SUPERVISION OF SECURITIES MARKETS

1. Reporting of transactions in financial instruments
2. Supervisory practice
3. Developments in the regulatory framework
1. REPORTING OF TRANSACTIONS IN FINANCIAL INSTRUMENTS

1.1. Obligation to report transactions in financial instruments

The reporting regime in respect of transactions in financial instruments applicable since 1 November 2007 is mainly set down in Article 28 of the law of 13 July 2007 on markets in financial instruments (MiFID law) which transposes Article 25 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MiFID Directive). This article specifies the obligation for credit institutions and investment firms to report to the CSSF the transactions in financial instruments admitted to trading on a regulated market of the European Economic Area. These arrangements are completed by the more detailed implementing measures of Regulation (EC) No 1287/2006 of 10 August 2006 implementing the MiFID Directive which clarify in particular the notion “transaction” and specify the content and form of the reports.

CESR continued to work on the revision of the definition of execution of a transaction (to be reported). The purpose is to clarify and standardise some key aspects such as the difference between clients and counterparties in the reporting of transactions and the way to report transactions carried out by an entity in its capacity as principal on behalf of clients. CESR also analysed the option to include the identification of clients on behalf of whom the transactions were executed in the reporting of transactions and considered in this context a standardisation of the codes for this identification. Moreover, CESR was working on the possibility to exchange between its members reporting of transactions in OTC derivatives. Proposals concerning some of the above-mentioned topics shall be submitted to the European Commission for the contemplated revision of the MiFID Directive.

1.2. Credit institutions and investment firms concerned by the obligation to report transactions in financial instruments

As at 31 December 2009, 253 entities (credit institutions and investment firms incorporated under Luxembourg law and Luxembourg branches of credit institutions and investment firms incorporated under foreign law) are falling under the scope of Article 28 of the MiFID law and are potentially concerned by the transaction reporting regime (250 entities in 2008), including 149 banks (152 in 2008) and 104 investment firms (98 in 2008). It should be noted that only investment firms which are authorised to carry out transactions in financial instruments, i.e. commission agents, private portfolio managers, professionals acting for their own account, market makers, underwriters of financial instruments and distributors of units/shares of investment funds, are subject to the reporting obligation.

As at 31 December 2009, 108 entities (106 in 2008), of which 94 banks (92 in 2008) and 14 investment firms (idem in 2008), are being required to send their transaction reports to the CSSF as their interventions have to be considered as “executions of transaction” within the meaning of the MiFID law, as specified by Circular CSSF 07/302. The difference in numbers as compared to the number of entities that are potentially concerned by the reporting regime results from the fact that, in practice, a certain number of entities, mainly investment firms, are not subject to the obligation to report transactions in financial instruments because they do not conclude immediate market facing transactions and do not execute transactions on own account.

In 2009, the focus was on the analysis and assessment of the quality of the data submitted by the entities subject to the obligation to report transactions in financial instruments. Systematic controls of the content of reports on executed transactions sent to the CSSF by credit institutions and investment firms lead to the detection of quite a few non-compliant elements on information relating to the transactions such as the buy/sell indicator of the transaction, the trading capacity and the trading time. The entities concerned received a letter and one on-site inspection was carried out in order to clarify certain irregularities.
1.3. Development in the number of reports of transactions in financial instruments

In 2009, the number of transaction reports sent by the entities and accepted by the CSSF reached 1,197,915 (+27.33% compared to 2008).

**Monthly volume of MiFID reports accepted in 2008 and in 2009**

<table>
<thead>
<tr>
<th>Month</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan.</td>
<td>919</td>
<td>99,981</td>
</tr>
<tr>
<td>Feb.</td>
<td>8,582</td>
<td>105,609</td>
</tr>
<tr>
<td>Mar.</td>
<td>11,582</td>
<td>117,990</td>
</tr>
<tr>
<td>Apr.</td>
<td>20,280</td>
<td>98,448</td>
</tr>
<tr>
<td>May</td>
<td>89,166</td>
<td>104,200</td>
</tr>
<tr>
<td>June</td>
<td>127,997</td>
<td>103,575</td>
</tr>
<tr>
<td>July</td>
<td>128,820</td>
<td>89,327</td>
</tr>
<tr>
<td>Aug.</td>
<td>88,502</td>
<td>96,504</td>
</tr>
<tr>
<td>Sept.</td>
<td>100,532</td>
<td>108,154</td>
</tr>
<tr>
<td>Oct.</td>
<td>158,484</td>
<td>88,075</td>
</tr>
<tr>
<td>Nov.</td>
<td>106,616</td>
<td>87,770</td>
</tr>
<tr>
<td>Dec.</td>
<td>99,347</td>
<td></td>
</tr>
</tbody>
</table>

