 of this article is a credit institution or where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in paragraph 2, the intermediate EU parent undertaking or the second intermediate EU parent undertaking, where it is established in Luxembourg, may be "a BRRD investment firm as defined in point (11) of Article 59-15 which is authorised in accordance with Part I, Chapter 2, Section 2, Subsection 1"[364].

(4) Paragraphs 1, 2 and 3 shall not apply where the total value of assets in the European Union of the third-country group is less than 40 billion euros.

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[361] Law of 21 July 2021: A566
[362] Law of 21 July 2021: A566
[363] Law of 21 July 2021: A566
[364] Law of 21 July 2021: A566

(5) For the purposes of this article, the total value of assets in the European Union of the third-country group shall be the sum of the following:

1. the total value of assets of "each credit institution and each investment firm"[365] in the European Union of the third-country group, as resulting from its consolidated balance sheet or as resulting from "the balance sheets of each credit institution or investment firm in the European Union"[366], where "a credit institution's or an investment firm's"[367] balance sheet is not consolidated; and
2. the total value of assets of each branch of the third-country group authorised in the European Union in accordance with Directive 2013/36/EU, Directive 2014/65/EU or Regulation (EU) No 600/2014.

(6) The CSSF shall notify the following information in respect of each third-country group operating in Luxembourg to the EBA:

1. the names and the total value of assets of "credit institutions and investment firms"[368] incorporated under Luxembourg law belonging to a third-country group;
2. the names and the total value of assets corresponding to branches authorised in Luxembourg in accordance with this Law, the Law of 30 May 2018 on markets in financial instruments, as amended, or Regulation (EU) No 600/2014, and the types of activities that they are authorised to carry out;
3. the name and the type as referred to in paragraph 3 of any intermediate EU parent undertaking set up in Luxembourg and the name of the third-country group of which it is part.

(7) The CSSF shall ensure that "each credit institution and each investment firm"[369] under Luxembourg jurisdiction that is part of a third-country group meets one of the following conditions:

1. it has an intermediate EU parent undertaking;
2. it is an intermediate EU parent undertaking;
3. it is the "only credit institution or investment firm"[370] in the European Union of the third-country group; or
4. it is part of a third-country group with a total value of assets in the European Union of less than 40 billion euros."

[365] Law of 21 July 2021: A566
[366] Law of 21 July 2021: A566
[367] Law of 21 July 2021: A566
[368] Law of 21 July 2021: A566
[369] Law of 21 July 2021: A566
[370] Law of 21 July 2021: A566

"PART II: Professional obligations, prudential rules and rules of conduct in the financial sector"[371]

Article 35. *(repealed by the Law of 21 July 2021: A566)*

Chapter 1: *(repealed by the Law of 10 November 2009)*

(Law of 13 July 2007)

""Chapter 2: Provisions applicable to specialised PFS and support PFS"[372] "

(Law of 21 July 2021: A566)

"Article 35-1. Scope

This chapter shall apply to specialised PFS and to support PFS incorporated under Luxembourg law, as well as to Luxembourg branches of specialised PFS incorporated under foreign law or support PFS incorporated under foreign law."

"Article 36. Prudential rules"[373]

(1) "Specialised PFS and support PFS shall be bound by prudential rules:"[374]

- to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees;
- to make adequate arrangements for instruments belonging to "clients"[375] with a view to safeguarding the latter's ownership rights, especially in the event of the insolvency of the (…)[376] PFS, and to preventing the use by the (…)[377] PFS of "clients'"[378] instruments for its own account except with the "clients'"[379] express consent;
- to make adequate arrangements for funds belonging to "clients"[380] with a view to safeguarding the latter's rights and (…)[381] preventing the use of "clients'"[382] funds for its own account;
- to arrange for records to be kept, and retained for periods laid down in the Commercial Code, of transactions executed which shall at least be sufficient to enable the CSSF to monitor compliance with the prudential rules which it is responsible for applying;
- to be structured and organised in such a way as to minimise the risk of clients' interests being prejudiced by conflicts of interest between the (…)[383] PFS and its clients or between one of its clients and another.

Nevertheless, where a branch is set up the organisational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.

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[371] Law of 12 March 1998
[372] Law of 30 May 2018
[373] Law of 13 July 2007
[374] Law of 30 May 2018
[375] Law of 13 July 2007
[376] Repealed by the Law of 13 July 2007
[377] Repealed by the Law of 13 July 2007
[378] Law of 13 July 2007
[379] Law of 13 July 2007
[380] Law of 13 July 2007
[381] Repealed by the Law of 13 July 2007
[382] Law of 13 July 2007
[383] Repealed by the Law of 13 July 2007

(Law of 13 July 2007)

"(2) By way of derogation from paragraph 1, market operators "operating an MTF or an OTF shall be subject to the organisational requirements laid down in Article 37-1, as well as to the requirements of Articles 19(1a), 38(4), 38-1, 38-2 and 38-8"[384] are subject to the organisational requirements of Article 37-1."

"Article 36-1. Conduct of business rules"[385]

(1) ""Specialised PFS and support PFS shall be bound"[386] by conduct of business rules:"[387]

- to act honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,
- to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market,
- to have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities,
- to seek from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,
- to make adequate disclosure of relevant material information in its dealings with its clients,
- to try to avoid "conflicts of interest"[388] and, when they cannot be avoided, to ensure that its clients are fairly treated, and
- to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market.

"(2) "Where a specialised PFS or support PFS"[389] receives, through a credit institution or another PFS, the instruction to execute a transaction on behalf of a client of that credit institution or that other PFS, Article 37-4 shall apply *mutatis mutandis*."[390]

(Law of 27 February 2018)

"Article 36-2. Organisational requirements for outsourcing

Outsourcing shall not prejudice the level and quality of the service provided to clients. It is carried out based on a service contract.

"The specialised PFS or support PFS"[391] shall remain entirely liable for the compliance with all its obligations pursuant to the prudential regulations when it outsources functions or activities.

Sub-outsourcing shall be first approved by the person, established in Luxembourg and subject to the prudential supervision of the CSSF or the European Central Bank, who is the originator of the outsourcing.

Outsourcing of important operational functions shall not be undertaken in such a way as to materially impair the quality of internal control of the "specialised PFS or support PFS"[392], and the ability of the

[384] Law of 30 May 2018
[385] Law of 13 July 2007
[386] Law of 30 May 2018
[387] Law of 13 July 2007
[388] Law of 30 May 2018
[389] Law of 30 May 2018
[390] Law of 13 July 2007
[391] Law of 30 May 2018
[392] Law of 30 May 2018

CSSF to monitor compliance of the "specialised PFS or support PFS"[393] with all obligations arising from this Law."

(Law of 13 July 2007)

"Chapter 3: Provision applicable to certain PFS"

(Law of 21 July 2021: A566)

"Article 36-3. Scope

This chapter shall apply to PFS incorporated under Luxembourg law which manage third-party funds. Article 37(1) and (2) shall also apply to Luxembourg branches of PFS incorporated under foreign law.

By way of derogation from the foregoing, Article 37(2a) shall apply to all investment firms incorporated under Luxembourg law and to Luxembourg branches of investment firms incorporated under foreign law."

"Article 37."[394] Prudential rules specific to certain PFS

(1) Contracts concluded between an PFS managing third party funds and its own clients must specify all the accounts and other assets of the clients to which they relate. Under no circumstances may the PFS dispose in its own favour of clients' assets.

"(2) Assets of clients must be deposited with any of the following entities:

(a) a central bank;

(b) a credit institution authorised in Luxembourg or in another Member State;

(c) a credit institution authorised in a third country;

(d) an eligible money market fund.

Financial instruments held by a PFS on behalf of their clients may be deposited into an account or accounts opened with a third party provided that the PFS exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and that arrangements for the holding and safekeeping of those financial instruments are agreed upon with the third party."[395]

(Law of 23 July 2015)

"(2a) Only an investment firm authorised to provide the ancillary service 1 referred to in Section C of Annex II shall be authorised to hold the assets in question."

(3) The assets in question shall not form part of the collective assets of the PFS in the event of its liquidation. They may not be seized by the latter's personal creditors. The PFS must enter them in accounts separate from those relating to its own assets.

(Law of 13 July 2007)

"Chapter 4: Provisions applicable to credit institutions and investment firms

(Law of 21 July 2021: A566)

"Article 37a. Scope

This chapter shall apply to:

1. investment services provided and investment activities performed by credit institutions and investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of credit institutions and investment firms that have their head office in a third country;

2. investment services provided and investment activities performed in Luxembourg by Luxembourg branches of credit institutions and investment firms that have their head office in another Member State, except for Articles 37-1, 37-2 and 37-8;

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[393] Law of 30 May 2018

[394] Law of 13 July 2007

[395] Law of 10 November 2009

3. ancillary services provided by investment firms.

Articles 37-1 to 37-4, 37-6, 37-7 and 37-8(1), (2) and (4) to (7) shall also apply to credit institutions and investment firms when selling or advising in relation to structured deposits.

By way of derogation from the first subparagraph, credit institutions shall not be subject to the organisational requirements defined in Article 37-1(1) to (9) when exercising their activity of depositary bank of undertakings for collective investment, pension funds or undertakings governed by the Law of 15 June 2004 relating to the investment company in risk capital, as amended."

Article 37-1. Organisational requirements

(1) Credit institutions and investment firms shall establish policies and procedures sufficient to ensure compliance of the credit institutions or investment firms, including their managers, employees and tied agents with their obligations laid down in the relevant legal and regulatory provisions.

Moreover, credit institutions and investment firms shall define appropriate rules governing transactions by their managers, employees and tied agents.

(2) Credit institutions and investment firms shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 37-2 from adversely affecting the interests of their clients.

(Law of 30 May 2018)

"A credit institution or an investment firm which manufactures financial instruments for sale to clients shall maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients.

The product approval process shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.

Credit institutions and investment firms shall also regularly review financial instruments they offer or market, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

A credit institution or investment firm which manufactures financial instruments shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument.

Where a credit institution or investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each financial instrument.

The policies, processes and arrangements referred to in this paragraph shall be without prejudice to all other requirements under this Law, the Law of 30 May 2018 on markets in financial instruments and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements."

(Law of 21 July 2021: A566)

"Credit institutions and investment firms shall be exempted from the requirements set out in the second to the fifth subparagraphs, where the investment service they provide relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties."

(3) Credit institutions and investment firms shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end "they shall

employ appropriate and proportionate systems, including information and communication technology (hereinafter "ICT") systems that are set up and managed in accordance with Article 7 of Regulation (EU) 2022/2554, as well as appropriate and proportionate resources and procedures"[396].

(4) Credit institutions and investment firms shall have a sound administrative and accounting organisation, an appropriate internal control system, effective procedures for risk assessment (…)[397].

"(5) Outsourcing shall not prejudice the level and quality of the service provided to clients. It is carried out based on a service contract.

Credit institutions and investment firms shall remain entirely liable for the compliance with all their obligations pursuant to the prudential regulations when they outsource functions or activities.

Sub-outsourcing shall be first approved by the person, established in Luxembourg and subject to the prudential supervision of the CSSF or the European Central Bank, who is the originator of the outsourcing.

Where they rely on third parties for the performance of operational functions which are critical for the provision of continuous and satisfactory services to clients or the performance of activities on a continuous and satisfactory basis, the credit institutions and investment firms shall take reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to materially impair the quality of internal control of the credit institutions and investment firms, and the ability of the CSSF to monitor compliance of the credit institutions and investment firms with all obligations arising from this Law."[398]

(Law of 27 February 2018)

"(5a) All credit institutions and investment firms shall have sound security mechanisms in place designed to "ensure, in accordance with the requirements laid down in Regulation (EU) 2022/2554"[399] the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times."

"(6) Credit institutions and investment firms shall arrange for records to be kept, in accordance with the time limits laid down in the Commercial Code, of all services, activities and transactions undertaken by them which shall be sufficient to enable the CSSF to fulfil its supervisory tasks and to perform the enforcement actions under Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, and in particular to ascertain that the credit institution or investment firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market."[400]

(Law of 30 May 2018)

"(6a) Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

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[396] Law of 1 July 2024

[397] Law of 1 July 2024

[398] Law of 27 February 2018

[399] Law of 1 July 2024

[400] Law of 30 May 2018

Such telephone conversations and electronic communications shall also include those that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

For those purposes, credit institutions and investment firms shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the credit institution or investment firm to an employee or person at their service or the use of which by an employee or such a person has been accepted or permitted by the credit institution or investment firm.

Credit institutions and investment firms shall notify new and existing clients that telephone communications or conversations between the credit institution or investment firm and its clients that result or may result in transactions will be recorded.

Such a notification may be made once, before the provision of investment services to new and existing clients.

Credit institutions and investment firms shall not provide, by telephone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders.

Credit institutions and investment forms shall allow their clients to place orders through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone. A credit institution or investment firm that invokes written minutes or a note shall demonstrate that the client accepted the order.

Credit institutions and investment firms shall take all reasonable steps to prevent an employee or another person at their service from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the credit institution or investment firm is unable to record or copy.

The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the CSSF, for a period of up to seven years."

(7) Where they hold financial instruments belonging to clients, credit institutions and investment firms shall make appropriate arrangements so as to safeguard clients' ownership rights, especially in the event of insolvency of the credit institution or investment firm, and to prevent the use of clients' financial instruments on own account except with the clients' express consent.

(8) Where they hold funds belonging to clients, credit institutions and investment firms shall make appropriate arrangements to safeguard clients' ownership rights, and, except in the case of credit institutions, prevent the use of client funds for their own account.

(9) The arrangements made to implement "paragraphs (1) to (8) of this article"[401] are laid down by way of a grand-ducal regulation.

(Law of 23 July 2015)

"(10) "Credit institutions and investment firms"[402] shall register all their transactions and document their systems and processes in such a manner that the CSSF is able to check compliance with

[401] Law of 23 July 2015

[402] Law of 21 July 2021: A566

Regulation (EU) No 575/2013, "or where applicable, Regulation (EU) 2019/2033,"[403] this Law and their implementing measures at all times."

Article 37-2. Conflicts of interest

(1) Credit institutions and investment firms shall take "all appropriate steps to identify and to prevent or manage conflicts of interest"[404] between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof", including those caused by the receipt of inducements from third parties or by the credit institution's or investment firm's own remuneration and other incentive structures"[405].

"(2) Where organisational or administrative arrangements made by the credit institution or investment firm in accordance with Article 37-1(2) to prevent conflicts of interest from adversely affecting the interest of its client are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the credit institution or investment firm shall clearly disclose to the client the general nature and, where applicable, sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf."[406]

(Law of 30 May 2018)

"(2a) The disclosure referred to in paragraph 2 shall:

1. be made in a durable medium; and
2. include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises."

(3) The arrangements made to implement this article are laid down by way of a grand-ducal regulation.

Article 37-3. Conduct of business rules when providing investment services to clients

(1) When providing investment services "or,"[407] where appropriate, ancillary services to clients, credit institutions and investment firms shall act honestly, fairly and professionally in accordance with the best interests of their clients and comply, in particular, with the principles set out in "this article"[408].

(Law of 21 July 2021: A566)

"The provision of research by third parties to credit institutions or investment firms providing portfolio management or other investment or ancillary services to clients shall be regarded as fulfilling the obligations under the first subparagraph if:

1. before the execution or research services have been provided, an agreement has been entered into between the credit institution or the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;
2. the credit institution or the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and
3. the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision

[403] Law of 21 July 2021: A566
[404] Law of 30 May 2018
[405] Law of 30 May 2018
[406] Law of 30 May 2018
[407] Law of 30 May 2018
[408] Law of 30 May 2018

of the research did not exceed 1 billion euros, as expressed by end-year quotes for the years when they are or were listed or by the own capital for the financial years when they are or were not listed.

For the purpose of this paragraph, "research" shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.

Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the credit institution's or the investment firm's decisions on behalf of clients being charged for that research."

(Law of 30 May 2018)

"(1a) Credit institutions and investment firms which manufacture financial instruments for sale to clients shall ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market, and the credit institutions and investment firms take reasonable steps to ensure that the financial instrument is distributed to the identified target market.

Credit institutions and investment firms shall understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom they provide investment services, also taking account of the identified target market of end clients, and ensure that financial instruments are offered or recommended only when this is in the interest of the client."

(Law of 21 July 2021: A566)

"Credit institutions and investment firms shall be exempted from the requirements set out in this paragraph, where the investment service they provide relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties."

(2) All information, including marketing communications, addressed by the credit institution or investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

(Law of 21 July 2021: A566)

"(2a) Credit institutions and investment firms shall provide, in electronic format, all information required to be provided by this chapter to clients or potential clients, except where the client or potential client is a retail client or potential retail client who has requested receiving the information on paper, in which case that information shall be provided on paper, free of charge.

Credit institutions and investment firms shall inform retail clients or potential retail clients that they have the option of receiving the information on paper.

Credit institutions and investment firms shall inform existing retail clients that receive the information required to be provided by this chapter on paper of the fact that they will receive that information in electronic format at least eight weeks before sending that information in electronic format. Credit institutions and investment firms shall inform those existing retail clients that they have the choice either to continue receiving information on paper or to switch to information in electronic format. Credit institutions and investment firms shall also inform existing retail clients that an automatic switch to the electronic format will occur if they do not request the continuation of the provision of the information on paper within that eight-week period. Credit institutions and investment firms shall not be required to inform existing retail clients who already receive said information in electronic format."

"(3) Credit institutions and investment firms shall provide appropriate information in good time to clients or potential clients with regard to:

1. the credit institution or investment firm and its services;
2. the financial instruments and proposed investment strategies;
3. execution venues; and
4. all costs and associated charges.

When investment advice is provided, the credit institution or investment firm shall, in good time before it provides investment advice, inform the client:

1. whether or not the advice is provided on an independent basis;
2. whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the credit institution or investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;
3. whether the credit institution or investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;

The information on financial instruments and proposed investment strategies shall include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market.

The information on all costs and associated charges shall include information relating to both investment and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments. "This subparagraph shall not apply to services provided to professional clients except for investment advice and portfolio management."[409]

The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment."[410]

(Law of 21 July 2021: A566)

"Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs and charges, credit institutions and investment firms may provide the information on costs and charges either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that both of the following conditions are met:

1. the client has consented to receiving the information without undue delay after the conclusion of the transaction
2. the credit institution or the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.

In addition to the requirements of the sixth subparagraph, credit institutions and investment firms shall be required to give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction."

[409] Law of 21 July 2021: A566

[410] Law of 30 May 2018

(Law of 30 May 2018)

"(3a) The information referred to in paragraphs 3 and 3d shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

(3b) Where a credit institution or investment firm informs the client that investment advice is provided on an independent basis, that credit institution or investment firm:

1. shall assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and must not be limited to financial instruments issued or provided by:

   (a) the credit institution or investment firm itself or by entities having close links with the credit institution or investment firm; or

   (b) other entities with which the credit institution or investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;

2. cannot accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the credit institution's or investment firm's duty to act in the best interest of the client shall be clearly disclosed and are excluded from this point.

(3c) When providing portfolio management credit institutions and investment firms cannot accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the credit institution's or investment firm's duty to act in the best interest of the client shall be clearly disclosed and are excluded from this paragraph.

(3d) Credit institutions and investment firms shall be regarded as not fulfilling their obligations under paragraph 1 or under Article 37-2 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, other than where the payment or benefit:

1. is designed to enhance the quality of the relevant service to the client; and

2. does not impair compliance with the credit institution's or investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.

The existence, nature and amount of the payment or benefit referred to in the first subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. Where applicable, the credit institution or investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.

The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the credit institution's or investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the first subparagraph.

(3e) A credit institution or investment firm which provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the credit institution or investment firm could offer a different financial instrument which would better meet that client's needs.

(3f) When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, credit institutions and investment firms shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

Where the risks resulting from such an agreement or package offered to a retail client are likely to be different from the risks associated with the components taken separately, credit institutions and investment firms shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

(3g) Credit institutions and investment firms shall ensure and demonstrate to the CSSF, upon request, that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the credit institution or investment firm possess the necessary knowledge and competence to fulfil their obligations under this article. The CSSF shall publish the criteria to be used for assessing such knowledge and competence on its website."

(4) When providing investment advice or portfolio management, credit institutions and investment firms shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, "that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable credit institutions and investment firms to recommend to the client or potential client the investment services and financial instruments that are suitable for him and that are in accordance with his risk tolerance and ability to bear losses"[411].

(Law of 30 May 2018)

"Where a credit institution or an investment firm provides investment advice recommending a package of services or products bundled pursuant to paragraph 3f, it shall ensure that the overall bundled package is suitable."

(Law of 21 July 2021: A566)

"When providing either investment advice or portfolio management that involves the switching of financial instruments, credit institutions and investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, credit institutions and investment firms shall inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching. For the purpose of this subparagraph, a switching of financial instruments shall refer to the sale of a financial instrument and purchase of another financial instrument or the exercise of a right to make a change with regard to an existing financial instrument.

The requirements laid down in the third subparagraph shall not apply to services provided to professional clients, unless those clients inform the credit institution or the investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in said subparagraph. Credit institutions and investment firms shall keep a record of the client communications referred to in this subparagraph."

(5) Credit institutions and investment firms, when providing investment services other than those referred to in paragraph 4, shall ask the client or potential client to provide information

[411] Law of 30 May 2018

regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to be able to assess whether the investment service or product envisaged is appropriate for the client. "Where a bundle of services or products is envisaged pursuant to paragraph 3f, the assessment shall consider whether the overall bundled package is appropriate."[412]

In case the credit institution or investment firm considers, on the basis of the information received under the previous paragraph, that the product or service is not appropriate to the client or potential client, it shall warn the client or potential client. This warning may be provided in a standardised format.

Where clients or potential clients "do not provide"[413] the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the credit institution or investment firm shall warn them that (…)[414] the credit institution or investment firm cannot determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

"(6) Credit institutions and investment firms, when providing investment services that only consist of execution or reception and transmission of client orders with or without ancillary services, excluding the granting of credits or loans as specified in Annex II, Section C, point (2), that do not comprise of existing credit limits of loans, current accounts and overdraft facilities of clients, may provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 5 where all the following conditions are met:

1. the services relate to any of the following financial instruments:

   (a) shares admitted to trading on a regulated market or on an equivalent third-country market or on an MTF, where those are shares in companies, and excluding shares in non-UCITS undertakings for collective investment and shares that embed a derivative;

   (b) bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third country market or on an MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

   (c) money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

   (d) shares or units in UCITS excluding structured UCITS as referred to in the second subparagraph of Article 36(1) of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website;

   (e) structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;

   (f) other non-complex financial instruments for the purpose of this paragraph.

   For the purpose of this point, if the requirements and the procedure laid down under the third and fourth subparagraphs of Article 25(4)(a) of Directive 2014/65/EU are fulfilled, a third-country market shall be considered to be equivalent to a regulated market.

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[412] Law of 30 May 2018

[413] Law of 30 May 2018

[414] Law of 30 May 2018

Where the CSSF requests the Commission to take an equivalence decision in accordance with the third subparagraph of Article 25(4)(a) of Directive 2014/65/EU, it shall indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant information to this end.

2. the service is provided at the initiative of the client or potential client;

3. the client or potential client has been clearly informed that in the provision of that service the credit institution or investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in a standardised format;

4. the credit institution or investment firm complies with its obligations under Article 37-2."[415]

(7) The credit institution or investment firm shall establish a record that includes the documents agreed between the credit institution or investment firm and the client, that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

"(8) Credit institutions and investment firms shall provide the client with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

When providing investment advice, credit institutions and investment firms shall, before the transaction is made, provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.

Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the credit institution or investment firm may provide the written statement on suitability in a durable medium immediately after the client is bound by any agreement, provided both the following conditions are met:

1. the client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction; and

2. the credit institution or investment firm has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

Where a credit institution or investment firm provides portfolio management or has informed the client that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the investment meets the client's preferences, objectives and other characteristics of the retail client."[416]

(Law of 21 July 2021: A566)

"The requirements laid down in this paragraph shall not apply to services provided to professional clients, unless those clients inform the credit institution or the investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in this paragraph. Credit institutions and investment firms shall keep a record of the client communications referred to in this subparagraph."

[415] Law of 30 May 2018

[416] Law of 30 May 2018

(Law of 30 May 2018)

"(8a) If a credit agreement under Directive 2014/17/EU (…)[417] has as a prerequisite the provision to that same consumer of an investment service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as that credit agreement, in order for the loan to be payable, refinanced or redeemed, that service shall not be subject to the obligations set out in paragraphs 3g to 8.

(8b) Where an investment service is offered as part of a financial product which is already subject to other provisions relating to credit institutions and consumer credits with respect to information requirements, that service shall not be additionally subject to the obligations set out in paragraphs 2, 3 and 3a."

(9) The arrangements made to implement this article are laid down by way of a grand-ducal regulation.

Article 37-4. Provision of services through the medium of another credit institution or another investment firm

The credit institution or investment firm receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another credit institution or another investment firm are allowed to rely on client information transmitted by the latter institution or firm. The credit institution or investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

The credit institution or investment firm which receives an instruction to undertake services on behalf of a client in that way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another credit institution or another investment firm. The credit institution or investment firm which mediates the instructions will remain responsible for the "suitability"[418] for the client of the recommendations or advice provided.

The credit institution or investment firm which receives client instructions or orders through the medium of another credit institution "or another investment firm"[419] shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of this chapter.

Article 37-5. Obligation to execute orders on terms most favourable to the client

(1) Credit institutions and investment firms shall take all "sufficient"[420] steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client, the credit institution or investment firm shall execute the order following that specific instruction.

(Law of 30 May 2018)

"Where a credit institution or investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

For the purposes of delivering best possible result in accordance with the first subparagraph where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the credit institution's or investment firm's order execution policy that is capable of executing that order, the credit institution's or

[417] Law of 15 July 2024
[418] Law of 30 May 2018
[419] Law of 30 May 2018
[420] Law of 30 May 2018

investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment."

(Law of 30 May 2018)

"(1a) Credit institutions and investment firms cannot receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue which would infringe the requirements on conflicts of interest or inducements set out in paragraph 1, in Article 37-1(2) and in Articles 37-2 and 37-3(1) to (3f).

(1b) Following execution of a transaction on behalf of a client, credit institutions and investment firms shall inform the client where the order was executed."

(2) Credit institutions and investment firms shall establish and implement effective arrangements for complying with paragraph 1. Credit institutions and investment firms shall establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with paragraph 1.

(3) The order execution policy shall include, in respect of each class of financial instruments, information on the different execution venues where the credit institution or investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those execution venues that enable the credit institution or investment firm to obtain on a consistent basis the best possible result for the execution of client orders.

Credit institutions and investment firms provide appropriate information to their clients on their order execution policy. "That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the credit institution or investment firm for the client."[421] Credit institutions and investment firms shall obtain the prior consent of their clients to the execution policy.

Where the order execution policy provides for the possibility that client orders may be executed outside "a trading venue"[422], the credit institution or investment firm shall, in particular, inform its clients about this possibility. Credit institutions and investment firms shall obtain the prior express consent of their clients before proceeding to execute their orders outside "a trading venue"[423]. Credit institutions and investment firms may obtain such consent either in the form of a general agreement or in respect of individual transactions.

(Law of 30 May 2018)

"(3a) Credit institutions and investment firms which execute client orders shall summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained."

(4) Credit institutions and investment firms "which execute client orders"[424] are required to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, credit institution and investment firms shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements", taking account of, inter alia, the information published under paragraph 3a and Article 61 of the Law of 30 May 2018 on markets in financial instruments"[425]. Credit institutions and investment firms shall "notify clients with whom they have an ongoing client relationship"[426] of any material changes to their order execution arrangements or execution policy.

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[421] Law of 30 May 2018
[422] Law of 30 May 2018
[423] Law of 30 May 2018
[424] Law of 30 May 2018
[425] Law of 30 May 2018
[426] Law of 30 May 2018

(5) Credit institutions and investment firms shall be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with their order execution policy", and demonstrate to the CSSF, at its request, their compliance with this article"[427].

(6) The arrangements made to implement this article are laid down by way of a grand-ducal regulation.

Article 37-6. Client order handling rules

(1) Credit institutions and investment firms authorised to execute orders on behalf of clients shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or their own trading interests.

These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the credit institution or investment firm.

(2) In the case of a client limit order in respect of shares admitted to trading on a regulated market "or traded on a trading venue"[428] which is not immediately executed under prevailing market conditions, credit institutions and investment firms shall, unless the client expressly instructs otherwise, take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. The CSSF may waive this obligation in respect of transactions that are large in scale compared with normal market size "as determined under Article 4 of Regulation (EU) No 600/2014"[429]. For the purposes of this article, "limit order" means the order to buy or sell a financial instrument at a specified price limit or better and for a specified size.

(3) The arrangements made to implement this article are laid down by way of a grand-ducal regulation.

Article 37-7. Transactions executed with eligible counterparties

(1) Credit institutions and investment firms authorised to execute orders on behalf of clients or to deal on own account or to receive and transmit orders may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations "under Article 37-3, with the exception of "its paragraph 2a"[430], Article 37-5 and Article 37-6(1)"[431], in respect of those transactions or in respect of any ancillary service directly related to those transactions.

(Law of 30 May 2018)

"In their relationship with eligible counterparties, credit institutions and investment firms shall act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business."

(2) Eligible counterparties for the purposes of this article shall be investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated "under EU law or under the national law of a Member State, national governments and their corresponding offices, including public bodies that deal with public debt at national level"[432], central banks and supranational organisations.

Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-

[427] Law of 30 May 2018
[428] Law of 30 May 2018
[429] Law of 30 May 2018
[430] Law of 21 July 2021: A566
[431] Law of 30 May 2018
[432] Law of 30 May 2018

trade basis, treatment as clients whose business with the credit institution or investment firm is subject to Articles 37-3, 37-5 and 37-6.

(3) The CSSF may also recognise as eligible counterparties other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the credit institution or investment firm shall defer to the status of the counterparty, as determined by the law or measures of the Member State in which that counterparty is established.

The credit institution or investment firm, when it enters into transactions in accordance with paragraph 1 with such undertakings, shall obtain the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. The credit institution or investment firm may obtain this confirmation either in the form of a general agreement or in respect of each individual transaction.

(4) Third country entities equivalent to those categories of entities mentioned in paragraph 2 may also be recognised as eligible counterparties.

The CSSF may also recognise as eligible counterparties third country undertakings such as those mentioned in paragraph 3 on the same conditions and subject to the same requirements as those laid down at paragraph 3.

(5) The arrangements made to implement this article are laid down by way of a grand-ducal regulation.

Article 37-8. Obligations of credit institutions and investment firms when appointing tied agents

(1) A credit institution or investment firm may decide to appoint tied agents for the purposes of promoting its services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered.

(2) Where a credit institution or investment firm decides to appoint a tied agent it remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting "on behalf of the credit institution or investment firm"[433].

The credit institution or investment firm shall ensure that the tied agent discloses the capacity in which he is acting and "the credit institution or investment firm"[434] he is representing when contacting or before dealing with a client or potential client.

(3) Tied agents registered in Luxembourg acting on behalf of an investment firm, may hold, on behalf and under the full responsibility of that investment firm and in accordance with the provisions of Article 37-1(6), (7) and (8), money and financial instruments of clients in Luxembourg and in Member States that allow tied agents to hold clients' money.

(4) Credit institutions and investment firms shall monitor the activities of their tied agents so as to ensure that they continue to comply with this Law when acting through tied agents.

"(5) The CSSF shall maintain the register of tied agents established in Luxembourg.

Registration in the CSSF's register is conditional on the tied agents being of sufficiently good repute and possessing appropriate general, commercial and professional knowledge so as to be able to deliver the investment service or ancillary service and to communicate accurately all relevant information regarding the proposed service to the clients or potential clients. Such repute shall be assessed on the basis of police records and of any evidence tending to show that the tied agents are of good repute and offering guarantee of irreproachable conduct.

[433] Law of 30 May 2018
[434] Law of 30 May 2018

The CSSF shall update the register on a regular basis. This register shall be published on the CSSF's website so that it is publicly available."[435]

(6) Credit institutions and investment firms that appoint tied agents shall take adequate measures in order to avoid any negative impact that those activities of the tied agents that are not activities of the financial sector within the meaning of this Law could have on the activities carried out by tied agents on behalf of the credit institution or investment firm.

(7) Credit institutions and investment firms shall appoint only tied agents entered in the public register held by an administrative authority of a Member State."

(Law of 23 July 2015)
Article 37-9. *(repealed by the Law of 21 July 2021: A566)*

(Law of 23 July 2015)
"Chapter 4a: Governance arrangements and remuneration policies"

(Law of 21 July 2021: A566)
"Section 1: Provisions applicable to CRR institutions"

(Law of 23 July 2015)
"Article 38. Scope

(1) "This section"[436] shall apply to all CRR institutions incorporated under Luxembourg law, unless they were granted a derogation by the CSSF pursuant to Article 7 of Regulation (EU) No 575/2013. In addition, it shall apply to Luxembourg branches of CRR institutions which have their head office in a third country. (…)[437]

(…)[438]

(2) Where the CRR institutions referred to in paragraph 1 of this article are parent undertakings or subsidiaries, they shall comply with the obligations on a consolidated or sub-consolidated basis to ensure that their arrangements, processes and mechanisms required by "this section"[439] are consistent and well-integrated and that any data and information relevant to the purpose of supervision by the CSSF can be produced. They shall also implement such arrangements, processes and mechanisms in their subsidiaries not subject to Directive 2013/36/EU", including those established in offshore financial centres"[440]. Those arrangements, processes and mechanisms shall be consistent and well-integrated and those subsidiaries shall be able to produce any data and information relevant to the purpose of supervision. "Subsidiary undertakings that are not themselves subject to Directive 2013/36/EU shall comply with their sector-specific requirements on an individual basis."[441]

(3) Obligations resulting from "this section"[442] concerning subsidiary undertakings, not themselves subject to Directive 2013/36/EU, shall not apply if the EU parent institution "can"[443] demonstrate to the CSSF that the application of the provisions of "this section"[444] is unlawful under the laws of the third country where the subsidiary is established.

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[435] Law of 30 May 2018
[436] Law of 21 July 2021: A566
[437] Law of 20 May 2021
[438] Law of 21 July 2021: A566
[439] Law of 21 July 2021: A566
[440] Law of 20 May 2021
[441] Law of 20 May 2021
[442] Law of 21 July 2021: A566
[443] Law of 20 May 2021
[444] Law of 21 July 2021: A566

(4) Article 38-8 shall only apply where the management body of the (…)[445] "CRR"[446] institution has competence in the process of selection and appointment of any of its members."

(Law of 20 May 2021)

"(5) The remuneration requirements laid down in Articles 38-5, 38-6 and 38-9 shall not apply on a consolidated basis to either of the following:

1. subsidiary undertakings established in the European Union where they are subject to specific remuneration requirements in accordance with other European Union legal acts;
2. subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other European Union legal acts if they were established in the European Union.

(6) By way of derogation from paragraph 5, and in order to avoid circumvention of the rules set out in Articles 38-5, 38-6 and 38-9, the requirements laid down in Articles 38-5, 38-6 and 38-9 shall apply to members of staff of subsidiaries that are not subject to Directive 2013/36/EU on an individual basis where:

1. the subsidiary is either an asset management company, or an undertaking that provides the investment services and activities listed in points (2), (3), (4), (6) and (7) of Section A of Annex I to Directive 2014/65/EU; and
2. those members of staff have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the CRR institutions within the group as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013."

(Law of 23 July 2015)

"Article 38-1. Governance arrangements

"The management body of a "CRR"[447] institution shall define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of a "CRR"[448] institution, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and client interests."[449]

These arrangements shall comply with the following requirements:

(a) the management body must have the overall responsibility for the (…)[450] "CRR"[451] institution and approve and oversee the implementation of the (…)[452] "CRR"[453] institution's strategic objectives, risk strategy and internal governance;
(b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;
(c) the management body must oversee the process of disclosure and communications;
(d) the management body must be responsible for providing effective oversight of the persons in charge of the management of the (…)[454] "CRR"[455] institution;

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[445] Law of 30 May 2018
[446] Law of 21 July 2021: A566
[447] Law of 21 July 2021: A566
[448] Law of 21 July 2021: A566
[449] Law of 30 May 2018
[450] Law of 30 May 2018
[451] Law of 21 July 2021: A566
[452] Law of 30 May 2018
[453] Law of 21 July 2021: A566
[454] Law of 30 May 2018
[455] Law of 21 July 2021: A566

(e) the chairman of the body in charge of the supervision of a (…)[456] "CRR"[457] institution must not exercise simultaneously the functions of chief executive officer within the same (…)[458] "CRR"[459] institution, unless justified by the (…)[460] "CRR"[461] institution and authorised by the CSSF.

The management body of (…)[462] "CRR"[463] institutions shall monitor the (…)[464] "CRR"[465] institution's governance arrangements, periodically assess their effectiveness and take appropriate steps to address any deficiencies."

(Law of 20 May 2021)
"Data on loans to members of the management body and their related parties shall be properly documented and made available to the CSSF upon request.

For the purposes of this article, the term "related party" shall mean:

1. a spouse, registered partner in accordance with the applicable national law, child or parent of a member of the management body;
2. a commercial entity, in which a member of the management body or his or her close family member as referred to in point (1) has a qualifying holding of 10% or more of capital or of voting rights in that entity, or in which those persons can exercise significant influence, or in which those persons hold positions within the authorised management or are members of the management body."

(Law of 30 May 2018)
"These governance arrangements shall also ensure that the management body defines, approves and oversees:

1. the organisation of the "CRR"[466] institution for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the "CRR"[467] institution has to comply with;
2. a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the "CRR"[468] institution and the characteristics and needs of the clients of the "CRR"[469] institution to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;
3. a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

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[456] Law of 30 May 2018
[457] Law of 21 July 2021: A566
[458] Law of 30 May 2018
[459] Law of 21 July 2021: A566
[460] Law of 30 May 2018
[461] Law of 21 July 2021: A566
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[463] Law of 21 July 2021: A566
[464] Law of 30 May 2018
[465] Law of 21 July 2021: A566
[466] Law of 21 July 2021: A566
[467] Law of 21 July 2021: A566
[468] Law of 21 July 2021: A566
[469] Law of 21 July 2021: A566

The management body shall monitor and periodically assess the adequacy and the implementation of the "CRR"[470] institution's strategic objectives in the provision of investment services and activities and ancillary services, the effectiveness of the "CRR"[471] institution's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making."

(Law of 23 July 2015)
"Article 38-2. Management body

(1) The composition of the management body and the criteria for the selection of the members of the management body shall comply with the following requirements:

(a) the overall composition of the management body shall reflect an adequately broad range of experiences;
(b) all members of the management body shall commit sufficient time to perform their functions in the (…)[472] "CRR"[473] institution;
(c) the management body shall possess adequate collective knowledge, skills and experience to be able to understand the (…)[474] "CRR"[475] institution's activities, including the main risks;
(d) each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the authorised management where necessary and to effectively oversee and monitor management decision-making. "Being a member of affiliated companies or affiliated entities does not in itself constitute an obstacle to acting with independence of mind."[476]

(2) The number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the (…)[477] "CRR"[478] institution's activities. Unless representing the State, members of the management body of a (…)[479] "CRR"[480] institution that is significant in terms of its size, internal organisation and nature, the scope and the complexity of its activities, shall not hold more than one of the following combinations of directorships at the same time:

(a) one executive directorship with two non-executive directorships;
(b) four non-executive directorships.

[470] Law of 21 July 2021: A566
[471] Law of 21 July 2021: A566
[472] Law of 30 May 2018
[473] Law of 21 July 2021: A566
[474] Law of 30 May 2018
[475] Law of 21 July 2021: A566
[476] Law of 20 May 2021
[477] Law of 30 May 2018
[478] Law of 21 July 2021: A566
[479] Law of 30 May 2018
[480] Law of 21 July 2021: A566

(3) The following elements shall be taken into account by the CSSF to determine if a (…)[481] "CRR"[482] institution is to be considered as a significant (…)[483] "CRR"[484] institution for the purposes of paragraph 2 "and letter (m) of the first subparagraph of Article 38-6(1)"[485]:

(a) the (…)[486] "CRR"[487] institution was identified pursuant to Article 59-3;
(b) the total asset value of the (…)[488] "CRR"[489] institution is greater than 30 billion euros or the ratio of its total assets and the Luxembourg GDP is greater than 20%, unless the total value of its assets is less than 5 billion euros;
(c) the (…)[490] "CRR"[491] institution represents the highest level of consolidation within the group of supervised institutions in the euro area and is included as such in the "list of significant supervised entities" drawn up by the European Central Bank in accordance with Article 49(1) of Regulation (EU) No 468/2014 of the European Central Bank;
(d) the (…)[492] "CRR"[493] institution is the ultimate "parent undertaking"[494] of the group of supervised institutions to which, as the case may be, it belongs;
(e) the (…)[495] "CRR"[496] institution is the "parent undertaking"[497] of a significant number of subsidiaries established in other countries;
(f) the shares of the (…)[498] "CRR"[499] institution are admitted to trading on a regulated market.

A (…)[500] "CRR"[501] institution which does not meet at least two of the conditions listed under letters (a) to (f) of the first subparagraph shall not be considered as significant for the purposes of paragraph 2.

(4) The members of the management body may, upon the CSSF's authorisation, hold one additional non-executive directorship. The CSSF shall inform", as the case may be, the European Banking Authority or the European Securities and Markets Authority"[502] of such authorisations.

(5) For the purposes of paragraph 2, the following shall count as a single directorship:

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[481] Law of 30 May 2018
[482] Law of 21 July 2021: A566
[483] Law of 30 May 2018
[484] Law of 21 July 2021: A566
[485] Law of 20 May 2021
[486] Law of 30 May 2018
[487] Law of 21 July 2021: A566
[488] Law of 30 May 2018
[489] Law of 21 July 2021: A566
[490] Law of 30 May 2018
[491] Law of 21 July 2021: A566
[492] Law of 30 May 2018
[493] Law of 21 July 2021: A566
[494] Law of 27 February 2018
[495] Law of 30 May 2018
[496] Law of 21 July 2021: A566
[497] Law of 27 February 2018
[498] Law of 30 May 2018
[499] Law of 21 July 2021: A566
[500] Law of 30 May 2018
[501] Law of 21 July 2021: A566
[502] Law of 30 May 2018

(a) executive or non-executive directorships held within the same group "as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013"[503];

(b) executive or non-executive directorships held within:

(i) (…)[504] "CRR"[505] institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or

(ii) undertakings (including non-financial entities) in which the (…)[506] "CRR"[507] institution holds a qualifying holding.

(6) Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 2.

(7) (…)[508] "CRR"[509] institutions shall devote adequate human and financial resources to the induction and training of members of the management body.

(8) (…)[510] "CRR"[511] institutions and, where applicable, their respective nomination committees shall engage a broad set of qualities and competences when recruiting members to the management body and for that purpose shall put in place a policy promoting diversity on the management body."

(Law of 23 July 2015)

"Article 38-3. Country-by-country reporting

(1) CRR institutions shall disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year:

(a) name(s), nature of activities and geographical location;
(b) turnover;
(c) number of employees on a full time equivalent basis;
(d) profit or loss before tax;
(e) tax on profit or loss;
(f) public subsidies received.

(2) All G-SIIs authorised within the European Union, as identified internationally, shall submit to the European Commission the information referred to in paragraph 1(d), (e) and (f) on a confidential basis.

(3) The information referred to in paragraph 1 shall be audited in accordance with the Law of "23 July 2016"[512] concerning the audit profession, as amended, and shall be published, where possible, as an annex to the annual consolidated financial statements of the CRR institution concerned."

(Law of 23 July 2015)

"Article 38-4. Public disclosure of return on assets

CRR institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet."

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[503] Law of 20 May 2021
[504] Law of 30 May 2018
[505] Law of 21 July 2021: A566
[506] Law of 30 May 2018
[507] Law of 21 July 2021: A566
[508] Law of 30 May 2018
[509] Law of 21 July 2021: A566
[510] Law of 30 May 2018
[511] Law of 21 July 2021: A566
[512] Law of 20 May 2021

(Law of 23 July 2015)

"Article 38-5. Remuneration policies

"(1)"[513] When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff (…)[514], whose professional activities have a material impact on their risk profile, CRR institutions shall comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the CRR institution;
(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the CRR institution, and incorporates measures to avoid conflicts of interest;
(c) the CRR institution's management body in its supervisory function adopts and periodically reviews the genral principles of the remuneration policy and is responsible for overseeing its implementation;
(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
(e) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
(f) the remuneration of the officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 38-9 or, if such a committee has not been established, by the management body in its supervisory function;
(g) the remuneration policy makes a clear distinction between criteria for setting:
    (i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and
    (ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment";

(Law of 20 May 2021)

"(h) the remuneration policy is a gender neutral remuneration policy."

(Law of 20 May 2021)

"(2) For the purposes of paragraph 1, categories of staff whose professional activities have a material impact on the institution's risk profile shall, at least, include:

(a) all members of the management body and authorised management;
(b) staff members with managerial responsibility over the institution's control functions or material business units;
(c) staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:

(i) the staff member's remuneration is equal to or greater than 500,000 euros and equal to or greater than the average remuneration awarded to the members of the institution's management body and authorised management referred to in letter (a);

(ii) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile."

[513] Law of 20 May 2021
[514] Law of 20 May 2021

(Law of 23 July 2015)

"Article 38-6. Variable elements of remuneration

"(1)"[515] For variable elements of remuneration, the following requirements shall apply in addition to, and under the same conditions as, those set out in Article 38-5:

(a) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the CRR institution and when assessing individual performance, financial and non-financial criteria are taken into account;

(b) the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the CRR institution and its business risks;

(c) the total variable remuneration does not limit the ability of the institution to strengthen its capital base;

(d) guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans;

(e) guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the CRR institution has a sound and strong capital base, and is limited to the first year of employment;

(f) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;

(g) CRR institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply:

(i) the variable component shall not exceed 100% of the fixed component of the total remuneration for each individual;

(ii) the shareholders or owners or members of the CRR institution may approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual.

Any approval of a higher ratio laid down in this point (ii) shall comply with the following procedure:

- the shareholders or owners or members of the CRR institution shall act upon a detailed recommendation by the "CRR institution"[516] giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;
- shareholders or owners or members of the CRR institution shall act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75% of the ownership rights represented;
- the CRR institution shall notify all shareholders or owners or members, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point (ii) will be sought;
- the CRR institution shall, without delay, inform the CSSF of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the CSSF that the proposed higher ratio does not conflict with the "CRR

[515] Law of 20 May 2021

[516] Law of 30 May 2018

institution's"[517] obligations under this Law, under Regulation (EU) No 575/2013 and under their implementing measures, having regard in particular to the CRR institution's own funds obligations;

- the CRR institution shall, without delay, inform the CSSF of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point (ii);
- staff who are directly concerned by the higher maximum levels of this variable remuneration referred to in this point (ii) shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the CRR institution;

(iii) CRR institutions may apply the discount rate to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years;

(h) payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct;

(i) remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the CRR institution including retention, deferral, performance and clawback arrangements;

(j) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;

(k) the allocation of the variable remuneration components within the CRR institution shall also take into account all types of current and future risks;

(l) a substantial portion, and in any event at least 50%, of any variable remuneration shall consist of a balance of the following:

"(i) shares or, subject to the legal structure of the CRR institution concerned, equivalent ownership interests or share-linked instruments or, subject to the legal structure of the CRR institution concerned, equivalent non-cash instruments; and"[518]

(ii) where possible, other instruments within the meaning of Article 52 or 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the CRR institution as a going concern and are appropriate to be used for the purposes of variable remuneration;

The instruments referred to in this letter (l) shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the "CRR institution"[519]. The CSSF may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. The provisions of this letter (l) shall be applied to both the portion of the variable remuneration component deferred in accordance with letter (m) and the portion of the variable remuneration component not deferred;

(m) a substantial portion, and in any event at least 40%, of the variable remuneration component is deferred over a period which is not less than "four"[520] to five years and is correctly aligned with the nature of the CRR institution, its risks and activities of the member of staff in question. "For members of the management body and authorised management of CRR institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities, the deferral period should not be less than five years."[521]

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[517] Law of 30 May 2018

[518] Law of 20 May 2021

[519] Law of 30 May 2018

[520] Law of 20 May 2021

[521] Law of 20 May 2021

Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the CRR institution, its risks and the activities of the member of staff in question;

(n) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the CRR institution as a whole, and justified on the basis of the performance of the CRR institution, the business unit and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the CRR institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements. Up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements. CRR institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

(i) participated in or was responsible for conduct which resulted in significant losses to the CRR institution;
(ii) failed to meet appropriate standards of fitness and propriety;

(o) the pension policy is in line with the business strategy, objectives, values and long-term interests of the CRR institution.

If the employee leaves the CRR institution before retirement, discretionary pension benefits shall be held by the CRR institution for a period of five years in the form of instruments referred to in letter (l). Where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in letter (l) subject to a five-year retention period;

(p) staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

(q) variable remuneration is not paid through vehicles or methods that facilitate the non-compliance with this Law or Regulation (EU) No 575/2013 and their implementing measures.

"CRR institutions shall apply letter (g) of the first subparagraph to remuneration awarded for services provided or performance, irrespective of the date of entry into force of the contracts on the basis of which it is due."[522]"

(Law of 20 May 2021)

"(2) By way of derogation from paragraph 1, the requirements set out in paragraph 1, first subparagraph, letters (l), (m) and in the second subparagraph of letter (o) shall not apply to:

(a) a CRR institution that is not a large CRR institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013 and the value of the assets of which is on average and on an individual basis in accordance with this Law and Regulation (EU) No 575/2013 equal to or less than 5 billion euros over the four-year period immediately preceding the current financial year;

(b) a staff member whose annual variable remuneration does not exceed 50,000 euros and does not represent more than one third of the staff member's total annual remuneration.

(3) By way of derogation from letter (a) of paragraph 2, the threshold of the value of the assets referred to therein shall be increased to 15 billion euros, provided that:

(a) the CRR institution in relation to which this provision is made use of is not a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013;

[522] Law of 27 February 2018

(b) the CRR institution meets the criteria set out in letters (c), (d) and (e) of point (145) of Article 4(1) of Regulation (EU) No 575/2013; and

(c) the CRR institution in relation to which this provision is made use of does not meet two or more of the criteria referred to in the first subparagraph of Article 38-2(3)."

(Law of 23 July 2015)
"Article 38-7. CRR institutions that benefit from government intervention

In the case of CRR institutions that benefit form exceptional governement intervention, the following requirements shall apply in addition to those set out in Article 38-5:

(a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;
(b) the CSSF requires the CRR institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the CRR institution;
(c) no variable remuneration is paid to members of the management body of the CRR institution unless justified."

