



Commission de Surveillance
du Secteur Financier

Annual report 2023





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2023 continued to be marked by **geopolitical tensions**, with an ongoing war in Ukraine, a risk of widespread conflict in the Middle East after the 7 October attacks, but also continued effects of the COVID-19 pandemic. Central Bank intervention to counter **inflation** led to record high interest rates in the Eurozone. The ECB interest rate on marginal lending facility reached 4.75%, a level unseen since October 2008. 2023 saw also the collapse of three regional banks in the US and a globally systemically important bank, Credit Suisse.

The **impact on the EU and Luxembourg financial markets** remained contained, thanks notably to the banking supervisory framework put in place post-financial crisis. That being said, the CSSF and the Systemic Risk Committee, of which it is a member, continue to carefully monitor the impact of the macro-economic environment on non-performing loans, both in the residential mortgage and corporate sectors.

Huge amounts of capital – public and private – are needed to finance the digital and green transitions. Europe must have a **Capital Markets Union** (CMU), and this can only be achieved through accelerated regulatory convergence, as well as strong institutions. I welcome in this respect the work undertaken by the European Supervisory Authorities (ESAs). In his report “Much More Than a Market”,

published in April 2024, the former Italian Prime Minister Enrico Letta has suggested to create a Savings and Investments Union, which requires a combination of EU and national policy measures to empower citizens and create a stronger investment culture. The report has a number of sensible and practical ideas on how to strengthen the EU’s economy.

One of the largest operational risks in the finance industry is the **cyber risk**. Whilst we have witnessed a rising number of cyberattacks, I am convinced that we have not seen the worst. It is therefore important that supervised entities step up their defences against cybersecurity threats. A key regulatory framework, the **Digital Operational Resilience Act** (DORA) entered into force in January 2023 and will apply as from January 2025. It provides consistent rules addressing digital resilience needs and establishes an EU-wide oversight framework for critical ICT third-party providers. In Luxembourg, we are very familiar with supervising specialised IT service providers: 2023 marked the 20th anniversary of the so-called “support PFS” licences for companies providing IT services to banks and other professionals of the financial sector. This experience will be very valuable in the context of DORA.

In June 2023, another important EU regulation, the **Markets in Crypto-Assets Regulation** (MiCA),

entered into force. MiCA provides a legal framework and thus legal certainty for crypto-assets falling outside the scope of the existing EU financial regulation and creates a harmonised set of rules for crypto-assets and related activities and services. MiCA will result in a higher level of consumer and investor protection. It will unfortunately not be able to eliminate the ever-growing number of crypto vendors operating illegally from outside the EU into the EU, mostly through social media and influencers. Regulators, including the CSSF, will therefore need to step up the surveillance of the Internet and social media, e.g. through web scraping – something that ideally should be coordinated through the ESAs in order to avoid replicating the effort in 27 Member States.

The **green finance** regulatory agenda continued to be implemented throughout 2023. The implementation of the EU Green Deal needs significant investments, estimated at EUR 500 billion annually. Transparency in the EU sustainability framework is key, as investors need clear information on the environmental and social impacts of their investments, so that they can make informed decisions. Investor confidence will lead to effective capital allocation. The Corporate Sustainability Reporting Directive (CSRD), which entered into force in January 2023, remedied shortcomings in the previous regulatory framework (the Non-Financial Reporting Directive). First sustainability reports will be due in 2025. Also, in September 2023, the European Commission launched an important consultation on reforming the Sustainable Finance Disclosure Regulation (SFDR), a framework that admittedly has led to confusion for both the industry and investors. This is an opportunity to transform the current regulation to make it simpler and more transparent, by moving from a disclosure regime to a labelling one. In 2023, the ESAs published an interim report on **greenwashing**, followed by the

publication in June 2024 of the final report. For the first time, there is now a common understanding of greenwashing, as well as a roadmap for regulators to tackle this phenomenon that undermines investor confidence. Further work was undertaken by ESMA on misleading investment fund names, resulting in the publication of guidelines in May 2024. Albeit still imperfect, and despite the need for costly adaptations, we should not lose sight of the important and urgent goal of the EU Green Deal: financing the transition to a more sustainable world, keeping global warming within the boundaries of the Paris Accord. Imperfection should not be a proxy for not implementing the change that is urgently needed, as the IPCC reminded us through their reports and, lately, the Sixth Assessment Report published in 2023. The IPCC has warned that “if climate goals are to be achieved, both adaptation and mitigation financing would need to increase many-fold”.

Although the roots of generative **artificial intelligence** (AI) go back to the birth of AI in the middle of the 20th century, use cases in finance have increased exponentially since ChatGPT which reached one million users after only five days, in November 2022, and ever since that date. AI and in particular generative AI have the potential to transform the way financial institutions work. If implemented and controlled properly, AI will deliver benefits to financial consumers and market participants through efficiency and productivity gains and will improve compliance and risk management. It is one way of tackling the ever-growing cost of compliance. The impact of AI on employment has yet to be seen; historically, technology has not led to a reduction in the workforce in finance but has affected the mix of jobs over time. There are a number of risks associated with AI, like data quality risks, the risk of bias, misinformation, hallucination, operational and cyber risks, market manipulation

risks (including through social media), and threats to data protection. Companies adopting AI tools and solutions must therefore ensure that there is proper governance, human oversight and explainability. On the regulatory side, political agreement was reached in the EU in December 2023 on the AI Act, a standardised framework for how AI systems are utilised and provided within the EU. The AI Act has introduced a risk-based approach, imposing stricter rules on AI systems that pose greater harm to society. This regulation is cross-sectoral, but there are explicit provisions for specific parts of the financial sector, like AI-based creditworthiness assessments. Do we need further regulation for AI in finance? I would caution this, particularly as we do not yet have a comprehensive view on how AI and generative AI are used by supervised entities, and how risks are mitigated. The CSSF will do a comprehensive survey for the first time in 2024, jointly with the Luxembourg Central Bank, covering not only banks but also fund management companies, investment firms and all other supervised entities. And even if Luxembourg and other countries concluded that specific regulation is needed for AI in finance, it should be international rather than at EU level. The vast majority of AI systems used in finance are non-EU systems, and by imposing restrictive rules in the EU only, there is a risk of not being able to harvest the benefits that AI could provide in the EU. Reflections have already been made at a broader level, e.g. at an AI Safety Summit that took place in November 2023 between the EU, the US, China, India, the UK and 24 other countries, which resulted in the Bletchley Declaration. Several publications have been made by IOSCO, and the FSB is also working on guidance. Herd behaviour and market correlation must be watched at international level, and intervention may be needed to avoid systemic risk.

The green and digital transitions warrant strategic rethinking by financial entities to ensure that they

are future-fit. Opportunities and risks must be analysed at **board and senior management** level, and therefore a more diverse skillset is urgently needed at these levels.

Money laundering and terrorist financing prevention remains a priority for the CSSF, given the size and international nature of Luxembourg's finance centre. In 2023, the Financial Action Taskforce (FATF) concluded the Mutual Evaluation of our country and stated that "Luxembourg has a solid anti-money laundering and counter-terrorist financing (AML/CFT) framework and a good understanding of its money laundering and terrorist financing risks". This evaluation covered not only technical compliance with the FATF's 40 Recommendations, but also the effectiveness of Luxembourg's framework in 11 key areas. Although the evaluation resulted in a regular follow-up – the best possible outcome – several areas of improvement have been identified, including the prevention of terrorist financing, on which the CSSF and other stakeholders are already working.

In the current environment, **consumers** are facing several challenges: inflation, high interest rates, over-indebtedness, offerings of financial products and crypto assets through digital channels, including social media. Assets may be virtual, but losses are real. In the area of sustainable finance, consumers have difficulties to understand the current product categorisations and may become victims of greenwashing.

A 2023 survey done by the OECD has shown two specific weak spots in **financial literacy**: young adults (18–29 years) and digital literacy. The best way to protect consumers is to educate them. We urgently need to step up financial education, and I welcome the fact that the government has expressly recognised this twice in the 2023–2028 coalition

agreement. The CSSF is proposing to update the current national strategy on financial education around three pillars: (i) introducing financial education in the school programs, (ii) coordinating various initiatives at national level and (iii) following up and measuring the impact of such initiatives. Financial education is also essential in the context of the CMU, and to channel investments into start-ups and innovative firms.

As the market is getting ready for the digital and sustainability transitions, so is [the CSSF](#). We are continuously rolling out standardised reporting through digital channels, moving towards a more automated, data- and risk-based supervision. The CSSF's strategy in this area is built around three pillars: new hard- and software, including machine learning and AI going forward, extensive training of staff (more than 24,000 hours in 2023), and process efficiency through lean management (more than 100 agents have been certified through 31 December 2023).

The success of any regulatory framework, including EU regulation, depends on its rigorous and consistent implementation. Our agents have constantly thrived to achieve this, and successfully so. They have dealt with complexity, innovation and continuous change, and I want to thank all [our agents](#) for their hard work through a challenging year 2023!

Claude Marx
Director General

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I. Governance and functioning of the CSSF

1. Governing bodies and Committees

1.1. CSSF Board

The powers conferred upon the Board notably include the annual adoption of the CSSF's budget and the approval of the financial statements and of the management report of the CSSF's Executive Board, which are submitted to the Board before being presented to the Government for approval. The Board also sets the general policy as well as the annual and long-term investment programmes which are submitted to it by the Executive Board before being submitted for approval to the Minister of Finance. The Board is not competent to intervene in the CSSF's prudential supervisory matters.

CSSF Board composition

Chairwoman	Maureen Wiwinius
	Daniel Croisé
	Yasmin Gabriel
	Jerry Grbic
	Andy Pepin
Members	Camille Thommes (until 31 December 2023)
	Pascale Toussing
	Serge Weyland (as from 1 January 2024)
Secretary	Danielle Mander

1.2. Resolution Board

The Resolution Board is the internal executive body of the CSSF in charge of the resolution function, i.e. the duties and powers conferred on the CSSF as the resolution authority by the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (BRRD Law), Regulation (EU) No 806/2014 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 (SRM Regulation) and their implementing measures.

Resolution Board composition

Chairman	Romain Strock
Members	Bob Kieffer
	Gaston Reinesch
	Claude Wampach
	Karin Guillaume
Secretary	Nicole Lahire



Left to right: Françoise Kauthen, Claude Wampach, Claude Marx, Marco Zwick, Jean-Pierre Faber

1.3. Council for the Protection of Depositors and Investors

The Council for the Protection of Depositors and Investors (CPDI) is the internal executive body of the CSSF in charge of managing and administering the Fonds de garantie des dépôts Luxembourg (FGDL) and the Système d'indemnisation des investisseurs Luxembourg (SIIL). Its duties and powers are assigned to it by Part Three of the BRRD Law. Its functioning is governed by the provisions of Section 4-2 of the Law of 23 December 1998 establishing the CSSF. The CPDI is the designated authority referred to in point (18) of Article 2(1) of Directive 2014/49/EU of 16 April 2014 on deposit guarantee schemes.

Council for the Protection of Depositors and Investors composition

Chairman	Claude Wampach
Members	Bob Kieffer Gaston Reinesch Karin Guillaume
Secretary	Isabelle Gil

1.4. Executive Board

The senior executive authority of the CSSF is the Executive Board, composed of a Director General and four Directors. It develops the measures and takes the decisions it deems useful and necessary for the fulfilment of the CSSF's mission and its organisation. Moreover, it sets up a five-year "target agreement" with the Minister of Finance. The Executive Board is responsible for the reports and proposals it must submit to the Board and the Government as part of its responsibilities.

Executive Board composition

Director General	Claude Marx
Directors	Françoise Kauthen Jean-Pierre Faber Marco Zwick Claude Wampach

1.5. Consultative Committee for Prudential Regulation

The Government may seek the advice of the committee, established by the Law of 23 December 1998 establishing the CSSF, concerning any draft law or grand-ducal regulation as regards regulations in the area of the supervision of the financial sector falling within the competence of the CSSF. The CSSF's Executive Board seeks the opinion of the committee on any draft CSSF regulation other than those related to statutory audits and the audit profession. Members of the committee may also seek its advice concerning the implementation or application of prudential regulations overall or for specific questions.

Consultative Committee for Prudential Regulation composition

Executive Board of the CSSF	Claude Marx (Chairman) Françoise Kauthen Jean-Pierre Faber Marco Zwick Claude Wampach
Members	Christian Dohmen Jerry Grbic Emmanuel Gutton Camille Seillès Vincent Thurmes Serge Weyland
Secretary	Danielle Mander

1.6. Consultative Committee for the Audit Profession

The Government may seek advice from the committee, established by the Law of 18 December 2009 concerning the audit profession, on any draft law or grand-ducal regulation related to statutory audits and the audit profession subject to the oversight of the CSSF. The CSSF's Executive Board seeks the opinion of the committee on any draft CSSF regulation related to statutory audits and the audit profession. Members of the committee may also seek its advice concerning the implementation or application of the legislation regarding the public oversight of the audit profession overall or for specific questions.

Consultative Committee for the Audit Profession composition

Executive Board of the CSSF	Claude Marx (Chairman) Françoise Kauthen Jean-Pierre Faber Marco Zwick Claude Wampach
Members	Christiane Chadoeuf Emmanuel Dollé Thierry Flamand Emmanuel Gutton Andy Pepin Daniel Ruppert Anne-Sophie Theissen Hugues Wangen
Secretary	Danielle Mander

1.7. Consultative Committee for Resolution

The Government may seek advice from the committee, established by the BRRD Law, on any draft law or grand-ducal regulation as regards regulations in the resolution field falling within the competence of the CSSF. The Resolution Board seeks an opinion of this committee on any draft CSSF regulation relating to resolution. Members of the committee may also seek its advice concerning the implementation or application of the regulations on resolution overall or for specific questions.

Consultative Committee for Resolution composition

Resolution Board	Romain Strock (Chairman) Karin Guillaume Bob Kieffer Gaston Reinesch Claude Wampach
Members	Jean-Louis Barbier Doris Engel Claude Eyschen Nico Picard Philippe Sergiel Vincent Thurmes
Secretary	Nicole Lahire

1.8. Permanent and ad hoc expert committees

The expert committees assist the CSSF in analysing the development of the different financial sector segments, give their advice on any issue relating to their activities and contribute to the drawing-up and interpretation of the regulations relating to the specific areas covered by the respective committees. In addition to the permanent committees, ad hoc committees are formed to examine specific subjects.

The permanent expert committees are currently the following.

• Anti-Money Laundering Committee

Permanent external members:

The Luxembourg Bankers' Association (ABBL), Association of Luxembourg Compliance Officers (ALCO), Association of the Luxembourg Fund Industry (ALFI), Association Luxembourgeoise des Professionnels du Patrimoine (ALPP), Luxembourg Association for Risk Management (ALRiM), The Institute of Internal Auditors Luxembourg (IIA), Institut des réviseurs d'entreprises (IRE), Administration de l'enregistrement, des domaines et de la TVA (AED), Commissariat aux Assurances (CAA), Financial Intelligence Unit (FIU), Ministry of Finance, Ministry of Justice, Luxembourg District Prosecutor's Office

• Investment Fund Managers (IFM) Committee

CSSF members:

Marco Zwick (Chairman), Pascal Berchem, Géraldine Bouvy, Michel Friob, Paul Hansen, François Hentgen, Alain Hoscheid, Laurent Van Burik, Rudi Dickhoff (Secretary)

External members:

Ravi Beegun, Hermann Beythan, Stéphane Brunet, Ruth Bültmann, Olivier Carré, David Claus, Jacques Elvinger, Jean-Marc Goy, Emmanuel Gutton, Emmanuel-Frédéric Henrion, Alain Kinsch, Corinne Lamesch, Charles Muller, Claude Niedner, Virginie Ng Wing Lit-Boulot, Marilyn Rinck, Tudor Sambritchi, Pierre Schleimer, Denise Voss, Pierre Weimerskirch, Thomas Seale, Julien Zimmer

Observer: Maureen Wiwinius

• Capital Markets Committee

CSSF members:

Françoise Kauthen (Chairwoman), Marc Limpach, Paul Wiltzius (Secretary)

External members:

Julie Becker, Philippe Hoss, Nicki Kayser, Christian Kremer, Henri Wagner

• Audit Technical Committee

CSSF members:

Frédéric Tabak (Chairman), Agathe Pignon, Anne Wirard, Pedro Da Costa, Mathieu Antoine (Secretary)

External members:

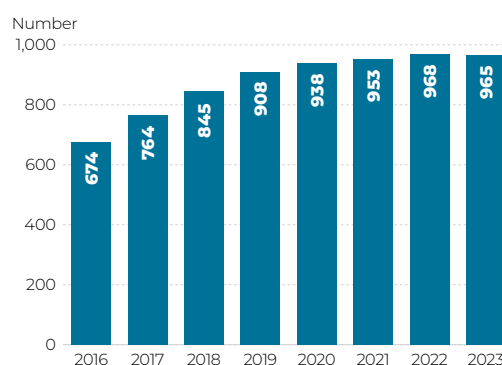
Yohan Blaise, Bettina Blinn, Christelle Bousser, Olivier Lefèvre, Sylvie Testa

2. Human resources

2.1. CSSF staff

In 2023, the CSSF pursued its recruitment efforts and hired 40 new agents. However, for the first time since 2010, the total number of staff stabilised as 43 agents left the CSSF during the year, bringing total staff to 965 as at 31 December 2023 (-0.31% as compared to the end of 2022). This represents the equivalent of 882.80 full-time jobs (+0.98%).

Movements in staff numbers



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The number of agents with alternate work arrangements amounted to 261 as at 31 December 2023, representing 27.05% of the CSSF's total staff.

Alternate work arrangements

Types of alternate work arrangements	Number of agents	in %
Part-time work	204	78.16%
Parental leave	46	17.62%
Unpaid leave	11	4.21%
Total	261	100.00%

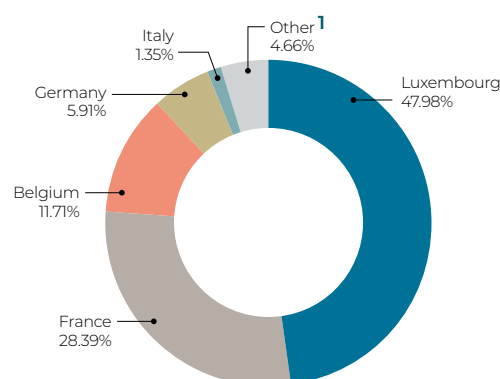
As regards parental leave, it is worth noting that the split leave of eight hours per week, i.e. a 20% reduction in weekly working time, is the most sought-after arrangement among CSSF agents and represented 65.22% of all granted parental leaves.

On 7 June 2022, the CSSF introduced the possibility for its agents to access teleworking, on a quarterly basis, up to two days per week for full-time agents. On average, 84% of the eligible agents chose this option. An evaluation of its effectiveness carried out in 2023 showed that both agents and superiors are satisfied with the remote use of the CSSF's tools and the possibility to work from home. Agents appreciate the flexibility offered by teleworking for their work-life balance. Superiors stress that team dynamics are maintained and that this new flexibility brings benefits to daily work. Most of the teams have agreed on one day per week for all team members to be on-site, which is also appreciated.

In 2023, the CSSF analysed 3,472 application forms. Recruitment efforts focussed, on the one hand, on strengthening the banking departments and, on the other hand, on profiles experienced in the field of investment funds. Recruitment interviews were mainly held on-site. With the introduction in 2023 of a new step in the recruitment process, the candidates completed 143 language tests and 148 reasoning tests and questionnaires on work preferences.

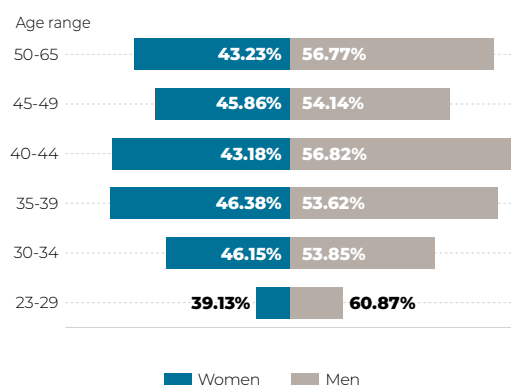
The CSSF agents represent 17 nationalities, the Luxembourg nationality being the most represented with 47.98% of total staff.

Breakdown of staff by nationality



The average age of the CSSF staff members slightly increased from 41.10 years as at 31 December 2022 to 41.87 years at the end of 2023.

Breakdown of staff by age and gender



Women make up 44.56% of total staff and men 55.44% as at 31 December 2023. Out of a total of 165 agents with hierarchical responsibility, 52 were women (31.52%) and 113 men (68.48%).

¹ Portugal (0.83%), Spain (0.74%), Austria (0.62%), the Netherlands (0.52%), Poland (0.41%), Romania (0.41%), Bulgaria (0.31%), Greece (0.31%), Ireland (0.21%), Finland (0.10%), Sweden (0.10%) and Slovakia (0.10%)

CSSF hierarchy structure

	Women	Men	Total
Director General	0	1	1
Director	1	3	4
Director Resolution	0	1	1
Head of department	12	19	31
Deputy head of department	19	22	41
Head of division	20	67	87
Total	52	113	165
In %	31.52%	68.48%	100.00%

2.2. Training

The CSSF has always given special attention to the training of its agents to enable them to deal with the challenges they face in the context of continuous regulatory developments and methodology changes that come with a constantly changing environment.

Today, the CSSF has a training catalogue that is adapted to the technical aspects of the business functions, to IT as well as management and leadership aspects.

In 2023, the CSSF returned to normal operational mode as regards training activities. Agents now take both distance and on-site training courses. The face-to-face mode is systematically preferred for transversal training courses with a small audience to encourage exchanges among participants. CSSF agents completed a total of 24,044 continuing training hours, averaging 25.39 hours per agent (compared to 23,800 training hours, averaging 25 hours per agent, in 2022).

In addition to Luxembourgish language courses, the CSSF plans to offer online language courses as from 2024. It encourages all interested agents to learn or improve their language skills in French, German or English. Online learning allows agents to learn at their own pace and according to their availability, while following up on their evolution.

Moreover, the personal development training offer will be expanded in 2024 with a training program in the form of game-based learning. This form of learning, which is increasingly used in the field of transversal skills, allows participants to simulate real situations in order to train problem solving.

Since the launch of the Leadership training course in 2022, four sessions have been organised. Out of 159 agents, 47 managers finalised the training programme in 2023.

The CSSF pursues its efforts in Lean Management training. In 2023, 43 additional agents received training on the basics of Lean Management (75 in 2022), among which 14 White Belts (38 in 2022), three Yellow Belts (14 in 2022) and eight Green Belts – Lean Experts. Today, about 12% of CSSF staff has been trained in Lean Management and Visual Management.

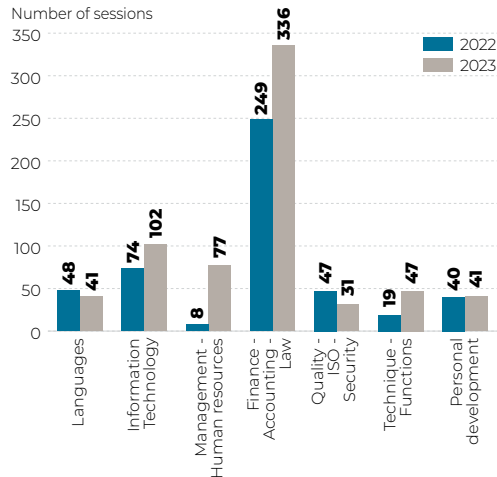
The Green Belt – Lean Expert certification cycles continue and 13 additional agents started this new certification cycle in January 2024. A new training module on the 5S methodology² was added to the training catalogue, in addition to the modules dedicated to the basics of Lean Management and Visual Management.

Building on the work undertaken since 2022 in the field of environmental, social and governance issues, the 2023 internal training programme of the CSSF was designed to continue training agents in sustainable development, sustainable finance and other related ESG factors. The 2023 ESG training programme proposes bespoke courses according to each agent's profile and needs, in accordance with the general CSSF training plan. These efforts will continue in 2024.

² Systematic approach for creating and sustaining an organised, clean and efficient work environment to increase productivity

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Breakdown of training according to topic



2.3. Organisation chart

The organisation chart of the CSSF is available on the CSSF's website (About the CSSF > General organisation > Documentation > Publications).

3. IT infrastructure of the CSSF and information exchange

In 2023, the CSSF officially introduced new means of communication with the professionals of the financial sector, i.e. eDesk and API (S3). Thus, professionals can transmit their forms and files directly:

- either via the CSSF's eDesk portal: information can be filled in a form and XBRL files can be uploaded;
- or by automating the transmission of information via a file exchange through an API (S3) solution.

Both means of communication are complementary and necessary to meet the heterogeneous needs of the financial industry at local and international level. Indeed, the first means of exchange allows direct interaction between the professionals and the CSSF without the need for the entities themselves to implement a new technology. The second means of exchange, on the other hand, opens the path for a "system-to-system" interaction by anybody wishing to perform an automatic data exchange with the CSSF.

Henceforth, professionals have a direct and real-time access to the service offered by the CSSF, making the interaction between supervised entities and the CSSF more efficient.

List of procedures subject to eDesk and API (S3) transmission methods in 2023

Procedure	eDesk	API (S3)
AML/CFT Market Entry Form	X	
Questionnaire on financial crime	X	X
Annual closing documents of specialised PFS	X	
Attestations	X	
Circular CSSF 15/612: Information to be submitted in relation to unregulated AIFs (established in Luxembourg, in another EU Member State or in a third country) and/or regulated AIFs established in a third country	X	
Collective Investment Sector Reporting Tool	X	X (SAQ)
Cross-border Marketing Notifications Tool	X	X (UCITS)
Data collection on commercial real estate for investment fund managers	X	X
European Account Preservation Order (EAPO)	X	
European Investment Firms Reporting (IFR)	X	
Law Firm and Legal advisor mandate	X	
MMF reporting dashboard	X	
Performance fees	X	
PRIIPs	X	
UCI approval	X	
UCI Data Collection	X	
Data collection on inactive accounts and safe deposit boxes (Law of 30 March 2022)	X	
Revised Long Form Report	X	X
PSD2 - PSP ICT Assessment	X	X
SFDR - IFM disclosures	X	
Contributions to the Single Resolution Fund (SRF)	X	X
SFDR - Precontractual funds/IORPs disclosures	X	X
UCI Administrator Reporting Tool	X	X
EBA high earners exercise	X	X
EBA remuneration benchmarking exercise	X	X
EBA higher ratio exercise	X	X
Semi-annual reporting of borrower-related residential real estate indicators	X	X
Semi-annual data collection on lending indicators related to commercial real estate	X	X

Procedure	eDesk	API (S3)
Quarterly survey on the amount of covered deposits (FGDL)	X	X
SFDR - Periodic funds/IORPs disclosures	X	X
Alternative Investment Fund Managers Reporting (AIFM)	X	X
SCI Real Estate Reporting	X	X

Many projects were triggered by regulations, while others mainly aimed at optimising the existing submission and supervisory processes, thereby contributing to the improvement of the efficiency of the CSSF's IT systems.

This strategy will continue in 2024 notably with the automation of the following procedures.

List of procedures to be automated in 2024

Procedure	eDesk	API (S3)
National reporting B4.5 and B4.6	January 2024	January 2024
Major ICT-related Incident Notification	March 2024	March 2024
Revised Long Form Report for investment firms	February 2024	February 2024
IRRBB ad hoc data collection (XBRL)	February 2024	February 2024
ESG Pillar 3 disclosures	March 2024	March 2024
IPU Threshold Monitoring	March 2024	March 2024
AML/CFT Summary report RC (SRRC)	March 2024	March 2024
EMIR - form for intragroup exemption notification and application	April 2024	April 2024
SFTR - Notification form	April 2024	April 2024
ABBL surveys	2 nd quarter 2024	2 nd quarter 2024
EBA Remuneration gender gap	2 nd quarter 2024	2 nd quarter 2024
Audit Filing Portal	2 nd quarter 2024	2 nd quarter 2024
Key Information Document (KID)	3 rd quarter 2024	3 rd quarter 2024
Official documents	3 rd quarter 2024	3 rd quarter 2024
Specific survey - innovative technology	2 nd quarter 2024	2 nd quarter 2024
COREP - FINREP	3 rd quarter 2024	3 rd quarter 2024

In 2023, the "Information systems" department (IT) strongly reduced its technical debt by developing its means of communication and related IT solutions allowing it to face the paradox between innovation and the treatment of its technical debt.

4. Social and environmental responsibility within the CSSF

In 2023, besides the general servicing and the maintenance of the technical facilities and infrastructure of both buildings of the CSSF (called "Aubépines" and "Moonlight"), the "Real estate and facility management" department (REFM) focussed as a priority on the improvement of the processes and on Corporate Social Responsibility.

Thus, many efforts have been made to improve the visualisation platform "Winguard" so as to identify and analyse more efficiently and more swiftly the alarm messages of the fire and intrusion detection systems. In this context, all the security staff members of the CSSF's sub-contractor have also been trained.

Following the training proposed to CSSF agents in first aid and fire intervention, the CSSF can now rely on 95 agents (9.8% of total staff) that have been trained in first aid and on 39 agents (4.0% of total staff) trained in first fire intervention.

As the catering concession with the previous sub-contractor expired at the beginning of 2023, the CSSF launched a new call for tenders in order to find a suitable partner for its catering needs. The new provider started its services on 2 February 2023 at the CSSF.

New applications that can be used by the agents concerned via their mobile device simplified and accelerated the treatment of the requests generated by the CAFM programme. Moreover, the support of Lean Management allowed automating certain parts of the processing, which streamlined processes and made them more efficient. With 4,500 tickets processed in 2023 in the Keylogic application, the benefit is not negligible.

The introduction of a RFID system, which replaces the regular barcoded labels since 2023, significantly sped up the furniture inventory (7,000 articles).

Actions undertaken in the interest of a responsible management of resources allowed recycling more than 4.6 tons of paper, thereby reducing the carbon footprint of the CSSF by two tons. Moreover, residual waste disposal costs could be reduced by 5,500 EUR per year.

The replacement of 200 traditional neon tubes by LED tubes also contributed to saving 6.7 tons of CO₂. Encouraged by the results obtained, the CSSF will soon also replace the remaining 1,500 neon office tubes.

The installation of an exterior irrigation system, supplied by rainwater and reverse osmosis water collected by the cooling towers, allow reducing the consumption of drinking water by several cubic meters per cycle thanks to the regular irrigation of the green spaces.

5. CSSF library

The CSSF library is a reference library which has been part of the Luxembourg libraries' network bibnet.lu since 2009. It is specialised in banking and financial law as well as in financial economy. It contains around 5,000 books and around 50 periodicals and update publications. The library also has a certain number of specialised electronic databases.

All the books in the library are listed in the general catalogue of the bibnet.lu network. The unified search engine of the collections of the network (www.a-z.lu) enables an easy search of the books available in the CSSF library and in all Luxembourg libraries.

The library is open to the public on prior request and by appointment on working days.

6. Budget and annual accounts of the CSSF - 2023

6.1. CSSF budget

Budget planning is part of a multi-year planning of the CSSF's income and expenses; it thereby allows following the financial development of the CSSF in the long term.

The 2023 budget was approved by the Board of the CSSF on 12 December 2022 and the 2023 annual accounts on 26 March 2024.

The CSSF's "Finance" division closely monitors the budget and draws up regular reports for the Executive Board. An analysis detailing the gaps between the budgeted figures and the real figures is made at the end of every financial year.

The key factors that have affected the 2023 budget are the following:

- increase in fees to be paid by supervised entities in accordance with Grand-ducal Regulation of 23 December 2022;
- control of operating costs despite inflation and triggering of three index tranches;
- grant of an operating subsidy of EUR 15 million in support of the CSSF's digitalisation.

6.2. CSSF annual accounts - 2023

BALANCE SHEET AS AT 31 DECEMBER 2023

Assets	EUR
Fixed assets	51,893,359.79
Intangible fixed assets	1,650,232.56
Development costs	1,363,303.00
Payments on account and intangible assets in progress	286,929.56
Tangible fixed assets	50,243,127.23
Land and buildings	42,763,583.00
Other fixtures, fittings, tools and equipment	7,052,415.00
Payments on account and tangible assets in progress	427,129.23
Current assets	127,365,376.24
Debtors	8,225,590.97
Trade debtors with a residual term of up to one year	8,198,700.31
Other debtors with a residual term of up to one year	26,890.66
Cash at banks, in postal cheque accounts, cheques in hand	119,139,785.27
Prepayment and accrued income	8,952,533.64
BALANCE SHEET TOTAL (ASSETS)	188,211,269.67

Own capital and liabilities	EUR
Own capital	97,925,200.97
Results brought forward	68,740,934.14
Result for the financial year	29,184,266.83
Provisions	29,209,503.86
Other provisions	29,209,503.86
Liabilities	61,076,564.84
Amounts owed to credit institutions	44,215,745.75
with a residual term of up to one year	5,771,598.36
with a residual term of over one year	38,444,147.39
Debts on purchases and provision of services	3,339,660.42
with a residual term of up to one year	3,339,660.42
Other debts	13,521,158.67
Tax debts	4,432,517.31
Social security debts	7,483,846.84
Other debts with a residual term of up to one year	1,604,794.52
BALANCE SHEET TOTAL (OWN CAPITAL AND LIABILITIES)	188,211,269.67

PROFIT AND LOSS ACCOUNT AS AT 31 DECEMBER 2023

	EUR
Net turnover	169,571,231.90
Other operating income	16,746,928.15
Raw materials and consumables and other external charges	14,581,604.54
Raw materials and consumables	478,839.87
Other external charges	14,102,764.67
Staff costs	128,465,774.02
Wages and salaries	121,181,711.02
Social security costs relating to pensions	4,475,916.55
other social security costs	436,000.11
Other staff costs	4,039,916.44
Value adjustments	2,808,146.45
on formation expenses and tangible and intangible fixed assets	5,329,725.41
on elements of current assets	4,937,225.45
Other operating charges	392,500.00
Interest and other financial charges	8,223,577.41
Other interest and financial charges	533,211.80
Result for the financial year	533,211.80
	29,184,266.83

Réviseur d'entreprises agréé (approved statutory auditor): PricewaterhouseCoopers

II. The European dimension of the supervision of the financial sector

1. Supervision of banks

1.1. Single Supervisory Mechanism (SSM)

In 2023, the CSSF participated in all 20 meetings of the SSM Supervisory Board and contributed to 2,403 decisions concerning individual supervised entities within the framework of the SSM. The CSSF also contributed at a technical level to the work of a large number of working groups set up by the ECB.