**Breakdown of transactions by month and by type of instrument in 2009**

<table>
<thead>
<tr>
<th>CFI Code</th>
<th>Bonds (Dxxxxx)</th>
<th>Shares (Exxxx)</th>
<th>Futures (Fxxxxx)</th>
<th>Others (Mxxxxx)</th>
<th>Options (Oxxxxx)</th>
<th>Rights (Rxxxxx)</th>
<th>Monthly total</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>48,783</td>
<td>37,372</td>
<td>8,016</td>
<td>1,617</td>
<td>3,357</td>
<td>836</td>
<td>99,981</td>
</tr>
<tr>
<td>February</td>
<td>51,468</td>
<td>43,184</td>
<td>6,802</td>
<td>655</td>
<td>2,765</td>
<td>735</td>
<td>105,609</td>
</tr>
<tr>
<td>March</td>
<td>61,117</td>
<td>42,436</td>
<td>8,142</td>
<td>342</td>
<td>4,220</td>
<td>1,733</td>
<td>117,990</td>
</tr>
<tr>
<td>April</td>
<td>49,159</td>
<td>36,495</td>
<td>6,858</td>
<td>423</td>
<td>3,901</td>
<td>1,612</td>
<td>98,448</td>
</tr>
<tr>
<td>May</td>
<td>50,587</td>
<td>37,559</td>
<td>5,750</td>
<td>445</td>
<td>2,692</td>
<td>1,249</td>
<td>98,282</td>
</tr>
<tr>
<td>June</td>
<td>55,979</td>
<td>36,132</td>
<td>7,409</td>
<td>721</td>
<td>2,926</td>
<td>1,033</td>
<td>104,200</td>
</tr>
<tr>
<td>July</td>
<td>56,002</td>
<td>35,674</td>
<td>6,681</td>
<td>234</td>
<td>3,694</td>
<td>1,290</td>
<td>103,575</td>
</tr>
<tr>
<td>August</td>
<td>42,472</td>
<td>37,116</td>
<td>5,455</td>
<td>197</td>
<td>2,700</td>
<td>1,387</td>
<td>89,327</td>
</tr>
<tr>
<td>September</td>
<td>50,427</td>
<td>35,509</td>
<td>6,077</td>
<td>405</td>
<td>2,989</td>
<td>1,097</td>
<td>96,504</td>
</tr>
<tr>
<td>October</td>
<td>55,531</td>
<td>40,728</td>
<td>5,901</td>
<td>408</td>
<td>3,658</td>
<td>1,928</td>
<td>108,154</td>
</tr>
<tr>
<td>November</td>
<td>41,244</td>
<td>35,616</td>
<td>5,335</td>
<td>251</td>
<td>4,126</td>
<td>1,503</td>
<td>88,075</td>
</tr>
<tr>
<td>December</td>
<td>43,479</td>
<td>34,196</td>
<td>4,932</td>
<td>194</td>
<td>3,107</td>
<td>1,862</td>
<td>87,770</td>
</tr>
<tr>
<td>Annual total</td>
<td>606,248</td>
<td>452,017</td>
<td>77,358</td>
<td>5,892</td>
<td>40,135</td>
<td>16,265</td>
<td>1,197,915</td>
</tr>
</tbody>
</table>
In relative terms, the majority of reports of 2009 concerned transactions in bonds (50.7%), followed by transactions in shares (37.7%). Transactions in other types of instruments represented only a small part (futures: 6.4%, options: 3.3%, rights: 1.4%, others: 0.5%).

**Annual comparison of transactions by type of instruments**

This data, as well as the evaluation of the information received via TREM (Transaction Reporting Exchange Mechanism), set up between competent authorities for their respective supervisory missions, reveals the trends on European markets and, particularly, on the Luxembourg market. The main purpose of the supervision of the markets is to prevent and detect infringements of financial and stock market laws and regulations. In this context, monthly internal reports, as well as specific internal reports, based on the received reports, are drawn up. These *ex post* analyses of transactions in financial instruments can be used as a starting point for the CSSF’s inquiries.

### 2. SUPERVISORY PRACTICE

#### 2.1. Supervision of stock exchanges

The establishment of a regulated market in Luxembourg is subject to a written authorisation of the Minister responsible for the CSSF. Chapter 1 of Title 1 of the MiFID law sets out the authorisation conditions and requirements applicable to regulated markets. Where the operator of such regulated market is established in Luxembourg, he must also obtain an authorisation as “PFS other than an investment firm” in accordance with the law of 5 April 1993 on the financial sector. The acts relating to the organisation and operation of the regulated market are supervised by the CSSF.

Pursuant to the provisions of the MiFID law, the operation of a multilateral trading facility (MTF) is part of the investment services and activities defined in that law. MTFs may be operated either by a market operator or by a credit institution or an investment firm.
There are currently two markets operated in Luxembourg by the same operator, namely Société de la Bourse de Luxembourg S.A. (SBL): a first market, named Bourse de Luxembourg (Luxembourg Stock Exchange), which is a regulated market within the meaning of the European directives and a second market called “Euro MTF”, the operating rules of which are defined in the Rules and Regulations of SBL.