(Law of 23 July 2015)
"Article 38-8. The nomination committee

(1) (…)[523] "CRR"[524] institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a nomination committee composed of members of the management body who do not perform any executive function in the (…)[525] "CRR"[526] institution concerned.

(2) The nomination committee shall:

(a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;
(b) decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013;
(c) periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;
(d) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
(e) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee, shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small goup of individuals in a manner that is detrimental to the interests of the (…)[527] "CRR"[528] institution as a whole.

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[523] Law of 30 May 2018
[524] Law of 21 July 2021: A566
[525] Law of 30 May 2018
[526] Law of 21 July 2021: A566
[527] Law of 30 May 2018
[528] Law of 21 July 2021: A566

The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect."

(Law of 23 July 2015)
"Article 38-9. Remuneration committee

(1) CRR institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

(2) The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the CRR institution concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the CRR institution concerned. In the CRR institutions in which the employee representation on the management body is provided for by the Labour Code, the remuneration committee shall include one or more employee representatives. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the CRR institution and the public interest."

(Law of 23 July 2015)
"Article 38-10. Supervision of governance arrangements and remuneration policies

The CSSF shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h)", (i) and (k)"[529] of Article 450(1) of Regulation (EU) No 575/2013 "as well as the information provided by CRR institutions on the gender pay gap"[530] and shall use it to benchmark remuneration trends and practices.

The CSSF shall collect information on the number of natural persons per institution that are remunerated 1 million euros or more per financial year, in pay brackets of 1 million euros, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution.

The CSSF shall collect information on the policy of diversity with regard to selection of members of the management body of CRR institutions, its objectives and any relevant targets set out in that policy, and that the extent to which these objectives and targets have been achieved. The CSSF shall use it to benchmark diversity practices.

The CSSF shall use the information received from CRR institutions on decisions taken by the shareholders or owners or members relating to remuneration, including any approved higher maximum ratio pursuant to Article 38-6 to benchmark the practices in that regard.

The CSSF shall provide the European Banking Authority with the information laid down in the preceding subparagraphs."

(Law of 23 July 2015)
"Article 38-11. Maintenance of a website on corporate governance and remuneration

CRR institutions that maintain a website shall explain there how they comply with the requirements of Articles 38-1 to 38-9."

(Law of 23 July 2015)
""Article 38-12. Reporting of infringements

(1) "CRR"[531] institutions shall have in place appropriate procedures for their employees to report internally, through a specific, independent and autonomous channel, potential or actual

[529] Law of 20 May 2021
[530] Law of 20 May 2021
[531] Law of 21 July 2021: A566

infringements of this Law, of the Law of 30 May 2018 on markets in financial instruments, of Regulation (EU) No 575/2013, of Regulation (EU) No 600/2014 or of their implementing measures.

"Such"[532] a channel may also be provided through arrangements provided for by social partners.

(2) The procedures, channels or arrangements referred to in paragraph 1 shall include at least:

1. appropriate protection for employees who report infringements committed within the "CRR"[533] institution at least against retaliation, discrimination or other types of unfair treatment;

2. protection of personal data concerning both, the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended; and

3. clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports infringements referred to in paragraph 1 committed within the "CRR"[534] institution, unless disclosure is required by or pursuant to a law."[535]"

(Law of 21 July 2021: A566)

"Section 2: Provisions applicable to all IFR investment firms

Subsection 1: General provisions

Article 38-13. Scope

This subsection shall apply to IFR investment firms.

(Law of 15 July 2024)

"Article 38-16 shall, in addition, apply to Luxembourg branches of IFR investment firms which have their head office in a third country."

Article 38-14. Additional provisions regarding the management body applicable to IFR investment firms

Articles 38(4), 38-1, 38-2 and 38-8 shall also apply to IFR investment firms.

Article 38-15. Treatment of IFR investment firms with respect to the qualifying conditions set out in Article 12(1) of Regulation (EU) 2019/2033

(1) Subsection 2 shall apply to IFR investment firms which determine that they do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

(2) Where an IFR investment firm which does not meet all the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 subsequently meets them, Subsection 2 and the third and fifth subparagraphs of Article 17(1a) shall cease to apply after a period of six months from the date on which those conditions are met, provided that the IFR investment firm continued to meet the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 without interruption during that period and where it notified the CSSF accordingly.

(3) Where an IFR investment firm determines that it no longer meets all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033, it shall notify the CSSF and comply with

[532] Law of 21 July 2021: A566
[533] Law of 21 July 2021: A566
[534] Law of 21 July 2021: A566
[535] Law of 30 May 2018

Subsection 2 and the third and fifth subparagraphs of Article 17(1a) within 12 months of the date on which that assessment took place.

IFR investment firms shall apply the provisions laid down in Article 38-22 to remuneration awarded for services provided or performance in the financial year following the financial year in which the assessment referred to in the first subparagraph took place.

(4) Where Subsection 2 applies and Article 8 of Regulation (EU) 2019/2033 is applied, this subsection and Article 17(1a) shall apply to investment firms on an individual basis.

Where Subsection 2 applies and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied, this subsection and Article 17(1a) shall apply to investment firms on an individual and consolidated basis.

By way of derogation from the second subparagraph, Subsection 2 and Article 17(1a) shall not apply to subsidiary undertakings included in a consolidated situation within the meaning of point (11) of Article 4(1) of Regulation (EU) 2019/2033 that are established in third countries, where the EU parent undertaking can demonstrate that the application of these provisions is unlawful under the laws of the third country where those subsidiary undertakings are established.

Article 38-16. Notification of infringements

(1) IFR investment firms shall have in place appropriate procedures for their employees to report internally, through a specific, independent and autonomous channel, potential or actual infringements of this Law, the Law of 30 May 2018 on markets in financial instruments, as amended, Regulation (EU) No 600/2014, Regulation (EU) 2019/2033 or of their implementing measures.

Those procedures may also be provided through arrangements provided for by social partners provided that those procedures offer a protection meeting the conditions defined in points (1) to (3) of paragraph 2. The CSSF shall check that the above-mentioned conditions are met.

(2) The procedures, means or arrangements referred to in paragraph 1 shall include at least:

1. appropriate protection for employees who report infringements committed within the IFR investment firm at least against retaliation, discrimination or other types of unfair treatment;
2. protection of personal data concerning both, the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
3. clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports infringements referred to in paragraph 1 committed within the IFR investment firm, unless disclosure is required by or pursuant to a law.

Article 38-17. Investment policy

(1) IFR investment firms, where the value of their on and off-balance sheet assets is on average higher than 100 million euros over the four-year period immediately preceding the given financial year, shall disclose the following in accordance with Article 46 of Regulation (EU) 2019/2033:

1. the proportion of voting rights attached to the shares held directly or indirectly by the IFR investment firm, broken down by Member State and sector;
2. a complete description of voting behaviour in the general meetings of companies the shares of which are held in accordance with paragraph 2, an explanation of the votes, and the ratio of proposals put forward by the administrative or management body of the company which the IFR investment firm has approved;
3. an explanation of the use of proxy advisor firms; and
4. the voting guidelines regarding the companies the shares of which are held in accordance with paragraph 2.

The disclosure requirement referred to in point (2) of the first subparagraph shall not apply if the contractual arrangements of all shareholders represented by the investment firm at the shareholders' meeting do not authorise the IFR investment firm to vote on their behalf unless express voting orders are given by the shareholders after receiving the meeting's agenda.

(2) The IFR investment firm referred to in paragraph 1 shall comply with that paragraph only in respect of each company whose shares are admitted to trading on a regulated market and only in respect of those shares to which voting rights are attached, where the proportion of voting rights that the IFR investment firm directly or indirectly holds exceeds the threshold of 5% of all voting rights attached to the shares issued by the company. Voting rights shall be calculated on the basis of all shares to which voting rights are attached, even if the exercise of those voting rights is suspended.

Subsection 2: Additional provisions applicable to non-SNI IFR investment firms

Article 38-18. Scope

This subsection shall apply to non-SNI IFR investment firms.

Article 38-19. Country-by-country reporting

(1) Non-SNI IFR investment firms that have a branch or subsidiary that is a financial institution in another Member State or in a third country shall disclose the following information by Member State and third country on an annual basis:

1. the name, nature of activities and location of subsidiaries and branches;
2. turnover;
3. the number of employees on a full-time equivalent basis;
4. profit or loss before tax;
5. tax on profit or loss;
6. the public subsidies received.

(2) The information referred to in paragraph 1 shall be audited in accordance with the Law of 23 July 2016 concerning the audit profession, as amended, and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that non-SNI IFR investment firm.

Article 38-20. Remuneration policies

(1) Non-SNI IFR investment firms, when establishing and applying their remuneration policies for categories of staff, including authorised management, risk takers, staff engaged in control functions and any member of staff receiving overall remuneration equal to at least the lowest remuneration received by a member of the authorised management or risk takers, whose professional activities have a material impact on the risk profile of the non-SNI IFR investment firm or of the assets that it manages, comply with the following principles:

1. the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity of the activities of the non-SNI IFR investment firm;
2. the remuneration policy is a gender-neutral remuneration policy;
3. the remuneration policy is consistent with and promotes sound and effective risk management;
4. the remuneration policy is in line with the business strategy and objectives of the non-SNI IFR investment firm, and also takes into account long-term effects of the investment decisions taken;
5. the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;
6. the non-SNI IFR investment firm's management body in its supervisory function adopts and periodically reviews the remuneration policy and has overall responsibility for overseeing its implementation;
7. the implementation of the remuneration policy is subject to a central and independent internal review by control functions at least annually;
8. staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of

the objectives linked to their functions, regardless of the performance of the business areas they control;

9. the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 38-23 or, where such a committee has not been established, by the management body in its supervisory function;
10. the remuneration policy makes a clear distinction between the criteria applied to determine the following:
    a) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in a staff member's job description as part of his or her terms of employment;
    b) variable remuneration, which reflects a sustainable and risk adjusted performance of the staff member, as well as performance in excess of the staff member's job description;
11. the fixed component represents a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component.

(2) For the purposes of point (11) of paragraph 1, non-SNI IFR investment firms shall set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the non-SNI IFR investment firm and associated risks, as well as the impact that different categories of staff referred to in paragraph 1 have on the risk profile of the non-SNI IFR investment firm.

(3) Non-SNI IFR investment firms shall establish and apply the principles referred to in paragraph 1 in a manner that is appropriate to their size and internal organisation and to the nature, scope and complexity of their activities.

Article 38-21. Non-SNI IFR investment firms that benefit from extraordinary public financial support

Where a non-SNI IFR investment firm benefits from extraordinary public financial support as defined in point (25) of the first subparagraph of Article 59-15:

1. that non-SNI IFR investment firm does not pay any variable remuneration to members of the management body;
2. where variable remuneration paid to members of staff other than members of the management body would be inconsistent with the maintenance of a sound capital base of a non-SNI IFR investment firm and its timely exit from extraordinary public financial support, variable remuneration shall be limited to a portion of net revenue.

Article 38-22. Variable remuneration

(1) Any variable remuneration awarded and paid by a non-SNI IFR investment firm to categories of staff referred to in Article 38-20(1) shall comply with all of the following requirements under the same conditions as those set out in Article 38-20(3):

1. where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the non-SNI IFR investment firm;
2. when assessing the performance of the individual, both financial and non-financial criteria are taken into account;
3. the assessment of the performance referred to in point (1) is based on a multi-year period, taking into account the business cycle of the non-SNI IFR investment firm and its business risks;
4. the variable remuneration does not affect the non-SNI IFR investment firm's ability to ensure a sound capital base;
5. there is no guaranteed variable remuneration other than for new members of staff only for the first year of employment of new members of staff and where the non-SNI IFR investment firm has a strong capital base;

6. payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct;
7. remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm;
8. the measurement of performance, where used as a basis to calculate pools of variable remuneration, takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033;
9. the allocation of the variable remuneration components within the non-SNI IFR investment firm takes into account all types of current and future risks;
10. up to 100% of the variable remuneration is contracted where the financial performance of the non-SNI IFR investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by non-SNI IFR investment firms which in particular cover situations where:
    (a) the individual in question participated in or was responsible for conduct which resulted in significant losses for the non-SNI IFR investment firm;
    (b) the individual in question is no longer considered fit and proper;
11. discretionary pension benefits are in line with the business strategy, objectives, values and long-term interests of the non-SNI IFR investment firm.

(2) For the purposes of paragraphs 1 and 3:

1. individuals referred to in Article 38-20(1) do not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in paragraphs 1 and 3;

2. variable remuneration is not paid through financial vehicles or methods that facilitate non-compliance with this subsection or with Regulation (EU) 2019/2033.

(3) Without prejudice to paragraph 4, non-SNI IFR investment firms, where the value of their on and off-balance sheet assets is on average higher than 100 million euros over the four-year period immediately preceding the given financial year, and individuals, whose annual variable remuneration exceeds 50,000 euros and represents more than one fourth of those individuals' total annual remuneration, shall also comply with the following provisions:

1. any variable remuneration awarded and paid by a non-SNI IFR investment firm to categories of staff referred to in Article 38-20(1) shall comply with all of the following requirements under the same conditions as those set out in Article 38-20(3):

    (a) at least 50% of the variable remuneration consists of the following instruments:

        (i) shares or equivalent ownership interests, subject to the legal structure of the non-SNI IFR investment firm concerned;

        (ii) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the non-SNI IFR investment firm concerned;

        (iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the non-SNI IFR investment firm as a going concern;

        (iv) non-cash instruments which reflect the instruments of the portfolios managed;

    (b) at least 40% of the variable remuneration is deferred over a three- to five-year period as appropriate, depending on the business cycle of the non-SNI IFR investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60%. The deferral of the variable remuneration shall vest no faster than on a pro-rata basis;

2. for the purposes of point (11) of paragraph 1, where a member of staff leaves the non-SNI IFR investment firm before retirement age, discretionary pension benefits shall be held by the non-SNI IFR investment firm for a period of five years in the form of instruments referred to in letter (a) of point (1) of this paragraph. Where a member of staff reaches

retirement age and retires, discretionary pension benefits shall be paid to the member of staff in the form of instruments referred to in letter (a) of point (1) of this paragraph, subject to a five-year retention period.

For the purposes of the letter (a) of point (1) of the first subparagraph, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the non-SNI IFR investment firm, its creditors and clients.

By way of derogation from letter (a) of point (1) of the first subparagraph, where a non-SNI IFR investment firm does not issue any of the instruments referred to in that point, the CSSF may approve the use of alternative arrangements fulfilling the same objectives.

(4) By way of derogation from paragraph 3, the threshold of 100 million euros shall be increased to 300 million euros for non-SNI IFR investment firms which meet the following criteria:

1. the non-SNI IFR investment firm is not, in Luxembourg, one of the three largest investment firms in terms of total value of assets;
2. the non-SNI IFR investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Articles 59-26 of this Law and with Articles 5 and 6 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
3. the size of the non-SNI IFR investment firm's on and off-balance sheet trading-book business is equal to or less than 150 million euros;
4. the size of the non-SNI IFR investment firm's on and off-balance sheet derivative business, as defined in point (29) of Article 2(1) of Regulation (EU) No 600/2014, is equal to or less than 100 million euros;
5. the non-SNI IFR investment firm in relation to which this provision is made use of does not meet two or more of the following criteria:
   a) the total value of assets of the non-SNI IFR investment firm exceeds 5 billion euros;
   b) the non-SNI IFR investment firm is the ultimate parent undertaking of the group to which it belongs;
   c) the non-SNI IFR investment firm is the parent undertaking of a significant number of subsidiaries established in other countries;
   d) the shares of the non-SNI IFR investment firm are admitted to trading on a regulated market.

Article 38-23. Remuneration committee

(1) Non-SNI IFR investment firms, where the value of their on and off-balance sheet assets is on average higher than 100 million euros over the four-year period immediately preceding the given financial year, shall establish a remuneration committee. That remuneration committee shall be gender balanced and shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee may be established at group level.

(2) The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the non-SNI IFR investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the non-SNI IFR investment firm concerned. Where employee representation in the management body is provided for by the Labour Code, the remuneration committee shall include one or more employee representatives.

(3) When preparing the decisions referred to in paragraph 2, the remuneration committee shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the non-SNI IFR investment firm.

Article 38-24. Information relating to remuneration

(1) The CSSF shall collect the information disclosed in accordance with letters (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 as well as the information

provided by non-SNI IFR investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices.

The CSSF shall provide that information to the EBA.

(2) Non-SNI IFR investment firms shall provide the CSSF with information on the number of natural persons per investment firm that are remunerated 1 million euros or more per financial year, in pay brackets of 1 million euros, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution.

Non-SNI IFR investment firms shall provide the CSSF, upon demand, the total remuneration figures for each member of the management body or authorised management.

The CSSF shall provide the information referred to in the first and second subparagraph to the EBA."

(Law of 13 July 2007)

"Chapter 5: Provisions applicable to credit institutions and PFS"

(Law of 21 July 2021: A566)

"Article 38-25. Scope

This chapter shall apply to:

1. "PFS"[536] under Luxembourg law, as well as to Luxembourg branches of "PFS"[537] incorporated under foreign law;
2. credit institutions and investment firms incorporated under Luxembourg law, as well as to Luxembourg branches of credit institutions and investment firms which have their head office in a third country;
3. Luxembourg branches of credit institutions and investment firms which have their head office in another Member State."

"Article 39. Professional obligations of the financial sector as regards combating money laundering and the financing of terrorism

Credit institutions and PFS shall be bound by the professional obligations laid down "in Title I of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and in its implementing measures"[538] (…)[539].

(…)[540]

"In addition, credit institutions and PFS shall be required to comply with the rules laid down in Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849"[541]."[542]"[543] "All professionals are required to respond, exhaustively and without delay, to requests submitted to them by the competent authorities responsible for the combat against money laundering and terrorist financing and that relate to information accompanying transfers of funds and corresponding recorded information, irrespective of any rule of professional secrecy."[544]

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[536] Law of 15 July 2024
[537] Law of 15 July 2024
[538] Law of 13 February 2018
[539] Law of 13 February 2018
[540] Law of 13 February 2018
[541] Law of 6 February 2025
[542] Law of 17 July 2008
[543] Law of 12 November 2004
[544] Law of 27 October 2010

Article 40. Obligation to cooperate with the authorities

Credit institutions and "PFS"[545] shall be required to provide the fullest possible response to, and cooperation with, any lawful demand which may be made to them by the authorities responsible for applying the law in the exercise by those authorities of their powers.

(...)[546]

Article 41. Obligation of professional secrecy

"(1) Natural and legal persons, subject to prudential supervision of the CSSF pursuant to this Law or established in Luxembourg and subject to the supervision of the European Central Bank or a foreign supervisory authority for the exercise of an activity referred to in this Law, as well as members of the management body, the directors, the employees and the other persons who work for these natural and legal persons shall maintain secrecy of the information entrusted to them in the context of their professional activity or their mandate. Disclosure of such information shall be punishable by the penalties laid down in Article 458 of the Penal Code.

The first subparagraph shall also apply to natural and legal persons who were authorised pursuant to this Law and who are subject to a reorganisation, recovery, controlled management, arrangement, resolution, winding-up or bankruptcy procedure and to all the people who are designated, employees or persons appointed to any function in the framework of such a procedure as well as to persons working for these natural and legal persons."[547]

(2) The obligation to maintain secrecy shall "not"[548] exist where disclosure of information is authorised or required by or pursuant to any legislative provision, even where the provision in question predates this Law.

(Law of 27 February 2018)

"(2a) The obligation to secrecy shall not cover the persons established in Luxembourg who are subject to the prudential supervision of the CSSF, of the European Central Bank or the Commissariat aux Assurances and who are subject to secrecy which is criminally sanctioned insofar as the communication of information to these persons is carried out through a service contract.

In cases not falling under the first subparagraph, the obligation to secrecy shall not cover the entities which are in charge of the outsourced service provision as well as the employees and other persons working for these entities insofar as the client has accepted, in accordance with the law or according to the arrangements for information agreed on by the parties, the outsourcing of the outsourced services, the type of information transmitted in the context of the outsourcing and the country of establishment of the entities that provide outsourced services. The persons who have access to the information referred to in paragraph 1 shall be subject by the law to a professional secrecy obligation or be bound by a confidentiality agreement."

"(3) The obligation to secrecy shall not cover the national, European and foreign authorities responsible for the prudential supervision of the financial sector or for resolution procedures, provided that they act within their legal competence for the purpose of this supervision or the measures taken in the context of the resolution procedure and provided that the disclosed information is covered by the obligation of professional secrecy of the receiving authority. The transmission of necessary information to a foreign authority in the context of prudential supervision shall be done via the parent undertaking or the shareholder or member subject to this same supervision. However, the transmission of necessary information to the European Central Bank, the Single Resolution Board, the European Securities and Markets Authority, the European Banking Authority or the European Insurance and Occupational Pensions Authority for the purpose of the prudential supervision or the resolution procedures may be carried out

[545] Law of 28 April 2011

[546] Repealed by the Law of 12 November 2004

[547] Law of 27 February 2018

[548] Law of 27 February 2018

directly to the institution or the above-mentioned EU agency where the laws and regulations applicable in Luxembourg authorise them to request that information directly from the person established in Luxembourg.

(4) The obligation to secrecy shall not cover the shareholders or members, whose quality is a condition for the authorisation of the relevant institution, insofar as the information communicated to these shareholders or members is strictly necessary for the assessment of consolidated risks or the calculation of consolidated prudential ratios or the sound and prudent management of the institution.

The credit institution or PFS belonging to a financial group shall guarantee their internal control bodies of the group access, where necessary, to information concerning specific business relationships, insofar as this information is necessary to the overall management of legal and reputational risks related to money laundering or terrorist financing under the Luxembourg law."[549]

(…)[550]

(Law of 5 November 2006)

"(5a) The obligation to maintain secrecy shall not exist between entities within a financial conglomerate for information that these entities may exchange between them or provide to the European Supervisory Authorities, where necessary, through the Joint Committee of European Supervisory Authorities in accordance with Article 35 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 respectively, insofar as the information is necessary for the exercise of supplementary supervision as referred to in Chapter 3b of Part III of this Law."[551]

"(6)"[552] Subject to the rules applicable in penal matters, once any information of the kind referred to in paragraph 1 has been disclosed, it may not be used for any purposes other than those for which its disclosure is permitted by law.

"(7)"[553] No person bound by the obligation of secrecy referred to in paragraph 1 who lawfully discloses any information covered by that obligation shall, by reason of that disclosure alone, incur any criminal responsibility or civil liability.

(Law of 28 April 2011)

"(8) The violation of the obligation of professional secrecy ramains punishable even when the function, mandate, employment or exercise of the profession ended."

(Law of 27 February 2018)

"(9) This article shall be without prejudice to the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended."

(Law of 30 May 2018)

"(10) This article shall not apply to the activity of APAs (…)[554]."

[549] Law of 27 February 2018
[550] Law of 27 February 2018
[551] Law of 21 December 2012
[552] Law of 2 August 2003
[553] Law of 2 August 2003
[554] Law of 21 July 2021: A566

PART IIa: *(repealed by the Law of 10 November 2009)*

PART III: Prudential supervision of the financial sector

Chapter 1: The competent authority responsible for supervision and its task

"Article 42. The competent authority

"The CSSF shall be the competent authority responsible for the supervision of credit institutions and "PFS"[555]„[556] "and, where applicable financial holding companies ", mixed financial holding companies and investment holding companies"[557] „[558]", for the purposes of this Law, Regulation (EU) No 575/2013 ", Regulation (EU) No 600/2014 and Regulation (EU) 2019/2033"[559] „[560]. (…)[561]

(...)[562]

"The CSSF is responsible for the cooperation and exchange of information with other authorities, bodies and persons within the limits, under the conditions and according to the terms laid down in this Law", in Regulation (EU) No 600/2014" "and in Regulation (EU) No 575/2013"[563]. It shall be the Luxembourg contact point for the purposes of "Directive2014/65/EU and Regulation (EU) No 600/2014"[564].

The CSSF shall inform the competent authorities of the other Member States responsible for the supervision of credit institutions and investment firms that it is designated to receive requests for exchange of information or cooperation pursuant to this Law "and Regulation (EU) No 575/2013"[565]."[566]„[567]

(Law of 21 July 2021: A566)
"The CSSF shall be the competent authority responsible for the supervision of APAs with a derogation and ARMs with a derogation for the purposes of this Law and of Regulation (EU) No 600/2014. In the framework of this supervision, the CSSF shall monitor their activities so as to assess compliance with the operating conditions provided for in this Law and in Regulation (EU) No 600/2014 and shall take appropriate measures to obtain information needed for this assessment."

Article 43. Purpose of supervision

(1) The CSSF shall exercise its powers of prudential supervision exclusively in the public interest. Where the public interest so warrants, it may publish its decisions.

(2) The CSSF shall monitor the application of the laws and regulations relating to the financial sector "and, where applicable, Regulation (EU) 575/2013"[568] ", Regulation (EU) No 600/2014 and Regulation (EU) 2019/2033"[569] by the persons subject to its supervision. "Branches of

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[555] Law of 28 April 2011
[556] Law of 2 August 2003
[557] Law of 21 July 2021: A566
[558] Law of 23 July 2015
[559] Law of 21 July 2021: A566
[560] Law of 30 May 2018
[561] Repealed by the Law of 10 November 2009
[562] Repealed by the Law of 2 August 2003
[563] Law of 23 July 2015
[564] Law of 30 May 2018
[565] Law of 23 July 2015
[566] Law of 13 July 2007
[567] Law of 12 March 1998
[568] Law of 23 July 2015
[569] Law of 21 July 2021: A566

credit institutions "or investment firms"[570] having their central administration in a third country shall not be subject to provisions which result in more favourable treatment than that accorded to branches of credit institutions "or investment firms"[571] having their central administration in the European Union."[572]

(3) The CSSF shall ensure the implementation of international agreements and of "EU law"[573] applicable to the area falling within the scope of its powers. To that end, it shall also be required to carry out all consultations and to effect all communications prescribed by international agreements or by "EU law"[574] within its field of competence.

"Article 44. Professional secrecy of the CSSF

"(1) All persons who work or have worked for the CSSF, as well as *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, are bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier")."[575] This secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual professionals of the financial sector cannot be identified, without prejudice to cases covered by criminal law "or taxation law"[576].

"(2) Where a credit institution or investment firm undergoing a financial reconstruction or liquidation procedure, the CSSF, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, may divulge confidential information which does not concern third parties in civil or commercial proceedings if necessary for carrying out those proceedings."[577]

(3) The reception, exchange and transmission of confidential information by the CSSF pursuant to this Law are subject to the conditions laid down in this article.

This article does not prevent the CSSF from exchanging confidential information with the competent authorities, other authorities, bodies and persons or from transmitting them confidential information within the limits, under the conditions and according to the terms laid down in this Law and in other legal provisions governing the professional secrecy of the CSSF.

(Law of 23 July 2015)

"Moreover, it shall not prevent the CSSF from publishing the outcome of stress tests carried out in accordance with applicable EU law or from transmitting the outcome of stress tests to the European Banking Authority for the purpose of the publication by the European Banking Authority of the results of the EU-wide stress tests."

(4) Communication of information by the CSSF authorised under this Law is subject to the following conditions:

– the information transmitted to competent authorities of a Member State supervising credit institutions, investment firms, "APAs with a derogation, ARMs with a derogation,"[578] insurance undertakings or reinsurance undertakings or to other administrative authorities of a Member State supervising markets in financial

[570] Law of 21 July 2021: A566
[571] Law of 21 July 2021: A566
[572] Law of 23 July 2015
[573] Law of 21 December 2012
[574] Law of 21 December 2012
[575] Law of 18 December 2009
[576] Law of 30 May 2018
[577] Law of 18 December 2009
[578] Law of 21 July 2021: A566

instruments are for the purpose of performing the supervisory task of the receiving authorities;

- the information communicated to competent authorities of a third country, other authorities, bodies or persons of a third country, must be relevant for the exercise of their functions;
- the information communicated by the CSSF must be covered by the professional secrecy of the competent authorities, other authorities, bodies and persons receiving it and the professional secrecy imposed on those competent authorities, other authorities, bodies and persons must provide safeguards at least equivalent to those inherent in the professional secrecy incumbent on the CSSF;
- the competent authorities, other authorities, bodies and persons receiving information from the CSSF, must use this information only for the purposes for which it has been communicated to them and must be in a position to ensure that no other use is made thereof;
- the competent authorities, other authorities, bodies and persons of a third country receiving information from the CSSF afford the same right to information to the CSSF;
- information received from competent authorities, other authorities, bodies or persons may be disclosed by it only with the express consent of those competent authorities, other authorities, bodies and persons and, as the case may be, solely for the purposes for which those competent authorities, other authorities, bodies and persons have given their consent, except in duly justified circumstances. In this latter case, the CSSF shall immediately inform the competent authority that communicated the transmitted information.

The condition of the previous indent does not apply to the transmission to the Commissariat aux Assurances of information received by the CSSF under paragraph 1 of Article 44-2, of 44-3 or paragraph 3 of Article 54.

(5) "Without prejudice to cases covered by criminal or taxation law, the CSSF may use confidential information received pursuant to this Law ", to Regulation (EU) No 600/2014 or to Regulation (EU) 2019/2033"[579] only in the performance of its duties and for the exercise of its functions within the scope of this Law or "said regulations"[580], or in the context of administrative or judicial proceedings specifically related to the exercise of those functions "[581]or proceedings with a view to imposing administrative measures or penalties"[582] ."[583]

However, the CSSF may use the information received for other purposes where the competent authority, other authority, body or person having transmitted the information consents thereto.

(6) The CSSF, which receives confidential information under paragraph 1 of Article 44-2, of 44-3 or paragraph 3 of Article 54, may only use this information in the performance of its functions:

- to check that the conditions governing the taking-up of the business of professionals of the financial sector are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to supervision of liquidity, solvency, large exposures, capital adequacy in relation to market risks, administrative and accounting procedures and internal control mechanisms, or
- to impose penalties, or
- in administrative actions against decisions taken by the CSSF, or

[579] Law of 21 July 2021: A566
[580] Law of 21 July 2021: A566
[581] Law of 21 July 2021: A566
[582] Law of 21 July 2021:A566
[583] Law of 30 May 2018

– in legal proceedings brought against decisions refusing to grant authorisation or withdrawing such authorisation", or"[584]

(Law of 30 May 2018)

"– in the extra-judicial mechanism for complaints referred to in Article 58(2) as regards the provision of investment services and ancillary services."

Article 44-1. Cooperation of the CSSF with the competent authorities of Member States

(1) The CSSF shall cooperate with the competent authorities of the other Member States responsible for the supervision of credit institutions and investment firms whenever necessary for the purpose of carrying out their relevant prudential supervisory duties making use of their powers set out in this Law "and in Regulation (EU) No 600/2014"[585].

The CSSF shall render assistance to these authorities, in particular by exchanging information and cooperating in any "investigation or"[586] supervisory activities. "It shall take the necessary administrative and organisational measures to facilitate the assistance provided for in this paragraph."[587]

(Law of 30 May 2018)

"The CSSF may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of fines. The expenses for this recovery other than the expenses for the functioning of the CSSF shall be borne by the requesting authority."

(2) The CSSF shall closely cooperate with the *Commissariat aux Assurances* whenever necessary for the purpose of carrying out their relevant (…)[588] supervisory duties, including performing additional supervision pursuant to Chapter 3 of Part III of this Law, making use of their powers set out in this Law.

The CSSF shall render assistance to the *Commissariat aux Assurances*, in particular by exchanging all information which is essential or relevant to the exercise of their relevant (…)[589] supervisory missions, including the supplementary supervision as referred to in Chapter 3 of Part III of this Law, and, where applicable within the scope of supervisory activities.

(Law of 30 May 2018)

"(2a) The CSSF may cooperate with the competent authorities of other Member States at their request, for the purposes of Article 79 of Directive 2014/65/EU, even where the conduct under investigation does not constitute an infringement of any regulation in force in Luxembourg."

(3) Where the CSSF has good reasons to suspect that acts, if carried out in Luxembourg, would have been such as to be contrary to the provisions of this Law "or of Regulation (EU) No 600/2014"[590], are being or have been carried out in another Member State by entities not subject to its supervision, it shall notify the competent authority of that other Member State "and the European Securities and Markets Authority"[591] in as specific manner as possible.

Where the CSSF receives comparable information from an authority of another Member State, it shall take appropriate measures. The CSSF shall inform the notifying competent authority "and the European Securities and Markets Authority"[592] of the outcome of the action and, to the extent possible, of significant interim developments.

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[584] Law of 30 May 2018
[585] Law of 30 May 2018
[586] Law of 30 May 2018
[587] Law of 30 May 2018
[588] Law of 30 May 2018
[589] Law of 30 May 2018
[590] Law of 30 May 2018
[591] Law of 21 December 2012
[592] Law of 21 December 2012

(4) The CSSF may request the cooperation of the competent authority of another Member State responsible for the prudential supervision of credit institutions and investment firms in a supervisory activity or for an on-the-spot verification or in an investigation.

(Law of 30 May 2018)

"The CSSF may refer to ESMA situations where a request relating to a supervisory activity, on-the-spot verification or investigation as provided for in the first subparagraph has been rejected or has not been acted upon within a reasonable time."

"Where the CSSF receives such a request with respect to an on-the-spot verification or investigation from such an authority, the CSSF shall, within the framework of its competences, act upon that request either by carrying out the request itself or by having a *réviseur d'entreprises agréé* (approved statutory auditor) or expert carrying it out, or by allowing the authority which made the request to carry it out itself."[593]

(5) The CSSF may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity where:

(…)[594]

- judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg courts, or
- a final judgment has already been delivered in relation to such persons for the same actions in Luxembourg.

In the case of such a refusal, the CSSF shall inform the requesting authority "and the European Securities and Markets Authority"[595] accordingly, providing as detailed information as possible. "The information to be communicated to the European Securities and Markets Authority pursuant to paragraphs 3 and 5 only concerns investment firms."[596]

(Law of 30 May 2018)

"(6) In relation to emission allowances, the CSSF shall cooperate with public bodies competent for the oversight of spot and auction markets and competent authorities, registry administrators and other public bodies charged with the supervision of compliance under Directive 20003/87/EC in order to ensure that they can acquire a consolidated overview of emission allowances markets.

(7) In relation to agricultural commodity derivatives, the CSSF shall report to and cooperate with the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EU) No 1308/2013.

(8) The CSSF shall cooperate with ESMA for the purposes of this Law, in accordance with Regulation (EU) No 1095/2010."

(Law of 21 July 2021: A566)

"(9) The CSSF and competent authorities of other Member States may exchange confidential information for the purposes of Article 15(2) of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (hereinafter "Directive (EU) 2019/2034"), may expressly state how that information is to be treated and may expressly restrict any further transmission of that information.

(10) The CSSF, as the competent authority of a third-country branch in accordance with the fourth subparagraph of Article 32-1(2), shall closely cooperate with the competent authorities of other Member States of entities that are part of the same group to which the branch of a third-country firm authorised in accordance with the third subparagraph of Article 32-1(2) belong,

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[593] Law of 18 December 2009

[594] Law of 30 May 2018

[595] Law of 21 December 2012

[596] Law of 21 December 2012

as well as with ESMA and the EBA to ensure that all activities of that group in the European Union are subject to comprehensive, consistent and effective supervision in accordance with Directive 2014/65/EU, Directive 2013/36/EU and Directive (EU) 2019/2034, as well as Regulation (EU) No 575/2013, Regulation (EU) No 600/2014 and Regulation (EU) 2019/2033. The same shall apply where the CSSF is the competent authority of an entity that is part of the same group to which the branch of third-country firms authorised in another Member State in accordance with Article 41(1) of Directive 2014/65/EU belong."

Article 44-2. Exchange of information of the CSSF within the European Union

(1) The CSSF shall exchange without delay with:

- the competent authorities of the other Member States responsible for the prudential supervision of credit institutions;
- the competent authorities of the other Member States responsible for the prudential supervision of investment firms;
- the administrative authorities of the other Member States responsible for the supervision of markets in financial instruments;

the information necessary for the supervision of the financial sector and the supervision of markets in financial instruments respectively.

Where the CSSF communicates information to the aforementioned authorities, it may indicate at the time of communication that such information must not be disclosed without its express consent, in which case such information may be exchanged solely for the purposes for which the CSSF gave its consent.

(Law of 30 May 2018)

"The CSSF may request the competent authority of another Member State to provide it with the information needed to fulfil its task of supervising markets in financial instruments under this Law and Regulation (EU) No 600/2014.

The CSSF may refer to ESMA situations where a request for exchange of information as referred to in the third subparagraph has been rejected or has not been acted upon within a reasonable time."

Without prejudice to the provision of the last indent of Article 44(4), the CSSF may not disclose information received from the authorities referred to above or use them for purposes other than for which those authorities gave their consent, where the latter have indicated this at the time of communication.

The CSSF may refuse to act on a request for information from the aforementioned authorities only if:

(…)[597]

- judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg courts, or
- a final judgment has already been delivered in relation to such persons for the same actions in Luxembourg.

In the case of such a refusal, the CSSF shall inform the requesting authority "and the European Securities and Markets Authority"[598] accordingly, providing as detailed information as possible. "The information to be communicated to the European Securities and Markets Authority in accordance with this paragraph only concerns investment firms."[599]

[597] Law of 30 May 2018

[598] Law of 21 December 2012

[599] Law of 21 December 2012

(2) "The CSSF may exchange, within the European Union, with the following authorities, persons and bodies, information intended for carrying out their mission:"[600]

- the competent authorities of a Member State responsible for the prudential supervision of insurance undertakings",[601] reinsurance undertakings", insurance holding companies, mixed-activity insurance holding companies within the meaning of Article 212(1)(g) of Directive 2009/138/EC or undertakings excluded from the scope of this directive in accordance with Article 4 thereof"[602];
- the authorities of a Member State entrusted with the public task of supervising financial institutions", ancillary services undertakings included in the consolidated situation of a CRR institution or mixed-activity holding companies"[603];
- the persons responsible for the statutory audit of the accounts of credit institutions, PFS, insurance undertakings, reinsurance undertakings or other financial institutions;
- the bodies involved in the liquidation, bankruptcy or similar procedures concerning credit institutions and PFS;
- the authorities responsible for the supervision of the persons responsible for the statutory audit of the accounts of credit institutions, PFS, insurance undertakings, reinsurance undertakings or other financial institutions;
- the authorities responsible for the supervision of the bodies involved in the liquidation, bankruptcy or similar procedures concerning credit institutions, PFS, insurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities, management companies and custodians of undertakings for collective investment in transferable securities;
- "– central banks of the European System of Central Banks and other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;"[604]
- "– the authorities entrusted with the public task of supervising payment systems or securities settlement systems;"[605]

(Law of 21 December 2012)

- "– the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority;
- the European Systemic Risk Board when this information is relevant for the exercise of its statutory tasks pursuant to Regulation (EU) No 1092/2010."

(…)[606]

(Law of 23 July 2015)

- "– authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules;
- reorganisation bodies or authorities aiming at protecting the stability of the financial system;

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[600] Law of 28 April 2011
[601] Law of 23 July 2015
[602] Law of 23 July 2015
[603] Law of 23 July 2015
[604] Law of 28 April 2011
[605] Law of 10 November 2009
[606] Repealed by the Law of 28 April 2011

– contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013";

(Law of 20 May 2021)

"– authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 (…)[607] for compliance with Directive (EU) 2015/849, and financial intelligence units referred to in Article 32 of that directive;

– competent authorities or bodies responsible for the application of rules on structural separation within a banking group";

(Law of 21 July 2021: A566)

"– the European Commission when that information is necessary for the exercise of the powers of the European Commission under Directive (EU) 2019/2034."

(3) The CSSF may transmit information, within the European Union, to bodies which administer deposit-guarantee schemes, investor compensation schemes or central credit registers, which is necessary to the exercise of their functions.

(4) The CSSF may communicate information referred to in paragraph 1 of Article 44-2 and in Article 44-3 to a clearing house or other similar body recognised under the law for the provision of clearing or settlement services for one of the Luxembourg markets, if the CSSF considers that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults, even potential defaults, of market participants.

(Law of 10 November 2009)

"(5) In an emergency situation as referred to "in Article 50-1(6)"[608], the CSSF may allow competent authorities to communicate information to the central banks of the European System of Central Banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, securities clearing and settlement systems, and the safeguarding of stability of the financial system "and to the European Systemic Risk Board pursuant to Regulation (EU) No 1092/2010 when this information is relevant for the exercise of its statutory tasks."[609] In such emergency situation, the CSSF may disclose to the competent departments of the Finance Ministries of all Member States concerned information which is relevant to the latter ", where applicable, with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-site inspection or check was carried out"[610]."[611]

(Law of 20 May 2021)

"Article 44-2a. Transmission of information to international bodies

(1) Notwithstanding Article 44, the CSSF may, subject to the conditions set out in paragraphs 2, 3 and 4 of this article, transmit or share certain information with the following:

1. the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;
2. the Bank for International Settlements, for the purposes of quantitative impact studies;
3. the Financial Stability Board, for the purposes of its surveillance function.

(2) The CSSF may only share confidential information following an explicit request by the relevant body, where at least the following conditions are met:

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[607] Law of 15 July 2024

[608] Law of 23 July 2015

[609] Law of 21 December 2012

[610] Law of 25 July 2018

[611] Law of 28 April 2011

1. the request is duly justified in light of the specific tasks performed by the requesting body in accordance with its statutory mandate;
2. the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;
3. the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond the statutory tasks conferred on the requesting body;
4. the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task;
5. the persons having access to the information are subject to professional secrecy requirements at least equivalent to those referred to in Article 44(1) and (2).

(3) Where the request is made by any of the entities referred to in paragraph 1, the CSSF may only transmit aggregate or anonymised information and may only share other information at its own premises.

(4) To the extent that the disclosure of information involves processing of personal data, any processing of personal data by the requesting body shall comply with the requirements laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, hereinafter the "GDPR"."

Article 44-3. Exchange of information of the CSSF with third countries

(1) For the purpose of its task of supervising credit institution or investment firms, the CSSF may exchange information with:

- the competent authorities of third countries responsible for the prudential supervision of credit institutions;
- the competent authorities of third countries responsible for the prudential supervision of investment firms;
- the competent authorities of third countries responsible for the prudential supervision of insurance undertakings or reinsurance undertakings;
- the authorities of third countries entrusted with the public task of supervising financial institutions;
- the persons responsible for the statutory audit of the accounts of credit institutions, PFS, insurance undertakings, reinsurance undertakings or other financial institutions;
- the authorities of third countries entrusted with the public task of supervising markets in financial instruments;
- the bodies involved in the liquidation, bankruptcy or similar procedures concerning credit institutions and PFS;
- the authorities responsible for the supervision of the persons responsible for the statutory audit of the accounts of credit institutions, PFS, insurance undertakings, reinsurance undertakings or other financial institutions;
- the authorities responsible for the supervision of the bodies involved in the liquidation, bankruptcy or similar procedures concerning credit institutions, PFS, insurance undertakings, reinsurance undertakings, undertakings for collective investment in transferable securities, management companies and custodians of undertakings for collective investment in transferable securities.

(Law of 23 July 2015)

"– third-country authorities entrusted with the public duty of supervising undertakings, the activity of which is comparable to that of any entity referred to in the first two indents of Article 44-2(2);"

(Law of 30 May 2018)

"– the authorities responsible for the oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;

– the authorities responsible for the oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets."

(Law of 30 May 2018)

"Transfer of personal data to a third country shall be in accordance with the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended."

(2) The CSSF may request the cooperation of the competent authority of a third country responsible for the prudential supervision of credit institutions or investment firms for an on-the-spot verification or in an investigation.

"Where the CSSF receives such a request with respect to an on-the-spot verification or investigation from such an authority, the CSSF may, within the framework of its competences and provided that the requesting authority grants the same right to the CSSF, act upon that request either by carrying out the request itself or by having a *réviseur d'entreprises agréé* (approved statutory auditor) or expert carry it out."[612] Upon request, the CSSF may be accompanied by certain agents of the requesting authority to an on-the-spot verification or investigation. Nevertheless, the on-the-spot verification or investigation shall be subject to the overall control of the CSSF."[613]

(Law of 30 May 2018)

"(3) The information provided by third-country competent authorities may not be disclosed without the express agreement of the competent authority which has transmitted it and, where appropriate, solely for the purposes for which this authority gave its agreement."

(Law of 21 July 2021: A566)

"(4) For the purpose of performing its supervisory tasks with respect to investment firms deriving from this Law or Regulation (EU) 2019/2033, and for the purpose of exchanging information, the CSSF may conclude cooperation arrangements with third-country supervisory authorities as well as with third-country authorities or bodies responsible for the following tasks, provided that the information disclosed is subject to guarantees of professional secrecy that are at least equivalent to those laid down in Article 44:

1. the supervision of investment firms, financial institutions within the meaning of point (14) of Article 4(1) of Regulation (EU) 2019/2033 and financial markets, including the supervision of financial entities licenced to operate as central counterparties, where central counterparties have been recognised under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereinafter "Regulation (EU) No 648/2012");
2. the liquidation and bankruptcy of investment firms and similar procedures;
3. oversight of the bodies involved in the liquidation and bankruptcy of investment firms and similar procedures;
4. the carrying-out of statutory audits of financial institutions within the meaning of point (14) of Article 4(1) of Regulation (EU) 2019/2033 or institutions which administer compensation schemes;
5. oversight of persons charged with carrying out statutory audits of the accounts of financial institutions within the meaning of point (14) of Article 4(1) of Regulation (EU) 2019/2033;

[612] Law of 18 December 2009

[613] Law of 13 July 2007

6. oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;
7. oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets."

(Law of 23 July 2015)
"Article 44-4. Exchange of information on penalties

Where the CSSF assesses the good repute of a person concerned in accordance with Article 7(1), Article 12(4), Article 19(1a), Article 32(4), Article 51(4) or Article 51-20, it shall check the existence of a relevant conviction in the criminal record of the person concerned and it shall consult the European Banking Authority's database of administrative penalties.

For the purposes of the first subparagraph, the CSSF may exchange information within the EU in accordance with the Law of 29 March 2013 on the organisation of the criminal record."

(Law of 23 July 2015)
"Article 44-5. Language regime

(1) When communicating in writing with the CSSF, the credit institutions shall use a language accepted by the CSSF. The use of Luxembourgish, French, German or English is accepted in any case.

(2) The CSSF may validly use English in an exclusive manner in its written communication with credit institutions."

"Chapter 2: Supervision of credit institutions, certain financial institutions and investment firms carrying on business in more than one "Member State"[614]

Article 45. Competence to supervise credit institutions and investment firms carrying on business in more than one "Member State"[615]

(1) The prudential supervision by the CSSF, acting as the competent authority of the "home Member State"[616], of credit institutions and investment firms established under Luxembourg law shall also extend to the business carried on by any such institution or firm in another "Member State"[617], whether by means of the setting up of a branch or by way of the provision of services.

(Law of 23 July 2015)
"In the cases referred to in letters (a) and (b) of the first subparagraph of Article 46(1), the CSSF, as the competent authority of the home Member State, shall, without delay, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance. The CSSF shall communicate those measures to the competent authorities of the host Member State without delay. In case of withdrawal of the authorisation of a Luxembourg credit institution, the CSSF shall, without delay, inform the competent authority of the host Member State where the credit institution has a branch or provides services."

"(2) The prudential supervision of a credit institution or investment firm authorised in another Member State, including that of activities carried on in Luxembourg in accordance with the provisions of Articles 30 and 31, shall be the responsibility of the competent authorities of the home Member State, without prejudice to the provisions of this Law which give responsibility to the CSSF as competent authority of the host Member State. "Measures taken by the CSSF, as the competent authority of the host Member State, shall not allow discriminatory or

[614] Law of 13 July 2007
[615] Law of 13 July 2007
[616] Law of 13 July 2007
[617] Law of 13 July 2007

restrictive treatment on the basis that a credit institution "or investment firm"[618] is authorised in another Member State."[619]

(Law of 23 July 2015)

"(2a) Before the branch of a credit institution authorised in another Member State commences its activities in Luxembourg, the CSSF as competent authority of the host Member State shall, within two months of receiving the information referred to in Article 33, prepare for the supervision of the credit institution in accordance with Chapter 2 of Part III of this Law and if necessary indicate the conditions under which, in the interests of the general good, those activities shall be carried out in Luxembourg."

"(3) The CSSF shall collaborate closely with the competent authorities of the Member States concerned in order to supervise the activities of CRR institutions operating, in particular through a branch, in one or more Member States other than that in which their central administrations are situated. The CSSF and these authorities shall supply one another with all information concerning the management and ownership of such CRR institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of CRR institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the CRR institution, administrative and accounting procedures and internal control mechanisms.

The CSSF as the competent authority of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and with this Law of the activities performed by the CRR institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.

The CSSF as competent authority of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervision measures taken in that context.

The CSSF as competent authority of the home Member State shall communicate and explain, upon request, to the competent authorities of the host Member State how information and findings provided by the latter have been taken into account. Where, following communication of information and findings, the competent authorities of the host Member State maintain that no appropriate measures have been taken by the CSSF, the competent authorities of the host Member State may, after informing the CSSF and the European Banking Authority, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

Where the CSSF as competent authority of the home Member State disagrees with the measures to be taken by the competent authorities of the host Member State, it may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010."[620]

(Law of 20 May 2021)

"(3a) The CSSF, in its capacity as competent authority supervising branches of credit institutions having their head office in a third country or CRR institutions that are part of a third-country group, shall cooperate closely with the competent authorities of other Member States supervising branches of credit institutions having their head office in a third country or CRR institutions that are part of the same third-country group to ensure that all activities of that third-country group in the European Union are subject to comprehensive supervision, to

[618] Law of 30 May 2018

[619] Law of 23 July 2015

[620] Law of 23 July 2015

prevent the requirements applicable to third-country groups pursuant to this Law, Directive 2013/36/EU and Regulation (EU) No 575/2013 from being circumvented and to prevent any detrimental impact on the financial stability of Luxembourg or the European Union."

(Law of 21 July 2021: A566)

"(3b) The CSSF shall cooperate closely with the competent authorities of other Member States for the purposes of their duties pursuant to Directive (EU) 2019/2034 and to Regulation (EU) 2019/2033, in particular by exchanging information about IFR investment firms without delay, including the following:

1. information about the management and ownership structure of the IFR investment firm;
2. information about compliance with own funds requirements by the IFR investment firm;
3. information about compliance with the concentration risk requirements and liquidity requirements of the IFR investment firm;
4. information about the administrative and accounting procedures and internal control mechanisms of the IFR investment firm;
5. any other relevant factors that may influence the risk posed by the IFR investment firm.

The CSSF, as the competent authority of the home Member State, shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an IFR investment firm to the protection of clients or the stability of the financial system in the host Member State which it has identified when supervising the activities of an IFR investment firm.