The top three SSM priorities identified for 2023–2025 are (i) strengthening resilience to immediate macro-financial and geopolitical shocks, (ii) addressing digitalisation challenges and strengthening management bodies' steering capabilities, and (iii) stepping up efforts in addressing climate change.

Further information on the SSM activities is available in the ECB Annual Report on supervisory activities 2023¹.

1.2. Regulatory developments

The tripartite negotiations relating to the banking package CRR3/CRD VI between the European Commission, the Council of the EU and the European Parliament took place throughout 2023. In December 2023, the preparatory bodies of the Council and the Parliament endorsed the banking package. The endorsement of these legal texts confirms the implementation of the final elements of the Basel III framework in the EU and in particular the provisions relating to:

- the introduction of an output floor to reduce excessive variability of banks' capital requirements calculated with internal models;
- the implementation of the final elements of the Basel III framework in the areas of credit risk, market risk and operational risk;
- the strengthening of the provisions related to Environmental, Social and Governance risks (ESG risks);
- the minimum harmonising conditions for the establishment of branches of third-country banks;

¹ <https://www.bankingsupervision.europa.eu/press/publications/annual-report/html/ssm.ar2023-2def923d71.en.html>

- the update of the fit and proper assessment framework applicable to members of management bodies and key function holders of institutions.

The majority of the new CRR3 rules will start applying on 1 January 2025 with the exception of certain transitional provisions. The provisions of CRD VI must be transposed by the Member States.

The legislative package will be submitted to the final vote of the European Parliament (Plenary) and of the Council. The final legal texts will be published in the Official Journal of the EU in the second quarter of 2024.

2. Supervision of financial markets

2.1. European Securities and Markets Authority - ESMA

At the level of ESMA, the CSSF participates actively in the work of the Data Standing Committee, the Risk Standing Committee and the Investment Management Standing Committee (IMSC) with its sub-group, the Operational Working Group on Supervisory Convergence (OWG), which are composed of experts of the national competent authorities of Member States, assisted and coordinated by ESMA agents.

In the field of collective investment management, the work, in 2023, mainly focussed on topics relating to MMF stress testing scenarios, to the valuation of UCITS and open-ended AIFs across the EU, to costs and fees charged by investment fund managers, to the Common Supervisory Action on the integration of sustainability risks and disclosures, to the European Commission's mandate concerning the recast of the eligible assets directive for UCITS, and to European long-term investment funds. This work is reflected, inter alia, in the following ESMA publications:

- publication, on 27 January 2023, of an update of its guidelines on stress test scenarios (ref. ESMA50-164-6583) under Regulation (EU) 2017/1131 on money market funds. These guidelines were implemented via Circular CSSF 23/831 of 23 March 2023. At the beginning of 2023, ESMA also consulted on a proposal for a review of the stress test scenario methodology for MMFs and published, on 19 December 2023, the final methodology as well as the annual calibration of

risk parameters for the following year (ref. ESMA50-43599798-9011);

- publication, on 17 May 2023, of an Opinion (ref. ESMA34-45-1747) which is in line with the Common Supervisory Action on costs and fees charged by investment fund managers in the EU, performed together with the national competent authorities in 2021 and followed by a report published by ESMA (ref. ESMA34-45-1673);
- publication, on 24 May 2023, of a report (ref. ESMA34-45-1802) following the Common Supervisory Action on the valuation of UCITS and open-ended AIFs across the EU. On 18 July 2023, the CSSF also published a feedback report which presents the main observations and recommendations for improvement with respect to the regulatory requirements applicable from a local perspective;
- announcement, on 6 July 2023, launching a Common Supervisory Action with all EU national competent authorities on the integration of sustainability risks and disclosures;
- publication, on 9 November 2023, of a press release informing market participants about the Union Strategic Supervisory Priorities (USSPs) focussing on cyber risk and digital resilience as from 2025, when the Digital Operational Resilience Act (DORA) will enter into force;
- publication, on 19 December 2023, of the Final Report (ref. ESMA34-1300023242-159) presenting the Regulatory Technical Standards (RTS) to be developed under Regulation (EU) 2015/760 on European long-term investment funds (ELTIF) amended by Regulation (EU) 2023/606.

All publications of ESMA are available on its website www.esma.europa.eu.

III. Macroprudential supervision of the financial sector

The CSSF actively contributes to the supervision of macroprudential risks that may weigh on the Luxembourg financial sector's stability. From an institutional point of view, it sits in various national and international committees and working groups, including the Systemic Risk Committee (Comité du Risque Systémique - CdRS), which is the authority in charge of coordinating the macroprudential policy in Luxembourg, and the European Systemic Risk Board (ESRB).

In 2023, the situation of the real estate market and the risks for the Luxembourg banking sector remained at the heart of national discussions.

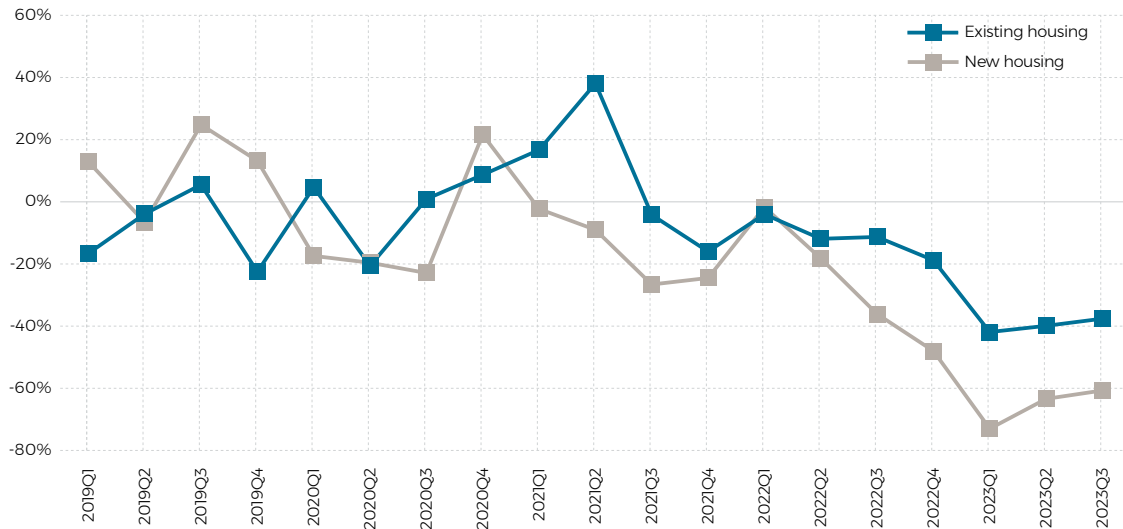
- **In a context of rising interest rates and economic slowdown, the prices and transactions on the residential and commercial real estate market dropped significantly.**

In 2023, the housing market in Luxembourg was contracting. The number of transactions in the real estate sector decreased significantly during the year and residential property prices fell. Year-on-year, prices fell by 1.7% in the first, by 5.9% in the second and by 13.6% in the third quarter of 2023¹. At the same time, rents increased. Thus, the ratio housing prices/rents has been decreasing continuously since the third quarter of 2022².

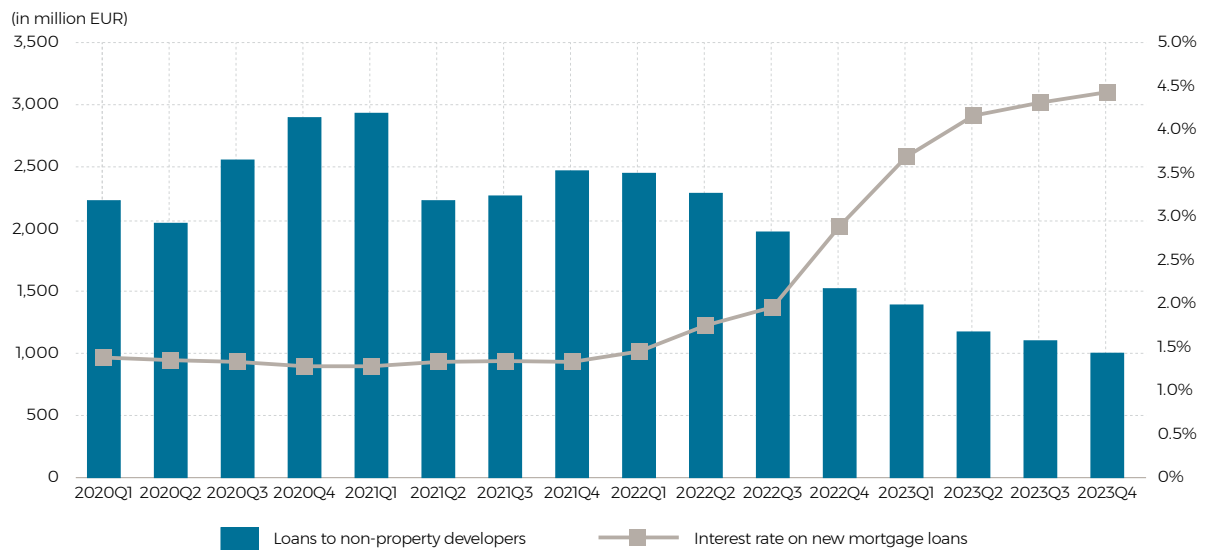
1 Source: Statec

2 Source: OECD

Development of real estate transactions in Luxembourg (annual growth, in %)³



Mortgage loans granted in relation to properties located in Luxembourg and interest rates⁴



³ Source: Eurostat

⁴ Source: Loans to non-property developers, BCL statistical reporting, table 11.9

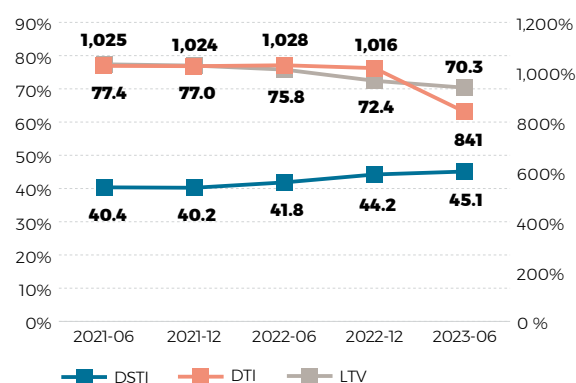
22 - III. Macroprudential supervision of the financial sector

As regards financing, the amount of mortgage loans granted fell sharply, due to growing uncertainties regarding real estate prices and the decreased borrowing capacity in the context of rising interest rates. In 2023, new loans fell by 43% compared to 2022. Total mortgage loans granted in relation to the residential real estate amounted to EUR 4.6 billion in 2023, down from EUR 8.2 billion in 2022⁵.

In terms of indebtedness criteria, the average Debt-To-Income (DTI) and Loan-To-Value (LTV) ratios both decreased⁶. While the average DTI amounted to 1,016% and the average LTV to 72.4% in the second half of 2022, their values decreased to 841% and 70.3% respectively in the first quarter of 2023. However, the percentage of loans granted with an LTV ratio above 90% increased by one percentage point (from 24% to 25%) between the second half of 2022 and the first half of 2023. The decrease in the average LTV ratio is the same for both first-time buyers and the buy-to-let segment.

In a context of sharply rising interest rates, the Debt-Service-To-Income (DSTI) ratio rose by 2% in six months to a value of 45.1% in the first half of 2023. Despite this rise in debt burden, the average maturity of new residential mortgage loans in the first half of 2023 remained stable, at 20.6 years on average, compared to the second half of 2022. The average Loan-Service-To-Income (LSTI) ratio also remained relatively stable, down from 36.1% in the second half of 2022 to 36.0% on average in the first half of 2023. This ratio evolves differently according to market segment. While it decreased for the buy-to-let segment and stood at 23.2% on average for new loans in the first half of 2023, it grew strongly for first-time buyers from 39.4% on average in the second half of 2022 to 45.6% in the first half of 2023.

Borrower-based indicators⁷



⁵ Source: Loans to non-property developers, BCL statistical reporting, tables 11.9 and 3.1

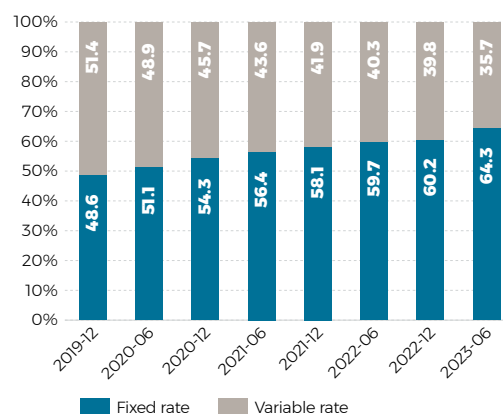
⁶ CSSF reporting in accordance with Circular CSSF 18/703; relates to loans granted for the purchase of residential real estate in Luxembourg and the real estate collateral of which is also located in Luxembourg

⁷ CSSF reporting in accordance with Circular CSSF 18/703; relates to loans granted for the purchase of residential real estate in Luxembourg and the real estate collateral of which is also located in Luxembourg

Despite the decrease in total indebtedness compared to income⁸, the share of new loans associated with an LSTI ratio above 50% grew in the total of new loans at the beginning of the first half of 2023 compared to the second half of 2022. In the first half of 2023, 17% of new loans were granted to households that will have to spend more than 50% of their income to cover the mortgage debt burden. By way of comparison, this share was 11% in the first half of 2022.

Despite adverse developments in 2023, only 1.6% of the residential mortgage loans were non-performing loans as at 31 December 2023⁹. Certain economic stabilisers in particular helped mitigating shocks, such as governmental household aids, the sound balance sheet of Luxembourg households and the small share of bridge loans in the total of loans granted. At the end of June 2023, 35.7% of the mortgage loans granted by banks to households were variable rate loans and only 3.8% were bridge loans¹⁰. It should be noted that the share of variable rate loans in the total of mortgage loans in Luxembourg tended to decline over the last years¹¹.

Distribution of variable and fixed rate loans for mortgage loans with mortgage guarantees located in Luxembourg (outstanding at the end of the period)¹²



However, there are substantial discrepancies between households¹³. Moreover, adverse developments, including a persistent rise in interest rates (for variable rate loans) or decrease in purchasing power, or even the loss of income due to unemployment, might expose such households to unsustainable loan arrangements. In this context, the CSSF closely follows the evolution of vulnerable households and the implications for financial stability.

As regards commercial real estate, the total volume of transactions in 2023 was well below the level of the previous years, amounting to only EUR 472 million, while it reached EUR 1 billion during the three previous years or even exceeded EUR 2 billion in 2018 and 2019. These decreases are the result of the consecutive interest rate rises and the uncertainty surrounding the future need in office and commercial space.

⁸ In 2022 (last available figure), household indebtedness was 182%. Source: ECB and Eurostat ESA 2010

⁹ FINREP Reporting

¹⁰ CSSF reporting in accordance with Circular CSSF 18/703; relates to loans granted for the purchase of residential real estate in Luxembourg and the real estate collateral of which is also located in Luxembourg

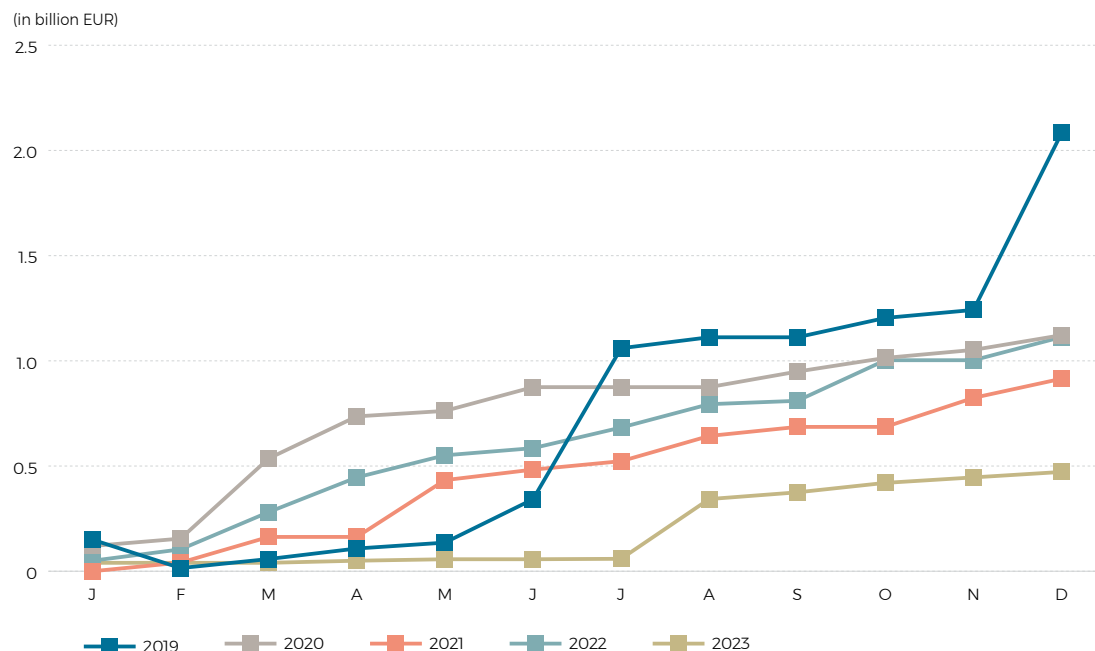
¹¹ CSSF reporting in accordance with Circular CSSF 18/703; relates to loans granted for the purchase of residential real estate in Luxembourg and the real estate collateral of which is also located in Luxembourg

¹² CSSF reporting in accordance with Circular CSSF 18/703; relates to loans granted for the purchase of residential real estate in Luxembourg and the real estate collateral of which is also located in Luxembourg

¹³ Source: Mathä, T.Y., A. Montes-Viñas, G. Pulina and M. Ziegelmeyer (2023): The Luxembourg Household Finance Consumption Survey: Results from the fourth wave in 2021, BCL WP 176, November 2023

24 - III. Macroprudential supervision of the financial sector

Cumulative transaction volume of investment in commercial real estate in Luxembourg¹⁴



Given the context, work relating to the commercial real estate sector gained in importance during the year 2023 at European as well as national level. Indeed, the CSSF actively contributed to the work relating to the follow-up to Recommendation ESRB/2022/9 on vulnerabilities in the commercial real estate sector in the EEA¹⁵. As this recommendation is addressed at several authorities active in the field of financial stability, a working group was created at the level of the CdRS in order to best respond to the recommendations issued by the ESRB.

Furthermore, on 4 September 2023, the ESRB also published an issues note on policy options to address risks in corporate debt and real estate investment funds from a financial stability perspective, describing in particular how the EU regulatory framework for investment funds, which is currently being revised, could enhance the prevention and mitigation of systemic risks.

- **The macroprudential measures implemented during the last years contributed to stronger resilience of the Luxembourg financial sector.**

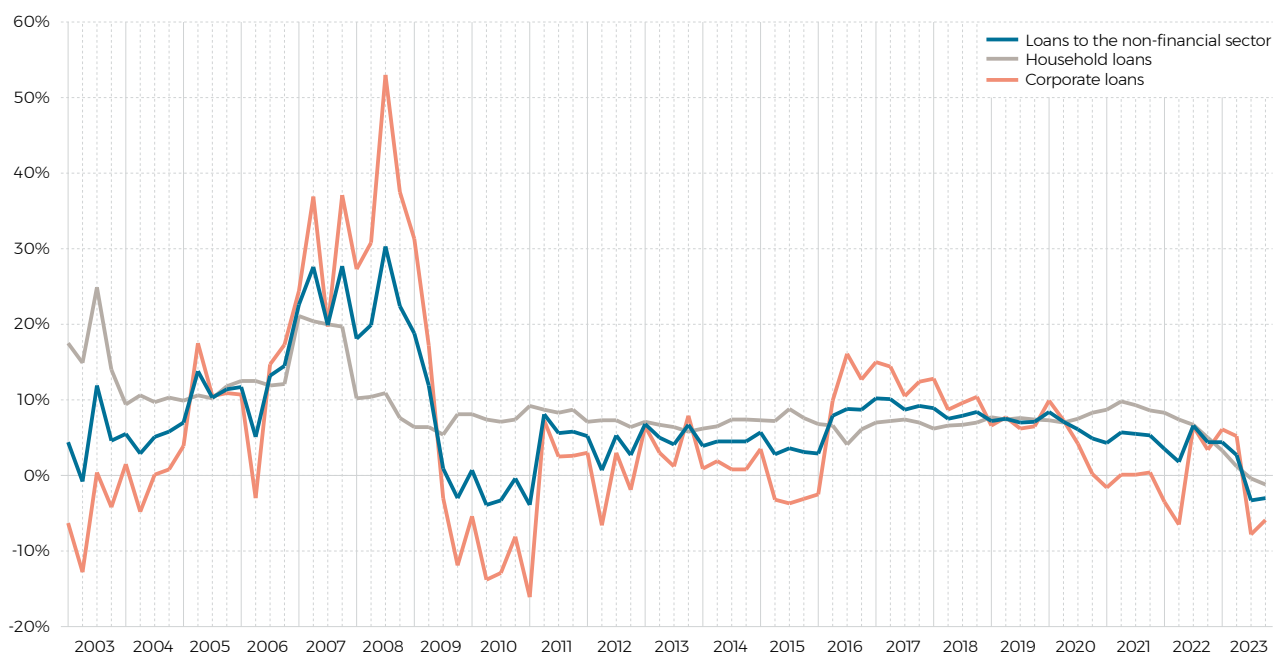
In the real estate sector, in addition to the 15% minimum threshold on risk weights applied by banks using the internal rating-based approach, the CSSF Regulation No 20-08, introducing differentiated Loan-to-Value limits, which link the amount a household can borrow for the acquisition of a residential property to its own funds contribution, helped to reduce leverage on the Luxembourg residential real estate market. As mentioned above, the average Loan-To-Value ratio for new loans decreased to 70.3% in the first half of 2023.

In 2023, in consultation with the BCL and following the CdRS recommendations, the CSSF maintained the countercyclical capital buffer at 0.5% in order to ensure, firstly, the resilience of the banking sector and, secondly, a positive buffer level to be released in case of materialisation of cyclical risks. At the end of 2023, the ratio of credit to GDP reached 91.3% compared to 98.1% in 2022.

¹⁴ Source: MSCI Real Capital Analytics (RCA)

¹⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023Y0201\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023Y0201(01))

Loans to the non-financial private sector – growth rate year-on-year¹⁶



Finally, as illustrated in the table below, five banks were designated as systemically important institutions in Luxembourg. This designation process took place during the year 2023 in the framework of the annual identification of systemic banks in Luxembourg in accordance with the EBA methodology (EBA/GL/2014/10). An additional capital requirement will be applied as from January 2024 to the banks concerned, which represent 23% of total assets of the Luxembourg financial sector, in order to reduce their probability of default, given the negative externalities that their default could generate.

Capital requirement for the identified banks remained unchanged, except for BGL BNP Paribas for which capital requirement rose from 0.5% to 1.0%. This is mainly due to the growth in the contribution of the indicators in the categories “complexity” and “importance” to the overall score, calculated in relative terms in relation to the whole Luxembourg banking sector, which was impacted by the closure of certain banking institutions during the period under review.

Denomination	Buffer rate applicable as at 1 January 2023	Buffer rate applicable as at 1 January 2024
Banque et Caisse d'Épargne de l'État, Luxembourg	0.5%	0.5%
Banque Internationale à Luxembourg	0.5%	0.5%
BGL BNP Paribas	0.5%	1.0%
Clearstream Banking S.A.	0.5%	0.5%
Société Générale Luxembourg	0.5%	0.5%



IV. The international dimension of the CSSF's mission

1. Basel Committee on Banking Supervision

The CSSF participates in the work of the Basel Committee, the main sub-committees (Policy and Standards Group, Supervisory Cooperation Group and Risks and Vulnerabilities Assessment Group) and some expert groups which are particularly relevant for banking supervision in Luxembourg. These groups are dedicated to the fight against money laundering and terrorist financing, accounting, credit and large exposures, liquidity, subjects covering operational aspects such as digitalisation, or complementing measures aiming at combating the effects of global warming.

The Basel Committee addressed the spring 2023 banking turmoil. These discussions resulted in the publication on 5 October 2023 of the *Report on the 2023 banking turmoil*, which confirms the importance for financial stability of banks' governance arrangements and risk management practices and the role of a strong and proactive supervisory authority in the field. Moreover, the Committee continued monitoring the progress of Member States in fully implementing the Basel III standards that had been decided in the wake of the 2008 financial crisis.

In terms of regulation, the Committee had launched a public consultation until 6 October 2023 on the update of its *Core principles for effective banking supervision* of 6 July 2023. The final version of the text will be presented and released in the context of the 50th anniversary of the Basel Committee in April 2024. The purpose of the amendments is to update the Core principles with regard to the developments of banking activities and the regulatory framework since 2012. They relate in particular to the strengthening of the internal governance arrangements, a better accounting for operational resilience and new risk dimensions, including those linked to information technology and environment and climate protection. The latter two dimensions continue to be actively discussed in the Committee and are the object of regular publications.

The Basel Committee's publications and information on its mission and organisation are available on the website www.bis.org.

2. International Organization of Securities Commissions

The CSSF participates in the work of the International Organization of Securities Commissions (IOSCO) via the main (sub-) committees and other working groups, such as for instance the Financial Stability Engagement Group (FSEG), Committee 5 on Investment Management, the Assessment Committee and the European Regional Committee, which are particularly relevant in the context of the development and the monitoring of implementation of internationally recognised standards relating to the regulation of securities markets.

In 2023, besides the 48th annual conference, which was held in Thailand, IOSCO's work mainly focussed on the topics addressed by the FSEG and Committee 5.

The FSEG continued its intense collaboration with the Financial Stability Board (FSB) on financial stability issues (including notably the resilience of non-bank financial intermediation – NBFI). Moreover, the work of Committee 5 on liquidity risk in investment funds continued throughout 2023, covering in particular liquidity risk and its management in open-ended UCIs. In this context, the CSSF organised, at the end of March 2023, a meeting of Committee 5 in Luxembourg, followed by two stakeholder outreach events concerning liquidity mismatches in open-ended UCIs and anti-dilution liquidity management tools.

Following this work, IOSCO published, on 20 December 2023, guidance on anti-dilution liquidity management tools, after having launched a consultation regarding its proposals in summer 2023. The guidance aims to enhance the previous IOSCO recommendations, dating back to 2018, on liquidity risk by supporting effective implementation of the recommendations for liquidity risk management in UCIs. Work will continue at the level of IOSCO in order to fully review these recommendations in 2024. At the same time, the FSB published revised policy recommendations to address structural vulnerabilities in relation to liquidity mismatch in open-ended funds, aiming in particular at clarifying the redemptions terms that open-ended funds may offer to investors.

Moreover, IOSCO published, on 11 May 2023, a report on good practices for Exchange-Traded Funds and launched, on 14 September 2023, a consultation on good practices for leveraged loans and Collateralised Loan Obligations (CLOs) which will be finalised in the first quarter of 2024.

IOSCO's publications and information on its mission and organisation are available on the website www.iosco.org.

3. The MiFIR third-country national regime

In 2023, the CSSF continued analysing files submitted by third-country (i.e. non-EU/EEA) firms in relation to the provision of cross-border investment services to clients in Luxembourg under the national third-country regime authorised under Regulation (EU) No 600/2014 (MiFIR). This regime, as well as the conditions to be met by firms to make use of it, are described at length in Circular CSSF 19/716. Circular CSSF 20/743, which complements Circular CSSF 19/716, clarifies the criteria that firms need to take into account to make their own assessment of whether their services are deemed to be provided in Luxembourg (the principle of territoriality).

In conjunction with Circular CSSF 19/716 as amended by Circular CSSF 20/743 and in particular the national third-country regime under MiFIR, the CSSF has continued to follow up the equivalence of the regimes of Canada, the Swiss Confederation, the United States of America, Japan, the Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Singapore through CSSF Regulation No 20-02, the equivalence of the United Kingdom of Great Britain and Northern Ireland through CSSF Regulation No 20-09, as well as the equivalence of the People's Republic of China and of Australia through CSSF Regulation No 22-04.

V. Financial innovation

In 2023, digitalisation, the use of new technologies and the emergence of innovative business models took a step further, challenging the CSSF's Innovation Hub and prompting it to keep its regulatory and technical knowledge up to date to assist the CSSF in its supervisory mission.

Consequently, in the past year, the Innovation Hub's activities focussed on the follow-up to, and in some cases, the completion of work undertaken in 2022, either within the context of Regulation (EU) 2023/1114 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 (MiCA Regulation) or the proactive watch on AI solutions, with the aim to prepare for the implementation of the AI Act ahead.

• MiCA Regulation

Before its entry into force on 29 June 2023, the MiCA Regulation represented a major project for the CSSF. This regulation sets up an authorisation and regulatory supervision framework for crypto-asset issuers and crypto-asset service providers falling within its scope of application. It will be phased in, in two steps, i.e. on 30 June 2024 for issuers of stablecoins (issuers of e-money tokens and asset-referenced tokens) and on 30 December 2024 for its remaining provisions.

The MiCA Regulation is accompanied by many standards and guidelines (over 50 regulatory technical standards, implementing technical standards and guidelines) to which the CSSF actively contributed during the preparation and review phases through its participation in the European working groups and regulatory committees.

In preparation for it, the CSSF first analysed the tasks to be incorporated into its practical internal organisation to meet its obligations, taking into consideration the cross-cutting nature of the impacts of the MiCA Regulation on both non-supervised entities and other entities already under its supervision. In this context, it has chosen to rely on the attribution of competences already

in place within its teams and created an internal working group in order to adopt a harmonised approach and to respond to common issues arising from the MiCA Regulation.

The primary mission of this internal working group, to which the Innovation Hub and the departments impacted by the new regulation contribute, is to coordinate, within the CSSF, the implementation of the MiCA Regulation (as well as the provisions relating to the standards and guidelines drawn up by ESMA and the EBA). This group intervenes in order to facilitate the work to ensure compliance with cross-cutting provisions, such as the drawing-up or the adaptation of internal procedures, circulars, guidance or external publications. It serves as the internal exchange platform for addressing practical cross-cutting issues related to the implementation of the MiCA Regulation and assists the departments on specific issues. By virtue of its own internal coordination mission, the Innovation Hub is a central member, and it contributes to its efforts by structuring exchanges, providing trainings or assistance about guidance issues or practices, on a case-by-case basis.

- **The Innovation Hub as a single point of contact**

The Innovation Hub's missions are at the core of these subjects and aim to provide internal and external guidance for the digital transition of the financial sector.

As the single point of contact of the CSSF, the Innovation Hub strengthened ties with established FinTechs and players to foster dialogue on topics related to financial innovation, including regulatory treatment of emerging products, services and business models, to answer questions and to connect applicants with the relevant departments of the CSSF by organising and facilitating meetings or by coordinating the processing of cross-cutting files.

As a testament to its growing visibility, the Innovation Hub was solicited in 2023 by 53 project entities¹ looking for either guidance or concrete support in the registration, authorisation or

extension of authorisation. The entities met were very diverse and based either in Luxembourg or other jurisdictions. In the latter case, this usually concerned projects to establish in Luxembourg.

The Innovation Hub assists many start-ups that contact it within the framework of projects that are still at an early stage of development. This allows guiding them through the regulatory framework applicable to them and on how they can best interact with the regulator when the project matures, and the legal memorandum and proof of concept are established. This proactive interaction allows, in turn, the Innovation Hub to keep up to date with the latest developments in the Luxembourg financial market and to align, where necessary, its internal priorities with the relevant themes.

Only a minority of the projects presented in 2023 were sufficiently developed legally and technically to start the authorisation process.

- **Tokenisation – security tokens**

Among the themes covered by the projects presented to the Innovation Hub, the emphasis remained on crypto-assets and the possible applications of DLT technology in the financial sector, with notably fundraising from the public through tokenisation.

Business models involving tokenisation use the issue of digital tokens that grant certain rights to their holder against the holder's participation in the project financing. As these rights are freely defined and may take different forms, it is crucial that the initiator of such a project provides a detailed reasoned opinion to the CSSF which determines all the rights attached to these tokens, thus allowing them to be legally qualified. Together with the different specialised teams at the CSSF departments' level, the Innovation Hub may then provide guidance on the regulatory requirements, depending on whether these tokens qualify, for example, as virtual asset or financial instrument.

In this context, it is worthy of note that the interest in the DLT pilot regime² remains very limited. With the exception of a few questions received, no concrete project has been identified to date.

¹ This number does not include requests where there was only an initial email exchange without further follow-up, nor those concerning the provision of services in virtual assets which are handled by another department within the CSSF.

² Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology

• Crypto-assets

Projects involving crypto-assets submitted to the Innovation Hub by financial sector professionals already authorised by the CSSF (including banks and investment firms) are few. In fact, few entities communicated their concrete intentions to the CSSF about a possible crypto-asset strategy. It is therefore not possible for the Innovation Hub to deliver a precise opinion on the interest in crypto-assets within the framework of the MiCA Regulation and to determine what will be the appetite of the traditional players for this sector. On 28 February 2024, the CSSF published a communiqué³ inviting the entities considering filing an authorisation file, within the framework of the MiCA Regulation, to contact the CSSF to engage in a prior dialogue.

• RegTech

In 2023, many projects submitted to the Innovation Hub covered, once again, the very diverse category of so-called RegTechs, the objective of which is to provide tools to enable an entity supervised by the CSSF to meet regulatory, compliance and reporting requirements. These tools include the types of business models already encountered in previous years: know-your-customer solutions, analysis/supervision of (traditional or virtual asset-related) transactions, onboarding of remote clients, data governance, data aggregation and provision, and regulatory reports.

Although these RegTechs often do not need an authorisation for the financial sector, it is important for the Innovation Hub to meet them to be aware of these innovative solutions that simplify traditional processes.

