MEANS OF SANCTION AVAILABLE TO THE CSSF

1. Means of intervention available to the CSSF
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1. MEANS OF INTERVENTION AVAILABLE TO THE CSSF

1.1. Laws and regulations into force

The following means of intervention are available to the CSSF to ensure that the persons subject to its supervision comply with the laws and regulations relating to the financial sector:

- injunction, sent by registered letter, requesting the establishment concerned to remedy the particular situation;
- suspension of persons, suspension of the voting rights of certain shareholders or suspension of the activities or of a sector of activities of the establishment concerned.

In addition, the CSSF has the right to:

- impose or ask the Minister of Finance to impose disciplinary fines on the persons in charge of the administration or management of the establishments concerned;
- under certain conditions, apply to the District Court sitting in commercial matters for suspension of payments of an establishment;
- ask the Minister of Finance to refuse registration on or to withdraw registration from the official list of credit institutions or the other professionals of the financial sector, if an establishment does not fulfil or no longer fulfils the conditions for being or continuing to be registered on the official list in question;
- refuse registration on or withdraw registration from the official list of undertakings for collective investment, pension funds, management companies (Chapter 13 of the law of 20 December 2002), SICARs or securitisation undertakings, if an establishment does not fulfil or no longer fulfils the conditions for being or continuing to be registered on the official list in question;
- under precise conditions laid down by law, request the District Court sitting in commercial matters to order the dissolution and the winding-up of an establishment.

Moreover, the CSSF informs the State Prosecutor of any instance of non-compliance with legal provisions relating to the financial sector, giving rise to penal sanctions and that could entail prosecution against the implicated persons. The following cases are concerned:

- persons performing an activity of the financial sector without the required authorisation;
- persons active in the field of domiciliation of companies without belonging to any of the professions entitled to carry on this activity pursuant to the law of 31 May 1999 governing the domiciliation of companies;
- persons other than those registered on the official lists of the CSSF, who use a title or appellation, thereby breaching Article 52(2) of the law of 5 April 1993 on the financial sector, that gives the appearance that they are authorised to perform one of the activities reserved for persons registered on one of the lists;
- attempted fraud.

1.2. Non-compliance with reporting deadlines

In order to carry out its prudential supervisory mission and to follow up with due diligence the development of the supervised entities’ activities, the CSSF requires that all entities, which must transmit reportings, observe this obligation within the time limits laid down for each type of reporting.

After noticing an increase in the reminders to be sent in order to receive the required information and documents, the CSSF decided to systematically impose henceforth disciplinary fines based on Article 63 of the law of 5 April 1993 on the financial sector in case of repeated non-compliance with the reporting deadlines without valid reasons.
2. SANCTIONS IMPOSED IN 2009

In 2009, the CSSF imposed the disciplinary fines and sanctions listed below.

In accordance with Article 59 of the law of 5 April 1993 on the financial sector and pursuant to Circular IML 91/75 of 21 January 1991 concerning the revision and recasting of rules governing UCIs covered by the law of 30 March 1988 on undertakings for collective investment, as amended by Circular CSSF 05/177, as well as pursuant to the law of 20 December 2002 relating to undertakings for collective investment, the CSSF used its right of injunction against two Luxembourg credit institutions concerning the implementation of the necessary infrastructure, i.e. sufficient human and technical means and the necessary internal rules, in order to fulfil the tasks relating to the function of a depositary bank of Luxembourg UCIs in accordance with the law of 20 December 2002 and Circular IML 91/75.

Moreover, the CSSF imposed disciplinary fines based on Article 63 of the law of 5 April 1993 on the financial sector to the persons in charge of the daily management of two PFS for refusing to communicate the documents and reports of the year-end closing.

The CSSF also imposed disciplinary fines to the persons in charge of the daily management of two support PFS for non-compliance with the deadlines laid down for the transmission of year-end closing documents and of the prudential reporting tables.

Furthermore, the CSSF filed three complaints with the State Prosecutor’s office regarding entities which provided investment services without authorisation.