The CSSF, as the competent authority of the home Member State, shall act upon information provided by the competent authorities of the host Member State by taking all measures necessary to avert or remedy potential problems and risks as referred to in the second subparagraph. Upon request by the competent authorites of the host Member State, the CSSF, as the competent authority of the home Member State, shall explain in detail to the competent authorities of the host Member State how the information and findings provided by the latter have been taken into account.

Where the CSSF, as the competent authority of the home Member State, disagrees with the measures taken by the competent authorities of the host Member State in accordance with Article 13(4) of Directive (EU) 2019/2034, it may refer the matter to the EBA.

The CSSF, as the competent authority of the host Member State, may provide the competent authority of the home Member State with information and findings in relation to communication made by the latter in accordance with Article 13(2) of Directive (EU) 2019/2034. It may request the competent authority of the home Member State to explain how this information and findings have been taken into account.

Following the communication of the information and findings referred to in Article 13(2) of Directive (EU) 2019/2034, where the CSSF, as the competent authority of the host Member State, considers that the competent authorities of the home Member State have not taken the necessary measures referred to in Article 13(3) of Directive (EU) 2019/2034, it may, after having informed the competent authorities of the home Member State, the EBA and ESMA, take appropriate measures to protect clients to whom services are provided or to protect the stability of the financial system.

The CSSF may refer to the EBA cases in which a request for collaboration, in particular a request to exchange information, has been rejected or has not been acted upon within a reasonable time.

(3c) For the purpose of assessing the condition in letter (c) of the first subparagraph of Article 23(1) of Regulation (EU) 2019/2033, the CSSF, as the competent authority of an IFR investment firm's home Member State, may request the competent authority of a clearing member's home Member State to provide information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firm.

For the purpose of assessing the condition in letter (c) of the first subparagraph of Article 23(1) of Regulation (EU) 2019/2033, the CSSF, as the competent authority of a clearing member's home Member State, may upon request by the competent authority of an IFR investment firm's

home Member State provide this competent authority with information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firm."

(4) The CSSF as the competent authority of the host Member State is responsible for ensuring that the investment services and ancillary services provided in Luxembourg by the Luxembourg branches of credit institutions or investment firms authorised in another Member State fulfil the obligations laid down in Articles 37-3, 37-5 and 37-6 of this Law and "Articles 14 to 26 of Regulation (EU) No 600/2014"[621].

The CSSF has the right to examine the arrangements of the Luxembourg branches and to request such changes as are strictly needed to enable the CSSF to enforce the obligations under Articles 37-3, 37-5 and 37-6 of this Law and "Articles 14 to 26 of Regulation (EU) No 600/2014"[622], with respect to investment services and ancillary services provided by branches in Luxembourg.

(5) The CSSF is competent to ensure that the Luxembourg branches of credit institutions and investment firms authorised in another Member State comply with the record-keeping obligation "under Article 37-1(6) and (6a)"[623] with respect to the transactions performed by the Luxembourg branches, without prejudice to the possibility for the competent authority of the Member State in which the credit institution or investment firm is authorised, to have direct access to those records.

(Law of 30 May 2018)

"The CSSF may directly access the records referred to in Article 37-1(6) and (6a), at the branches of credit institutions or investment firms incorporated under Luxembourg law established in another Member State."

(6) Luxembourg branches of credit institutions and investment firms authorised in another Member State are required to report periodically on their activities to the CSSF. "The CSSF may require that these institutions provide with information which will allow the CSSF to assess whether the branches are significant under Article 50-1(9)."[624]

"Such reports shall only be required for information or statistical purposes, for the application of Article 50-1(9), or for supervisory purposes in accordance with this chapter. They shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 44."[625]

In discharging the responsibilities imposed on the CSSF in paragraph 4, the Luxembourg branches of credit institutions and investment firms authorised in another Member State are required to provide to the CSSF, upon request, the information necessary for the monitoring of their compliance with the standards that apply to them in Luxembourg, for the cases provided for in Articles 37-3, 37-5 and 37-6 of this Law and in "Articles 14 to 26 of Regulation (EU) No 600/2014"[626]. The information to be provided by these branches is the same information as the CSSF requires for these purposes from credit institutions and investment firms authorised in Luxembourg.

(7) For the purposes of supervising the activities of the Luxembourg branch of a "CRR"[627] institution authorised in another Member State, the competent authority of the home Member State of this "CRR"[628] institution may, after having first informed the CSSF, carry on itself or through

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[621] Law of 30 May 2018
[622] Law of 30 May 2018
[623] Law of 30 May 2018
[624] Law of 23 July 2015
[625] Law of 23 July 2015
[626] Law of 30 May 2018
[627] Law of 23 July 2015
[628] Law of 23 July 2015

the intermediary of persons it appoints for that purpose on-the-spot verification of information concerning the management and ownership of that "CRR"[629] institution that is likely to facilitate its supervision and the examination of the conditions for its authorisation, and all information "referred to in paragraph 3."[630]

For the purposes of verifying this information, the competent authority of the home Member State may also request the CSSF to have this verification made. "The CSSF shall, within the framework of its powers, carry out the verification itself, or appoint to this end and chargeable to the "CRR"[631] institution a *réviseur d'entreprises agréé* (approved statutory auditor) or expert."[632]

(8) For the purposes of supervising the activities of the branches established by a credit institution incorporated under Luxembourg law in another Member State, the CSSF may, after having first informed the competent authority of the host Member State, carry on itself or through the intermediary of persons it appoints for that purpose on-the-spot verification of information concerning the management and ownership of that credit institution that is likely to facilitate its supervision and the examination of the conditions for its authorisation, and all information likely to facilitate the monitoring of that institution, in particular with regard to capital adequacy, liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control.

For the purposes of verifying this information, the CSSF may also request the competent authority of the host Member State to have this verification made.

(9) The competent authority of the home Member State may, in the exercise of its responsibilities and after informing the CSSF, carry on itself or through the intermediary of persons it appoints for that purpose on-the-spot verification or investigations within Luxembourg branches of investment firms authorised in the home Member State", as well as on-site inspections of the information referred to in Article 13(1) of Directive (EU) 2019/2034"[633].

The competent authority of the home Member State may also request the CSSF to have this verification made. "The CSSF shall, within the framework of its powers, carry out the verification itself, or appoint to this end and chargeable to the investment firm a *réviseur d'entreprises agréé* (approved statutory auditor) or expert."[634]

(10) The CSSF may, in the exercise of its responsibilities and after informing the competent authority of the host Member State, carry on itself "or through the intermediary of persons it appoints for that purpose"[635] on-the-spot verifications or investigations within branches established by investment firms incorporated under Luxembourg law in that host Member State", as well as on-site inspections of the information referred to in the first subparagrpah of paragraph 3b"[636]."[637]

(Law of 23 July 2015)
"(11) Nothing in this chapter shall prevent credit institutions with central administrations in other Member States from advertising their services through all available means of communication in Luxembourg, subject to the provisions of the Consumer Code applicable to advertisements."

(Law of 23 July 2015)
"(12) This article shall not prevent supervision on a consolidated basis."

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[629] Law of 23 July 2015
[630] Law of 23 July 2015
[631] Law of 23 July 2015
[632] Law of 18 December 2009
[633] Law of 21 July 2021: A566
[634] Law of 18 December 2009
[635] Law of 21 July 2021: A566
[636] Law of 21 July 2021: A566
[637] Law of 13 July 2007

"Article 46. Precautionary measures available to the CSSF as host Member State

(1) *(Law of 23 July 2015)* "Where the CSSF on the basis of information received from the competent authorities of the home Member State ascertains that a credit institution having a branch or providing services within the Luxembourg territory fulfils one of the following conditions in relation to the activities carried out in Luxembourg, it shall inform the competent authorities of the home Member State:

(a) the credit institution does not comply with Regulation (EU) No 575/2013, this Law or their implementing measures;
(b) there is a material risk that the credit institution will not comply with Regulation (EU) No 575/2013, this Law or their implementing measures.

Where the CSSF considers that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of Article 41(1) of Directive 2013/36/EU, it may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010."

Where the CSSF has clear and demonstrable grounds for believing that a credit institution "providing investment services or carrying out investment activities"[638] or investment firm of another Member State having a branch or acting within the Luxembourg territory under the freedom to provide services is in breach of the obligations arising from the provisions of this Law which do not confer powers on the CSSF, it shall refer those findings to the competent authority of the home Member State of the credit institution "providing investment services or carrying out investment activities"[639] or investment firm.

If, despite the measures taken by the competent authority of the home Member State of the credit institution or investment firm or because such measures prove inadequate, the said credit institution or investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the CSSF, after informing the competent authority of the home Member State of the credit institution or investment firm, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets in Luxembourg. This shall include the possibility of preventing the offending credit institution or investment firm from initiating any further transactions in Luxembourg. The CSSF shall inform the European Commission "and the European Securities and Markets Authority"[640] of such measures without "undue"[641] delay. "In addition, the CSSF may refer the matter to the European Securities and Markets Authority which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010."[642]

(2) Where the CSSF ascertains that a credit institution or an investment firm of another Member State having a branch in Luxembourg is not complying with the provisions of this Law which confer powers to the CSSF, the CSSF enjoins the offending credit institution or investment firm to put an end to its irregular situation.

If the credit institution or investment firm concerned fails to take the necessary steps, the CSSF shall take all appropriate measures to ensure that the credit institution or investment firm puts an end to its irregular situation. The CSSF shall inform the competent authority of the home Member State of the credit institution or investment firm of the nature of those measures.

If, despite the measures taken by the CSSF, the credit institution or investment firm persists in breaching the legal or regulatory provisions of this Law which confer powers on the CSSF,

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[638] Law of 23 July 2015
[639] Law of 23 July 2015
[640] Law of 21 December 2012
[641] Law of 30 May 2018
[642] Law of 21 December 2012

the latter may, after informing the competent authority of the home Member State of the credit institution or investment firm, take appropriate measures "to protect the proper functioning of the markets and investors in Luxembourg"[643]. The CSSF shall inform the European Commission "and the European Securities and Markets Authority"[644] of such measures without "undue"[645] delay. "In addition, the CSSF may refer the matter to the European Securities and Markets Authority which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010."[646]

(3) Any measure adopted pursuant to "paragraphs 1, 2 and 4"[647], involving penalties or restrictions on the activities of a credit institution or investment firm, shall be properly justified and communicated to the credit institution or investment firm concerned. These measures may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

"(4) Before following the procedures provided for in subparagraphs 1 and 2 of paragraph 1 and in paragraph 2, the CSSF may, in emergencies, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors or other persons to whom services were provided. The CSSF shall inform the European Commission, the European Banking Authority, the European Securities and Markets Authority and the competent authorities of other Member States concerned of the adoption of such measures without delay. The information to be communicated to the European Securities and Markets Authority in accordance with this subparagraph shall only apply if credit institutions provide investment services or carry out investment activities.

Any precautionary measures under subparagraph 1 shall be proportionate to their aforementioned purpose. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the credit institution in the host Member State over ceditors in other Member States.

Any precautionary measure under subparagraph 1 shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC.

The CSSF shall terminate precautionary measures where it considers those measures to have become obsolete under paragraph 1, unless they cease to have effect in accordance with subparagraph 3 of this paragraph."[648]

(5) Where the CSSF is informed by the competent authority of the home Member State of the withdrawal of authorisation from a credit institution having a branch or acting under the freedom to provide services in Luxembourg, it shall take appropriate measures to prevent the credit institution concerned from initiating further transactions in Luxembourg and to safeguard the interests of the depositors."[649]

(Law of 23 July 2015)

"(6) The CSSF, in its capacity as competent authority of the host Member State, shall have the power to carry out, on a case-by-case basis, on-site inspections and checks of the activities carried out by branches of "credit institutions and investment firms"[650] established in Luxembourg and require information from a branch about the activities and for the supervisory purposes, where it considers it relevant for reasons of stability of the Luxembourg financial system. Before carrying out such checks and inspections, the CSSF shall consult "without

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[643] Law of 30 May 2018
[644] Law of 21 December 2012
[645] Law of 30 May 2018
[646] Law of 21 December 2012
[647] Law of 23 July 2015
[648] Law of 23 July 2015
[649] Law of 13 July 2007
[650] Law of 21 July 2021: A566

delay"[651] the competent authorities of the home Member State. "As soon as possible after"[652] such checks and inspections, the CSSF shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the "credit institutions or investment firms"[653] or the stability of the Luxembourg financial system.

Where the CSSF is the competent authority of the home Member State "of a CRR institution"[654], it shall duly take into account that such information and those findings received from the authorities of the host Member State in determining their supervisory examination programme, also having regard to the stability of the financial system in the host Member State.

The on-site inspections and checks of branches shall be conducted in accordance with the law of the Member State where the inspection or check is carried out."

Article 47. Supervision of certain Community financial institutions

"Without prejudice to Chapter 1 of Title II of the Law of 10 November 2009 on payment services,"[655] "Articles 45 and 46 shall apply *mutatis mutandis* to the supervision of Community financial institutions, including those governed by Luxembourg law, which carry on business in a Member State other than their "home Member State"[656], whether by means of the setting up of a branch or by way of the provision of services, in accordance with the conditions laid down in Article 31."[657]

(Law of 12 Januray 2001)

Chapter 2a: *(repealed by the Law of 10 November 2009)*

"Chapter 3: Supervision of CRR institutions on a consolidated basis"[658]

"Article 48. *(repealed by the Law of 23 July 2015)*

Article 49. Scope and parameters of supervision on a consolidated basis

(1) (…)[659]

(Law of 20 May 2021)

"For the purposes of this chapter, "group" shall refer to groups as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013."

"(2) Where a credit institution is a parent institution in Luxembourg or an EU parent institution, supervision on a consolidated basis shall be exercised by the CSSF, where it supervises that credit institution on an individual basis."

Where a (…)[660] investment firm is a "parent investment firm"[661] in Luxembourg or an EU "parent investment firm"[662] and none of its subsidiaries is a credit institution, supervision on a

[651] Law of 21 July 2021: A566
[652] Law of 21 July 2021: A566
[653] Law of 21 July 2021: A566
[654] Law of 21 July 2021: A566
[655] Law of 10 November 2009
[656] Law of 13 July 2007
[657] Law of 12 March 1998
[658] Law of 23 July 2015
[659] Law of 21 July 2021: A566
[660] Law of 21 July 2021: A566
[661] Law of 21 July 2021: A566
[662] Law of 21 July 2021: A566

consolidated basis shall be exercised by the CSSF, where it supervises that (…)[663] investment firm on an individual basis.

Where a (…)[664] investment firm is a "parent investment firm"[665] in Luxembourg or an EU "parent investment firm"[666], and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the CSSF, where it is the competent authority of the credit institution, or where there are several credit institutions, of the credit institution with the largest balance sheet total."[667]

(Law of 20 May 2021)

"(3) Where the parent undertaking of a CRR institution is a parent financial holding company in Luxembourg, a parent mixed financial holding company in Luxembourg, a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company and the supervision of that CRR institution on an individual basis is exercised by the CSSF, the CSSF shall exercise, subject to Article 21a of Directive 2013/36/EU, a prudential supervision on a consolidated basis of the financial holding company or of the mixed financial holding company, where applicable.

(4) Where two or more "credit institutions or investment firms"[668] authorised in the European Union have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the CSSF in the following cases:

1. the CSSF is the competent authority of the credit institution where there is only one credit institution within the group;
2. the CSSF is the competent authority of the credit institution with the largest balance sheet total, where there are several credit institutions within the group; or

"3. the CSSF is the competent authority of the investment firm with the largest balance sheet total, in the case of an investment firm group which includes at least one CRR investment firm."[669]

(5) Where consolidation is required pursuant to Article 18(3) or (6) of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the CSSF if it is the competent authority of the credit institution with the largest balance sheet total or, "in the case of an investment firm group which includes at least one CRR investment firm"[670], if it is the competent authority of the (…)[671] investment firm with the largest balance sheet total.

(6) By way of derogation from the third subparagraph of paragraph 2, from point (2) of paragraph 4 and from paragraph 5, where a competent authority of another Member State supervises on an individual basis more than one credit institution within a group, the CSSF shall be the consolidating supervisor only where it supervises on an individual basis one or more credit institutions within the group and where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other competent authority.

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[663] Law of 21 July 2021: A566
[664] Law of 21 July 2021: A566
[665] Law of 21 July 2021: A566
[666] Law of 21 July 2021: A566
[667] Law of 20 May 2021
[668] Law of 21 July 2021: A566
[669] Law of 21 July 2021: A566
[670] Law of 21 July 2021: A566
[671] Law of 21 July 2021: A566

"By way of derogation from point (3) of paragraph 4 and from paragraph 5, where a competent authority of another Member State supervises on an individual basis more than one investment firm within an investment firm group which includes at least one CRR investment firm, the CSSF shall be the consolidating supervisor only where it supervises on an individual basis one or more investment firms within that group with the overall highest balance sheet total in aggregate."[672]

(7) In particular cases, the CSSF and the competent authorities of other Member States may waive by common agreement the criteria referred to in Article 111(1), (3) and (4) of Directive 2013/36/EU and appoint a different competent authority to exercise supervision on a consolidated basis where they deem that the application of the criteria referred to therein would be inappropriate, taking into account the "credit institutions or investment firms"[673] concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority. In such cases, the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the "credit institution or investment firm"[674] with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.

(8) The CSSF shall notify the European Commission and the European Banking Authority without delay of any agreement falling within paragraph 7."

(…)[675]

Article 50. *(repealed by the Law of 23 July 2015)*

(Law of 7 November 2007)

"Article 50-1. Cooperation with the other authorities responsible for prudential supervision regarding consolidated supervision

(1) Where the CSSF is responsible for the exercise of supervision on a consolidated basis "pursuant to Article 49"[676], it shall in addition carry out the following tasks:

(a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

"(b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to as regards the (…)[677] process for "internal"[678] capital adequacy assessment, the "supervisory review and evaluation process"[679], the information to be published by "CRR institutions"[680], the organisation and treatment of risks and "Article 53-1(2), second indent"[681], in cooperation with the competent authorities involved;"[682]

"(c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during

[672] Law of 21 July 2021: A566
[673] Law of 21 July 2021: A566
[674] Law of 21 July 2021: A566
[675] Law of 23 July 2015
[676] Law of 21 July 2021: A566
[677] Law of 23 July 2015
[678] Law of 23 July 2015
[679] Law of 23 July 2015
[680] Law of 23 July 2015
[681] Law of 23 July 2015
[682] Law of 28 April 2011

emergency situations, including adverse developments in "CRR institutions"[683] or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management;"[684]

(…)[685]

(Law of 28 April 2011)

"The planning and coordination of supervisory activities referred to "in letter (c)"[686] includes exceptional measures referred to in paragraph 5(b) the preparation of joint assessments, the implementation of contingency plans and communication to the public."

(Law of 21 December 2012)

"Where the competent authorities concerned do not cooperate with the CSSF to the extent required in carrying out the tasks in the first subparagraph, the CSSF may refer the matter to the European Banking Authority, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.

The CSSF may also refer the matter to the European Banking Authority, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010, where the consolidating supervisor is an authority other than the CSSF and the CSSF considers that the consolidating supervisor fails to carry out the tasks referred to in the first subparagraph."

(…)[687]

(3) In the context of consolidated prudential supervision, the CSSF shall closely cooperate with the other competent authorities. They shall provide one another with any information which is essential or relevant for the exercise of their prudential supervision. In this regard, the CSSF and the other competent authorities shall communicate, upon request, all relevant information and shall communicate on their own initiative all essential information. "The CSSF shall cooperate with the European Banking Authority for the purposes of Directive 2013/36/EU and Regulation (EU) No 575/2013, in accordance with Regulation (EU) No 1093/2010. The CSSF shall provide the European Banking Authority with all information necessary to carry out its duties under Directive 2013/36/EU, under Regulation (EU) No 575/2013, and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010."[688]

Information referred to in the first subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of a "CRR institution"[689] or financial institution in another Member State.

In particular, in its role of authority responsible for consolidated supervision of "a CRR institution authorised in Luxembourg which is a EU parent institution"[690] "or a CRR institution"[691] controlled by an EU parent financial holding company "or by an EU parent mixed financial holding company"[692], the CSSF shall provide the competent authorities in other Member States who supervise subsidiaries of these parents with all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account. "The CSSF shall provide the competent authorities concerned and the European Banking Authority with all information regarding the group of credit institutions in accordance with Article 5(1a), Article 6(3), (4) and (16) and

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[683] Law of 23 July 2015
[684] Law of 28 April 2011
[685] Law of 23 July 2015
[686] Law of 23 July 2015
[687] Law of 23 July 2015
[688] Law of 23 July 2015
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[690] Law of 23 July 2015
[691] Law of 23 July 2015
[692] Law of 23 July 2015

Article 38(2), in particular regarding the legal and organisational structure of the group and its governance."[693]

The essential information referred to in the first subparagraph shall include, in particular, the following items:

"(a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 5(1), Article 6(3), (4) and (16) and Article 38(2), and of the competent authorities of the regulated entities in the group;"[694]

(b) procedures for the collection of information from the "CRR institutions"[695] in a group, and the verification of that information;

(c) adverse developments in "CRR institutions"[696] or in other entities of a group, which could seriously affect the "CRR institutions"[697];

"(d) significant penalties and exceptional measures taken by the CSSF, including the imposition of a specific own funds requirement under the second indent of Article 53-1(2) and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013."[698]

(Law of 21 December 2012)

"The CSSF may refer to the European Banking Authority situations where:

(a) a competent authority has not communicated essential information, or

(b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time."

(Law of 23 July 2015)

"(3a) Where a CRR institution, financial holding company, mixed financial holding company or a mixed-activity holding company subject to the supervision by the CSSF controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the CSSF shall cooperate closely with the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services. Without prejudice to their respective responsibilities, they shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise."

(Law of 20 May 2021)

"For the purpose of applying this Law, Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated basis, the CSSF, when acting as consolidating supervisor of a group with a parent mixed financial holding company, shall cooperate and have written coordination and cooperation arrangements in place with the coordinator determined in accordance with Article 10 of Directive 2002/87/EC in order to facilitate and establish effective cooperation."

(4) Where the CSSF is responsible for the supervision of a "CRR institution"[699] controlled by an "EU parent institution"[700], it shall whenever possible contact the competent authorities responsible

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[693] Law of 23 July 2015
[694] Law of 23 July 2015
[695] Law of 23 July 2015
[696] Law of 23 July 2015
[697] Law of 23 July 2015
[698] Law of 23 July 2015
[699] Law of 23 July 2015
[700] Law of 23 July 2015

for consolidated supervision of the "EU parent institution"[701] or of the "CRR institution"[702] controlled by an EU parent financial holding company "or by an EU parent mixed financial holding company"[703] when it needs information regarding the implementation of approaches and methodologies set out in "Directive 2013/36/EU and Regulation (EU) No 575/2013"[704] that may already be available to those competent authorities.

(5) The CSSF shall, prior to its decision, consult the other competent authorities with regard to the following items, where this decision is of importance for other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of "CRR institutions"[705] in a group, which require the approval or authorisation of competent authorities; and

(b) "significant penalties and exceptional measures, including the imposition of a specific own fund requirements under the second indent of Article 53-1(2) and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013."[706]

For the purposes of "letter (b)"[707], the CSSF shall always consult the competent authority responsible for supervision on a consolidated basis of the group to which the Luxembourg "CRR institution"[708] belongs. However, the CSSF may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of its decision. The CSSF shall forthwith inform the other relevant competent authorities.

"(6) Where an emergency situation, including "a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of"[709] adverse developments in financial markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group, as defined in Article 51-9(15), have been authorised or where significant branches as referred to in paragraph 9 are established, and where the CSSF is the consolidating supervisor, the latter shall, subject to Articles 44 to 44-2, alert as soon as is practicable, "the European Banking Authority, the European Systemic Risk Board and"[710] the authorities referred to in Article 44-2(5), and shall communicate to them all information that is essential for the pursuance of their tasks. Those obligations shall apply to the CSSF in its capacity as competent authority under Articles 49 and 50-1(1).

If "a central bank"[711] referred to in the first sentence of Article 44-2(5) becomes aware of a situation described in the first subparagraph of this paragraph, it shall alert as soon as is practicable the competent authorities referred to in Article 49", and the European Banking Authority."[712]

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[701] Law of 23 July 2015
[702] Law of 23 July 2015
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[704] Law of 23 July 2015
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[708] Law of 23 July 2015
[709] Law of 21 December 2012
[710] Law of 21 December 2012
[711] Law of 23 July 2015
[712] Law of 21 December 2012

Where possible, the above-mentioned competent authorities shall use existing defined channels of communication."[713]

(7) The CSSF in its role as competent authority responsible for supervision on a consolidated basis shall, when it needs information which has already been given to another competent authority, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

(8) In order to facilitate and establish effective supervision, the CSSF in its role as competent authority responsible for supervision on a consolidated basis and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under these arrangements additional tasks may be entrusted to the CSSF in its role as competent authority responsible for supervision on a consolidated basis and procedures for the decision-making process and for cooperation with other competent authorities, may be specified."

(Law of 20 May 2021)

"Where a financial holding company or a mixed financial holding company has been granted approval in another Member State in accordance with Article 21a of Directive 2013/36/EU and where the CSSF is the consolidating supervisor, the coordination and cooperation arrangements referred to in the first subparagraph shall also be concluded with the competent authority of the Member State where the parent undertaking is established."

(Law of 28 April 2011)

"(9) The competent authorities of a host Member State may make a request to the CSSF in its capacity as consolidating supervisor where paragraph 1 applies or as the competent authority of the home Member State, for a branch of a "credit institution"[714] authorised in Luxembourg to be considered as significant.

That request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch of this "credit institution"[715] in terms of deposit exceeds 2% in the host Member State;
(b) the likely impact of a suspension or closure of the operations of the "credit institution"[716] on "systemic liquidity"[717] and the payment and clearing and settlement systems in the host Member State; and
(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The CSSF in its capacity as competent authority of the home Member State and the competent authorities of host Member State, and, where applicable, the consolidating supervisor shall do everything within their power to reach a joint decision on the designation of a branch as being significant. The same cooperation obligation lies with the CSSF if, in its capacity as consolidating supervisor, it receives such a request pursuant to paragraph 1, respectively if the CSSF makes such a request to competent authorities for a branch established in Luxembourg.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any

[713] Law of 28 April 2011
[714] Law of 21 July 2021: A566
[715] Law of 21 July 2021: A566
[716] Law of 21 July 2021: A566
[717] Law of 23 July 2015

views and reservations of the CSSF acting as the consolidating supervisor or as the competent authority of the home Member State.

Where the CSSF is the competent authority of the host Member State, it may, in accordance with the procedures laid down in this paragraph, request to the consolidating supervisor, if "Article 112(1) of Directive 2013/36/EU"[718] applies, or to the competent authorities of the home Member State involved that a branch established in Luxembourg be considered as significant. It shall observe the deadlines and obligations incumbent upon the competent authority of a host Member State in order to make a decision pursuant to this paragraph.

(Law of 21 December 2012)
(…)[719]

The decisions referred to in the third and fourth subparagraphs shall be set out in a document containing the fully reasoned decision and transmitted by the CSSF to the other competent authorities concerned. If the CSSF receives such a decision from another competent authority in the European Union, it shall recognise it as determinative and apply it.

The designation of a branch as being significant shall not affect the rights and responsibilities of the CSSF under this Law "and Regulation (EU) No 575/2013"[720].

(10) The CSSF in its capacity as competent authority of the home Member State shall communicate to the competent authorities of the host Member State where a significant branch is established the information referred to in Article 50-1(3)(c) and (d) and carry out the tasks referred to in paragraph 1(c) in cooperation with the competent authorities of the host Member State.

If the CSSF in its capacity as competent authority of the home Member State becomes aware of an emergency situation (…)[721] as referred to in paragraph 6, it shall alert as soon as practicable the authorities referred to in Article 44-2(5).

(Law of 23 July 2015)
"The CSSF as competent authority of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments to which it submitted the "credit institutions"[722] with such branches. The CSSF shall also communicate decisions under Article 53-1 and decisions relating to specific liquidity requirements in so far as those assessments and decisions are relevant to those branches.

The CSSF as competent authority of the home Member State shall consult the competent authorities of the host Member States where significant branches are established about operational steps for the treatment of the liquidity risk, where relevant for liquidity risks in the host Member State's currency.

Where the CSSF as competent authority of the home Member State has not consulted the competent authorities of the host Member State, or where, following such consultation, the competent authorities of the host Member State maintain that operational steps for the treatment of the liquidity risk are not adequate, the competent authorities of the host Member State may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

The CSSF as the competent authority of the host Member State shall have the same possibility to refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010, where the competent authority of the home Member State has not consulted the CSSF, or where, following such consultation, the CSSF

[718] Law of 23 July 2015
[719] Law of 23 July 2015
[720] Law of 23 July 2015
[721] Law of 21 July 2021: A566
[722] Law of 21 July 2021: A566

maintains that operational steps required by the competent authority of the home Member State to treat the liquidity risk are not adequate."

(11) Where a supervision on a consolidated basis does not apply at Community level, the CSSF in its capacity as the competent authority of the home Member State of a "credit institution"[723], authorised in Luxembourg with significant branches in other Member States, shall establish and chair a college of supervisors to facilitate the cooperation under Part III, Chapter 2 and paragraph 10. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the CSSF in its capacity as competent authority of the home Member State. The CSSF shall decide which competent authorities participate in a meeting or in an activity of the college.

The decision of the CSSF shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the obligations referred to in paragraph 10.

The CSSF shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. It shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(12) "The CSSF, in its capacity as consolidating supervisor or in its capacity as competent authority responsible for the supervision of subsidiaries of an EU parent institution, shall do everything within its power, together with the other competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed financial holding company, to reach a joint decision:

(a) on the application of the internal capital adequacy assessment process and the supervisory review and evaluation process to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of the first sentence of the second indent of Article 53-1(2) to each entity within the group and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision, including relating to the adequacy of the organisation and the treatment of liquidity risks and relating to the need for CRR institution-specific liquidity requirements;

(c) on any guidance on additional own funds referred to in Article 53-4(3).

The joint decisions referred to in the first subparagraph shall be reached:

(a) for the purposes of letter (a) of the first subparagraph, within four months of submission by the CSSF, in its capacity as consolidating supervisor, of a report containing the risk assessment of the group in accordance with Article 53-3 to the relevant competent authorities;

(b) for the purposes of letter (b) of the first subparagraph, within four months of submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group in accordance with the supervision of liquidity and specific liquidity requirements;

(c) for the purposes of letter (c) of the first subparagraph, within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Article 53-4."[724]

"The joint decisions "referred to in the first subparagraph"[725] shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with

[723] Law of 21 July 2021: A566

[724] Law of 20 May 2021

[725] Law of 20 May 2021

the internal capital adequacy assessment process and the supervisory review and evaluation process."[726] „[727]

"The joint decisions "referred to in letters (a) and (b) of the first subparagraph"[728] shall be set out in documents"[729] containing the fully reasoned decision which shall be provided to the "EU parent institution"[730] by the CSSF in its capacity as consolidating supervisor. In the event of disagreement, the CSSF in its capacity as consolidating supervisor shall at the request of any of the other competent authorities concerned consult the "European Banking Authority"[731]. The CSSF in its capacity as consolidating supervisor may consult the "European Banking Authority"[732] on its own initiative.

In the absence of such a joint decision between the competent authorities "within the time limits referred to in letters (a) "to (c)"[733] of the second subparagraph"[734], a decision on the application of the (…)[735] process for "internal"[736] capital adequacy assessment", supervisory review and evaluation process, liquidity supervision, specific liquidity requirements"[737], "the second indent of Article 53-1(2)"[738] "and Article 53-4"[739] shall be taken on a consolidated basis by the CSSF in its capacity as consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. "If, at the end of the "time limits referred to in letters (a) "to (c)"[740] of the second subparagraph"[741], any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the CSSF as the consolidating supervisor shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that regulation, and shall take its decision in conformity with the decision of the European Banking Authority. "The time limitis referred to in letters (a) "to (c)"[742] of the second subparagraph shall be deemed"[743] the conciliation period within the meaning of the regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the European Banking Authority after the end of the four-month period (…)[744] or after a joint decision has been reached."[745]

[726] Law of 27 February 2018
[727] Law of 23 July 2015
[728] Law of 20 May 2021
[729] Law of 23 July 2015
[730] Law of 23 July 2015
[731] Law of 21 December 2012
[732] Law of 21 December 2012
[733] Law of 20 May 2021
[734] Law of 23 July 2015
[735] Law of 23 July 2015
[736] Law of 23 July 2015
[737] Law of 23 July 2015
[738] Law of 23 July 2015
[739] Law of 20 May 2021
[740] Law of 20 May 2021
[741] Law of 23 July 2015
[742] Law of 20 May 2021
[743] Law of 23 July 2015
[744] Law of 20 May 2021
[745] Law of 21 December 2012

The decision on the application of the (…)[746] process for "internal"[747] capital adequacy assessment", supervisory review and evaluation process, liquidity supervision, specific liquidity requirements"[748] and "the second indent of Article 53-1(2)"[749] shall be taken by the CSSF responsible for supervision of subsidiaries of an "EU parent institution"[750]", an EU parent financial holding company or a mixed activity holding company"[751] on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. "If, at the end of the "time limits referred to in letters (a) "to (c)"[752] of the second subparagraph"[753], any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the CSSF shall defer its decision and await any decision that the European Banking Authority shall take in accordance with Article 19(3) of that regulation, and shall take its decision in conformity with the decision of the European Banking Authority. "The time limits referred to in letters (a) "to (c)"[754] of the second subparagraph shall be deemed"[755] the conciliation period within the meaning of that regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the European Banking Authority after the end of the four-month period (…)[756] or after a joint decision has been reached."[757]

The decisions shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during "the time limits referred to in letters (a) "to (c)"[758] of the second indent"[759]. The document shall be provided by the CSSF in its capacity as consolidating supervisor to all competent authorities concerned and to the "EU parent institution"[760].

Where the "European Banking Authority"[761] has been consulted, the CSSF shall consider such advice, and explain any significant deviation therefrom.

"The joint decisions"[762] referred to in the first subparagraph, when the CSSF is not the consolidating supervisor, and the decisions taken by the competent authorities in the absence of a joint decision shall be recognised as determinative and shall be applied by the CSSF.

"The joint decisions referred to in the first subparagraph and any decisions taken in the absence of a joint decision in accordance with the fifth and sixth subparagraphs"[763], shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible

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[746] Law of 23 July 2015
[747] Law of 23 July 2015
[748] Law of 23 July 2015
[749] Law of 23 July 2015
[750] Law of 23 July 2015
[751] Law of 23 July 2015
[752] Law of 20 May 2021
[753] Law of 23 July 2015
[754] Law of 20 May 2021
[755] Law of 23 July 2015
[756] Law of 20 May 2021
[757] Law of 21 December 2012
[758] Law of 20 May 2021
[759] Law of 23 July 2015
[760] Law of 23 July 2015
[761] Law of 21 December 2012
[762] Law of 23 July 2015
[763] Law of 23 July 2015

for the supervision of subsidiaries of an "EU parent institution"[764]", an EU parent financial holding company or a mixed financial holding company"[765] makes a written and fully reasoned request to the CSSF in its capacity as consolidating supervisor to update the decision on the application of "the second indent of Article 53-1(2)"[766]", of Article 53-4"[767] "and as regards the specific liquidity requirements."[768] In "those exceptional circumstances"[769], the update may be addressed on a bilateral basis between the CSSF in its capacity as consolidating supervisor and the competent authority making the request.

(13) The CSSF in its capacity as consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in "paragraphs 1, 6 and 12"[770] and subject to the confidentiality requirements of paragraph 14 and compatibility with "EU law"[771], ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

(Law of 21 December 2012)

"In order to promote and monitor the efficient, effective and consistent functioning of the colleges of supervisors referred to in paragraphs 13 and 14 of this article in accordance with Article 21 of Regulation (EU) No 1093/2010, the European Banking Authority may participate, if it deems appropriate, in these colleges and shall be considered as a competent authority for that purpose."

Colleges of supervisors shall provide a framework for the consolidating supervisor ", the European Banking Authority"[772] and the other competent authorities concerned to carry out the following tasks:

(a) exchanging information "among themselves and with the European Banking Authority in accordance with Article 21 of Regulation (EU) No 1093/2010;"[773]
(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
(c) determining supervisory examination programmes based on a risk assessment of the group in accordance with the "supervisory review and evaluation process"[774];
(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in "paragraphs 4, 6 and 7"[775];
(e) consistently applying the prudential requirements under "Directive 2013/36/EU and Regulation (EU) No 575/2013"[776] across all entities within a banking group without prejudice to the options and discretions available in Community legislation;
(f) applying paragraph 1(c) taking into account the work of other forums that may be established in this area.

(Law of 20 May 2021)

"To facilitate the tasks referred to in paragraphs 1, 6 and 8, the CSSF, in its capacity as consolidating supervisor, shall also establish colleges of supervisors where all the cross-border

[764] Law of 23 July 2015
[765] Law of 23 July 2015
[766] Law of 23 July 2015
[767] Law of 20 May 2021
[768] Law of 23 July 2015
[769] Law of 20 May 2021
[770] Law of 27 February 2018
[771] Law of 21 December 2012
[772] Law of 21 December 2012
[773] Law of 21 December 2012
[774] Law of 23 July 2015
[775] Law of 23 July 2015
[776] Law of 23 July 2015

subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company have their head offices in third countries, provided that the third countries' supervisory authorities are subject to confidentiality requirements that are equivalent to the requirements laid down in Section II of Chapter 1 of Title VII of Directive 2013/36/EU and, where applicable, in Articles 76 and 81 of Directive 2014/65/EU."

When the CSSF participates in a college of supervisors, it shall closely cooperate with the other competent authorities "and the European Banking Authority."[777] The confidentiality requirements under Articles 44 to 44-3 shall not prevent the CSSF from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the CSSF under this Law", Regulation (EU) No 575/2013 and their implementing measures"[778].

(14) The establishment and functioning of the colleges shall be based on written arrangements referred to in paragraph 8, determined after consultation with competent authorities concerned by the CSSF in its capacity as consolidating supervisor.

The competent authorities responsible for the supervision of subsidiaries of an "EU parent institution"[779]", an EU parent financial holding company or EU parent mixed financial holding company"[780] and the competent authorities of a host country where significant branches as referred to in paragraph 9 are established, "ESCB"[781] central banks as appropriate, and third countries' competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under "Title VII,"[782] Chapter 1, Section 2 of "Directive 2013/36/EU"[783] "and, where applicable, under Title IV, Chapter 1, Section 2 of Directive (EU) 2019/2034"[784] may participate in colleges of supervisors.

(Law of 20 May 2021)

"The competent authority in the Member State where a financial holding company or a mixed financial holding company that has been granted approval in accordance with Article 21a of Directive 2013/36/EU is established may participate in the relevant college of supervisors."

The CSSF in its capacity as consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. It shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. It shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

The decision of the CSSF in its capacity as consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the obligations referred to in paragraph 10.

The CSSF in its capacity as consolidating supervisor, subject to the confidentiality requirements under Articles 44 to 44-3, shall inform the "European Banking Authority"[785] of the activities of the college of supervisors, including in emergency situations, and communicate to "the

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[777] Law of 21 December 2012
[778] Law of 23 July 2015
[779] Law of 23 July 2015
[780] Law of 23 July 2015
[781] Law of 23 July 2015
[782] Law of 21 July 2021: A566
[783] Law of 23 July 2015
[784] Law of 21 July 2021: A566
[785] Law of 21 December 2012

European Banking Authority"[786] all information that is of particular relevance for the purposes of supervisory convergence."

(Law of 23 July 2015)

"In the event of disagreement between competent authorities on the functioning of supervisory colleges, any of the competent authorities concerned may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010."

Article 51. Content of supervision on a consolidated basis

"(1) Supervision on a consolidated basis shall include at least:

"(a) items referred to in Article 11 of Regulation (EU) No 575/2013;"[787]

(b) (…)[788] process for internal capital adequacy assessment;

(c) compliance with Article 5(1a).

The CSSF shall adopt any measures necessary, where appropriate, to include parent financial holding companies "and parent mixed financial holding companies"[789] in consolidated supervision, "in accordance with paragraph 3 of Article 49"[790].

Compliance with the limits laid down for holdings is subject to supervision and control on the basis of the "CRR institution's"[791] "consolidated or sub-consolidated situation"[792]."[793]

(Law of 5 November 2006)

"(1a) Without prejudice to the rules relating to the control of large exposures, the CSSF shall exercise general supervision over transactions between "CRR institutions"[794] incorporated under Luxembourg law and their parent undertaking, if it is a mixed-activity holding company, and the latter's subsidiaries.

"CRR institutions"[795] are required to have in place adequate risk management processes and internal control mechanisms, including sound accounting and reporting procedures, in order to identify, measure, monitor and control transactions with the mixed-activity holding company and its subsidiaries appropriately. "CRR institutions"[796] shall report to the CSSF any significant transaction with these entities, "other than the one referred to in Article 394 of Regulation (EU) No 575/2013"[797]. These procedures and significant transactions are controlled by the CSSF.

Where these transactions jeopardize the financial situation of a "CRR institution"[798] incorporated under Luxembourg law, the CSSF shall enjoin, by registered letter, the "CRR

[786] Law of 30 May 2018
[787] Law of 23 July 2015
[788] Law of 23 July 2015
[789] Law of 23 July 2015
[790] Law of 20 May 2021
[791] Law of 23 July 2015
[792] Law of 23 July 2015
[793] Law of 7 November 2007
[794] Law of 23 July 2015
[795] Law of 23 July 2015
[796] Law of 23 July 2015
[797] Law of 23 July 2015
[798] Law of 23 July 2015

institution"[799] concerned to remedy within such period as it may prescribe the situation found to exist."

(2) Prudential supervision on a consolidated basis shall not affect supervision on a non-consolidated basis.

(…)[800]

(Law of 5 November 2006)

"(4) "Members of the management body"[801] of a financial holding company "or mixed financial holding company"[802] shall prove to be of good professional repute. Such repute shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offering guarantee of irreproachable conduct on part of those persons. In addition, those persons shall possess "professional experience, sufficient knowledge and skills"[803] to perform those duties",taking into account the specific role of a financial holding company or mixed financial holding company"[804] by having previously exercised similar activities at a high level of responsibility and autonomy. "Financial holding companies and mixed financial holding companies shall have the primary responsibility for ensuring that members of the management body meet these conditions."[805]

(Law of 20 May 2021)

"Where members of the management body do not fulfil the requirements set out in this paragraph, the CSSF shall have the power to remove such members from the management body. The CSSF shall in particular verify whether the requirements set out in this paragraph are still fulfilled where it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that financial holding company or mixed financial holding company."

Any change in the persons as referred to above shall be authorised in advance by the CSSF. To this effect, the CSSF may request all such information as may be necessary regarding the concerned persons. The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred."

(…)[806]

(Law of 7 November 2007)

"(7) Where the CSSF makes use of the discretion provided for "in Article 7(3) of Regulation (EU) No 575/2013"[807], it shall disclose:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of "parent institutions in Luxembourg"[808] which benefit from the exercise of the provisions "of Article 7(3) of Regulation (EU) No 575/2013"[809] and the number of those which incorporate subsidiaries in a third country;

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[799] Law of 23 July 2015
[800] Law of 23 July 2015
[801] Law of 23 July 2015
[802] Law of 23 July 2015
[803] Law of 23 July 2015
[804] Law of 23 July 2015
[805] Law of 20 May 2021
[806] Law of 23 July 2015
[807] Law of 23 July 2015
[808] Law of 23 July 2015
[809] Law of 23 July 2015

(c) on an aggregate basis for Luxembourg:

(i) the total amount of own funds on the consolidated basis of the "Luxembourg parent institution"[810] which benefits from the provisions of "Article 7(3) of Regulation (EU) No 575/2013"[811], which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of the "Luxembourg parent institutions"[812] which benefit from the provisions of "Article 7(3) of Regulation (EU) No 575/2013"[813], represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total minimum own funds required to cover credit risk, market risk and operational risk on a consolidated basis of "Luxembourg parent institutions"[814] which benefit from the provisions of "Article 7(3) of Regulation (EU) No 575/2013"[815], represented by own funds which are held in subsidiaries in a third country."

(…)[816]

(Law of 7 November 2007)

"(9) (…)[817] Where the CSSF makes use of the discretion provided for in "Article 9 of Regulation (EU) No 575/2013"[818], it shall disclose:

(i) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(ii) the number of "parent institutions"[819] which benefit from the exercise of the provisions of "Article 9 of Regulation (EU) No 575/2013"[820] and the number of those which incorporate subsidiaries in a third country;

(iii) on an aggregate basis for Luxembourg:

– the total amount of own funds of "parent institutions"[821] benefiting from the provisions of "Article 9 of Regulation (EU) No 575/2013"[822] which are held in subsidiaries in a third country;

– the total percentage of own funds of "parent institutions"[823] benefiting from the provisions of "Article 9 of Regulation (EU) No 575/2013"[824], represented by own funds which are held in subsidiaries in a third country;

– the percentage of total minimum own funds required for capital adequacy in order to cover credit risk, market risk and operational risk of "parent institutions"[825] which

[810] Law of 23 July 2015
[811] Law of 23 July 2015
[812] Law of 23 July 2015
[813] Law of 23 July 2015
[814] Law of 23 July 2015
[815] Law of 23 July 2015
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[818] Law of 23 July 2015
[819] Law of 23 July 2015
[820] Law of 23 July 2015
[821] Law of 23 July 2015
[822] Law of 23 July 2015
[823] Law of 23 July 2015
[824] Law of 23 July 2015
[825] Law of 23 July 2015

benefit from the provisions of "Article 9 of Regulation (EU) No 575/2013"[826], represented by own funds which are held in subsidiaries in a third country."

(Law of 23 July 2015)

"(10) Where a mixed financial holding company is subject to equivalent provisions under this chapter and Chapter 3b, in particular in terms of risk-based supervision, the CSSF as consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the provisions of Chapter 3b to that mixed financial holding company. Where a mixed financial holding company is subject to equivalent provisions under this chapter and Directive 2009/138/EC, in particular in terms of risk-based supervision, the CSSF as consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions (…)[827] relating to the most significant financial sector as defined in Article 51-9, point 20. The CSSF as consolidating supervisor shall inform the European Banking Authority and the European Insurance and Occupational Pensions Authority of the decisions taken under this paragraph."

Article 51-1. Means used to exercise supervision on a consolidated basis

"(1) Where the CSSF is called upon, pursuant to this chapter, to exercise prudential supervision of a "CRR institution"[828] on a consolidated basis, the following conditions must be fulfilled:

(a) the structure of the direct and indirect participations covered by the consolidation must be transparent and organised in such a way that the prudential supervision can be exercised, without impediment, in the most effective and direct way;

(b) the central administrative and accounting bodies and the management of all of the undertakings included in the consolidation must be established in Luxembourg;

(c) in all the undertakings included in the consolidation, there must be adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.

(2) (a) In the exercise of prudential supervision of a "CRR institution"[829] on a consolidated basis, the CSSF may require, for the purposes of such supervision, any undertaking included in the consolidation, and the subsidiaries of a "CRR institution"[830] or "financial holding company"[831] "or mixed financial holding company"[832] which do not fall within the scope of supervision on a consolidated basis, to supply any information which would be relevant.

(b) Where the parent undertaking of one or more "CRR institutions"[833] subject to supervision by the CSSF is a "mixed-activity holding company"[834], the CSSF shall, by approaching the "mixed-activity holding company"[835] and its subsidiaries either directly or via "CRR institution"[836] subsidiaries, require them to supply any information which would be relevant for the purposes of supervising the "CRR institution"[837] subsidiaries.

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[826] Law of 23 July 2015
[827] Law of 20 May 2021
[828] Law of 23 July 2015
[829] Law of 23 July 2015
[830] Law of 23 July 2015
[831] Law of 5 November 2006
[832] Law of 23 July 2015
[833] Law of 23 July 2015
[834] Law of 5 November 2006
[835] Law of 5 November 2006
[836] Law of 23 July 2015
[837] Law of 23 July 2015

The CSSF may carry out, or have carried out by external inspectors, on-the-spot verifications to verify information received from "mixed-activity holding companies"[838] and their subsidiaries. If the "mixed-activity holding company"[839] or one of its subsidiaries is an insurance undertaking, it may also have recourse to collaboration by the supervisory authority of that insurance undertaking. If the "mixed-activity holding company"[840] or one of its subsidiaries is situated in another "Member State"[841], on-the-spot verification of information shall be carried out in accordance with the procedure laid down in paragraph 3 of this article.

(c) Where a "CRR institution"[842] authorised in Luxembourg which is the subsidiary of a parent undertaking situated in another "Member State"[843] is not included in the consolidated supervision of that parent undertaking "under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013"[844], the CSSF may ask the parent undertaking for information which may facilitate its supervision of that "CRR institution"[845].

(3) (a) Where the CSSF is the competent authority responsible for supervising on a consolidated basis a "CRR institution"[846] the parent undertaking of which is situated in another "Member State"[847], it may request the competent authority of that other "Member State"[848] to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit the same to the CSSF.

Where it receives such a request from the competent authority of another "Member State"[849] and the parent undertaking is situated in Luxembourg, the CSSF must act on that request by asking the parent undertaking for the relevant information and by transmitting it to that authority.

(b) Where, in the context of the supervision of "CRR institutions"[850] on a consolidated basis, the CSSF wishes in specific cases to verify information concerning a "CRR institution"[851], a "financial holding company"[852], "a mixed financial holding company,"[853] a financial institution, an ancillary banking services undertaking, a "mixed-activity holding company"[854] or one of its subsidiaries "or a subsidiary of a CRR institution, a financial holding company or a mixed financial holding company which does not fall"[855] within the scope of consolidated supervision and is situated in

[838] Law of 5 November 2006
[839] Law of 5 November 2006
[840] Law of 5 November 2006
[841] Law of 13 July 2007
[842] Law of 23 July 2015
[843] Law of 13 July 2007
[844] Law of 23 July 2015
[845] Law of 23 July 2015
[846] Law of 23 July 2015
[847] Law of 13 July 2007
[848] Law of 13 July 2007
[849] Law of 13 July 2007
[850] Law of 23 July 2015
[851] Law of 23 July 2015
[852] Law of 5 November 2006
[853] Law of 23 July 2015
[854] Law of 5 November 2006
[855] Law of 27 February 2018

another "Member State"[856], it may ask the competent authorities of that other "Member State"[857] to have that verification carried out. "Where the CSSF is not authorised by the competent authority of the other "Member State"[858] to carry out the verification itself, it shall, if it so wishes, request to participate in it."[859]

""Where it receives such a request for verification from the competent authority of another "Member State"[860], the CSSF shall, within the framework of its competences, act upon that request either by carrying out the request itself or by having a *réviseur d'entreprises agréé* (approved statutory auditor) or expert carrying it out, or by allowing the authority which made the request to carry it out itself."[861]

The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself."[862]

(4) (a) Each undertaking falling within the scope of the supervision of a "CRR institution"[863] on a consolidated basis, together with "mixed-activity holding companies"[864] and their subsidiaries and the subsidiaries of a "CRR institution"[865] or "financial holding company"[866] "or a mixed financial holding company"[867] that do not fall within the scope of supervision on a consolidated basis, shall be required, upon demand by the competent supervisory authorities, to provide any information which would be relevant for the purposes of supervision on a consolidated basis.