• Artificial intelligence

In May 2023, the CSSF and the BCL published a thematic report on the use of artificial intelligence in the Luxembourg financial sector⁴. This report results from a joint survey conducted between October 2021 and January 2022 and is addressed to all credit institutions, payment institutions and electronic money institutions supervised by the CSSF. Some of the survey's main findings confirmed that the use of artificial intelligence in the Luxembourg financial sector was fairly limited and still at an early stage, although a growing interest in this technology, and more particularly machine learning, is being evidenced by investment levels deemed to be increasing. The main categories of reported use cases included AML and fraud detection, process automation, marketing and product recommendation, customer insights and cyber security.

Furthermore, the entities asked focussed on the aspects of reliability of artificial intelligence (for instance human in the loop, bias identification/prevention techniques, auditability, explainability) and the level of adoption of the underlying techniques varying with the specific type of use case. This important observation confirms that Luxembourg institutions using artificial intelligence are aware of the specific risks related to this technology. These results corroborate the importance to continue to take account of the recommendations included in the CSSF's White Paper, pending the next regulation of the European Commission laying down harmonised rules on artificial intelligence (AI Act), the official text of which is planned for the second quarter of 2024.

As a follow-up to this first survey, a second survey on the use of artificial intelligence should be conducted in 2024. It will also cover the use of generative artificial intelligence by Luxembourg financial institutions, which has not been covered by the first survey.

3 <https://www.cssf.lu/en/2024/02/mica-markets-in-crypto-assets/>

4 <https://www.cssf.lu/en/Document/thematic-review-on-the-use-of-artificial-intelligence-in-the-luxembourg-financial-sector/>

• Networking

The Innovation Hub continued its networking initiatives with the aim of acquiring specific, and in particular, technical knowledge and getting aware of the sector's expectations. Exchanges with the stakeholders of the financial sector enable it to be aware of the concrete problems faced by the sector, to identify possible regulatory obstacles or gaps resulting from specific sector-specific laws and to find solutions in a coordinated way. Thus, the Innovation Hub, accompanied, where appropriate, by specialists from different CSSF departments, meets with the professional associations of the financial sector several times a year in order to provide a regulatory update, to allow them to ask questions and to have a free exchange on the observed issues and trends. These meetings have now become a must in the Luxembourg ecosystem to keep each other up to date on important issues.

• Challenges for 2024

The Innovation Hub's work for 2024 will continue to consist of supporting the transition to an increasingly digital finance by monitoring innovation and financial technological developments, in particular in order to identify, at an early stage, the impact on the Luxembourg financial sector and to define the approach and the concrete measures to adopt, where appropriate. That being said, there will be a number of priorities.

In order to control the impact of the new regulations and to ensure the security and soundness of the financial sector as well as to protect consumers and manage risks, it is necessary to adopt a proactive approach and to provide some clarification on new activities and risk mitigation. Consequently, it is important to centralise the financial sector's questions and to develop uniform answers, while providing guidance.

The application, in 2024, of the MiCA Regulation is a milestone for players of markets in crypto-assets and traditional institutions that consider providing services related to these assets. Consequently, as outlined above, the CSSF and its Innovation Hub will remain in contact with these players in order to ensure a smooth transition to this new framework by providing guidance through dedicated communication channels (e.g. in the section dedicated to the markets in crypto-assets on the CSSF's website⁵).

The use of artificial intelligence, including generative artificial intelligence techniques, will continue to be a key point to monitor. In 2024, the CSSF will also follow closely, through its participation in working groups at European level, the preparations for the entry into force of the AI Act which will be phased in notably with the rules on high-risk use cases (including the assessment of the creditworthiness of natural person) and enter into force after 24 months.

5 <https://www.cssf.lu/en/markets-in-crypto-assets-mica-micar/>



VI. Sustainable finance

Environmental, social and governance issues continue to have a significant global impact.

In continuation of the work accomplished since 2022, the CSSF attached great importance to accompanying the transition of the financial sector and its stakeholders and continued its supervisory actions in sustainable finance matters.

The year 2023 was marked by certain regulatory developments that reflect the remaining challenges regarding a number of strategic questions in sustainable finance matters.

Thus, efforts relating to the implementation of the European taxonomy continued to be undertaken with, since 1 January 2023, the obligation for non-financial companies to publish information on their alignment to taxonomy and, in June 2023, the publication of delegated acts aiming, in particular, at supplementing those on climate goals by defining technical criteria for a substantial contribution to the sustainable management of water, the transition to a circular economy, pollution prevention and the preservation of biodiversity.

The integration of sustainability-related aspects into the traditional corporate governance and risk management arrangements remained a cornerstone of the regulatory framework, notably in order to anticipate as well as possible how climate change is likely to affect the financial sector. Thus, the ECB developed new indicators to improve the quality and availability of climate data, in order to better identify and manage the challenges and opportunities of the transition to a greener economy. These indicators were published for the first time in January 2023, followed by a version with additional breakdowns released in November 2023. The “carbon emissions” and “physical risks” indicators should be updated in the first half of 2024. Nevertheless, producing these indicators is complex and at this stage, the data published must be understood as analytical statistics or indicators and should be used with due care.

Still for the purposes of improving the quality and availability of the data necessary for the implementation of the regulatory framework, the implementation of the Corporate Sustainability Reporting Directive (CSRD) continued to progress. Its application is a challenge and its stakes reflect the importance of thorough financial information for investors, without however imposing overly burdensome obligations, as demonstrated by the

many projects that culminated, in December 2023, in the publication of the European Sustainability Reporting Standards (ESRS). Companies that are required to publish their first sustainability reports in accordance with the requirements of the CSRD in 2025 for 2024 data are invited to read the CSSF's publication¹ which provides a preliminary understanding of the gaps that remain to be addressed by issuers with regard to compliance with the CSRD.

The importance of allowing investors to trustfully invest their moneys in activities aligned with the EU taxonomy is also reflected in the European Green Bond Regulation which entered into force in December 2023 and the provisions of which will be applicable as from the end of 2024. This regulation offers a framework to issuers that choose to comply with it in order to issue bonds labelled as EU Green Bonds, thus helping investors to find and finance environmentally sustainable investments based on a reliable standard.

As the sustainable finance market is evolving and products are becoming more sophisticated and diversified, the year 2023 also entailed the application, as of 3 October 2023, of the ESMA Guidelines on MiFID II suitability and product governance requirements. These guidelines were integrated into the administrative practice and regulatory approach of the CSSF in accordance with the provisions of Circulars CSSF 23/835 and CSSF 23/840.

Despite the development of more sophisticated and diversified products, there is still a mismatch between the offer and the very strong demand for sustainable investment products, leaving the fight against greenwashing at the heart of the concerns aiming at maintaining a trusted environment for sustainable investment. In May 2023, at the European Commission's request, the three European Supervisory Authorities each published a report to enhance the understanding of greenwashing and to assess which areas of the sustainable investment value chain are the most exposed to these risks, thereby laying the foundations for supervising, preventing and remedying this phenomenon efficiently. The report identifies preliminary corrective actions that must be adjusted and completed in 2024.

The implementation of the regulatory framework applicable to sustainable finance throughout the EU remains an important leverage of transformation. In order to better accompany the financial sector in this implementation, the CSSF updated its supervisory priorities in sustainable finance matters².

However, the level of maturity of the framework must evolve further in order to face the challenges mentioned above. The consultation launched in September 2023 by the European Commission shows that the regulatory framework still needs to be improved for the purpose of harmonising its implementation, better supporting the financing of the transition and delineating the greenwashing phenomenon.

As in 2023, the CSSF will continue to fully play its role to help filling the existing regulatory gaps, notably via its participation in the working groups of the European Commission and the European Supervisory Authorities, as well as in the international working groups such as the NGFS, the Basel Committee and IOSCO.

Sustainable finance will remain one of the cornerstones of the CSSF's programme for financial education of investors and consumers until the regulatory framework applicable to sustainable finance reaches full maturity.

1 <https://www.cssf.lu/wp-content/uploads/Report-on-2023-climate-related-disclosures.pdf>

2 <https://www.cssf.lu/en/2024/03/the-cssfs-supervisory-priorities-in-the-area-of-sustainable-finance/>

VII. Supervision of banks

1. Banking supervision practice

1.1. Organisation of the supervision

The responsibility for the microprudential supervision in the strict sense depends on the typology of credit institutions, as illustrated in the table below.

Competent authorities by type of credit institutions active in Luxembourg

Type of credit institution	Competent authority	Number	
		2022	2023
Significant institutions incorporated under Luxembourg law	ECB	27	27
Less significant institutions incorporated under Luxembourg law	CSSF	51	47
Branches of a significant institution	ECB	19	20
Branches of a less significant institution	Supervisory authority of the head office	9	10
Branches of an institution headquartered in an EU Member State outside of the SSM	Supervisory authority of the head office	2	2
Branches of a non-EU institution	CSSF	13	13
Total		121	119

Prudential supervision in the strict sense includes the supervision of solvency, liquidity and internal governance. It does not include the other areas of supervision that fall under the sole competence of the CSSF, namely:

- the supervision of compliance with the professional obligations regarding anti-money laundering and combating the financing of terrorism (AML/CFT);
- the supervision of regulations for consumer protection: MiFID, laws on mortgage credits and consumer credits;
- the supervision of regulations relating to market integrity: European Market Infrastructure Regulation (EMIR), Securities Financing Transactions Regulation (SFTR), Benchmark Regulation (BMR) and covered bonds directive;
- the supervision of the obligations deriving from sectoral laws on UCIs, including, in particular, the obligations related to the function of depositary bank of UCIs;

- the supervision of obligations deriving from other European or national regulations, such as PSD2¹, NIS Directive² and the law on payment accounts.

During 2023, 130.65 full-time equivalents (FTE) (129.45 in 2022) directly contributed to the various tasks in relation to the execution of the CSSF's banking supervision mandate.

As regards the areas of supervision referred to above, the CSSF agents also participate actively in working groups which meet at European and international level.

1.2. Priorities with respect to prudential supervision and banking risks

The CSSF defines its priorities for the supervision of credit institutions falling within its remit on an annual basis. In order to use resources as efficiently as possible, the determination of the supervisory priorities follows a risk-based approach considering the main risks and major vulnerabilities of the Luxembourg banking centre, as well as the supervisory priorities defined by the ECB and the EBA.

The priorities of the CSSF for the prudential supervision in 2023 were the following.

1.2.1. Compliance/conduct risk, including money laundering and terrorist financing

Money laundering and terrorist financing (ML/TF) are risks inherent in the activities of international financial centres such as Luxembourg. At the level of banks, wealth management activities involving international customers are particularly exposed to such risks. Within the CSSF, the control of these risks has undergone significant developments over the last years with, in particular, a substantial increase in the number of staff and systems allowing an efficient fight against ML/TF. These developments continued in 2023 in a context of prevention (via targeted communications) as well as control (via the execution of yearly AML/CFT control plans – both off-site and on-site). Like in previous years, the outcome of these controls

resulted in the CSSF imposing administrative fines on banks which did not comply with their AML/CFT-related professional obligations³.

The efficiency of the CSSF's AML/CFT framework was assessed end of 2022 by the FATF and a mutual evaluation report, published in September 2023⁴, identified Luxembourg as having a sound AML/CFT framework and a good understanding of its money laundering and terrorist financing risks.

1.2.2. Operational risk, including IT risk and cyber risk

The main activity of banks offering wealth and asset management (depository banks and private banks) is the custody and management of their customers' financial assets. The main risks linked to this type of banking activity are operational in nature and include, besides ML/TF risk, IT risk with cyber risk for instance, resilience risk (business continuity) and risks related to the use of sub-depository institutions and outsourcing. Moreover, the increasing digitalisation and new technologies such as DLT, digital payments or crypto-currencies bring about new challenges, both strategic and operational.

In 2023, the CSSF deepened its understanding of the banks' digital transformation projects and existing and emerging IT risks, notably by monitoring cyber incidents.

1.2.3. Credit risk

The tightening in financial conditions, especially in times of strong interest rate rises, generally leads to a deterioration in the asset quality. In 2023, the CSSF continued to closely supervise the development of credit risk as well as the actions undertaken by banks, in particular as regards the credit-granting standards, monitoring outstanding debts and adequate provisioning. Throughout the year, the level of non-performing loans and the banks' exposure to credit risk remained limited.

1 Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market

2 Directive (EU) 2016/1148 of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

3 For further details on this subject, please refer to point 2. of Chapter XVIII "Instruments of supervision".

4 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/MER-Luxembourg-2023.html>

1.2.4. Risks related to climate change and environmental degradation

Following the publication of Circular CSSF 21/773 on the management of climate-related and environmental risks in June 2021, the CSSF initiated its first dedicated supervisory activities in 2023. Hence, the CSSF requested a sample of 15 banks, among the less significant banks and branches of non-EU banks which it directly supervises, to carry out a self-assessment of compliance with Circular CSSF 21/773. The exercise aimed to outline the state of play of the level of the banking sector's alignment with the CSSF's expectations set out in the circular. Individual recommendations were provided to the participating banks and overall feedback was addressed to the banking community. During the second half of 2023, the self-assessment was repeated with a new sample of 14 banks.

Moreover, the CSSF performed a horizontal review of the information contained in the long form reports with respect to disclosure of information on sustainable development, in accordance with SFDR. The CSSF shared the key observations with the ABBL. The CSSF, applying a risk-based approach, selected a sample of banks for which a full off-site review of their SFDR-related disclosures had been initiated in 2023.

1.3. Supervision of significant institutions

At the end of 2023, 47 banks established in Luxembourg were directly supervised by the ECB, either because they fulfil the criteria to qualify as significant institution (SI) at solo or consolidated level, or because they were part of a group considered as significant. These banks represented 70% of the total assets of the Luxembourg banks.

Supervision of SIs is exercised by Joint Supervisory Teams (JSTs) formed of staff members from the ECB and from the national competent authorities. At the end of 2023, the CSSF was a member of 22 JSTs for as many banking groups. Nineteen CSSF supervisors were directly involved in this supervisory system.

SIs established in Luxembourg by category

SSM status	Number of banks	In % of assets
Significant banks, group head in Luxembourg	3	10.2%
Significant banks, subsidiaries of an SI	24	32.1%
Branches of an SI	20	27.7%
<i>Sub-total SIs</i>	<i>47</i>	<i>70.0%</i>
Total Luxembourg banking sector	119	100.0%

The SSM's supervisory approach is described in detail in the ECB's Supervisory Manual⁵.

1.4. Supervisory review and evaluation process (SREP)

Since 2015, a common SREP methodology has been applied to less significant institutions (LSIs). It is based on the EBA Guidelines on SREP (EBA/GL/2018/03) and on the methodology applied to SIs by the ECB, by taking into account the principle of proportionality.

In general, the SREP is carried out annually based on a large range of quantitative and qualitative information sources, among which the prudential reporting and internal reports provided by the bank, the reports of on-site inspections, the ICAAP⁶ and the ILAAP⁷ as well as the different stress tests. The SREP is applied, in a proportionate manner, to credit institutions having regard to the nature, scale and complexity of their activities and risks and, if relevant, their situation within the group.

The interest rate risk in the banking book, the impact of the increasing interest rates on the LSIs' profitability and risk-bearing capacity were again subject to an in-depth assessment within the SREP in 2023, with a particular focus and specific supervisory measures on credit risk.

⁵ <https://www.bankingsupervision.europa.eu/press/publications/html/index.en.html?sk=Supervisory%20manual>; please also refer to the Annual Report of the ECB published at www.ecb.europa.eu/pub/annual/html/index.en.html

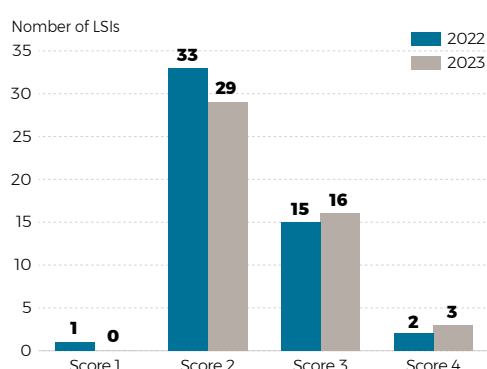
⁶ Internal Capital Adequacy Assessment Process

⁷ Internal Liquidity Adequacy Assessment Process

In addition to the risks impacting solvency, the SREP covered institutions' liquidity risk by taking into account ILAAPs and stress test results.

The distribution of overall SREP scores, which vary on a scale of 1 (low risk for the viability of the institution) to 4 (high risk for the viability of the institution), deteriorated slightly from 2022 to 2023 with an average of 2.46 for all LSIs in 2023.

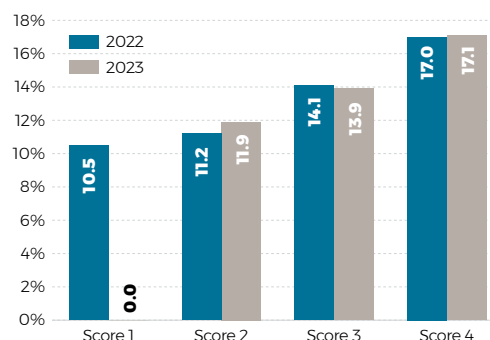
Breakdown of the SREP scores



Based on the conclusions of the SREP, the LSIs were required to implement a range of qualitative and quantitative measures, mainly in relation to capital ratios.

The applicable own funds requirements under the CRR should appropriately cover the incurred risks, including in stressed conditions. Where the results of the stress tests indicate that an institution's capital position would become vulnerable or even non-compliant with the relevant rules, the CSSF requires additional own funds in the form of Pillar 2 Guidance (P2G) to ensure that the institution remains appropriately capitalised.

Own funds requirements (P1+P2R+buffers+P2G) in % by SREP score



As regards all LSIs, on average, Pillar 1 (P1) and Pillar 2 (P2R) capital requirements, combined capital buffers and the P2G cumulatively amounted to 12.92% (12.25% in 2022).

In addition to the interventions aiming at the adequacy of the amount of capital, the CSSF took, again, some qualitative supervisory measures in 2023. As in the past, these measures mostly covered strategic planning by requiring, for example, restrictions for certain activities, a better management of liquidity risk or interest rate risk in the banking book and/or the strengthening of the internal governance framework or of the AML/CFT framework.

1.5. Authorisations

The CSSF mainly intervenes in four banking-related authorisation processes.

1.5.1. Authorisation of new credit institutions

Since the introduction of the SSM, the ECB has been exclusively competent for the authorisation of new credit institutions in all SSM countries. The competence for the authorisation of branches of non-EU credit institutions remains at national level.

However, the CSSF is still the entry point for the submission of authorisation files. Upon receipt of an application, the CSSF analyses it in order to verify compliance with the legal and regulatory requirements, focussing in particular on compliance with the AML/CFT regulation. In the case of Luxembourg credit institutions, the CSSF drafts a proposal, after the examination of the file, and submits it for decision to the ECB.

As regards branches of non-EU credit institutions, the authorisation is granted by the CSSF.

In 2023, the CSSF worked on three authorisation requests for new credit institutions. No authorisation has been granted yet and the examination of these files continues in 2024.

1.5.2. Authorisation for acquisitions of qualifying holdings

Like the authorisation of a new institution which requires prior examination of the file by the CSSF, the subsequent acquisitions of holdings that reach or exceed 10% of the capital or that give significant influence over the institution concerned (qualifying holdings) are also examined by the CSSF and authorised by the ECB (or by the CSSF for acquisitions of holdings in non-EU credit institutions with a branch in Luxembourg), in accordance with the applicable legal and regulatory requirements.

In 2023, the CSSF examined 17 qualifying holding files, nine of which led to an authorisation by the ECB (or the CSSF) during the year. The examination of the other files continues in 2024.

1.5.3. Authorisation of directors and managers of banks

In 2023, the CSSF dealt with 143 files regarding the nomination of new directors and authorised managers in Luxembourg credit institutions. The CSSF verifies the compliance of the candidates, notably in terms of good repute, professional experience and availability, with the legal and regulatory requirements. Particular attention is given to compliance with the AML/CFT legislation. Following the examination of the files by the CSSF, the nominations in SIs are forwarded to the ECB for authorisation, whereas the nominations in LSIs and third-country branches are directly authorised by the CSSF.

1.5.4. Authorisation of financial holding companies

For financial holding companies subject to a procedure for approval or for exemption from approval under the CRD framework, the procedures implemented by the CSSF aim to clarify the role and responsibilities of these parent undertakings in accordance with the consolidated prudential requirements. Depending on the situation, the CSSF examines these files jointly with another competent authority.

In 2023, the CSSF did not receive any file as the consolidating competent authority. However, the CSSF, as competent authority of the Member State where the financial holding company is incorporated, participated in joint decision-making with the competent authority for the consolidated supervision with respect to three requests for exemption from approval which were approved.

1.6. Investor protection

The CSSF's action covers, inter alia, the depositary bank activities for Luxembourg-domiciled UCIs and activities governed by the MiFID II regulation. The CSSF's supervision aims to verify that the banks observe all legal and regulatory provisions relating thereto on an ongoing basis. It is based on a set of information including in particular the long form report, the reports drawn up by the internal control function and the on-site inspections performed by the CSSF teams.

As regards MiFID, a certain number of questionnaires were sent to credit institutions, mostly at ESMA's request, as regards, for example, the application of the MiFID II rules with regard to marketing communications and advertisements of financial products, the cross-border provision of investment services and activities to retail clients or the marketing of contracts for difference (CFDs) to retail clients.

It is important to remember that the CSSF works in close collaboration with ESMA and other national supervisory authorities in order to promote a harmonised supervisory framework, focussed on the protection of investors in general and of retail investors in particular.

The lessons learnt from this supervision are reflected in the SREP and, where applicable, in grievance letters addressed to banks.

As regards depositary banks, it should be borne in mind that prior to starting any depositary business activities for Luxembourg-domiciled UCIs, an administrative authorisation has to be obtained from the CSSF. Any major subsequent change of the elements underlying the initial authorisation as a UCI depositary (e.g. extension of initial authorisation to other investment vehicles or any major change in the operational model) is also subject to the CSSF's authorisation. In 2023, the CSSF processed one such authorisation.

1.7. EMIR

The European Market Infrastructure Regulation (EU) No 648/2012 (EMIR) of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 2019/834 (EMIR Refit) in 2019, aims to improve the transparency of over-the-counter derivative markets and to reduce the risks associated with these markets.

The objective of the CSSF's work is to continually improve the accuracy, precision and reliability of the reported transactions via a data analysis module. In 2023, the CSSF sent one observation letter and intervened three times in writing in order to ask for remediation of deficiencies identified at banks established in Luxembourg. In addition, based on the risk-based approach, one on-site inspection was conducted in order to ensure compliance with the regulatory requirements under EMIR.

1.8. Payment services

Under Directive (EU) 2015/2366 of 25 November 2015 on payment services (PSD2), transposed into national law by the Law of 20 July 2018 amending the Law of 10 November 2009 on payment services, the following reports, submitted by credit institutions in their capacity as payment service provider (PSP), were analysed by the CSSF in 2023:

- monthly statistical data on fraud relating to different payment means which are collected by the BCL based on the operational collaboration between the BCL and the CSSF;

- annual updated and comprehensive assessment of the ICT and security risks relating to payment services;
- 168 notifications in connection with 56 major operational or security incidents that the CSSF shared with the EBA and the BCL;
- summary reports of the banks' internal audit regarding compliance of the security measures with the regulatory technical standards on strong customer authentication and common and secure open standards of communication (RTS on SCA&CSC). This exercise concerned a selection of credit institutions according to a risk-based approach.

The CSSF carried out checks of the credit institutions' websites to find out whether they publish, where applicable, the quarterly statistics on the availability and performance of the dedicated interface and the interface(s) used by their payment service users according to Article 32(4) of the RTS on SCA&CSC.

Finally, via Circular CSSF 23/845, which amends Circular CSSF 22/821, the CSSF introduced, in the long form report, a self-assessment questionnaire (SAQ) on the compliance of the security measures with the requirements laid down in the RTS on SCA&CSC to be filled in by the entities concerned.

1.9. Recovery plans

Directive 2014/59/EU of 15 May 2014 (BRRD) and Directive (EU) 2019/879 of 20 May 2019 (BRRD2) establishing a framework for the recovery and resolution of credit institutions and investment firms provide the authorities with instruments which should allow them to deal with failing national or transnational banks and, thus, to limit their systemic impact.

Among the arrangements implemented by both the BRRD and BRRD2, transposed by the Law of 18 December 2015 and the Law of 20 May 2021 respectively, is the obligation to establish a recovery plan indicating notably the measures planned by an institution to restore its viability following a financial deterioration.

In 2023, the CSSF analysed the comprehensiveness, quality and credibility of the recovery plans for which it is the direct supervisory authority.

For Luxembourg banks belonging to European groups, the CSSF participated, in its capacity as host authority, in several joint decisions on group recovery plans involving less significant institutions within the meaning of the SSM. It also contributed to the assessment of recovery plans of some banks under the direct responsibility of the ECB.

1.10. Cooperation in banking supervision

In 2023, the CSSF organised one supervisory college concerning a bank for which it exercised the ultimate consolidated supervision at European level.

As a large number of banking groups is present in the Luxembourg financial sector through subsidiaries, the CSSF regularly participates, as host supervisor, in colleges, including colleges organised by supervisory authorities from non-EEA countries. In addition to the colleges, periodical bilateral meetings take place between the CSSF and the Swiss supervisory authority, the FINMA. Cooperation with the Chinese and US authorities takes place mainly via the participation in supervisory colleges organised by these authorities. It should be borne in mind that since 2014, within the framework of the SSM, a number of supervisory colleges have been internalised. Indeed, for Luxembourg subsidiaries and branches belonging to banking groups with their group head in another Member State participating in the SSM, the coordination between authorities takes place through JSTs.

One of the main objectives of the colleges is the performance of a Joint Risk Assessment based on which the colleges assess the capital adequacy of the banking groups and their subsidiaries with regard to the risks incurred, as well as their liquidity situation. Following this assessment, they take a Joint Decision on Capital and Liquidity (for EEA colleges) which is communicated to the banking groups and their subsidiaries. Moreover, the purpose of the colleges is to promote the exchange of information between authorities, including information on the situation of ML/TF compliance risks.

In accordance with the AML/CFT College Guidelines of the EBA, the CSSF organised nine colleges as home authority and participated, as host authority, in 28 colleges organised by supervisory authorities of other EU Member States in 2023.

The CSSF also closely collaborates with the foreign supervisory authorities within the context of the consultations provided for by the European directives and in all circumstances in which cooperation is needed.

Finally, the CSSF cooperates with the national judicial and law enforcement authorities as well as with the Commissariat aux Assurances in accordance with Article 2 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") and Articles 9-1 and 9-1a of the Law of 12 November 2004 on the fight against money laundering and terrorist financing. Moreover, the CSSF consults the intelligence unit in the context of the procedures for authorisation and qualifying holdings, if deemed necessary.

1.11. Stress testing

Stress tests are exercises aiming to identify sources of risks and vulnerabilities which banks may face and to determine their impact on banks.

The CSSF is involved in stress tests at three levels:

- at EU level, the CSSF assists the EBA in the development of the methodology of its EU-wide stress test relating to solvency which is carried out every two years;
- at SSM level, the CSSF assists the ECB in its annual stress test exercise, in the development of a methodology and during the performance of the stress test. During the 2023 EU-wide stress test coordinated by the EBA, the ECB examined 57 significant banks of the euro area. The EBA published the results obtained for the different institutions at the end of July 2023. In parallel, the ECB performed its own stress test with 41 banks under its direct supervision which had not been included in the EBA's sample. Together, these banks represented about 80% of total euro area banking assets. The CSSF provided its technical expertise in relation to three significant banks having their group head in Luxembourg.

- at national level, the CSSF carries out solvency and other stress tests or sensitivity analyses on an annual or half-yearly basis. The aggregated results of these analyses are regularly presented to international organisations such as the IMF or the OECD which regularly request the CSSF's point of view on the stability of the Luxembourg banking sector.

The results of the solvency stress tests are a source of information to (i) compare, judge and, where appropriate, challenge the results of the stress tests carried out internally by banks in the framework of their ICAAP, (ii) help assess the solvency risk of the institutions, and (iii) help assess the situation and future capital requirements of a bank as a preventive approach. The results of the stress tests form a starting point for the determination of the LSIs' capital levels under Pillar 2 (Pillar 2 Guidance – P2G). A similar approach is adopted as regards liquidity.

1.12. Intra-group credit risks

One of the main risks monitored by the CSSF is related to the significant exposures of Luxembourg banks to banking entities of their group.

The Luxembourg banking sector is primarily composed of subsidiaries and branches of large international banking groups which carry out activities of private banking and/or custody of financial assets in Luxembourg. These activities generate excess liquidity which is either maintained in Luxembourg as liquidity buffer (often deposited with the BCL) or lent to the parent company.

In total, intra-group exposures represented 33% of the assets of the Luxembourg banking sector at the end of 2023. In line with the European rules in this regard and Article 56-1 of the Law of 5 April 1993 on the financial sector, these exposures often represent a multiple of a bank's own funds. In these cases, the CSSF follows and controls compliance by the banks with the legal conditions provided for in the above-mentioned Article 56-1.

2. Developments in the banking sector in 2023

2.1. Development in the number of credit institutions

With 119 entities authorised at the end of the financial year 2023, the number of banks decreased by two entities as compared to 31 December 2022.

Four new banks started their activities in 2023.

Denomination	Start date of the activity	Type of activities
Bank of America Europe Designated Activity Company, Luxembourg Branch	05/05/2023	Corporate Finance
Banque Populaire Alsace Lorraine Champagne, Succursale du Luxembourg	22/05/2023	Retail and Commercial Banking
Bank Pictet & Cie (Europe) AG, succursale de Luxembourg	26/05/2023	Private Banking
KBC Bank - Luxembourg Branch	01/11/2023	Custodian banking

Six banks were deregistered from the official list during 2023.

Denomination	Date of deregistration	Reason
Fideuram Bank (Luxembourg) S.A.	01/01/2023	Merger with Compagnie de Banque Privée Quilvest S.A. (renamed Intesa Sanpaolo Wealth Management in the meantime)
Landesbank Baden-Württemberg Luxembourg Branch	30/03/2023	Cessation of activities
Banque BCP S.A.	22/05/2023	Merger and then conversion into a branch
Pictet & Cie (Europe) S.A.	26/05/2023	Merger and then conversion into a branch
UniCredit Bank AG Luxembourg Branch	30/06/2023	Cessation of activities
Fortuna Banque s.c.	12/10/2023	Liquidation

2.2. Development in banking employment

As at 31 December 2023, the number of employees in Luxembourg credit institutions⁸ amounted to 26,254 compared to 26,012 as at 31 December 2022, representing an increase of 242 people on an annual basis. In 32% of banks, employment increased whereas in 55% of them it decreased.

Compared to the figures of end December 2022, the distribution of employment according to men and women remained almost unchanged with 55% men and 45% women.

2.3. Development of balance sheet and off-balance sheet items

The balance sheet total remained relatively stable compared to 2022 (+0.6%). The slight growth from EUR 923.1 billion to EUR 929.0 billion went hand in hand with, on the assets side, a rise in loans and advances to credit institutions which largely offset the decrease in loans and advances to central banks, households and non-financial companies. On the liabilities side, the growth in amounts owed to credit institutions was offset by a fall in amounts owed to non-monetary investment funds and central banks.

Aggregate balance sheet total - in million EUR⁹

ASSETS	2022	2023 ¹⁰	Variation
Loans and advances to central banks	164,273	153,876	-6.3%
Loans and advances to central governments	3,599	3,347	-7.0%
Loans and advances to credit institutions	338,040	369,214	9.2%
Loans and advances to customers	259,016	240,986	-7.0%
Fixed-income securities	119,267	124,883	4.7%
Variable-yield securities	7,082	7,470	5.5%
Fixed assets and other assets	31,853	29,231	-8.2%
Total	923,130	929,007	0.6 %

LIABILITIES	2022	2023 ¹¹	Variation
Amounts owed to central banks	9,086	6,233	-31.4%
Amounts owed to credit institutions	276,170	298,226	8.0%
Amounts owed to customers	487,762	457,401	-6.2%
Amounts owed represented by securities	57,354	69,866	21.8%
Liabilities (other than deposits) held for trading	8,753	7,378	-15.7%
Provisions	3,133	3,580	14.3%
Subordinated liabilities	2,190	3,182	45.3%
Other liabilities	17,619	17,868	1.4%
Capital (and reserves)	61,063	65,274	6.9%
Total	923,130	929,007	0.6%

As regards off-balance sheet exposures, the Luxembourg banking sector had granted loan commitments and financial guarantees amounting to EUR 155.2 billion as at 31 December 2023 (-7.7% over a year).

8 Figures at the lowest level of consolidation available

9 Figures at the lowest level of consolidation available

10 Preliminary figures

11 Preliminary figures

2.4. Development in the profit and loss account

In 2023, the 51.0% increase in net interest income over a year greatly contributed to the 45.1% rise in profit before provisions and taxes which reached EUR 8,942 million. Due to the slower rise in provisions, net profit for the year 2023 increased by 67.3% compared to 2022 and amounted to EUR 6,603 million. It should be noted that 85% of the banks ended the year 2023 with a positive net result (77% in 2022).

The rise in interest-rate margin by 51.0% coincided with the rise in interest rates and 80% of the banks benefitted from it.

Net fee and commission income decreased by 3.2% year-on-year. This fall only concerns 53% of the banks and breaks down very unevenly among them.

General expenses (+7.3%) continued their upward trend for 81% of the banks. This growth mainly results from the significant rise in staff costs (+10.9%) against a backdrop of inflation.

Given the allocations to provision for risk, which mark a return to the mean following an exceptional year 2022, net results grew by 67.3% year-on-year. In 2022, these provisions increased strongly in relation to commitments to Russian counterparties.

The above-mentioned developments led to a historically low cost-to-income ratio of 48%, against 56% in 2022. Despite this positive development at sectoral level, 17 banks recorded a cost-to-income ratio above 100% as at 31 December 2023.

