1. Directives and regulations under discussion at EU Council level

2. Directives and regulations adopted by the Council and the European Parliament but not yet implemented under national law

3. Luxembourg laws and regulations adopted in 2009
1. DIRECTIVES AND REGULATIONS UNDER DISCUSSION AT EU COUNCIL LEVEL

The CSSF participates in the groups examining the following proposals for directives or regulations.

1.1. Proposals for regulations establishing the European Systemic Risk Board, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

On 23 September 2009, the European Commission presented legislative proposals to create a new architecture for the supervision of the financial system in Europe aiming to strengthen supervision and reinforce thereby financial stability throughout the EU.

The proposed regulations are based on the “de Larosière” report published on 29 February 2009, named after the Chairman of the group of high level experts mandated by the European Commission to reflect on the future of European regulation and supervision of the financial sector, in order, among other things, to mitigate weaknesses and deficiencies that contributed to the financial crisis.

The balance between macro-prudential oversight and micro-prudential oversight, as well as monitoring macro-prudential risk in the financial system are some of the explicit goals of the new proposals.

The report thus proposes the creation of an European Systemic Risk Board (ESRB) responsible for macro-prudential oversight, as well as an European System of Financial Supervisors responsible for micro-prudential oversight and consisting of the national financial supervisors working in tandem with the three new European supervisory authorities, namely the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

The ESRB may issue recommendations with which the Member States, the European Supervisory Authorities and the national supervisory authorities will have to comply.

The members of the ESRB’s decision making body, the General Board, are the President of the European Central Bank (ECB), the Chairmen of the three new European Supervisory Authorities, the Governors of national central banks, and the representatives of national supervisory authorities, the latter having no voting rights however.

The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority will result from the transformation of the existing Level 3 committees in the area of banks (CEBS), insurance and occupational pensions (CEIOPS) and financial markets (CESR). The new Authorities will take over the functions of those committees and have some additional competences. Thus, they are notably responsible for:

- developing proposals for technical standards;
- resolving cases of disagreement between national supervisors;
- contributing to ensuring consistent application of technical Community rules (including through peer reviews);
- acting as coordinators in stress situations.

Moreover, the new European Securities and Markets Authority will exercise supervisory powers on credit rating agencies.

In order to ensure an efficient functioning of the future European System of Financial Supervisors (ESFS) consisting of the network of national financial supervisory authorities working in tandem with the new European Supervisory Authorities, the European Commission presented, on 26 October 2009, a proposal for a directive aiming to amend different sectoral legislation.

The goal of this proposal is to specify for every sectoral directive the areas in which the three European Supervisory Authorities can develop binding technical standards. In order to make the future supervisory architecture operational, the Omnibus Directive also provides for the necessary changes to ensure that appropriate gateways for the exchange of information between the national and European authorities are present.


In the second half of 2009, the EU Council started discussions on a proposal for a directive to further amend the CRD Directives. This proposal, commonly referred to as CRD III, addresses two major issues that contributed to the financial crisis: remuneration policies applied by credit institutions and risks associated with securitisations and re-securitisations.

According to the proposed directive, institutions must cover the risks inherent in re-securitisations through higher capital requirements and by enhancing transparency towards the markets by means of adequate disclosure of securitisation risks. Capital requirements for the trading book will also be changed in order to better take into account the potential losses resulting from adverse market movements. Finally, the proposed directive will require banks to have remuneration policies that do not encourage excessive risk-taking.

1.4. Proposal for a directive amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive)

At the close of a consultation process with the interested parties, the European Commission put forward a proposal for the review of the Prospectus Directive on 24 September 2009.

The proposal is part of a simplification exercise within the Action Program of the European Commission for the reduction of administrative burdens in the EU. It should increase legal clarity and efficiency in the existing regime for prospectuses to be drawn up when securities are offered to the public or admitted to trading on a regulated market and reduce administrative burdens for issuers and intermediaries. At the same time, notably in the light of the financial crisis, reviewing certain provisions of this directive in order to enhance its efficiency and the level of investor protection seemed appropriate. Moreover, the Prospectus Directive provided for a review clause of five years following its entry into force on 31 December 2003.
The main changes agreed upon by Member States at the Council are:

- the simplification of certain prospectus categories (issues of small firms, offers to existing shareholders, State-guaranteed issues);
- the simplification of issuers’ employees access to securities proposed by their employer;
- the alignment of the definition of qualified investors on that of professional client as defined in the Directive on markets in financial instruments;
- the format and content of the summary and the link between summary and Final Terms; the compromise reached introduces the notion of key information in the summary;
- the responsibility attached to the summary in order to guarantee that the summary is a useful and efficient document for investors;
- the conditions to use the prospectus in case of retail cascades of intermediaries that offer securities with or without the consent of the issuer;
- the revision of thresholds (“retail/wholesale issues”) that trigger certain transparency requirements under the Prospectus Directive and the Transparency Directive. The compromise reached proposes to increase the threshold to EUR 100,000.

The proposal to introduce more flexibility to determine the home Member State of the competent authority for the prospectus approval has not been maintained; the compromise proposes to keep the current situation.

2. DIRECTIVES AND REGULATIONS ADOPTED BY THE COUNCIL AND THE EUROPEAN PARLIAMENT BUT NOT YET IMPLEMENTED UNDER NATIONAL LAW


The UCITS IV Directive was published in the Official Journal of the EU on 17 November 2009. This proposed directive was discussed in detail in the CSSF’s Annual Report 2008. It must be transposed into national law by 1 July 2011.


The directive was discussed in detail in the CSSF’s Annual Report 2008. It should be transposed into national law by 31 October 2010.