They shall be authorised to exchange such information with each other.

(b) Where a "CRR institution"[868] authorised in another "Member State"[869] which is the subsidiary of a parent undertaking situated in Luxembourg is not included by the CSSF in its consolidated supervision "under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013"[870], the parent undertaking shall be required upon demand to provide to the supervisory authority of the Member State in which that "CRR institution"[871] subsidiary is situated any information which may facilitate the supervision of that "CRR institution"[872] subsidiary.

(5) The collection or possession by the CSSF of information from or concerning an undertaking for the purposes of supervising a "CRR institution"[873] on a consolidated basis shall not in any way imply that the CSSF is required to play a supervisory role in relation to that undertaking standing alone.

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[856] Law of 13 July 2007
[857] Law of 13 July 2007
[858] Law of 13 July 2007
[859] Law of 5 November 2006
[860] Law of 13 July 2007
[861] Law of 18 December 2009
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[863] Law of 23 July 2015
[864] Law of 5 November 2006
[865] Law of 23 July 2015
[866] Law of 5 November 2006
[867] Law of 23 July 2015
[868] Law of 23 July 2015
[869] Law of 13 July 2007
[870] Law of 23 July 2015
[871] Law of 23 July 2015
[872] Law of 23 July 2015
[873] Law of 23 July 2015

However, in the event of non-compliance with the provisions of this article by an undertaking which is not subject to prudential supervision by the CSSF, the CSSF may call upon it, by registered letter, to remedy the situation found to exist within a period fixed by the CSSF. Article 63 of this Law shall apply to persons in charge of the administration or management of such an undertaking."[874]

(Law of 5 November 2006)

"Article 51-1a. Parent undertakings having their head office in a third country

(1) Where a "CRR institution"[875] incorporated under Luxembourg law, whose parent undertaking is a "CRR institution"[876]", "[877] financial holding company "or mixed financial holding company"[878] having its head office in a third country, is not subject to consolidated supervision pursuant to Article 49 "and Regulation (EU) No 575/2013"[879], the CSSF "shall assess whether"[880] this "CRR institution"[881] is subject to consolidated supervision, exercised by the competent authority of a third country, equivalent to that exercised by the CSSF based on the principles set out under Article 49 et seq "and on the requirements of Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013"[882]. The CSSF carries out this "assessment"[883], on its own initiative or at the request of the parent undertaking or of any of the regulated entities authorised by a Member State, whenever it exercises the consolidated supervision if paragraph 2 were to apply. "Regulated entity" means a regulated entity within the meaning of Article 51-9(7).

Before taking its decision, the CSSF shall consult the other relevant competent authorities concerned regarding the equivalence or not of this consolidated supervision exercised by the competent authority of the third country. It shall take into consideration the applicable "general guidance"[884] issued by the European Banking Committee. For this purpose, "the CSSF shall consult the European Banking Authority"[885] before adopting a decision.

(2) Where the CSSF, based on the "assessment"[886] described in paragraph 1 establishes the absence of equivalent consolidated supervision, the provisions concerning consolidated supervision as referred to in Article 49 et seq. "and in Regulation (EU) No 575/2013"[887] shall apply by analogy.

(3) By way of derogation from paragraph 2, the CSSF may decide, when it exercises consolidated supervision, after consultation with the other relevant competent authorities, to apply a different method to achieve the objectives of consolidated supervision of "CRR institutions"[888]. The CSSF may in particular require the establishment of a financial holding company "or a mixed financial holding company"[889] with head office in a Member State and apply the provisions relating to consolidated supervision to the consolidated situation of that financial

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[874] Law of 3 May 1994
[875] Law of 23 July 2015
[876] Law of 23 July 2015
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[882] Law of 23 July 2015
[883] Law of 23 July 2015
[884] Law of 23 July 2015
[885] Law of 21 December 2012
[886] Law of 23 July 2015
[887] Law of 23 July 2015
[888] Law of 23 July 2015
[889] Law of 23 July 2015

holding company "or to the consolidated situation of CRR institutions of that mixed financial holding company"[890].

The CSSF shall inform the other relevant competent authorities ", the European Banking Authority"[891] and the European Commission of any decision taken in accordance with this paragraph."

(Law of 21 July 2021: A566)

"Chapter 3a: Supervision of IFR investment firm groups

Section 1: General provisions

Article 51-2. Definitions

For the purposes of this chapter:

1. "IFD mixed-activity holding company" shall mean a parent undertaking other than a financial holding company, an investment holding company, a credit institution, an investment firm, or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm;
2. "group supervisor" shall mean a competent authority responsible for the supervision of compliance with the group capital test of EU parent investment firms and investment firms controlled by EU parent investment holding companies or EU parent mixed financial holding companies;
3. "IFR investment firm group" shall mean an investment firm group which does not include any CRR investment firm.

Section 2: Supervision of IFR investment firm groups on a consolidated basis and supervision of compliance with the group capital test

Article 51-3. Determination of the group supervisor

(1) Where an IFR investment firm group is headed by a parent investment firm in Luxembourg which is an IFR investment firm, the CSSF shall carry on supervision on a consolidated basis or supervision of compliance with the group capital test where it is the competent authority of that parent investment firm in Luxembourg.

(2) Where the parent undertaking of an IFR investment firm established in Luxembourg is an EU parent investment holding company or an EU parent mixed financial holding company, the CSSF shall carry on supervision on a consolidated basis or supervision of compliance with the group capital test in its capacity as competent authority of that investment firm.

However, where two or more IFR investment firms authorised in two or more Member States have the same EU parent investment holding company or the same EU parent mixed financial holding company, the CSSF shall carry on supervision on a consolidated basis or supervision of compliance with the group capital test where it is the competent authority of one of these IFR investment firms and where the investment holding company or the mixed financial holding company has been established in Luxembourg.

(3) Where the parent undertakings of two or more IFR investment firms authorised in two or more Member States comprise more than one investment holding company or mixed financial holding company with central administrations in different Member States and where there is an IFR investment firm in each of those Member States, the CSSF shall carry on supervision on a consolidated basis or supervision of compliance with the group capital test where it is the competent authority of the IFR investment firm with the largest balance sheet total.

(4) Where two or more IFR investment firms authorised in the European Union have as their parent the same EU investment holding company or EU mixed financial holding company and none of those investment firms has been authorised in the Member State in which the investment holding company or mixed financial holding company was set up, the CSSF shall carry on

[890] Law of 23 July 2015

[891] Law of 21 December 2012

supervision on a consolidated basis or supervision of compliance with the group capital test where it is the competent authority of the IFR investment firm with the largest balance sheet total.

(5) The CSSF and the competent authorities concerned of the other Member States may, by common agreement, waive the criteria referred to in Article 46(3), (4) and (5) of Directive (EU) 2019/2034 where their application would not be appropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test, taking into account the IFR investment firms concerned and the importance of their activities in the relevant Member States, and designate a different competent authority from that provided for in Article 46(3), (4) and (5) of Directive (EU) 2019/2034 to exercise supervision on a consolidated basis or supervision of compliance with the group capital test. In those cases, the CSSF and the competent authorities concerned of the other Member States shall, before adopting any such decision, give the EU parent investment holding company or EU parent mixed financial holding company or IFR investment firm with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that intended decision. The CSSF and the competent authorities concerned of other Member States shall notify the European Commission and the EBA of any such decision.

Article 51-4. Information requirements in emergency situations

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an IFR investment firm group have been authorised, the CSSF, where it is the group supervisor pursuant to Article 51-3, shall, subject to Article 44 and Article 44-1(9), alert, as soon as practicable, the EBA, the European Systemic Risk Board and any relevant competent authorities and shall communicate all information essential for the performance of their tasks.

Article 51-5. Colleges of supervisors

(1) The CSSF, where it is the group supervisor determined pursuant to Article 51-3, may, if appropriate, establish colleges of supervisors to facilitate the exercise of the tasks referred to in this article and to ensure coordination and cooperation with relevant third-country supervisory authorities in particular where this is needed for the purpose of applying letter (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update relevant information on the margin model with the supervisory authorities of the qualifying central counterparties (hereinafter "QCCPs").

(2) Colleges of supervisors established in accordance with paragraphs 1 and 3 shall provide a framework for the CSSF, in its capacity as group supervisor, the EBA and the other competent authorities to carry out the following tasks:

1. the tasks referred to in Article 47 of Directive (EU) 2019/2034;
2. the coordination of information requests where this is necessary for facilitating supervision on a consolidated basis, in accordance with Article 7 of Regulation (EU) 2019/2033;
3. the coordination of information requests, in cases where several competent authorities of IFR investment firms that are part of the same IFR investment firm group need to request either from the competent authority of a clearing member's home Member State or from the competent authority of the QCCP information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;
4. the exchange of information between all competent authorities and with the EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;
5. reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;
6. increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

(3) Where appropriate, colleges of supervisors may also be established where subsidiaries of an IFR investment firm group headed by an EU IFR investment firm, EU parent investment holding company or EU parent mixed financial holding company are located in a third country.

(4) The following authorities shall be members in the college of supervisors:

1. the competent authorities responsible for the supervision of subsidiaries of an IFR investment firm group headed by an EU IFR investment firm, EU parent investment holding company or EU parent mixed financial holding company;
2. where appropriate, third-country supervisory authorities, subject to confidentiality requirements that are equivalent in the opinion of all competent authorities to the requirements laid down in Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034.

(5) The CSSF, in its capacity as group supervisor determined pursuant to Article 51-3, shall chair the meetings of the college of supervisors and adopt decisions. It shall keep all members of the college of supervisors fully informed in advance of the organisation of those meetings, of the main issues to be discussed and of the activities to be considered. It shall also keep all the members of the college of supervisors fully informed, in a timely manner, of the decisions adopted in those meetings or the measures carried out.

The CSSF, in its capacity as group supervisor, shall take account of the relevance of the supervisory activity to be planned or coordinated by the authorities referred to in paragraph 4 when adopting decisions.

The establishment and functioning of the colleges of supervisors shall be formalised by means of written arrangements.

(6) Where the CSSF is member of a college of supervisors without being the group supervisor and where it disagrees with a decision adopted by the group supervisor determined pursuant to Article 46 of Directive (EU) 2019/2034 on the functioning of colleges of supervisors, it may refer the matter to the EBA and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Article 51-6. Cooperation requirements

(1) The CSSF, where it is the group supervisor pursuant to Article 51-3 or where it is member of a college of supervisors pursuant to Article 48(5) of Directive (EU) 2019/2034, and the other competent authorities which are members of the college shall provide each other with all relevant information as required, including the following:

1. identification of the IFR investment firm group's legal and governance structure, including its organisational structure, covering all regulated and non-regulated entities, non-regulated subsidiaries and the parent undertakings, and of the competent authorities of the regulated entities in the IFR investment firm group;
2. procedures for the collection of information from the IFR investment firms in an IFR investment firm group, and the procedures for the verification of that information;
3. any adverse developments in IFR investment firms or in other entities of an IFR investment firm group, which could seriously affect those IFR investment firms;
4. any significant sanctions and exceptional measures taken by competent authorities in accordance with Directive (EU) 2019/2034;
5. the imposition of a specific own funds requirement under Article 39 of Directive (EU) 2019/2034.

(2) The CSSF may refer to the EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, where relevant information has not been communicated pursuant to Article 49(1) of Directive (EU) 2019/2034 without undue delay or where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable period of time.

(3) Before adopting a decision that may be important for other competent authorities' supervisory tasks, the CSSF shall consult these competent authorities on the following:

1. changes in the shareholder, organisational or management structure of IFR investment firms in the IFR investment firm group, which require the approval or authorisation;

2. significant sanctions imposed on IFR investment firms or any other exceptional measures taken by the CSSF in relation to them; and
3. specific own funds requirements imposed in accordance with Article 53-33(2).

(4) The CSSF shall consult the group supervisor where significant sanctions are to be imposed or any other exceptional measures are to be taken as referred to in point (2) of paragraph 3.

(5) By way of derogation from paragraph 3, the CSSF is not obliged to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision, in which case it shall inform the other competent authorities concerned of that decision not to consult without delay.

Article 51-7. Verification of information concerning entities located in other Member States

(1) Where the CSSF needs to verify information about IFR investment firms, investment holding companies, mixed financial holding companies, financial institutions within the meaning of point (14) of Article 4(1) of Regulation (EU) 2019/2033, ancillary services undertakings, IFD mixed-activity holding companies or subsidiaries that are located in another Member State, including subsidiaries which are insurance companies, it may send a request to that effect to the relevant competent authorities of that other Member State.

Where a competent authority of another Member State needs to verify information about IFR investment firms, investment holding companies, mixed financial holding companies, financial institutions within the meaning of point (14) of Article 4(1) of Regulation (EU) 2019/2033, ancillary services undertakings, IFD mixed-activity holding companies or subsidiaries that are located in Luxembourg, including subsidiaries which are insurance companies and where it sent a request to that effect to the CSSF, the CSSF shall carry out this verification in accordance with paragraph 2. Where subsidiaries which are insurance companies are concerned by the request of the competent authority of another Member State, the Commissariat aux Assurances shall carry out the verification in accordance with paragraph 2.

(2) Where the CSSF or, if applicable, the Commissariat aux Assurances, has received such a request, it shall do any of the following:

1. it shall carry out the verification itself within the framework of its competence;
2. it shall allow the competent authorities who made that request to carry out the verification;
3. it shall request a *réviseur* (auditor) or expert to carry out the verification impartially and to report the results promptly.

For the purposes of points (1) and (3), the competent authorities that made the request shall be allowed to participate in the verification.

Section 3: Investment holding companies, mixed financial holding companies and IFD mixed-activity holding companies

Article 51-8. Provisions applicable to investment holding companies and mixed financial holding companies

(1) Investment holding companies and mixed financial holding companies shall be included in the supervision of compliance with the group capital test.

(2) Members of the management body of an investment holding company or mixed financial holding company shall be of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company.

Article 51-8a. IFD mixed-activity holding companies

(1) Where the parent undertaking of an IFR investment firm is an IFD mixed-activity holding company, the CSSF, as the competent authority responsible for the supervision of the IFR investment firm may:

1. require that the IFD mixed-activity holding company supply it with any information that may be relevant for the supervision of that IFR investment firm;

2. supervise transactions between the IFR investment firm and the IFD mixed-activity holding company and the subsidiaries of the latter, and require the IFR investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

(2) The CSSF may carry out, or have carried out by external inspectors, on-the-spot verification of the information received from IFD mixed-activity holding companies and their subsidiaries.

Article 51-8b. Assessment of third-country supervision and other supervisory techniques

(1) Where two or more IFR investment firms that are subsidiaries of the same parent undertaking, the central administration of which is in a third country, are not subject to effective supervision at group level, the CSSF shall assess whether the IFR investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in this chapter and in Part One of Regulation (EU) 2019/2033.

(2) Where the assessment referred to in paragraph 1 concludes that no such equivalent supervision applies, the CSSF may use appropriate supervisory techniques which achieve the objectives of supervision in accordance with Article 7 or 8 of Regulation (EU) 2019/2033, decided in accordance with Article 55(2) of Directive (EU) 2019/2034.

The CSSF shall decide on those supervisory techniques referred to in the first subparagraph, after consulting the other competent authorities involved, where it would be the group supervisor had the parent undertaking been established in the European Union.

Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to the EBA and to the European Commission.

(3) In cases where it would be the group supervisor had the parent undertaking been established in the European Union, the CSSF may, in particular, require the establishment of an investment holding company or mixed financial holding company in the European Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company."

(Law of 5 November 2006)

"Chapter 3b: Supplementary supervision of credit institutions and investment firms in a financial conglomerate

Section 1: Definitions

Article 51-9. Definitions

For the purposes of this chapter:

"1. "competent authorities" shall mean the national authorities of Member States which are empowered by law or regulation to supervise one or several categories of regulated entities, whether on an individual or a group-wide basis. In Luxembourg, supervision of insurance and reinsurance undertakings is performed by the Commissariat aux assurances and the supervision of credit institutions, investment firms, asset management companies and alternative investment fund managers is performed by the CSSF."[892]

"2. "relevant competent authorities" shall mean:

(a) the Member States' competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;
(b) the coordinator appointed in accordance with Article 51-17, if different from the authorities referred to in letter (a);
(c) where applicable, other competent authorities concerned pursuant to the views of the authorities referred to in letters (a) and (b). Until the entry into force of any regulatory technical standard adopted in accordance with Article 21a(1)(b) of Directive 2002/87/EC,

[892] Law of 23 July 2015

this view shall especially take into account the market share of the regulated entities of the conglomerate in other Member States, in particular if it exceeds 5%, and the importance in the conglomerate of any regulated entity established in another Member State.

Other competent authorities concerned shall mean the competent authorities responsible for the supervision of the regulated entities in a given financial conglomerate."[893]

"3. "Joint Committee" shall mean the committee referred to in Article 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;"[894]

"4. "risk concentration" shall mean all exposures to risks with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in this financial conglomerate. These exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks;"[895]

"5. "financial conglomerate" shall mean a group or sub-group in which a regulated entity is at the head of the group or sub-group or in which at least one of the subsidiaries of this group or sub-group is a regulated entity and which meets the following conditions:

(a) where a regulated entity is at the head of the group or sub-group:
  (i) this entity is a parent undertaking of an entity in the financial sector, or of an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by way of being placed under single management pursuant to a contract or clauses of their memoranda or by way of having administrative, management or supervisory bodies primarily composed of the same persons;
  (ii) at least one of the entities in the group or sub-group is within the insurance sector and at least one is within the banking or investment services sector; and
  (iii) the consolidated or aggregated activities of the entities in the group or sub-group within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 51-10(2) or (3); or

(b) where there is no regulated entity at the head of the group or sub-group:
  (i) the activities of the group or sub-group are mainly carried out in the financial sector within the meaning of Article 51-10(1);
  (ii) at least one of the entities in the group or sub-group is within the insurance sector and at least one is within the banking or investment services sector; and
  (iii) the consolidated or aggregated activities of the entities in the group or sub-group within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 51-10(2) or (3);"[896]

6. "coordinator" shall mean the competent authority responsible for coordination and exercise of supplementary supervision of a financial conglomerate, appointed from among the competent

[893] Law of 23 July 2015
[894] Law of 23 July 2015
[895] Law of 23 July 2015
[896] Law of 23 July 2015

authorities that have approved the regulated entities belonging to this financial conglomerate, including those of the Member State in which the mixed financial holding company has its head office;

"7. "regulated entity" shall mean a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;"[897]

(…)[898]

(Law of 23 July 2015)

"8. "insurance undertaking" shall mean an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;"

"9. "investment firm" shall mean an investment firm within the meaning of Article 4(1)(1) of Directive 2004/39/EC, including firms referred to in Article 4(1)(25) of Regulation (EU) No 575/2013, or an undertaking which has its head office in a third country and which would require an authorisation in accordance with Directive 2004/39/EC if its head office were located in the European Union. In Luxembourg, this shall mean any person referred to in Part I, Chapter 2, Section 2, Subsection 1 of this Law;"[899]

"10. "reinsurance undertaking" shall mean a reinsurance undertaking as defined in Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle as defined in Article 13(26) of Directive 2009/138/EC;"[900]

(…)[901]

(Law of 23 July 2015)

"11. "alternative investment fund manager" shall mean an alternative investment fund manager as defined in Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking which has its head office in a third country and which would require an authorisation in accordance with that directive if its head office were located in the European Union;"

(…)[902]

(…)[903]

(…)[904]

"15. "group" shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked by the fact of being managed on a unified basis pursuant to a contract or provisions in the memorandum or articles of association or by the fact of having administrative, management or supervisory bodies consisting for the major part of the same persons, including any sub-group of the group;"[905]

(…)[906]

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[897] Law of 23 July 2015
[898] Repealed by the Law of 13 July 2007
[899] Law of 23 July 2015
[900] Law of 23 July 2015
[901] Repealed by the Law of 13 July 2007
[902] Law of 23 July 2015
[903] Repealed by the Law of 13 July 2007
[904] Law of 23 July 2015
[905] Law of 23 July 2015
[906] Law of 23 July 2015

(…)[907]

"19. "sectoral rules" shall mean rules relating to the prudential supervision of regulated entities, deriving from national legislation, including that transposing European directives, among which, in particular Directives "2014/65/EU, 2019/2034"[908], 2013/36/EU and 2009/138/EU, and from the European legislation which is directly applicable;"[909]

"20. "financial sector" shall mean a sector composed of one or more of the following entities:

(a) the banking sector, comprising credit institutions, financial institutions and ancillary services undertakings;
(b) the insurance sector, comprising insurance undertakings as defined in Article 13(1) of Directive 2009/138/EC, reinsurance undertakings as defined in Article 13(4) of Directive 2009/138/EC, insurance holding companies as defined in Article 212(1)(f) of Directive 2009/138/EC, as well as captive insurance undertaings and captive reinsurance undertakings as defined in Article 13(2) and (5) of Directive 2009/138/EC;
(c) the investment services sector, comprising (…)[910] investment firms;"[911]

(Law of 23 July 2015)

"20a. "asset management company" shall mean a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an undertaking which has its head office in a third country and which would require an authorisation in accordance with that directive if its head office were located in the European Union. In Luxembourg, this shall mean any person as defined in Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended;"

21. "intra-group transactions" shall mean all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.

Article 51-10. Thresholds for identifying a financial conglomerate

"(1) For the application of Article 51-9(5)(b)(i), a group's activities are deemed to mainly occur in the financial sector when the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole exceeds 40%."[912]

(2) "For the application of Article 51-9(5), letters (a)(iii) or (b)(iii)"[913], a group is deemed to have a significant activity in a given financial sector when the average of the ratio of the balance sheet total of the entities of that financial sector to the balance sheet total of all financial sector entities in the group and the ratio of the solvency requirements of the entities of the same financial sector to the total solvency requirements of all the financial sector entities in the group exceeds 10%.

For the purposes of this chapter, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

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[907] Repealed by the Law of 13 July 2007
[908] Law of 21 July 2021: A566
[909] Law of 23 July 2015
[910] Law of 21 July 2021: A566
[911] Law of 23 July 2015
[912] Law of 23 July 2015
[913] Law of 23 July 2015

(Law of 23 July 2015)

"The asset management companies shall be added to the sector to which they belong within the group. If they belong to several sectors within the group, they shall be added to the smallest financial sector.

Alternative investment fund managers shall be added to the sector to which they belong in the group. If they belong to several sectors within the group, they shall be added to the smallest financial sector."

(3) "For the application of Article 51-9(5), letters (a)(iii) or (b)(iii)"[914], cross-sectoral activities shall also be presumed to be significant if the balance sheet total of the smallest financial sector entities in the group exceeds 6 billion euros. "If the group does not reach the threshold referred to in paragraph 2, the CSSF and the other relevant competent authorities may decide, by common agreement, not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Articles 51-14, 51-15 or 51-16 if they are of the opinion that the inclusion of the group in the scope of the supplementary supervision as defined in this chapter or the application of such articles are not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision."[915]

"Where the CSSF exercises the role of coordinator, it shall notify to the other competent authorities the decisions taken in accordance with this paragraph, and, except in exceptional cases, shall publish these decisions.

Where the decisions taken in accordance with Article 3(3) of Directive 2002/87/EC are notified to the CSSF, the latter shall publish, except in exceptional cases, these decisions."[916]

(Law of 23 July 2015)

"(3a) If the group reaches the threshold referred to in paragraph 2 but the smallest sector does not exceed 6 billion euros, the CSSF and the other relevant competent authorities may decide, by common agreement, not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Articles 51-14, 51-15 or 51-16 if they are of the opinion that the inclusion of the group in the scope of the supplementary supervision as defined in this chapter or the application of such articles are not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Where the CSSF exercises the role of coordinator, it shall notify to the other competent authorities the decisions taken in accordance with this paragraph, and, except in exceptional cases, shall publish these decisions.

Where the decisions taken in accordance with Article 3(3a) of Directive 2002/87/EC are notified to the CSSF, the latter shall publish, except in exceptional cases, these decisions."

(4) For the application of paragraphs 1, 2 and 3, the CSSF may, by common agreement with the other relevant competent authorities:

"(a) exclude an entity when calculating the ratios, in the cases referred to in Article 51-13(5), except in cases where the entity was transferred from a Member State to a third country and where it has been demonstrated that it changed the location for the sole purpose of avoiding regulation;"[917]

(b) take into account compliance with the thresholds envisaged in paragraphs 1 and 2 for three consecutive years so as to avoid sudden supervision regime shifts, or disregard such compliance if there are significant changes in the group's structure";"[918]

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[914] Law of 23 July 2015

[915] Law of 23 July 2015

[916] Law of 23 July 2015

[917] Law of 23 July 2015

[918] Law of 23 July 2015

(Law of 23 July 2015)

"(c) exclude one or several participations in the smallest sector if these participations are decisive for the identification of a financial conglomerate and if, together, they are of negligible interest with respect to the objectives of supplementary supervision."

Where a financial conglomerate has been identified according to paragraphs 1, 2 and 3, the decisions referred to in the first subparagraph shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

(5) For the application of paragraphs 1 and 2, the CSSF may, in exceptional cases and by common agreement with the other relevant competent authorities, "replace the criterion based on balance sheet total with one or several of the following parameters or add one or several of these parameters"[919], if it is of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under this chapter: income structure, off-balance-sheet activities", total assets under management"[920].

(6) For the application of paragraphs 1, 2 and 3, if a financial conglomerate already subject to supplementary supervision no longer meets one or more of the thresholds referred to in those paragraphs, these thresholds are replaced for the following three years in order to avoid a sudden supervision regime shift, by the following thresholds: 40% shall be replaced by 35%, 10% shall be replaced by 8%, 6 billion euros shall be replaced by 5 billion euros.

Notwithstanding the previous subparagraph, the coordinator may, with the agreement of the other relevant competent authorities, decide that these lower thresholds shall not apply or shall cease to apply during the period of three years, taking into account the objectives of the group's supplementary supervision.

(7) The calculations referred to in this article regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group, according to their annual accounts. For the purposes of this calculation, undertakings in which a participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. Where consolidated accounts are available for a given group or part of a group, the calculations shall be based on these accounts.

The solvency requirements referred to in paragraphs 2 and 3 shall be calculated in accordance with the provisions of the relevant sectoral rules.

(Law of 23 July 2015)

"(8) The CSSF shall, in cooperation with the other competent authorities, reassess the derogations to the application of supplementary supervision on an annual basis and re-examine the quantitative indicators laid down in this article as well as the risk-based assessments of the financial groups."

Article 51-11. Identifying a financial conglomerate

"(1) The CSSF shall, on the basis of Articles 51-9, 51-10 and 51-12, identify any group that falls under the scope of this chapter.

For this purpose:

- the CSSF shall cooperate closely with the other competent authorities which have authorised regulated entities in the group;
- if the CSSF is of the opinion that a credit institution, an investment firm, an asset management company or an alternative investment fund manager incorporated under Luxembourg law is a member of a group which may be considered as a financial conglomerate, but has not yet been identified, it shall communicate its view to the other competent authorities concerned and to the Joint Committee."[921]

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[919] Law of 23 July 2015

[920] Law of 23 July 2015

[921] Law of 23 July 2015

(2) Where a group has been identified as a financial conglomerate and where the CSSF is the coordinator, in accordance with Article 51-17, it shall inform the parent undertaking at the head of the group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in the group. "It shall also inform the competent authorities which have authorised the regulated entities in the group, the competent authorities of the Member State in which the mixed financial holding company has its head office and the Joint Committee."[922]

Section 2: Scope

Article 51-12. Scope of supplementary supervision of credit institutions or investment firms

(1) Without prejudice to the provisions on supervision contained in the sectoral rules, credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate are subject to a supplementary supervision, to the extent and in the manner prescribed in this chapter. The supplementary supervision of the CSSF does not undermine the supervision on consolidated basis, nor the supervision on individual basis.

(2) In relation to credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which it assumes the role of coordinator pursuant to Article 51-17, the CSSF performs a supplementary supervision at the level of the financial conglomerate, in accordance with Articles 51-13 to 51-24.

All the financial sector entities within a financial conglomerate, whether regulated or not, whether established in a Member State or in a third country, fall under the scope of the supplementary supervision of the CSSF.

The supplementary supervision carried out by the CSSF encompasses the financial position of the financial conglomerate in general and the capital adequacy in particular, risk concentration and intra-group transactions, as well as internal control mechanisms and risk management processes set up at the level of the financial conglomerate.

Where the CSSF exercises the role of coordinator for a financial conglomerate which is itself a subgroup of another financial conglomerate subject to supplementary supervision, the CSSF may exempt the subgroup, as a whole or in part, from the application of Articles 51-13 to 51-24.

(3) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which a competent authority other than the CSSF acts as coordinator, are subject to a supplementary supervision to the extent and in the manner prescribed in Articles 51-13 to 51-24.

"(4) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate not subject to supplementary supervision in accordance with paragraphs 2 and 3, the parent undertaking of which is a regulated entity or a mixed financial holding company whose head office is located in a third country shall be subject to supplementary supervision at the level of the financial conglomerate, to the extent and in the manner prescribed in Article 51-25."[923]

(5) Where, in cases other than those referred to in paragraphs 2, 3 and 4, an undertaking holds participations or capital ties in one or more regulated entities or exercises significant influence over such entities without holding a participation or capital ties, and where one of these regulated entities is a credit institution or investment firm incorporated under Luxembourg law, the CSSF, where it is the relevant competent authority, shall by common agreement with the other relevant competent authorities determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if it constituted a financial

[922] Law of 23 July 2015
[923] Law of 23 July 2015

conglomerate. The competent authority in charge of the supplementary supervision at the level of the group is appointed through analogous application of the provisions of Article 51-17.

"In order to apply such supplementary supervision, the requirements laid down in Article 51-9(5), letters (a)(ii) or (b)(ii), and Article 51-9(5), letters (a)(iii) or (b)(iii) shall be met. The CSSF shall take a decision taking into account the objectives of supplementary supervision as defined in this chapter."[924]

(6) Without prejudice to Article 51-20, the exercise of supplementary supervision at the level of the financial conglomerate shall in no way imply that the CSSF is required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate, on a stand-alone basis.

Section 3: Financial position

Article 51-13. Capital adequacy

(1) Without prejudice to the sectoral rules, the CSSF exercises a supplementary supervision of credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which it assumes the role of coordinator, with respect to the capital adequacy in accordance with this article, Article 51-16 and Section 4 of this chapter.

The requirement laid down in paragraph 2 shall be subject to supervisory overview by the CSSF in accordance with Section 4 of this chapter.

(2) Credit institutions and investment firms concerned shall ensure that own funds are available at the level of the financial conglomerate, which are always at least equal to the capital adequacy requirements.

(3) The entity at the head of a financial conglomerate for which the CSSF exercises the role of coordinator shall calculate at least annually own funds and the capital adequacy requirements according to the terms, including periodicity, laid down by the CSSF in accordance with Article 56. The CSSF shall, after consultation with the other relevant competent authorities and with the financial conglomerate, decide which method shall be applied by the financial conglomerate.

(4) The entity at the head of a financial conglomerate for which the CSSF exercises the role of coordinator shall submit to the CSSF the results of the calculation and the relevant data on which the calculation is based according to the terms, including periodicity, laid down by the CSSF in accordance with Article 56. The CSSF may, after consultation with the other relevant competent authorities and with the financial conglomerate, authorise another regulated entity in the financial conglomerate to submit the information required.

(Law of 23 July 2015)

"(4a) For the purposes of calculating the capital adequacy requirements referred to in paragraph 2, the following entities shall be included:

- a credit institution, a financial institution or an ancillary services undertaking;
- an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- an investment firm;
- a mixed financial holding company."

(5) The CSSF, in its capacity as coordinator, may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:

(a) if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse authorisation where the effective exercise of their supervisory functions is prevented;

[924] Law of 23 July 2015

(b) if, in the opinion of the CSSF, the entity is of negligible interest with respect to the objectives of supplementary supervision;
(c) if, in the opinion of the CSSF, the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.

However, if several entities are to be excluded pursuant to (b) of the first subparagraph, they must nevertheless be included when collectively they are of non-negligible interest.

In the case mentioned in (c) of the first subparagraph, the CSSF shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

When the CSSF does not include a regulated entity in the scope under one of the cases provided for in (b) and (c) of the first subparagraph, the competent authorities of the Member State in which that regulated entity is situated may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the regulated entity.

(6) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which a competent authority other than the CSSF exercises the role of coordinator shall provide the results of their calculations of own funds and capital adequacy requirements to the entity at the head of the financial conglomerate or, where applicable, to another regulated entity of the financial conglomerate assigned by the coordinator to provide it with the results of the calculations, in order to allow the coordinator to assess whether, at the level of the financial conglomerate, own funds are always at least equal to the capital adequacy requirements.

Article 51-14. Risk concentration

(1) Without prejudice to the sectoral rules, the CSSF exercises supplementary supervision of credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which it assumes the role of coordinator, with respect to the risk concentration in accordance with this article, Article 51-16 and Section 4 of this chapter.

Significant risk concentration shall be subject to supervisory overview by the CSSF. The CSSF shall in particular monitor the possible risk of contagion in the financial conglomerate, the existence of conflicts of interests, the circumvention of sectoral rules and the level or volume of risks.

(2) The entity at the head of a financial conglomerate for which the CSSF exercises the role of coordinator shall notify the CSSF on a regular basis, and at least annually, of any significant risk concentration at the level of the financial conglomerate in accordance with the provisions of paragraph 3. The CSSF may, after consultation with the other relevant competent authorities and with the financial conglomerate, authorise another regulated entity in the financial conglomerate to submit the information required.

"(3) After consultation with the other relevant competent authorities and with the financial conglomerate, the CSSF, in its capacity as coordinator, shall identify, in accordance with Article 56, the type of risks that shall be notified and the procedure for notification, including the periodicity. To this end, the CSSF shall take into account the specific group and risk management structure of the financial conglomerate. After consultation with the other relevant competent authorities and with the financial conglomerate itself, the CSSF shall define the thresholds above which the risk concentration shall be notified due to its significance. These notification thresholds shall be defined based on regulatory own funds and/or technical provisions."[925]

"(4) The CSSF may set quantitative limits with regard to any risk concentration at the level of the financial conglomerate or take other supervisory measures which would allow achieving the objectives of supplementary supervision, as regards any risk concentration at the level of the financial conglomerate."[926] In order to avoid a circumvention of sectoral rules, the CSSF may

[925] Law of 23 July 2015
[926] Law of 23 July 2015

require the application of sectoral rules regarding risk concentration at the level of the financial conglomerate.

(5) Where the financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding risk concentration applicable to the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

(6) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which a competent authority other than the CSSF exercises the role of coordinator shall provide information relating to any significant risk concentration to the entity at the head of the financial conglomerate or, where applicable, to another regulated entity of the financial conglomerate assigned by the coordinator to provide the necessary information in order to allow the coordinator to fulfil its supervisory control mission regarding risk concentration at the level of the financial conglomerate.

Article 51-15. Intra-group transactions

(1) Without prejudice to the sectoral rules, the CSSF exercises a supplementary supervision of credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which it assumes the role of coordinator, with respect to intra-group transactions of regulated entities in a financial conglomerate, in accordance with this article, Article 51-16 and Section 4 of this chapter.

The CSSF shall exercise a supervisory overview of intra-group transactions in accordance with Section 4 of this chapter. It shall in particular monitor the possible risk of contagion in the financial conglomerate, the existence of conflicts of interests, the circumvention of sectoral rules, and the level and volume of intra-group transactions.

(2) The entity at the head of the financial conglomerate for which the CSSF assumes the role of coordinator shall report to the CSSF on a regular basis, and at least annually, all significant intra-group transactions of regulated entities within a financial conglomerate in accordance with the provisions of paragraph 3. The CSSF may, after consultation with the other relevant competent authorities and with the financial conglomerate, authorise another regulated entity in the financial conglomerate to report the information concerned to the CSSF.

"(3) After consultation with the other relevant competent authorities and with the financial conglomerate, the CSSF, in its capacity as coordinator, shall identify, in accordance with Article 56, the type of transactions that shall be notified and the procedure for notification, including the periodicity. To this end, the CSSF shall take into account the specific group and risk management structure of the financial conglomerate. After consultation with the other relevant competent authorities and with the financial conglomerate itself, the CSSF shall define the thresholds above which the intra-group transactions shall be notified due to their significance. These notification thresholds shall be defined based on regulatory own funds and/or technical provisions. In the absence of a definition of the notification thresholds, an intra-group transaction shall be deemed significant if the amount exceeds at least 5% of the total amount of capital adequacy requirements at the level of the financial conglomerate."[927]

"(4) The CSSF may set quantitative limits and qualitative requirements with regard to intra-group transactions of regulated entities within a financial conglomerate or take other supervisory measures which would allow achieving the objectives of supplementary supervision, as regards these intra-group transactions."[928] In order to avoid a circumvention of sectoral rules, the CSSF may require the application of sectoral rules regarding intra-group transactions of regulated entities within a financial conglomerate.

(5) Where the financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions applicable to the most important financial sector in

[927] Law of 23 July 2015

[928] Law of 23 July 2015

the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

(6) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which a competent authority other than the CSSF exercises the role of coordinator shall provide information relating to significant intra-group transactions to the entity heading the financial conglomerate or, where applicable, to another regulated entity of the financial conglomerate assigned by the coordinator to provide the necessary information, in order to allow the coordinator to fulfill its supervisory control mission regarding intra-group transactions of regulated entities within a financial conglomerate.

Article 51-16. Internal control mechanisms and risk management processes

(1) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which the CSSF exercises the role of coordinator shall have in place, at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management processes shall include:

(a) sound governance and management with the approval and periodical review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;

(b) adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with Article 51-13;

(c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate ";"[929]

(Law of 21 December 2012)

"(d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans. Such arrangements shall be updated regularly."

(3) The internal control mechanisms shall include:

(a) adequate identification, measurement and management systems of material risks incurred and processes aiming to ensure capital adequacy with respect to the risks incurred;

(b) sound accounting and reporting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

"(4) The entities included in the scope of supplementary supervision pursuant to Article 51-12 shall have in place internal control mechanisms ensuring the production of data and information necessary for the purposes of the supplementary supervision.

The requirement laid down in subparagraph 1 shall also apply to the mixed financial holding company having its head office in Luxembourg and to entities incorporated under Luxembourg law of the banking and investment services sector belonging to a financial conglomerate for which a competent authority other than the CSSF exercises the role of coordinator.

"The entities referred to in subparagraph 1 shall regularly provide the CSSF with details on the legal structure, governance system and organisational structure at the level of the financial conglomerate, including the regulated entities, non-regulated subsidiaries and significant branches."[930]

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[929] Law of 21 December 2012

[930] Law of 27 February 2018

The entities referred to in subparagraph 1 shall publish, either in extenso or by reference to equivalent information, a description of their legal structure, their governance system and their organisational structure on an annual basis."[931]

(5) Credit institutions and investment firms incorporated under Luxembourg law belonging to a financial conglomerate for which a competent authority other than the CSSF exercises the role of coordinator shall have in place adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures, for the financial conglomerate.

(6) The CSSF, in its capacity as coordinator, exercises a prudential supervision on the requirements of paragraph 1, 2, 3 and "of the first, third and fourth subparagraph of paragraph 4"[932].

Section 4: Measures to facilitate supplementary supervision

(Law of 23 July 2015)
"Article 51-16a. Stress-testing

The CSSF may regularly submit the financial conglomerates of which it acts as coordinator to appropriate stress testing.

Where another competent authority acts as coordinator of a financial conglomerate to which credit institutions, investment firms, asset management companies or alternative investment fund managers incorporated under Luxembourg law belong, the CSSF shall fully cooperate with it."

Article 51-17. Competent authority responsible for exercising supplementary supervision (the coordinator)

(1) In order to ensure proper supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator shall be appointed for each financial conglomerate. The CSSF exercises the role of coordinator in the cases referred to in this article.

(2) The CSSF shall exercise the role of coordinator when the financial conglomerate is headed by a credit institution or investment firm authorised under this Law.

(3) The CSSF shall exercise the role of coordinator, within the limits set out in this article, where the financial conglomerate is headed by a mixed financial holding company which is the parent undertaking of a credit institution or investment firm authorised under this Law.

Nevertheless, the CSSF shall not exercise the role of coordinator when the mixed financial holding company has its head office in a Member State other than Luxembourg and is also parent undertaking of a regulated entity authorised in this same Member State. In this case, the competent authority of the relevant Member State shall exercise the role of coordinator.

"(4) Where the financial conglomerate is headed by a mixed financial holding company having its head office in Luxembourg and which is parent undertaking of at least two regulated entities having their head office in different Member States, the CSSF shall exercise the role of coordinator if at least one of these regulated entities is a credit institution or an investment firm authorised under this Law.

Where the mixed financial holding company is parent undertaking of: (i) an insurance or reinsurance undertaking authorised pursuant to the Law of 6 December 1991 on the insurance sector, as amended and (ii) a credit institution or an investment firm authorised under this Law, an asset management company authorised pursuant to the Law of 17 December 2010 relating to undertakings for collective investment, as amended or an alternative investment fund manager authorised pursuant to the Law of 12 July 2013 on alternative investment fund managers, the CSSF shall exercise the role of coordinator if the banking and investment services sector represent the most important sector within the financial conglomerate."[933]

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[931] Law of 23 July 2015
[932] Law of 23 July 2015
[933] Law of 23 July 2015

(5) Where the financial conglomerate is headed by more than one mixed financial holding company with their head office in different Member States including Luxembourg and there is at least one regulated entity in each of these Member States, including in Luxembourg, the CSSF shall exercise the role of coordinator if the regulated entity located in Luxembourg is a credit institution or an investment firm authorised under this Law and if, where regulated entities located in the Member States exercise their activities in the same financial sector, the credit institution or investment firm authorised under this Law shows the largest balance sheet total, or, where regulated entities situated in the Member States exercise their activities in more than one financial sector, the credit institution or investment firm authorised under this Law shows the largest balance sheet total in the most important financial sector.

"(6) Where the financial conglomerate is headed by a mixed financial holding company having its head office in a Member State other than Luxembourg and which is parent undertaking of at least two regulated entities having their head office in different Member States, except in the Member State where the mixed financial holding company has its head office, the CSSF shall exercise the role of coordinator if at least one of these regulated entities is a credit institution or an investment firm authorised under this Law and if this credit institution or investment firm shows the largest balance sheet total in the most important financial sector."[934]

(7) Where the financial conglomerate is a group which is not headed by a parent undertaking, or in any other case, the CSSF shall exercise the role of coordinator if at least one of the regulated entities within the group is a credit institution or an investment firm authorised under this Law and if this credit institution or investment firm shows the largest balance sheet total in the most important financial sector.

(8) The CSSF may by common agreement with other relevant competent authorities waive the criteria referred to in paragraphs 2 to 7, if their application would be inappropriate, taking into account the structure of the financial conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In these cases, before taking the decision, the CSSF shall request the opinion of the financial conglomerate.

Article 51-18. Tasks of the coordinator

(1) Where the CSSF exercises the role of coordinator with regard to supplementary supervision, the following tasks shall be carried out:

(a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;

(b) supervisory overview and assessment of the financial situation of a financial conglomerate;

(c) assessment of compliance with the rules on capital adequacy, risk concentration and intra-group transactions;

(d) assessment of the financial conglomerate's structure, organisation and internal control system;

(e) planning and coordination of supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities involved;

(f) other tasks, measures and decisions assigned to the coordinator by this chapter or deriving from the regulatory provisions of its implementation.

(2) In order to facilitate and establish supplementary supervision on a broad legal basis, the CSSF and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and specify the procedures for the decision-making process as set out in Articles 51-10 and 51-11, Article 51-12(4), Article

[934] Law of 23 July 2015

51-13, Article 51-19(2) and Articles 51-23 and 51-25, and for cooperation with other competent authorities.

(3) Where the CSSF exercises the role of coordinator and needs information which has already been given to another competent authority in accordance with the sectoral rules, it should contact this authority, whenever possible, in order to prevent duplication of reporting to the various authorities involved in prudential supervision.

Where the competent authority of another Member State exercises the role of coordinator and where this authority needs information which has already been given to the CSSF in accordance with the sectoral rules, the CSSF provides the coordinator, whenever possible, with the information requested if this request aims at preventing duplication of reporting to the various authorities involved in prudential supervision.

(4) Without prejudice to the possibility of delegating specific supervisory competences and responsibilities, "the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks"[935] and responsibilities of the CSSF as provided for by the sectoral rules.

(Law of 23 July 2015)

"(5) The cooperation provided for in this section and the exercise of the tasks listed in paragraphs 1, 2 and 3 of this article and in Article 51-19 and, if necessary, the appropriate coordination and cooperation with the third-country supervisory authorities concerned, in compliance with the confidentiality requirements and EU law, are ensured through colleges established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC. The coordination arrangements referred to in paragraph 2 shall be separately included in the written coordination arrangements put in place in accordance with Article 115 of Directive 2013/36/EU or Article 248 of Directive 2009/138/EC. Where the CSSF is the coordinator and where it chairs a college established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC, it shall decide which other competent authorities participate in a meeting or in an activity of the college."

(Law of 20 May 2021)

"(6) For the purpose of applying this Law, Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated basis, the CSSF, when acting as coordinator, shall cooperate and have written coordination and cooperation arrangements in place with the consolidating supervisor determined in accordance with Article 111 of Directive 2013/36/EU in order to facilitate and establish effective cooperation."

Article 51-19. Cooperation and exchange of information between competent authorities

(1) The CSSF shall closely cooperate with the other competent authorities responsible for the supervision of regulated entities within a financial conglomerate, and where it does not exercise this role, with the coordinator. Without prejudice to the responsibilities as defined under this Law, the CSSF and these authorities provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and supplementary supervision. In this regard, the CSSF shall communicate to the other competent authorities and, where it does not exercise this role, to the coordinator, upon request, all relevant information and shall communicate on its own initiative all essential information.

This cooperation shall at least provide for the gathering and the exchange of information with regard to the following items:

"(a) identification of the group's legal structure, governance system and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, holders of qualifying holdings at the

[935] Law of 23 July 2015

level of the ultimate parent undertaking, as well as the competent authorities of the regulated entities in that group;"[936]

(b) the financial conglomerate's strategic policies;

(c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;

(d) the financial conglomerate's major shareholders and management;

(e) the organisation, risk management and internal control systems at financial conglomerate level;

(f) procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

(g) adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;

(h) major penalties and exceptional measures taken by competent authorities in accordance with sectoral rules or this chapter.

The CSSF may also exchange, in line with the provisions laid down in this Law, such information on regulated entities within a financial conglomerate as may be needed for the performance of their respective tasks, with the central banks of the Member States, the European System of Central Banks ","[937] the European Central Bank", the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 and the Comité du risque systémique (Systemic Risk Committee)."[938]

(2) Without prejudice to its responsibilities under sectoral rules as defined under this Law, the CSSF shall, prior to its decision, consult with the other relevant competent authorities with regard to the following items, where the decisions are of importance for other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of these competent authorities;

(b) major penalties or exceptional measures taken by the CSSF.

The CSSF may decide not to consult with the other relevant competent authorities in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the CSSF shall, without delay, inform the other competent authorities.

(3) Where the CSSF exercises the role of coordinator, it may invite the competent authorities of the Member State in which a parent undertaking has its head office to ask the parent undertaking for any information which would be relevant for the exercise of its coordination tasks as laid down in Article 51-18, and to transmit that information to the CSSF.

Where the information referred to in Article 51-21(2) has already been provided to a competent authority in accordance with sectoral rules, the CSSF, when exercising the role of coordinator, may apply to this authority to obtain the information.

(4) For the purposes of supplementary supervision, the CSSF may exchange information as referred to under paragraphs 1, 2 and 3 with the "Commissariat aux assurances" as well as other relevant competent authorities and the authorities as defined in the last subparagraph of paragraph 1. The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the CSSF is required to play a supervisory role in relation to this entity on a stand-alone basis.

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[936] Law of 23 July 2015

[937] Law of 21 December 2012

[938] Law of 23 July 2015

Information received in the framework of supplementary supervision, and in particular any exchange of information between the CSSF and other relevant competent authorities or the authorities as referred to under the last subparagraph of paragraph 1 in accordance with this chapter are subject to the provisions of Article 44.

(Law of 23 July 2015)

"Article 51-19a. Cooperation and exchange of information with the Joint Committee

(1) The CSSF shall cooperate with the Joint Committee for the purposes of this chapter, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

(2) The CSSF shall, for the purposes of Directive 2002/87/EC, provide the Joint Committee, without delay, with any information necessary to carry out its tasks, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

(3) Where the CSSF acts as coordinator, it shall provide the Joint Committee with the information referred to in the third subparagraph of Article 51-16(4) and in subparagraph 2(a) of Article 51-19(1)."

Article 51-20. Management body of mixed financial holding companies

Persons who effectively direct the business of a mixed financial holding company at the head of a financial conglomerate for which the CSSF exercises the role of coordinator shall prove to be of good professional repute. Such repute shall be assessed on the basis of police records and of any evidence tending to show that the persons concerned are of good repute and offering guarantee of irreproachable conduct on part of those persons. In addition, those persons shall possess an adequate professional experience by having previously exercised similar activities at a high level of responsibility and autonomy.

Any change in the persons as referred to above shall be authorised in advance by the CSSF. To this effect, the CSSF may request all such information as may be necessary regarding the concerned persons. The decision of the CSSF may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case may be filed within one month, or else shall be time-barred.

Article 51-21. Access to information

The entities in a financial conglomerate, whether or not regulated, shall provide any information which would be relevant for the purposes of supplementary supervision, upon request, to the CSSF.

Article 51-22. Verification

Where, in the context of supplementary supervision, the CSSF, in its capacity of coordinator, wishes, in specific cases, to verify information concerning an entity in a financial conglomerate, whether or not regulated, which is situated in another Member State, the CSSF shall ask the competent authorities of that other Member State to have the verification carried out.

"Where the CSSF receives such a request from another competent authority in the capacity of coordinator, it shall, within the framework of its competences, act upon it either by carrying out the verification itself, by allowing a *réviseur d'entreprises agréé* (approved statutory auditor) or expert to carry it out, or by allowing the authority which made the request to carry it out itself."[939]

The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.

Article 51-23. Enforcement measures

Where the CSSF, in exercising its role of coordinator, observes that the financial conglomerate does no longer comply with the requirements referred to in Articles 51-13 to 51-16 or that these requirements are met but solvency of the financial conglomerate may nevertheless be jeopardized, or that the intra-group transactions or the risk concentrations are a threat to the financial position of the regulated entities within a financial conglomerate, it shall enjoin the mixed financial holding company at the head

[939] Law of 18 December 2009

of the financial conglomerate and the credit institutions and investment firms incorporated under Luxembourg law belonging to the financial conglomerate, by registered letter, to remedy within such period as it may prescribe the situation found to exist. Article 63 is applicable to the persons in charge of the administration or management of the mixed financial holding company. Where a credit institution or investment firm incorporated under Luxembourg law is at the head of a financial conglomerate, the CSSF shall enjoin it, by registered letter, to remedy within such period as it may prescribe the situation found to exist. The CSSF shall also inform the other relevant competent authorities of its findings.