Development in the profit and loss account - in million EUR¹²

	2022	Relative share	2023 ¹³	Relative share	Variation	
					in volume	in %
Net interest income	6,799	49%	10,268	59%	3,469	51.0%
Net fee and commission income	5,899	42%	5,712	33%	-187	-3.2%
Other net income	1,287	9%	1,357	8%	70	5.5%
Banking income	13,985	100%	17,337	100%	3,352	24.0%
General expenses	7,822	56%	8,395	48%	573	7.3%
<i>of which: staff costs</i>	3,234	23%	3,588	21%	354	10.9%
<i>of which: general administrative expenses</i>	4,587	33%	4,807	28%	220	4.8%
Profit before provisions	6,163	44%	8,942	52%	2,779	45.1%
Net creation of provisions	1,430	10%	732	4%	-698	-48.8%
Taxes	785	6%	1,607	9%	821	104.6%
Net result for the financial year	3,947	28%	6,603	38%	2,656	67.3%

¹² Figures at the lowest level of consolidation available

¹³ Preliminary figures

44 - VII. Supervision of banks

Long-term development of profit and loss account – in million EUR¹⁴

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023 ¹⁵
Net interest income	4,960	4,671	4,281	4,066	4,496	4,717	4,886	4,994	5,384	5,061	4,891	6,799	10,268
Net fee and commission income	3,832	3,727	3,962	4,101	4,720	4,602	4,706	4,975	5,132	5,038	5,943	5,899	5,712
Other net income	76	1,401	2,213	2,217	2,262	3,038	2,166	1,841	1,550	1,401	1,899	1,287	1,357
Banking income	8,868	9,799	10,456	10,384	11,478	12,357	11,758	11,809	12,067	11,501	12,733	13,985	17,337
General expenses	4,789	4,994	5,198	5,005	5,942	6,040	6,253	6,737	7,285	6,893	7,637	7,822	8,395
<i>of which: staff costs</i>	<i>2,535</i>	<i>2,622</i>	<i>2,745</i>	<i>2,624</i>	<i>3,065</i>	<i>3,109</i>	<i>3,161</i>	<i>3,265</i>	<i>3,545</i>	<i>3,016</i>	<i>3,165</i>	<i>3,234</i>	<i>3,588</i>
<i>of which: general administrative expenses</i>	<i>2,253</i>	<i>2,372</i>	<i>2,453</i>	<i>2,381</i>	<i>2,878</i>	<i>2,931</i>	<i>3,092</i>	<i>3,473</i>	<i>3,740</i>	<i>3,876</i>	<i>4,472</i>	<i>4,587</i>	<i>4,807</i>
Result before provisions	4,080	4,805	5,258	5,379	5,535	6,317	5,505	5,071	4,782	4,608	5,097	6,163	8,942
Net creation of provisions	1,572	765	865	327	577	757	956	712	441	922	257	1,430	732
Taxes	18	503	762	799	85	820	827	714	637	595	819	785	1,607
Net result for the year	2,490	3,538	3,631	4,253	4,874	4,740	3,721	3,645	3,703	3,091	4,021	3,947	6,603

2.5. Solvency and liquidity ratios

The banks of the Luxembourg financial centre continued to register high prudential ratios. The average capital ratio total of the banking sector rose from 23.1% to 23.8% during 2023, and remained largely above the regulatory threshold (exclusive of variable buffers) set at 10.5%.

Elements of own funds¹⁶

	2022		2023	
	Amount (in million EUR)	Relative share	Amount (in million EUR)	Relative share
Own funds	50,229.0	100.0%	50,912.3	100.0%
Common Equity Tier 1 capital (CET1)	46,948.2	93.5%	46,633.1	91.6%
Additional Tier 1 capital (AT1)	1,529.9	3.0%	1,577.7	3.1%
Tier 2 capital (T2)	1,750.9	3.5%	2,701.6	5.3%

¹⁴ Figures at the lowest level of consolidation available. Since 2021, the scope of the data of the Luxembourg banking sector has been based on the banks active at the reference period, excluding their foreign branches and their subsidiaries, in order to better represent the level of national activity. Consequently, the December 2020 figures have been restated to take account of the change of scope.

¹⁵ Preliminary figures

¹⁶ Figures at the lowest level of consolidation available

Risk-weighted exposure amounts

	2022		2023	
	Amount (in million EUR)	Relative share	Amount (in million EUR)	Relative share
Total risk exposure amount	217,805.4	100.0%	213,626.1	100.0%
Risk-weighted credit risk, counterparty risk and dilution risk and free deliveries	193,566.0	88.9%	189,579.2	88.7%
<i>of which: Standardised Approach (STA)</i>	142,338.9	65.4%	138,868.9	65.0%
<i>of which: Internal Ratings-Based approach (IRB)</i>	47,670.4	21.9%	46,588.6	21.8%
Total operational risk exposure amount	20,035.6	9.2%	19,998.7	9.4%
Capital ratio	23.1%		23.8%	
Common Equity Tier 1 capital ratio (CET1 ratio)	21.6%		21.8%	

- **Liquidity Coverage Requirement (LCR)**

As at 31 December 2023, the weighted average of the LCR of Luxembourg banks and Luxembourg branches of banks having their registered office outside the EU amounted to 249% as compared to 200% at the end of December 2022. The minimum regulatory threshold is set at 100%.

At aggregate level, the liquidity buffer is mainly composed by Level 1 assets. The short-term deposits made with the BCL still represented the major part of the Luxembourg banks' liquid assets.

- **Net Stable Funding Ratio (NSFR)**

The weighted average of the NSFR of Luxembourg banks and Luxembourg branches of banks having their registered office outside the EU amounted to 154% as at 31 December 2023, as compared to 156% at the end of December 2022. The minimum regulatory threshold is set at 100%.

- **Asset encumbrance ratio**

Luxembourg banks have a low asset encumbrance ratio. As at 31 December 2023, this ratio amounted to 6.20% (6.65% in 2022) on weighted and aggregate basis, showing that most of the Luxembourg banks' assets were unencumbered. Only six banks presented an asset encumbrance ratio exceeding 15% due to their business model. This was especially the case of banks issuing covered bonds. In accordance with the current regulations, these banks were subject to additional reporting requirements.

VIII. Supervision of PFS

1. Investment firms

1.1. Development of investment firms in 2023

1.1.1. Development in the number of investment firms

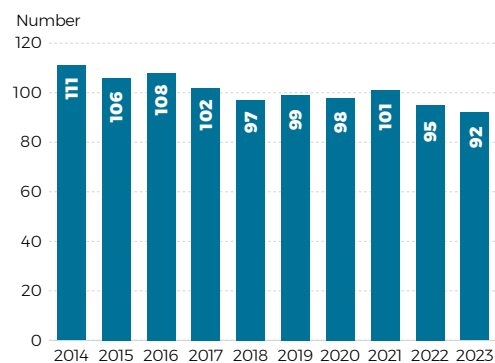
During the year 2023, the number of investment firms decreased to 92 entities as at 31 December 2023 (against 95 entities at the end of 2022), among which 85 Luxembourg entities and seven branches of investment firms from other EU Member States.

Four entities were authorised as investment firms in 2023, whereas no new entity had been authorised in 2022.

Seven entities gave up their investment firm status during the year (idem in 2022) for the following reasons:

- cessation of regulated activities (two entities);
- change into specialised PFS (one entity);
- voluntary liquidation (two entities);
- judicial liquidation (two entities).

Development in the number of investment firms



In terms of IFD/IFR classification¹, about a third of the 85 Luxembourg investment firms registered on the official list as at 31 December 2023 were “class 2” investment firms while the rest of the population were “class 3” investment firms. No “class 1” investment firm has been identified.

1.1.2. Development in employment

While the last few years witnessed an increase in staff numbers, in 2023 the total number of staff of investment firms declined from 1,958 people as at 31 December 2022 to 1,830 people at the end of December 2023. This decrease is mainly ascribable to several entities with a large number of employees that were deregistered from the official list of investment firms in 2023, the effect of which could only be slightly counterbalanced by the increase of staff linked to the newly authorised investment firms.

Employment in investment firms

Year	Number of investment firms	Total staff
2014	111	2,390
2015	106	2,278
2016	108	2,285
2017	102	2,271
2018	97	2,115
2019	99	1,688
2020	98	1,776
2021	101	1,903
2022	95	1,958
2023	92	1,830

It should also be noted that, as at 31 December 2023, about half the investment firms were very small insofar as they had 10 or fewer employees.

1.1.3. Development of balance sheets and net results

The provisional balance sheet total of the investment firms established in Luxembourg reached EUR 1,071 million² as at 31 December 2023, against EUR 977 million as at 31 December 2022, i.e. an increase of 9.6%. This increase results from the positive effect of the newly authorised investment firms on the balance sheet total. This effect was only slightly counteracted by the decrease of the balance sheet total linked to the investment firms which were deregistered from the official list in 2023. In addition, a certain number of market players registered either upward or downward balance sheet variations year-on-year which only had little impact on the increase of the total balance sheet amount.

Investment firms also recorded a positive development in their net results over a year. Indeed, provisional net results amounted to EUR 57.7 million³ as at 31 December 2023, against EUR 55.2 million as at 31 December 2022, representing an increase by 4.6%. This positive development is partly linked to the deregistration from the official list, during the year, of a number of investment firms that recorded losses as at 31 December 2022. This impact was partially offset by several firms that were newly authorised in 2023 and reported losses as at 31 December 2023, and by a number of market players whose net results are slightly declining from one year to the next. It should be noted that 69% of the investment firms ended the year 2023 with a positive net result (against 65% in 2022).

Development of the balance sheet total and of the net results of investment firms

(in million EUR)	2022	2023	Variation in %
Balance sheet total	977	1,071	+9.6%
Net results	55.2	57.7	+4.6%

¹ IFD: Directive (EU) 2019/2034 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
IFR: Regulation (EU) 2019/2033 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

² The branches established in Luxembourg by investment firms originating from other EU/EEA Member States and included, since 2009, in the total number of investment firms are not included in these figures.

³ Same comment as in the above footnote no 2.

1.2. Prudential supervisory practice

1.2.1. Compliance by investment firms with the quantitative standards

• Capital base

In accordance with Article 20 and Articles 24-1 to 24-9 of the Law of 5 April 1993 on the financial sector, authorisation as investment firm is subject to the production of evidence showing the existence of minimum capital base. This capital base⁴ consisting of subscribed and paid-up share capital, relevant share premiums, legally formed reserves and profits brought forward, after deduction of possible losses for the current financial year, must be permanently available to the investment firm and invested in its own interest.

Based on the financial data that investment firms are required to provide to the CSSF on a monthly basis, the CSSF verifies, in particular, ongoing compliance of investment firms with the minimal capital base conditions. In 2023, the CSSF intervened at two investment firms for non-compliance with the legal provisions relating to capital base. For one entity, the CSSF's intervention as regards capital base, combined with other shortcomings identified, resulted in fine in the dissolution and judicial liquidation of the investment firm by the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court).

• Capital ratios

The entry into force, in 2021, of the IFD/IFR changed, among others, the requirements applicable to investment firms with respect to capital ratios pursuant to Article 56 of the Law of 5 April 1993 on the financial sector.

This new prudential regime defines the composition of own funds and the methods to calculate own funds requirements under Parts Two and Three of the IFR. Investment firms are required to comply with these requirements at all times and to notify the CSSF of non-compliance, where applicable.

In 2023, the CSSF intervened at six investment firms for non-compliance with the capital ratio and closely monitored the regularisation processes implemented by the investment firms in case of capital ratio deficiency.

For one entity, the CSSF's intervention as regards capital ratios, combined with other shortcomings identified, resulted in fine in the dissolution and judicial liquidation of the investment firm by the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court).

Moreover, the CSSF intervened at another entity, by way of an injunction letter, for non-compliance of its capital instruments with the applicable regulatory and prudential requirements.

• Concentration risk

Since the entry into force of the IFD/IFR, investment firms have been subject to the provisions relating to concentration risk under Part Four of the IFR.

In 2023, the CSSF did not intervene at investment firms in the framework of the applicable regulations.

• Liquidity requirements

Investment firms must have sufficient liquidity pursuant to Article 43 of the IFR which introduced liquidity requirements. In accordance with this article, investment firms are required to hold a minimum of one third of their fixed overheads requirement of the previous financial year⁵ in liquid assets.

In 2023, the CSSF intervened at one investment firm, by way of an injunction letter, for non-compliance with the liquidity requirements.

⁴ In accordance with Article 20(5) of the Law of 5 April 1993 on the financial sector, subordinated borrowing or profits for the current year are not to be taken into account for the determination of the minimum capital base of a professional of the financial sector.

⁵ Calculation in accordance with the provisions of Article 13(1) of the IFR

1.2.2. Introductory visits

Introductory visits are made on the premises of investment firms that recently received their authorisation and, where appropriate, of existing investment firms that received an authorisation to carry out a new activity in addition to existing authorisations. The purpose of these missions is to verify that the contemplated business plan is being followed and that the systems and infrastructures are correctly implemented. In 2023, the CSSF did not undertake any introductory visits to investment firms.

1.2.3. Specific audits

Article 54(2) of the Law of 5 April 1993 on the financial sector states that the CSSF may request a *réviseur d'entreprises agréé* (approved statutory auditor) to carry out a specific audit at a financial professional in relation to one or more specific aspects of the activities and operations of the institution. The ensuing costs are to be borne by the professional concerned. The CSSF did not formally use this power in 2023.

2. Specialised PFS

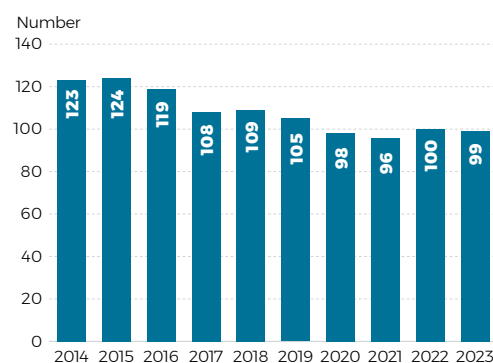
2.1. Development of specialised PFS in 2023

2.1.1. Development in the number of specialised PFS

During the year 2023, the number of specialised PFS decreased to 99 entities (against 100 entities at the end of 2022).

In 2023, four entities (eight in 2022) were authorised as specialised PFS, including one entity that had been previously authorised as investment firm. Five entities gave up their status of specialised PFS during the year, against four in 2022.

Development in the number of specialised PFS



Among specialised PFS, the statuses of corporate domiciliation agent and professional providing company incorporation and management services are the most prevalent with 80 and 83 entities, respectively, authorised under these statuses as at 31 December 2023 (2022: 82 and 84 entities, respectively), followed by the status of registrar agent with 71 entities authorised at that date (2022: idem).

2.1.2. Development in employment

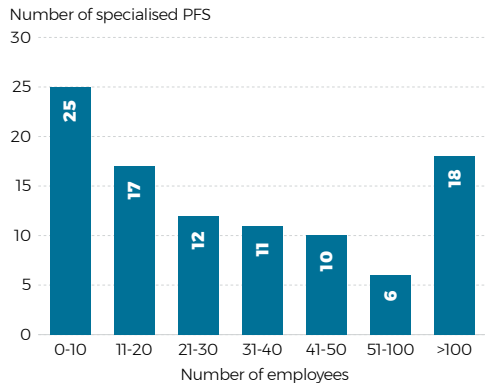
During 2023, the number of people employed by all specialised PFS rose by 406 to a total of 7,258 people, representing an increase of 5.9% as compared to the end of 2022.

Development in employment of specialised PFS

Year	Number of specialised PFS	Total staff
2014	123	3,431
2015	124	3,787
2016	119	3,972
2017	108	4,008
2018	109	4,480
2019	105	5,183
2020	98	5,476
2021	96	5,949
2022	100	6,852
2023	99	7,258

As at 31 December 2023, 18 specialised PFS employed over 100 people (idem at the end of 2022) and 25 specialised PFS employed 10 or fewer people (against 26 entities at the end of 2022).

Breakdown of the number of employees per specialised PFS



2.1.3. Development of balance sheets and net results

Over a one-year period, specialised PFS recorded an overall rise of EUR 307.19 million (+5.0%) in their balance sheet and a decrease of EUR 82.93 million (-33.7%) in their net results.

Development of the balance sheet total and of the net results of specialised PFS

(in million EUR)	2022	2023	Variation in %
Balance sheet total	6,100.46	6,407.65	+5.0%
Net results	246.17	163.24	-33.7%

2.2. Prudential supervisory practice

In the context of the prudential supervision of specialised PFS, the CSSF verifies compliance by specialised PFS with the quantitative and qualitative standards.

2.2.1. Capital base

In accordance with Article 20 and Articles 25 to 28-10 of the Law of 5 April 1993 on the financial sector, authorisation as specialised PFS is subject to the production of evidence showing the existence of minimum capital base for a PFS authorised as a legal person, or own assets for a PFS authorised as a natural person.

In 2023, the CSSF identified cases of non-compliance with the legal provisions in this respect at six entities (against 12 entities in 2022). Their situation was regularised in a satisfactory manner.

2.2.2. Compliance of the day-to-day management and Corporate Governance

In 2023, the CSSF intervened 15 times (four times in 2022) by way of observation letters due to situations of non-compliance in the day-to-day management of specialised PFS, notably linked to insufficient presence and/or effective involvement of one of the two managers in the day-to-day management of the entity or to the need for reorganisation of the entity's administrative or management body composition.

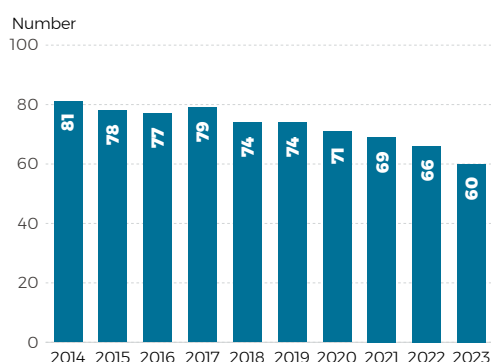
3. Support PFS

3.1. Development of support PFS in 2023

3.1.1. Development in the number of support PFS

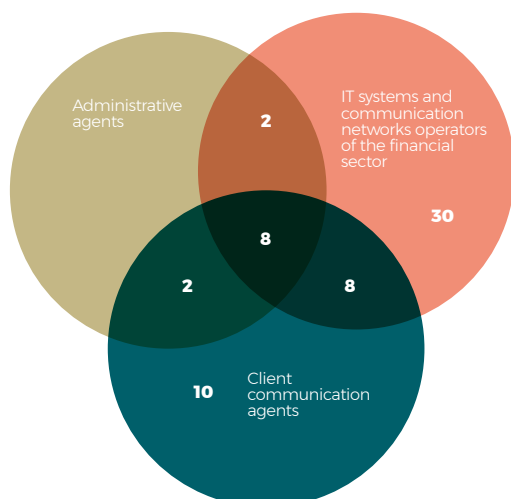
The number of support PFS was 60 as at 31 December 2023.

Development in the number of support PFS



In 2023, six support PFS gave up their authorisation as part of a redefinition of their business strategy, in several cases at group level.

Breakdown of support PFS by status



As administrative agents are ipso jure authorised to carry out the activities of client communication agents, there is no entity that only has the status of administrative agent.

3.1.2. Development in employment

The number of support PFS staff decreased from 8,704 people at the end of 2022 to 7,710 people as at 31 December 2023, representing a decline of 11%. This reduction in the number of staff can be ascribed to the six support PFS that gave up their authorisation, one of which employed 659 people as at 31 December 2022. It is worth mentioning that the average number of employees per support PFS increased by 15% over the past 10 years.

Development in support PFS employment

Year	Number of support PFS	Total staff
2014	81	9,043
2015	78	9,218
2016	77	9,185
2017	79	9,656
2018	74	9,931
2019	74	10,005
2020	71	8,987
2021	69	8,951
2022	66	8,704
2023	60	7,710

3.1.3. Development of balance sheets and net results

The balance sheet total of all support PFS amounted to EUR 1,382.2 million as at 31 December 2023, against EUR 1,680.3 million as at 31 December 2022, representing a decrease of 17.7%. This drop can be explained by the six support PFS that gave up their authorisation, of which one support PFS recorded a total balance sheet of EUR 304.9 million as at 31 December 2022.

The net results fell by 26.7%, from EUR 90 million as at 31 December 2022 to EUR 65.9 million as at 31 December 2023. This decrease is notably linked to two support PFS which gave up their authorisation and whose net results totalled EUR 19.8 million as at 31 December 2022.

3.2. Prudential supervisory practice

3.2.1. Publication of Circular CSSF 24/850

Circular CSSF 24/850, which was published on 19 January 2024, defines the documents to be submitted on an annual basis by support PFS and their *réviseurs d'entreprises agréés* (approved statutory auditors, REAs) as well as the new arrangements for the preparation and submission of these documents. This circular is the result of an in-depth review of the objective and content of the information the CSSF intends to receive in the framework of its supervision. The newly introduced tools have been defined according to a risk-based approach and with due regard to the principle of proportionality, taking notably into account the services offered by the support PFS to the financial sector.

The circular repeals Circulars CSSF 12/544 and CSSF 19/727, and it introduces a self-assessment questionnaire to be completed on an annual basis by support PFS and to be submitted to the CSSF as a replacement of the risk assessment report (RAR) previously required under Circular CSSF 12/544. It also simplifies the descriptive report to be provided on an annual basis by support PFS.

Support PFS must henceforth transmit on an annual basis:

- the self-assessment questionnaire;
- the descriptive report, adapted in accordance with Annex 1 of the circular;
- all other documents expected as included in Annex 2 of the circular (documents expected in the context of the descriptive report and of the financial year-end).

The circular also broadly details the role and engagement of REAs as part of the statutory audit of support PFS. Thus, it establishes a specific regulatory framework applicable to the management letter and introduces a separate report detailing all the test procedures defined by the CSSF. Both documents must be drawn up by the support PFS' REAs on an annual basis.

In practice, the application of the principle of proportionality and of the risk-based approach implies that the definition and volume of questions and tests applicable depend on the type of authorisation held and on the type of risk to which the support PFS may expose the financial sector.

The above requirements and regulatory framework apply for the first time to the financial years closing on or after 31 December 2023. The CSSF expects to receive the first documentation and information complying with the new circular as from July 2024.

3.2.2. Impact of the European Commission's work (NIS2, DORA)

Directive (EU) 2022/2555 (NIS2) on measures for a high common level of cybersecurity across the Union, which repeals Directive (EU) 2016/1148 (NIS1), entered into force on 16 January 2023 and will apply from 18 October 2024. NIS2 modernises the existing legal framework considering the increased digitalisation of the EU internal market, the evolution of cybersecurity threats as well as the findings of the European Commission following its assessment of the implementation of NIS1 in the Member States.

In the framework of the national transposition of NIS2 carried out by the HCPN (Haut-Commissariat à la protection nationale), the CSSF continued its exchanges with the ILR (Institut Luxembourgeois de Régulation) and the HCPN in 2023. Draft law No 8364 has thus been submitted to the Chamber of Deputies in March 2024, and maintains the CSSF as national authority for the financial sector, financial market infrastructures and support PFS falling within the scope of NIS2.

The CSSF underlines the importance of NIS2 for support PFS. A large share of the support PFS will be concerned by this directive, as they provide services related to the sectors "digital infrastructure" and "ICT service management" covered by that directive. In 2023, the CSSF participated with the ILR in a conference organised by FEDIL to raise support PFS' awareness on the requirements of NIS2, and to encourage their preparedness. Moreover, the CSSF follows the evolution of the level-2 texts that are being drafted, notably to assess their alignment with the existing prudential supervision framework for support PFS.

The CSSF also pursued its work relating to the Digital Operational Resilience Act (DORA) which will apply as from 17 January 2025. Further details on DORA and the involvement of the CSSF are described in Chapter XV “Supervision of information systems”.

In principle, support PFS do not fall directly within the scope of DORA, since the requirements of the regulation apply to their financial sector clients. However, due to the nature of the services offered, certain support PFS will be considered as ICT third-party service providers within the meaning of DORA. Some of them could be designated by the three European Supervisory Authorities as critical ICT third-party service providers (CTPP). Consequently, the PFS designated as CTPP would be subject to the CTPP Union Oversight Framework introduced by Section II of Chapter V of DORA.

More generally, it is worth adding that DORA should remain of interest to all PFS that are considered as ICT third-party service providers, whether designated as CTPP or not. As a matter of fact, support PFS, as well as their European competitors, will be indirectly concerned by DORA as ICT third-party service providers for the entities that are included in the scope of this regulation. They must hence be prepared to meet the requirements of their role as ICT third-party service provider. For instance, the contractual arrangements for the use of their ICT services must comply with the requirements of DORA in that area.

3.2.3. Qualification of activities and authorisation applications

The qualification of activities under the Law of 5 April 1993 on the financial sector is often the first contact between an entity and the CSSF and allows determining whether a business activity falls within the scope of the aforementioned law and, consequently, requires an authorisation. The CSSF processes on average several tens of qualifications of activities and related questions per year. When the CSSF qualifies an activity as activity subject to the law, it informs the entity thereof and the authorisation procedure starts.

In 2023, the CSSF received two applications for authorisation as support PFS and two applications for the extension of authorisation. The two support PFS application files are currently being pre-examined. As concerns the applications for the extension of authorisation, one extension of authorisation was granted whereas the other is being pre-examined.

3.2.4. Introductory visits

Introductory visits are made on the premises of support PFS that recently received their authorisation and, where appropriate, of existing support PFS that received an authorisation to carry out a new activity in addition to existing authorisations. The purpose of these missions is to verify that the contemplated business plan is being followed and that the systems and infrastructures are correctly implemented. In 2023, the CSSF visited one support PFS.

3.2.5. Capital base

In accordance with Article 20 and Articles 29-1 to 29-6 of the Law of 5 April 1993 on the financial sector, authorisation as support PFS is subject to the production of evidence showing the existence of minimum capital base for a PFS authorised as a legal person.

In 2023, the CSSF identified cases of non-compliance with the legal provisions in this respect by two entities (against five entities in 2022). Their situation was regularised in a satisfactory manner.



IX. Supervision of payment institutions and electronic money institutions

1. Regulatory framework and supervisory practice

The Law of 10 November 2009 on payment services imposes authorisation, operational and supervisory requirements on payment institutions and electronic money institutions that provide payment services or that issue electronic money.

The CSSF's prudential supervision aims to verify that payment institutions and electronic money institutions subject to its supervision continuously observe the legal, regulatory and contractual provisions relating to their organisation and operation, with the objective of ensuring the protection of payment service users and electronic money holders as well as the stability of the financial system. In this regard, the CSSF notably attaches particular importance to the establishment, by these institutions, of stable and performing mechanisms for safeguarding the funds of payment service users and electronic money holders.

Moreover, the CSSF is continuing its actions in order to ensure the deployment by payment institutions and electronic money institutions of compliant IT solutions that secure the transactions and the access to payment accounts as well as of fraud mitigation measures relating to the different means of payment in accordance with the relevant European rules.

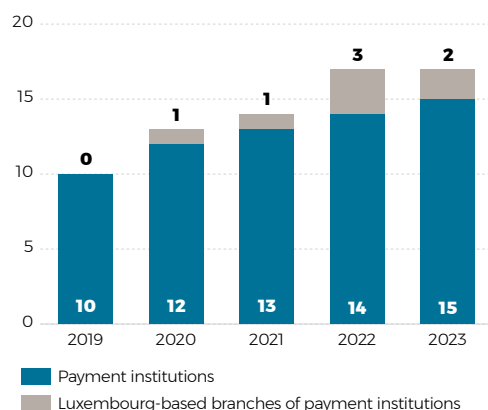
2. Development of payment institutions and electronic money institutions in 2023

2.1. Development of the number of payment institutions and electronic money institutions

2.1.1. Payment institutions

In 2023, one new payment institution was listed in the public register of payment institutions, bringing the total number of institutions in the register to 15 (compared to 14 in 2022). Moreover, there were 16 branches established in other EU Member States by four of these authorised institutions as well as two branches established in Luxembourg by payment institutions authorised in other EU Member States.

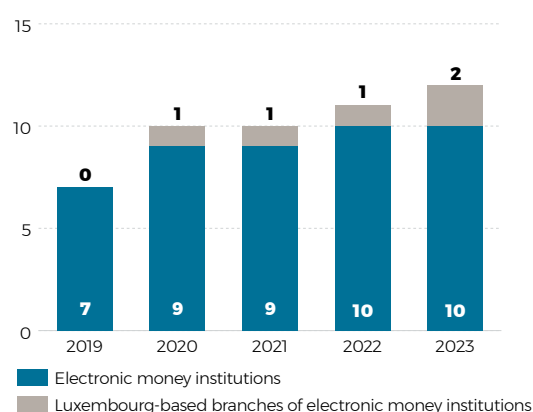
Development of the number of payment institutions



2.1.2. Electronic money institutions

In 2023, no new electronic money institution was listed in the public register of electronic money institutions, so that the total number of institutions in the register remained at 10. Moreover, there were four branches established in other EU Member States by two of these authorised institutions, as well as two branches established in Luxembourg by electronic money institutions authorised in other EU Member States.

Development of the number of electronic money institutions



2.2. Payment services provided

The Annex to the Law of 10 November 2009 on payment services lists the payment services that payment institutions and electronic money institutions may be authorised to provide. As at 31 December 2023, the institutions authorised to provide such services were broken down as follows.

Number of institutions authorised by payment service

Payment service	Number of institutions
1 - Cash placement on a payment account	0
2 - Cash withdrawal from a payment account	1
3 - Execution of payment transactions, including transfers of funds	16
4 - Execution of payment transactions where the funds are covered by a credit line	3
5(a) - Issuing of payment instruments	6
5(b) - Acquiring of payment transactions	16
6 - Money remittance	7
7 - Payment initiation service	3
8 - Account information service	1
Issuing, distribution and redemption of electronic money	10

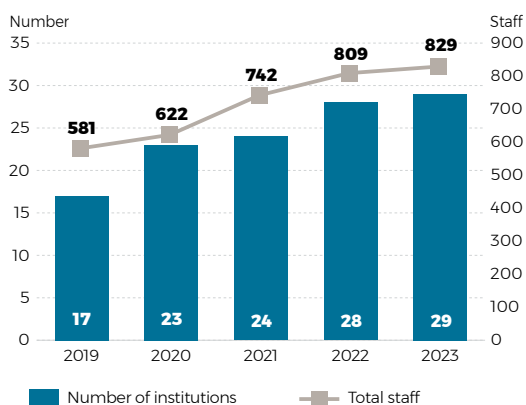
These services are provided in Luxembourg and on the territory of other EU Member States through the establishment of branches, by engaging one or several agents and by way of free provision of services.

56 - IX. Supervision of payment institutions and electronic money institutions

2.3. Development in staff numbers within payment institutions and electronic money institutions

In 2023, the number of staff employed by payment institutions and electronic money institutions and branches established in Luxembourg of payment institutions or electronic money institutions authorised in other EU Member States increased by 2.5%, representing 829 positions in Luxembourg as at 31 December 2023.

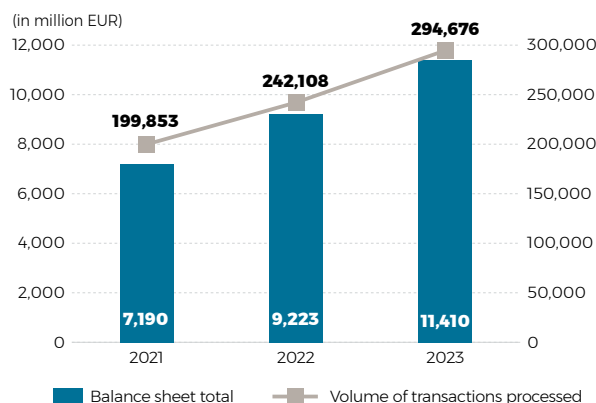
Development in staff numbers within payment institutions and electronic money institutions



2.4. Development of the balance sheet total and of the volume of transactions processed by payment institutions and electronic money institutions

The balance sheet total of payment institutions and electronic money institutions amounted to EUR 11.4 billion as at 31 December 2023, representing an increase of approximately 24% compared to the end of 2022. In 2023, these institutions processed an overall volume of payment transactions of about EUR 295 billion, i.e. an increase of 22% compared to the end of 2022. These increases were essentially linked to the development of acquiring of payment transactions services, in particular those related to the development of e-commerce.

Development of the balance sheet total and of the volume of transactions processed by payment institutions and electronic money institutions



3. Prudential supervision of payment institutions and electronic money institutions

In the framework of its prudential supervision through a risk-based approach, the CSSF notably ensures compliance by payment institutions and electronic money institutions with the safeguarding requirements of funds of payment service users and electronic money holders, the requirements on central administration, on the sound and prudent management of these institutions, including maintaining an adequate capital base, as well as the requirements relating to payment security.

As regards, in particular, the supervision for the purposes of the fight against money laundering and terrorist financing, please refer to Chapter XXI of this report.

The CSSF intervenes at these institutions through interviews with the members of the management and supervisory bodies and with the internal control functions, as well as through observation or injunction letters.

In this context, the CSSF notably points out the exchanges relating to:

- the implementation of sound internal governance arrangements within the institutions, including in particular decision-making processes that are well established and clearly documented within the supervisory and management bodies, and the establishment of permanent, independent and efficient internal control functions;
- the internal control framework ensuring the sound and effective safeguarding of the funds of payment service users and electronic money holders and in particular the decision-making, oversight and reporting processes established by these institutions;

- the central administration, the existence in Luxembourg of the decision-making and administrative centres and the internal control functions established in the context of the outsourcing of operational and/or IT functions with reference to the requirements of Circular CSSF 22/806 on outsourcing;
- the continuous reassessment and necessary enhancement of the institutions' human and technical means in the context of the growth, development and/or extension of their payment and electronic money services.