SBL is also the only company holding an authorisation as operator of a regulated market authorised in Luxembourg as defined in Article 27 of the law of 5 April 1993. As such, SBL is registered on the official list of the other professionals of the financial sector as “PFS other than an investment firm”.

As far as its supervisory mission is concerned, the CSSF has had several meetings and exchanged mail with SBL notably with regard to the follow-up of implications of the amendments in the regulatory framework governing SBL and its markets, the amendment of its Rules and Regulations, the organisation of market supervision and the amendment of its articles of incorporation. On the basis of the reports transmitted by SBL and the electronic access to the information on stock market transactions, the CSSF also monitors the market activities and the problems encountered in relation to these activities. The development of SBL’s financial situation is observed, in particular, via the monthly reporting sent by SBL.

On 9 March 2009, SBL migrated all securities admitted on its two markets to the trading platform Universal Trading Platform (UTP) which is the shared trading platform used by NYSE Euronext markets. This migration forms part of the partnership signed between Euronext N.V. and SBL. Moreover, since 1 September 2009, SBL has also adopted tick sizes that are standardised at European level.

As at 31 December 2009, SBL counted 61 members, of which 49 credit institutions and 12 investment firms.

As far as market activities are concerned, the trading turnover on both markets operated by SBL reached EUR 272.05 million in 2009 against EUR 1,114.24 million in 2008. It should be specified that, in 2008, the activity was exceptional due to the important trading volumes of the shares of a Luxembourg company newly admitted to trading. Considering the importance of this stock, the company’s shares were even added to the basket of shares making up the LuxX index in the beginning of January 2009.

2009 was characterised by a decrease of the admissions to the markets operated by SBL with 7,738 new admissions (11,651 in 2008). As at 31 December 2009, the two markets operated by SBL totalled 45,660 listings (against 49,097 in 2008), i.e. 30,805 bonds, 293 shares, 7,277 warrants and rights and 7,285 Luxembourg and foreign undertakings for collective investment and sub-funds. The regulated market accounted for 39,745 out of the 45,660 listings, and the Euro MTF for 5,915.

In 2009, SBL has launched two new indexes for GDRs (Global Depositary Receipts) named Lux GDRs India and Lux GDRs Taiwan. It also carried out the first update of its Ten Principles of Corporate Governance applicable to Luxembourg companies the shares of which are listed on the Luxembourg Stock Exchange.

2.2. Investigations conducted by the CSSF at national and international level

The CSSF is the administrative authority competent to ensure that the provisions of the law of 9 May 2006 on market abuse are applied. The purpose of this law is to combat insider dealing and market manipulation (“market abuse”) in order to ensure the integrity of financial markets, to enhance investor confidence in those markets and thereby to ensure a level playing field for all market participants.

In the context of its supervision of securities markets, the CSSF either initiates inquiries itself or conducts them following a request for assistance from a foreign administrative authority within the framework of international cooperation. The decisions to open an investigation or to intervene against a professional of the financial sector are first based on analytical reports of daily trading activities at the Luxembourg Stock Exchange, as well as on the analysis of transactions reported to the CSSF. After its assessment of all the available information, the CSSF decides on the appropriateness of an intervention.
In the context of the collection of information regarding an investigation, the CSSF is empowered to summon interested parties to a hearing. Such hearings allow affected persons to present arguments in fact and in law, to explain the reasons to initiate the executed transactions and to provide the CSSF with elements in order to better assess the case.

**2.2.1. Investigations initiated by the CSSF**

In 2009, the CSSF opened four investigations into insider dealing and/or price manipulation. As part of one investigation, the CSSF carried out an on-site inspection at an establishment subject to its prudential supervision. All these national investigations resulted in a total of thirteen hearings, organised by the CSSF with the interested parties.

The information received in relation to one investigation already opened in 2008 allowed the CSSF to close this file without taking any further action. The examinations made in the context of investigations opened in 2009 and before continue in 2010.

**2.2.2. Investigations conducted by the CSSF at the request of a foreign authority**

- **Inquiries into insider dealing**

  In 2009, the CSSF processed 29 inquiries into insider dealing (against 36 in 2008). It handled all these requests with the necessary diligence befitting cooperation between authorities and within that scope organised in Luxembourg five hearings of affected persons in which agents from the foreign competent authorities could participate.

- **Inquiries into price manipulation, fraudulent public offers, breaches of the requirement to report major shareholdings and other breaches of the law**

  The CSSF received nine inquiries into price manipulation (*idem* in 2008), five inquiries into breaches of requirements to report major shareholdings (*idem* in 2008), five other inquiries relating to Luxembourg-incorporated companies (against nine in 2008), one inquiry into short selling, two inquiries regarding an illegal offer of securities, three inquiries into fraudulent behaviour and one inquiry in relation to UCI management. The CSSF responded to all these requests within the scope of its legal competence. Five of the above-mentioned requests were received from administrative authorities of countries outside the European Economic Area.