The directive was discussed in detail in the CSSF’s Annual Report 2008. It should be transposed into national law by 30 April 2011.

The CRD II package is composed of three directives that Member States must transpose until 31 October 2010 and implement as from 31 December 2010.

Directive 2009/111/EC, subject to the co-decision procedure, amends several provisions of the CRD Directives (2006/48/EC and 2006/49/EC) as a reaction to the lessons learned from the subprime crisis and updates other provisions according to the needs of the financial system as a whole. The main amendments arising from the directive are:

- enhanced cooperation between authorities regarding crisis management and formalisation of colleges of supervisors;
- complete recasting of the large exposure regulation with, in particular, stricter limits regarding inter-bank market;
- amendment of the own funds regime: the directive seeks to determine clear criteria, at Community level, which allow assessing to what extent “hybrid” instruments, which have both equity and debt characteristics, are eligible as original own funds;
- setting-up of stricter rules regarding risk management of securitised instruments: institutions which securitise or re-securitise loans in order to offer them as tradable instruments (the “originators”) must retain part of the risk resulting from the exposure to such instruments.


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

According to this regulation, credit rating agencies shall:

- register with the competent authorities of the Member States and be supervised by these authorities;
- adapt their internal governance models to the provisions of the regulation in order to better manage and to avoid conflicts of interest as far as possible; and
- disclose their risk assessment methods in order to allow banks and other sophisticated investors to assess the soundness of the methods used by the rating agencies and to thus strengthen market discipline; keep the methods used up-to-date and review them regularly.

The regulation, which is directly applicable in EU Member States, entered into force on 7 December 2009. The provisions of Article 4(1) apply as from 7 December 2010.

The regulation lays down two mechanisms which allow taking into account certain credit ratings issued by credit rating agencies in third countries: an endorsement regime addressed to credit rating agencies with physical presence in the EU (Article 4) and a certification system based on equivalence decisions addressed to non-systemic credit rating agencies with no physical presence in the EU (Article 5).

Article 4(1) also provides that, where a prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004 contains a reference to a credit rating or credit ratings, the issuer, offeror or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the EU and registered under Regulation (EC) No 1060/2009.

3. LUXEMBOURG LAWS AND REGULATIONS ADOPTED IN 2009

3.1. Law of 29 May 2009 transposing, for credit institutions, Directive 2006/46/EC of 14 June 2006 amending Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, and amending the law of 17 June 1992 relating to the accounts of credit institutions, as amended

The law incorporates four proposed key revisions of the European Accounting Directives that are part of the European Commission's Company Law Action Plan published on 21 May 2003. It reinforces the collective responsibility of the members of the administrative, management and supervisory bodies of banks as regards the drawing-up and publication of annual accounts and management report, as well as the drawing-up of consolidated accounts and key non-financial information. The main objective consists in enhancing public confidence in these publications.

Moreover, the law aims to make transactions with related parties more transparent by imposing the disclosure requirement not only on transactions between a parent company and its subsidiaries, but also on other types of related parties, such as key management members and spouses of members of administrative, management and supervisory bodies. This requirement only applies to material transactions not carried out at arm’s length. It also requires all companies to disclose all off-balance sheet arrangements. Appropriate information concerning material risks and advantages must be provided in the annex to the annual accounts and consolidated accounts for transactions related to the use of specific, potentially offshore, financial structures.

Finally, the law ensures better information on corporate governance practices by requiring all listed Luxembourg credit institutions to publish a corporate governance statement in a specific and clearly identifiable section of the management report. This statement must include information on existing risk management systems and internal controls of the group.

3.2. Law of 10 November 2009 on payment services

The main purpose of the law is to transpose into national law Directive 2007/64/EC of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, as well as 2006/48/EC and repealing Directive 97/5/EC.
The law gathers all the legal provisions transposing Community texts relating to payments in a single legal act. In principle, the law applies to all means of payment, including electronic payments but excluding payments by bank notes or coins. Furthermore, the law applies to all payment services providers. These include credit institutions, electronic money institutions, payment institutions, post office giro institutions, central banks, EU Member States, their regional and local authorities. It lays down information requirements and defines the rights and obligations of users and providers of payment services.

The law also introduces a new status of financial institution, i.e. that of payment institution, and defines its authorisation and operating requirements. Payment institutions include among others firms that provide payment services only on an incidental basis and that are called “hybrid payment institutions”.

3.3. Law of 18 December 2009 on the audit profession

Grand-ducal regulation of 18 December 2009 determining the conditions of recognition of providers from other Member States under the freedom to provide services

Grand-ducal regulation of 15 February 2010 establishing the qualification requirements of réviseurs d’entreprises (statutory auditor)

Grand-ducal regulation of 15 February 2010 organising continuing education of réviseurs d’entreprises (statutory auditors) and réviseurs d’entreprises agréés (approved statutory auditors)

The law, which transposes into Luxembourg law Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, as well as the three Grand-ducal regulations made pursuant to the law, are described in further detail in point 1. of Chapter X “Public oversight of the audit profession”.

3.4. Grand-ducal regulation of 18 December 2009 relating to the fees to be levied by the CSSF

The purpose of the Grand-ducal regulation is to lay down the amount of taxes to be paid for the oversight of the audit profession, which has been entrusted to the CSSF pursuant to the law of 18 December 2009 on the audit profession.

It also lays down the amount of taxes to be levied on payment institutions referred to in the law of 10 November 2009 on payment services.

Finally, the regulation introduces application fees for certain categories of entities and adapts the amount of some taxes to the levied in order to comply with the general principle according to which taxes are meant to cover, as far as possible, the costs of supervision generated by the category of supervised entities on which the taxes are levied.