X. Supervision of investment fund managers and UCIs

1. Key figures for 2023

1.1. Investment fund managers (IFMs)

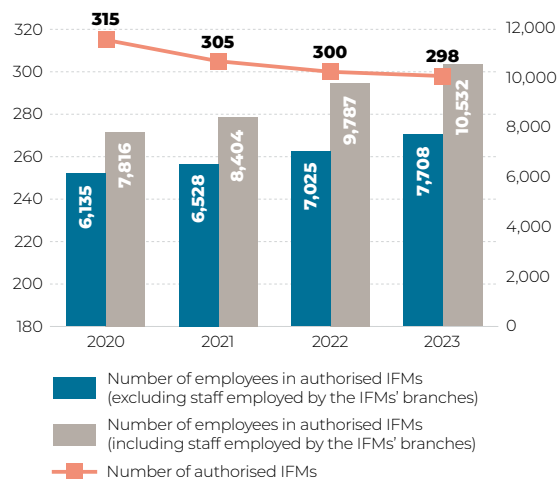
298

authorised IFMs as at 31 December 2023

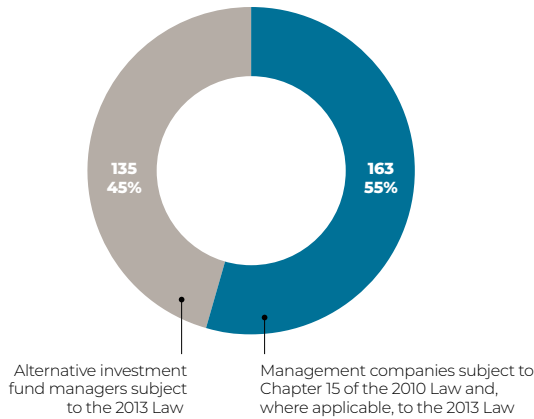
EUR 6,511.6 bn

assets under management, of which 80% managed by authorised IFMs

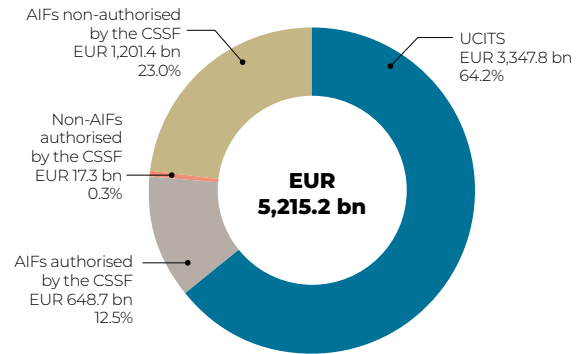
Evolution of the number of authorised IFMs and of their employees



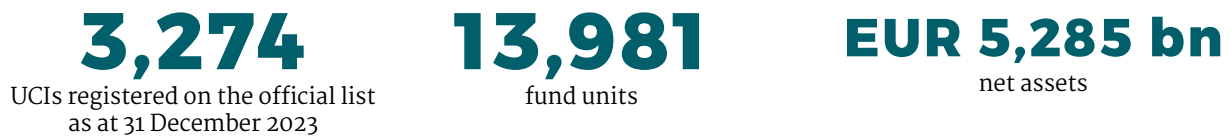
Breakdown of authorised IFMs by category



Breakdown of assets managed by authorised IFMs by product type



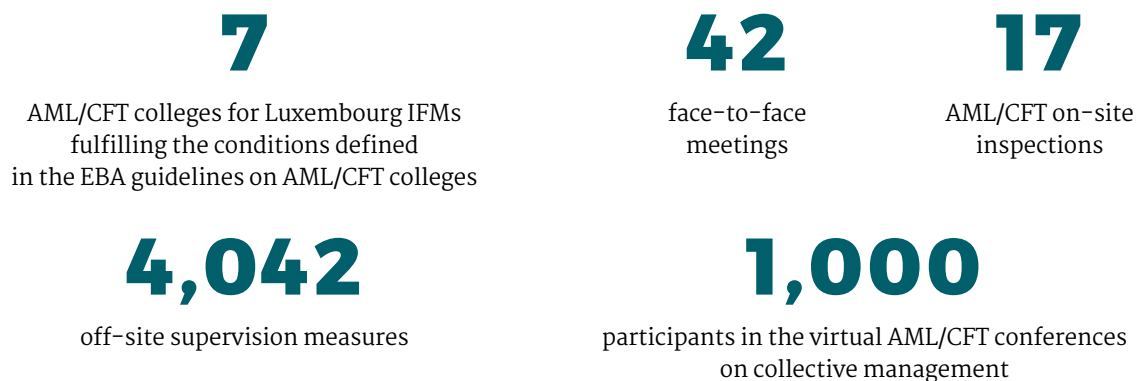
1.2. Undertakings for collective investment (UCIs)



1.3. Prudential supervision



1.4. AML/CFT



2. Major events in 2023

2.1. Development of UCIs in a context of monetary policy tightening, high inflation and geopolitical risks

The year 2023 was marked by the geopolitical context (ongoing war in Ukraine, outbreak of the Israel-Hamas conflict in October 2023, tensions between China and the United States of America), but also the continuation of the restrictive monetary policies that had been introduced as soon as 2022 by the main central banks to fight inflation. While inflation significantly declined during the year, higher interest rates had an impact on the economic activities and investment funds, paving the way for three major events: the US regional banks crisis, the real estate sector crisis and asset reallocation.

2.1.1. The US regional banks crisis and the collapse of Credit Suisse

In the first quarter of 2023, a banking crisis unfolded in the United States of America with the failure of Silicon Valley Bank (SVB) in March, closely followed by the collapse of Silvergate Bank and Signature Bank. The default of these regional banks stemmed from massive withdrawals (bank run) over fears about the banks' solvency, notably following the sale, by SVB, of US Treasury bonds at a loss as market interest rates rose.

The threat of contagion to the whole banking sector led the US regulators to take extraordinary measures to sustain the US banking sector. The Federal Reserve also established a Bank Term Funding Program (BTFP). This crisis affected the international financial system with, in Europe, the collapse of Credit Suisse, which was bought by UBS following extraordinary measures brokered by the Swiss government in March 2023.

In the US, First Republic Bank, the latest victim of the crisis, was closed down in May 2023 following massive deposit withdrawals and despite the US government rescue efforts.

The direct exposure of Luxembourg investment funds to those assets affected by the US regional banks crisis was, in general, limited (less than 0.2% of total assets) and the redemptions linked to that sector remained overall very low, with no contagion or major impact on other Luxembourg investment funds.

2.1.2. Real estate market crisis

The slowdown in the housing market, which started in 2022 mainly as a result of higher energy and commodity prices, continued in 2023 in a context of rising interest rates and tightened credit conditions. Prices fell significantly in most countries (-13.6% between September 2022 and September 2023 for the Luxembourg residential real estate according to the statistical data of the Luxembourg Housing Observatory (*Observatoire de l'Habitat*)).

The CSSF monitored the real estate slowdown on a sample of investment funds via a dedicated form, notably by focussing on risk perception, the evolution of redemptions, the use of liquidity management tools, valuation practices and the use of credit lines.

Based on this questionnaire and, more generally, on the risk monitoring performed by the CSSF on real estate investment funds, liquidity risk appeared to be relatively limited as the majority of real estate funds are closed-ended, or, in the case of open-ended funds, as they report a limited liquidity mismatch, on average, and generally use liquidity management tools that allow managing liquidity risk, including in particular the possibility to defer redemptions based on market liquidity, and are largely held by institutional investors with longer-term investment targets. Capital outflows for real estate investment funds authorised by the CSSF amounted to 2.5% of the value of total net assets in 2023 (compared to 1.4% over the same period for all Luxembourg investment funds authorised by the CSSF).

According to the data available, leverage-related risk remains relatively limited as the levels of leverage tend to be within the lower range of levels observed in Europe¹. However, these figures may increase upon clarification by ESMA on the necessity to apply a look-through on the leverage calculation.

The information collected by the CSSF shows that valuation risk seems to remain rather limited although it is increasing, whereas the decrease in the number of real estate transactions implies that the real value of real estate assets is more difficult to assess, with financial players relying more on model-based valuations.

2.1.3. Asset reallocation

The year 2023 was also marked by capital movements that favoured less risky assets, considering the high short-term interest rate levels that had not been observed since the 2008 crisis, with, notably, several years of negative rates for the euro.

The net assets of money market funds thus increased by 19%, from EUR 413 billion at the end of 2022 to a historically high level of EUR 495 billion in December 2023 (benefitting also from the banking crisis).

As for capital movements, bond funds remained relatively stable whereas equity funds and mixed funds recorded net redemptions of -4.6% and -5.4% compared to total net assets.

2.2. Liability Driven Investment Funds (LDI Funds)

Three alternative investment fund managers are active in the segment of LDI Funds denominated in GBP in Luxembourg.

As described in the 2022 Annual Report of the CSSF, following the turmoil during the “mini-budget” crisis and a series of interactions with the Central Bank of Ireland and ESMA, the CSSF issued a letter to the investment fund managers of GBP LDI Funds active in Luxembourg, requesting them to maintain the enhanced level of resilience that had been built up (yield buffer for resilience to average rate variations of 300 to 400 basis points).

Further actions have been carried out in 2023 in coordination with the other authorities involved to establish a more structural framework that will also ensure future resilience of these funds.

Building on these actions, a consultation was launched on 23 November 2023² with a view to introducing macroprudential measures which notably include a yield buffer for GBP LDI Funds to ensure maintaining resilience to a minimum of 300 basis points interest rate variation, via the use of Article 25 of the AIFMD as transposed into Luxembourg law by Article 23 of the 2013 Law. Moreover, the CSSF contributed to the implementation, by the relevant European and UK authorities, of a common reporting for the follow-up of GBP LDI Funds.

¹ Cf. *TRV Risk Analysis- Assessing risks posed by leveraged AIFs in the EU* published by ESMA on 30 January 2024 (https://www.esma.europa.eu/sites/default/files/2024-01/ESMA60-1389274163-2572_TRV_article_-_Assessing_risks_posed_by_leveraged_AIFs_in_the_EU.pdf)

² <https://www.cssf.lu/en/2023/11/cssf-communication-on-gbp-liability-driven-investment-funds-consultation/>

2.3. Environmental, Social and Governance (ESG)

Commission Delegated Regulation (EU) 2022/1288 supplementing Regulation (EU) 2019/2088 (SFDR) with regard to regulatory technical standards (SFDR RTS) entered into force on 1 January 2023. On 27 July and 6 September 2022, the CSSF published two communiqués on this topic to provide clarifications on the procedure to follow to ensure compliance of pre-contractual information of financial market participants with these regulations.

The SFDR RTS were amended by Delegated Regulation (EU) 2023/363 of 31 October 2022 which introduces pre-contractual and periodic transparency requirements for fossil gas and nuclear energy activities that are aligned with the taxonomy for financial products disclosure under Articles 8 and 9 of SFDR. On 8 March 2023, the CSSF published a communiqué on the entry into force of the amended SFDR RTS.

In 2023, the CSSF also updated its FAQs on sustainability-related disclosures in the financial sector to further clarify the use of ESG or sustainability-related terminology in fund names as well as the use of efficient portfolio management techniques by funds disclosing under Article 9 of SFDR.

On 17 May 2023, the European Supervisory Authorities published consolidated questions and answers on the SFDR and SFDR RTS which combine all the clarifications given by the European Supervisory Authorities and the European Commission on this topic.

Also in May 2023, the European Supervisory Authorities published their *Progress Report on greenwashing* which aims to support a better understanding of greenwashing and greenwashing risk, and to assess which areas of the sustainable investment value chain are more exposed to this risk. This report also provides a first definition of greenwashing.

In terms of supervisory actions, the CSSF performed a thematic review on the implementation of the regulatory provisions linked to sustainability risk in the investment funds industry in 2023. This review reflects observations made by the CSSF during both its off-site supervision and the on-site inspections in this area. In this thematic review document, published in August 2023, the CSSF issued a series of recommendations to IFMs and investment funds. They were requested to review the shortcomings identified, if any, within their organisation and in terms of sustainability-related disclosure, and to take the necessary corrective measures.

In July 2023, ESMA announced the launch of a Common Supervisory Action (CSA) with national competent authorities across the EU on transparency and the integration of sustainability risk in the investment fund sector. The first phase, which focusses more closely on greenwashing, was launched by the CSSF on 6 September 2023.

2.4. Follow-up on the CSA on the valuation of less liquid assets held by UCITS and open-ended AIFs

In January 2022, ESMA launched a CSA with national competent authorities on the supervision of the asset valuation methodologies under the UCITS Directive and the AIFMD across the EU. In 2022, the CSSF analysed the information collected from a sample of 30 IFMs, selected in accordance with the methodology developed by ESMA, and drew up a summary report for ESMA.

In 2023, the CSSF undertook supervisory measures in the form of on-site inspections and bilateral contacts with a certain number of IFMs that were part of the sample to address the shortcomings and/or vulnerabilities observed.

In May 2023, ESMA published a consolidated report detailing the outcome of the CSA. In July 2023, building on this report and its analyses of the Luxembourg IFM sample, the CSSF published a feedback report including its main observations and the related improvement recommendations in respect of the applicable regulatory requirements.

This feedback report is intended for all IFMs managing UCITS and/or AIFs. Despite the differences in the regulatory framework for IFMs managing UCITS and IFMs managing AIFs as concerns the valuation function, IFMs managing UCITS should try to adhere to the AIFMD framework to ensure the same degree of protection for UCITS retail investors as for professional investors. The report focusses on six topics:

- appropriateness of valuation policies and procedures;
- valuation under stressed market conditions;
- independence of the valuation function and use of third parties;
- early detection mechanisms for valuation errors and transparency to investors;
- open-ended funds investing in private equity and real estate assets;
- involvement of depositaries in the verification of the valuation framework of IFMs.

On that basis, the CSSF asked all IFMs managing UCITS and/or AIFs to conduct a comprehensive assessment of their valuation framework in relation to the opinions and observations of ESMA and the CSSF's feedback report, and to take, if appropriate, the necessary corrective measures by 31 December 2023.

Further investigations will be performed on a certain number of IFMs in this respect in 2024.

2.5. Thematic review on costs and fees

In March 2023, as part of the prudential supervision of UCIs, the CSSF launched a thematic analysis targeting a limited number of IFMs managing UCIs with an abnormally high level of costs and fees compared to market standards for similar funds, notably with a view to asking IFMs to take corrective measures in the best interest of investors.

The main findings emerging from this analysis were:

- the confirmation by the IFMs of abnormally high levels of costs and fees charged to certain funds they manage;
- inadequate/insufficient reviews performed of the level of fees charged to the funds they manage for most of the IFMs concerned;
- a lack of efficient measures and/or inadequate measures to remedy the situation for the UCIs concerned by these high levels of costs and fees before the intervention of the CSSF;
- the late implementation of corrective measures in the majority of the cases analysed.

Based on these findings, the CSSF performed a detailed follow-up of the IFMs concerned in order to ensure that the necessary corrective measures (e.g. significant decrease in fees following the renegotiation of contracts, liquidation, merger) are implemented to remedy the situation in the best interest of investors within a short timeframe.

2.6. Follow-up on the implementation of Circulars CSSF 21/788, CSSF 21/789 and CSSF 21/790 (reform of the long form report)

In 2023, the CSSF continued its work on the implementation of the reform of the long form report for UCIs, with a focus notably on the following topics:

- the implementation of the first annual separate reports drawn up by the *réviseurs d'entreprises agréés* (approved statutory auditors) for SIFs and SICARs as from the financial years closing on 30 June 2023, in accordance with the phased approach as laid down in Circular CSSF 21/790;

- the implementation of an IT solution optimising the completion of the self-assessment questionnaire for UCIs, as provided for in Circular CSSF 21/790 (cf. CSSF communiqué dated 15 November 2023³);
- the implementation of ad hoc updates of certain questions of the separate report for UCIs, as provided for in Circular CSSF 21/790, in order to clarify or complement, with regard to the applicable regulatory requirements, certain topics covered by this report;
- the inclusion of an AML/CFT section in the separate report, as provided for in Circular CSSF 21/790, for UCIs which have designated an IFM outside of Luxembourg;
- the provision of further guidance in the self-assessment questionnaire for UCIs to clarify certain questions (e.g. tooltips), taking also into account the feedback received from the industry.

Moreover, the CSSF analysed the information and responses received through the self-assessment questionnaires and separate reports for UCIs using a risk-based approach, and integrated these elements into its prudential supervisory practices, including notably exchanges with certain players/entities to clarify some points and to request corrective actions or measures in the event of deficiencies or shortcomings identified.

On this basis, the CSSF has been able to establish the preliminary findings from the different questionnaires and the related topics, based on a transversal thematic analysis of the closing documents introduced by Circular CSSF 21/790. The industry will be provided with specific feedback on this analysis in 2024.

2.7. Follow-up of the implementation of Circular CSSF 22/811

On 16 May 2022, the CSSF published Circular CSSF 22/811 on UCI administrators which clarified the activity of UCI administrators by specifying the principles of sound governance and the CSSF requirements on internal organisation and good practice applicable to them. This circular also introduced a new annual reporting for UCI administrators to strengthen the CSSF's risk-based supervision.

In 2023, the circular was further implemented in the CSSF's supervisory activities, notably through the following:

- development and introduction of the annual reporting tool on the eDesk platform, as well as via a solution based on the submission of a structured file through a S3 (simple storage service) protocol;
- publication of a dedicated user guide, explaining the procedures for completing, validating and submitting the different report types;
- support to the market for the implementation of Circular CSSF 22/811, notably through the CSSF's participation in several conferences and bilateral discussions with market participants;
- review and update of the FAQs related to Circular CSSF 22/811.

³ <https://www.cssf.lu/en/2023/11/reports-foreseen-by-circulars-cssf-21-788-21-789-and-21-790-applicable-as-from-year-end-31-december-2023-now-available-in-edesk-and-information-on-main-updates/>

3. Prospects for 2024

3.1. Environmental, Social and Governance (ESG)

The following items might impact the ESG legislative and regulatory landscape as from 2024:

- the publication, on 14 December 2023, of ESMA's Public Statement on draft guidelines on funds' names using ESG or sustainability-related terms, which highlights the main features of the future guidelines whose publication will occur shortly after the entry into force of the revised AIFMD and UCITS Directive;
- the publication, on 4 December 2023, by the European Supervisory Authorities, of the final report on draft Regulatory Technical Standards (RTS) amending, in particular, the disclosures of principal adverse impacts and the disclosure templates under SFDR;
- the consultation by the European Commission on the implementation of SFDR, which took place between September and December 2023, to assess potential shortcomings, the usability of the regulation and its ability to play its part in tackling greenwashing;
- the work by the European Supervisory Authorities to finalise their greenwashing report, which will be published in May 2024.

As far as supervisory actions are concerned, the second stage of the CSA on sustainability-related disclosures and the integration of sustainability risks in the investment fund sector will be launched in 2024. This phase will focus on the review of sustainability-related disclosures and the integration of sustainability risks in the organisational arrangements of IFMs. The publication of the ESMA and CSSF reports will follow in due course; ESMA announced working on a final report to be published at the beginning of 2025.

3.2. Thematic review on costs and fees

As part of the prudential supervision of UCIs, the CSSF will continue its reviews and analyses of the levels of costs and fees charged to UCIs. In the course of 2024, it will launch a new thematic analysis on this topic, based in particular on the information collected through the self-assessment questionnaires for UCIs, as provided for in Circular CSSF 21/790.

3.3. Revision of Circular CSSF 02/77

In 2023, the CSSF continued its work, in consultation with the key market players of the investment fund industry, on the revision of Circular CSSF 02/77 on the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to UCIs. This revision takes into account the numerous regulatory developments since its publication in 2002 and the experience gained by the CSSF, while specifying the guidelines to be followed for certain types of errors and non-compliance with investment rules with a view to protecting the interests of investment fund investors.

The new circular will be published in 2024, as well as an update of the relating FAQs to provide further clarifications and calculation examples, where applicable.

Moreover, the CSSF will carry out a review of the working processes related to this circular in 2024, including in particular an adaptation of the error notification form and the integration of the notifications in a more secure transmission environment.

3.4. Revision of Circular CSSF 11/512

In 2023, the CSSF worked, in consultation with the market players of the investment fund industry, on the revision of Circular CSSF 11/512 on the organisation of the permanent risk management function and on the risk management policy and process of management companies. The purpose of this revision is to integrate in this new circular the legal developments in risk management, notably as regards AIFMs, and to specify in a single circular the rules applicable to all Luxembourg authorised IFMs. This work will continue in 2024.

3.5. Follow-up on the implementation of Circulars CSSF 21/788, CSSF 21/789 and CSSF 21/790

In 2024, the CSSF will continue its work on the implementation of the reform of the long form report, notably as regards the following themes:

- the review of the information and responses received through these reports following a risk-based approach, including the new ad hoc questions and sections introduced in 2023;
- the transversal thematic review of closing documents, with a view to establishing findings and providing related feedback to the industry;
- the development of functionalities allowing an efficient use and management of the documents in eDesk;
- the review and update of the questions included in these reports and of the relevant guidance, taking into account the feedback received and the regulatory developments;
- the integration of the first annual separate reports drawn up by the *réviseurs d'entreprises agréés* for SIFs and SICARs as from the financial years closing on 30 June 2023, in accordance with the phase-in period laid down in Circular CSSF 21/790, into the prudential supervisory practice.

4. Prudential supervisory practice

The CSSF's prudential supervision aims to ensure that IFMs and UCIs subject to its supervision continuously observe all legal, regulatory or contractual provisions relating to their organisation and operation, with the objective of guaranteeing investor protection and stability of the financial system.

Prudential supervision is exercised notably via:

- off-site supervision based on the analysis of the periodic financial information, annual reports, other reports (including the reports of the *réviseurs d'entreprises agréés*) and regular or ad hoc information received by the CSSF;
- on-site supervision, i.e. on-site inspections carried out by the CSSF agents at the offices of supervised entities.

4.1. Off-site supervision of UCIs

4.1.1. Supervision based on closing documents of UCIs

In the framework of the review of annual reports and of management letters as well as of the reports introduced by Circular CSSF 21/790, i.e. the self-assessment questionnaire (SAQ) and the separate report (SR) to be submitted annually by UCIs, the CSSF intervened with certain funds and/or their IFMs.

These interventions aimed notably at addressing the deficiencies noted by the *réviseurs d'entreprises agréés* in the annual reports, management letters and in the separate reports, as well as the deficiencies noted in relation to the information provided in the UCI's SAQs.

In 2023, in the context of the review of the above-mentioned documents, the CSSF sent 457 letters and emails with the aim of analysing in particular the deficiencies identified or noted by the *réviseurs d'entreprises agréés*, following up on the measures implemented and/or requiring corrective measures in order to remedy these deficiencies, including the compensation of UCIs and/or investors. Besides these formal interventions, the CSSF also intervened in a number of cases via telephone and by organising meetings to clarify or deal with certain irregularities.

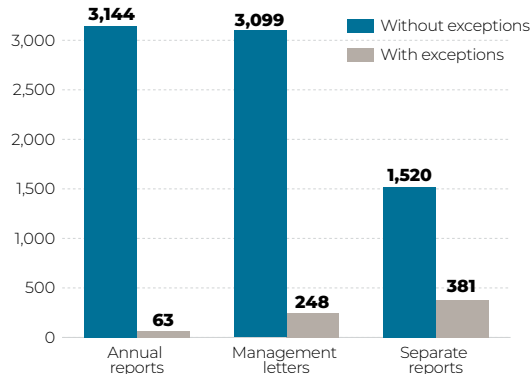
The CSSF's interventions concerned, inter alia, investment valuation, compliance with investment restrictions and policies, costs/fees charged to funds, NAV calculation, reconciliations performed by the administrative agent or depositary bank, governance, AML/CFT arrangements as well as disclosure in the funds' annual report.

Following these reviews and interventions, the CSSF may impose sanctions on UCIs and/or their IFMs in the event of non-compliance with the applicable legal, regulatory or contractual provisions.

Finally, as part of its review of the above-mentioned closing documents, the CSSF also identified cases of non-compliance with investment rules and NAV calculation errors at the level of several UCIs which had not been identified by the management bodies, the IFMs and/or the service providers and which have subsequently been treated in accordance with the provisions of Circular CSSF 02/77.

The following chart highlights, per type of closing document, the number of documents received in 2023 in which one or several exceptions were noted, in particular, by the *réviseur d'entreprises agréé* and which were subject to a review and/or intervention by the CSSF.

Number of closing documents with or without exceptions noted in 2023

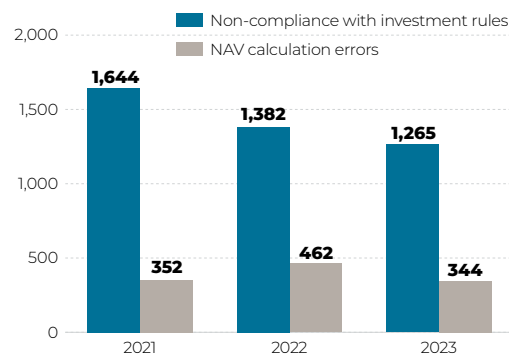


In 2023, the CSSF also received 3,358 SAQs. As indicated under point 2.6 above, the aforementioned interventions on the closing documents also covered the information included in the different sections of the SAQ.

4.1.2. NAV calculation errors and non-compliance with investment rules

In 2023, the CSSF received 1,609 declarations on the basis of Circular CSSF 02/77, compared with 1,844 declarations in 2022, representing a decrease of 12.7%.

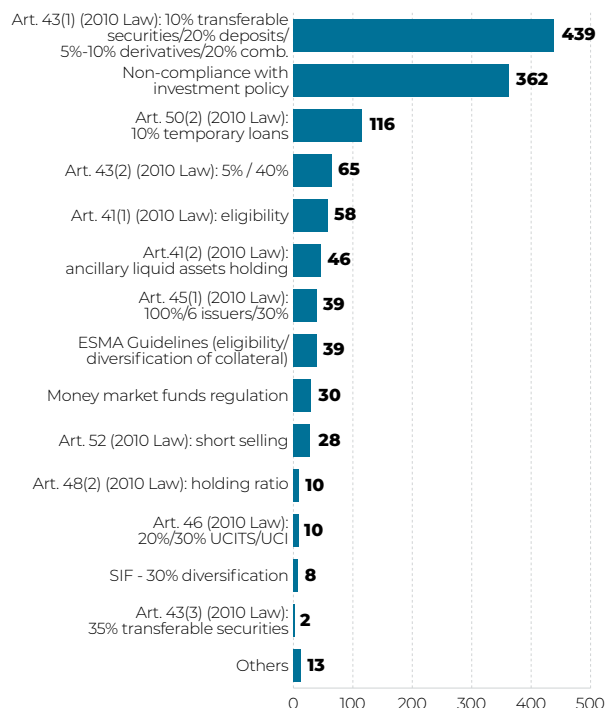
Evolution of the number of NAV calculation errors and instances of non-compliance with investment rules reported to the CSSF over the last three years



As in previous years, the simplified procedure provided for in Circular CSSF 02/77 could be applied in most cases of NAV calculation errors and non-compliance with investment rules. As regards the compensation procedures for investment funds and investors that exceed the tolerance thresholds laid down in Circular CSSF 02/77 ("normal procedures"), the CSSF received 148 notifications in 2023, against 173 in 2022, which represents a 14.5% decrease.

68 - X. Supervision of investment fund managers and UCIs

Breakdown of the instances of non-compliance with investment rules in 2023



Failure to observe the legal limits of diversification, holding and borrowing in UCITS was the main source of non-compliance with investment rules with 727 cases (820 cases in 2022, i.e. -11.3%), followed by 362 cases of breaches of investment policy limits/rules defined in the sales documents (361 cases in 2022, i.e. +0.3%) and 58 cases of legal constraints breaches as regards asset eligibility (63 cases in 2022, i.e. -7.9%). The CSSF has also been informed of 118 instances of non-compliance that concerned different types of rules.

It is worth mentioning that 68 out of 362 cases of breaches of investment policy limits/rules concern the European regulation on sustainable finance disclosures (SFDR).

Compensation in relation to correction of NAV calculation errors or instances of non-compliance with investment rules⁴

(in EUR)	Investors		
	2021	2022	2023
Total amount of compensation following NAV calculation errors	11,349,231.9	21,187,863.8	49,601,054.1
Total amount of compensation following non-compliance with investment rules	0.0	8,318.0	50,802.4
(in EUR)	UCIs/Sub-funds		
	2021	2022	2023
Total amount of compensation following NAV calculation errors	4,463,176.3	26,901,611.6	14,109,720.7
Total amount of compensation following non-compliance with investment rules	2,962,426.4	5,383,677.7	7,403,712.6

In 2023, the total compensation paid out to investors increased compared to 2022, as more significant compensation amounts had to be paid out for a few isolated cases. A decrease was recorded in the compensation paid out to UCIs/sub-funds. Overall, the total amount of compensation remains moderate as compared to the total amount of assets under management.

⁴ The data as at 31 December 2023 are incomplete as the final compensation amounts have not yet been finalised for some files. Moreover, in order to allow a comparison with previous years, the data relating to 2022 and 2021 have not been adjusted either, and are based on the data published in the previous annual reports.

4.2. Off-site supervision of IFMs

4.2.1. Supervision based on closing documents of IFMs: first observations on the self-assessment questionnaires (SAQ) submitted by IFMs and on the separate reports (SR) submitted by the *réviseurs d'entreprises agréés*

Following the entry into force of Circulars CSSF 21/788, CSSF 21/789 and CSSF 21/790 concerning IFMs, the CSSF developed an IFM assessment methodology which is based on the answers provided in the different documents introduced by these circulars. The scores obtained define the CSSF's prudential supervisory actions following a risk-based approach.

This approach allowed the CSSF to work on supervisory actions that will notably result in observation letters being sent to the IFMs concerned based on the weaknesses identified in the SR drawn up by the *réviseur d'entreprises agréé*. The SAQ assessment allowed identifying the following trends and recommendations.

Significant discrepancies between the SAQ of certain IFMs and the SR of the *réviseur d'entreprises agréé* were singled out. This observation is particularly noticeable in sections "I Bis: Lux office, resources, and accounting", "IV: Permanent compliance function", "VIII: Information Technology" and "IX: Other key functions". The CSSF recommends that IFMs review the conclusions of their *réviseur d'entreprises agréé* in order to take them into account in their future self-assessments.

In general, the legal provisions of section "I: Shareholding structure and financial situation of the IFM" of the SAQ have been complied with by IFMs. However, the CSSF would like to reiterate that:

- IFMs must at any time be able to determine the amount of legally required own funds; the CSSF recommends that IFMs perform a calculation at least on a quarterly basis to ensure that the amount of required own funds is adequate;

- the minimum required own funds pursuant to the legal and regulatory requirements must be maintained at the permanent disposal of the IFM and invested in its own interest in order to ensure continuity and regularity of the activities and services provided by the IFM; thus, it is permitted that the required own funds be invested in liquid assets or assets readily convertible into liquid short-term assets which do not contain any speculative positions.

Certain organisational or shareholder structure changes must be notified beforehand to the CSSF, notably any change regarding the shareholders of a qualifying holding, the intention of the IFM to delegate one or more functions, in particular portfolio management, risk management, UCI administration or/and valuation, as well as freedom of establishment or freedom to provide services.

The work of the management body/governing body, the meetings of which must be held at least on a quarterly basis, as well as the work of the executive committee, the meetings of which must be held at least on a monthly basis, must be documented in writing. This documentation must include the agenda and the minutes of the meetings, and it must provide a record of the decisions and measures taken by the above-mentioned bodies.

The person responsible for the permanent risk management function may not at the same time be in charge of the internal audit function and s/he must report directly to the conducting officer in charge of the risk management function.

The person responsible for the permanent risk management function must ensure that the IFM's risk management policy includes the techniques, tools and arrangements concerning the liquidity risk management procedure which the IFM must apply, where appropriate, and which ensures that the liquidity profile of the investments of each UCI complies with the underlying obligations (specifying also the IFM's obligations with respect to stress tests in the context of liquidity management) taking into account the investment strategy, the liquidity profile and the current redemption policy.

The independence of the internal control functions does not allow the staff of the internal control functions to perform the tasks they are called upon to control.

The Compliance Officer must report in writing to the senior management, on a regular basis (at least annually and, where necessary, on a more frequent ad hoc basis), and, where appropriate, to the specialised committees and management body/governing body of the IFM. This report must include the follow-up to the recommendations and problems, shortcomings and irregularities, and is submitted for approval to the management body/governing body and for information purposes to the senior management.

The internal audit plan drawn up by the person responsible for the internal audit function in accordance with the internal audit charter must be discussed with the senior management and approved by it, confirmed, where appropriate, by the audit committee and ultimately and formally approved by the management body/governing body. The person responsible for the internal audit function must report in writing to the senior management, on a regular basis (at least annually and, where necessary, on a more frequent ad hoc basis), and, where appropriate, to the specialised committees and management body/governing body of the IFM. This report must include the follow-up to the recommendations, problems, shortcomings and irregularities and is submitted for approval to the management body/governing body and for information purposes to the senior management.

The procedures implemented within IFMs must be reviewed periodically, at least once a year. This mainly concerns the procedures relating to voting rights, complaints handling, conflicts of interest, rules of conduct, remuneration policy, personal transactions and marketing, where applicable. Also, each IFM must implement a procedure for the approval of new business relationships and new products.

The principles on initial and ongoing due diligence of delegates, set out specifically in Section 6.2.3. of Circular CSSF 18/698, must be complied with in terms of nature, scope and frequency. The periodic due diligence to be carried out on delegates must take into account a risk-based approach. When carrying out its risk assessment, the IFM must consider not only the risks incurred by every delegate but also the number of delegates it uses.

The IFM must implement procedures and a system for the identification and management of IT risks, as defined under point 137 of Circular CSSF 18/698.

The IFM must implement a data classification adapted to their criticality, value and sensitivity, as well as control processes for the real-time detection of potential ICT-related security incidents. The monitoring of the IT function and of the related incidents (cyberattacks and other intrusion attempts) must be included in the Management Information referred to in Section 5.5.1. of Circular CSSF 18/698, whose analysis must be presented and discussed during the meetings of the executive committee held at least on a monthly basis in Luxembourg. At the very least, the decisions taken on this matter must be recorded in writing in the minutes of these committees' meetings.

Where ad hoc committees are set up within an IFM (for example for portfolio management, risk management or valuation), the regulatory provisions concerning (i) professional experience and skills of the members, (ii) composition, (iii) rules regarding rights and (iv) documentation relating to the committee's work should be complied with.

Based on the feedback received from the entities and the *réviseurs d'entreprises agréés*, the reports that will be made available in future will be amended on certain points, e.g. certain questions will be amended or some free-text comment fields of the SAQ that imply complex data exploitation will be removed.

The FAQs have been updated to include the main recurring questions.

4.2.2. Thematic reviews

• Conflicts of interest management policy and records

In 2023, the CSSF reviewed the IFMs' conflicts of interest policies and records to ensure the proper implementation of the requirements arising from the various regulatory provisions. In particular, the CSSF verified that the IFMs concerned have in place a conflicts of interest policy as set out in point 377 of Circular CSSF 18/698 and a conflicts of interest register as set out in point 381 of that same circular.