**2.2.3. Notifications of suspicious transactions under the law on market abuse**

In accordance with Article 12 of the law on market abuse, any credit institution or other professional of the financial sector established in Luxembourg shall notify the CSSF if it reasonably suspects that a transaction might constitute insider dealing or market manipulation. In this context, Circular CSSF 07/280, as amended, specifies the application of this article.

Based on this provision, the CSSF received eight suspicious transaction reports in 2009 (against 25 in 2008). For underlying financial instruments admitted to one or several foreign markets, the notified information was transmitted to the competent authorities of the market(s) concerned, thereby observing the cooperation obligation referred to in the law on market abuse. This information can, where necessary, lead these authorities to open investigations.

In 2009, the CSSF received eleven notifications of suspicious transactions transmitted by foreign authorities (against three in 2008) and analysed them with the necessary diligence.
2.3. Approval of prospectuses relating to offers to the public or admissions to trading on a regulated market

2.3.1. Application of the Prospectus law of 10 July 2005

In 2009, financial transactions were strongly affected by the financial crisis which reached all lines of business at the end of 2008. Similarly to most of the other EU Member States, the number of files submitted in Luxembourg for the approval of the prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market decreased. However, due to the increasing complexity of the transaction structures and of the relevant deposited documents and due to the increasing number of files relating to structured products, the amount of work linked to the approval activity did not lessen.

The department “Supervision of securities markets” competent for the enforcement of the Prospectus regulations was sought 156 times in 2009. Although these requests concerned diverse subjects of the regulation, two recurring subjects may be highlighted:

- the financial statements to be submitted for the approval of a prospectus; and
- the exemptions from the publication of a prospectus as laid down in Articles 5 and 6 of the Prospectus law.

Some positions of the CSSF in this respect are detailed in point 2.3.3. of this Chapter.

In 2009, the CSSF received 26 requests for the omission of information pursuant to Article 10 of the Prospectus law. After analysing them, the CSSF granted 20 requests. It should be noted that, like the previous year, the majority of the requests (17) relate to certain points regarding the description of State guarantors supporting credit institutions. Moreover, the CSSF approved five prospectuses subject to information omission due to non-pertinence, amongst which the pertinence of the tables of cash flows for certain specific companies, in accordance with Article 23(4) of Regulation (EC) No 809/2004.

2.3.2. Approvals and notifications in 2009

• Documents approved by the CSSF in 2009

The number of documents approved by the CSSF significantly decreased compared to 2008 reaching a total of 1,406 approved documents in 2009 (of which 327 prospectuses, 341 base prospectuses, 9 registration documents and 729 supplements) against 2,367 the previous year. This important fall of 40.60% is due to the financial crisis which affected the markets.
Development in the number of documents approved by the CSSF

<table>
<thead>
<tr>
<th>Month</th>
<th>2008/2009</th>
<th>Variation in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan.</td>
<td>269/92</td>
<td>-65.8%</td>
</tr>
<tr>
<td>Feb.</td>
<td>195/105</td>
<td>-46.2%</td>
</tr>
<tr>
<td>March</td>
<td>246/139</td>
<td>-43.5%</td>
</tr>
<tr>
<td>April</td>
<td>257/111</td>
<td>-56.8%</td>
</tr>
<tr>
<td>May</td>
<td>282/150</td>
<td>-46.8%</td>
</tr>
<tr>
<td>June</td>
<td>192/121</td>
<td>-37.0%</td>
</tr>
<tr>
<td>July</td>
<td>198/124</td>
<td>-37.4%</td>
</tr>
<tr>
<td>Aug.</td>
<td>165/110</td>
<td>-33.3%</td>
</tr>
<tr>
<td>Sept.</td>
<td>163/110</td>
<td>-32.5%</td>
</tr>
<tr>
<td>Oct.</td>
<td>146/103</td>
<td>-29.5%</td>
</tr>
<tr>
<td>Nov.</td>
<td>129/138</td>
<td>7.0%</td>
</tr>
<tr>
<td>Dec.</td>
<td>125/103</td>
<td>-17.6%</td>
</tr>
</tbody>
</table>

Variation in %: -65.8% -46.2% -43.5% -56.8% -46.8% -37.0% -37.4% -33.3% -32.5% -29.5% 7.0% -17.6%

Distribution of documents approved in 2009

- Registration documents: 0.64%
- Supplements: 51.85%
- Others (prospectus, standardised prospectus, etc.): 23.26%
- Base prospectuses: 24.25%