Where the CSSF is informed of such findings by another competent authority exercising the role of coordinator, it shall enjoin, if need be, the credit institutions and investment firms incorporated under Luxembourg law belonging to the financial conglomerate, by registered letter, to remedy within such period as it may prescribe the situation found to exist.

The CSSF and other relevant competent authorities shall coordinate, where necessary, the supervisory measures to be taken.

Article 51-24. Additional powers of the competent authorities

Where the CSSF observes that a credit institution or investment firm, which has been authorised by it, is using the membership to a financial conglomerate in order to avoid, totally or partially, application of the sectoral rules, the CSSF shall enjoin that credit institution or investment firm, by registered letter, to remedy within such period as it may prescribe the situation found to exist.

Likewise, where non-compliance with the provisions set out in this chapter and with the measures for its implementation by a mixed financial holding company occurs, the CSSF shall enjoin it, by registered letter, to remedy within such period as it may prescribe the situation found to exist. Article 63 is applicable to the persons in charge of the administration or management of the mixed financial holding company.

The CSSF shall closely cooperate with other relevant competent authorities to ensure that the measures aiming at ending the observed breaches or the causes of such breaches produce the desired results.

Section 5: Third countries

Article 51-25. Parent undertakings having their head office in a third country

(1) Without prejudice to the sectoral rules, in the case referred to in Article 51-12(4), the CSSF shall verify whether the credit institutions and investment firms incorporated under Luxembourg law are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this chapter on the supplementary supervision referred to in Article 51-12(2). The CSSF carries out this verification, on its own initiative or at the request of the parent undertaking or of any of the regulated entities authorised by a Member State and belonging to the group, whenever it exercises the role of coordinator if Article 51-17 were to apply.

"The CSSF shall consult the other relevant competent authorities regarding the equivalence or not of this supplementary supervision and shall make every effort to comply with any applicable guidelines prepared through the "Joint Committee"[940].

Where a competent authority disagrees with the decision taken by the CSSF, Article 19 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively shall apply."[941]

(2) Where the CSSF, based on the verification described in paragraph 1, establishes the absence of equivalent supplementary supervision, the provisions concerning supplementary supervision as referred to in Article 51-12(2) shall apply by analogy.

(3) By way of derogation from paragraph 2, the CSSF may decide, when it exercises the role of coordinator, after consultation with the other relevant competent authorities, to apply a different method to achieve the objectives of supplementary supervision. The CSSF may in

[940] Law of 23 July 2015

[941] Law of 21 December 2012

particular require the establishment of a mixed financial holding company with head office in a Member State and apply the provisions of this chapter to the regulated entities in the financial conglomerate headed by that mixed financial holding company.

The CSSF informs the other relevant competent authorities and the European Commission of any decision taken in accordance with this paragraph.

Article 51-26. Cooperation with third countries' competent authorities

The CSSF may conclude cooperation agreements with competent authorities of third countries specifying the means of exercising supplementary supervision."

Chapter 4: Means used to exercise prudential supervision

(Law of 20 May 2021)

"Section 1: Official lists and protection of titles"

Article 52. Official lists and protection of titles

"(1) The CSSF shall keep official lists of the credit institutions ", APAs with a derogation, ARMs with a derogation"[942] and other categories of professionals of the financial sector authorised to carry on business through an institution in Luxembourg, which are subject to its supervision. The CSSF shall, on a regular basis "and without delay in case of withdrawal"[943], update the official lists. The official lists shall contain information on the services or activities for which each investment firm is authorised. (…)[944]

The different official lists shall be published on the CSSF's website."[945]

(Law of 21 December 2012)

"The CSSF shall notify the authorisations as well as the withdrawals of authorisation of credit institutions to the European Banking Authority (…)[946]. "It shall indicate in this notification that the credit institutions concerned are members of the Fonds de Garantie des Dépôts Luxembourg laid down in Article 154 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms."[947] The CSSF shall notify the authorisations and withdrawals of authorisation of investment firms to the European Securities and Markets Authority. The withdrawals of authorisation shall be reasoned and notified to the persons concerned." (…)[948] "The CSSF shall notify ESMA on an annual basis of the list of branches of third-country firms active in Luxembourg in accordance with Article 32-1(2)."[949]

(…)[950]

(Law of 20 May 2021)

"(1a) The CSSF shall notify the European Banking Authority of the following:

1. all the authorisations for branches granted to credit institutions having their head office in a third country and any subsequent changes to such authorisations;
2. total assets and liabilities of the authorised branches of credit institutions having their head office in a third country, as periodically reported;
3. the name of the third-country group to which an authorised branch belongs.

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[942] Law of 21 July 2021: A566
[943] Law of 15 July 2024
[944] Law of 21 July 2021: A560
[945] Law of 30 May 2018
[946] Law of 23 July 2015
[947] Law of 18 December 2015
[948] Law of 20 May 2021
[949] Law of 21 July 2021: A566
[950] Law of 20 May 2021

The CSSF shall inform the European Banking Authority and the European Commission of the number and type of cases in which there has been a refusal pursuant to Article 33(4) with regard to credit institutions."

(Law of 21 July 2021: A566)

"(1b) Upon request, the CSSF shall communicate the following information to ESMA:

1. all the authorisations for branches authorised in accordance with the third subparagraph of Article 32-1(2) and any subsequent changes to such authorisations;
2. the scale and scope of the services and activities carried out by an authorised branch in Luxembourg;
3. the turnover and the total assets corresponding to the services and activities referred to in point (2);
4. the name of the third-country group to which an authorised branch belongs."

(2) Only persons entered in an official list may use any title or name purporting to indicate that they are authorised to carry on any of the activities reserved to persons entered in such a list. This prohibition shall not apply where there is no possibility of anyone being misled or in cases involving a branch or service provider from abroad which is duly authorised to carry on business in Luxembourg and uses a title or name which it is authorised to use in its home State. However, where there is any possibility of anyone being misled, such persons must arrange for the title or name used by them to be followed by sufficiently precise particulars.

(3) No person may make use for commercial purposes of his entry in an official list or of the fact of his being subject to supervision by the CSSF.

(Law of 23 July 2015)

"(4) Where the CSSF is responsible for the supervision on a consolidated basis pursuant to Chapter 3 of Part III of this Law and Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013, it shall establish lists of the financial holding companies or mixed financial holding companies.

The CSSF shall communicate those lists to the competent authorities of the other Member States, to the European Banking Authority and to the European Commission."

(Law of 20 May 2021)

"Section 2: Powers of the CSSF"

"Article 53. Powers of the CSSF

"(1)"[951] For the purposes of this Law", of Regulation (EU) No 575/2013", of Regulation (EU) No 600/2014"[952] ", of Regulation (EU) 2019/2033"[953] and of their implementing measures"[954], the CSSF shall be given all supervisory and investigatory powers for the exercise of its functions "including powers to impose remedies"[955].

The powers of the CSSF include the right to:

"1. have access to any document or data in any form whatsoever, which the CSSF considers could be relevant for the performance of its supervisory mission, and to receive or take a copy of it;"[956]

2. "require or demand the provision of information"[957] from any person and, where necessary, to summon any such person in order to obtain information;

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[951] Law of 7 November 2007
[952] Law of 30 May 2018
[953] Law of 21 July 2021: A566
[954] Law of 23 July 2015
[955] Law of 30 May 2018
[956] Law of 30 May 2018
[957] Law of 30 May 2018

3. carry on on-site inspections or investigations with respect to persons subject to its prudential supervision;

4. require existing recordings of telephone conversations "or electronic communications or other data traffic records"[958];

5. require the cessation of any practice that is contrary to the provisions "of Regulation (EU) No 575/2013,"[959] "of Regulation (EU) No 600/2014,"[960] "of Regulation (EU) 2019/2033,"[961] of this Law and "their"[962] implementing measures", and to take measures to prevent repetition of that practice"[963];

6. request the freezing and/or sequestration of assets with the President of the district court of Luxembourg deciding upon request;

7. impose temporary prohibition of professional activity with respect to persons subject to its prudential supervision, as well as members "of the management body"[964], employees and tied agents linked to these persons;

8. "require *réviseurs d'entreprises agréés* (approved statutory auditors) of the persons subject to its prudential supervision to provide information;"[965]

9. adopt any type of measure necessary to ensure that the persons subject to its prudential supervision continue to comply with the requirements "of Regulation (EU) No 575/2013,"[966] "of Regulation (EU) No 600/2014,"[967] "of Regulation (EU) 2019/2033,"[968] of this Law and "their"[969] implementing measures;

10. refer information to the State Prosecutor for criminal prosecution;

11. "require *réviseurs d'entreprises agréés* (approved statutory auditors) or experts to carry out on-the-spot verifications or investigations of persons subject to its prudential supervision."[970] "These verifications and investigations are carried out at the expense of the person concerned subject to the prudential supervision of the CSSF;"[971]

(Law of 30 May 2018)

"12. issue public notices;

13. suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;

14. suspend the marketing or sale of financial instruments or structured deposits where the credit institution or investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 37-1(2);

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[958] Law of 30 May 2018
[959] Law of 23 July 2015
[960] Law of 30 May 2018
[961] Law of 21 July 2021: A566
[962] Law of 23 July 2015
[963] Law of 30 May 2018
[964] Law of 23 July 2015
[965] Law of 18 December 2009
[966] Law of 23 July 2015
[967] Law of 30 May 2018
[968] Law of 21 July 2021: A566
[969] Law of 23 July 2015
[970] Law of 18 December 2009
[971] Law of 23 July 2015

15. require the removal of a natural person from the management board of a credit institution or investment firm;

16. subject to judicial authorisation provided for in paragraph 3, to require data traffic records held by providers of electronic communication services and public communication networks operators, where there is a reasonable suspicion of an infringement and where such records may be useful to ascertaining the truth in the context of an investigation regarding infringements of this Law as referred to in Article 63-2a(1) and (2)";

(Law of 20 May 2021)

"17. take the measures referred to in Article 34-2(8);"

(Law 15 July 2024)

"18. prohibit any of the credit servicing activities;

19. require the removal of members of the management body of a credit servicer when they fail to comply with the requirements set out in Article 28-16(1);

20. require credit servicers to modify or update their internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the provisions applicable to the creditor's rights under a credit agreement or the credit agreement itself;

21. require a credit servicer that does not comply with the requirements imposed by Part I, Chapter 2, Section ", Subsection 2a to take, at an early stage, all necessary actions or steps in order to comply with those provisions."

In particular, the CSSF has the right to require from any person subject to its supervision any information relevant for the performance of its tasks. It may inspect books, accounts, registers or other deeds and documents of those persons."[972]

(Law of 7 November 2007)

""(2) Without prejudice to paragraph 1, the powers of the CSSF shall include, in particular:

(a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out its tasks, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

(i) "credit institutions and investment firms"[973] established in Luxembourg;

(ii) financial holding companies established in Luxembourg;

(iii) mixed financial holding companies established in Luxembourg;

(iv) "mixed-activity holding companies within the meaning of point (6g) of Article 1, established in Luxembourg and IFD mixed-activity holding companies within the meaning of point (1) of Article 52-1, established in Luxembourg;"[974]

(v) persons belonging to the entities referred to in points (i) to (iv) "and (vii)"[975];

(vi) third parties to whom the entities referred to in points (i) to (iv) "and (vii)"[976] have outsourced functions or activities ", including, where applicable, ICT third-party service providers referred to in Chapter V of Regulation (EU) 2022/2554"[977];

(Law of 21 July 2021: A566)

"(vii) investment holding companies established in Luxembourg";

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[972] Law of 13 July 2007

[973] Law of 21 July 2021: A566

[974] Law of 21 July 2021: A566

[975] Law of 21 July 2021: A566

[976] Law of 21 July 2021: A566

[977] Law of 1 July 2024

(b) the power to conduct all necessary investigations of any person referred to in letter (a) "(i) to (vii)"[978] established or located in Luxembourg where necessary to carry out its tasks, including:
   (i) the right to require the submission of documents;
   (ii) to examine the books and records of the persons referred to in letter (a) "(i) to (vii)"[979] and take copies or extracts from such books and records;
   (iii) to obtain written or oral explanations from any person referred to in letter (a) "(i) to (vii)"[980] or their representatives or staff; and
   (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(c) the power, subject to other conditions set out in EU law, to conduct all necessary inspections at the business premises of the legal persons referred to in letter (a) "(i) to (vii)"[981] and any other undertaking included in consolidated supervision where the CSSF is the consolidating supervisor, "and any other undertaking included in the supervision of compliance with the group capital test, where the CSSF is the group supervisor in accordance with Article 51-3,"[982] subject to the prior notification of the competent authorities concerned."[983]"

(Law of 30 May 2018)

"(3) The CSSF shall exercise the powers laid down in point (16) of the second subparagraph of paragraph 1 only after prior authorisation by order of the *juge d'instruction* (investigating judge) of the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court). The order shall be given upon reasoned request by the CSSF. The *juge d'instruction directeur* (chief investigating judge), or, should the latter not be available, the magistrate replacing him/her, shall appoint, for each request by the CSSF, the judge who shall be in charge.

The *juge d'instruction* shall verify that the reasoned request submitted by the CSSF is justified and proportionate to the aim pursued. The request shall include all elements of information that justify the requested authorisation.

The order referred to in the first subparagraph may be subject to the same remedies as the ones regarding orders of the *juge d'instruction*. The remedies shall not be suspensive."

(Law of 20 May 2021)

"(4) The decisions taken by the CSSF in the exercise of its supervisory powers shall state the reasons on which they are based."

(Law of 21 December 2012)

"Article 53-1. Compliance with the arrangements regarding governance and structure coefficients

(1) The CSSF may require any credit institution or investment firm to take the necessary steps at an early stage to strengthen its situation for the purpose of compliance with the legal requirements in relation to the arrangements regarding governance and structure coefficients. "The CSSF may require any CRR institution to take the necessary steps rapidly and at an early stage to strengthen its situation for the purpose of compliance with the requirements of Regulation (EU) No 575/2013, this Law and their implementing measures, in particular as regards arrangements relating to governance, remuneration policies, supervisory reviews and evaluations, use of internal approaches, compliance with prudential ratios and limitation of risks."[984]

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[978] Law of 21 July 2021: A566
[979] Law of 21 July 2021: A566
[980] Law of 21 July 2021: A566
[981] Law of 21 July 2021: A566
[982] Law of 21 July 2021: A566
[983] Law of 23 July 2015
[984] Law of 23 July 2015

(Law of 23 July 2015)

"(1a) Moreover, the CSSF may require CRR institutions to take the necessary measures rapidly and at an early stage to address relevant problems, where the CSSF has evidence that the CRR institution is likely to breach the requirements of this Law, of Regulation (EU) No 575/2013 or of their implementing measures within the following 12 months."

(2) To that end, The CSSF may in particular:

- require the strengthening of the arrangements, procedures, processes, mechanisms and strategies implemented to ensure the compliance with Articles 5 to 17", Articles 38 to 38-9"[985] and of the internal capital adequacy assessment process;
- "require"[986] the credit institution or the investment firm to hold own funds (…)[987] of an amount and quality superior to the minimum prescribed pursuant to Article 56 "under the conditions set out in Article 53-3"[988]. "Require the credit institution or the investment firm to hold liquid assets of a quality and amount superior to the minimum prescribed pursuant to Article 56 or in accordance with Regulation (EU) No 575/2013 and its implementing measures;"[989]
- require the reduction of risks inherent in activities, products and systems of the credit institution or investment firm", including outsourced activities"[990];
- require the credit institution or the investment firm to apply to their exposures a specific provisioning policy or treatment of assets in terms of own funds requirements;
- restrict or limit the business, operations or network of credit institutions or investment firms "or request the divestment of activities that pose excessive risks to the soundness of a credit institution or an investment firm"[991];
- require the credit institution or the investment firm to limit the variable remunerations as a percentage of total net income where these remunerations are not compatible with maintaining a sound capital base;
- require the credit institution or the investment firm to use the net profits to strengthen its capital base";"[992]

(Law of 23 July 2015)

- "– restrict or prohibit distributions or interest payments by a credit institution or an investment firm to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the credit institution or the investment firm;
- impose additional or more frequent reporting requirements, including "reporting on own funds, liquidity and leverage"[993];
- impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- require additional disclosures."

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[985] Law of 23 July 2015
[986] Law of 23 July 2015
[987] Law of 23 July 2015
[988] Law of 20 May 2021
[989] Law of 23 July 2015
[990] Law of 20 May 2021
[991] Law of 23 July 2015
[992] Law of 23 July 2015
[993] Law of 20 May 2021

"(3) For the purposes of the ninth indent of paragraph 2, the CSSF may only impose additional or more frequent reporting requirements on CRR institutions where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative.

For the purposes of the supervisory review and evaluation process and the application of general supervisory measures, any additional information that may be required from CRR institutions shall be deemed as duplicative where the same or substantially the same information has already been otherwise reported to the CSSF or may be produced by the CSSF.

The CSSF shall not require a CRR institution to report additional information where it has previously received it in a different format or level of granularity and that different format or granularity does not prevent the CSSF from producing information of the same quality and reliability as that produced on the basis of the additional information that would be otherwise reported."[994]

(…)[995]

(5) If the CSSF takes measures based on this article, it shall inform the other competent authorities concerned." "It shall notify the relevant resolution authorities of the additional own funds requirement imposed on CRR institutions pursuant to the second indent of paragraph 2."[996]

(Law of 20 May 2021)

"Section 3: Control process of CRR institutions

Subsection 1: Supervisory measures and powers

Article 53-2. Scope

CRR institutions shall apply this subsection in accordance with the level of application of the requirements of Part One, Title II of Regulation (EU) No 575/2013.

(…)[997]

Article 53-3. Additional own funds requirement

(1) The CSSF shall impose the additional own funds requirement referred to in the first sentence of the second indent of Article 53-1(2) where, on the basis of the reviews carried out in accordance with Articles 53-25 and 53-28, it determines any of the following situations for an individual CRR institution:

1. the CRR institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, as specified in paragraph 2, by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, hereinafter "Regulation (EU) 2017/2402";

2. the CRR institution does not meet the requirements set out in Articles 5, 17, 38 to 38-9 and 53-9 of this Law or in Article 393 of Regulation (EU) No 575/2013 and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;

3. the valuation adjustments for positions or portfolios in the trading book are deemed to be insufficient to enable the CRR institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

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[994] Law of 20 May 2021
[995] Law of 20 May 2021
[996] Law of 20 May 2021
[997] Law of 21 July 2021: A566

4. the evaluation carried out by the CSSF in the context of the ongoing review of the permission to use internal approaches reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;

5. the CRR institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with Article 53-4(3);

6. other CRR institution-specific situations deemed by the CSSF to raise material supervisory concerns.

The CSSF shall only impose the additional own funds requirement referred to in the first sentence of the second indent of Article 53-1(2) to cover the risks incurred by individual CRR institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual CRR institution.

(2) For the purposes of point (1) of paragraph 1, risks or elements of risk shall only be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 where the amounts, types and distribution of capital considered adequate by the CSSF, taking into account the supervisory review of the internal capital adequacy assessment carried out by CRR institutions in accordance with Article 53-9, are higher than the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

For the purposes of the first subparagraph, the CSSF shall assess, taking into account the risk profile of each individual institution, the risks to which the institution is exposed, including:

1. CRR institution-specific risks or elements of such risks that are explicitly excluded from or not explicitly addressed by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402;

2. CRR institution-specific risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

To the extent that risks or elements of risk are subject to transitional arrangements or grandfathering provisions laid down in this Law or in Regulation (EU) No 575/2013, they shall not be considered risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

For the purposes of the first subparagraph, the capital considered adequate shall cover all risks or elements of risks identified as material pursuant to the assessment laid down in the second subparagraph that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

Interest rate risk arising from non-trading book positions may be considered material in the cases referred to in Article 53-7(4), unless the CSSF, in performing the review and evaluation, comes to the conclusion that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the CRR institution is not excessively exposed to interest rate risk arising from non-trading book activities.

Interest rate risk arising from non-trading book positions may also be considered material in the exceptional circumstance where a CRR institution’s exposure to interest rate risk arising from non-trading book activities is high and the CRR institution’s management of this risk is inadequate.

(3) Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by letter (d) of Article 92(1) of Regulation (EU) No 575/2013, the CSSF shall determine the level of the additional own funds required under point (1) of paragraph 1 of this article as the difference between the capital considered adequate pursuant

to paragraph 2 of this article and the relevant own funds requirements set out in Parts Three and Four of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by letter (d) of Article 92(1) of Regulation (EU) No 575/2013, the CSSF shall determine the level of the additional own funds required under point (1) of paragraph 1 of this article as the difference between the capital considered adequate pursuant to paragraph 2 of this article and the relevant own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013.

(4) CRR institutions shall meet the additional own funds requirement imposed by the CSSF under the first sentence of the second indent of Article 53-1(2) to address risks other than the risk of excessive leverage with own funds that satisfy the following conditions:

1. at least three quarters of the additional own funds requirement shall be met with Tier 1 capital;
2. at least three quarters of the Tier 1 capital referred to in letter (a) shall be composed of Common Equity Tier 1 capital.

CRR institutions shall meet the additional own funds requirement imposed by the CSSF under the first sentence of the second indent of Article 53-1(2) to address the risk of excessive leverage with Tier 1 capital.

By way of derogation from the first and the second subparagraphs, the CSSF may, where necessary, require the CRR institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, having regard to the specific circumstances of the CRR institution.

Own funds that are used to meet the additional own funds requirement referred to in the first sentence of the second indent of Article 53-1(2) imposed by the CSSF to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

1. the own funds requirements set out in letters (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013;
2. the combined buffer requirement;
3. the guidance on additional own funds referred to in Article 53-4(3) where that guidance addresses risks other than the risk of excessive leverage.

Own funds that are used to meet the additional own funds requirement referred to in the first sentence of the second indent of Article 53-1(2) imposed by the CSSF to address the risk of excessive leverage not sufficiently covered by letter (d) of Article 92(1) of Regulation (EU) No 575/2013 shall not be used to meet any of the following:

1. the own funds requirement set out in letter (d) of Article 92(1) of Regulation (EU) No 575/2013;
2. the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013;
3. the guidance on additional own funds referred to in Article 53-4(3) where that guidance addresses risks of excessive leverage.

(5) The CSSF shall duly justify in writing to each CRR institution the decision to impose an additional own funds requirement under the first sentence of the second indent of Article 53-1(2), at least by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4. That justification shall include, in the case set out in point (5) of paragraph 1, a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

Article 53-4. Guidance on additional own funds

(1) Pursuant to the strategies and processes referred to in Article 53-9, CRR institutions shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks

that a CRR institution is exposed to and to ensure that the CRR institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in Article 53-29.

(2) The CSSF shall regularly review the level of the internal capital set by each CRR institution in accordance with paragraph 1 as part of the reviews and evaluations performed in accordance with Articles 53-25 and 53-28, including the results of the stress tests referred to in Article 53-29.

Pursuant to that review, the CSSF shall determine for each CRR institution the overall level of own funds it considers appropriate.

(3) The CSSF shall communicate its guidance on additional own funds to CRR institutions. The additional own funds covered by the guidance shall be the own funds exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of Regulation (EU) No 575/2013, Chapter 2 of Regulation (EU) 2017/2402, the first sentence of the second indent of Article 53-1(2) and point (6) of Article 59-2 of this Law or pursuant to Article 92(1a) of Regulation (EU) No 575/2013, as relevant, which are needed to reach the overall level of own funds considered appropriate by the competent authorities pursuant to paragraph 2 of this article.

(4) The CSSF's guidance on additional own funds pursuant to paragraph 3 shall be CRR institution-specific. The guidance may cover risks addressed by the additional own funds requirement imposed pursuant to the first sentence of the second indent of Article 53-1(2) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

(5) Own funds that are used to meet the guidance on additional own funds communicated in accordance with paragraph 3 to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

1. the own funds requirements set out in letters (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013;

2. the requirement laid down in Article 53-3 imposed by the CSSF to address risks other than the risk of excessive leverage and the combined buffer requirement.

Own funds that are used to meet the guidance on additional own funds communicated in accordance with paragraph 3 to address the risk of excessive leverage shall not be used to meet the own funds requirement set out in letter (d) of Article 92(1) of Regulation (EU) No 575/2013, the requirement laid down in Article 53-3 of this Law imposed by the CSSF to address the risk of excessive leverage and the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013.

(6) Failure to meet the guidance referred to in paragraph 3 where a CRR institution meets the relevant own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, the relevant additional own funds requirement referred to in the first sentence of the second indent of Article 53-1(2) of this Law and, as relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013 shall not trigger the restrictions referred to in Articles 59-13 or 53-13b.

(7) The CSSF shall notify the relevant resolution authorities of any guidance on additional own funds communicated to CRR institutions in accordance with paragraph 3.

Article 53-5. Specific liquidity requirements

For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Subsection 4, the CSSF shall assess whether any imposition of a specific liquidity requirement is necessary, the level of which broadly relates to the disparity between the actual liquidity position of a CRR institution and any liquidity and stable funding requirements established at national or European Union level, to capture liquidity risks to which a CRR institution is or might be exposed, taking into account the following:

1. the particular business model of the CRR institution;

2. the CRR institution's arrangements, processes and mechanisms referred to in Subsection 3 and in particular in Article 53-22;

3. the outcome of the supervisory review and evaluation carried out in accordance with Article 53-25.

Article 53-6. Specific publication requirements

(1) The CSSF may require CRR institutions:

1. to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for publication;

2. to use specific media and locations for publications other than the financial statements.

(2) The CSSF may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of CRR institutions in accordance with Article 5(1a), Article 6(3), (4) and (16), the first and second subparagraphs of Article 17(1a) and Article 38(2).

Article 53-7. Other specific requirements and arrangements

(1) Where a review shows that a CRR institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010, the CSSF shall inform the EBA without delay of the results of the review.

(2) With reference to Article 53-26(4), the CSSF shall take effective action where developments referred to in that article may lead to individual CRR institution or systemic instability. The CSSF shall inform the EBA of any action measure taken.

(3) With reference to point (10) of Article 53-26(1), if a CRR institution is found to have provided the type of implicit support referred to in that article on more than one occasion the CSSF shall take appropriate measures reflective of the increased expectation that the CRR institution will provide future support to its securitisation operations, thus failing to achieve a significant transfer of risk.

(4) With reference to point (11) of Article 53-26(1), the CSSF shall exercise the supervisory powers referred to in Article 53-1(2) or specify the modelling and parametric assumptions, to be reflected by CRR institutions in their calculation of the economic value of equity, in the following cases:

1. where a CRR institution's economic value of equity as referred to in Article 53-20(1) declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to the interest rates provided for in the regulatory technical standards adopted in accordance with Article 98(5a) of Directive 2013/36/EU;

2. where a CRR institution’s net interest income as referred to in Article 53-20(1) experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to the interest rates provided for in the regulatory technical standards adopted in accordance with Article 98(5a) of Directive 2013/36/EU.

Notwithstanding the first subparagraph, the CSSF shall not be obliged to exercise supervisory powers where it considers, based on the review and evaluation referred to in Article 53-25, that the CRR institution's management of interest rate risk arising from non-trading book activities is adequate and that the CRR institution is not excessively exposed to interest rate risk arising from non-trading book activities.

(5) Based on the analysis under Article 53-27, the CSSF shall take corrective action if it can be clearly established that a CRR institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions.

The CSSF shall ensure that its decisions on the appropriateness of corrective actions as referred to in the first subparagraph comply with the principle that such actions must maintain the objectives of an internal approach and do not:

1. lead to standardisation or preferred methods;
2. create wrong incentives; or
3. cause herd behaviour.

(6) Based on the review provided for in Article 53-28, where material deficiencies are identified in risk capture by a CRR institution's internal approach, the CSSF shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing additional own funds requirements, or taking other appropriate and effective measures.

If a CRR institution has received permission to apply an approach that requires permission by the competent authorities before using such an approach for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 but does not meet the requirements for applying that approach anymore, the CSSF shall require the CRR institution to either demonstrate to the satisfaction of the CSSF that the effect of non-compliance is immaterial where applicable in accordance with Regulation (EU) No 575/2013 or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The CSSF shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the CRR institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

In particular, if for an internal market risk model numerous overshootings referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the model is not or is no longer sufficiently accurate, the CSSF shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

Subsection 2: Internal capital and liquid assets

Article 53-8. Scope

(1) Any CRR institution which is neither a subsidiary in Luxembourg, nor a parent undertaking, and any CRR institution not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013 shall meet the obligations set out in Articles 53-9 and 53-10 on an individual basis.

Where a CRR institution is exempt from applying the own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Articles 53-9 and 53-10 shall apply on an individual basis.

(2) CRR institutions that are parent undertakings, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013, which define the methods and the scope of the prudential consolidation, shall meet the obligations set out in Articles 53-9 and 53-10 on a consolidated basis.

(3) Subsidiary CRR institutions shall apply the requirements set out in Articles 53-9 and 53-10 on a sub-consolidated basis if those CRR institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have a CRR institution, a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in a third country.

Article 53-9. Internal capital adequacy assessment process

(1) CRR institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which

they are or might be exposed. Therefore, CRR institutions shall take into account the elements set out in paragraphs 2 and 3.

(2) With reference to Article 53-15(2), where own funds requirements are based on a rating by an external credit assessment institution or based on the fact that an exposure is unrated, this shall not exempt CRR institutions from additionally considering other relevant information for assessing their allocation of internal capital.

(3) Internal capital must be adequate for material market risks that are not subject to own funds requirements pursuant to Regulation (EU) No 575/2013.

CRR institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product, shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. CRR institutions shall also have adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition.

Where using the treatment in Article 345 of Regulation (EU) No 575/2013, CRR institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

(4) Those strategies and processes referred to in paragraph 1 shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the CRR institution.

Article 53-10. Liquidity adequacy assessment process

(1) The strategies, policies, processes and systems referred to in Article 53-22(1) shall be such as to ensure that CRR institutions maintain at all times the level, composition and quality of liquidity buffers they consider adequate to cover the nature and level of the liquidity risks to which they are or might be exposed.

(2) The strategies, policies, processes and systems referred to in paragraph 1 shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the CRR institution.

Subsection 3: Treatment of risks

Article 53-11. Scope

This subsection shall apply in accordance with the level of application referred to in Article 38.

Article 53-12. Risk management

(1) The management body shall approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the CRR institutions are or might be exposed to, including those posed by the macroeconomic environment in which they operate in relation to the status of the business cycle.

(2) The management body shall devote sufficient time to consideration of risk issues. The management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks.

(3) CRR institutions shall establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof. These reporting lines shall provide the management body in its supervisory function and, where a risk committee has been established, the risk committee, with adequate access to information on the risk situation of the CRR institution and, if necessary and appropriate, to the CRR institution’s risk control function and to external expert advice. The management body in its supervisory function and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

Article 53-13. Specialised committees

(1) CRR institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a risk committee composed of members of the management body who do not perform any executive function in the CRR institution concerned. Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the CRR institution.

(2) The risk committee shall advise the management body on the CRR institution's overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by the authorised management. The management body shall retain overall responsibility for risks.

The risk committee shall review whether prices of liabilities and assets offered to clients take fully into account the CRR institution's business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee shall present a remedy plan to the management body.

In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, own funds, liquidity and the likelihood and timing of earnings.

(3) The CSSF may allow a CRR institution which is not considered significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities, to combine the risk committee with the audit committee. Members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.

Article 53-14. Risk control function

(1) The CSSF shall ensure that CRR institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, have a risk control function independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

The risk control function shall be able to report directly to the management body in its supervisory function, independent from the authorised management, and raise concerns and warn the management body in its supervisory function where specific risk developments affect or may affect the CRR institution significantly.

(2) The risk control function shall ensure that all material risks are identified, measured and properly reported. It shall be actively involved in elaborating the CRR institution's risk strategy and in all material risk management decisions and shall deliver a complete view of the whole range of risks of the CRR institution.

(3) The head of the risk control function shall be an independent authorised manager with distinct responsibility for the risk control function.

Where the nature, scale and complexity of the activities of the CRR institution do not justify a specially appointed person, another senior person within the CRR institution may fulfil that function, provided there is no conflict of interest.

The head of the risk control function shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body where necessary.

Article 53-15. Credit and counterparty risk

(1) Credit-granting shall be based on sound and well-defined criteria. The process for approving, amending, renewing, and re-financing credits shall be clearly established.

(2) CRR institutions shall have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the

portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings.

The CSSF shall encourage CRR institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties.

(3) CRR institutions shall use effective systems for ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions.

(4) CRR institutions shall ensure that diversification of credit portfolios is adequate given their target markets and their overall credit strategy.

Article 53-16. Residual risk

The risk that recognised credit risk mitigation techniques used by CRR institutions prove less effective than expected shall be addressed and controlled by CRR institutions including by means of their written policies and procedures.

Article 53-17. Concentration risk

The written policies and procedures of the CRR institution shall notably provide for the treatment and control of the concentration risk arising from:

1. exposures to each counterparty, including central counterparties;
2. exposures to groups of connected counterparties;
3. exposures to counterparties in the same economic sector or geographic region;
4. credit exposures deriving from a same activity, business or commodity; or
5. the application of credit risk mitigation techniques, and including risks associated with large indirect credit exposures.

Article 53-18. Securitisation risk

(1) The risks arising from securitisation transactions in relation to which the CRR institutions are investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, shall be evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

(2) Liquidity plans to address the implications of scheduled or early amortisation shall exist at CRR institutions which are originators of revolving securitisation transactions involving early amortisation provisions.

Article 53-19. Market risk

(1) CRR institutions shall implement policies and processes for the identification, measurement and management of all material sources and effects of market risks.

(2) Where the short position falls due before the long position, CRR institutions shall also take measures against the risk of a shortage of liquidity.

(3) The CSSF shall encourage CSSF institutions that are significant due to their size, internal organisation and the nature, scale and complexity of their activity, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

Article 53-20. Interest risk arising from non-trading book activities

(1) CRR institutions shall implement internal systems and use the standardised methodology or the simplified standardised methodology to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of a CRR institution's non-trading book activities.

(2) CRR institutions shall implement systems to assess and monitor the risks arising from potential changes in credit spreads that affect both the economic value of equity and the net interest income of a CRR institution's non-trading book activities.

(3) The CSSF may require a CRR institution to use the standardised methodology referred to in paragraph 1 where the internal systems implemented by that CRR institution are not satisfactory for the purpose of evaluating the risks referred to in paragraph 1.

(4) The CSSF may require a small and non-complex CRR institution as defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013 to use the standardised methodology where the simplified standardised methodology is not adequate to capture interest rate risk arising from non-trading book activities of that CRR institution.

Article 53-21. Operational risk

(1) CRR institutions shall implement policies and processes to evaluate and manage the exposures to operational risk, including model risk and risks resulting from outsourcing, and to cover low-frequency high-severity events. CRR institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures.

(2) "CRR institutions shall have adequate business contingency and continuity policies and plans, including ICT business continuity policies and plans and ICT response and recovery plans for the technology they use for the communication of information. CRR institutions shall establish, manage and test those plans in accordance with Article 11 of Regulation (EU) 2022/2554, in order for them to keep operating in the event of severe business disruption and limit losses incurred as a consequence of such disruption."[998]

Article 53-22. Liquidity risk

(1) CRR institutions shall have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day. Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

(2) The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the complexity, risk profile, scope of operation of the CRR institution and risk tolerance set by the management body and reflect the CRR institution's importance in each Member State in which it carries out business. CRR institutions shall communicate risk tolerance to all relevant business lines to the CSSF.

(3) CRR institutions shall have a liquidity risk profile that corresponds to the requirements of a well-functioning and robust system, taking into account the nature, scale and complexity of their activities.

(4) CRR institutions shall develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

(5) CRR institutions shall distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register

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or in an account as well as their eligibility and shall monitor how assets can be mobilised in a timely manner.

(6) CRR institutions shall have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area.

(7) CRR institutions shall consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

(8) CRR institutions shall consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For those purposes, different scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation (EU) No 575/2013, in relation to which the CRR institution acts as sponsor or provides material liquidity support.

(9) CRR institutions shall consider the potential impact of CRR institution-specific, market-wide and combined alternative scenarios. Different time horizons and varying degrees of stressed conditions shall be considered.

(10) CRR institutions shall adjust their strategies, policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraphs 8 and 9.

(11) CRR institutions shall have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. CRR institutions shall test these plans at least annually, update them on the basis of the outcome of the alternative scenarios set out in paragraphs 8 and 9 and report them to the authorised management for approval, so that policies and processes can be adjusted accordingly. CRR institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. For credit institutions, such operational steps shall include, in particular, the holding of collateral immediately available for central bank funding. This includes holding collateral, where necessary, in the currency of another Member State, or the currency of a third country to which the CRR institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

Article 53-23. Risk of excessive leverage

(1) CRR institutions shall have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations.

(2) CRR institutions shall manage the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the CRR institution's own funds through expected or realised losses, depending on the applicable accounting rules. To that end, CRR institutions shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

Subsection 4: Supervisory review and evaluation process

Article 53-24. Scope

CRR institutions shall apply this subsection in accordance with the level of application of the requirements of Part One, Title II of Regulation (EU) No 575/2013.

(…)[999]

Article 53-25. Implementation of the supervisory review and evaluation process

(1) For the purpose of applying the supervisory review and evaluation process, the CSSF shall review the arrangements, strategies, processes and mechanisms implemented by CRR institutions to comply with this Law and Regulation (EU) No 575/2013 and shall evaluate, taking into account in particular the technical criteria set out in Article 53-26:

1. the risks to which CRR institutions are or might be exposed;
2. the adequacy of the arrangements, strategies, processes and mechanisms implemented by CRR institutions and the own funds and liquidity held by them to ensure a sound and prudent management and coverage of their risks;
3. the risks revealed by stress testing taking into account the nature, scale and complexity of a CRR institution's activities "; and"[1000].

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"4. risks revealed by digital operational resilience testing in accordance with Chapter IV of Regulation (EU) 2022/ 2554."

(2) The CSSF shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size and systemic importance of the CRR institution concerned, and the nature, scale and complexity of its activities. The frequency shall be at least annual for CRR institutions covered by the supervisory examination programme referred to in Article 53-30(2).

(3) The CSSF may tailor the methodologies for the application of the review and evaluation referred to in paragraph 1 to take into account CRR institutions with a similar risk profile, such as similar business models or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, shall allow for due consideration of the specific risks that each CRR institution may be exposed to, and shall not affect the CRR institution-specific nature of measures imposed in accordance with Article 53-1.

Where the CSSF uses tailored methodologies pursuant to this paragraph, it shall notify the EBA.

Article 53-26. Technical criteria for the supervisory review and evaluation

(1) In addition to credit, market and operational risks, the supervisory review and evaluation pursuant to Article 53-25 shall include:

1. the results of the stress tests carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by CRR institutions applying an internal ratings based approach;
2. the exposure to and management of concentration risk by CRR institutions, including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 and Article 53-17;
3. the robustness, suitability and manner of application of the policies and procedures implemented by CRR institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
4. the extent to which the own funds held by a CRR institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
5. the exposure to, measurement and management of liquidity risk by CRR institutions, including the development of alternative scenario analyses, the management of risk mitigants, such as the level, composition and quality of liquidity buffers and effective

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contingency plans. In this respect, the CSSF shall regularly carry out a comprehensive assessment of the overall liquidity risk management by CRR institutions and promote the development of sound internal methodologies. Those reviews shall take into account the role played by CRR institutions in the financial markets;

6. the impact of diversification effects and how such effects are factored into the risk measurement system;

7. the results of stress tests carried out by CRR institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;

8. the geographical location of CRR institutions' exposures;

9. the business model of the CRR institution;

10. the existence of an implicit support of a CRR institution to a securitisation;

11. the CRR institutions' exposure to interest rate risk arising from their non-trading book activities;

12. the CRR institutions' exposure to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. The adequacy of the leverage ratio and of the arrangements, strategies, processes and mechanisms implemented by CRR institutions to manage the risk of excessive leverage shall be assessed by taking into account the business model of the CRR institutions.

(2) For the purposes of the determination to be made under point (2) of Article 53-25(1), the CSSF shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No 575/2013, enable the CRR institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(3) For the purposes of the determination to be made under point (2) of Article 53-25(1), the review and evaluation conducted by the CSSF shall include governance arrangements of CRR institutions, their corporate culture and values, and the ability of members of the management body to perform their duties. These reviews and evaluations shall be conducted in particular based on agendas and supporting documents for meetings of the management body and its committees, and based on the results of the internal or external evaluation of performance of the management body.

(4) As a supplement to point (5) of paragraph 1 and by reference to paragraph 3 of Article 53-22, the CSSF shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

Article 53-27. Supervisory benchmarking of internal approaches for calculating own funds requirements

The CSSF shall, on the basis of the information submitted by CRR institutions in accordance with Article 53-32 and on the basis of assessment criteria set by the EBA, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those CRR institutions. At least annually, the CSSF shall make an assessment of the quality of those approaches in particular with respect to:

1. those approaches that exhibit significant differences in own funds requirements for the same exposure;

2. approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

Where particular CRR institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the CSSF shall investigate the reasons therefor.

Article 53-28. Ongoing review of the permission to use internal approaches

(1) The CSSF shall review on a regular basis, and at least every 3 years, the CRR institutions' compliance with the requirements regarding approaches that require permission by the competent authorities before using such approaches for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013. It shall have particular regard to changes in a CRR institution's business and to the implementation of those approaches to new products. For the review of the permissions it grants to CRR institutions to use internal approaches, the CSSF shall take into account the analyses and benchmarks issued by the EBA for internal approaches.

(2) The CSSF shall in particular review and assess whether CRR institutions use well developed and up-to-date techniques and practices for those approaches and shall monitor, taking into account the nature, scale and complexity of the CRR institutions' activities, that CRR institutions do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

Article 53-29. Supervisory stress tests

The CSSF shall carry out, as appropriate but at least annually, supervisory stress tests on the CRR institutions it supervises, to facilitate the supervisory review and evaluation process under Article 53-25.

Article 53-30. Supervisory examination programme

(1) The CSSF shall, at least annually, adopt a supervisory examination programme for the CRR institutions it supervises. Such programme shall take into account the supervisory review and evaluation process under Article 53-25. It shall contain the following:

1. an indication of how the CSSF intends to carry out its tasks and allocate its resources;
2. an identification of which CRR institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;
3. a plan for on-site inspections of CRR institutions, including their branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122 of Directive 2013/36/EU.

(2) The supervisory examination programme shall include:

1. CRR institutions for which the results of the stress tests referred to in points (1) and (7) of Article 53-26(1) and Article 53-29, or the outcome of the supervisory review and evaluation process under Article 53-25, indicate significant risks to their ongoing financial soundness or indicate infringements of Regulation (EU) No 575/2013 or of this Law;
2. any other CRR institution, if the CSSF deems it to be necessary.

(3) Where appropriate under Article 53-25, the CSSF shall take, if necessary, the following measures:

1. an increase in the number or frequency of on-site inspections of the CRR institution;
2. a permanent presence of the CSSF at the CRR institution;
3. additional or more frequent reporting by the CRR institution;
4. additional or more frequent review of the operational, strategic or business plans of the CRR institution;
5. thematic examinations monitoring specific risks that are likely to materialise.

(4) Adoption of a supervisory examination programme by the CSSF as the competent authority of the home Member State shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-site inspections and checks of the activities carried out by branches of CRR institutions on their territory in accordance with Article 52(3) of Directive 2013/36/EU.

(5) Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the CSSF as the competent authority of the host Member State from carrying out, on a case-by-case basis, on-site inspections and checks of the activities carried out by branches of CRR institutions on Luxembourg territory in accordance with Article 46(6).

Subsection 5: Benchmark portfolios

Article 53-31. Scope

CRR institutions shall apply this subsection in accordance with the level of application of the requirements of Part One, Title II of Regulation (EU) No 575/2013.

Article 53-32. Benchmark portfolios

CRR institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own funds requirements except for operational risk shall report to the CSSF and the EBA the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios defined by the EBA. They shall communicate to these authorities, separately from the aforementioned results, the results of the specific portfolios that the CSSF would have defined in consultation with the EBA. These reports shall be based on procedures, models, definitions and IT means defined by the EBA.

CRR institutions shall submit the results of their calculations, together with an explanation of the methodologies used to produce them at an appropriate frequency, and at least annually."

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"Section 4: Review process for IFR investment firms

Subsection 1: Supervisory measures and powers

Article 53-33. Supervisory measures and powers

(1) The CSSF shall require IFR investment firms to take, at an early stage, the measures necessary to address the following problems:

1. an IFR investment firm does not meet the requirements of this Law or of Regulation (EU) 2019/2033;
2. the CSSF has evidence that an IFR investment firm is likely to breach the provisions of this Law or the provisions of Regulation (EU) 2019/2033 within the next 12 months.

(2) For the purposes of paragraph 1 of this Article, Article 53-44, Article 53-45(3) and of the application of Regulation (EU) 2019/2033, the CSSF shall have the following powers:

1. to require IFR investment firms to have own funds in excess of the requirements set out in Article 11 of Regulation (EU) 2019/2033, under the conditions laid down in Article 53-34, or to adjust the own funds and liquid assets required in case of material changes in the business of those IFR investment firms;
2. to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 17(1a) and 53-40;
3. to require IFR investment firms to present, within one year, a plan to restore compliance with supervisory requirements pursuant to this Law and to Regulation (EU) 2019/2033, to set a deadline for the implementation of that plan and require improvements to that plan regarding scope and deadline;
4. to require IFR investment firms to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
5. to restrict or limit the business, operations or network of IFR investment firms or to request the divestment of activities that pose excessive risks to the financial soundness of an IFR investment firm;
6. to require the reduction of the risk inherent in the activities, products and systems of IFR investment firms, including outsourced activities;

7. to require IFR investment firms to limit variable remuneration as a percentage of net revenues where that remuneration is inconsistent with the maintenance of a sound capital base;

8. to require IFR investment firms to use net profits to strengthen own funds;

9. to restrict or prohibit distributions or interest payments by an IFR investment firm to shareholders, members or holders of Additional Tier 1 instruments where that restriction or prohibition does not constitute an event of default of the IFR investment firm;

10. to impose additional or more frequent reporting, including reporting on capital and liquidity positions;

11. to impose specific liquidity requirements in accordance with Article 53-36;

12. to require additional disclosures;

13. to require IFR investment firms to reduce the risks posed to the security of IFR investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets.

For the purposes of point (10) of the first subparagraph, the CSSF may only impose additional or more frequent reporting requirements on IFR investment firms where the information to be reported is not duplicative and one of the following conditions is met:

1. one of the cases referred to in points (1) and (2) of paragraph 1 applies;

2. the CSSF considers it to be necessary to gather the evidence referred to in point (2) of paragraph 1;

3. the additional information is required for the purpose of the supervisory review and evaluation process referred to in Article 53-44.

Information shall be deemed to be duplicative where the CSSF already has the same or substantially the same information, where that information is capable of being produced by the CSSF or of being obtained by the CSSF through other means than a requirement on the IFR investment firm to report it. The CSSF shall not require additional information where the information is available to the CSSF in a different format or level of granularity than the additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.

Article 53-34. Additional own funds requirement

(1) The CSSF shall impose the additional own funds requirement referred to in point (1) of the first subparagraph of Article 53-33(2) only where, on the basis of the reviews carried out in accordance with Articles 53-44 and 53-45, it ascertains any of the following situations for an IFR investment firm:

1. the IFR investment firm is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or not sufficiently covered by the own funds requirement, and especially K-factor requirements, set out in Part Three or Four of Regulation (EU) 2019/2033;

2. the IFR investment firm does not meet the requirements set out in Articles 17(1a) and 53-40 and other supervisory measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;

3. the adjustments in relation to the prudent valuation of the trading book are insufficient to enable the IFR investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

4. the review carried out in accordance with Article 53-45 shows that non-compliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital;

5. the IFR investment firm repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 53-35.

(2) For the purposes of point (1) of paragraph 1, risks or elements of risks shall be considered not to be covered or to be insufficiently covered by the own funds requirements set out in Parts Three and Four of Regulation (EU) 2019/2033 only where the amounts, types and distribution of capital considered adequate by the CSSF following the supervisory review of the assessment carried out by IFR investment firms in accordance with Article 53-40(1) are higher than the IFR investment firm's own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

For the purposes of the first subparagraph, the capital considered to be adequate may include risks or elements of risks that are explicitly excluded from the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

(3) The CSSF shall determine the level of the additional own funds required pursuant to point (1) of the first subparagraph of Article 53-33(2) as the difference between the capital considered adequate pursuant to paragraph 2 of this Article and the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

(4) The CSSF shall require IFR investment firms to meet the additional own funds requirement referred to in point (1) of the first subparagraph of Article 53-33(2) with own funds subject to the following conditions:

1. at least three quarters of the additional own funds requirement is met with Tier 1 capital;
2. at least three quarters of the Tier 1 capital is composed of Common Equity Tier 1 capital;
3. those own funds are not used to meet any of the own funds requirements set out in letters (a), (b) and (c) of Article 11(1) of Regulation (EU) 2019/2033.

(5) The CSSF shall substantiate in writing its decision to impose an additional own funds requirement as referred to in point (1) of the first subparagraph of Article 53-33(2) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4 of this Article. That includes, in the case set out in point (4) of paragraph 1 of this Article, a specific statement of why the level of capital established in accordance with Article 53-35(1) is no longer considered sufficient.

(6) The CSSF may impose an additional own funds requirement in accordance with paragraphs 1 to 5 on IFR investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 on the basis of a case-by-case assessment.

Article 53-35. Guidance on additional own funds

(1) Taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities of non-SNI IFR investment firms, the CSSF may require such non-SNI IFR investment firms to have levels of own funds which, based on Article 53-40, are sufficiently above the requirements set out in Part Three of Regulation (EU) 2019/2033 and in this section, including the additional own funds requirements referred to in point (1) of the first subparagraph of Article 53-33(2), to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the non-SNI IFR investment firm to wind down and cease activities in an orderly manner.

(2) The CSSF shall, where appropriate, review the level of own funds that has been set by each non-SNI IFR investment firm in accordance with paragraph 1 and, where relevant, shall communicate the conclusions of that review to the non-SNI IFR investment firm concerned, including any expectation for adjustments to the level of own funds established in accordance with paragraph 1 of this Article. Such a communication shall include the date by which the CSSF requires the adjustment to be completed.