While, in general, the policies relating to the management of conflicts of interest were satisfactory, in a few instances a lack of comprehensiveness could be observed in the identification of the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCIs. Moreover, the description of the procedures to be followed and the measures to be adopted to manage such conflicts of interest were not always sufficiently detailed.

The CSSF reiterates that the conflicts of interest risks resulting from the relationship with the depositary, a delegate or a counterparty must be incorporated in the analysis, as well as the risks that may arise from the integration of sustainability risk in the processes, systems, and internal controls of the IFMs.

As concerns the record of conflicts of interest, a lack of exhaustiveness was observed in some instances, as concerns both the number of actual and potential conflicts of interest and the content of the record. In this context, the CSSF points out that the record must cover, as a minimum, the items listed under point 381 of Circular CSSF 18/698.

• Delegation of the portfolio management function

The CSSF assessed the compliance of a sample of authorised IFMs with the legal and regulatory provisions and with Circular CSSF 18/698 as regards the delegation of the portfolio management function by way of a questionnaire.

The CSSF noted that the IFMs concerned comply in overall terms with these provisions. However, weaknesses were identified as regards the following requirements:

- improvements should be made by certain IFMs to the framework procedure set out in point 6.2.3.2. of Circular CSSF 18/698; indeed, in some circumstances, several documents (policy, control lists, etc.) are available, whereas point 443 of the circular actually provides for the drawing-up of a single framework procedure covering all aspects of delegation, allowing thus for a rapid and autonomous identification of the operational flows and of the control levels and documents of the delegation;
- as concerns the initial and periodic due diligence carried out on delegates, the written summary report as provided for in points 462 and 469 of Circular CSSF 18/698 was often missing, as IFMs integrate their written reports on the controls in the minutes of their meetings or in reports that are too concise;
- the CSSF points out that a written contract must be signed between the IFMs and the delegates, and that the contract must include provisions that allow IFMs, at all times, to request further information, give instructions to the delegates or withdraw the mandate with immediate effect;
- in certain cases, the number of staff employed by IFMs to perform the controls on the delegates was not in line with the number of delegates; the CSSF expects that IFMs assess, on a regular basis, the number of staff members to be allocated to the control of the delegates.

• Market Abuse Regulation

In 2023, the CSSF carried out assessments to clarify and support the measures aimed at preventing and detecting instances of market abuse applicable to IFMs, i.e. management companies subject to Chapter 15 of the 2010 Law and AIFMs subject to Chapter 2 of the 2013 Law. These assessments mainly focussed on the following themes:

- assessment of the market abuse risks to which IFMs are exposed;
- supervisory measures and systems to prevent and detect market abuses referred to in the Market Abuse Regulation;
- identification of the profile of the employees in charge of market abuse prevention;

- specific training for employees acting unlawfully under the Market Abuse Regulation and raising awareness to the detection of unlawful behaviour;
- conditions and arrangements required for the delegation of market abuse supervision by IFMs.

The conclusions and recommendations resulting from this assessment will be published in 2024.

• Risk management reports

In accordance with point 212 of Circular CSSF 18/698, the permanent risk management function of the IFM must draw up, at least once a year, a report assessing the adequacy and effectiveness of the risk management to be submitted to their senior management. IFMs must also submit this report to the CSSF.

In 2023, the CSSF reviewed a sample of these documents and identified a number of weaknesses as regards their content. First, the CSSF expects these reports to include a status on the functioning of the risk management system implemented by the IFM. Second, the reports must detail the issues identified, the corrective measures to address them and the implementation status of these measures, especially as concerns governance issues linked to risk management and deficiencies in identifying, measuring, drawing up reports and decision-making relating to risk management. Finally, the CSSF expects the subsequent reports to include a follow-up of the corrective measures taken, indicating, for each of these measures, their status and/or the effective implementation date.

4.2.3. Implementation of the regulations on cross-border distribution of UCIs (CBDF Regulations)

In the context of the CBDF Regulations, notably Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings (CBDF Regulation), and Circular CSSF 22/795 (CBDF Circular) of 31 January 2022 on the application of the *ESMA Guidelines on marketing communications* (ESMA34-45-1272), the CSSF must provide ESMA every two years with a report covering, inter alia, the most frequent infringements observed based on the ex post verification of a sample of marketing communications. In March 2023, the CSSF provided ESMA with this biannual report.

In August 2023, the CSSF shared the findings and best practices observed during this verification exercise with the industry⁵:

- marketing communications should always be clearly identifiable;
- the information presented in the marketing communication must be consistent with the information published in the fund's documents and the marketing communications should not be more precise than the fund's documents, in particular as concerns investment policy and risk;
- the use of hyperlinks should be limited in marketing communications. Hyperlinks should point directly to the relevant information. The validity of these hyperlinks must also be maintained over time.

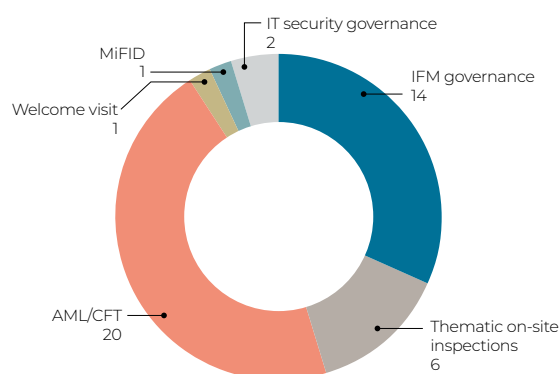
5 <https://www.cssf.lu/en/Document/2021-2023-marketing-communications-under-the-regulation-on-cross-border-distribution-of-funds/>

4.3. On-site supervision

The “UCI On-site inspections” (OPC CSP) department carries out in-depth reviews of the IFMs’ business models and governance, AML/CFT inspections, thematic on-site inspections as well as welcome visits aiming at ensuring that recently authorised IFMs comply with the requirements of their authorisation. The “Prudential supervision and risk management” department performs thematic on-site inspections on risk management and money market funds.

AML/CFT on-site inspections are described in point 1.2. of Chapter XXI “Financial crime”.

Number and themes of the on-site inspections performed in 2023 at IFMs



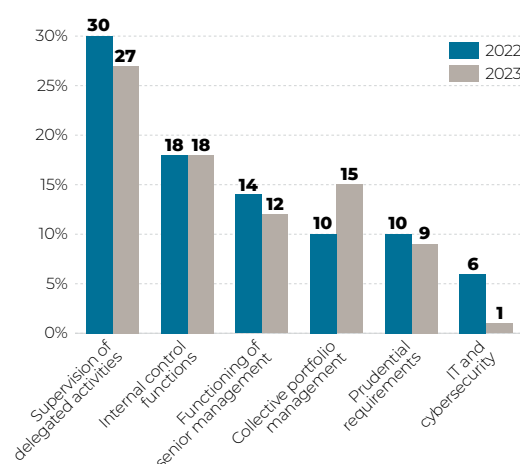
The entities inspected in 2023 managed about 13% of the total assets under management at Luxembourg IFMs. Sixteen of these entities managed assets amounting to over EUR 10 billion.

During the year, the CSSF carried out five on-site inspections relating to the IFMs’ supervision of their delegated portfolio managers located abroad. It also performed one inspection on the asset valuation function carried out internally by the IFM within the meaning of Article 17(4)(b) of the 2013 Law.

The CSSF also carried out seven on-site inspections at UCI service providers⁶, which break down as follows:

- three inspections at depositary banks;
- two inspections at professional depositaries of assets other than financial instruments;
- two inspections at UCI administrators.

Main categories of observations following on-site inspections carried out at IFMs



- **20 inspected IFMs showed shortcomings relating to the supervision of delegated activities (against 16 in 2022).**

In the framework of the on-site inspections concerning IFM governance, the CSSF again observed shortcomings regarding the supervision of delegates. In this context, it issued administrative fines against two IFMs for which these deficiencies were identified.

In particular, the shortcomings observed concerned the supervision of intermediaries in charge of marketing. Indeed, the CSSF noted that the supervision mechanism implemented by the IFMs was not always adapted to the size of their distribution network.

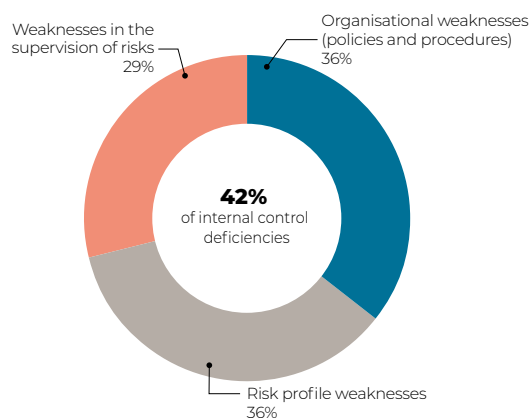
6 These on-site inspections were carried out at credit institutions, investment firms or specialised PFS.

- 19 inspected IFMs showed weaknesses within their internal control functions (against 16 in 2022).

The CSSF noted shortcomings with respect to internal control functions, with most deficiencies relating to the risk management function.

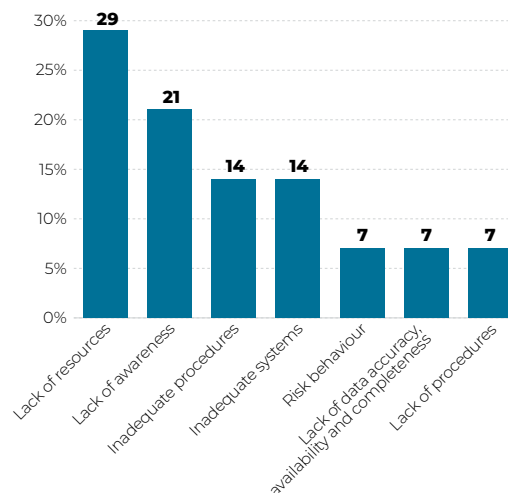
In particular, the CSSF noted that the risk profiles of investment funds had not been systematically updated by the IFMs to integrate sustainability risk. Moreover, further deficiencies were observed in the stress tests carried out in order to (i) take into account the risks resulting from possible market condition developments and (ii) assess liquidity risk exposure in exceptional liquidity conditions.

Risk management: weaknesses identified in 2023



Moreover, the CSSF observed that the shortcomings identified were essentially due to a lack of resources, insufficient knowledge of the regulatory provisions as well as weaknesses in the IFMs procedures.

Main reasons for the weaknesses observed in relation to risk management



• Observations in relation to valuation of assets

The CSSF observed that AIFMs usually perform the asset valuation function internally while relying, in most cases, on their group and/or on support provided by a third party with expertise in this area. The CSSF noted the following shortcomings in relation to these AIFMs:

- for those that belong to a group (banking or asset management group), the valuations' underlying analyses (prepared by the group) are not systematically transmitted to the AIFMs;
- as concerns third-party fund managers which manage several different asset categories, the controls performed on the valuations (prepared by external parties) are sometimes incomplete.

The CSSF reiterates that AIFMs must ensure that controls are implemented on the selection of the data, sources and methods used for the valuation, in order to be able to prove that the portfolios of the managed funds have been accurately valued.

The CSSF also noted that most inspected AIFMs set up a valuation committee. However, the composition of these committees does not systematically allow ensuring an independent valuation of assets. Moreover, the CSSF noted a number of shortcomings in the documentation of the decisions taken by the committees. It also observed that the frequency of the meetings of such committees did not match the periodicity of the NAV calculation of all the funds managed. In such circumstances, AIFMs cannot demonstrate that they reviewed and approved, at each valuation date, the valuation of the assets held by the investment funds.

Finally, the CSSF noted that the responsibility of certain IFMs as concerns asset valuation was not accurately defined neither in their valuation procedures nor in the managed funds' prospectuses.

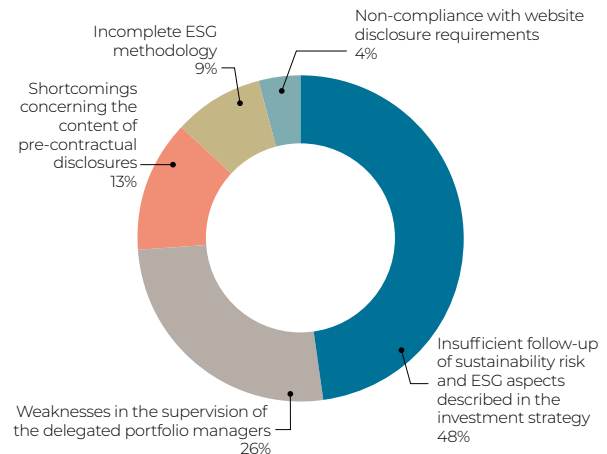
• Observations related to ESG thematic controls

As part of the ESG thematic controls (which started in the fourth quarter of 2022), the CSSF noted that certain IFMs managed investment funds disclosing under Article 8 or Article 9 of the Regulation on sustainability-related disclosures in the financial services sector (SFDR) without having analysed the ESG methodology implemented by their delegated portfolio managers beforehand and without having updated the content of their periodic due diligence.

Moreover, the key performance indicators provided by the delegated portfolio managers to these IFMs were sometimes incomplete and/or drawn up at an inappropriate frequency (considering the periodicity of the NAV calculation of the managed funds).

Consequently, the IFMs were not able to verify, on an ongoing basis, the funds' compliance with all bindings aspects of the investment strategies described in the pre-contractual information. In this context, the CSSF noted that the portfolio of an investment fund included several financial assets that did not meet the exclusion criteria listed in the pre-contractual disclosures.

Weaknesses observed during ESG thematic controls



• Other observations

The CSSF noted that IFMs having established one or more branches did not systematically perform an adequate supervision of the arrangements relating to the administrative and accounting organisation of branches. In addition, certain IFMs did not perform any control on the marketing communications used by the employees of their branches, and the latter did not necessarily have access to the IFMs' policies and procedures.

Following the above-mentioned on-site inspections, the CSSF imposed three administrative fines on IFMs. For further details on this subject, please refer to point 2. of Chapter XVIII "Instruments of supervision". Moreover, the CSSF used its right of injunction against two IFMs and decided to withdraw the "Fit and Proper" status of the *dirigeant* (director) of an IFM.

XI. Supervision of securitisation undertakings

1. Development of authorised securitisation undertakings in 2023

In 2023, the CSSF received one application for registration on the official list of authorised securitisation undertakings subject to the Law of 22 March 2004 on securitisation. Following the deregistration of one securitisation undertaking during the year, 28 securitisation companies were registered on the official list of authorised securitisation undertakings as at 31 December 2023, against 29 entities at the end of 2022.

The balance sheet total of authorised securitisation undertakings exceeded EUR 29.6 billion at the end of 2023, i.e. a decrease of EUR 11.1 billion compared to 2022. This fall is mainly due to the fact that the notional amount of issues that matured or were redeemed prematurely exceeded the notional amount of new issues.

The submitted application files reveal that securitisation transactions mainly consist in repackaging transactions in the form of structured product issues linked to various financial assets, notably equity indices or baskets of shares, as well as in securitisation of debt, loans and other comparable assets. The repackaging transactions are mainly synthetic securitisation transactions in respect of the risk transfer technique.

In general, the securities issued by securitisation undertakings are bonds and subject to foreign law. It is also possible for some securitisation undertakings to issue warrants.

To date, no application file for a securitisation fund has been submitted to the CSSF. Neither has the CSSF received any application file for a fiduciary-representative under Luxembourg law, even though the Law of 22 March 2004 on securitisation has established a specific legal framework for these independent professionals in charge of representing investors' interests.

2. Development in the regulatory framework

As a reminder, pursuant to points (b), (c) and (d) of Article 7(1) of Regulation (EU) 2017/2402 of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised (STS) securitisation, the CSSF expects to be notified of each securitisation, be it public or private, STS or non-STS, involving an originator, a sponsor or a securitisation special purpose entity established in Luxembourg, at or close to the closing date of the transaction.

Pursuant to points (a) and (e) of Article 7(1) of the above-mentioned regulation, the following must be submitted to the CSSF for the securitisations notified in accordance with the preceding paragraph: (i) information on the underlying exposures on a quarterly basis or, in the case of asset-backed commercial papers (ABCP), information on the underlying receivables or credit claims on a monthly basis, and (ii) quarterly investor reports or, in the case of ABCP, monthly investor reports. This information must be submitted simultaneously to the CSSF each quarter, at the latest one month after the due date for the payment of interest or, in the case of ABCP transactions, at the latest one month after the end of the period the report covers.

The reports submitted must comply with the requirements set out in Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 and in Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019. For public securitisations, these reports are in practice made available by means of a securitisation repository, while for private securitisations, the CSSF expects these reports to be provided on their own initiative.

As a consequence of the poor quality of a certain number of reports received, the CSSF underlines that the entities under its supervision are responsible for ensuring that the reports submitted meet the minimum quality standards.

Pursuant to Article 9 of Commission Delegated Regulation (EU) 2020/1224, “No Data Option” (ND) values may be reported where permitted in the corresponding field. However, the CSSF noted an excessive use of these values, in particular as regards the value ND5. The CSSF would like to reiterate that the report of ND values must not be used to circumvent the requirements of Commission Delegated Regulation (EU) 2020/1224 and that the required information must be provided whenever possible. Where permitted in the corresponding field, ND1 to ND4 values may be used if the information is not available. It should be noted that the value ND5 may only be used where the required information does not apply to the corresponding field and that it must under no circumstances be used if the information is not available.



XII. Supervision of pension funds

1. Development of pension funds in 2023

1.1. Major events in 2023

In 2023, one new pension fund subject to the Law of 13 July 2005 was registered on the official list of the CSSF and two pension funds which managed cross-border pension schemes were deregistered from it. Consequently, 11 pension funds subject to 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) were registered on the CSSF's official list of pension funds as at 31 December 2023.

The year 2023 was mainly marked by the addition of new pension schemes to existing pension funds and by several cross-border transfers to other insurance products. Thus, during the year, the CSSF authorised 13 new pension schemes within existing pension funds and 25 new schemes were notified in accordance with Article 11 of Directive (EU) 2016/2341 of 14 December 2016 in order to carry out a cross-border activity on behalf of a sponsoring undertaking established in another EU Member State.

In 2024, the CSSF expects a slight increase in the number of cross-border pension schemes of the pension fund sector.

1.2. Pension fund activities

The pension funds supervised by the CSSF manage one or several pension schemes set up by Luxembourg companies or foreign employers for their employees.

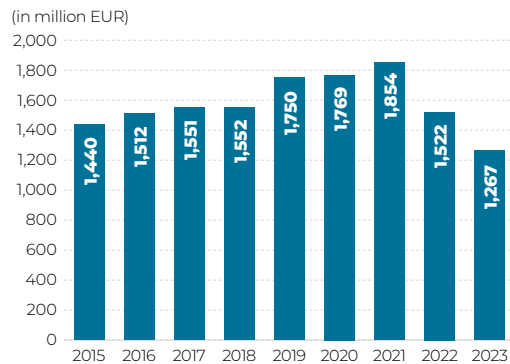
As at 31 December 2023, one pension fund managed cross-border pension schemes. It provided services to sponsoring undertakings in Germany and Portugal.

Out of the 11 pension funds registered on the CSSF's official list, nine have adopted the legal form of a pension savings association and two have adopted the legal form of a pension savings company with variable capital.

1.3. Development of pension fund assets

At the end of 2023, gross assets of pension funds amounted to EUR 1,267 million against EUR 1,522 million at the end of 2022. This decrease of almost 17% is mainly due to the deregistration of two pension funds in 2023.

Development of pension fund gross assets



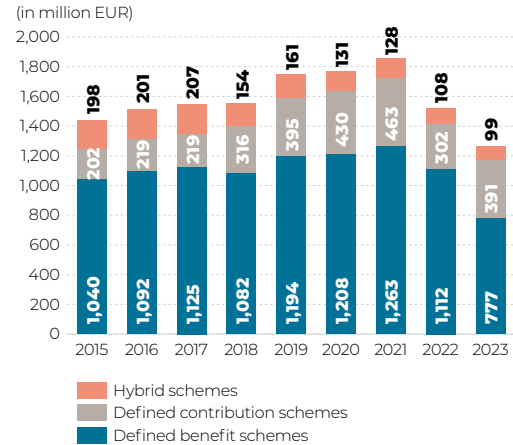
The gross assets of cross-border pension schemes amounted to EUR 23 million at the end of 2023 against EUR 490 million as at 31 December 2022. This is partly explained by the transfer of several cross-border pension schemes in 2023.

1.4. Development of assets according to the type of pension scheme

As at 31 December 2023, the overall gross assets of pension funds broke down as follows:

- 61% in defined benefit schemes (EUR 777 million);
- 39% in defined contribution and hybrid schemes (EUR 490 million).

Breakdown of assets between defined benefit schemes, defined contribution schemes and hybrid schemes



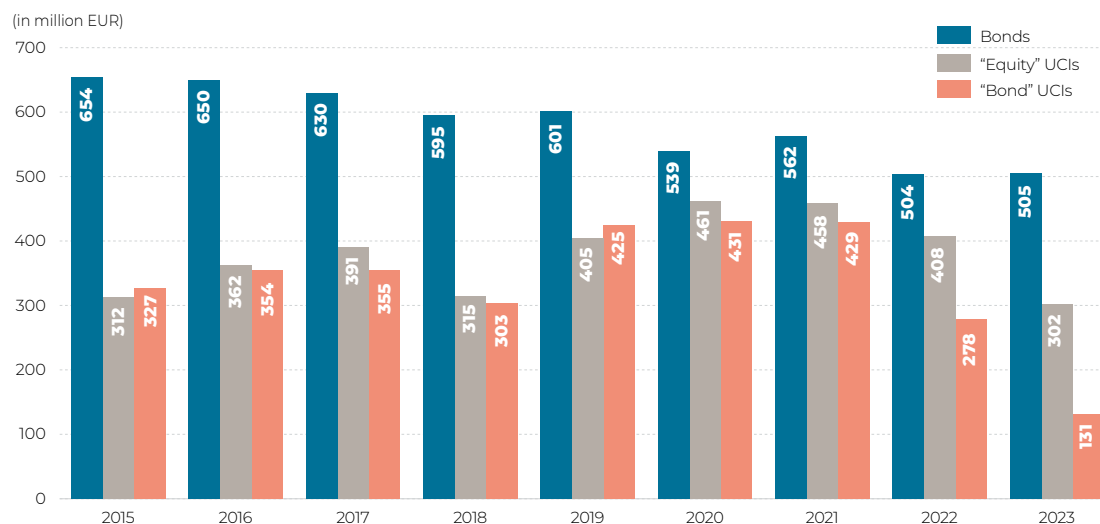
1.5. Allocation of pension fund assets

In 2023, investments of pension funds broke down as follows:

- EUR 569 million, i.e. 45% of the total gross assets, in investment funds, including:
 - 53% (i.e. EUR 302 million) exposed to the equity market;
 - 23% (i.e. EUR 131 million) exposed to the bond market;
 - 24% (i.e. EUR 136 million) in mixed funds, money market funds and funds with alternative investment policies;
- EUR 505 million, i.e. 40% of the total gross assets, in bonds;
- EUR 193 million, i.e. 15% of the total gross assets, in other assets, money market instruments, equity and liquid assets.

80 - XII. Supervision of pension funds

Allocation of pension fund assets



1.6. Development in the number of pension fund members

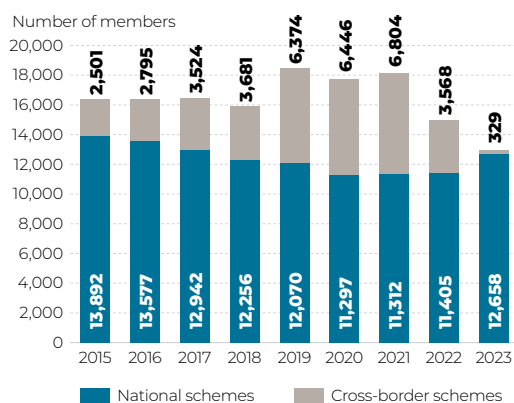
At the end of 2023, the pension funds had 12,987 members against 14,977 as at 31 December 2022.

An analysis of the population of members of the pension funds supervised by the CSSF shows that the proportion of international members (329 members as at 31 December 2023) is falling compared to the previous years. This decrease results, in particular, from the transfer of several cross-border schemes in 2023.

2. Development of liability managers in 2023

The official list of professionals authorised to act as liability managers for pension funds subject to the Law of 13 July 2005 included 14 liability managers as at 31 December 2023.

Development in the number of pension fund members



XIII. Supervision of securities markets

1. Prospectuses for securities

In 2023, the number of prospectuses for securities published under Regulation (EU) 2017/1129 of 14 June 2017 (Prospectus Regulation) approved by the CSSF decreased by about 7.5% compared to the previous year, which is in line with the general trend observed in Europe. This drop results from an almost 20% decrease in standalone prospectus approvals combined with a slight increase in base prospectus approvals. It should be noted, however, that in 2023, the CSSF still ranked first among European authorities in charge of approving prospectuses for securities.

On 11 July 2023, ESMA published a public statement on disclosures in prospectuses for securities with respect to sustainability matters, in order to harmonise the requirements of the competent authorities. The CSSF applies ESMA's advice on these requirements relating, more particularly, to the disclosure of risk factors, the use of proceeds and the terms and conditions in the prospectuses.

It should also be noted that around 38% of the base prospectuses approved in 2023 by the CSSF included an environmental, social or governance component.

• Challenges and priorities for 2024

The publication of Regulation (EU) 2023/2631 of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (Regulation on European Green Bonds) will require issuers intending to benefit from the “European Green Bond” label to be much more transparent with respect to their sustainable projects as well as the use of the proceeds of these bonds. In this context and even though the regulation will only enter into force on 21 December 2024, the CSSF will ensure throughout the year that the environmental, social or governance notions used in the prospectuses it approves are not misused, and notably in base prospectuses whose period of validity could exceed the date of entry into force of the Regulation on European Green Bonds.

In cooperation with ESMA and the other European authorities, the CSSF continues analysing the data received during the process of approval of prospectuses for securities as well as with the filing

of the final terms. Thus, under the aegis of ESMA within various working groups, the CSSF helps establishing management rules to achieve greater quality of the data collected on ESMA's Prospectus Register. In this context, the CSSF will remain vigilant in its quality controls relating to the filing of documentation in the field of prospectuses.

2. Enforcement of information published by issuers

Within the context of its mission of supervising securities markets, the CSSF is in charge of examining the information published by issuers of securities. Through this activity, generally known as enforcement, the CSSF notably ensures that the financial information complies with the relevant reporting framework, i.e. the applicable accounting standards. Moreover, since the entry into force of the Law of 23 July 2016 on disclosure of non-financial information and diversity information by certain large undertakings and groups, transposing Directive 2014/95/EU of 22 October 2014 (NFRD Law), this enforcement also extends to the sustainability information of the issuers covered by this law.

Beyond the legal and regulatory requirements, the examination of the financial and sustainability information contributes to the investors' protection and confidence in the financial markets.

2.1. Enforcement of financial information

In its communiqué of 15 April 2024, the CSSF presented the results of its 2023 enforcement campaign on financial information published by issuers of securities for 2022. The main observations of these examinations refer to issues related to the application of the international financial reporting standards (IFRS), some aspects of which were part of the priorities identified and communicated by ESMA and the CSSF.

These examinations notably cover the impacts on financial statements of the macroeconomic situation, characterised by high interest and inflation rates. Thus, the CSSF insisted more specifically with the issuers concerned to make sure that the different sensitivity analyses are adapted to this high-rate environment and present transparent and useful information to users of financial statements.

In the light of the struggles of real estate markets, the CSSF also took an interest in the issues relating to the valuation of investment properties. It reminded the issuers concerned that particular attention should be paid to unobservable inputs used in valuations of investment properties, such as those relating to quantitative information or sensitivity analyses.

Finally, in a context where environmental matters are ever more important, the CSSF noted, in its review of non-financial asset valuation, that there was often room for improvement as regards the information provided in order to better identify the climate-related assumptions used in projections and estimate their impact on discount or growth rates.

2.2. Sustainability information enforcement

For issuers subject to the obligation to publish sustainability-related information, the 2023 campaign focussed, inter alia, on the presentation of policies in place, their results and the risks relating, in particular, to environmental issues. While continuous improvement has been noted overall, the specific reviews showed that significant efforts remain to be made, in particular in view of the implementation of the European Sustainability Reporting Standards (ESRS) for the drawing-up of the 2024 reports to be published in 2025. For further details, please refer to the special report published by the CSSF on 2 February 2024.

Another important topic was the publication of information required under Article 8 of Regulation (EU) 2020/852 of 18 June 2020 (Taxonomy Regulation). Here too, while the issuers concerned all provided the information concerning alignment and eligibility of their activities, efforts are still needed to be made in order to adequately comply with the new requirements and to provide information that comply with the regulatory and relevant requirements, as expected by the various stakeholders. The CSSF published a report thereon on 18 December 2023.

2.3. Challenges and priorities for 2024

In 2024, the CSSF will continue to consider the impacts of environmental risks on the financial statements of the issuers concerned.

More broadly, the current macroeconomic environment continues holding, for issuers and their activities, significant challenges, notably due to interest rates that remain high in 2023. This topic will also be part of the specific points of attention in the 2024 campaign.

The year 2024 also marks a new stage with the entry into force of the CSDR and the obligation for issuers already subject to the NFRD Law to publish, in 2025, a sustainability report according to the ESRS standards for the financial year 2024. Little time remains for issuers to prepare for this important challenge.

Finally, the issuers concerned need to remain vigilant when applying the requirements under Article 8 of the Taxonomy Regulation. To this end, they can refer to certain resources provided, such as the Questions and Answers of the European Commission, the International Platform on Sustainable Finance or the EU Taxonomy Compass.

3. Supervision of issuers

In order to guarantee a high level of investor protection, the CSSF notably ensures, in the framework of its mission as competent authority under the Law of 11 January 2008 on transparency requirements for issuers (Transparency Law), that the issuers disclose periodic and ongoing information as required by said law.

3.1. ESEF requirements

The CSSF continues monitoring the requirements relating to the ESEF format set out in Delegated Regulation (EU) 2019/815 under which issuers are required to prepare their annual financial reports. In this context, it concentrates particularly on the awareness raising and guidance of issuers with regard to the applicable obligations. Furthermore, the CSSF also considers the complexity of the requirements related to this format and focusses first on the verification of the issuers required to draw up IFRS consolidated financial statements.

3.2. Filing platform eRIIS

In the first quarter of 2022, the CSSF launched its online portal eRIIS (electronic Reporting of Information concerning Issuers of Securities), a web application allowing entities subject to the Transparency Law and the Market Abuse Regulation¹ to meet their regulatory filing obligations with the CSSF (e.g. through filing of regulated information under the Transparency Law or diverse publications under the Market Abuse Regulation) and serving as a secure channel of communication with the CSSF. eRIIS was well received by the entities concerned which adjusted swiftly to its use (including the management of access rights and the granting of access delegation to third parties) as well as to the interfacing with the OAM system.

3.3. European Single Access Point (ESAP)

The CSSF conducted preparatory studies in relation to the establishment and operation of the European Single Access Point and took an active part in the preliminary work organised at European level.

3.4. Audit of annual accounts

Several issuers under the Transparency Law seem to have trouble finding an audit firm that accepts auditing their accounts. The CSSF would like to reiterate that as long as the securities of an issuer are admitted to trading on a regulated market (and that Luxembourg is the home Member State of this issuer), the provisions of the Transparency Law relating to annual financial reports, and notably those of Article 3(4), apply. The responsibility for the information to be drawn up and made public in accordance with Article 3 lies with each issuer concerned. These issuers are also required to inform the market of these problems in a clear, precise and timely manner.

¹ Regulation (EU) No 596/2014 of 16 April 2014 on market abuse

3.5. Short-seller attacks

The CSSF noted that certain issuers falling under the scope of the Transparency Law had to suffer attacks orchestrated by short sellers. These actions were monitored by the CSSF. Issuers targeted by such attacks should remember the importance of transparent communication, aiming at providing accurate, complete and quality information to the public in a timely manner.

4. Market abuse

4.1. Suspicious transaction and order reports (STORs)

In 2023, the CSSF received 64 suspicious transaction and order reports (STORs) under Article 16 of the Market Abuse Regulation from the market operator and other professionals established in Luxembourg, representing a level of STORs similar to that of the preceding year (65 STORs). The STORs received from Luxembourg professionals concerned suspicions of insider dealing, suspicions of market manipulation or suspicions combining insider dealing and market manipulation, the vast majority of which related to transactions in equity securities (shares).

In parallel, the CSSF received 25 STORs from its foreign counterparties, which mainly concerned suspicions of insider dealing and a few cases of suspicions of market manipulation and unlawful disclosure of inside information in relation to transactions in equity or debt securities.

Following the thematic review of the STOR obligations of investment fund managers (IFMs) performed in 2022 and whose main observations were published in January 2023, the review of STOR obligations of IFMs was integrated into the different supervisory activities of the CSSF, notably including on-site inspections and IFM authorisation procedures. For the first time, questions relating to market abuse were addressed to IFMs in the context of the CSSF's survey on financial crime in 2023.

4.2. Cooperation and exchange of information with foreign supervisory authorities

In 2023, the CSSF opened around 50 inquiries relating to requests for assistance from its foreign counterparties, mainly under IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information and under the Multilateral Memorandum of Understanding providing a general framework for cooperation arrangements and exchange of information between competent authorities and ESMA.

The majority of these requests related to inquiries into insider dealing carried out by the requesting foreign authorities. The other requests related either to inquiries into market manipulation or to very diverse subjects (including major holdings).

XIV. Supervision of market infrastructures

1. CSDR and the supervision of central securities depositories

In accordance with Article 1(1) of the Law of 6 June 2018 on central securities depositories and implementing Regulation (EU) No 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDR), the CSSF is the competent authority in charge of exercising the duties under CSDR for the authorisation and supervision of the central securities depositories (CSDs) established in Luxembourg.