Documents drawn up under the European passport regime in 2009

In 2009, the CSSF received 1,292 notifications (relating to 324 prospectuses and base prospectuses and 968 supplements) from the competent authorities of several EU Member States, against 1,144 notifications (relating to 282 prospectuses and base prospectuses and 962 supplements) in 2008, representing a 12.94% growth. The number of notifications relating to prospectuses and base prospectuses alone increased by 14.89%.
In 2009, the CSSF sent notifications for 691 CSSF-approved documents¹ (256 prospectuses and base prospectuses and 435 supplements) to the competent authorities of the EU Member States, against 1,070 documents (420 prospectuses and base prospectuses and 650 supplements) in 2008, which is a 35.42% decrease. The number of notifications relating to prospectuses and base prospectuses alone decreased by 39.05%.

¹ This figure is the number of documents for which the CSSF sent one or several notifications. Where notifications have been sent at different dates and/or in several Member States, only the first notification is included in the statistical calculations. Each document notified in one or several Member States is thus only counted once.
• Approval of prospectuses relating to Luxembourg issuers

Among the 89 prospectuses relating to issues carried out by Luxembourg issuers that the CSSF approved in 2009, it should be noted that two prospectuses related to issues of securities from two closed-end type UCIs and around fifty prospectuses covered issues of securitisation vehicles.

Among the transactions linked to capital increases, the capital increase performed via a convertible loan and/or a loan which may be exchanged by ArcelorMittal may be pointed out.

Finally, in January 2010, the CSSF approved one prospectus related to a public offer and an admission on a regulated market of Units issued by a SPAC (Special Purpose Acquisition Company) established in the form of a European company in Luxembourg. The purpose of the sum of Units, each composed of a share and a warrant, is to allow an issuer to invest in activities mainly based in Germany either by purchasing shares, exchanging shares or any other financial transaction.

• A posteriori control of the Final Terms

In accordance with the Prospectus regulation, the Final Terms are not subject to the approval by the CSSF but only to a filing. As regards the content, the CSSF’s approach allows the issuers to decide on the level of information to include in the base prospectus or in the Final Terms within the applicable regulatory limits and by taking into account some general principles laid down in FAQ No. 11 published on the CSSF website. As for the requirement to file the Final Terms, FAQ No. 12 specifies that the issuer shall perform such filing with the competent authority of the home Member State and recommends to the issuers to also send a copy of the Final Terms to the competent authority of all host Member States. Please refer to Article 14 of the Prospectus law for the modalities concerning the publication of the Final Terms in Luxembourg.

In this context, the CSSF deemed it useful to perform controls on samples from the filed Final Terms in 2009. During the inspections, the CSSF noted irregularities not only in the filing and the publication of the Final Terms but also in their form and content. Indeed, some issuers do not file all the Final Terms for issues subject to public offer and/or admission to trading on a regulated market as it is required by the applicable regulations, while others file even the documents which do not fall within the scope of the Prospectus regulations. In addition, the control showed that, often, the Final Terms are not filed within the applicable time limits. In some cases, versions which are not final, which are incomplete, which contain mistakes or contradictions compared to the models of the Final Terms from the related base prospectuses were filed. In accordance with the competences and powers to intervene conferred by the Prospectus law, the CSSF intervened against the issuers concerned and intends to continue its action in 2010.

The issuers, offerors and persons asking for the admission to trading on the regulated market of securities shall bear in mind that they must file the Final Terms within the applicable time limits and in due form pursuant to the regulation into force and by observing the modalities described in the relevant base prospectus. In this context, the responsibilities the issuers have in relation to the base prospectus also apply for the content of the Final Terms concerned which are an integral part of the documentation set out in the Prospectus regulations. This documentation must contain all the information which allows the investors to make an informed assessment of the proposed investment.

2.3.3. Questions regarding prospectuses raised in 2009

• Approval of issues that benefit from State guarantees

Question No. 70 from CESR’s seventh updated FAQ of December 2008 regarding the disclosure requirements in relation to the States supporting financial institutions raised many interpretation issues for the filing entities during the 1st quarter of 2009. The CSSF confirmed its policy regarding the treatment of these issues which consists in analysing on a case-by-case basis pursuant to Article 10(2) of the Prospectus law and Article 23(4) of Regulation (EC) No 809/2004.
• Description of the risk factors in the framework of a base prospectus

In accordance with Article 22(2) of Regulation (EC) No 809/2004, information which is not known at the time of the approval of the base prospectus or which cannot be determined at the time of the issue may be omitted during the approval of the base prospectus and set out in the Final Terms. In accordance with Article 22(4) of the same regulation, the Final Terms may only contain information included in the different notes on securities and thus specific to the outstanding issue. Consequently, it is not possible to add general risk factors which are inherent to the issuer or which relate to the securities described and summarised in the base prospectus via the Final Terms. Indeed, these general risk factors trigger, in principle, a supplement to the base prospectus.