Article 53-36. Specific liquidity requirements

(1) The CSSF shall impose the specific liquidity requirements referred to in point (11) of the first subparagraph of Article 53-33(2) only where, on the basis of the reviews carried out in accordance with Articles 53-44 and 53-45, it concludes that a non-SNI IFR investment firm or an IFR investment firm that meets the conditions set out in Article 12(1) of Regulation (EU)

2019/2033 but has not been exempted from liquidity requirement in accordance with Article 43(1) of Regulation (EU) 2019/2033 is in one of the following situations:

1. it is exposed to liquidity risk or elements of liquidity risk that are material and are not covered or not sufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033;

2. it does not meet the requirements set out in Articles 17(1a) and 53-40 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe.

(2) For the purposes of point (1) of paragraph 1, liquidity risk or elements of liquidity risk shall be considered not to be covered or to be insufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033 only where the amounts and types of liquidity considered adequate by the CSSF following the supervisory review of the assessment carried out by IFR investment firms in accordance with Article 53-40(1) are higher than the IFR investment firm's liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

(3) The CSSF shall determine the level of the specific liquidity required pursuant to point (11) of the first subparagraph of Article 53-33(2) as the difference between the liquidity considered adequate pursuant to paragraph 2 of this Article and the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

(4) The CSSF shall require investment firms referred to in paragraph 1 to meet the specific liquidity requirements referred to in point (11) of the first subparagraph of Article 53-33(2) with liquid assets as set out in Article 43 of Regulation (EU) 2019/2033.

(5) The CSSF shall substantiate in writing its decision to impose a specific liquidity requirement as referred to in point (11) of the first subparagraph of Article 53-33(2) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 3 of this Article.

Article 53-37. Cooperation with resolution authorities

The CSSF shall notify the relevant resolution authorities of any additional own funds requirement imposed pursuant to point (1) of the first subparagraph of Article 53-33(2) for an IFR investment firm that is a BRRD investment firm within the meaning of point (11) of the first subparagraph of Article 59-15 and about any expectation for adjustments as referred to in Article 53-35(2) in respect to such investment firm.

Article 53-38. Publication requirements

The CSSF shall have the power to:

1. require non-SNI IFR investment firms and investment firms referred to in Article 46(2) of Regulation (EU) 2019/2033 to publish the information referred to in Article 46 of that regulation more than once a year and to set deadlines for that publication;

2. require non-SNI IFR investment firms and investment firms referred to in Article 46(2) of Regulation (EU) 2019/2033 to use specific media and locations, in particular the investment firms' websites, for publications other than the financial statements;

3. require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the IFR investment firm group in accordance with the first subparagraph of Article 17(1a), the first and second subparagraphs of Article 18(1), Article 18(3) and (4) and the first subparagraph of Article 18(18).

Article 53-39. Obligation to inform the EBA

The CSSF shall inform the EBA of:

1. its review and evaluation process referred to in Article 53-44;

2. the methodology used for decisions referred to in Articles 53-33(2), 53-34 and 53-35;

3. the level of administrative sanctions referred to in Article 63-2b.

Subsection 2: Internal capital and liquid assets

Article 53-40. Internal capital and liquid assets

(1) Non-SNI IFR investment firms shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the non-SNI IFR investment firms themselves are or might be exposed.

(2) The arrangements, strategies and processes referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned. They shall be subject to regular internal review.

(3) The CSSF may request IFR investment firms which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 to apply the requirements provided for in paragraphs 1 and 2. In order to determine to which extent these investment firms shall apply the requirements provided for in paragraphs 1 and 2, the CSSF shall take into account the nature and complexity of their activities, as well as the risks which they may pose to others and to which they themselves are or might be exposed.

Subsection 3: Treatment of risks

Article 53-41. Treatment of IFR investment firms as regards the qualifying conditions set out in Article 12(1) of Regulation (EU) 2019/2033

(1) This subsection shall apply to IFR investment firms that determine that they do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

(2) Where an IFR investment firm which has not met all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 subsequently meets those conditions, this subsection shall cease to apply after a period of six months from the date on which those conditions are met, only where the IFR investment firm continued to meet the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 without interruption during that period and where it notified the CSSF accordingly.

(3) Where an IFR investment firm determines that it no longer meets all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033, it shall notify the CSSF thereof and comply with this subsection within 12 months of the date on which that assessment took place.

(4) Where this subsection applies and Article 8 of Regulation (EU) 2019/2033 is applied, this subsection shall apply to investment firms on an individual basis.

Where this subsection applies and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied, this subsection shall apply to investment firms on an individual and consolidated basis.

By way of derogation from the second subparagraph, this subsection shall not apply to subsidiary undertakings included in a consolidated situation within the meaning of point (11) of Article 4(1) of Regulation (EU) 2019/2033 and that are established in third countries, where the EU parent undertaking can demonstrate that the application of this subsection is unlawful under the laws of the third country where those subsidiary undertakings are established.

Article 53-42. Role of the management body in risk management

(1) The management body of the non-SNI IFR investment firm shall approve and periodically review the strategies and policies on the risk appetite of the non-SNI IFR investment firm, and on managing, monitoring and mitigating the risks the non-SNI IFR investment firm is or may be exposed to, taking into account the macroeconomic environment and the business cycle of the non-SNI IFR investment firm.

(2) The management body shall devote sufficient time to ensure proper consideration of the matters referred to in paragraph 1 and allocate adequate resources to the management of all material risks to which non-SNI IFR the investment firm is exposed.

(3) Non-SNI IFR investment firms shall establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

(4) All non-SNI IFR investment firms where the value of their on and off-balance sheet assets is on average equal to or higher than 100 million euros over the four-year period immediately preceding the given financial year shall establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

Members of the risk committee referred to in the first subparagraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm concerned. They shall ensure that the risk committee advises the management body on the investment firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by the authorised management. The management body shall retain overall responsibility for the investment firm's risk strategies and policies.

(5) The management body in its supervisory function and, where applicable, the risk committee of that management body shall have access to information on the risks to which the non-SNI IFR investment firm is or may be exposed.

Article 53-43. Treatment of risks

(1) The CSSF shall ensure that non-SNI IFR investment firms have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

1. material sources and effects of risk to clients and any material impact on own funds;
2. material sources and effects of risk to market and any material impact on own funds;
3. material sources and effects of risk to the investment firm, in particular those which can deplete the level of own funds available;
4. liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the non-SNI IFR investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under points (1), (2) and (3).

The strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, and scope of operation of the non-SNI IFR investment firm and risk tolerance set by the management body, and shall reflect the non-SNI IFR investment firm's importance in each Member State in which it carries out business.

For the purposes of point (1) of the first subparagraph and of the second subparagraph, the CSSF shall consider the rules governing segregation applicable to client money.

For the purposes of point (1) of the first subparagraph, non-SNI IFR investment firms shall consider holding professional indemnity insurance.

For the purposes of point (3) of the first subparagraph, material sources of risk to the non-SNI IFR investment firm itself shall include, if relevant, material changes in the book value of assets, including any claims on tied agents, the failure of clients or counterparties, positions in financial instruments, foreign currencies and commodities, and obligations to defined benefit pension schemes.

Non-SNI IFR Investment firms shall give due consideration to any material impact on own funds where such risks are not appropriately captured by the own funds requirements calculated under Article 11 of Regulation (EU) 2019/2033.

(2) Where non-SNI IFR investment firms need to wind down or cease their activities, the CSSF shall require that non-SNI IFR investment firms, by taking into account the viability and sustainability of their business models and strategies, give due consideration to requirements and necessary resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

(3) By way of derogation from Article 53-41, points (1), (3) and (4) of the first subparagraph of paragraph 1 and the second subparagraph shall apply to IFR investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

Subsection 4: Supervisory review and evaluation process.

Article 53-44. Supervisory review and evaluation.

(1) The CSSF shall review, to the extent relevant and necessary, taking into account the IFR investment firm's size, risk profile and business model, the arrangements, strategies, processes and mechanisms implemented by IFR investment firms to comply with this Law and with Regulation (EU) 2019/2033 and evaluate the following as appropriate and relevant, so as to ensure a sound management and coverage of their risks:

1. the risks referred to in Article 53-43;
2. the geographical location of an IFR investment firm's exposures;
3. the business model of the IFR investment firm;
4. the assessment of systemic risk, taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or recommendations of the European Systemic Risk Board or the Comité du risqué systémique (Systemic Risk Committee);
5. the risks posed to the security of IFR investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets;
6. the exposure of IFR investment firms to the interest rate risk arising from non-trading book activities;
7. governance arrangements of IFR investment firms and the ability of members of the management body to perform their duties.

For the purposes of this paragraph, the CSSF shall duly take into account whether IFR investment firms hold a professional indemnity insurance.

(2) The CSSF shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1, having regard to the size, nature, scale and complexity of the activities of the IFR investment firms concerned and, where relevant, their systemic importance, and taking into account the principle of proportionality.

For the purposes of the first subparagraph, the CSSF shall consider the rules governing segregation applicable to client money held.

(3) The CSSF shall decide on a case-by-case basis whether and in which form the review and evaluation is to be carried out with regard to IFR investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033, only where it deems it to be necessary due to the size, nature, scale and complexity of the activities of those investment firms.

(4) When conducting the review and evaluation referred to in point (7) of the first subparagraph of paragraph 1, the CSSF shall have access to agendas, minutes and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of the performance of the management body.

Article 53-45. Ongoing review of the permission to use internal models.

(1) The CSSF shall review on a regular basis, and at least every three years, IFR investment firms' compliance with the requirements for the permission to use internal models as referred to in Article 22 of Regulation (EU) 2019/2033. The CSSF shall in particular have regard to changes in an IFR investment firm's business and to the implementation of those internal models to new products, and review and assess whether the IFR investment firm uses well-developed and up-to-date techniques and practices for those internal models. The CSSF shall ensure that material deficiencies identified in the coverage of risk by an IFR investment firm's internal

models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.

(2) Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the internal models are not or are no longer accurate, the CSSF shall revoke the permission to use the internal models or impose appropriate measures to ensure that the internal models are improved promptly within a set timeframe.

(3) Where an IFR investment firm that has been granted permission to use internal models no longer meets the requirements for applying those internal models, the CSSF shall require the IFR investment firm either to demonstrate that the effect of non-compliance is immaterial or to present a plan and a deadline to comply with those requirements. The CSSF shall require improvements to the presented plan where that plan is unlikely to result in full compliance or where the deadline is inappropriate.

Where it is unlikely that the IFR investment firm will comply by the prescribed deadline or has not satisfactorily demonstrated to the CSSF that the effect of non-compliance is immaterial, the CSSF shall revoke the permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline."

(Law of 20 May 2021)

"Section "5"[1001]: Other means used to exercise prudential supervision"

Article 54. Relationship between the CSSF and *réviseurs d'entreprises* (statutory auditors)

""(1) Every professional of the financial sector subject to the supervision of the CSSF which must have its accounts audited by a *réviseur d'entreprises agréé* (approved statutory auditor) must spontaneously communicate to the CSSF the reports and written comments issued by the *réviseur d'entreprises agréé* (approved statutory auditor) in the framework of its audit of the annual accounting documents.

The CSSF may set rules regarding the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the *réviseur d'entreprises agréé* (approved statutory auditor) as referred to in the previous subparagraph, without prejudice to the legal provisions governing the content of the statutory auditor's report."[1002]

(2) The CSSF may request any *réviseur d'entreprises agréé* (approved statutory auditor) to carry out an audit in relation to one or more specific aspects of the activities and operations of such a professional of the financial sector. Such audits shall be carried out at the expense of the professional concerned.

(3) The *réviseur d'entreprises agréé* (approved statutory auditor) shall be required promptly to report to the CSSF any fact or decision of which he becomes aware while performing the task of auditing the annual accounting documents of a professional of the financial sector ", an APA with a derogation or an ARM with a derogation"[1003] or any other statutory task, where that fact or decision:

"1. concerns that professional of the financial sector ", that APA with a derogation or that ARM with a derogation"[1004]; and

2. is liable to:

(a) constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which

[1001] Law of 21 July 2021: A566
[1002] Law of 21 December 2012
[1003] Law of 21 July 2021: A566
[1004] Law of 21 July 2021: A566

specifically govern pursuit of the activities of the professional of the financial sector ", the APA with a derogation or the ARM with a derogation"[1005];

(b) affect the continuous functioning of the professional of the financial sector ", the APA with a derogation or the ARM with a derogation"[1006]; or

(c) lead to refusal to certify the accounts or the expression of reservations thereto."[1007] The *réviseur d'entreprises agréé* (approved statutory auditor), in completing for a professional of the financial sector ", an APA with a derogation or an ARM with a derogation"[1008] the tasks referred to in the preceding subparagraph, shall likewise be required promptly to inform the CSSF of any fact or decision concerning that professional of the financial sector ", that APA with a derogation or that ARM with a derogation"[1009], and fulfilling the criteria enumerated in the preceding subparagraph, of which he becomes aware while auditing the annual accounting documents or performing any other statutory task within an undertaking which is linked to that professional of the financial sector ", that APA with a derogation or that ARM with a derogation"[1010] by a close link.

(Law of 21 July 2021: A566)

"The duty to report referred to in the first subparagraph shall apply, in the case of an IFR investment firm, to any fact or decision that fulfils the conditions set out in point (2) of the first subparagraph, and which concerns the IFR investment firm or any undertaking that has close links with the IFR investment firm."

(Law of 20 May 2021)

"(3a) The CSSF may require the replacement of a *réviseur d'entreprises agréé* (approved statutory auditor) if he or she acts in violation of his or her obligations under paragraph 3."

(…)[1011]

(4) The disclosure in good faith to the CSSF by a *réviseur d'entreprises agréé* (approved statutory auditor) of any fact or decision as referred to in paragraph 3 shall not constitute a violation of the obligation of professional secrecy or a breach of any restriction on disclosure of information imposed by contract "or by law"[1012], and shall not expose that auditor to liability of any kind."[1013] "Such disclosure shall be made simultaneously to the management body of the professional of the financial sector unless there are compelling reasons not to do so."[1014]

Article 55. *(repealed by the Law of 21 December 2012)*

Article 56. Coefficients

The CSSF shall fix structure coefficients to be observed by the various categories of credit institutions and "PFS"[1015] subject to its supervision. It shall define the factors involved in the calculation of those coefficients. It shall monitor compliance with the coefficients fixed by international agreements or "EU law"[1016].

[1005] Law of 21 July 2021: A566
[1006] Law of 21 July 2021: A566
[1007] Law of 30 May 2018
[1008] Law of 21 July 2021: A566
[1009] Law of 21 July 2021: A566
[1010] Law of 21 July 2021: A566
[1011] Law of 13 July 2007
[1012] Law of 30 May 2018
[1013] Law of 18 December 2009
[1014] Law of 23 July 2015
[1015] Law of 28 April 2011
[1016] Law of 21 December 2012

(Law of 23 July 2015)

"Article 56-1. Group exemption relating to large exposures

(1) Pursuant to Article 493(3)(c) of Regulation (EU) No 575/2013, exposures, including participations or other kinds of holdings, incurred by a CRR institution to its parent undertaking, to other subsidiaries "and qualifying holdings"[1017], in so far as those undertakings are covered by the supervision on a consolidated basis to which the CRR institution itself is subject, in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC or with equivalent standards in force in a third country, shall be exempted from the application of Article 395(1) of Regulation (EU) No 575/2013 if the following conditions are met:

(a) the counterparty is a CRR institution, a third-country credit institution or a third-country investment firm;

(b) the financial situation in terms of risks and solvency and the liquidity situation of the counterparties concerned does not entail disproportionate credit risks for the CRR institution;

(c) the financing of the exposures concerned does not incur material liquidity risks for the CRR institution in respect of maturity mismatches and currencies; and

(d) the exposures concerned would not trigger a disproportionate negative impact on the CRR institution where a resolution procedure had been applied to all or part of the group to which the CRR institution belongs.

A CRR institution may ignore the condition under (a) with respect to its own subsidiaries, in so far as they are included in the supervision on a consolidated basis to which the CRR institution is itself subject pursuant to Regulation (EU) No 575/2013, Directive 2002/87/EC or with equivalent standards in force in a third country.

A grand-ducal regulation shall specify the conditions set out in letters (a) to (d).

(2) The CRR institutions shall be able to justify, upon the CSSF's request and to its satisfaction, that the conditions set out in paragraph 1(a) to (d) are met.

The CRR institutions which, as at 31 December 2013, had not been granted an exemption by the CSSF pursuant to point (24) of Part XVI of Circular CSSF 06/273 or point 24 of Part XVI of Circular CSSF 07/290 shall provide the CSSF with the written justification referred to in subparagraph 1 if they intend to apply the exemption laid down in paragraph 1.

Where the CSSF is not satisfied with the justification provided by the CRR institution pursuant to subparagraph 1 or 2, it may limit the exemption laid down in paragraph 1 for the CRR institution concerned. A grand-ducal regulation shall specify the extent of the exemption limitation in such cases.

The CRR institutions shall inform the CSSF, spontaneously and without delay, of any changes which occurred or which the CRR institutions know will occur and which materially change the compliance of the CRR institutions with the conditions laid down in paragraph 1(a) to (d)."

Article 57. Authorisation of holdings

(1) Any credit institution or "PFS"[1018] subject to supervision by the CSSF which wishes to have a qualifying holding must first obtain authorisation from the CSSF.

(…)[1019]

(Law of 1 June 2021)

"(2) Where a qualifying holding does not exceed 40 million euros and 5 per cent of a CRR institution's own funds, the first subparagraph shall not apply."

[1017] Law of 20 December 2024: A585

[1018] Law of 28 April 2011

[1019] Law of 23 July 2015

(Law of 21 July 2021: A566)

"Article 57-1. Discretion to subject certain investment firms to the requirements of Regulation (EU) No 575/2013

(1) The CSSF may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to letter (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex II, where the total value of the consolidated assets of the investment firm is equal to or exceeds 5 billion euros, calculated as an average of the previous 12 months, and one or more of the following criteria apply:

1. the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;
2. the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033;
3. the CSSF considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:
   (a) the importance of the investment firm for the Luxembourg economy or the economy of the European Union;
   (b) the significance of the investment firm's cross-border activities;
   (c) the interconnectedness of the investment firm with the financial system.

(2) Paragraph 1 shall not apply to commodity and emission allowance dealers as defined in point (150) of Article 4(1) of Regulation (EU) No 575/2013, collective investment undertakings or insurance undertakings.

(3) Where the CSSF decides to revoke a decision taken in accordance with paragraph 1, it shall inform the investment firm without delay.

Any decision taken under paragraph 1 shall cease to apply where an investment firm no longer meets the threshold referred to in that paragraph, calculated over a period of 12 consecutive months.

(4) The CSSF shall inform the EBA without delay of any decision taken pursuant to this Article."

Article 58. Complaints by clients

"(1"[1020] The CSSF shall be competent to entertain complaints by clients of persons subject to its supervision and to approach those persons with a view to achieving an amicable settlement of such complaints.

(Law of 30 May 2018)

"(2) The CSSF is the competent authority for the out-of-court resolution of disputes relating to the rights and obligations laid down in this Law in accordance with the provisions of Book 4 of the Consumer Code.

(3) For the purposes of Article 75 of Directive 2014/65/EU, the CSSF shall cooperate with the authorities responsible for out-of-court settlement of disputes from the other Member States and shall notify ESMA of the out-of-court resolution procedure for consumer disputes relating to investment services and ancillary services provided by credit institutions and investment firms."

[1020] Law of 30 May 2018

(Law of 23 July 2015)

"Article 58-1. Reporting of breaches

The CSSF shall establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of Regulation (EU) No 575/2013, "of Regulation (EU) No 600/2014,"[1021] "of Regulation (EU) 2019/2033,"[1022] of this Law and their implementing measures.

The mechanisms referred to in the first subparagraph shall include at least:

(a) specific procedures for the receipt of reports on breaches ", their treatment"[1023] and their follow-up", including the establishment of secure communication channels for such reports"[1024];

(b) appropriate protection for employees of institutions who report breaches committed "within the persons subject to the supervision of the CSSF"[1025] against retaliation, discrimination or other types of unfair treatment at a minimum;

(c) protection of personal data concerning both, the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended;

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches (…)[1026], unless disclosure is required by Luxembourg law in the context of further investigations or subsequent judicial proceedings."

Article 59. Powers of injunction and suspension of the CSSF

(1) Where a person subject to supervision by the CSSF is not complying with the provisions of any laws, regulations or memorandum and articles of association relating to him, or where his management activities or financial situation are not such as to constitute an adequate guarantee of proper discharge of his commitments", or where it commits one of the breaches referred to in Articles 63-1 and 63-2,"[1027] the CSSF shall enjoin that person, by registered letter, to remedy, within such period as it may prescribe, the situation found to exist "or to cease any practice that is contrary to the relevant legal, regulatory or statutory provisions"[1028]", or to cease the conduct and to desist from repetition of that conduct"[1029].

(2) If, by the end of the period prescribed by the CSSF pursuant to the preceding paragraph, the situation in question has not been remedied, the CSSF may:

(a) suspend the members of the "management body"[1030] or any other persons who, by their actions, negligence or lack of prudence, have brought about the situation found to exist or the continued exercise of whose functions may prejudice the implementation of recovery or reorganisation measures;

(b) suspend the exercise of voting rights attaching to shares held by shareholders or members whose influence is likely to operate to the detriment of the prudent and sound management of the person in question "or who are held responsible for the breaches referred to in Article 63-1"[1031];

[1021] Law of 30 May 2018
[1022] Law of 21 July 2021: A566
[1023] Law of 21 July 2021: A566
[1024] Law of 30 May 2018
[1025] Law of 30 May 2018
[1026] Law of 30 May 2018
[1027] Law of 23 July 2015
[1028] Law of 13 July 2007
[1029] Law of 23 July 2015
[1030] Law of 23 July 2015
[1031] Law of 23 July 2015

(c) suspend the pursuit of that person's business or, if the situation found to exist concerns a particular area of business, the pursuit of the latter.

(3) Decisions adopted by the CSSF pursuant to the preceding paragraph shall take effect *vis-à-vis* the person in question from the date on which they are notified by registered letter or served by means of a notification drawn up by a bailiff (*exploit d'huissier*).

(4) Where, on account of a suspension ordered pursuant to paragraph 2, an administrative, executive or management body no longer has the minimum number of members prescribed by law or by the memorandum and articles of association, the CSSF shall fix, by registered letter, the period within which the institution concerned is to fill the positions left vacant by the departure of the persons suspended.

(5) If, by the end of that period, the positions left vacant by the departure of the persons suspended have not been filled, they shall be provisionally filled by persons appointed by the President of the *Tribunal d'Arrondissement de Luxembourg* (Luxembourg District Court), after the institution in question has been duly heard or called upon to put forward its submissions. The persons thus appointed shall have the same powers as the persons whom they replace. Their term of office may not exceed the duration of the suspension of the latter persons. Their fees shall be taxed by the judge appointing them and shall, together with all other expenses occasioned in pursuance of this article, be borne by the institution in question.

(Law of 13 July 2007)

"(6) The CSSF may disclose to the public any measure taken pursuant to paragraphs 1 and 2, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved."

(Law of 23 July 2015)

"Chapter 5: "Macroprudential supervision"[1032] "

(Law of 23 July 2015)

"Section 1: Scope and definitions"

(Law of 23 July 2015)

"Article 59-1. Scope

(1) "Sections 1 to 4 shall apply"[1033] to credit institutions and "CRR investment firms"[1034].

(…)[1035]

(Law of 23 July 2015)

"Article 59-2. Definitions

For the purpose of this chapter, the following definitions shall apply:

1. "capital conservation buffer" shall mean the own funds that an institution is required to maintain in accordance with Article 59-5;
2. "institution-specific countercyclical capital buffer" shall mean the own funds that an institution is required to maintain in accordance with Article 59-6;
3. "G-SII buffer" shall mean the own funds that an institution is required to maintain in accordance with Article 59-8;
4. "O-SII buffer" shall mean the own funds that an institution may be required to maintain in accordance with Article 59-9;
5. "systemic risk buffer" shall mean the own funds that an institution may be required to maintain in accordance with Article 59-10 where the conditions provided for in paragraph 1 of that article are met;

[1032] Law of 20 May 2021

[1033] Law of 20 May 2021

[1034] Law of 21 July 2021: A566

[1035] Law of 21 July 2021: A566

6. "combined buffer requirement" shall mean the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:
    (a) an institution-specific countercyclical capital buffer;
    (b) a G-SII buffer;
    (c) an O-SII buffer;
    (d) a systemic risk buffer where the conditions provided for in Article 59-10(1) are met;
7. "countercyclical buffer rate" shall mean the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 59-7 or by a relevant third-country authority, as the case may be;
8. "CRR institution authorised in Luxembourg" shall mean a CRR institution which was authorised in Luxembourg pursuant to this Law;
9. "buffer guide" shall mean a benchmark buffer rate calculated in accordance with Article 59-7;
10. "designated authority" shall mean the designated authority referred to in Articles 131, 133 and 136 of Directive 2013/36/EU and "in "Articles 124(8)"[1036], 164(5) and"[1037] 458 of Regulation (EU) No 575/2013. In Luxembourg, the designated authority is the CSSF which, when acting in such a capacity, takes decisions after consultation with the Banque centrale du Luxembourg in order to adopt a common position and, where applicable, after requesting the opinion of the Comité du risque systémique (Systemic Risk Committee) or taking the latter's recommendations into account. In Luxembourg, the mission of the designated authority is to perform the tasks entrusted to it in accordance with Articles 59-1 to 59-12 of this Law, as well as by Chapter 4 of Title VII of Directive 2013/36/EU and by ""Articles 124(9)"[1038], 164(6) and"[1039] 458 of Regulation (EU) No 575/2013. "The designated authority shall also decide on the application of the measures referred to in Article 59-14a."[1040] The exercise of this mission, as described in the preceding sentence, shall not change the current rules of representation of the authorities concerned at European and international level";

(Law of 20 May 2021)

"11. "group" shall mean a group as defined in point (138) of Article 4(1) of Regulation (EU) No 575/2013."

(Law of 23 July 2015)

"Section 2: Systemically important institutions"

(Law of 23 July 2015)

"Article 59-3. Systemically important institutions

(1) The CSSF shall be the designated Luxembourg authority referred to in Article 131(1) of Directive 2013/36/EU. By acting in accordance with this article, as well as with Articles 59-8 and 59-9, the CSSF shall act as designated authority and not as competent authority as defined in Article 42. Where the CSSF acts in accordance with this article, it shall take the decisions after consultation with the Banque centrale du Luxembourg and after requesting the opinion of the Comité du risque systémique (Systemic Risk Committee).

(2) The CSSF shall identify the systemically important institutions which have been authorised in Luxembourg. The systemically important institutions are either G-SIIs or O-SIIs. "G-SIIs shall be identified on a consolidated basis."[1041]

[1036] Law of 20 December 2024: A585
[1037] Law of 20 May 2021
[1038] Law of 20 December 2024: A585
[1039] Law of 20 May 2021
[1040] Law of 4 December 2019
[1041] Law of 20 May 2021

"(3) G-SIIs shall be any of the following:

(a) a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or
(b) a CRR institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company."[1042]

(4) The identification methodology for G-SIIs shall be based on the following categories:

(a) size of the group;
(b) interconnectedness of the group with the financial system;
(c) substitutability of the services or of the financial infrastructure provided by the group;
(d) complexity of the group;
(e) cross-border activity of the group, i.e. activity between Luxembourg and between a Member State or a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity as referred to in paragraph 2 assessed, which allows G-SIIs to be identified and allocated into a sub-category.

There shall be at least five subcategories of G-SIIs. The lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology "referred to in the first to the third subparagraphs"[1043]. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the sub-category "five and any added higher sub-category"[1044]. For the purposes of this subparagraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the buffer assigned to each sub-category shall increase in gradients of "at least 0.5%"[1045] of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 (…)[1046].

(…)[1047]

Notwithstanding this "and using the sub-categories and cut-off scores referred to in the fourth subparagraph"[1048], the CSSF may, in the exercise of sound supervisory judgment:

(a) re-allocate a G-SII from a lower sub-category to a higher sub-category;
(b) allocate an entity as referred to in paragraph 2 that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII;

(Law of 20 May 2021)

"(c) taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in paragraph 4a re-allocate a G-SII from a higher sub-category to a lower sub-category."

[1042] Law of 20 May 2021
[1043] Law of 20 May 2021
[1044] Law of 20 May 2021
[1045] Law of 20 May 2021
[1046] Law of 20 May 2021
[1047] Law of 20 May 2021
[1048] Law of 20 May 2021

(…)[1049]

(Law of 20 May 2021)

"(4a) An additional identification methodology for G-SIIs shall be based on the following categories:

(a) the categories referred to in letters (a) to (d) of paragraph 4;
(b) cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, hereinafter the "SRMR".

Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in letter (a) of the first subparagraph, the indicators shall be the same as the corresponding indicators determined pursuant to paragraph 4.

The additional identification methodology shall produce an additional overall score for each entity as referred to in paragraph 2 assessed, on the basis of which the CSSF may take one of the measures referred to in letter (c) of the fifth subparagraph of paragraph 4."

(5) O-SIIs shall be identified on an individual, sub-consolidated or consolidated basis, as applicable and shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or a CRR institution.

(Law of 20 May 2021)

"(5a) O-SIIs may either be a CRR institution or a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State."

(6) The systemic importance of O-SIIs shall be assessed on the basis of a method which includes at least any of the following criteria:

(a) size;
(b) importance for the economy of the European Union or of Luxembourg;
(c) significance of cross-border activities;
(d) interconnectedness of the CRR institution or group with the financial system.

(7) The CSSF shall notify to (…)[1050] the European Systemic Risk Board (…)[1051] the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated and shall disclose their names to the public. "The notification shall contain full reasons why supervisory judgment has been exercised or not in accordance with letters (a) to (c) of the fifth subparagraph of paragraph 4."[1052] It shall disclose to the public the sub-category to which each G-SII is allocated.

The CSSF shall review annually the identification of G-SIIs and O-SIIs and the allocation into the respective sub-categories. It shall report the result of this review to the systemically important institution concerned "and"[1053] the European Systemic Risk Board (…)[1054] and disclose the updated list of identified systemically important institutions to the public and shall disclose to the public the sub-category into which each identified G-SII is allocated."

[1049] Law of 20 May 2021
[1050] Law of 20 May 2021
[1051] Law of 20 May 2021
[1052] Law of 20 May 2021
[1053] Law of 20 May 2021
[1054] Law of 20 May 2021

(Law of 23 July 2015)

"Section 3: Combined buffer requirement"

(Law of 23 July 2015)

"Article 59-4. Combined capital buffer

(1) CRR institutions shall maintain on an individual and, if applicable, on a consolidated or sub-consolidated basis a combined capital buffer in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirements imposed by Article 92 of Regulation (EU) No 575/2013. The combined capital buffer maintained by the institutions shall consist of Common Equity Tier 1 capital and shall equal at least the combined buffer requirement.

(2) The combined capital buffer includes, if applicable, the following elements each consisting of Common Equity Tier 1 capital:

(a) capital conservation buffer;
(b) institution-specific countercyclical capital buffer;
(c) G-SII buffer;
(d) O-SII buffer;
(e) systemic risk buffer where the conditions provided for in Article 59-10(1) are met.

"(3) CRR institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in point (6) of the first subparagraph of Article 59-2, to meet any of the requirements set out in letters (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, the additional own funds requirements imposed pursuant to Article 53-3 to address risks other than the risk of excessive leverage, and the guidance communicated in accordance with Article 53-4(3) to address risks other than the risk of excessive leverage.

CRR institutions shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of its combined buffer requirement to meet the other applicable elements of its combined buffer requirement.

CRR institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in point (6) of the first subparagraph of Article 59-2 to meet the risk-based components of the requirements set out in Articles 92a and 92b of Regulation (EU) No 575/2013 and in Articles 46-3 and 46-4 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended."[1055]

"(4) Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer the higher buffer shall apply."[1056]

"(5) Where a CRR institution is subject to a systemic risk buffer, set in accordance with Article 59-10, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with this article.

Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraph 8, 9 or 10 of Article 59-10 and the O-SII buffer rate or the G-SII buffer rate to which the same CRR institution is subject would be higher than 5%, the procedure set out in paragraph 5a of Article 131 of Directive 2013/36/EU shall apply."[1057]

(…)[1058]

(Law of 23 July 2015)

"Article 59-5. Capital conservation buffer

CRR institutions shall maintain", in addition to the Common Equity Tier 1 capital that is maintained to meet any of the own funds requirements set out in letters (a), (b) and (c) of Article 92(1) of Regulation

[1055] Law of 20 May 2021
[1056] Law of 20 May 2021
[1057] Law of 20 May 2021
[1058] Law of 20 May 2021

(EU) No 575/2013,"[1059] a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that regulation."

(…)[1060]

(Law of 23 July 2015)
"Article 59-6. Institution-specific countercyclical capital buffer

CRR institutions shall maintain an institution-specific countercyclical capital buffer of Common Equity Tier 1 capital equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the countercyclical buffer rates on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that regulation."

(…)[1061]

(Law of 23 July 2015)
"Article 59-7. Countercyclical buffer rates

(1) The CSSF shall be the Luxembourg designated authority referred to in Article 136(1) of Directive 2013/36/EU and shall be responsible for setting the countercyclical buffer rates applicable in Luxembourg. By acting in accordance with this article, the CSSF shall act as designated authority and not as competent authority as defined in Article 42. Where the CSSF acts in accordance with this article, it shall take the decisions after consultation with the Banque centrale du Luxembourg and by taking into account the recommendations of the Comité du risque systémique (Systemic Risk Committee).

(2) The CSSF shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment on the adequacy of the countercyclical buffer rate in accordance with paragraph 3. This buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Luxembourg and shall duly take into account specificities of the Luxembourg economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

(a) an indicator of growth of levels of credit in Luxembourg and, in particular, an indicator reflective of the changes in the ratio of credit granted in Luxembourg to GDP;
(b) any current guidance maintained by the European Systemic Risk Board in accordance with Article 135(1)(b) of Directive 2013/36/EU.

(3) "The Comité du risque systémique (Systemic Risk Committee) shall assess the intensity of cyclical systemic risk and the appropriateness of the countercyclical buffer rate for Luxembourg on a quarterly basis. In so doing, it shall take into account:"[1062]

(a) the buffer guide calculated in accordance with paragraph 2;
(b) any current guidance maintained by the European Systemic Risk Board in accordance with Article 135(1)(a), (c) and (d) of Directive 2013/36/EU and any recommendations issued by the European Systemic Risk Board on the setting of a buffer rate;
(c) other variables that the Comité du risque systémique (Systemic Risk Committee) considers relevant for addressing cyclical systemic risk.

The result of this assessment shall be laid down in a recommendation for the CSSF. The CSSF shall set the countercyclical buffer rate on a quarterly basis by taking into account letters (a) to (c).

[1059] Law of 20 May 2021
[1060] Law of 20 May 2021
[1061] Law of 20 May 2021
[1062] Law of 20 May 2021

(4) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in Luxembourg, shall be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points. Where justified on the basis of the considerations set out in paragraph 3 of this article, the Comité du risque systémique (Systemic Risk Committee) may recommend the CSSF to set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

(5) Where the CSSF sets the countercyclical buffer rate above zero for the first time, or where, thereafter, it increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the CRR institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 7. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(6) If the CSSF reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the CSSF.

(7) "The CSSF shall publish quarterly at least the following information on its website:"[1063]

(a) the applicable countercyclical buffer rate;
(b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
(c) the buffer guide calculated in accordance with paragraph 2;
(d) a justification for that buffer rate;
(e) where the buffer rate is increased, the date from which the CRR institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
(f) where the date referred to in letter (e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;
(g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period;

The CSSF shall take all reasonable steps to coordinate the timing of that announcement with the designated authorities of other EU Member States. It shall notify each "change"[1064] of the countercyclical buffer rate and the information specified "in points (i) to (vii) of the first subparagraph"[1065] to the European Systemic Risk Board.

(8) Where a designated authority of another Member State, in accordance with Article 136(4) of Directive 2013/36/EU, or a relevant third-country authority has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the CSSF may recognise that buffer rate for the purposes of the calculation by CRR institutions authorised in Luxembourg of their institution-specific countercyclical capital buffers.

Where the CSSF recognises a buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

(a) the applicable countercyclical buffer rate;
(b) the Member State or third countries to which it applies;

[1063] Law of 20 May 2021
[1064] Law of 15 July 2024
[1065] Law of 15 July 2024

(c) where the buffer rate is increased, the date from which the CRR institutions authorised in Luxembourg must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
(d) where the date referred to in letter (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(9) Where a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country to which one or more CRR institutions authorised in Luxembourg have credit exposures, the CSSF may set the countercyclical buffer rate that the CRR institutions authorised in Luxembourg must apply for the purposes of calculating their institution-specific countercyclical capital buffer.

(10) Where a countercyclical buffer rate has been set and published by the relevant third-country authority for that third country, the CSSF may set a different rate for that third country in order for CRR institutions authorised in Luxembourg to calculate their institution-specific countercyclical capital buffer if it has reasonable grounds to consider that the rate set by the relevant third-country authority is not sufficient to protect these CRR institutions appropriately from the risks of excessive credit growth in that country.

When exercising the power under the first subparagraph, the CSSF shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5%, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of CRR institutions that have credit exposures in that third country.

(11) Where the CSSF sets a countercyclical buffer rate for a third country pursuant to paragraph 9 or 10 which increases the existing applicable countercyclical buffer rate, it shall decide the date from which CRR institutions authorised in Luxembourg must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with paragraph 12. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(12) The CSSF shall announce through publication on its website any setting of a countercyclical buffer rate for a third country pursuant to paragraph 9 or 10. It shall, in particular, include the following information:

(a) the countercyclical buffer rate and the third country to which it applies;
(b) a justification for that buffer rate;
(c) where the buffer rate is set above zero for the first time or is increased, the date from which the CRR institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
(d) where the date referred to in letter (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application."

(Law of 23 July 2015)
"Article 59-8. The G-SII buffer

The G-SIIs identified in accordance with Article 59-3 shall, on a consolidated basis, maintain a buffer that consists of Common Equity Tier 1 capital. This G-SII buffer of a given G-SII shall correspond to the sub-category in which it was identified in accordance with Article 59-3."

(Law of 23 July 2015)
"Article 59-9. The O-SII buffer

(1) Where the CSSF acts in accordance with this article, the CSSF shall take decisions after consultation with the Banque centrale du Luxembourg and after requesting the opinion of the Comité du risque systémique (Systemic Risk Committee).

The CSSF may require that O-SIIs identified in accordance with Article 59-3, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer that consists

of Common Equity Tier 1 capital. That buffer may reach "3%"[1066] of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, taking into account the criteria for the identification of the O-SII.

When giving its opinion, the Comité du risque systémique (Systemic Risk Board) shall take into account the restrictions laid down in paragraphs 2 to 4.

(Law of 20 May 2021)

"(1a) Subject to the European Commission's authorisation referred to in the third subparagraph of Article 131(5a) of Directive 2013/36/EU, the CSSF may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. That buffer shall consist of Common Equity Tier 1 capital."

(2) When requiring an O-SII buffer to be maintained, the CSSF shall comply with the following:

(a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market;
(b) the O-SII buffer must be reviewed at least annually.

(3) "Before setting or resetting an O-SII buffer, the CSSF shall notify the European Systemic Risk Board one month before the publication of the decision referred to in paragraph 1 and shall notify three months before the publication of the decision of the CSSF referred to in paragraph 1a."[1067]

That notification shall describe in detail:

(a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
(b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the CSSF;
(c) the O-SII buffer rate that the CSSF wishes to set.

"(4) Without prejudice to paragraph 1 and Article 59-10, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either a CRR institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:

(a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
(b) 3% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate the European Commission has authorised to be applied to the group on a consolidated basis in accordance with Article 131(5a) of Directive 2013/36/EU."[1068] "

(Law of 23 July 2015)

"Article 59-10. The systemic risk buffer

(1) The CSSF shall be the Luxembourg designated authority for the purposes of Article 133"(3)"[1069] of Directive 2013/36/EU. By acting in accordance with this article and Article 59-11, the CSSF shall act as designated authority and not as competent authority as defined in Article 42. The CSSF may only act pursuant to this article after an opinion has been adopted by the Comité du risque systémique (Systemic Risk Committee). The Comité du risque systémique (Systemic Risk Committee) shall review this opinion at least every second year. Where the CSSF acts in

[1066] Law of 20 May 2021
[1067] Law of 20 May 2021
[1068] Law of 20 May 2021
[1069] Law of 20 May 2021

accordance with this article, it shall take the decisions after consultation with the Banque centrale du Luxembourg.

The Comité du risque systémique (Systemic Risk Committee) shall adopt the opinion referred to in the first subparagraph only if it identifies one or several (…)[1070] systemic or macroprudential risks not covered by Regulation (EU) No 575/2013 "or by Articles 59-6, 59-8 and 59-9 of this Law"[1071] within the meaning of a risk of disruption in the financial system with potential to have consequences for the financial system and real economy in Luxembourg and if it considers that the systemic risk buffer is the only effective means to mitigate these risks.

(2) After the adoption of the opinion referred to in paragraph 1 by the Comité du risque systémique (Systemic Risk Committee), the CSSF may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector "on all or a subset of exposures as referred to in paragraph 5"[1072] in order to prevent and mitigate the risks identified by the Comité du risque systémique (Systemic Risk Committee).

(Law of 20 May 2021)

"(2a) CRR institutions shall calculate the systemic risk buffer as follows:

$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

where:

(a) B_{SR} = the systemic risk buffer;

(b) r_T = the buffer rate applicable to the total risk exposure amount of a CRR institution;

(c) E_T = the total risk exposure amount of a CRR institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

(d) i = the index denoting the subset of exposures as referred to in paragraph 5;

(e) r_i = the buffer rate applicable to the risk exposure amount of the subset of exposures i; and

(f) E_i = the risk exposure amount of an institution for the subset of exposures i calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013."

"(3) For the purposes of paragraph 2, the CSSF may require CRR institutions to maintain a systemic risk buffer of Common Equity Tier 1 capital calculated in accordance with paragraph 2a, on an individual, consolidated, or sub-consolidated basis, as applicable, in accordance with Title II of Part One of Regulation (EU) No 575/2013."[1073]

"(4) A systemic risk buffer may apply to:

(a) all exposures located in Luxembourg;

(b) the following sectoral exposures located in Luxembourg:

i) all retail exposures to natural persons which are secured by residential property;

ii) all exposures to legal persons which are secured by mortgages on commercial immovable property;

iii) all exposures to legal persons excluding those specified in point (ii);

iv) all exposures to natural persons excluding those specified in point (i);

(c) all exposures located in other Member States, subject to paragraphs 10 and 13;

[1070] Law of 20 May 2021

[1071] Law of 20 May 2021

[1072] Law of 20 May 2021

[1073] Law of 20 May 2021

(d) sectoral exposures, as identified in letter (b), located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 134 of Directive 2013/36/EU;

(e) exposures located in third countries;

(f) subsets of any of the exposure categories identified in letter (b).”[1074]

“(5) A systemic risk buffer shall apply to all exposures, or a subset of exposures as referred to in paragraph 4, of all CRR institutions, or one or more subsets of those CRR institutions authorised in Luxembourg and shall be set in steps of adjustment of 0.5 percentage points or multiples thereof. Different requirements may be introduced for different subsets of CRR institutions and of exposures. The systemic risk buffer shall not address risks that are covered by Articles 59-6, 59-8 and 59-9.”[1075]

(6) When requiring a systemic risk buffer to be maintained the CSSF shall comply with the following:

(a) according to the assessment of the Comité du risque systémique (Systemic Risk Committee), the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the “proper”[1076] functioning of the internal market;
(b) the systemic risk buffer must be reviewed by the CSSF at least every second year;

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“(c) the systemic risk buffer is not to be used to address risks that are covered by Articles 59-6, 59-8 and 59-9.”

“(7) The CSSF shall notify the European Systemic Risk Board before the publication of the decision referred to in paragraph 11. Where the CRR institution to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the CSSF shall also notify the authorities of that Member State. Where a systemic risk buffer rate applies to exposures located in third countries, the CSSF shall also notify the European Systemic Risk Board. That notification shall describe in detail:

(a) the macroprudential or systemic risks in Luxembourg;
(b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
(c) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
(d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the CSSF;
(e) the systemic risk buffer rate or rates that the CSSF intends to impose and the exposures to which such rates shall apply and the CRR institutions which shall be subject to such rates;
(f) where the systemic risk buffer rate applies to all exposures, a justification of why the CSSF considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided for in Article 59-9.

Where the decision to set the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, the CSSF shall only comply with this paragraph.”[1077]

“(8) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 4 subject to one or more systemic risk buffers does not result in a combined systemic risk buffer rate higher than 3% for any of those exposures, the

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[1074] Law of 20 May 2021
[1075] Law of 20 May 2021
[1076] Law of 20 May 2021
[1077] Law of 20 May 2021

CSSF shall notify the European Systemic Risk Board in accordance with paragraph 7 one month before the publication of the decision referred to in paragraph 11. For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 59-11 shall not count towards the 3% threshold."[1078]

"(9) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 4 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3% and up to 5% for any of those exposures, the CSSF shall request in the notification submitted in accordance with paragraph 7 the European Commission's opinion. Where the opinion of the European Commission is negative, the CSSF shall comply with that opinion or give reasons for not doing so.

Where a CRR institution to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the CSSF shall request in the notification submitted in accordance with paragraph 7 a recommendation by the European Commission and the European Systemic Risk Board.

In case of disagreement on the systemic risk buffer rate or rates applicable to that CRR institution and in the case of a negative recommendation of both the European Commission and the European Systemic Risk Board, the CSSF may refer the matter to European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the systemic risk buffer rate or rates for those exposures shall be suspended until the European Banking Authority has taken a decision."[1079]

"(10) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 4 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5% for any of those exposures, the CSSF shall seek the authorisation of the European Commission before implementing a systemic risk buffer."[1080] "

(Law of 20 May 2021)

"(11) The CSSF shall announce the setting or resetting of one or more systemic risk buffer rates by publication on its website. The publication shall include at least the following information:

(a) the systemic risk buffer rate or rates;

(b) the CRR institutions to which the systemic risk buffer applies;

(c) the exposures to which the systemic risk buffer rate or rates apply;

(d) a justification for setting or resetting the systemic risk buffer rate or rates;

(e) the date from which the CRR institutions shall apply the setting or resetting of the systemic risk buffer; and

(f) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

Where the publication of the information referred to in letter (d) of the first subparagraph could jeopardise the stability of the financial system, that information shall not be included in the publication.

(12) Where the CSSF decides to set the systemic risk buffer on the basis of exposures located in other Member States, the buffer shall be set equally on all exposures located within the European Union, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 134 of Directive 2013/36/EU."

[1078] Law of 20 May 2021

[1079] Law of 20 May 2021

[1080] Law of 20 May 2021

(Law of 23 July 2015)

"Article 59-11. Recognition of a systemic risk buffer rate

(1) Where the CSSF acts in accordance with this article, it shall take its decisions after consultation with the Banque centrale du Luxembourg and after requesting the opinion of the Comité du risque systémique (Systemic Risk Committee).

The CSSF may recognise the systemic risk buffer rate set in other Member States in accordance with Article 133 of Directive 2013/36/EU and may apply that buffer rate to CRR institutions authorised in Luxembourg for the exposures located in the Member State that sets that buffer rate.

(2) If the CSSF recognises the systemic risk buffer rate for CRR institutions authorised in Luxembourg it shall notify (…)[1081] the European Systemic Risk Board (…)[1082].

(3) When deciding whether to recognise a systemic risk buffer rate, the CSSF shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with "Article 133(9) and (13)"[1083] of Directive 2013/36/EU.

(Law of 20 May 2021)

"(3a) Where the CSSF decides to recognise a systemic risk buffer rate for CRR institutions authorised in Luxembourg, that systemic risk buffer may be cumulative with the systemic risk buffer applied in accordance with Article 59-10, provided that the buffers address different risks. Where the buffers address the same risks, only the higher buffer shall apply."

(4) Where a systemic risk buffer rate is introduced in Luxembourg in accordance with Article 59-10 of this Law, the CSSF may ask the European Systemic Risk Board to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which may recognise the systemic risk buffer rate."

(Law of 23 July 2015)

"Section 4: Control of compliance with combined buffer requirements and capital conservation measures"

(Law of 23 July 2015)

"Article 59-12. Compliance with combined buffer requirements and designated authority for the purposes of Regulation (EU) No 575/2013

(1) The CSSF shall ensure compliance with the requirements laid down in Articles 59-1 to 59-14.

(2) The CSSF shall be the Luxembourg designated authority for the purposes of Article 458 of Regulation (EU) No 575/2013. By acting in accordance with Article 458, the CSSF shall act as designated authority and not as competent authority as defined in Article 42. Where it acts in accordance with Article 458 of Regulation (EU) No 575/2013, it shall take its decisions after consultation with the Banque centrale du Luxembourg and after requesting the opinion of the Comité du risque systémique (Systemic Risk Committee)."

(Law of 23 July 2015)

"Article 59-13. Capital conservation measures in case of non-compliance with the combined buffer requirement

(1) Any CRR institution that meets the combined buffer requirement shall refrain from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

(2) Any CRR institution that:

(a) does not fully comply with the combined buffer requirement;
(b) does not fully comply with the requirement in Article 59-5;

[1081] Law of 20 May 2021

[1082] Law of 20 May 2021

[1083] Law of 20 May 2021

(c) does not fully comply with the requirement in Article 59-6; or
(d) does not fully comply with the requirement in Article 59-10

shall calculate the Maximum Distributable Amount (MDA) in accordance with "paragraph 5"[1084] and shall notify the CSSF of that MDA.

(3) Where one or several cases referred to in paragraph 2 apply, the CRR institution concerned shall be prohibited from undertaking any of the following actions before it has calculated the MDA:

(a) make a distribution in connection with Common Equity Tier 1 capital;
(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at the time when the CRR institution failed to meet the combined buffer requirements;
(c) make payments on Additional Tier 1 instruments.

(4) Where one or several cases referred to in paragraph 2 apply "or where a CRR institution does not exceed its combined buffer requirements"[1085], the CRR institution concerned shall be prohibited from carrying out any actions referred to in paragraph 3(a), (b) and (c) that imply distributing more than the MDA calculated in accordance with paragraph 5.

(5) The CRR institutions shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 6 by the factor determined in accordance with paragraph 7. The MDA shall be reduced by any of the actions referred to in paragraph 3(a), (b) or (c).

(6) The sum to be multiplied in accordance with paragraph 5 shall consist of:

(a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013", net of any distribution of profits or any payment resulting from the actions referred to"[1086] in paragraph 3(a), (b) or (c); plus
(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013", net of any distribution of profits or any payment resulting from the actions referred to"[1087] in paragraph 3(a), (b) or (c); minus
(c) amounts which would be payable by tax if the items specified in letters (a) and (b) of this paragraph were to be retained.