As at 31 December 2023, two entities were authorised in Luxembourg as CSD under CSDR, one of which has an authorisation in accordance with Article 16 of CSDR (provision of core CSD services), and the other one holds the three available CSDR authorisations, i.e. the one under Article 16, the authorisation to maintain an interoperable link under Article 19 and the authorisation to provide, under its banking authorisation, ancillary banking services for CSD participants under Article 54. Within the CSSF, there is a dedicated division responsible for the supervision of CSDs (with and without banking authorisation).

At the end of 2023, the CSSF received one application for authorisation to exercise CSD activities (Article 16 of CSDR). The review process in accordance with CSDR is ongoing.

Regarding the supervision of authorised CSDs, the CSSF must perform at least once a year a review and an evaluation in accordance with Article 22 of CSDR and, in addition, an assessment in accordance with Article 60 of CSDR for the CSD authorised under Article 54 to provide banking services. These annual exercises are combined with the continuous supervisory work under CSDR (as well as under the CRR/CRD package for the entity holding a banking authorisation).

During the year 2023, the monthly and annual reports of settlement fails required under Article 7 of CSDR were transmitted on time and without major technical problems.

Within the framework of the reporting by settlement internalisers (Article 9 of CSDR), about 130 entities submitted their reporting, on a regular basis, as required by the regulation.

2. EMIR

In the framework of Regulation (EU) 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation – EMIR), the CSSF contributes, through different ESMA working groups, to the development of implementing measures regarding EMIR and of ESMA publications in order to promote common positions between competent authorities in the application of EMIR¹.

The CSSF is the competent authority in Luxembourg to ensure compliance with some provisions of EMIR by financial counterparties, except for those subject to the supervision of the Commissariat aux Assurances, and by non-financial counterparties as defined by the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories.

The CSSF received 3 million reports per day from trade repositories for a total exceeding 720 million transactions in 2023. These reports concerned about 11,500 counterparties established in Luxembourg which were exposed to around one million derivative contracts. The notional amount was about EUR 9,000 billion.

In 2023, the CSSF, together with other national competent authorities, took part in ESMA's Data Quality Indicators (DQI) exercises. In this context, the CSSF contacted entities with higher levels of data quality issues and requested them to take corrective actions.

The CSSF raised several major data quality issues, mainly related to outliers in quantitative data, with reporting counterparties or entities responsible for reporting established in Luxembourg or in other Member States. Most of the problems could be resolved quickly and, in some cases, even before ESMA or other European data users (e.g. ESRB) raised them. In some isolated but significant cases, data quality problems have not yet been resolved, and supervisory actions are conducted with respect to these specific counterparties.

Using a risk-based approach, the CSSF contacted during the year some of the main counterparties which are not under its prudential supervision. The objective was to verify if the data provided through EMIR reporting reflected the real situation of these entities, to establish a relationship to ensure that EMIR is considered by these entities and to monitor compliance with the obligations introduced by EMIR more widely. The CSSF mainly focussed on the obligations relating to the clearing thresholds whose calculations are to be carried out annually by non-financial counterparties at group level in accordance with Article 10 of EMIR.

Throughout the year, the CSSF also participated in several conferences on EMIR focussing mainly on the new technical standards on EMIR Refit reporting which were published in 2022 and which will be applicable from 29 April 2024. Moreover, from 5 to 7 June 2023, the CSSF, together with the Commissariat aux Assurances, organised conferences on EMIR to raise counterparties' awareness regarding the forthcoming entry into force of the EMIR Refit reporting and to present the EMIR Data Quality Strategy and the related initiatives that both the CSSF and the Commissariat aux Assurances have developed².

In 2024, the CSSF intends to pursue its actions by focussing on the improvement of data quality in general and, more particularly, on the preparation and the implementation relating to EMIR Refit.

EMIR allows benefiting from intragroup exemptions according to Article 4(2), Article 9(1) and Article 11(5) to (10). In 2023, the CSSF accepted the notifications received after appropriate review.

Moreover, the CSSF received further notifications informing it that clearing thresholds have been exceeded for financial or non-financial counterparties (FC+ or NFC+), according to the obligations provided for in Articles 4a and 10 of EMIR.

¹ As regards more specifically the EMIR supervision of credit institutions, see also point 1.7. of Chapter VII "Supervision of banks".

² <https://www.cssf.lu/en/2023/05/cssf-and-caa-joint-conference-on-emir-refit-reporting-and-emir-data-quality-supervision/>

3. Transparency of securities financing transactions

In the framework of Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Securities Financing Transaction Regulation – SFTR), the CSSF contributes, through different ESMA working groups, to the development of implementing measures regarding SFTR and of ESMA publications in order to promote common positions between competent authorities in the application of SFTR. In accordance with Article 1 of the Law of 6 June 2018 on transparency of securities financing transactions, the CSSF is the national competent authority regarding SFTR for financial counterparties apart from those subject to the supervision of the Commissariat aux Assurances, as well as for non-financial counterparties.

Most of the issues regarding data quality raised in 2023 with reporting counterparties or entities responsible for reporting established in Luxembourg or in other Member States could be resolved quickly.

In 2024, the CSSF intends to pursue its activities in this field, to implement the data quality indicators developed and to continue its data driven supervision of SFTR obligations.

XV. Supervision of information systems

This chapter deals with the supervision of information systems of financial professionals, including mainly credit institutions, investment firms, specialised PFS, payment institutions and electronic money institutions. As regards the specific supervision of support PFS, reference is made to point 3. of Chapter VIII “Supervision of PFS”.

1. Major events in 2023 and challenges for 2024

1.1. Digital resilience

The Digital Operational Resilience Act (DORA)¹ will apply as from 17 January 2025. This ambitious text is the baseline for a single regulatory and supervisory framework for digital resilience in the financial sector. The measures relate to Information and Communication Technology (ICT) governance and risk management, a harmonised ICT-related incident reporting process, digital operational resilience testing (i.e. advanced intrusion testing simulating real cyberattacks,

as for example presented in the TIBER-EU framework), management of risks associated with ICT third-party service providers (in particular through the creation of an oversight framework for designated critical providers) and information sharing.

The European Supervisory Authorities’ Joint Committee created a Sub-Committee on Digital Operational Resilience (JC-SC DOR) which continued its mandate throughout 2023 and assisted the three European supervisory authorities in fulfilling their policy mandates under DORA and related tasks. The CSSF was intensively involved throughout 2023 in the JC-SC DOR and in each of the three working groups established by the JC-SC DOR which were tasked to deliver the DORA policy mandates and other deliverables in relation to DORA. All deliverables are currently on track, with the 12-month mandates having been finalised by 17 January 2024 and the review work of the answers submitted to the consultation papers of the 18-month policy mandates being in progress.

The CSSF also participated in the JC-SC DOR preparatory work for the gradual development of an effective Union-level coordinated response in the event of a major cross-border cyber incident or related threat that could have a systemic impact on the EU financial sector, as envisaged by the

¹ Regulation (EU) 2022/2554 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

Recommendation of the European Systemic Risk Board (ESRB) of 2 December 2021 on a pan-European systemic cyber incident coordination framework for relevant authorities (ESRB/2021/17).

As announced in the Annual Report of 2022, the European supervisory authorities launched a preparatory exercise to assess the scale of usage of third-party service providers of ICT services by the financial entities and to facilitate the preparation of the deliverables on the oversight framework. For Luxembourg, 29 financial supervised entities were in the scope. The report was published in 2023².

In addition, the CSSF performed in 2023 a survey over a sample of IFMs to assess their readiness for the implementation of the DORA framework and participated in numerous conferences on the topic to raise awareness to the market, as well as in meetings with service providers and supervised entities.

The year 2024 will be a year dedicated to DORA readiness both at the level of the CSSF and the supervised entities. In this context, the CSSF will notably put in place a framework and tools for the reception and communication of ICT-related incidents, as well as for the reception and forwarding of the register of information, as required under DORA.

As regards the new Directive NIS2 on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148 (Directive NIS1), which entered into force on 16 January 2023 and for which the national transposition shall apply from 18 October 2024, point 3.2.2. of Chapter VIII "Supervision of PFS" provides further details.

Moreover, the CSSF continued to follow with interest the legal adoption process at EU level of the revised version of the eIDAS Regulation. The final version adopted by the European Parliament on 29 February 2024 updates the previously existing text, addressing the challenges posed by its structural deficiencies and its limited implementation, as well as the technological developments since it was adopted in 2014. This European digital identity framework will offer secure and trusted means to authenticate and

to exchange qualified data attributes online through an "EU Digital Identity Wallet" issued by the Member States and allowing transactions throughout the entire EU. These personal digital wallets will allow citizens to digitally identify themselves, store and manage identity data and official documents in an electronic format, and perform e-signatures free-of-charge. The revised regulation also introduces new trusted services, such as electronic archiving and electronic ledger. While the publication of the official text is expected in the first half of 2024, several implementation acts will be required in the following 24 months to ensure a fully efficient application of the eIDAS-2 Regulation.

In 2023, the first TIBER-LU³ test exercise, which was launched in 2022 under the oversight of the BCL and the CSSF, was successfully completed. This provided the tested entity with great learning opportunities and areas of improvement for its cybersecurity practice. The TIBER-LU program has now reached its cruising speed with five exercises started in 2023, including two cross-border exercises with the collaboration of other competent authorities. In 2024, the TIBER-LU program will make the necessary changes to align with DORA, and in particular the requirements related to the Threat-Led Penetration Tests (TLPT).

In 2023, the CSSF continued its monitoring of the use of artificial intelligence by supervised entities specifically through meetings with selected entities of the financial sector and via the participation in national and European events focussing on the topic. The CSSF will continue to monitor the use of this technology and define from 2024 onwards its supervision approach, also in the light of the upcoming publication of the Artificial Intelligence Act (AI Act)⁴.

Finally, together with its Innovation Hub⁵, the CSSF continues its technology watch regarding the use of distributed ledger technologies (DLT) in the financial sector and will continue to do so in the context of the MiCA application.

² https://www.esma.europa.eu/sites/default/files/2023-09/ESA_2023_22_-_ESAs_report_on_the_landscape_of_ICT_TPPs.pdf

³ <https://www.cssf.lu/en/2021/11/tiber-lu/>

⁴ See also Chapter V "Financial innovation"

⁵ See also Chapter V "Financial innovation"

1.2. PSD2 requirements relating to payment security and access to payment accounts

In 2023, the CSSF continued its supervision of payment service providers (PSPs) by organising meetings and exchanging with entities involved in specific projects concerning strong customer authentication implementation as well as the dedicated interfaces to third-party providers (TPPs).

The participation in the EBA and ECB working groups continued as well during the whole year 2023 and the main focus was the analysis of the European Commission's legislative proposal for the revised PSD2 that was published end of June 2023, as well as the European Commission's legislative proposal on a framework for Financial Data Access (FIDA). Such proposals are now under discussion at the level of the Council of the EU.

The revised PSD2 will be split into two different instruments:

- the third Payment Services Directive (PSD3) that will deal in particular with the authorisation process for payment institutions (which now also includes electronic money institutions) and the prudential regime;
- the Payment Services Regulation (PSR) that will deal essentially with rules (and related penalties) for PSPs and users.

Among the analysis carried out at the EBA and ECB level, it is worth to mention the analysis of the major incidents reported under PSD2 (security and/or operational incidents) in 2023 for the whole EU.

1.3. Adaptation of the CSSF expectations and practices as regards ICT outsourcing

Whilst the CSSF implemented throughout 2021 and 2022 a new risk-based processing for notifications of critical or important ICT outsourcing arrangements, no additional changes were made in 2023, to provide supervised entities with stability and time to prepare and close the gap towards the DORA requirements, namely the preparation of the register of information.

As indicated in point 1.1. above, the CSSF will throughout 2024 and 2025 continue to adapt its expectations and practices following the entry into force of DORA, and gradually adjust templates and tools accordingly, not only as regards ICT outsourcing but more generally as regards ICT risk supervision.

1.4. Adaptation of the incident reporting framework

In contrast to the previous point, with regards to the ICT-related incident reporting framework, the CSSF continued to work in 2023 on the modification of the incident reporting framework to allow collecting more structured and comprehensive information on ICT-related incidents via a new dedicated portal. This was necessary as the existing incident reporting framework under Circular CSSF 11/504 was deemed insufficient to cover the CSSF's needs in terms of supervision. The preparatory work was completed by December 2023 and, in January 2024, the new Circular CSSF 24/847 on the ICT-related incident reporting framework as well as CSSF Regulation No 24-01 were published. Circular CSSF 11/504 will therefore be gradually repealed and the supervised entities, starting from 1 April 2024, will be required to notify ICT-related incident notifications via a specific eDesk procedure or via an Application Programming Interface (S3 protocol).

2. Supervision of information systems in practice

Supervision includes verifying that supervised entities comply with the legal and regulatory framework, with the direct (or indirect) aim of maintaining or improving the activities' professionalism, focussing on the technologies implemented as part of the information systems. This implies considering the specific nature of the outsourcing of services to support PFS or third parties, within or outside the group.

In the context of the off-site supervision of the information systems, the CSSF processed 555 requests in 2023 (+25% as compared to 2022), i.e.:

- 51 applications for authorisation or for the extension of authorisation (IT-related part) for different types of entities (credit institutions, electronic money institutions, payment institutions, PFS);
- 504 requests for advice or authorisation or notifications (+28% as compared to 2022) relating to IT projects submitted by supervised entities (most of them concerned outsourcing, remote access, security of online services or major system changes) and specific IT issues (for example critical items of a management letter from a *réviseur d'entreprises agréé* (approved statutory auditor)).

About 32% of the requests for advice or notification originated from credit institutions and 37% from investment fund managers.

As regards the on-site supervision of the information systems, the on-site inspections aiming to cover the IT risk are described in more detail in point 1.11. of Chapter XVIII "Instruments of supervision".



XVI. Supervision of the remuneration policies

The CSSF ensures compliance with the requirements regarding governance and remuneration in the financial sector. The procedures and arrangements implemented by the entities with respect to remuneration form an integral element of robust internal governance arrangements which ensure that risks are managed in an efficient and lasting manner. In 2023, the CSSF thus continued to carry out reviews of remuneration policies and practices in order to ensure compliance with the legal and regulatory requirements.

In the context of the higher ratio notifications from credit institutions for the purpose of paying variable remuneration exceeding 100% of the fixed component, the CSSF noted, once again, an improvement in meeting the requirements, in particular, thanks to ever more comprehensive notifications provided by credit institutions.

However, some institutions are still not fully compliant with all the requirements regarding higher ratio notifications. In this respect, the main grievance lies in the lack of respect for the respective roles and powers of the different bodies of the credit institution during the approval process. Moreover, the CSSF noted that the documents provided by credit institutions do not always clearly demonstrate that they

have taken into account the achievement of the environmental, social and governance (ESG) objectives when determining the higher ratio amounts.

While encouraging credit institutions to pursue their efforts, the CSSF continues ensuring compliance with the procedure set out in point (g) of Article 38-6(1) of the Law of 5 April 1993 on the financial sector and specified in Circular CSSF 15/622 and will increase focus on compliance with ESG requirements when analysing future higher ratio notifications.

In addition, the CSSF will pursue its efforts to ensure compliance with the remuneration requirements through targeted reviews on selected topics. Consequently, in 2024, it will, for instance, conduct thematic reviews (1) on the variable remuneration of staff engaged in control functions and (2) on the processes of identification of material risk takers. These thematic reviews will base on a sample of credit institutions and investment firms.

In 2023, the CSSF contributed to the EBA's data collection exercise regarding the application of gender-neutral remuneration policies. The data collected for Luxembourg, covering a sample of 15 credit institutions and five non-SNI IFR

investment firms, revealed non-compliance with the following requirements:

- two entities infringed the obligation to check whether their remuneration policies and their application are gender neutral;
- while a majority of entities carried out this review on an annual basis and one entity stood out with a biannual review, one entity however infringed the obligation to carry out an annual review by conducting it only once every two years;
- although this review must be performed by the management body in its supervisory function or by the remuneration committee when it is established, two entities did not comply with this requirement.

The CSSF also contributed to the EBA's annual benchmarking exercise on remuneration policies and practices for financial year 2022. In this context, the CSSF observed several breaches of the legal obligations incumbent on non-SNI IFR investment firms regarding the award and payment of the variable remuneration. These concerned, in particular, entities which wrongly applied the derogations provided for in Article 38-22(3) and (4) of the Law of 5 April 1993 on the financial sector and which, therefore, failed to meet their obligations concerning the deferral and payment in financial instruments of part of the variable remuneration to their material risk takers.

To the extent that such breaches are notably likely to arise as a result of significant governance problems, the CSSF published, in March 2024, a communiqué in order to warn the financial sector that it will continue to supervise the proper application of the rules relating to the award and payment of any variable remuneration within the relevant investment firms, while recalling that any failure to comply with these rules could entail the application of strict measures, up to and including a sanction.

Finally, the CSSF pursued its annual benchmarking exercise of the remuneration practices at national level. In this context, it noted that credit institutions distributed variable remunerations at a similar level to the previous years, amounting, on average, to 44% of the fixed component of the remuneration in 2023 for performance year 2022 (against 45% in 2022 and 44% in 2021), that the proportion of the variable remuneration paid out

in financial instruments amounted to 28% on average (against 40% in 2022 and 2021) and that the deferred part of variable remuneration amounted, on average, to 30% (against 39% in 2022 and 35% in 2021). The reduction, on average, of the proportion paid in financial instruments and the deferred part is mainly due to the transformation of a leading institution of the financial sector into a branch (for which the data are no longer taken into account in the calculations).

XVII. Public oversight of the audit profession

1. European cooperation

Established by Regulation (EU) No 537/2014, the CEAOB (Committee of European Auditing Oversight Bodies) is the body for cooperation between the different public audit oversight authorities in the EU. Among its members are the representatives of the European national authorities, the European Commission and ESMA. Representatives of the EEA national authorities also participate in the meetings, as well as the EBA and EIOPA as observers.

The CSSF is an active member of the CEAOB. It is represented notably within the consultative group which assists the chairperson of the CEAOB with the coordination of the work, chairs the sub-working group on inspections and is a member of the other sub-working groups and of the regulatory colleges for the Big 4¹.

1.1. Specific activities relating to current topics

The CEAOB anticipated the possible impacts that certain European developments could have on the audit profession and its oversight:

- by submitting to the European Commission a report on the recast of the audit directive and regulation with recommendations and priorities to improve audit quality in Europe;
- by responding to EFRAG's consultation on the first set of draft European Sustainability Reporting Standards.

More detailed information is available on the website of the CEAOB².

1.2. Comment letters relating to standard setting proposals

The CEAOB provided its point of view on the following topics:

- IAASB – Exposure Draft on the revision of ISA 500 (April 2023);
- IAASB – Exposure Draft on a proposed new standard for the audits of financial statements of less complex entities (April 2023);

¹ PwC, KPMG, Deloitte, EY

² https://finance.ec.europa.eu/regulation-and-supervision/expert-groups-comitology-and-other-committees/committee-european-auditing-oversight-bodies_en

- IAASB – Consultation paper on the proposed strategy and work plan for 2024/2027 (May 2023);
- IESBA – Consultation paper on the proposed strategy and work plan for 2024–2027 (July 2023);
- IAASB – Exposure Draft on the proposed revision of ISA 570 (August 2023);
- IAASB – Exposure Draft on a new standard for sustainability assurance engagements ISSA 5000 (December 2023).

1.3. Other publications

In 2023, the CEAOB also published:

- two infographics relating to the findings observed during inspections regarding financial institutions and disclosures;
- two updated common inspection programmes relating to inspections of the IT audit work performed by the auditor as part of an audit of financial statements and concerning information and cyber security;
- the 7th report on the statistical and qualitative study of the activity of the CEAOB members with respect to investigations and sanctions.

2. Legal, regulatory and normative framework of the audit profession

In 2023, the CSSF contributed to works on the transposition of Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

This directive amends, among other things, the Law of 23 July 2016 concerning the audit profession by assigning a new mission to *réviseurs d'entreprises agréés* (approved statutory auditors) and to *cabinets de révision agréés* (approved audit firms), namely that of expressing an opinion based on a limited assurance engagement which could become, in the future, a reasonable assurance engagement:

- on the compliance of the sustainability reporting with the sustainability reporting standards to be adopted by the European Commission;

- on the process carried out by the undertaking to determine the information reported pursuant to these sustainability reporting standards;
- on the compliance with the requirement to mark up sustainability reporting;
- on the compliance of the undertaking's reporting with the reporting requirements of Article 8 of Regulation (EU) 2020/852.

The European Commission should adopt limited assurance standards by 1 October 2026.

In order to perform this engagement, *réviseurs d'entreprises agréés* and *cabinets de révision agréés* will have to obtain a specific approval for the assurance of sustainability reporting in addition to the approval to carry out statutory audits. The engagement should be subject to public oversight through quality assurance reviews.

In January 2024, the CSSF issued Regulation CSSF No 24-02 relating to the adoption of auditing standards which repeals and replaces the previous regulation of 2022 and which brings about changes concerning:

- the revised ISA 600 relating to audits of group financial statements (including the work of component auditors) for audits of financial statements for periods beginning on or after 15 December 2023;
- the revisions to the Code of Ethics relating to the definition of engagement team and group audits, the upcoming expiry of the “jurisdictional provision” relating to the long association of senior personnel with an audit client and, for audits of financial statements for periods beginning on or after 15 December 2024, the definition of public-interest entity and the subsequent amendments to the definitions of audit client and group audit client as well as audits linked to technology;
- certain amendments to these standards in order to comply with Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities.

Circular CSSF 24/852 modified Circular CSSF 19/717 in order to reflect these changes with respect to the parts “Application and Other explanatory material” and, where appropriate, the “Appendix” of the international standards on auditing. These parts were supplemented by the provisions introduced by the European directive and regulation.

3. Quality assurance review

3.1. Scope of application

By virtue of the Law of 23 July 2016 concerning the audit profession (Audit Law), *réviseurs d’entreprises agréés* and *cabinets de révision agréés* are subject to a quality assurance review of their statutory audit engagements, organised according to the terms laid down by the CSSF in its capacity as oversight authority of the audit profession.

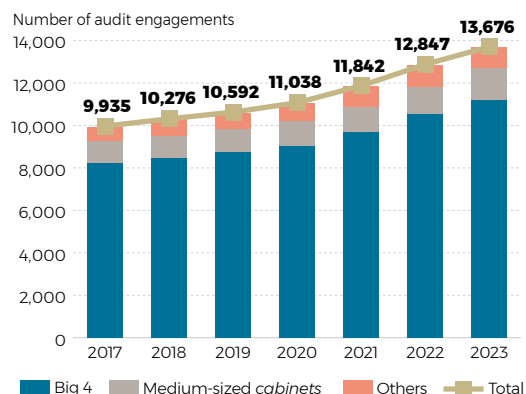
The population of *cabinets de révision agréés* and *réviseurs d’entreprises agréés* that carry out statutory audits is as follows as at 31 December 2023:

- 53 *cabinets de révision agréés*, 13 of which audit PIEs³;
- four approved independent *réviseurs* (auditors), none of which audits PIEs.

Based on the data collected through the “Annual Annexes” for the year 2023, the statutory audit engagements break down as follows between *cabinets de révision agréés* and independent *réviseurs d’entreprises agréés*:

- 82% of the engagements were carried out by the Big 4;
- 11% of the engagements were carried out by medium-sized audit firms⁴;
- 7% of the engagements were carried out by the other firms and independent *réviseurs*.

Development of market share in statutory audit⁵



3.2. Activity programme for 2023

The CSSF set down a multiannual programme for the review of *cabinets de révision agréés/réviseurs d’entreprises agréés* which aims at observing the legal quality assurance review cycle, being three years for firms that audit PIEs and six years for the other ones. This programme was based on the information transmitted by firms and *réviseurs* through the “Annual Annexes” relating to their activity.

Under the 2023 programme, 10 firms were reviewed, six of which audit PIEs and are members of an international network. The quality assurance reviews focussed on:

- the review of the implementation of International Standards on Quality Management (ISQM) 1 and 2 and notably the risk assessment process;
- the review of a sample of audit files relating to statutory audit engagements of the financial years 2022 and 2021.

The 10 reviewed audit firms reported⁶ a total of 10,966 statutory audit engagements, including 379 in relation to PIEs. Under the 2023 review programme (including specific follow-ups), 128 mandates were reviewed, 37 of which concerned PIEs.

³ Public-interest entity

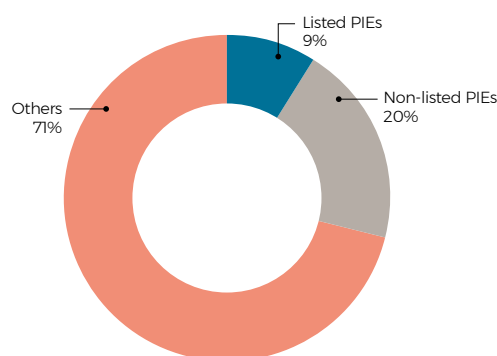
⁴ Firms that carry out over 100 statutory audit engagements (as at 31 December 2023, four firms were concerned)

⁵ Source: “Annual Annexes” collected by the CSSF

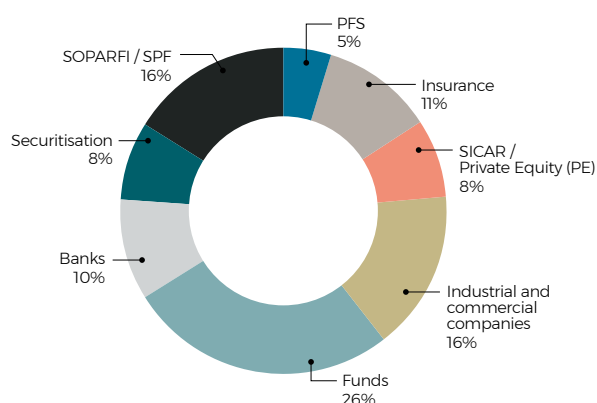
⁶ Based on the statements of *cabinets de révision agréés* as at 31 December 2023

The quality assurance reviews started in January 2023 and were carried out by 10 CSSF inspectors with professional audit experience and expert knowledge in the business areas of the financial centre. These reviews represented a total of 8,794 hours.

Breakdown of audit files reviewed by the CSSF in 2023 per entity type



Breakdown of audit files reviewed by the CSSF in 2023 per sector



It should be noted that for the investment fund sector files, a specific inspection was implemented in addition to the individual review of the audit files. This inspection consists notably of a review of internal controls within the firms in relation to the holding and independent valuation processes of portfolio securities and derivative financial instruments.

3.3. Main issues identified during the quality assurance reviews of 2023

3.3.1. Review of quality management systems

In 2023, the CSSF examined how the *cabinets de révision agréés* implemented the International Standard on Quality Management and its Luxembourg supplement:

- through a survey launched in September 2023 via a questionnaire to which 49 *cabinets d'audit agréés* responded;
- by analysing the implementation of the quality management system and examining the risk assessment process as well as the design and implementation of the responses for the 10 firms reviewed under the 2023 activity programme.

The results of the study were published, on 30 January 2024, in a thematic report⁷.

3.3.2. Audit files

The results of the 2023 quality assurance reviews show that auditors too often lack professional scepticism when applying audit standards, be it in assessing the risks of material misstatements, auditing accounting estimates, identifying material misstatements or assessing the completeness and accuracy of the information provided in the financial statements.

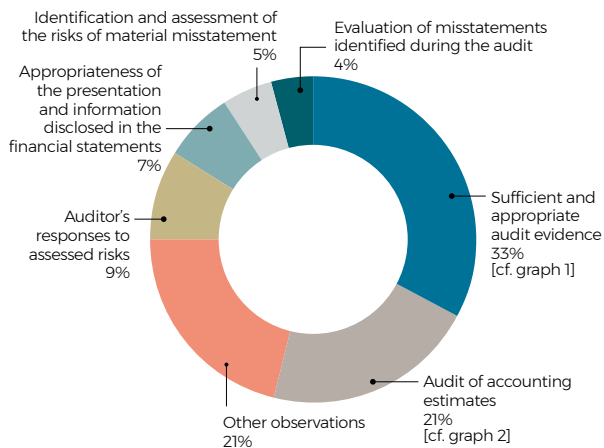
The CSSF also notes that the formalisation of the audit diligences could be improved. Auditors must thus ensure that the archived audit file contains an exhaustive description of the implemented audit procedures, all the audit evidence used by the auditor to support its opinion and the material professional judgements exercised to reach these conclusions.

⁷ <https://www.cssf.lu/wp-content/uploads/ISQM-1-implementation-Thematic-Report-v230124.pdf>

Auditors use increasingly sophisticated technological tools to analyse data in order to improve their efficiency and effectiveness for identifying discrepancies and errors in the financial statements. However, the increasing use of technology during audits should not be to the detriment of the full understanding of accounting and auditing standards by audit teams.

The following graphs summarise the observations made during the 2023 quality inspections.

Main observations issued on the files

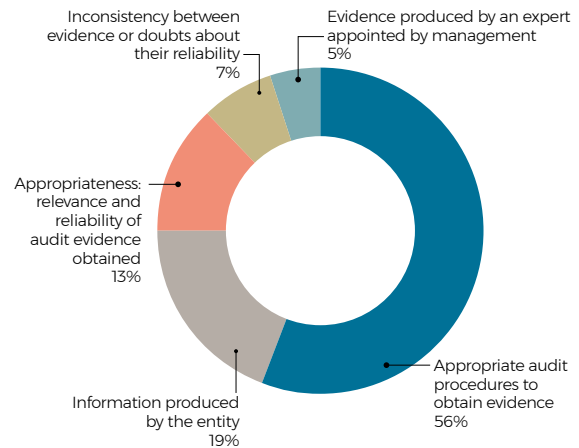


The CSSF observed a rise in failures with respect to ISA 500 relating to the audit evidence obtained. In order to form its opinion, the auditor must collect sufficient and appropriate evidence when implementing its audit procedures. Information may however only be used as audit evidence where the auditor assessed its relevance and reliability beforehand (cf. graph 1). Moreover, compliance with the requirements of ISA 540 relating to auditing accounting estimates still is a major area for improvement for the auditor (cf. graph 2).

The less frequent observations are categorised as “Other observations” and mainly relate to the following standards:

- auditor’s responsibilities relating to fraud in an audit of financial statements;
- analytical procedures;
- external confirmations;
- group audits.

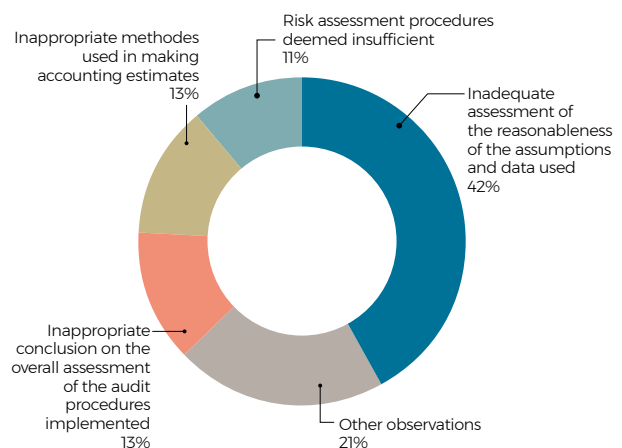
Graph 1: Sufficient and appropriate audit evidence



ISA 500 “Audit Evidence” requires auditors to ascertain that evidence is sufficient and appropriate. The results of the 2023 quality assurance reviews, however, revealed deficiencies of audit diligences aiming to ensure notably the appropriateness of audit procedures with regard to the identified risks and the reliability (accuracy and completeness) and the consistency of the audit evidence obtained.

Assessing audit evidence is an area in which auditors do not question enough the information obtained from the management. Auditors are required to retain in the audit file the audit evidence demonstrating that they have noted and taken into account any contradictory elements as well as the elements demonstrating that they showed professional scepticism towards information obtained from the management.

Graph 2: Audit of accounting estimates



Inspections focussed in particular on the audit areas requiring the exercise of the auditor's professional judgement and on the documentation of these judgements. Audit of accounting estimates undoubtedly remains an area where deficiencies are identified and where the quality must be enhanced. Besides the risk assessment procedures linked to accounting estimates assessed as unsatisfactory, the CSSF reiterates the need for auditors to show greater professional scepticism when assessing the reasonableness and appropriateness of the methods, assumptions and data used by the management. Auditors should remain vigilant as to the subjectivity of accounting estimates, the biases introduced by the management and the opportunities that increase the risk of fraud.

4. Monitoring of preventive measures

In 2023, the CSSF carried out specific follow-ups for 14 professionals for which material weaknesses were noted in the previous financial years. Under these specific follow-ups, 20 mandates were reviewed, two of which concerned PIEs. These reviews represented a total of 663 hours.

Following these reviews, the specific follow-ups of 12 professionals ended and two follow-ups are still ongoing.

During the 2023 programme of activity, the following conclusions were addressed to the firms and *réviseurs d'entreprises agréés* based on the six finalised quality assurance reviews:

- a training plan was given to one *réviseur d'entreprises agréé*;
- two *réviseurs d'entreprises agréés* are subject to a specific follow-up.

5. Overview of the population of *réviseurs d'entreprises* in Luxembourg

5.1. Access to the profession

5.1.1. Activities of the Consultative Commission for the Access to the Audit Profession

The Consultative Commission's task is, among others, to verify the theoretical and professional qualification of the candidates for the access to the audit profession in Luxembourg, as well as that of the service providers from other Member States wishing to exercise the activity by way of free provision of services.

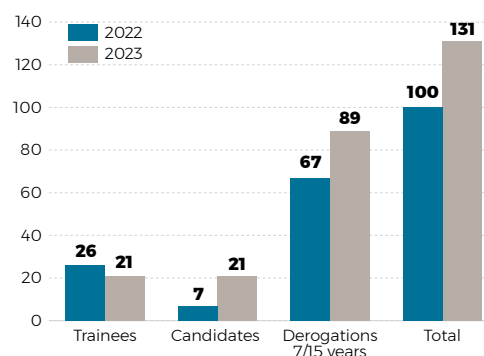
The commission met seven times in 2023 and analysed the files of 131 candidates, against 100 in 2022.

In 2023, the access to training was refused to three candidates (2%) as the number of subjects still to be completed based on their administrative certificate was greater than four.

There are three categories of candidates:

- trainee *réviseurs d'entreprises*;
- foreign candidates;
- candidates applying for an exemption based on their professional experience of either 7 or 15 years.