• Application of Article 13 of the Prospectus law

In 2009, several requests for opinion were related to information which could or, where applicable, had to be included in the supplement to the base prospectus. Pursuant to Article 13 of the Prospectus law, every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, must be mentioned in a supplement to the prospectus. The addition of a new issuer or a new category of securities is not part of the criteria set out in Article 13 and, in these cases, a new base prospectus shall be drawn up. However, the addition of a guarantor may amend the existing terms and may therefore fulfil the criteria of Article 13. This amendment may, thus, take place via a supplement.

2.4. Takeover bids

2.4.1. Offer documents approved by the CSSF


On 23 January 2009, following the contribution of CEGEDEL S.A. (Cegedel) shares by some former shareholders, the Luxembourg company SOTEG S.A. (Soteg) announced that it holds 82.8% of the shares and voting rights in Cegedel. As a consequence, in accordance with Article 5(1) of the law on takeover bids, Soteg had to launch a mandatory takeover bid for the remaining Cegedel shares not yet held by Soteg.

The offer document was approved by the CSSF and recognised by the Belgian Commission bancaire, financière et des assurances (CBFA) on 3 April 2009. Soteg’s offer was finally launched on 6 April 2009. A positive reasoned opinion was also published by the Board of Directors of the target company, in compliance with the law on takeover bids.

On 13 May 2009, a supplement to the offer document was approved by the CSSF and recognised by the CBFA.

After an extension of the offer until 15 May 2009, Soteg holding 97.89% of the capital and voting rights in Cegedel announced, on 23 May 2009, the exercise of its squeeze-out right in the Cegedel shares which were not presented to the offer pursuant to Article 15 of the law on takeover bids. It was specified in the same notice that the ownership of the remaining Cegedel shares was transferred ipso jure to Soteg in accordance with the law on takeover bids.

Following the realisation of the offer and the exercise of Soteg’s squeeze-out right in the shares not presented to the offer, the Cegedel shares were removed from the official list and from trading on the Luxembourg regulated market with effect as of 2 June 2009.
2.4.2. Questions regarding the law on takeover bids raised in 2009

In 2009, several requests for opinion on transactions likely to fall under the scope of the law on takeover bids related to transactions included in the initial issues of securities. In its answers, the CSSF took into account the general principles set out in Article 3 of the law on takeover bids by paying special attention to the information made available for investors as of their decision to invest into the company, more specifically the risk related to possible acquisition of control of the company, as well as to the practical arrangements of the protection put in place with regards to an acquisition of control.

2.5. Supervision of issuers whose securities are admitted to trading on a regulated market and for which the CSSF is the competent authority pursuant to the law of 11 January 2008 on transparency requirements for issuers of securities (Transparency law)

Pursuant to the Transparency law, the CSSF supervises the issuers which fall within the scope of this law. As at 8 March 2010, 750 issuers had chosen Luxembourg as home Member State for the purposes of the Transparency law and were, thus, supervised by the CSSF in accordance with this law. As from November 2009, a list of these issuers is available on the CSSF website (section “Supervised entities”).

Among these 750 issuers, 233 are Luxembourg issuers, of which 45 are issuers of shares, three are investment companies the shares of which are admitted to trading on a regulated market and one is an issuer the shares of which are represented by Fiduciary Depository Receipts admitted to trading on a regulated market. Among the other issuers, 178 have their registered office in a Member State of the European Economic Area (EEA) and 339 are incorporated in third countries (outside the EEA).

Breakdown of issuers according to countries

- Luxembourg: 31.07%
- European Economic Area: 23.73%
- Third countries (outside the EEA): 45.20%
2.5.1. Determination of the home Member State

The task of identifying the entities to be supervised under the Transparency law, described in detail in the CSSF’s 2008 Annual Report, continued in 2009. Currently, there are still issuers which have not yet notified their choice of home Member State (HMS) to the CSSF. Among these, there are certainly issuers which chose another EEA Member State as HMS and which, thus, only omitted to inform the CSSF thereof. Nevertheless, it is presumed that many of the above-mentioned issuers, mainly those from third countries, have not yet elected a HMS for the purposes of the Transparency Directive. Thus, these issuers do not comply with all the European regulations applicable to entities the securities of which are admitted to trading on a regulated market situated or operating in an EEA Member State. In order to establish contact with these issuers and to receive information about the choice of their HMS, the CSSF got in touch, in November 2009, with the competent authorities of the third countries mostly concerned and, thus, sent several reminders in cooperation with these authorities.

Another difficulty observed in 2009, in relation to the determination of the HMS, concerns the legislation on prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market. Indeed, some issuers assume that they have fulfilled the requirement to notify their choice of HMS when having made a choice for the purposes of a prospectus. However, this is not the case; a distinct choice has to be made for the purpose of the Transparency Directive. Besides, it is important to note that the choices made for the approval of a prospectus are done in most cases per issue whereas they are usually done per issuer for the purposes of the Transparency Directive.