(7) The factor shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the CRR institution which is not used to meet the own funds "requirements"[1088] under Article 92(1)"(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in the first sentence of the second indent of Article 53-1(2) of this Law"[1089], expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
(b) where the Common Equity Tier 1 capital maintained by the CRR institution which is not used to meet the own funds "requirements"[1090] under Article 92(1)"(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in the first sentence of the second

[1084] Law of 20 May 2021
[1085] Law of 20 May 2021
[1086] Law of 20 May 2021
[1087] Law of 20 May 2021
[1088] Law of 20 May 2021
[1089] Law of 20 May 2021
[1090] Law of 20 May 2021

indent of Article 53-1(2) of this Law"[1091], expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

(c) where the Common Equity Tier 1 capital maintained by the CRR institution which is not used to meet the own funds "requirements"[1092] under Article 92(1)"(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in the first sentence of the second indent of Article 53-1(2) of this Law"[1093], expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

(d) where the Common Equity Tier 1 capital maintained by the CRR institution which is not used to meet the own funds "requirements"[1094] under Article 92(1)"(a) to (c) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage set out in the first sentence of the second indent of Article 53-1(2) of this Law"[1095], expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

where "Q_n" indicates the ordinal number of the quartile concerned.

(8) The restrictions imposed by this article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the CRR institution.

(9) Where one or several of the cases referred to in paragraph 2 apply and where the CRR institution concerned intends to distribute any of its distributable profits or undertake an action referred to in paragraph 3(a), (b) and (c), it shall notify the CSSF and provide the following information:

(a) the amount of capital maintained by the institution, subdivided as follows:
  (i) Common Equity Tier 1 capital,
  (ii) Additional Tier 1 capital,
  (iii) Tier 2 capital;
(b) the amount of its interim and year-end profits;
(c) the MDA calculated in accordance with paragraph 5;
(d) the amount of distributable profits it intends to allocate between the following:
  (i) dividend payments,
  (ii) share buybacks,
  (iii) payments on Additional Tier 1 instruments,

[1091] Law of 20 May 2021
[1092] Law of 20 May 2021
[1093] Law of 20 May 2021
[1094] Law of 20 May 2021
[1095] Law of 20 May 2021

(iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the CRR institution failed to meet its combined buffer requirements.

(10) CRR institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the CSSF upon request.

(11) For the purposes of this article, a distribution in connection with Common Equity Tier 1 capital shall include the following:

(a) a payment of cash dividends;
(b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;
(c) a redemption or purchase by a CRR institution of its own shares or other capital instruments referred to in Article 26(1)(a) of that regulation;
(d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of that regulation;
(e) a distribution of items referred to in points (b) to (e) of Article 26(1) of that regulation.

(12) Where the application of those restrictions on distributions referred to in this article leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the CRR institution in the light of the relevant risks, the CSSF may take additional measures in accordance with Articles 53 and 53-1."

(Law of 20 May 2021)
"Article 59-13a. Failure to meet the combined buffer requirement

A CRR institution shall be considered as failing to meet the combined buffer requirement for the purposes of Article 59-13 where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following requirements in:

1. letter (a) of Article 92(1) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under the first sentence of the second indent of Article 53-1(2) of this Law;

2. letter (b) of Article 92(1) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under the first sentence of the second indent of Article 53-1(2) of this Law;

3. letter (c) of Article 92(1) of Regulation (EU) No 575/2013 and the additional own funds requirement addressing risks other than the risk of excessive leverage under the first sentence of the second indent of Article 53-1(2) of this Law.

Article 59-13b. Restrictions applicable to distributions in case of failure to meet the leverage ratio buffer requirement

(1) A CRR institution that meets the leverage ratio buffer requirement in accordance with Article 92(1a) of Regulation (EU) No 575/2013 shall not make a distribution in connection with Tier 1 capital to an extent that would decrease its own funds to a level where the leverage ratio buffer requirement is no longer met.

(2) A CRR institution that fails to meet the leverage ratio buffer requirement shall calculate the maximum distributable amount related to the leverage ratio, hereinafter the "MDA-L", in accordance with paragraph 4 and shall notify the CSSF thereof.

Where the first subparagraph applies, the institution shall not undertake any of the following actions before it has calculated the MDA-L:

1. make a distribution in connection with Common Equity Tier 1 capital;
2. create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the CRR institution failed to meet the leverage ratio buffer requirement; or
3. make payments on Additional Tier 1 instruments.

(3) Where a CRR institution fails to meet its leverage ratio buffer requirement, it shall not distribute more than the MDA-L calculated in accordance with paragraph 4 through any action referred to in points (1), (2) and (3) of the second subparagraph of paragraph 2.

(4) CRR institutions shall calculate the MDA-L by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The MDA-L shall be reduced by any amount resulting from any of the actions referred to in point (1), (2) or (3) of the second subparagraph of paragraph 2.

(5) The sum to be multiplied in accordance with paragraph 4 shall consist of:

1. any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment related to the actions referred to in point (1), (2) or (3) of the second subparagraph of paragraph 2 of this article; plus
2. any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment related to the actions referred to in point (1), (2) or (3) of the second subparagraph of paragraph 2 of this article; minus
3. amounts which would be payable by tax if the items specified in points (1) and (2) of this paragraph were to be retained.

(6) The factor referred to in paragraph 4 shall be determined as follows:

1. where the Tier 1 capital maintained by the CRR institution which is not used to meet any of the requirements under letter (d) of Article 92(1) of Regulation (EU) No 575/2013 and the first sentence of the second indent of Article 53-1(2) of this Law as regards the risk of excessive leverage insufficiently covered by letter (d) of Article 92(1) of that regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that regulation, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor shall be 0;
2. where the Tier 1 capital maintained by the CRR institution which is not used to meet any of the requirements under letter (d) of Article 92(1) of Regulation (EU) No 575/2013 and the first sentence of the second indent of Article 53-1(2) of this Law as regards the risk of excessive leverage insufficiently covered by letter (d) of Article 92(1) of that regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that regulation, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0.2;
3. where the Tier 1 capital maintained by the CRR institution which is not used to meet any of the requirements under letter (d) of Article 92(1) of Regulation (EU) No 575/2013 and the first sentence of the second indent of Article 53-1(2) of this Law as regards the risk of excessive leverage insufficiently covered by letter (d) of Article 92(1) of that regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that regulation, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0.4;
4. where the Tier 1 capital maintained by the CRR institution which is not used to meet any of the requirements under letter (d) of Article 92(1) of Regulation (EU) No 575/2013 and the first sentence of the second indent of Article 53-1(2) of this Law as regards the risk of excessive leverage insufficiently covered by letter (d) of Article 92(1) of that regulation, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of that regulation, is within the fourth (that is, the highest) quartile of the leverage ratio buffer requirement, the factor shall be 0.6.

The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times (Q_n\text{-}1)$$

$$\text{Upper bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times Q_n$$

where "Q_n" is the ordinal number of the quartile concerned.

(7) The restrictions imposed by this article shall only apply to payments that result in a reduction of Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the CRR institution.

(8) Where a CRR institution fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (1), (2) and (3) of the second subparagraph of paragraph 2, it shall notify the CSSF and provide the information listed in Article 59-13(9), except its letter (a)(iii) and the MDA-L calculated in accordance with paragraph 4 of this article.

(9) CRR institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA-L are calculated accurately, and shall be able to demonstrate that accuracy to the CSSF on request.

(10) For the purposes of paragraphs 1 and 2, a distribution in connection with Tier 1 capital shall include any item listed in Article 59-13(11).

Article 59-13c. Failure to meet the leverage ratio buffer requirement

A CRR institution shall be considered as failing to meet the leverage ratio buffer requirement for the purposes of Article 59-13b where it does not have Tier 1 capital in an amount needed to meet at the same time the requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013 and the requirements laid down in letter (d) of Article 92(1) of that regulation and in the first sentence of the second indent of Article 53-1(2) of this Law, when faced with addressing the risk of excessive leverage insufficiently covered by letter (d) of Article 92(1) of Regulation (EU) No 575/2013."

(Law of 23 July 2015)
"Article 59-14. Capital conservation plan

(1) Where one or several of the cases referred to in Article 59-13(2) apply "or where a CRR institution fails to meet the leverage ratio buffer requirement"[1096], the CRR institution concerned shall prepare a capital conservation plan and submit it to the CSSF no later than five working days after it identified that it was failing to meet the requirement in question, unless the CSSF authorises a longer delay up to 10 days.

The CSSF shall grant such authorisations only on the basis of the individual situation of "a CRR institution"[1097] and taking into account the scale and complexity of the "CRR"[1098] institution's activities.

(2) The capital conservation plan shall include the following:

(a) estimates of income and expenditure and a forecast balance sheet;
(b) measures to increase the capital ratios of the CRR institution;
(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;
(d) any other information that the CSSF considers to be necessary to carry out the assessment required by paragraph 3.

(3) The CSSF shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise

[1096] Law of 20 May 2021
[1097] Law of 25 July 2018
[1098] Law of 25 July 2018

sufficient capital to enable the CRR institution to meet its combined buffer requirements within a period which the CSSF considers appropriate.

(4) If the CSSF does not approve the capital conservation plan in accordance with paragraph 3, it shall impose one or both of the following:

(a) require the CRR institution to increase own funds to specified levels within specified periods;
(b) exercise its powers under Article 53-1 to impose more stringent restrictions on distributions than those required by Article 59-13."

(Law of 4 December 2019)

""Section 5: Macroprudential measures in the area of mortgage loans"[1099]

Article 59-14a. Powers of the CSSF

(1) The CSSF may take the measures referred to in paragraph 2 to set out the conditions for granting loans for residential immovable property located in Luxembourg by credit institutions, insurance undertakings and professionals performing lending operations.

The CSSF may only take the measures referred to in paragraph 2 if the activation of such measures allows counteracting the malfunctioning of the national financial system or reducing the accumulation of risks to national financial stability arising from developments in the real estate sector in Luxembourg and if no other measure that may be taken under this Law, under Regulation (EU) No 575/2013 or their implementing measures, taken independently or together, would allow these risks to be adequately mitigated.

In the event of a sustained and persistent increase in house prices and in the volume of mortgage loans coupled with a significant deterioration, when granting loans, of the ratios referred to in paragraph 2, the Systemic Risk Committee shall assess whether such developments indicate a malfunctioning of the national financial system or pose a risk to national financial stability.

The CSSF shall act under this article only after a recommendation from the Systemic Risk Committee has been adopted and addressed to the CSSF. Where the CSSF acts in accordance with this article, it shall decide on the measures to be taken after consultation with the Banque centrale du Luxembourg to reach a common position. Where players of the insurance sector are concerned by the measures referred to in paragraph 2, a prior consultation with the Commissariat aux assurances shall take place.

The measures taken in accordance with this article shall not apply to credit agreements in force at the time of the decision of the measure by the CSSF.

(2) For the provision of loans relating to residential immovable property, the CSSF may define:

(a) a maximum limit for the ratio between the sum of all loans or loan tranches secured by the borrower on the immovable property at the moment of loan origination and the value of the property at the moment of loan origination. Where the CSSF defines a maximum limit for the above ratio, this limit shall be between 75% and 100%;

(b) a maximum limit for the ratio between the sum of all loans or loan tranches secured by the borrower on the immovable property at the moment of loan origination and the borrower's total available annual income at the moment of loan origination. Where the CSSF defines a maximum limit for the above ratio, this limit shall be between 400% and 1200%;

(c) a maximum limit for the ratio between the borrower's total indebtedness at the moment of loan origination and the borrower's total available annual income at the moment of loan origination. Where the CSSF defines a maximum limit for the above ratio, this limit shall be between 400% and 1200%;

[1099] Law of 20 May 2021

(d) a maximum limit for the ratio between the total annual mortgage charges and the borrower's total available annual income at the moment of loan origination. Where the CSSF defines a maximum limit for the above ratio, this limit shall be between 35% and 75%;

(e) a maximum limit for a loan's initial maturity. Where the CSSF defines a maximum limit for the loans' initial maturity, this limit shall be between 20 and 35 years.

The measures referred to under points (a) to (e) may be applied alone or in combination and may refer to all or part of the amount of the new loans.

Article 59-14b. Recognition of the measures taken in Luxembourg (...)[1100] in other Member States

(1) The CSSF may, in its capacity as designated authority, ask the national authorities of other Member States to recognise the conditions set out for granting loans relating to immovable property located in Luxembourg and to apply these conditions to entities under their supervision.

(2) The CSSF shall act under this article only after a recommendation from the Systemic Risk Committee has been adopted and addressed to the CSSF. Where the CSSF acts in accordance with this article, it shall decide on the measures to be taken after consultation with the Banque centrale du Luxembourg to reach a common position."

(Law of 20 May 2021)
"Article 59-14c. Cooperation obligation

For the purposes of "Articles 124(8)" [1101] and 164(5) of Regulation (EU) No 575/2013, the CSSF shall ensure that the departments in charge of the missions it exercises in its capacity as designated authority and the departments in charge of the missions it exercises in its capacity as competent authority coordinate, closely cooperate and exchange information necessary for the adequate performance of the duties referred to in these articles. By acting in accordance with "Articles 124(8)" [1102] and 164(5) of Regulation (EU) No 575/2013, the CSSF shall duly take into account the interaction with other measures, in particular measures taken under Article 458 of that regulation and Article 59-10 of this Law and shall ensure that any form of duplicative or inconsistent action between the departments concerned is avoided."

"PART IV: Prudential rules and obligations in relation to recovery planning, intra-group financial support and early intervention

Chapter I: Scope, definitions and general provisions

Article 59-15. Definitions

For the purposes of this part the following definitions shall apply:

1. "shareholders" shall mean shareholders or holders of other instruments of ownership;
2. "core business lines" shall mean business lines and associated services which represent material sources of revenue, profit or franchise value for a BRRD institution or for a group of which a BRRD institution forms part;
3. "resolution authority" shall mean an authority designated by a Member State in accordance with Article 3 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, hereinafter referred to as "Directive 2014/59/EU";

[1100] Law of 20 May 2021
[1101] Law of 20 December 2024: A585
[1102] Law of 20 December 2024: A585

4. "Luxembourg resolution authority" shall mean the CSSF acting via the Resolution Board or, where appropriate, the Single Resolution Board within its competence and powers pursuant to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010;
5. "recovery capacity" shall mean the capability of a BRRD institution to restore its financial position following a significant deterioration;
6. "supervisory college" shall mean a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;
7. "resolution college" shall mean a college established in accordance with Article 88 of Directive 2014/59/EU to carry out the tasks referred to in Article 88(1) of that directive;
8. "Resolution Board" shall mean the Resolution Board in accordance with Article 12-2 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
9. "financial contracts" includes the following contracts and agreements:
    (a) securities contracts, including:
        (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
        (ii) options on a security or group or index of securities;
        (iii) repurchase or reverse repurchase transactions on any such security, group or index;
    (b) commodities contracts, including:
        (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
        (i) options on a commodity or group or index of commodities;
        (ii) repurchase or reverse repurchase transactions on any such commodity, group or index;
    (c) futures and forwards contracts, including contracts for the purchase, sale or transfer, other than a commodities contract, of a commodity or property of any other description, service, right or interest for a specified price at a future date;
    (d) swap agreements, including:
        (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;
        (ii) total return, credit spread or credit swaps;
        (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
    a) inter-bank borrowing agreements where the term of the borrowing is three months or less;
    b) master agreements for any of the contracts or agreements referred to in letters (a) to (e);
10. "group entity" shall mean a legal person that is part of a group;
11. "BRRD investment firm" shall mean an investment firm as defined in "point (22) of Article 4(1) of Regulation (EU) No 2019/2033 that is subject to the initial capital requirement laid down in Article 9(1) of Directive (EU) 2019/2034"[1103];
12. "EU parent undertaking" or "parent undertaking of the group" shall mean an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;
13. "BRRD institution" shall mean a credit institution or a BRRD investment firm;
14. "bridge institution" shall mean a bridge institution as defined in point (58) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
15. "critical functions" shall mean activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of a BRRD institution or group, with particular regard to the substitutability of those activities, services or operations;
16. "group" shall mean a parent undertaking and its subsidiaries;
17. "sale of business tool" shall mean the sale of business tool as defined in point (69) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;

[1103] Law of 21 July 2021: A566

18. "derivative" shall mean a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;
19. "business day" shall mean a day other than a Saturday, a Sunday or a public holiday;
20. "crisis prevention measure" shall mean the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 59-22(3), (4) and (5), the exercise of powers to address or remove impediments to resolvability under Articles 29, 30 or 31 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, the application of an early intervention measure under Article 59-43, the appointment of a temporary administrator under Article 59-45 or the exercise of the write-down or conversion powers under Article 57 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
21. "competent ministries" shall mean finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with Article 3(5) of Directive 2014/59/EU. In Luxembourg, the competent minister is the Minister responsible for the financial sector;
22. "recovery plan" shall mean a recovery plan drawn up and maintained by a BRRD institution in accordance with Articles 59-18 to 59-20;
23. "group recovery plan" shall mean a group recovery plan drawn up and maintained in accordance with Article 7 of Directive 2014/59/EU;
24. "normal insolvency proceedings" shall mean the insolvency proceedings described in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
25. "extraordinary public financial support" shall mean State aid within the meaning of Article 107(1) of the TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of a BRRD institution or entity referred to in letter (b), (c) or (d) of Article 59-16 or of a group of which such a BRRD institution or entity forms part;
26. "asset management vehicle" shall mean an asset management vehicle as defined in point (104) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
27. "institutional protection scheme" or "IPS" shall mean an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;
28. "instruments of ownership" shall mean shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;

(Law of 20 May 2021)
"For the purposes of the application of Articles 59-18 to 59-20, 59-23 and 59-24 to resolution groups referred to in letter (b) of point (67a) of Article 1 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, the definition of "subsidiary" referred to in point (18) of Article 1 of this Law shall also include, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Article 46-5(3) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended."

Article 59-16. Scope

This part lays down rules and procedures relating to the recovery of the following entities:

(a) BRRD institutions incorporated under Luxembourg law;
(b) financial institutions incorporated under Luxembourg law that are subsidiaries of a BRRD institution or of a company referred to in letter (c) or (d) of Article 1(1) of Directive 2014/59/EU, and that are covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013;
(c) financial holding companies incorporated under Luxembourg law, mixed financial holding companies incorporated under Luxembourg law and mixed-activity holding companies incorporated under Luxembourg law;
(d) Luxembourg parent financial holding companies, EU parent financial holding companies incorporated under Luxembourg law, Luxembourg parent mixed financial holding companies, EU parent mixed financial holding companies incorporated under Luxembourg law.

This part shall also apply to institutions and entities referred to in Article 1(1) of Directive 2014/59/EU which the CSSF will be supervising on a consolidated basis in accordance with a decision taken under "Article 49(7)"[1104].

Article 59-17. General provisions

(1) When establishing and applying the requirements under this part and when using the different tools at their disposal in relation to an entity referred to in Article 59-16, the CSSF shall take account of the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status of the entity concerned. The CSSF shall also take account of the interconnectedness of the entity concerned to other BRRD institutions or to the financial system in general, of the scope and the complexity of its activities, its membership of an institutional protection scheme or other cooperative mutual solidarity systems referred to in Article 113(6) of Regulation (EU) No 575/2013 and of the fact that it exercises investment services or activities as defined in this Law.

(2) Decisions taken by the CSSF in accordance with this part shall take into account the potential impact of the decision in all the Member States where the BRRD institution or the group operate and minimise the negative effects on financial stability and negative economic and social effects in those Member States.

Chapter II: Recovery planning

Section 1: Preparation of recovery plans

Article 59-18. Recovery plans

(1) Each BRRD institution that is not part of a group subject to consolidated supervision shall draw up and maintain a recovery plan providing for measures to be taken by the BRRD institution to restore its financial position following a significant deterioration of its financial situation. Recovery plans shall be considered to be a governance arrangement within the meaning of Articles 5 and 17.

(2) Without prejudice to Article 59-19, where the BRRD institution is part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, the parent undertaking of the group shall draw up a recovery plan for the group headed by this parent undertaking as a whole.

(3) Without prejudice to the application of simplified obligations in accordance with letter (b) of Article 59-26(1), the recovery plan shall be updated at least once a year or after any change to the legal or organisational structure, to the business or the financial situation of the BRRD institution or of the group that could have material effect on or require a change to the recovery plan. The CSSF may require that the recovery plan be updated more frequently.

(4) Without prejudice to the application of simplified obligations in accordance with letter (a) of Article 59-26(1), the recovery plan shall include the information listed below:

(a) a summary of the key elements of the plan and a summary of the recovery capacity of the BRRD institution or of the group;
(b) a summary of the material changes to the BRRD institution or to the group since the most recently filed recovery plan;
(c) a communication and disclosure plan outlining how the BRRD institution or the parent undertaking of the group intends to manage any potentially negative market reactions;
(d) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the BRRD institution or of the group;
(e) an estimation of the timeframe for executing each material aspect of the plan;
(f) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
(g) identification of critical functions;

[1104] Law of 20 May 2021

(h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the BRRD institution or of the group;
(i) a detailed description of how recovery planning is integrated into the corporate governance structure of the BRRD institution or of the parent undertaking of the group as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
(j) arrangements and measures to conserve or restore the own funds of the BRRD institution or of the parent undertaking of the group;
(k) arrangements and measures to ensure that the BRRD institution or the parent undertaking of the group has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
(l) arrangements and measures to reduce risk and leverage;
(m) arrangements and measures to restructure liabilities;
(n) arrangements and measures to restructure business lines;
(o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
(p) arrangements and measures necessary to maintain the continuous functioning of the BRRD institution's or the group's operational processes, including "network and information systems that are set up and managed in accordance with Regulation (EU) 2022/2554"[1105];
(q) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
(r) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
(s) preparatory measures that the BRRD institution or the parent undertaking of the group has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the BRRD institution or the parent undertaking of the group;
(t) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

(5) The recovery plan shall include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

The recovery plan shall contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the BRRD institution's or the group's specific conditions including system-wide events and stress specific to individual legal persons and to groups.

The recovery plan shall also include possible measures which could be taken by the BRRD institution or the parent undertaking of the group where the conditions for early intervention under Article 59-43 are met.

The recovery plan shall not assume any access to or receipt of extraordinary public financial support but shall include, where applicable, an analysis of how and when a BRRD institution or the parent undertaking of a group may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

(6) The recovery plan shall include a framework of indicators established by the BRRD institution or the parent undertaking of the group which identifies the points at which appropriate actions referred to in the plan may be taken. The indicators may be of qualitative or quantitative nature relating to the BRRD institution's or the group's financial position and shall be capable of being monitored easily.

[1105] Law of 1 July 2024

To this end, the BRRD institution or the parent undertaking of the group shall put in place appropriate arrangements for the regular monitoring of the indicators referred to in the first subparagraph.

Such indicators shall be agreed by the CSSF when making the assessment of recovery plans in accordance with Articles 59-21 to 59-24.

Notwithstanding the first, second and third subparagraph, a BRRD institution or the parent undertaking of a group may:

(a) take action under its recovery plan where the relevant indicator has not been met, but where the management body of the BRRD institution or of the parent undertaking of the group, respectively, considers it to be appropriate in the circumstances; or
(b) refrain from taking such an action where the management body of the BRRD institution or of the parent undertaking of the group, respectively, does not consider it to be appropriate in the circumstances of the situation.

A decision to take an action referred to in the recovery plan or a decision to refrain from taking such an action shall be notified to the CSSF without delay.

(7) In addition, the recovery plan shall fulfil the following criteria:

(a) the implementation of the arrangements proposed in the plan is, in all likelihood, such so as to maintain or restore the viability and financial position of the BRRD institution or of the group, taking into account the preparatory measures that the BRRD institution or the parent undertaking of the group has taken or has planned to take;
(b) the plan and specific options within the plan are, in all likelihood, such so as to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other BRRD institutions to implement recovery plans within the same period.

The BRRD institution or the parent undertaking of the group shall demonstrate, to the satisfaction of the CSSF, that the plan fulfils the criteria of the first subparagraph of this paragraph.

(8) The management body of the entity drawing up the recovery plan pursuant to paragraph 1 or paragraph 2 shall assess and approve the recovery plan before submitting it to the CSSF.

(9) The CSSF may require from a BRRD institution or from an EU parent undertaking to maintain detailed records of financial contracts to which it is a party.

Article 59-19. Recovery plans for a subsidiary

In accordance with Article 59-23 and 59-24, the CSSF may require from a BRRD institution that is subsidiary of an EU parent undertaking to draw up and submit a recovery plan on an individual basis. Any plan drawn up by a specific subsidiary shall include, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter III.

Article 59-20. Specific requirements relating to the preparation of group recovery plans

(1) Where the CSSF is the consolidating supervisor, EU parent undertakings shall draw up and submit a group recovery plan to the CSSF.

(2) Without prejudice to the requirements under Article 59-18, the group recovery plans shall fulfil the following requirements:

(a) the group recovery plan shall identify measures that may be required to be implemented at the level of the EU parent undertaking and each of its Luxembourg or foreign subsidiary.
(b) the group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any BRRD institution of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the BRRD institution in question, at the same time taking into account the financial

position of other group entities. The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of:

(i) the EU parent undertaking;
(ii) the entities referred to in letters (c) and (d) of Article 59-16;
(iii) the subsidiaries; and,
(iv) where applicable, in accordance with this Law at the level of significant branches;

(c) the group recovery plan shall include, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter III;

(d) for each of the scenarios provided for in Article 59-18(5), the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

Section 2: Assessment of recovery plans

Article 59-21. Assessment of recovery plans

(1) The entities that are required to draw up recovery plans under Articles 59-18 to 59-20 shall submit those recovery plans to the CSSF for review.

(2) The CSSF shall provide these recovery plans to the Luxembourg resolution authority. The Luxembourg resolution authority may examine these recovery plans with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the BRRD institution or the group and make recommendations on the subject to the CSSF.

(3) The CSSF shall, within six months of the submission of each plan, and after consulting the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch and without prejudice to Article 59-23 or Article 59-24, review it and assess the extent to which it satisfies the requirements laid down in Articles 59-18 to 59-20.

(4) When assessing the appropriateness of the recovery plans, the CSSF shall take into consideration the appropriateness of the capital and funding structure of the BRRD institution or of the group to the level of complexity of the organisational structure and the risk profile of the BRRD institution or of the group.

Article 59-22. Measures in the event of failure of the recovery plans

(1) Where the CSSF assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the BRRD institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, a revised plan demonstrating how those deficiencies or impediments are addressed. Upon request, the CSSF may decide to extend that time limit. This extension shall not exceed one month.

(2) Before requiring an institution to resubmit a recovery plan the CSSF shall give the BRRD institution or the parent undertaking of the group the opportunity to state its opinion on that requirement.

Where the CSSF does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the BRRD institution or the parent undertaking of the group to make specific changes to the plan.

(3) If the BRRD institution or the parent undertaking of the group fails to submit a revised recovery plan, or if the CSSF determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the CSSF shall require the BRRD institution or the parent undertaking of the group to identify within a reasonable timeframe changes it can make to its business or the business of the group in order to address the deficiencies in or impediments to the implementation of the recovery plan.

(4) If the BRRD institution or the parent undertaking of the group fails to identify such changes within the timeframe set by the CSSF, or if the CSSF assesses that the actions proposed by the BRRD institution or the parent undertaking of the group would not adequately address the deficiencies or impediments, the CSSF may direct the BRRD institution or the parent undertaking of the group to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the BRRD institution's or group's business.

(5) The CSSF may, in accordance with paragraph 4, without prejudice to Article 53-1 and its implementing measures, direct the BRRD institution or the parent undertaking of the group to:

(a) reduce the risk profile of the institution, including liquidity risk;
(b) enable timely recapitalisation measures;
(c) review the BRRD institution's or group's strategy and structure;
(d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;
(e) make changes to the governance structure of the institution.

(6) Where the CSSF requires that the BRRD institution or the parent undertaking of the group takes measures according to paragraphs 4 and 5, its decision on the measures shall be reasoned and proportionate.

The decision shall be notified in writing to the BRRD institution or the parent undertaking of the group and subject to remedy before the *Tribunal administratif* (Administrative Tribunal). The case must be filed within one month from the date of notification of the contested decision, and otherwise shall be time-barred. The *Tribunal administratif* (Administrative Tribunal) shall deal with the substance of the case.

(7) Before taking a decision in accordance with paragraphs 4 and 5, the CSSF shall coordinate with the Luxembourg resolution authority as regards the possible measures taken in accordance with Article 29(4) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.

Article 59-23. Assessment of group recovery plans where the CSSF is the consolidating supervisor

(1) Where the CSSF is the consolidating supervisor, it shall communicate, provided that there are confidentiality obligations such as those laid down in Articles 59-50 and 59-51, the group recovery plans:

(a) to relevant competent authorities referred to in Article 50-1;
(b) to the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;
(c) to the Luxembourg resolution authority; and
(d) to the resolution authorities of subsidiaries.

(2) Where the CSSF is the consolidating supervisor, it shall, together with the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 50-1(13) and (14), and with the competent authorities of significant branches insofar as is relevant to the significant branch. review the group recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in Articles 59-18 to 59-20. That assessment shall be made in accordance with the procedure established in Article 59-21 and with this article and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

The CSSF and the competent authorities of subsidiaries shall endeavour to reach a joint decision within four months of the date of transmission by the CSSF of the group recovery plan in accordance with paragraph 1 on:

(a) the review and assessment of the group recovery plan;
(b) whether a recovery plan on an individual basis shall be drawn up for BRRD institutions that are part of the group; and
(c) the application of the measures referred to in Article 59-22(1) to (5).

The CSSF may request the EBA to assist the competent authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010. If one or several competent authorities disagree with the joint decision in accordance with the second subparagraph, the CSSF may take a joint decision with the other competent authorities which do not disagree with the group recovery plan for group entities under their jurisdiction.

(3) In the absence of a joint decision between the competent authorities, within four months of the date of transmission, on the review and assessment of the group recovery plan or on any measures the EU parent undertaking is required to take in accordance with Article 59-22(1) and (5), the CSSF shall make its own decision with regard to those matters and each competent authority of a subsidiary shall make its own decision in accordance with Article 8(4) of Directive 2014/59/EU. The CSSF shall make its decision having taken into account the views and reservations of the other competent authorities expressed during the four-month period. The CSSF shall notify the decision to the EU parent undertaking as well as to the other competent authorities.

If, at the end of that four-month period, any of the competent authorities referred to in the second subparagraph of paragraph 2 has referred the matter regarding the assessment of the recovery plan mentioned in letter (a) of the second subparagraph of paragraph 2 or regarding the implementation of the measures referred to in letters (a), (b) and (d) of Article 59-22(5) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the CSSF shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. The matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the CSSF shall apply.

(4) The CSSF may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 on the assessment of the recovery plan referred to in letter (a) of the second subparagraph of paragraph 2 or on the implementation of the measures referred to in letter (a), (b) and (d) Article 59-22(5). The CSSF cannot refer the matter to the EBA after the end of the four-month period or after a joint decision has been reached.

(5) The joint decisions referred to in paragraph 2 and the decision taken by the CSSF in the absence of a joint decision referred to in paragraph 3 shall be recognised as conclusive and applied by the CSSF.

Article 59-24. Assessment of group recovery plans where the CSSF is not the consolidating supervisor

(1) Where the CSSF is not a consolidating supervisor, it shall, if it receives from the consolidating supervisor a group recovery plan, review and assess the extent to which it satisfies the requirements and criteria laid down in Articles 6 and 7 of Directive 2014/59/EU. The CSSF shall carry it out together with the consolidating supervisor and the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of Directive 2013/36/EU and with the competent authorities of significant branches insofar as is relevant to the significant branch. That assessment shall be made in accordance with the procedure established in Article 6 of Directive 2014/59/EU and with this article and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

(2) The CSSF, the consolidating supervisor and the competent authorities of subsidiaries shall endeavour to reach a joint decision on:

(a) the review and assessment of the group recovery plan;
(b) whether a recovery plan on an individual basis shall be drawn up for BRRD institutions that are part of the group; and
(c) the application of the measures referred to in Article 6(5) and (6) of Directive 2014/59/EU.

The CSSF shall endeavour to reach a joint decision with the other competent authorities within four months of the date of transmission of the recovery plan to the CSSF in accordance with paragraph 1.

The CSSF may request the EBA to assist the competent authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010. If one or several competent authorities disagree with the joint decision in accordance with the second subparagraph, the CSSF may take a joint decision with the other competent authorities which do not disagree with the group recovery plan for group entities under their jurisdiction.

(3) The CSSF may make its own decision, where the competent authorities cannot reach a joint decision, within four months of the date of transmission of the recovery plan, on:

(a) whether a recovery plan on an individual basis is to be drawn up for the BRRD institutions incorporated under Luxembourg law; or
(b) the application of the measures referred to in Article 59-22(1) to (5) at level of subsidiaries incorporated under Luxembourg law.

(4) If, at the end of the four-month period, the consolidating supervisor or one of the other competent authority referred the matter regarding the implementation of the measures referred to in letters (a), (b) and (d) of Article 6(6) of Directive 2014/59/EU at the level of subsidiaries incorporated under Luxembourg law to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the CSSF shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. The matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the CSSF at an individual level shall apply.

(5) The CSSF may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 on the assessment of the recovery plan referred to in letter (a) of the second subparagraph of paragraph 2 or on the implementation of the measures referred to in letter (a), (b) and (d) of Article 59-22(5). The CSSF cannot refer the matter to the EBA after the end of the four-month period or after a joint decision has been reached.

(6) The joint decisions referred to in paragraph 2 shall be recognised as conclusive and applied by the CSSF. In the absence of a joint decision in accordance with paragraph 2, the CSSF shall recognise the decisions taken by the consolidating supervisor and the decisions taken by the other competent authorities concerned in their respective areas as conclusive.

Article 59-25. Confidentiality requirements for BRRD institutions and group entities

Without prejudice to Article 41, the entities referred to in Article 59-16 shall handle the recovery plans and group recovery plans in a confidential manner and may only transmit these recovery plans and group recovery plans to third parties which participated in their drawing up and transposition.

Article 59-26. Simplified obligations for certain BRRD institutions

(1) Having regard to the impact that the failure of the BRRD institution could have, due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other BRRD institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(6) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in this Law, and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other BRRD institutions, on funding conditions, or on the wider economy, the CSSF shall determine:

(a) the contents and details of recovery plans provided for in Articles 59-18 to 59-20;
(b) the date by which the first recovery plans are to be drawn up and the frequency for updating recovery plans which may be lower than that provided for in Article 59-18(3);

(c) the content and detail of the information required from BRRD institutions and EU parent undertakings as laid down in Articles 59-18 to 59-20.

(2) The Resolution Board shall make the assessment referred to in the paragraph 1 after consulting, where appropriate, the Systemic Risk Board.

(3) Where simplified obligations are applied, the CSSF can impose unsimplified obligations at any time.

(4) The application of simplified obligations shall not affect the powers of the CSSF to take crisis prevention measures.

(5) The CSSF shall inform the EBA of the manner in which it applies this article to BRRD institutions under its jurisdiction.

Article 59-27. Exemption for certain BRRD institutions

(1) Subject to paragraphs 2 and 3, the CSSF may exempt the following from the application of the requirements of Articles 59-18 to 59-24:

(a) the BRRD institutions affiliated to a central body and wholly or partially exempted from prudential requirements in Luxembourg law in accordance with Article 10 of Regulation (EU) No 575/2013; and
(b) the BRRD institutions members of an IPS.

(2) Where an exemption pursuant to paragraph 1 is granted, the CSSF shall:

(a) apply the requirements of this chapter on a consolidated basis to the central body and BRRD institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013;
(b) require the IPS to fulfil the requirements of this chapter in cooperation with each of its exempted members.

For that purpose, any reference in this chapter, to a group shall include a central body and BRRD institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013 and their subsidiaries, and any reference to parent undertakings or BRRD institutions that are subject to consolidated supervision in accordance with Article 49 shall include the central body.

(3) The exemption option referred to in paragraph 1 shall not apply when:

(a) the BRRD institution is subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013; or
(b) the total value of its assets exceeds 30,000,000,000 euros; or
(c) the ratio of its assets and the GDP of Luxembourg exceeds 20%, unless the total value of its assets is below 5,000,000,000 euros.

In these cases, the BRRD institution shall draw up a recovery plan on an individual basis.

(4) The CSSF shall inform the EBA of the manner in which it applies this article to BRRD institutions under its jurisdiction.

Chapter III: Intra-group financial support

Article 59-28. Group financial support agreement

(1) A group financial support agreement within the meaning of this part shall mean an agreement to provide unilateral or reciprocal financial support entered into:

(a) by a parent institution of a Member State, an EU parent institution or an entity referred to in letter (c) or (d) of Article 1(1) of Directive 2014/59/EU and its subsidiaries which are BRRD institutions or financial institutions subject to consolidated supervision of the parent undertaking, part of which, at least, is an entity incorporated under Luxembourg law;
(b) in the event that at least one of the parties to the agreement fulfils the conditions for early intervention pursuant to Article 59-43.

(2) The group financial support granted to any group entity that experiences financial difficulties shall not be conditional on the prior conclusion of a group financial support agreement if the BRRD institution decides to do so, on a case-by-case basis and according to the group policies and as long as it does not represent a risk for the whole group.

A group financial support agreement shall not constitute a prerequisite in order to carry out an activity in Luxembourg.

(3) This chapter does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.

Article 59-29. Conditions and content of a group financial support agreement

(1) Each party to a group financial support agreement shall be acting freely into entering the agreement. It cannot be forced into entering the agreement by another group entity, including by the parent undertaking of the group, or by third parties.

(2) The group financial support agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.

The group financial support agreement may:

(a) cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of those entities;
(b) provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

(3) The group financial support agreement shall specify the principles for the calculation of the consideration, for any transaction made under it. Those principles shall include a requirement that the consideration shall be set at the time of the provision of financial support. The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles:

(a) the conditions to a group financial support shall at least correspond to the prior conditions in respect of a group financial support in accordance with Article 59-35;
(b) in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
(c) each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
(d) the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
(e) the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

(4) Any right, claim or action arising from the group financial support agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

Article 59-30. Authorisation

A group financial support agreement can only be concluded after prior authorisation by the competent authorities in accordance with Articles 59-31, 59-32 and Article 20 of Directive 2014/59/EU based on a request from the EU parent institution.

Article 59-31. Review of the draft agreement by the competent authorities where the CSSF is the consolidating supervisor

(1) The EU parent institution that has its head office in Luxembourg shall submit to the CSSF in its capacity as consolidating supervisor an authorisation request for any draft group financial support agreement proposed in accordance with Article 59-28. This request shall include the text of the draft agreement and indicate which entities of the group intend to be part to the agreement.

(2) The CSSF shall forward without delay the application to the competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision.

(3) The CSSF and the competent authorities concerned shall endeavour to reach a joint decision on whether the terms of the proposed agreement are consistent with the conditions for financial support within four months of the date of receipt of the application in accordance with paragraph 1. To this end, the CSSF shall check the consistency of the terms with the conditions laid down in Article 59-35. During the joint decision-making the potential impact, including any fiscal consequences, the execution of the agreement in all Member States where the group operates shall be taken into account.

The CSSF may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

The joint decision shall be set out in a document containing the fully reasoned decision.

(4) If, before the adoption of a joint decision and before the end of the four-month period, any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the CSSF shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. The matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached.

(5) In the absence of a joint decision between the competent authorities within four months or of a decision of the EBA in accordance with Article 20(7) of Directive 2014/59/EU within one month, the CSSF shall make its own decision with regard to this request having taken into account the views and reservations of the other competent authorities expressed during the four-month period. This decision shall be set out in a document detailing the fully reasoned decision. Its decision shall be provided to the applicant and the other competent authorities by the CSSF.

(6) The CSSF shall, in accordance with the procedure set out in paragraphs 3 to 5, grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 59-35. The CSSF may, in accordance with the procedure set out in paragraphs 3 to 5, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Article 59-35. The CSSF shall communicate the joint decision duly set out to the applicant in accordance with the third subparagraph of paragraph 3.

Article 59-32. Review of the draft agreement by the competent authorities where the CSSF is not the consolidating supervisor

(1) If the consolidating supervisor of an EU parent institution that has its head office in another Member State communicates to the CSSF an authorisation request for a draft group financial

support agreement proposed pursuant to "Article 19 of Directive 2014/59/EU"[1106] and if the CSSF is the competent authority of a subsidiary which intends to be party to the agreement, the CSSF and the other competent authorities shall do everything within their power to reach a joint decision on whether the terms of the proposed agreement are consistent with the conditions for financial support within four months of the date of receipt of the application by the consolidating supervisor. To this end, the CSSF shall check the consistency of the terms with the conditions laid down in Article 59-35. During the joint decision-making the potential impact, including any fiscal consequences, the execution of the agreement in all Member States where the group operates shall be taken into account.

(2) The CSSF may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

(3) The CSSF may, until the end of the four-month period, refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, provided that no joint decision was adopted.

Article 59-33. Approval of proposed agreement by shareholders

(1) A group financial support agreement authorised in accordance with Articles 59-30 to 59-32 shall be valid only in respect of those parties whose shareholders have approved the agreement in accordance with paragraph 2.

(2) A group financial support agreement shall be valid in respect of a group entity only if its shareholders have authorised the management body of that group entity to make a decision that the group entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions laid down in this chapter and that shareholder authorisation has not been revoked.

(3) The management body of each entity that is party to an agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken pursuant to the agreement.

Article 59-34. Transmission of the group financial support agreements to resolution authorities

The CSSF shall transmit to the Luxembourg resolution authority the group financial support agreements it authorised and any changes thereto.

Article 59-35. Conditions for group financial support

Financial support by a group entity established in Luxembourg in accordance with Article 59-28 may only be provided if all the following conditions are met:

(a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;
(b) the provision of financial support:

(ii) (i) has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group, and
(iii) is in the interests of the group entity providing the support;

(c) the financial support is provided on certain terms, including consideration in accordance with Article 59-29(1) and (3);
(d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;

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(e) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;
(f) the provision of the financial support would not create a threat to financial stability, in particular in Luxembourg;
(g) the group entity providing the support:
  (i) complies at the time the support is provided,
    - with the requirements of this Law and its implementing measures relating to capital or liquidity and any requirements imposed pursuant to Article 53-1(3); and
    - with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and this Law as well as their implementing measures, including the provisions reflecting the choices made pursuant to the discretions left to the Member States in that regulation;
  (ii) shall not be induced by the provision of the financial support to infringe the requirements laid down in point (i), unless authorised by the CSSF in its capacity as competent authority responsible for the supervision on an individual basis; and
(h) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

Article 59-36. Decision to provide financial support

(1) The decision to provide group financial support in accordance with the agreement shall be taken by the management body of the group entity providing financial support. That decision shall be reasoned and shall indicate the objective of the proposed financial support. In particular, the decision shall indicate how the provision of the financial support complies with the conditions laid down in Article 59-34.

(2) The decision to accept group financial support in accordance with the agreement shall be taken by the management body of the group entity receiving financial support.

Article 59-37. Obligation to notify the intention to grant group financial support

(1) Before providing support in accordance with a group financial support agreement, the management body of a group entity established in Luxembourg that intends to provide financial support shall notify:

(a) the CSSF;
(b) the consolidating supervisor, where different from the authorities in letters (a) and (c);
(c) the competent authority of the group entity receiving the financial support, where different from letters (a) and (b);
(d) the EBA.

(2) The notification referred to in paragraph 1 shall include:

(a) the reasoned decision of the management body in accordance with Article 59-36;
(b) the details of the proposed financial support; and
(c) the copy of the group financial support agreement.

Article 59-38. Decision of the CSSF relating to the provision of a group financial support by an entity established in Luxembourg

(1) Within five business days from the date of receipt of a complete notification, the CSSF may agree with the provision of financial support, or may prohibit or restrict it if it assesses that the conditions for group financial support laid down in Article 59-35 have not been met. A decision of the CSSF to prohibit or restrict the financial support shall be reasoned.

(2) The decision of the CSSF to agree, prohibit or restrict the financial support shall be immediately notified to:

(a) the consolidating supervisor, where the CSSF is not also the consolidating supervisor;
(b) the competent authority of the group entity receiving the financial support; and
(c) the EBA.

Where the CSSF is the consolidating supervisor, it shall immediately inform other members of the supervisory college and the members of the resolution college.

(3) If the CSSF, following the receipt of a complete notification, does not prohibit or restrict the financial support within the period indicated in paragraph 1, or has agreed before the end of that period to that support, financial support may be provided in accordance with the terms submitted to the CSSF.

Article 59-39. Communication of the decision to provide financial support

The decision of the management body of the BRRD institution to provide financial support shall be transmitted to:

(a) the CSSF;
(b) the consolidating supervisor, where the CSSF is not also the consolidating supervisor;
(c) the competent authority of the group entity receiving the financial support, where different from letters (a) and (b);
(d) the EBA.

Where the CSSF is the consolidating supervisor, it shall immediately inform other members of the supervisory college and the members of the resolution college.

Article 59-40. Participation of the CSSF in the decision-making relating to the provision of a group financial support to an entity established in Luxembourg

(1) Where a competent authority of another Member State prohibits or restricts the financial support to a group entity subject to prudential supervision of the CSSF and the CSSF has objections regarding the decision to prohibit or restrict the financial support to this group entity, the CSSF may within two days following the notification of the decision by the competent authority concerned refer the matter to the EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

(2) Where a competent authority of another Member State prohibits or restricts the group financial support to a group entity subject to the prudential supervision of the CSSF and the group recovery plan, in accordance with Article 7(5) of Directive 2014/59/EU, refers to an intra-group financial support, the CSSF may request the consolidating supervisor to review the group recovery plan in accordance with Article 8 of Directive 2014/59/EU or, if the recovery plan was drawn up at an individual level, require from the group entity to submit a revised recovery plan.

Article 59-41. Participation of the CSSF in the decision-making relating to the provision of a group financial support, where the CSSF is the consolidating supervisor

(1) This article shall apply where the CSSF is the consolidating supervisor.

(2) Where the CSSF is notified of the competent authority's decision to authorise, prohibit or restrict financial support, it shall immediately inform the other members of the college of supervisors as well as the members of the resolution college of that decision.

(3) If the CSSF has objections regarding the decision of a competent authority to prohibit or restrict financial support, it may within two days refer the matter to the EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

(4) Where the CSSF is notified of the decision of an institution's management body to provide financial support, it shall immediately inform the other members of the college of supervisors as well as the members of the resolution college of that decision.

(5) If the competent authority restricts or prohibits the group financial support and if the group recovery plan makes reference to intra-group financial support, the CSSF shall review the group recovery plan at request from the competent authority of the group entity for which the support is restricted or prohibited.

Article 59-42. Disclosure

(1) Each group entity established in Luxembourg shall make public whether or not it has entered into a group financial support agreement pursuant to Article 59-28 and make public a description of the general terms of any such agreement and the names of the group entities that are party to it. This information shall be updated at least annually.

(2) Articles 431 and 434 of Regulation (EU) No 575/2013 shall apply.

Chapter IV: Early intervention measures

Article 59-43. Early intervention measures

(1) Where a BRRD institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, this Law or their implementing measures or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, depending of the applicability of these articles in accordance with Article 55 of Regulation (EU) No 600/2014, the CSSF may, without prejudice to the measures referred to in Article 53-1 and its implementing measures where applicable, take at least the following measures:

(a) require the management body of the BRRD institution:
  (i) to update the recovery plan in accordance with Article 59-18(3) when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan;
  (ii) to implement one or more of the arrangements or measures set out in the recovery plan;
  (iii) to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
  (iv) to convene a meeting of shareholders of the BRRD institution. If the management body fails to comply with that requirement, the CSSF may convene directly that meeting. In both cases, the CSSF may set the agenda and require certain decisions to be considered for adoption by the shareholders;
  (v) to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

(b) require the BRRD institution:
  (i) to remove or replace one or more members of the management body or authorised management if those persons are found unfit to perform their duties pursuant to Articles 7 and 19;
  (ii) to change its business strategy;
  (iii) to change its legal or operational structures;

(c) to acquire, including through on-site inspections and provide to the Luxembourg resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the BRRD institution and for valuation of the assets and liabilities of the institution in accordance with Article 37 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.

(2) The CSSF shall notify the Luxembourg resolution authority without delay upon determining that the conditions laid down in paragraph 1 have been met in relation to a BRRD institution and shall notify as soon as possible the measures taken in accordance with paragraph 1.

(3) For each of the measures referred to in paragraph 1, the CSSF shall set an appropriate deadline for completion, and to enable it to evaluate the effectiveness of the measure.

Article 59-44. Removal of authorised management and management body

Where there is a significant deterioration in the financial situation of a BRRD institution or where there are serious infringements of law, of regulations or of the statutes of the BRRD institution, or serious administrative irregularities, and other measures taken in accordance with Article 59-43 are not sufficient to reverse that deterioration, the CSSF may require the removal of the authorised management or management body of the BRRD institution, in its entirety or with regard to individuals. The appointment of the new authorised management or management body shall be done in accordance with this Law and the EU law.

Article 59-45. Temporary administrator

(1) Where replacement of the authorised management or management body as referred to in Article 59-44 is deemed to be insufficient by the CSSF to remedy the financial situation of the BRRD institution that significantly deteriorated, the CSSF may appoint a temporary administrator either to replace the management body of the BRRD institution temporarily or to work temporarily with the management body (hereinafter the "temporary administrator"). The CSSF shall make its decision based on what is proportionate in the circumstances and specify its decision at the time of appointment. The CSSF shall make public the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the BRRD institution.

(2) Any temporary administrator shall have the qualifications, ability and knowledge required to carry out his or her functions and be free of any conflict of interests.

The CSSF shall specify the powers, the role and the duties of the temporary administrator at the time of his or her appointment based on what is proportionate in the circumstances.

Such powers may include some or all of the powers of the management body of the BRRD institution under the statutes of the institution and under the law, including the power to exercise some or all of the administrative functions of the management body of the BRRD institution.

The role and functions of the temporary administrator may include ascertaining the financial position of the BRRD institution, managing the business or part of the business of the BRRD institution with a view to preserving or restoring the financial position of the BRRD institution and taking measures to restore the sound and prudent management of the business of the BRRD institution. The CSSF shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

If the CSSF appoints a temporary administrator to work with the management body of the BRRD institution, the CSSF shall further specify at the time of such an appointment any requirements for the management body of the BRRD institution to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

The CSSF may vary the terms of appointment of a temporary administrator at any time.

The CSSF may require that certain acts of a temporary administrator be subject to its prior consent. The CSSF shall specify any such requirements at the time of appointment of a temporary administrator or at the time of any variation of the terms of appointment of a temporary administrator.

In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the BRRD institution and to set the agenda of such a meeting only with the prior consent of the CSSF.

(3) The CSSF may appoint several temporary administrators for one BRRD institution in accordance with paragraph 1.

(4) The CSSF may require that a temporary administrator draws up reports on the financial position of the BRRD institution and on the acts performed in the course of its appointment, at intervals set by the CSSF and at the end of his or her mandate.