Moreover, the CSSF noticed that some securities which still appeared as admitted to trading on the regulated market Bourse de Luxembourg were in the meantime repurchased or redeemed. In these cases, the issuers (often companies which have been dissolved) omitted to inform SBL of the withdrawal of the securities concerned.

As stated in 2008, many issuers who have not issued new securities since several years are not aware of the fact that their securities are admitted to trading on a regulated market as defined in the MiFID Directive and of the legal consequences thereof.

In the context of the cooperation between competent authorities and based on the answers received by the various issuers whose securities are admitted to trading on the regulated market in Luxembourg, the CSSF informed, in February 2009, the European competent authorities of the issuers that have chosen other Member States as HMS for the purposes of the Transparency Directive. Moreover, it informed them of the choice of HMS of Luxembourg issuers whose securities are admitted to trading on regulated markets in other EEA Member States.
Finally, it should be pointed out that the date of the notification of the choice does not determine the moment as from which the requirements deriving from the Transparency Directive start to apply. Indeed, many issuers that have chosen Luxembourg as HMS for the purposes of the Transparency Directive after 30 April 2009 (deadline for the filing of the annual financial report for the year 2008) were of the opinion that they were exempted from the requirements laid down in the Transparency law regarding the annual reports for the year 2008. However, since the Transparency law entered into force on 19 January 2008 and pursuant to an FAQ published by the CSSF at the beginning of 2008 (cf. CSSF’s 2007 Annual Report), all the issuers for which Luxembourg is the home Member State must draw up annual financial reports, concerning the financial years starting 1 January 2008 or after this date in accordance with the provisions of the Transparency law, which must be disseminated, stored with the OAM (Officially Appointed Mechanism) and filed with the CSSF like any other regulated information.

2.5.2. Review of annual and semi-annual reports

As regards the review of the 2008 annual reports and 2009 semi-annual reports, it was noticed that at the beginning of 2009 many issuers were not yet well informed about the procedures concerning the content and the disclosure of their annual financial reports. Indeed, the notion of effective dissemination to the public of the EEA Member States was not always well applied; many issuers had not yet registered with the OAM for the storage of their regulated information and the statement made by the persons responsible within the issuer, laid down in Articles 3(2)c) and 4(2)c) of the Transparency law, was not included in the reports or did not include the information required by the law.

In the context of these statements made by the persons responsible, it is important to point out that the purpose of the Transparency Directive is to make the managers personally responsible, meaning that a declaration indicating that the financial statements and the management report are drawn up in accordance with the applicable laws is not sufficient any more. Until now, several injunctions were ordered in this matter. Even though an improvement has been noted with regard to the drawing-up of the semi-annual report for the period from 1 January until 30 June 2009 compared to the financial year 2008, there are still issuers who assume that they are not able to comply. The CSSF will therefore have to continue its interventions in this matter in the future.

2.5.3. Dissemination and storage of regulated information with the OAM

Since 1 January 2009, regulated information to be drawn up pursuant to the Transparency law shall be filed with SBL which was designated as the officially appointed mechanism for the central storage of regulated information regarding issuers for which Luxembourg is the HMS (cf. CSSF’s 2008 Annual Report) by the Grand-ducal regulation of 3 July 2008. The transitional provision allowing the storage of regulated information on the website of the issuers ended on 31 December 2008. All the regulated information issued as from 1 January 2009 must be filed with SBL which makes it available to the public on its website in a dedicated section. The information stored before this date on the issuers’ website is not required to be transferred to the OAM.

As regards the storage of information, the CSSF observed that a lot of information was not filed in the appropriate categories or was not correctly referenced. The security measures indicated in the recommendation of the European Commission of 11 October 2007 (cf. CSSF’s 2007 Annual Report) set out that, once filed and made available to the public, the regulated information cannot be withdrawn from the OAM systems. In order to improve the procedures laid down in this context and, thus, to enhance the readability of the filed information and the transparency towards the investors, the CSSF will continue its efforts to improve the quality of the filings in cooperation with SBL.

In the context of the storage of regulated information, it is important to note that the availability of the information in section REGULATED INFORMATION (OAM) on SBL’s website does not exempt issuers from the requirement of effective dissemination of this information as laid down in the Transparency law.
The CSSF has in the meantime recognised the following five entities as companies specialised in the dissemination of regulated information: SBL, Business Wire, Tensid S.A., PR Newswire and Hugin AS. Based on the information filed with the CSSF until now, it has been noticed that most issuers choose SBL in order to comply with the dissemination requirements laid down in the Transparency law.

Generally, many issuers have not yet informed themselves about the legal requirements regarding the storage and dissemination set forth in the Transparency law for the 2008 annual report. However, following the reminders sent by the CSSF to all issuers which did not fulfil the requirements in this context during 2009, a clear improvement in the disclosure modalities of the 2009 semi-annual reports could be noted.

2.5.4. Questions regarding the Transparency law raised in 2009

• Publication of new loan issues

In accordance with Article 15(3) of the Transparency law, issuers are required to make public without delay their new loan issues and any guarantee or security in respect thereof. Given the important number of questions raised in relation to this article, the CSSF published in 2008 an FAQ specifying that this article only applies to securities admitted to trading on a regulated market as defined in Article 1(11) of the Transparency law. During 2009, many issuers were worried about the wording “without delay”. In the absence of a standardised point of view at European level, the following approach is accepted by the CSSF: if the issuers publish the information about new issues immediately on the regulated markets concerned and if the amount of the new loans is not significant compared to the existing indebtedness, it is sufficient to file this information once a week with the CSSF and with SBL acting as OAM for the purposes of the Transparency law.

It is important to bear in mind that the questions mainly concerned the Final Terms relating to admission to trading on a regulated market. The distribution of these Final Terms in accordance with the provisions of the Transparency law is, however, not sufficient for the fulfilment of the requirements to publish and file with the CSSF as laid down in the laws relating to prospectuses to be published in case of an offer to the public or admission to trading on a regulated market (cf. point 2.3.2. of this chapter).

• Third-country issuers

Having regard to the large number of third-country issuers which have Luxembourg as HMS, many questions regarding the equivalence of laws in third countries were raised during the year.

Thus, as regards accounting standards, several third-country issuers still had questions regarding the standards to be used for the establishment of their individual annual accounts. In this context, the CSSF informs that it provided clarifications thereof in its 2008 Annual Report.

It should be noted that, contrary to the opinion of certain issuers, the second chapter of the Grand-ducal regulation of 11 January 2008 regarding the equivalence for third countries sets out criteria allowing the competent authorities to determine whether the laws of a third country have equivalent requirements to those of the laws of Member States. Thus, it is not up to the issuer to individually assess, based on these criteria, whether the regulated information it draws up is acceptable for the purposes of the Transparency law.

• Netting of long and short positions

Besides the decisions taken by the CSSF, it should be pointed out that CESR published FAQ documents in April and October 2009 following questions raised by different competent authorities of Member States. These documents are available on the CSSF website (section “Issuers / Prospectuses”, sub-section “Transparency requirements for issuers of securities”, “FAQ”).

In the context of requirements concerning notification of major holdings, question No. 13 determines that the netting of long and short positions is not authorised and that the long position must, thus, always be notified if it entitles to acquire, on the holder’s own initiative, shares already issued and to which voting rights are attached.
3. DEVELOPMENTS IN THE REGULATORY FRAMEWORK

3.1. Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies

The impact of this regulation on the information to be included in the prospectuses is subject to a more detailed description in point 2.5. of Chapter XIV “Banking and financial legislation and regulations”.

3.2. Law of 18 December 2009 concerning the audit profession

The law, which transposes Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts into Luxembourg law, impacts the approval of the prospectuses containing financial information of companies whose transferable securities are admitted to trading on the regulated market of Luxembourg and which were subject to an audit report as well as the review of the periodical financial information of such companies under the Transparency law.

Indeed, Chapter XI of the law lays down certain provisions applying to third-country companies issuing securities. Thus, Article 79(1) (which implements Article 45(1) of Directive 2006/43/EC) sets out that the CSSF shall register every third-country auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outside a Member State whose transferable securities are admitted to trading on the regulated market of Luxembourg. The companies which issue exclusively debt securities the denomination per unit of which is at least EUR 50,000 or, in case of debt securities denominated in a currency other than Euro, the value of such denomination per unit being, at the date of issue, equivalent to at least EUR 50,000 are exempted from this provision.

In accordance with the fourth paragraph of this article, the audit reports relating to individual or consolidated accounts of the above-mentioned companies issued by third-country auditors or audit entities which are not registered in Luxembourg have no legal effect in Luxembourg.

However, having regard to difficulties regarding equivalence in relation to third countries and the direct consequences linked to the non-registration of the auditors of these countries, the European Commission published on 29 July 2008 a decision concerning a transitional period for the audit activities performed by auditors from certain third countries. Article 1 of this decision lays down that Article 45 of Directive 2006/43/EC shall not apply to audit reports concerning annual accounts or consolidated accounts, as referred to in Article 45(1), for the financial years starting during the period from 29 June 2008 to 1 July 2010, which are issued by auditors from the third countries referred to in the Annex to this decision, where the third-country auditor or audit entity concerned provides certain information listed in paragraph 1 of Article 1 of the decision.

In short, Article 79(4) of the law concerning the audit profession does not currently apply to audit reports issued by auditors from one of the third countries listed in the Annex to the decision which provided the CSSF with all the information required by this decision.