(5) The appointment of a temporary administrator shall not last more than one year. That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met. The CSSF shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders. The CSSF has the power to remove a temporary administrator at any time and for any reason.

A temporary administrator appointed in accordance with this article shall not be considered as a shadow director.

The appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with EU law or company law.

The temporary administrator shall only be held liable in case of serious violation. Actions against the temporary administrator, in his or her capacity as temporary administrator, for acts committed in the exercise of his or her duties shall be barred after five years as of these acts, or if fraudulently concealed, as of the discovery of these acts.

Article 59-46. Coordination of early intervention measures and appointment of temporary administrator in relation to groups

(1) Where the conditions for the imposition of requirements under Article 59-43 or the appointment of a temporary administrator in accordance with Article 59-45 are met in relation to an EU parent undertaking, for which the CSSF is the consolidating supervisor, the CSSF shall notify the EBA and consult the other competent authorities within the supervisory college.

Following that notification and consultation, the CSSF shall decide whether to apply any of the measures in Article 59-43 or appoint a temporary administrator under Article 59-45 in respect of the relevant EU parent undertaking, taking into account the impact of those measures on the group entities in other Member States. The CSSF shall notify the decision to the other competent authorities within the supervisory college and the EBA.

(2) Where the conditions for imposition of requirements under Article 59-43 or the appointment of a temporary administrator under Article 59-45 are met in relation to a Luxembourg subsidiary of an EU parent undertaking over which the CSSF exercises supervision on an individual basis and where the CSSF intends to take one of the measures in accordance with Article 59-43 or to appoint a temporary administrator pursuant to Article 59-45, the CSSF shall notify the EBA of its intention and consult the consolidating supervisor with respect to its assessment of the likely impact of the imposition of the measures or the appointment of the temporary administrator on the group or on the group entities of other Member States.

The CSSF shall decide whether to apply any of the measures in Article 59-43 or appoint a temporary administrator under Article 59-45 by giving due consideration to any assessment of the consolidating supervisor. If the CSSF does not receive within three days the assessment made by the consolidating supervisor, the CSSF shall make its own decision on whether to apply one of the measures under Article 59-43 or to appoint a temporary administrator pursuant to Article 59-45. The CSSF shall notify its decision to the consolidating supervisor and other competent authorities within the supervisory college and the EBA.

(3) Where the conditions for imposition of requirements under Article 27 of Directive 2014/59/EU or the appointment of a temporary administrator under Article 29 of Directive 2014/59/EU are met in relation to a subsidiary of an EU parent undertaking established in another Member State and where the CSSF acting as consolidating supervisor is consulted by the competent authority responsible for the supervision on an individual basis which intends to apply one of the measures referred to in Articles 27 and 29 of Directive 2014/59/EU, the CSSF may assess the likely impact of the imposition of these measures on the group or on the group entities of the other Member States. The CSSF shall communicate its assessment to the competent authority within three days.

(4) Where the CSSF intends to apply one of the measures referred to in Article 59-43 or to appoint a temporary administrator pursuant to Article 59-45 in relation to a BRRD institution and where, at the same time, at least one competent authority of another Member State intends to apply one of the measures referred to in Articles 27 and 29 of Directive 2014/59/EU for another institution of the same group, the CSSF shall participate with the other relevant competent authorities in the joint assessment on whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of the early intervention measures to more than one BRRD institution. The purpose of the above is to facilitate solutions restoring the financial position of the BRRD institution concerned. This assessment shall take the form of a joint decision that is reasoned and set out in a document that the CSSF, if it is the consolidating supervisor, shall communicate to the EU parent undertaking. This joint decision shall be reached within five days from the date of the notification referred to in paragraph 1.

The CSSF may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

In the absence of a joint decision within five days, the CSSF may make its own decision on the application of one of the measures under Article 59-43 and the appointment of a temporary administrator pursuant to Article 59-45 to the BRRD institutions for which it is responsible.

(5) Any decision by the CSSF shall be reasoned. The decision shall take into account the views and reservations of the other competent authorities expressed during the consultation period referred to in paragraph 2 or the five-day period referred to in paragraph 4 as well as the potential impact of the decision on financial stability in the Member States concerned. The decisions shall be communicated by the CSSF to the entities for which it is responsible.

(6) Where in the cases referred to in paragraph 1 or 3 of Article 30 of Directive 2014/59/EU, a decision made by a competent authority of another Member State, including the consolidating supervisor, is notified to the CSSF and the CSSF disagrees with the notified decision, it may request the EBA to assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 if the decision concerns one or more early intervention measures relating to:

(a) the application of the arrangements or measures listed in the recovery plan, provided that they concern a range of capital and liquidity actions required to maintain or restore the viability and financial position of the BRRD institution or of the group pursuant to letter (d) of Article 59-18(4), arrangements and measures to conserve or restore the own funds of the BRRD institution or of the parent undertaking of the group pursuant to letter (j) of Article 59-18(4), arrangements and measures to ensure that the BRRD institution or the parent undertaking of the group has adequate access to contingency funding sources pursuant to letter (k) of Article 59-18(4), or measures to implement the recovery plan pursuant to letter (s) of Article 59-18(4);
(b) the drawing up of a plan for renegotiation on restructuring of debt; or
(c) the change to the legal or operational structures of the BRRD institution or of the parent undertaking of the group.

The CSSF may also refer the matter to the EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010 in the absence of a joint decision pursuant to paragraph 4 on one or more early intervention measures referred to in the first subparagraph. The matter shall not be referred to the EBA after the end of the five-day period or after a joint decision has been reached.

Where one of the competent authorities concerned has referred one of the early intervention measures laid down in Article 30(6) of Directive 2014/59/EU to the EBA pursuant to Article 19(3) of Regulation (EU) 1093/2010, the CSSF shall take its decision in accordance with the decision of the EBA. In the absence of a decision by the EBA within three days, the individual decision of the CSSF taken in accordance with paragraph 1, paragraph 2 or paragraph 4 shall apply.

Article 59-47. Exclusion of certain contractual terms in early intervention

(1) A crisis prevention measure taken in relation to an entity referred to in Article 59-16, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the entity, be deemed to be an enforcement event within the meaning of Article 1 of the Law of 5 August 2005 on financial collateral arrangements, as amended, or as insolvency proceedings within the meaning of Article 107 of the Law of 10 November 2009 on payment services, as amended, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

Such a crisis prevention measure shall not, per se, be deemed as an enforcement event or insolvency proceedings under a contract entered into by:

(a) a subsidiary of the entity referred to in Article 59-16, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity;
(b) any entity of the same group as the entity referred to in Article 59-16 which includes cross-default provisions.

(2) Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:
  (i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
  (ii) any group entity which includes cross-default provisions;
(b) obtain possession, exercise control or enforce any security over any property of the BRRD institution or the entity referred to in letter (b), (c) or (d) of Article 59-16 concerned or any group entity in relation to a contract which includes cross-default provisions;
(c) affect any contractual rights of the BRRD institution or the entity referred to in letter (b), (c) or (d) of Article 59-16 concerned or any group entity in relation to a contract which includes cross-default provisions.

(3) This article shall not affect the right of a person to take an action referred to in paragraph 2 where that right arises by virtue of an event other than the crisis prevention measure or the occurrence of any event directly linked to the application of such a measure.

(4) The provisions contained in this article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and shall apply irrespective of the law applicable to the contract. They shall apply to the outstanding contracts.

Chapter V: Remedy, administrative penalties and other administrative measures

Article 59-48. Remedies

The decision to adopt crisis prevention measures may be referred to the *Tribunal Administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Article 59-49. Administrative penalties and other administrative measures

(1) Without prejudice to Part V, the CSSF may impose administrative penalties and other administrative measures referred to in paragraph 2 on BRRD institutions, financial institutions and EU parent undertakings subject to the supervision of the CSSF as well as on members of the management body, their effective managers or any other natural person when they fail:

(a) to draw up, maintain and update recovery plans and group recovery plans, infringing Article 59-18, 59-19 or 59-20; or
(b) to notify an intention to provide group financial support to the CSSF infringing Article 59-37.

(2) In the cases referred to in paragraph 1, the CSSF may:

(a) make a public statement which indicates the natural person, BRRD institution, financial institution, EU parent undertaking or other legal person responsible and the nature of the infringement;
(b) enjoin the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct in accordance with Article 59;
(c) impose a temporary ban against any member of the management body or authorised management of the BRRD institution or the entity referred to in letter (b), (c) or (d) of Article 59-16 or any other natural person, who is held responsible, to exercise functions in a BRRD institution or an entity referred to in letter (b), (c) or (d) of Article 59-16;
(d) impose, in the case of a legal person, administrative fines of up to 10% of the total annual net turnover of that legal person in the preceding business year.
(e) impose, in the case of a natural person, administrative fines of up to 5,000,000 euros;
(f) impose administrative penalties of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

Where the legal person referred to in letter (d) of the first subparagraph is a subsidiary of a parent undertaking, the relevant turnover shall be the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

(3) The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive. When determining the type of administrative penalties or other administrative measures and the level of administrative fines, the CSSF shall take into account all circumstances laid down in Article 63-4.

(4) In the exercise of its powers to impose penalties, the CSSF and the Luxembourg resolution authority shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and the CSSF shall coordinate its actions with the other competent authorities and resolution authorities when dealing with cross-border cases.

(5) The CSSF shall publish the administrative penalties it imposes following infringements to the provisions of this part on its website in accordance with Article 63-3.

Chapter VI: Confidentiality

Article 59-50. Confidentiality

(1) Without prejudice to Articles 44 to 44-4, the requirements of professional secrecy shall be binding in respect of the following persons:

(a) the CSSF;
(b) the Luxembourg resolution authority;
(c) the Council for the Protection of Depositors and Investors referred to in Article 4 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
(d) the Minister responsible for the financial sector;
(e) the temporary administrators appointed in accordance with this part;
(f) the potential purchasers contacted by the CSSF, whether the contract is made as preparation for the use of the sale of business tool;
(g) the auditors, accountants, legal advisers, professional advisers, valuers and other experts hired directly or indirectly by the Resolution Board, the CSSF or the Minister responsible for the financial sector or by potential acquirers referred to in letter (f);
(h) the Fonds de Garantie des Dépôts Luxembourg as defined in Article 154 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
(i) the Fonds de Résolution Luxembourg defined in Article 105 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
(j) the Banque centrale du Luxembourg;
(k) the other authorities involved in the resolution process;
(l) a bridge institution or an asset management vehicle;
(m) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in letters (a) to (l);
(n) the authorised management, members of the management body, and employees of the bodies or entities referred to in letters (a) to (l) before, during and after their appointment.

(2) The persons referred to in paragraph 1 are bound by the obligation of professional secrecy.

In particular, the persons in question shall be prohibited from disclosing confidential information received during the course of or in relation to their professional activities or from the CSSF in connection with its functions under this part, to any person unless it is in the exercise of their functions under this part or in summary or collective form such that individual BRRD institutions or entities referred to in letters (b), (c) or (d) of Article 59-16 cannot be identified or with the express and prior consent of the authority or the BRRD institution or the entity referred to in letter (b), (c) or (d) of Article 59-16 which provided the information.

No confidential information shall be disclosed by the persons referred to in paragraph 1.

The CSSF shall assess the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery plan and the result of any assessment pursuant to Articles 59-21, 59-23 and 59-24.

Any person referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this article.

(3) With a view to ensuring that the confidentiality requirements laid down in paragraph 2 are complied with, the persons in letters (a), (b), (c), (d), (h), (j), (k) and (l) of paragraph 1 shall ensure that there are internal rules in place.

(4) This article shall not prevent:

(a) employees and experts of the bodies or entities referred to in letters (a) to (k) of paragraph 1 from sharing information among themselves within each body or entity; or

(b) the CSSF and the Luxembourg resolution authority, including their employees and experts, from sharing information with each other and with other EU resolution authorities, other EU competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the Systemic Risk Board, persons charged with carrying out statutory audits of accounts, the EBA, or, subject to Article 59-51, third-country authorities that carry out equivalent functions to the CSSF, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

(5) This article shall be without prejudice to the rules applicable to the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

Article 59-51. Exchange of confidential information

(1) The CSSF may exchange confidential information, including the recovery plans, with the relevant third-country authorities only if the following conditions are met:

(a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 59-50;

Insofar as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable EU and Luxembourg data protection law.

(b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under Part I of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms and, subject to letter (a) of this paragraph, is not used for any other purposes.

(2) Where confidential information originates in another Member State, the CSSF discloses that information to relevant third-country authorities only if the following conditions are met:

(a) the relevant authority of the Member State where the information originated agrees to that disclosure;
(b) the information is disclosed only for the purposes permitted by that authority.

(3) For the purposes of this article, information is deemed to be confidential if it is subject to confidentiality requirements under EU law."[1107]

[1107] Law of 18 December 2015

PART IVa: *(repealed by the Law of 18 December 2015)*

PART IVb: *(repealed by the Law of 18 December 2015)*

PART V: Penalties

"Article 63. "Administrative penalties and other administrative measures"[1108]

(1) Legal persons subject to the supervision of the CSSF and "the members of the management body, the effective managers or the persons responsible for a breach"[1109] of these legal persons as well as natural persons subject to such supervision may be punished by the CSSF in the event that:

- they fail to comply with applicable laws, regulations, statutory provisions or instructions,
- they refuse to provide accounting documents or other requested information,
- they have provided documentation or other information that proves to be incomplete, incorrect or false,
- they preclude the performance of the powers of supervision, inspection and investigation of the CSSF,
- they contravene the rules governing the publication of balance sheets and accounts,
- they fail to act in response to injunctions of the CSSF,
- they act such as to jeopardise the sound and prudent management of the institution concerned";"[1110]

(Law of 23 July 2015)

"– they do not comply with the provisions of Regulation (EU) No 575/2013 and its implementing measures, insofar as these provisions shall apply to them."

(2) In order of seriousness, the CSSF may impose the following penalties:

- a warning,
- a reprimand,
- a fine of between 250 and 250,000 euros,
- one or more of the following measures:

  (a) a temporary or definitive prohibition on the execution of any number of operations or activities, as well as any other restrictions on the activities of the person or entity,
  (b) a temporary or definitive prohibition on participation in the profession by the de jure or de facto, directors or senior management personnel of persons or entities subject to the supervision of the CSSF.

The CSSF may disclose to the public any penalties imposed under this article, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

The decision to impose a penalty may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

[1108] Law of 23 July 2015
[1109] Law of 23 July 2015
[1110] Law of 23 July 2015

(3) In connection with the exercise of the powers provided for in Articles 53 and 59, the CSSF may impose a coercive fine upon the persons referred to in paragraph 1 above in order to compel these persons to act on the injunctions issued by the CSSF. The amount of this coercive fine, on the grounds of an observed failure to perform, may not be greater than 1,250 euros per day, with the understanding that the total amount imposed due to an observed failure to perform may not exceed 25,000 euros."[1111]

(Law of 23 July 2015)

"Article 63-1. Administrative penalties and other administrative measures for breach of authorisation "and approval"[1112] requirements and requirements for acquisitions of qualifying holdings

(1) Without prejudice to Article 63, the CSSF may apply administrative penalties and other administrative measures referred to in paragraph 2 in the following cases:

(a) carrying out the business of taking deposits or other repayable funds from the public without being a credit institution, in breach of Article 2(3);
(b) commencing activities as a credit institution without obtaining authorisation, in breach of Article 2(1);
(c) acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 6(5) or so that the credit institution would become its subsidiary, without notifying in writing the CSSF of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 6(5);
(d) disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 6(15) or so that the credit institution would cease to be a subsidiary, without notifying in writing the CSSF;

(Law of 20 May 2021)

"(e) non-compliance with the requirements set out in Article 34-2;"

(Law of 21 July 2021: A566)

"(f) carrying out at least one of the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and meeting the threshold indicated in that article without being authorised as a credit institution."

(2) In the cases referred to in paragraph 1, the CSSF may:

(a) issue a public statement which identifies the natural person, CRR institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
(b) enjoin the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct in accordance with Article 59;
(c) apply, in the case of a legal person, administrative pecuniary penalties of up to 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;
(d) apply, in the case of a natural person, administrative pecuniary penalties of up to 5,000,000 euros;
(e) apply administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined;

[1111] Law of 27 October 2010
[1112] Law of 20 May 2021

(f) suspend the voting rights attached to shares or units held by the shareholders or members held responsible for the breaches referred to in paragraph 1 in accordance with Article 59 of this Law.

Where the undertaking referred to in letter (c) of this paragraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year."

(Law of 23 July 2015)

"Article 63-2. Other specific provisions relating to CRR institutions

(1) Without prejudice to Article 63, the CSSF may apply administrative penalties and other administrative measures referred to in paragraph 2 of this article in the following circumstances:

(a) a CRR institution has obtained the authorisation through false statements or any other irregular means;
(b) a CRR institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 6(5) or Article 18(5), respectively, or Article 6(15) or in Article 18(16), respectively, fails to inform the CSSF of those acquisitions or disposals in breach of Article 6(16) or Article 18(17) of this Law;
(c) a CRR institution listed on a regulated market as referred to in the list published by the European Securities and Markets Authority in accordance with Article 47 of Directive 2004/39/EC does not, at least annually, inform the CSSF of the names of the shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of Article 6(16) or Article 18(17) respectively;
(d) a CRR institution fails to have in place governance arrangements required by the CSSF in accordance with Article 5 or Article 17 or in accordance with Articles 38 to 38-9 of this Law as well as their implementing measures;
(e) a CRR institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the CSSF in breach of Article 99(1) of that regulation;
(f) a CRR institution fails to report or provides incomplete or inaccurate information to the CSSF in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013;
(g) a CRR institution fails to report information or provides incomplete or inaccurate information about a large exposure to the CSSF in breach of Article 394(1) of Regulation (EU) No 575/2013;
(h) a CRR institution fails to report information or provides incomplete or inaccurate information on liquidity to the CSSF in breach of Article 415(1) and (2) of Regulation (EU) No 575/2013;
(i) a CRR institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the CSSF in breach of Article 430(1) of Regulation (EU) No 575/2013;
(j) a CRR institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of Regulation (EU) No 575/2013;
(k) a CRR institution incurs an exposure in excess of the limits set out in Article 395 of Regulation (EU) No 575/2013;
(l) a CRR institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of Regulation (EU) No 575/2013;
(m) a CRR institution fails to disclose information or provides incomplete or inaccurate information in breach of Article 431(1), (2) and (3) or Article 451(1) of Regulation (EU) No 575/2013;
(n) a CRR institution makes payments to holders of instruments included in the own funds of the institution in breach of Article 59-13 or in cases where "Articles 28, 52"[1113] or 63

[1113] Law of 25 July 2018

of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;

(Law of 25 July 2018)

"(o) a CRR institution is found liable for serious breach of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;"

(p) a CRR institution allows one or more persons not complying with Article 7 or Article 19 to become or remain a member of the management body;

(Law of 20 May 2021)

"(q) a parent institution, a parent financial holding company or a parent mixed financial holding company fails to comply with the prudential requirements set out in Part Three, Four, Six or Seven of Regulation (EU) No 575/2013 or imposed under the second indent of Article 53-1(2) of this Law or the specific liquidity requirements on a consolidated or sub-consolidated basis."

(2) In the cases referred to in paragraph 1, the CSSF may:

(a) issue a public statement which identifies the natural person, credit institution, investment firm, financial holding company or mixed financial holding company responsible and the nature of the breach;

(b) enjoin the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct in accordance with Article 59;

(c) "in the case of an investment firm, decide to withdraw its authorisation in accordance with Article 23 or, in the case of a credit institution, launch a procedure for the withdrawal of its authorisation in accordance with Article 14 of Regulation (EU) No 1024/2013;"[1114]

(d) impose a temporary ban against a member of the management body of the credit institution or investment firm or any other natural person, who is held responsible, from exercising functions in credit institutions or investment firms;

(e) apply, in the case of a legal person, administrative pecuniary penalties of up to 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;

(f) apply, in the case of a natural person, administrative pecuniary penalties of up to 5,000,000 euros;

(g) apply administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

Where an undertaking referred to in point (e) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year."

(Law of 30 May 2018)

"Article 63-2a. Penalties and administrative measures for infringements relating to the provision of investment services, the performance of investment activities or the provision of "APA or ARM"[1115] services

(1) Without prejudice to Article 63, the CSSF may impose penalties and administrative measures referred to in paragraph 4 for infringements of the following provisions:

1. the first subparagraph of Article 15(9) as regards investment firms;

2. the first subparagraph of Article 18(5), and Article 18(6) and (17) as regards investment firms;

[1114] Law of 21 July 2021: A560

[1115] Law of 21 July 2021: A566

3. Article 19(1a) to (4) as regards investment firms;

4. points (2), (3) and (4) of Article 23(1) as regards investment firms;

(Law of 21 July 2021: A566)

"5. the first subparagraph of Article 29-7(2);"

(…)[1116]

9. Article 30(2);

10. Article 33(1a) and the first sentence of the second subparagraph of Article 33(6);

11. Article 34(2), the first sentence of Article 34(4) and the first subparagraph of Article 34(5);

12. Article 37-1(1) to (8);

13. Article 37-2(1) to (2a);

14. Article 37-3(1) to (8);

15. the second sentence of the first subparagraph and the second and third subparagraphs of Article 37-4;

16. Article 37-5(1) to (5);

17. Article 37-6(1) and (2);

18. the second subparagraph of Article 37-7(1) and the first sentence of the second subparagraph of Article 37-7(3);

19. Article 37-8(2), (4), (6) and (7);

20. Article 38-1;

21. Article 38-2;

22. Article 38-8.

Without prejudice to Article 63, the CSSF may also impose penalties or administrative measures referred to in paragraph 4 for infringements of the fourth subparagraph of Article 13 of the Law of 5 August 2005 on financial collateral arrangements, as amended.

(Law of 21 July 2021: A566)

"Without prejudice to Article 63, the CSSF may also impose penalties and administrative measures referred to in paragraph 4 for infringements by an APA with a derogation or by an ARM with a derogation of Article 27f(1) to (3), Article 27g(1) to (5) and Article 27i(1) to (4) of Regulation (EU) No 600/2014."

(2) The CSSF may impose penalties and administrative measures referred to in paragraph 4 for the provision of investment services "or"[1117] the performance of investment activities (…)[1118] without the authorisation or approval required under the provisions of Article 14, the second sentence of Article 15(6), (…)[1119] Article 30 or Article 32-1(1) and (2) as well as for the performance of the activity referred to in Article 27 without the required authorisation "and the performance of the activity of an APA with a derogation or an ARM with a derogation without the required authorisation in accordance with Article 29-7(1)"[1120].

(3) The CSSF may impose penalties and administrative measures referred to in paragraph 4 on those who, in the framework of providing investment services, performing investment activities

[1116] Law of 21 July 2021: A566
[1117] Law of 21 July 2021: A566
[1118] Law of 21 July 2021: A566
[1119] Law of 21 July 2021: A566
[1120] Law of 21 July 2021: A566

"or the activity of an APA with a derogation or an ARM with a derogation"[1121], hinder the performance of its supervisory and investigatory powers, do not act on its injunction issued under Article 53, have knowingly provided it with inaccurate or incomplete information following its requests under Article 53, or do not comply with its requirements under Article 53.

(4) In the case of infringements referred to in paragraphs 1 to 3, the CSSF may impose the following penalties and administrative measures on the persons under its supervision, on the members of their management bodies and on any other person responsible for an infringement:

1. a public statement, which indicates the natural or legal person and the nature of the infringement in accordance with Article 63-3a;
2. an injunction requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
3. in the case of an investment firm, market operator ", APA with a derogation or ARM with a derogation"[1122], launch a procedure for the withdrawal or suspension of the authorisation;
4. a temporary or, for repeated serious infringements a permanent ban against any member of the market operator's, credit institution's, investment firm's management body or any other natural person, who is held responsible, to exercise management functions in market operators, credit institutions or investment firms;
5. the suspension or exclusion of a credit institution or investment firm from being member, participant or user of a trading venue;
6. in the case of a legal person, maximum administrative fines of 5,000,000 euros, or of up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
7. in the case of a natural person, maximum administrative fines of 5,000,000 euros;
8. maximum administrative fines of twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (6) and (7)."

(Law of 21 July 2021: A566)

"Article 63-2b. Other provisions specific to IFR investment firms

(1) Without prejudice to Article 63, the CSSF may impose the administrative penalties and measures set out in paragraph 3 for the following infringements by an IFR investment firm:

1. failure to have in place internal governance arrangements as set out in Article 17(1a);
2. failure to report information or provision of incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 11 of Regulation (EU) 2019/2033 to the CSSF, in breach of letter (b) of Article 54(1) of that regulation;

[1121] Law of 21 July 2021: A566

[1122] Law of 21 July 2021: A566

3. failure to report to the CSSF, in breach of letter (e) of Article 54(1) of Regulation (EU) 2019/2033, information about concentration risk or provision of incomplete or inaccurate information;

4. exposure to a concentration risk in excess of the limits set out in Article 37 of Regulation (EU) 2019/2033, without prejudice to Articles 38 and 39 of that regulation;

5. repeated or persistent failure to hold liquid assets in breach of Article 43 of Regulation (EU) 2019/2033, without prejudice to Article 44 of that regulation;

6. failure to disclose information, or provision of incomplete or inaccurate information, in breach of Article 38-17 of this Law or Article 46(1) to (3), Article 47, 48, 49(1), 50, 51 or 53 of Regulation (EU) 2019/2033;

7. making payments to holders of instruments included in the own funds of the IFR investment firm where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibits such payments to holders of instruments included in own funds;

8. having been found liable for a serious infringement of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

9. allowing one or more persons that do not comply with the provisions of the first sentence of Article 19(1a) and of Article 38-2 to become and remain a member of the management body.

(2) The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive. The CSSF shall, when determining the type of administrative penalties or other administrative measures referred to in paragraph 1 and the level of administrative pecuniary sanctions, take into account all relevant circumstances provided for in Article 63-4.

(3) For infringements referred to in paragraphs 1 and 4, the CSSF may impose the following administrative penalties and measures on the persons subject to its supervision, on the members of their management body and on any other person responsible for an infringement:

1. a public statement which identifies the natural or legal person, IFR investment firm, investment holding company or mixed financial holding company responsible and the nature of the infringement, in accordance with Article 63-3;

2. an order requiring the natural or legal person responsible to cease the conduct and to desist from repeating that conduct;

3. a temporary ban for one or more members of the IFR investment firm's management body or any other natural persons who are held responsible on exercising functions in credit institutions or investment firms;

4. in case of a legal person, administrative pecuniary sanctions of up to 5,000,000 euros or of up to 10 % of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding business year. Where an undertaking is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

5. in the case of a legal person, administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided due to the infringement where those profits or losses can be determined;

6. in the case of a natural person, administrative pecuniary sanctions of up to 5,000,000 euros.

(4) The CSSF may impose the administrative penalties or measures referred to in paragraph 3 on investment holding companies, mixed financial holding companies and IFD mixed-activity holding companies within the meaning of point (1) of Article 51-2, or on their effective managers, for infringements of Articles 51-8(2), 51-8a(1) and 51-8b(3)."

(Law of 15 July 2024)

"Article 63-2c. Other provisions specific to credit servicers

(1) Without prejudice to Article 63, the CSSF may impose penalties and administrative measures referred to in paragraph 2 for infringements by a credit servicer of the following provisions:

1. a credit servicer's governance arrangements and internal control mechanisms as set out in Article 28-16(5) fail to ensure respect for borrower rights and compliance with personal data protection rules;
2. a credit servicer's policy is inadequate for the proper treatment of borrowers as set out in Article 28-16(6);
3. a credit servicer's internal procedures as set out in Article 28-16(7) fail to provide for the recording and handling of complaints from borrowers according to the obligations set out in this Law;
4. a credit servicer allows one or more persons not complying with the requirements set out in Article 28-16(1), to become or remain a member of its management body;
5. a credit servicer fails to comply with the requirements set out in Article 28-21;
6. a credit servicer receives and holds funds from borrowers when this is not permitted in a Member State in accordance with Article 6(1), point (b), of Directive (EU) 2021/2167;
7. a credit servicer fails to comply with the requirements set out in Article 28-14(5).

(2) In the case of infringements referred to in paragraph 1, the CSSF may impose the following administrative penalties and measures on credit servicers, on the members of their management body and on any other person responsible for an infringement:

1. a withdrawal of an authorisation to carry out activities as a credit servicer in accordance with Article 28-17;
2. an order requiring the credit servicer to remedy the infringement, and to cease the conduct and to desist from a repetition of that conduct;
3. a temporary or, for repeated serious infringements, a permanent ban against any member of the credit servicer's management body or any other natural person, who is held responsible for the infringement, to exercise credit servicer functions;
4. in the case of a legal person, an administrative fine of up to EUR 5,000,000, or up to 10% of the total annual turnover of that legal person according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
5. in respect of a natural person, an administrative fine of up to EUR 5,000,000;
6. maximum administrative fines of twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points 4 and 5.

(3) The administrative penalties and measures shall be effective, proportionate and dissuasive.

The decisions taken by the CSSF in the exercise of its powers to impose penalties shall be substantiated.

When determining the type of administrative penalties or other administrative measures referred to in paragraph 2 and the level of administrative fines, the CSSF shall take into account all relevant circumstances and notably those set out in Article 63-4(1)."

(Law of 23 July 2015)

""Article 63-3. Publication of administrative penalties imposed under Articles 63-1 ", 63-2 and 63-2b"[1123]„[1124]

(1) The CSSF shall publish on its website the administrative penalties that were decided or that have acquired the force of res judicata and which are "imposed under Articles 63-1 ",63-2 or 63-2b"[1125]„[1126], including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties. "The penalties imposed under Article 63-2b shall only be published to the extent that the publication is necessary and proportionate."[1127]

(2) By way of derogation from paragraph 1, the CSSF shall publish the penalties on an anonymous basis in any of the following circumstances:

(a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
(c) where publication would cause, insofar as it can be determined, disproportionate damage to the credit institutions or investment firms or natural persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 "of the administrative penalties imposed under Articles 63-1 or 63-2"[1128] may be postponed for such a period of time.

(3) Information published under paragraphs 1 and 2 shall remain on the CSSF's website for 5 years." "Personal data in such a publication may only be retained on the CSSF's website for a maximum period of 12 months."[1129]

(Law of 30 May 2018)

Article 63-3a. Publication of administrative penalties imposed under Article 63-2a

(1) The CSSF shall publish all decisions imposing a penalty or administrative measures under Article 63-2a on its website without undue delay after the person on whom the penalty was imposed has been informed of that decision. The publication shall include information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

By way of derogation to the first subparagraph, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CSSF to be disproportionate following a case-by-case assessment, or where publication jeopardises the stability of financial markets or an on-going investigation, the CSSF shall either:

1. defer the publication of the decision to impose the penalty or measure until the moment where the reasons for non-publication cease to exist;

2. publish the decision to impose the penalty or measure on an anonymous basis, if such anonymous publication ensures effective protection of the personal data concerned; or

3. not publish the decision to impose a penalty or measure at all in the event that the options set out in points (1) and (2) are considered to be insufficient to ensure:

[1123] Law of 21 July 2021: A566
[1124] Law of 30 May 2018
[1125] Law of 21 July 2021: A566
[1126] Law of 30 May 2018
[1127] Law of 21 July 2021: A566
[1128] Law of 21 July 2021: A566
[1129] Law of 21 July 2021: A566

(a) that the stability of financial markets would not be put in jeopardy; or

(b) the proportionality of the publication of that decision with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

Where the CSSF has disclosed an administrative measure or penalty to the public, it shall, at the same time, inform ESMA thereof.

(2) Where the decision to impose a penalty or measure is subject to appeal, the CSSF shall also publish, immediately, on its website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

(3) The CSSF shall keep all publications in accordance with this article on its website for five years. Personal data contained in the publications concerned will only be kept on the CSSF's website for a maximum period of twelve months.

The CSSF shall inform ESMA of all administrative penalties imposed but not published in accordance with point (3) of paragraph 1, including any appeal in relation thereto and the outcome thereof.

(4) The CSSF shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with paragraphs 1 and 2. That obligation does not apply to measures of an investigatory nature.

(Law of 23 July 2015)

"Article 63-4. Effective application of penalties and exercise of powers to impose penalties by the CSSF

"(1)"[1130] When determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, the CSSF shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the breach;
(b) the degree of responsibility of the natural or legal person responsible for the breach;
(c) the financial strength of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
(e) the losses for third parties caused by the breach, insofar as they can be determined;
(f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority "without prejudice to the need to ensure the disgorgement of profits gained or losses avoided by that person"[1131];
(g) previous breaches by the natural or legal person responsible for the breach;
(h) any "real or"[1132] potential systemic consequences of the breach;"

(Law of 30 May 2018)

"(i) measures taken by the person responsible for the infringement to prevent its repetition."

(Law of 20 May 2021)

"(2) The decisions taken by the CSSF in the exercise of its powers to impose penalties shall state the reasons on which they are based."

[1130] Law of 20 May 2021

[1131] Law of 30 May 2018

[1132] Law of 15 July 2024

(Law of 23 July 2015)
"Article 63-5. Right of appeal

The decision to apply an administrative penalty or to take another administrative measure pursuant to Articles "63-1, 63-2 ", 63-2a, (…)[1133] 63-2b"[1134]„[1135] "and 63-2c"[1136] may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred."

Article 64. Criminal penalties

(1) Any person who contravenes or attempts to contravene the provisions of, respectively, Articles 2, 3(5), 14, "15(6)"[1137], "28-11"[1138] ", "28-14(1),"[1139] "29-7(1),"[1140] 32(1) and (5), or the first sentence of the first subparagraph of Article 32-1(1) and the first subparagraph of Article 32-1(2),"[1141] or of Article 52(2), shall be punishable by a term of imprisonment of between eight days and five years and/or a fine of between ""5 000"[1142] and 125 000 euros"[1143].

(2) "Any person who contravenes the provisions of Articles 7(3) or 19(4) (...)[1144] shall be punishable by a fine of between "1 250 and 125 000 euros"[1145] ."[1146]

(3) Any person responsible for a financial professional or professionals who fails within the time-limit for publication laid down pursuant to Article 55(2) to lodge the accounting documents referred to therein shall be punishable by a fine of between ""500"[1147] and 25,000 euros"[1148].

(4) "Any member of the management body"[1149] of a financial institution who

- despite having been suspended pursuant to Article 59(2)(a), carries out any act of disposal, administration or management;
- notwithstanding suspension of the pursuit of the institution's activities pursuant to Article 59(2)(c), carries out any act of disposal, administration or management.

(…)[1150]

[1133] Law of 15 July 2024
[1134] Law of 21 July 2021: A566
[1135] Law of 30 May 2018
[1136] Law of 15 July 2024
[1137] Law of 12 March 1998
[1138] Law of 6 April 2013
[1139] Law of 15 July 2024
[1140] Law of 21 July 2021: A566
[1141] Law of 30 May 2018
[1142] Article IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, No. 59)
[1143] Article 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, No. 117)
[1144] Repealed by the Law of 12 November 2004
[1145] Article 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, No. 117)
[1146] Law of 11 August 1998
[1147] Article IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, No. 59)
[1148] Article 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, No. 117)
[1149] Law of 23 July 2015
[1150] Law of 27 February 2018

(…)[1151]

shall be punishable by a term of imprisonment of between eight days and five years and/or a fine of between ""5 000"[1152] and 125 000 euros"[1153].

(5) Any person who contravenes the provisions of Article 28-2(2)[1154] shall be punishable by a term of imprisonment of between eight days and three months and a fine of between ""251"[1155] and 25,000 euros"[1156].

(6) This article shall apply without prejudice to the penalties laid down by the Penal Code or by other individual laws.

(...)[1157]

(Law of 13 January 2002)
"Article 64-1.

Credit institutions, and, within the limits of their payment activity, PFS and specialised PFS, the members of the management body, the effective managers or the other persons responsible for an infringement of these entities shall be punishable by a fine of between 1,250 euros and 125,000 euros, where they fail to:

(1) ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity and that counterfeits are detected;
(2) withdraw from circulation all euro notes and coins received by them which they know or have sufficient reason to believe to be counterfeit;
(3) hand the euro notes and coins referred to in point (2) over to the competent authorities."[1158]

(Law of 23 July 2015)
"Article 64-2. Information on administrative penalties communicated to the European Banking Authority

Subject to the requirements relating to professional secrecy referred to in Article 44, the CSSF shall inform the European Banking Authority of any administrative penalties, including any permanent prohibitions applied in accordance with Articles 53, 59, "59-49,"[1159] 63, 63-1 ", 63-2 and 63-2b"[1160], including any relevant remedy and the result of that remedy."

PART VI: Amendments, repeals and transitional provisions

(Law of 21 December 2012)
"Article 65. Transitional provisions

The persons who, on the date of the entry into force of this Law, carry on the activity of investment adviser for undertakings for collective investment referred to in the Law of 17 December 2010 or

[1151] Law of 8 December 2021
[1152] Article IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096)
[1153] Article 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440)
[1154] Law of 12 March 1998 and Law of 2 August 2003
[1155] Article IX of the Law of 13 June 1994 on the system of penalties (Mém. A 1994, p. 1096)
[1156] Article 6 of the Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legislative provisions (Mém. A 2001, p. 2440)
[1157] Repealed by the Law of 11 August 1998
[1158] Law of 21 July 2021: A563
[1159] Law of 27 February 2018
[1160] Law of 21 July 2021: A566

specialised investment funds referred to in the Law of 13 February 2007 have to comply with the provisions of the amended Law of 5 April 1993 on the financial sector by 30 June 2013."

(Law of 23 July 2015)

"Article 66. Transitional provisions relating to G-SII buffer

This transitional provision shall apply to Article 59-8 from 2016 to 2018:

In 2016, the G-SII buffer rate of a given institution shall correspond to 25% of the rate which would result from the application of Article 59-8.

In 2017, the G-SII buffer rate of a given institution shall correspond to 50% of the rate which would result from the application of Article 59-8.

In 2018, the G-SII buffer rate of a given institution shall correspond to 75% of the rate which would result from the application of Article 59-8."

(Law of 20 May 2021)

"Article 67. Transitional provisions on approval of financial holding companies and on mixed financial holding companies

Parent financial holding companies and parent mixed financial holding companies already existing on 27 June 2019 shall apply for approval in accordance with Article 34-2 by 28 June 2021. If a financial holding company or mixed financial holding company fails to apply for approval by 28 June 2021, appropriate measures shall be taken pursuant to Article 34-2(8).

The CSSF shall have the supervisory powers conferred on it by this Law with regard to financial holding companies or mixed financial holding companies referred to in the first subparagraph.

Article 68. Transitional provisions on the obligation to establish a single intermediate EU undertaking

Article 34-4(1) shall only apply as from 30 December 2023 to CRR institutions that are part of a third-country group operating through more than one CRR institution in the European Union and with a total value of assets in the European Union equal to or greater than 40 billion euros on 27 June 2019."

(Law of 21 July 2021: A566)

"Article 69. Transitional provision relating to investment firms and IT systems operators authorised as at 31 July 2021

(1) Without prejudice to Articles 2-1 and 71, the authorisations granted to investment firms authorised under Articles 24 to 24-10 as they were in force before 31 July 2021 shall remain valid after that date for the investment services and activities specified therein in accordance with Article 15(3). These investment firms shall comply by 30 September 2021 at the latest with the authorisation conditions of this Law, as applicable as from 31 July 2021.

(2) Primary IT systems operators of the financial sector and secondary IT systems and communication networks operators of the financial sector authorised under Articles 29-3 and 29-4 as applicable before 31 July 2021 shall automatically have the status of IT systems and communication networks operator of the financial sector. These IT systems and communication networks operators shall comply by 31 July 2022 at the latest with the authorisation conditions of this Law as applicable as from 31 July 2021.

IT systems and communication networks operators of the financial sector, authorised as such under Article 29-3 as applicable before 1 November 2007 and automatically having the status of primary IT systems operator of the financial sector under Article 29-3(6) as in force before 31 July 2021, shall also be subject to the transitional regime as described in the first subparagraph.

Article 70. Transitional provision relating to APAs and ARMs authorised before 1 January 2022

The authorisations granted to APAs and ARMs, authorised under Article 29-7 as applicable prior to 1 January 2022, which fulfil the criteria defined in the delegated act referred to in Article 2(3) of Regulation (EU) No 600/2014 and which, as such, constitute APAs with a derogation or ARMs with a derogation, shall remain valid after that date. These APAs and these ARMs shall comply, as from

1 January 2022, with the authorisation conditions of this Law, as applicable as from 1 January 2022, and of Title IVa of Regulation (EU) No 600/2014.

Article 71. Transitional provision on the authorisation of the undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

(1) Undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 which, as at 24 December 2019, carry out activities as investment firms authorised under Part I, Chapter 2, Section 2, Subsection 1 shall apply for authorisation in accordance with Article 2.

(2) Where the CSSF notes that the envisaged total assets of an undertaking which has applied for authorisation pursuant to Part I, Chapter 2, Section 2, Subsection 1 before 25 December 2019 in order to carry out the activities referred to in points (3) and (6) of Section A of Annex II are equal to or exceed 30 billion euros, it shall notify the applicant thereof.

Where the CSSF determines that an undertaking must be authorised under Article 2, pursuant to Article 2-1, it shall notify the undertaking thereof and shall take over the authorisation procedure from the date of that notification."

(Law of 20 December 2024: A585)

"Article 72. Transitional arrangements concerning the risk weight for exposures secured by residential property for the purpose of calculating the output floor

(1) Pursuant to Article 465(5) of Regulation (EU) No 575/2013, CRR institutions may apply the following derogations from Article 92(5), point (a)(ii), of Regulation (EU) No 575/2013:

1. until 31 December 2032, a risk weight of 10 % to the part of the exposures secured by mortgages on residential property up to 55 % of the property value determined in accordance with Article 125(1), first subparagraph of Regulation (EU) No 575/2013 may be applied;

2. until 31 December 2029, a risk weight of 45 % to any remaining part of the exposures secured by mortgages on residential property up to 80 % of the property value determined in accordance with Article 125(1), first subparagraph, of Regulation (EU) No 575/2013 may be applied provided that the adjustment to own funds requirements for credit risk referred to in Article 501 of Regulation (EU) No 575/2013 is not applied.

(2) For the purposes of paragraph 1, point (1), where a CRR institution holds a junior lien and there are more senior liens not held by that CRR institution, to determine the part of the institution's exposure that is eligible for the 10 % risk weight, the amount of 55 % of the property value shall be reduced by the amount of the more senior liens not held by the institution.

Where liens not held by the institution rank pari passu with the lien held by the institution, to determine the part of the institution's exposure that is eligible for the 10 % risk weight, the amount of 55 % of the property value, reduced by the amount of any more senior liens not held by the institution, shall be reduced by the product of:

1. 55 % of the property value, reduced by the amount of more senior liens, if any, whether held by the institution itself or by other institutions; and

2. the amount of liens not held by the institution that rank pari passu with the lien held by the institution divided by the sum of all pari passu liens.

(3) For the purposes of paragraph 1, point (2), where a CRR institution holds a junior lien and there are more senior liens not held by that institution, to determine the part of the institution's exposure that is eligible for the 45 % risk weight, the amount of 80 % of the property value shall be reduced by the amount of the more senior liens not held by the institution.

Where liens not held by the institution rank pari passu with the lien held by the institution, to determine the part of the institution's exposure that is eligible for the 45 % risk weight, the

amount of 80 % of the property value, reduced by the amount of any more senior liens not held by the institution, shall be reduced by the product of:

1. 80 % of the property value, reduced by the amount of all more senior liens, if any, whether held by the institution itself or by other institutions; and
2. the amount of liens not held by the institution that rank pari passu with the lien held by the institution divided by the sum of all pari passu liens.

(4) For the purposes of paragraph 1, all of the following conditions shall be met:

1. the exposures qualify for the treatment pursuant to Article 125(1) of Regulation (EU) No 575/2013;
2. the qualifying exposures are risk weighted in accordance with Part Three, Title II, Chapter 3, of Regulation (EU) No 575/2013;
3. the residential property securing the qualifying exposures is located in Luxembourg;
4. over the last eight years the CRR institution's losses in any given year, as reported by the CRR institution pursuant to Article 430a(1), points (a) and (c), or pursuant to Article 101(1), points (a) and (c), of Regulation (EU) No 575/2013, in the version of those points applicable on 27 June 2021, on the part of the exposures secured by mortgages on residential property up to the lower of the pledged amount and 55 % of the property value, unless otherwise determined under Article 124(9) of Regulation (EU) No 575/2013, do not exceed on average 0.25 % of the sum of the exposure values of all outstanding exposures secured by mortgages on residential property;
5. for the qualifying exposures the CRR institution has the following enforceable rights in the event of the default or non-payment of the obligor:
   a) a right on the residential property securing the exposure or the right to take a mortgage on the residential property in accordance with Article 108(5), point (g), of Regulation (EU) No 575/2013;
   b) a contractual or legal right on other assets and income of the obligor;
6. the CSSF has verified that the conditions set out in points (1) to (5) are met.

(5) For the purposes of the application of paragraph 1, and provided that all conditions set out in paragraph 4 are met, CRR institutions may assign the following risk weights to any remaining part of the exposures secured by mortgages on residential property referred to in paragraph 1, point (2), until 31 December 2032:

1. 52.5 % during the period from 1 January 2030 to 31 December 2030;
2. 60 % during the period from 1 January 2031 to 31 December 2031;
3. 67.5 % during the period from 1 January 2032 to 31 December 2032."

"ANNEX I

List of activities (…)[1161]:

1. Acceptance of deposits and other repayable funds.
2. Lending, including, *inter alia*, consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.

"4. Payment services within the meaning of point (38) of Article 1 of the Law of 10 November 2009 on payment services".[1162]

"5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4."[1163]

6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
   (a) money-market instruments (cheques, bills, certificates of deposit, etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest-rate instruments;
   (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe-custody services."[1164]

(Law of 20 May 2011)

"15. Issuing electronic money, including electronic money tokens as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (hereinafter referred to as "Regulation (EU) 2023/1114"."[1165]

(Law of 6 February 2025)

"16. Issuance of asset-referenced tokens as defined in Article 3(1), point (6), of Regulation (EU) 2023/1114.

17. Crypto-asset services as defined in Article 3(1), point (16), of Regulation (EU) 2023/1114."

[1161] Repealed by the Law of 28 April 2011

[1162] Law of 10 November 2009

[1163] Law of 10 November 2009

[1164] Law of 12 March 1998

[1165] Law of 6 February 2025

(Law of 21 July 2021: A566)
"The services and activities provided for in Sections A and B of Annex I to Directive 2014/65/EU, when referring to the financial instruments provided for in Section C of Annex I to that directive, shall be subject to mutual recognition in accordance with Directive 2013/36/EU."

"ANNEX II

Section A: Investment services and activities

1. Reception and transmission of orders in relation to one or more financial instruments.
2. Execution of orders on behalf of clients.
3. Dealing on own account.
4. Portfolio management.
5. Investment advice.
6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
7. Placing of financial instruments without a firm commitment basis.
8. Operation of a Multilateral Trading Facility (MTF).

(Law of 30 May 2018)
"9. Operation of an Organised Trading Facility (OTF)."

"Section B: Financial Instruments

1. Transferable securities.
2. Money-market instruments.
3. Units in collective investment undertakings.
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
6. Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled.
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
8. Derivative instruments for the transfer of credit risk;
9. Financial contracts for differences;
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF.
11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC."[1166]

[1166] Law of 30 May 2018

Section C: Ancillary services

"1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding providing and maintaining securities accounts at the top tier level ('central maintenance service') referred to in point (2) of Section A of the Annex to Regulation (EU) No 909/2014."[1167]

2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.

3. Advice to undertakings on capital structure, industrial strategy and related matters; advice and services relating to mergers and the purchase of undertakings.

4. Foreign exchange services where these are connected to the provision of investment services.

5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

6. Services related to underwriting.

7. Investment services and activities as well as ancillary services of the type included under Section A or C of this Annex related to the underlying of the derivatives included under points 5, 6, 7 and 10 of Section B, where these are connected to the provision of investment or ancillary services.

(…)[1168]

ANNEX III

Criteria to be fulfilled by professional clients

Criteria to be fulfilled by clients of credit institutions or PFS to be considered as professional clients are the following:

Section A: Categories of investors who are considered to be professionals

The following should all be regarded as professionals in all investment services and activities and financial instruments for the purposes of this Law:

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a third country:

(a) Credit institutions.

(b) Investment firms.

(c) Other authorised or regulated financial institutions.

(d) Insurance undertakings and reinsurance undertakings.

(e) Collective investment schemes and their management companies.

(f) Pension funds and management companies of such funds.

[1167] Law of 30 May 2018
[1168] Law of 21 July 2021: A566

(g) Commodity and commodity derivatives dealers.

(h) Local firms as defined in Article 3(1)(p) of Directive 2006/49/EC.

(i) Other institutional investors.

(2) Large undertakings meeting two of the following size requirements on a company basis:

- balance sheet total: 20 million euros;
- net turnover: 40 million euros;
- equity: 2 million euros.

(3) National and regional governments, public bodies that manage public debt "at national or regional level"[1169], central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities mentioned above are considered to be professional clients. They can request non-professional treatment reserved to non-professional clients and credit institutions and investment firms may agree to provide a higher level of protection. Where the client of a credit institution or investment firm is an undertaking referred to above, the credit institution or investment firm must inform it prior to any provision of services, that, on the basis of the information available to the credit institution or investment firm, the client is deemed to be a professional client, and will be treated as such unless agreed otherwise.

The credit institution or investment firm must also inform the client that it can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided where a client who is considered to be a professional client enters into a written agreement with the credit institution or investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business rules. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

Section B: Clients who may be treated as professionals on request

1. Identification criteria

Clients other than those mentioned in section A, including public sector bodies", local public authorities, municipalities"[1170] and private individual investors, may be allowed to waive some of the protections afforded by the conduct of business rules.

To this end, credit institutions and investment firms are allowed to treat those clients as professional clients, provided the criteria and procedure defined in this section are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in section A.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the credit institution or investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.

[1169] Law of 30 May 2018

[1170] Law of 30 May 2018

The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the assessment should be the person authorised to carry out transactions on behalf of the entity.

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds 500,000 euros;
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

2. Procedure

The clients defined in point 1. may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- the client states in writing to the credit institution and investment firm that it wishes to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;
- the credit institution or investment firm must give to the client a clear written warning of the protections and investor compensation rights it may lose;
- the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, the credit institution or investment firm must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in point 1.

Client relationships already categorised as professional clients under parameters and procedures similar to those in this section with credit institutions or investment firms are not intended to be affected by the new rules adopted pursuant to this Annex.

Credit institutions and investment firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the credit institution or investment firm informed about any change, which could affect their current categorisation. Should the credit institution or investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the credit institution or investment firm must take appropriate action."[1171]

[1171] Law of 13 July 2007