Development in the number of application files submitted to the Consultative Commission



Graduation ceremony



77% of the candidates come from the Big 4. As regards the nationality, most of the candidates come from France (26%), followed by Belgium (15%), Germany (11%) and Luxembourg (9%). The remaining 39% originate from various other countries.

5.1.2. Examination of professional competence in 2023

The CSSF administrates the examination of professional competence in accordance with Articles 5 and 6 of the Grand-ducal Regulation of 14 December 2018 determining the requirements for the professional qualification of *réviseurs d'entreprises*.

Based on the decision of the examination jury, the CSSF granted the title of “*réviseur d'entreprises*” to 31 out of the 61 candidates registered for the written and oral exams of the examination of professional competence.

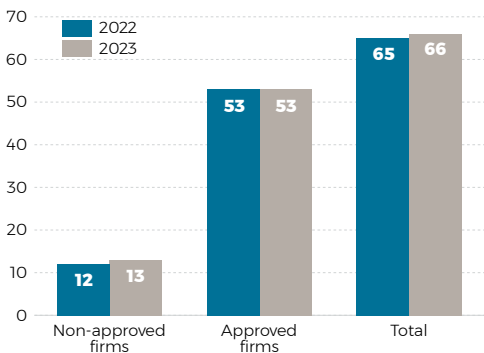
5.2. Public register

The public register of *réviseurs d'entreprises agréés*, *cabinets de révision agréés* and third-country auditors and audit entities is available on the CSSF website (<https://audit.apps.cssf.lu>).

5.2.1. National population as at 31 December 2023

• **Development in the number of *cabinets de révision* and *cabinets de révision agréés***

The total number of *cabinets de révision* and *cabinets de révision agréés* amounted to 66 as at 31 December 2023, against 65 as at 31 December 2022.



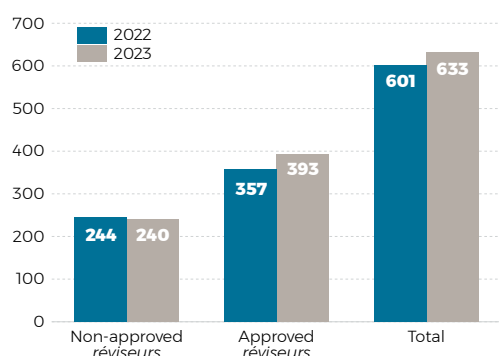
The following firms were approved in 2023:

- Entrust Revision S.à r.l.
- LIBRA – LUXEMBOURG S.à r.l.
- EYL Luxembourg

In 2023, three firms gave up their approval, two of which kept the title of “*cabinet de révision*” and one *cabinet de révision* returned its title.

- **Development in the number of *réviseurs d’entreprises* and *réviseurs d’entreprises agréés***

The total number of *réviseurs d’entreprises* and *réviseurs d’entreprises agréés* amounted to 633 as at 31 December 2023, against 601 as at 31 December 2022.



In 2023, the CSSF granted the title of “*réviseur d’entreprises*” to 48 people and approved 46 *réviseurs d’entreprises*. Moreover, 10 *réviseurs d’entreprises* abandoned their approval.

The population consists of 69% men and 31% women. The average age of the *réviseurs* is 45.91 years for women and 46.73 years for men.

- **Development in the number of candidates for the audit profession**

The total number of trainee *réviseurs d’entreprises* amounted to 70 as at 31 December 2023, against 65 as at 31 December 2022, which is an 8% increase. The population consists of 61% men and 39% women. The average age of the trainees is 30.99 years for women and 30.85 years for men.

The number of candidates exempted based on their professional experience of either 7 or 15 years in the financial, legal and accounting areas amounted to 221 as at 31 December 2023, against 197 as at 31 December 2022, i.e. a 12% increase. The population consists of 71% men and 29% women. The average age of these candidates is 36.91 years for women and 37 years for men.

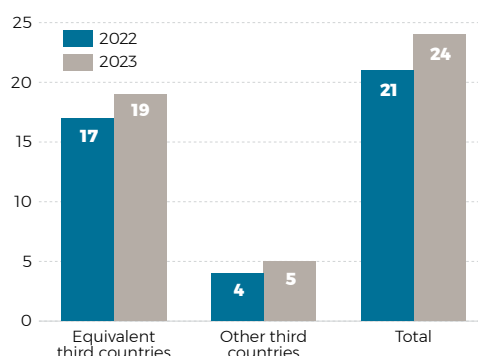
It should be pointed out that 69% of the population of trainees comes from the Big 4.

5.2.2. Third-country auditors and audit firms

The number of third-country auditors and audit entities that provide an auditor’s report on the annual or consolidated financial statements of a company incorporated outside an EU Member State, whose securities are admitted to trading on the regulated market of the Luxembourg Stock Exchange, increased in 2023. The CSSF thus responded favourably to the registration requests of four entities whose activities fell under the scope of the amended Directive 2006/43/EC. On the other hand, one entity did not renew its application within the year.

The public register listing all registered third-country auditors is available on the CSSF website.

Breakdown of registered third-country auditors



6. Cooperation agreements

The CSSF did not sign any new cooperation agreement in 2023. The agreements previously concluded are available on the CSSF website.

XVIII. Instruments of supervision

1. On-site inspections

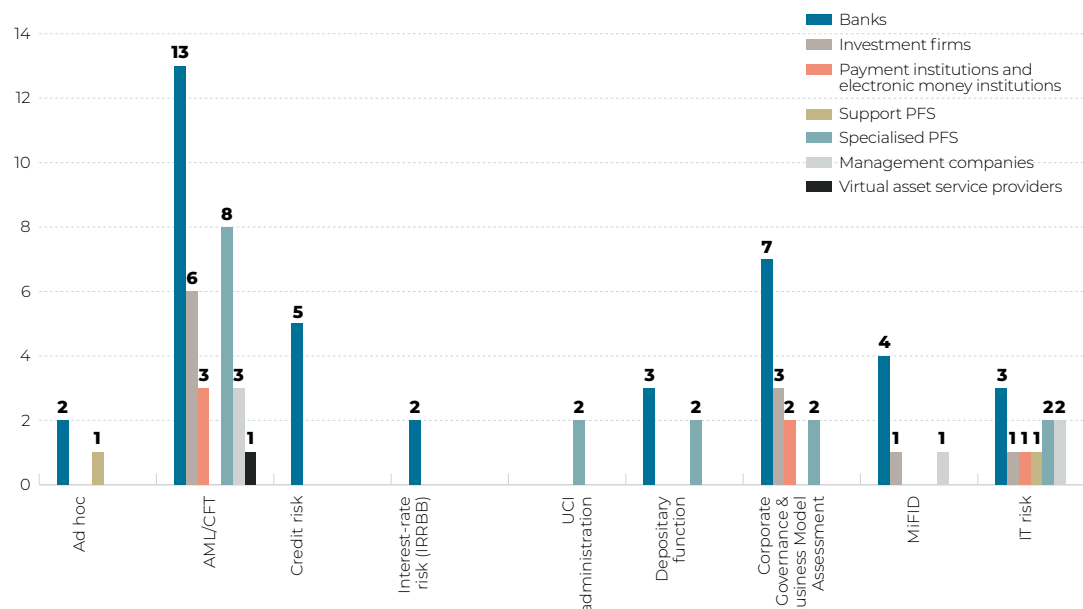
On-site inspections are in-depth investigations which provide a better understanding of the functioning and activities of the supervised entities and allow the assessment of the risks to which these entities are exposed and their compliance with the laws and regulations. In general, on-site inspections are proposed, on an annual basis, by the supervisory departments which have developed a dedicated risk-based approach to determine which professionals must undergo an on-site inspection. Subsequently, an annual planning is established and validated by the Executive Board of the CSSF. Any change, insertion or deletion in this annual planning must be subject to a formal validation.

The “On-site inspection” (OSI) department is in charge of conducting on-site inspections with regard to banks¹, payment institutions, electronic money institutions, UCIs as well as their management companies², investment firms, specialised PFS, support PFS, virtual asset service providers and financial market participants. Moreover, the OSI department coordinates on-site inspections of Luxembourg significant banks with the “On-Site & Internal Model Inspections” department of the ECB with respect to subject matters addressed by the SSM.

On-site inspections relating to IT are carried out by a specialised team within the “Supervision of information systems and support PFS” department. The subjects covered during these inspections as well as the main weaknesses identified are detailed in point 1.11. below.

- 1 This includes on-site inspections of less significant banks which are not directly subject to the SSM and AML/CFT, MiFID, depositary bank and UCI administration on-site inspections of significant and less significant banks as these topics are not directly covered by the SSM. The inspections of credit institutions regarding authorisations to use internal models for own funds requirements are excluded from the scope of activities of the OSI department. These inspections are carried out by a dedicated team within the Banking Departments.
- 2 Only for MiFID and AML/CFT and for the activity of transfer agent and individual management.

Breakdown of the on-site inspections carried out in 2023 by topic and type of entity (excluding UCI departments)



In order to fulfil all its tasks, the OSI department's staff remained stable with 81 agents, representing 76.8 full-time equivalents, as at 31 December 2023. A team composed of eight agents, representing 7.6 full-time equivalents as at 31 December 2023, of the "Supervision of information systems and support PFS" department that is specialised in on-site IT inspections has to be added to this figure.

The teams in charge of on-site inspections are set up based on the nature, scale and scope of the missions and usually involve the agents of an on-site department and, in certain cases, off-site supervisory departments.

After each on-site inspection, the team in charge draws up an internal report on the controls performed and on the weaknesses identified during the on-site inspection. The observations are then shared with the professionals during a fact validation meeting. Generally, on-site inspections are followed by an observation letter that is sent to the inspected professional. In the event of more serious failures, the CSSF analyses whether it needs to launch an injunction procedure or a non-litigious administrative procedure in order to impose an administrative sanction pursuant to the sectoral laws in force. The administrative sanctions and prudential enforcement measures are described in detail in point 2. of this chapter.

In accordance with the Grand-ducal Regulation of 23 December 2022 relating to the fees to be levied by the CSSF, a lump sum is billed for every on-site inspection relating to a specific topic. This lump sum amounts to EUR 25,000 for banks, to EUR 10,000 for the other entities and to EUR 1,500 for agents acting on behalf of a payment institution or electronic money institution.

In 2023, 118 on-site inspections were conducted by the CSSF departments:

- 37 of these inspections were performed by the UCI departments and are set out in point 4.3. of Chapter X "Supervision of investment fund managers and UCIs".
- 71 of these inspections were carried out by the OSI department (cf. points 1.1. to 1.10. below);
- 10 of these inspections were carried out by the "Supervision of information systems and support PFS" department (cf. point 1.11. below).

1.1. Ad hoc on-site inspections

Ad hoc on-site inspections are intended for the investigation of a given situation or a specific, sometimes worrying, issue related to the professional. Often, this particular situation of the professional had already been observed in the context of the off-site prudential supervision. Such missions may either be planned in advance or occur unexpectedly. The nature and scale of ad hoc inspections may vary significantly and, consequently, determine the composition and size of the on-site inspection teams.

In 2023, three ad hoc on-site inspections were performed. In addition, two ad hoc on-site inspections which had started earlier continued in 2023. They concerned, in particular, governance and anti-money laundering and countering the financing of terrorism issues. The ad hoc team also supported one “MiFID” on-site inspection.

1.2. “Anti-money laundering and countering the financing of terrorism” (AML/CFT) on-site inspections

AML/CFT on-site inspections are described in detail in point 1.2. of Chapter XXI “Financial crime” which relates more particularly to the CSSF’s AML/CFT supervision.

1.3. “Credit risk” on-site inspections

The purpose of “Credit risk” on-site inspections is to verify the soundness and prudence of credit risk management within credit institutions.

In 2023, the CSSF carried out two “Credit risk” inspections at less significant banks in Luxembourg. They were performed based on the credit risk methodology prepared by the ECB. In addition, the CSSF carried out three inspections regarding compliance with macroprudential measures related to the residential real estate market at banks in Luxembourg.

During these inspections, the CSSF noted that the risk appetite statement did not include all the risks to which the entity was exposed (leverage transactions, ESG) or that these risks were not always subject to a nominal limit in particular as regards the monitoring of the concentration level.

Moreover, the resources allocated to the risk control function were sometimes insufficient, and IT tools did not allow responding to the regulatory requirements for credit classification.

As regards procedures, the CSSF noted that they were not mutually consistent and not always updated and, in certain cases, they could be incomplete, or even missing.

As regards credit monitoring, the CSSF identified a lack of rigour in following up on the contractual financial covenants and delays in the loans periodic review and debtors’ internal ratings. Moreover, there has often been a lack of formalisation of the controls performed.

The CSSF also noted weaknesses relating to the management of defaulted or forborne exposures. Indeed, the signs of an “unlikeness to pay” were either not in line with the regulatory requirements, or not adapted to the credit activity and the “more than 90 days past due” standard was not accurately applied. As a result, recognition of default was late, entailing erroneous prudential reporting.

As regards Lombard loans, which are loans secured by securities pledged to the bank which can realise the pledge and sell the securities in case of a breach of the loan contract by the borrower, the CSSF wishes to recall the following elements:

- the pledged securities portfolio must be sufficiently liquid and diversified with prudent haircuts applied to the securities. The CSSF observed that certain haircuts had been fixed without taking into account the risk inherent to the security, that they were often subject to derogations and that they were not reviewed on a regular basis;
- in the event of a drop in the portfolio value, the bank must trigger a margin call process at the latest after having identified a breach of the loan exposure coverage by the lending value (weighted value of the portfolio) and liquidate the portfolio if the situation is not regularised. The CSSF observed the absence of active monitoring of margin calls resulting in a late triggering of the liquidation process;
- the concentration of securities at bank level (sector, geography, currency, asset type, etc.) must be monitored and the risk mitigated. The CSSF noted a lack of concentration limits with an absence of adequate monitoring of related risks.

Besides these traditional credit risk inspections, the CSSF finalised its campaign covering residential real estate located on the Luxembourg territory through the inspection of three banks in 2023. The purpose was to verify the implementation of the macroprudential borrower-based measures and to assess the practices in place so as to be able to provide structured feedback and, where applicable, specify CSSF's expectations. Indeed, the CSSF identified interpretation issues as regards regulatory requirements and a certain number of deficiencies with respect to the calculation of the LTV (loan-to-value) ratios as well as to the application of LTV limits when granting loans.

1.4. "Interest rate risk" on-site inspections

"Interest rate risk" or "Interest rate risk in the banking book (IRRBB)" on-site inspections aim to assess how interest rate risk arising from non-trading activities is managed and to assess the stress test results. They are performed based on the methodology covering the interest rate risk prepared by the ECB.

In 2023, the CSSF carried out three such missions at two Luxembourg banks and at one significant bank located abroad in the framework of the SSM.

The deficiencies observed in the Luxembourg banks concerned, in particular, the following aspects:

- insufficient involvement of the risk control function so that it did not have an overview of the risks;
- inadequate modelling assumptions for non-maturity deposits;
- deficiencies in the quantification process for Economic Value of Equity (no consideration of interest payments, non-modelling of NPL);
- risk management tool not capturing the product optionalities (no consideration of implicit caps and floors or of explicit options on loans and bonds);
- use of a not sufficiently robust quantification tool with insufficiently granular data and lacking documentation of the data flows used in the tool and of the controls performed;
- incomplete quantification for the Earnings perspective with the application of only a parallel shock and disregard of the fair value variations;
- absence of a reference rate in the quantification tool with instead consideration of a 0% rate.

1.5. “ICAAP” on-site inspections

The purpose of “ICAAP” on-site inspections is to control the internal capital adequacy assessment process. In the context of these missions, the CSSF verifies that the bank has set up an appropriate process to maintain an adequate level of capital in order to ensure continuity of its commercial operations. The CSSF also verifies that the bank integrates its ICAAP into its decision-making and risk management processes and that it calculates the appropriate level of capital in the normative and economic perspectives, reflecting its risk profile. It also verifies the adequacy of stress tests.

In 2023, the CSSF carried out three “ICAAP” missions in the framework of the SSM, including one abroad. These missions concerned two significant banks located in Luxembourg and one significant bank located abroad. Two missions were still ongoing at the beginning of 2024.

The main observations were the following:

- deficiencies in the internal control processes relating to ICAAP;
- weaknesses in the risk identification process;
- economic capital models and modelling strategy that do not allow capturing the specific risks of the entity which makes their use difficult for decision-making at the management level;
- insufficiently severe stress scenario which does not take into account the entity-specific vulnerabilities;
- insufficiently robust and conservative definition of internal capital;
- no consideration of the profitability and economic perspective in the capital allocation process.

1.6. “Pillar 1” on-site inspections

“Pillar 1” on-site inspections aim to verify the correct application of the requirements for the calculation of own funds with respect to the regulatory reporting as provided for in the CRR.

In 2023, the CSSF did not carry out a separate mission concerning this subject but covered the review of risk weighted assets in the context of a “Credit risk” on-site inspection at a Luxembourg bank.

The shortcomings mainly concerned non-compliance with the risk weights required by the regulation, entailing a rise in the amounts of risk weighted assets and thus a drop in the entity’s solvency ratio.

1.7. “Depository” on-site inspections

In 2023, the CSSF carried out five on-site inspections on the depository function, three of which at banks and two at specialised PFS authorised as professional depository of assets other than financial instruments.

As part of these inspections, the CSSF verified whether the supervised entities carry out the depository function in compliance with the existing laws and regulations. These inspections covered, in particular, the procedures and controls implemented with respect to the process of acceptance of new mandates, the safekeeping of the various asset classes including the due diligence processes on entities involved in the assets holding chain, the specific oversight duties including risk assessment and due diligence as regards the parties involved in UCI management, as well as cash flow monitoring. These inspections also covered the review of compliance with the conflicts of interest management requirements that can occur either due to the organisation of the depositaries with respect to the various services provided to UCIs, or due to the possible link with IFMs.

As regards the safekeeping of other assets, the CSSF identified several recurring weaknesses in the ownership verification for other assets, which had not been carried out in a fully formalised, rigorous and systematic manner. The observations focussed mainly on the following subjects:

- review of the verification processes regarding the assets registrations within the IFMs;
- determination of asset ownership based on external evidence;
- application of the look-through principle where investments in assets targeted under investment policies are made through intermediary financial or legal structures.

The CSSF stresses the point that, in the context of investments in alternative asset categories, the depositary must ensure that the IFM establishes and applies appropriate procedures to verify that the assets acquired by the AIF it manages are appropriately registered in the name of the AIF, and to verify the consistency between the positions shown in the records of the IFM and the assets for which the depositary has established that the AIF holds the ownership. The IFM, on the other hand, must ensure that all instructions and relevant information related to the AIF's assets are sent to the depositary without undue delay, so that the depositary is able to perform its own verification or reconciliation procedures. The depositary must therefore verify that it possesses sufficient and reliable information for it to be satisfied of the AIF's ownership right over the assets, notably based on external evidence, where available.

As regards the oversight duties relating to transaction settlement, and more particularly where cash accounts are not held with the depositary, the CSSF found that the notifications of transactions from IFMs did not consistently allow depositaries to verify the existence and compliance of transactions in advance of the remittance of corresponding liquidities.

Moreover, as regards the general principles relating to the oversight duties, the CSSF recurrently notes that the supervision of tasks under the direct responsibility of the IFMs has not been systematically carried out according to a risk-based approach. It is expected from depositaries that the risk assessment process takes into account the characteristics of the UCIs' strategies and covers the control environment within the IFM's organisation in order to determine the methodologies to apply for periodic controls. The IFM control environment must be subject to an assessment providing assurance on its adequacy and effective implementation, i.e. an assessment that is not only based on the descriptions provided in response to due diligence questionnaires.

In addition, in accordance with the communiqué of 18 July 2023 on the CSSF's expectations following ESMA's Common Supervisory Action on asset valuation, it is reminded, as regards the obligation regarding the valuation of units or shares, mainly relating to UCIs investing in illiquid alternative assets, that the depositary must:

- verify, during the due diligence procedures at IFMs, compliance of asset valuation policies and processes specifically applied to UCIs served by the depositary with the requirements of Article 17 of the Law of 12 July 2013 on alternative investment fund managers and the corresponding articles of Delegated Regulation (EU) No 231/2013;
- ensure, during the periodic control, the effective application of the valuation policies and procedures.

For specialised PFS acting as depositaries of assets other than financial instruments, the CSSF noted certain recurrent deficiencies in their governance, their internal control system and the human and technical resources allocated to the execution and documentation of their tasks. In addition, the shortcomings identified in the preceding paragraphs have also been observed for these market players.

1.8. “UCI administration” on-site inspections

The purpose of “UCI administration” on-site inspections is to ensure the proper implementation of the obligations arising from Circular CSSF 22/811 on the authorisation and organisation of entities acting as UCI administrators.

At the end of 2023, the CSSF initiated two on-site inspections at UCI administrators, the assessments of which are still ongoing at the beginning of 2024.

1.9. “Corporate Governance” on-site inspections

“Corporate Governance” on-site inspections aim to assess the quality of the governance arrangements set up by the supervised entities, pursuant to the legal and regulatory requirements. Thus, may be subject to such an inspection: the internal governance arrangements, the “head of group” function carried out by a Luxembourg entity over its subsidiaries or branches, the organisation and effectiveness of the internal control functions of an entity, the remuneration policies or the outsourcing organisation.

In 2023, 14 “Corporate Governance” on-site inspections were carried out at credit institutions, payment institutions, investment firms and specialised PFS. In addition, under the SSM framework, the CSSF carried out or participated in such inspections at two significant banks in Luxembourg and three significant banks abroad.

The “Corporate Governance” on-site inspections concerned the functioning of, and the collaboration between, the Board of Directors, the authorised management, their committees and the internal control functions, as well as the organisation of outsourcing arrangements.

The most important weaknesses, by recurrence or severity, observed in 2023 at the level of the Boards of Directors and their specialised committees concerned their responsibilities, notably in terms of definition and implementation of the strategy, their review of the remuneration policies and practices, of the quality of the internal control functions, the lack of assessment of the effectiveness of the internal control system and of the quality of the audit work, and finally, the absence of policies and procedures or of their review and approval.

Furthermore, a lack of debate or expression of diverging opinions during the meetings of the members of the Board of Directors, but also a lack of review of the functioning and the absence of assessments of the members of the Board of Directors and its committees were observed. The inspections also revealed deficiencies as regards the review and approval by the Board of Directors of the strategy and the annual update of the internal audit plan of the entities concerned. Finally, the management of conflicts of interest as well as the absence of clear and consistent segregation of responsibilities between the Board of Directors and the authorised management have also been detected as deficiencies.

At the level of the authorised management and the management committees, the main shortcomings identified relate to their functioning and their responsibilities and in particular the lack of risk analysis, monitoring and formalisation relating to outsourcing framework agreements. Moreover, the formalisation and communication of the decisions on the management and the internal governance arrangements, but also the monitoring of the proper implementation of the recommendations issued by the control functions or the supervisory authority, were among the most serious weaknesses. Shortcomings were also identified as regards the absence of a decision-making centre and the permanent presence of the authorised management in Luxembourg, as well as the handling of conflicts of interest in the context of the allocation of responsibilities between authorised managers.

The main deficiencies observed as regards the governance of outsourced activities and functions were the lack of systematic review of the risk assessments relating to the activities concerned and to the external service providers, the inadequate reporting of information to the decision-making bodies as well as the lack of consideration of the continuity of outsourced services in the procedures or the corporate strategy.

The shortcomings identified at the level of the compliance function mainly concern the organisation, the completeness of policies or procedures and the lack of resources of the compliance function, which are likely to jeopardise its independence. Shortcomings were observed as regards the completeness and the consideration of compliance risk assessments relating to the compliance function monitoring programmes. Shortcomings and delays in the execution of the control plans, in the centralisation and follow-up of the identified weaknesses as well as in the content of the reports addressed to the governance bodies were observed at the level of the supervised entities and of their subsidiaries or branches. It has also been noted that some compliance functions did not systematically establish or communicate a list of standards and regulations to which the entities are subject. Also, the coverage of all compliance risks was incomplete.

As regards the risk control function, the weaknesses observed concern the review, completeness and approval of the risk management procedural framework, at the level of the human resources shortage as well as at the level of the assessment, identification and risk control processes, including those relating to the supervision of the outsourcing framework agreements. Weaknesses were also found in the definition and implementation of risk limit indicators of the inspected entities. Finally, a failure to take into account the opinion of the risk management function in the decision-making processes was found.

Several on-site inspections revealed gaps in the quality of the internal audit function's work, at the level of the scope and systematisation of the work performed or of the annual reports that did not highlight the required information for an efficient oversight by the governance bodies. In certain cases, the internal audit function did not establish any procedural framework relating to key elements of the audit cycle, such as the execution of tests or the follow-up and implementation of recommendations. The CSSF also found that some internal audit plans were incomplete or prepared without considering a risk-based approach.

Finally, the CSSF found that inadequate planning of human resources within the internal audit function generated the need to use external experts, in the absence of adequate processes.

With regard to the compliance with EMIR, shortcomings were found as regards supervision and centralisation of EMIR requirements within the same group of entities and the absence of adequate reporting to the governance bodies. Weaknesses were also detected at the level of the contractual framework and the quality of the supervision and outsourcing of certain EMIR activities. As far as risk mitigation techniques are concerned, the main shortcomings were observed at the level of the EMIR trade confirmation process.

The CSSF included, for the first time in 2023, the analysis of the integration of climate-related and environmental (C&E) risks in the governance arrangements of the inspected entities. Particular attention was given to the existence of a materiality assessment of C&E risks and on the approval of a full action plan by the management body, in accordance with the expectations communicated to the banking sector (cf. ABBL/CSSF workshop relating to C&E risks organised in June 2023). Moreover, the CSSF continued to actively contribute to various ECB working groups on "sustainable finance".

1.10. “MiFID” on-site inspections

The purpose of “MiFID” on-site inspections is to assess whether the implemented MiFID framework is in line with the legal and regulatory requirements as regards investor protection and the related organisational measures.

In 2023, the CSSF carried out six “MiFID” on-site inspections at credit institutions, investment firms, management companies authorised under Chapter 15 of the 2010 Law and alternative investment fund managers within the meaning of the 2013 Law.

Four out of the six inspections had a limited scope which allowed focussing on a MiFID theme or on a group of MiFID themes according to the risk assessment of the off-site supervisory departments. These inspections notably covered the organisational requirements governing the provision of investment services and activities, the product governance, the suitability and appropriateness assessment or the provision of information and reports to clients.

The following most important weaknesses, in terms of frequency or seriousness, were identified during the “MiFID” on-site inspections of 2023:

- deficiencies relating to the collection of MiFID information and the suitability or appropriateness assessment of the products and services proposed;
- deficiencies as regards the identification of conflicts of interest and insufficient arrangements to prevent or manage these situations;
- deficiencies detected as regards the information communicated to clients, notably ex-ante and ex-post information relating to costs and charges of financial instruments and investment or ancillary services;
- insufficiency of the measures in place regarding product governance at the level of the product manufacturing and distribution activities as well as at the level of information exchanges among stakeholders;

- shortcomings identified in the controls performed by the internal control functions (linked, in particular, to the non-exhaustivity of the themes covered and insufficient formalisation of the controls carried out by the compliance and internal audit functions).

It should be noted that, in 2023, “MiFID” on-site inspections included controls regarding the consideration of environmental, social and governance (ESG) criteria by the entities that provide investment services. Thus, verifications were made as to how the entities obtain the clients’ sustainable investment preferences and take them into account in the suitability assessment of the investment service.

1.11. “IT risk” on-site inspections

The “Supervision of information systems and support PFS” department includes a specialised team in charge of conducting IT on-site inspections at the supervised entities. In 2023, this team performed, on behalf of the CSSF, 10 on-site inspections at three credit institutions, one investment firm, one electronic money institution, one support PFS, two specialised PFS and two management companies. It also contributed to two on-site inspections at significant banks abroad in the framework of the SSM. Moreover, it cooperated with other CSSF teams in carrying out two AML/CFT on-site inspections.

The main shortcomings, in terms of frequency or seriousness, identified in 2023 during the “IT risk” on-site inspections concerned:

- IT security, including in particular the management of obsolete IT systems and their configurations in order to protect them from malicious events, the information security testing framework, as well as the management and remediation of critical vulnerabilities;
- management of logical access, with an excessive use of privileged generic accounts (e.g. for daily IT activities), privileged nominative access rights not restricted according to the principle of less privilege, accesses not subject to activity logging and to appropriate supervisory controls allowing identifying suspicious activities in due time and guaranteeing responsibility for the activities performed;

- management of IT risks, with very limited or inexistent IT risk management activities (e.g. absence of an information asset mapping supporting the “business” functions and the “support” processes, absence of information asset classification according to criticality, absence of comprehensive and regular risk identification and assessment exercises, poor description of IT risks, unjustified assessment of the IT risk level, inadequate assessments of the controls, erroneous risk level calculation methodology, incomplete risk processing plans and absence of IT risk monitoring and information reporting to the management), or a lack of competence of the IT security control function;
- internal audit, notably with the absence of an adequate and formalised risk assessment to establish the internal audit plan, partial coverage of IT activities, weak quality of audit work with a lack of depth in the audit procedures or a very limited description of audit tests and their results, issues of competence to assess IT risks and inefficient follow-up of IT audit observations and corresponding corrective measures;
- outsourcing, in particular the absence of a criticality assessment of the outsourced activities, incomplete contractual provisions (in particular with the parent companies) and insufficient operational monitoring of performances and risks of the IT service providers.

2. Decisions as regards administrative sanctions and prudential enforcement measures taken in 2023

In 2023, the CSSF took the following decisions with respect to administrative sanctions and prudential enforcement measures. It should be noted that the total amount of administrative fines imposed in 2023 amounted to EUR 2,436,420.50.

2.1. Credit institutions

In 2023, the CSSF imposed two administrative fines on credit institutions and one administrative fine on a shareholder of a credit institution.

One of these fines, amounting to EUR 178,600, was imposed on a credit institution under Article 63(2), 1st subparagraph, 3rd indent and Article 63-2(2), letter (e) of the Law of 5 April 1993 on the financial sector for infringements relating to internal governance and IT organisation, IT outsourcing and IT risk management.

Another fine of EUR 444,400 was imposed on a credit institution pursuant to Article 63-2(1)(d) and Article 63-2(2)(e) of said law for non-compliance with the professional obligations related to governance and IT organisation.

A shareholder of a credit institution was fined EUR 45,000 pursuant to Article 63-1(1)(c) and Article 63-1(2)(c) of the Law of 5 April 1993 on the financial sector for non-compliance with the notification requirement of Article 6(5) of that law, transposing Article 22(1) of Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions.

2.2. Investment firms

In 2023, the CSSF imposed three administrative fines (against six in 2022) on investment firms as legal persons.

An administrative fine amounting to EUR 785,000 for deficiencies relating to AML/CFT professional obligations was imposed on an investment firm in accordance with Article 8-4(1), (2) and (3), of the Law of 12 November 2004 on AML/CFT.

Another administrative fine, amounting to EUR 160,100 was imposed on an investment firm pursuant to Article 63(1), 1st and 7th indents and Article 63(2), 1st subparagraph, 3rd indent of the Law of 5 April 1993 on the financial sector for non-compliance with the professional obligations related to governance and IT organisation, taking into account the criteria defined in Article 63-4(1) of that law, in particular the number, the seriousness and the duration of the breaches.

Another investment firm was fined EUR 20,000 pursuant to Articles 63(1) and (2) and 63-2a(1) and (4) of the Law of 5 April 1993 on the financial sector for non-compliance with Article 19(4) of that law and point (14) of the prudential procedure regarding the appointment of directors, authorised managers and key function holders within investment firms.

The CSSF used its right of injunction in accordance with Article 59 of the Law of 5 April 1993 on the financial sector in 15 cases (16 in 2022) for the following reasons:

- non-compliance with the legal and regulatory provisions in force with respect to remuneration procedures, practices and policies;
- non-compliance with MiFID II laws and regulations;
- incorrect information stated on the website of an investment firm;
- fiduciary loan activity performed without authorisation;
- deficiencies observed with respect to periodic IFR/IFD reporting;
- compliance of the AML/CFT risk assessment;
- shortcomings, partly recurrent, observed by the external auditor and the internal auditor in their reports dated 31 December 2021;
- non-compliance with the regulatory requirements regarding liquidity (IFR);
- deficiencies identified regarding the AML/CFT arrangements in place;
- non-compliance with the regulatory deadline for the submission of closing documents;
- non-compliance with the professional obligations regarding governance and IT organisation;
- compliance of the compliance function and the risk control function;
- non-compliance with certain provisions applicable to corporate governance;
- non-compliance of capital instruments with the applicable regulatory and prudential requirements;
- business continuity at risk.

The CSSF also imposed injunctions on 10 investment firms in accordance with Article 8-2(1) of the Law of 12 November 2004 on AML/CFT (against one in 2022) for the following reasons:

- non-compliance with CSSF Regulation No 12-02 of 14 December 2012 relating to AML/CFT as regards the financial year closing on 31 December 2021;
- non-compliance with the applicable AML/CFT laws and regulations;
- shortcomings observed in relation to AML/CFT policies in place;
- shortcomings observed concerning the AML/CFT arrangements in place for the financial year 2021;
- non-compliance with the AML/CFT procedure;
- deficiencies observed with respect to the frequency of the name screening controls.

Moreover, 37 investment firms were concerned by an injunction imposed by the CSSF pursuant to Article 8-2(1) of the Law of 12 November 2004 on AML/CFT for not having transmitted suspicious transaction reports over several business years.

In 2023, the CSSF decided to withdraw, for a period of 10 years, the professional standing of a natural person for a serious breach of the obligation to ensure compliance with the regulatory framework governing the company's business. Serious deficiencies to obligations under prudential regulations were noted.

After having ordered the suspension of payments for an investment firm, the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court) sitting in commercial matters pronounced the dissolution and ordered the liquidation of the investment firm concerned.

For another investment firm, from which the CSSF had withdrawn the authorisation for serious failures to comply with certain legal and regulatory requirements, the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court) sitting in commercial matters pronounced the dissolution and ordered the judicial liquidation of the investment firm concerned.

In 2023, the CSSF transmitted one report to the State Prosecutor pursuant to Article 23(2) of the Code of Criminal Procedure and one report pursuant to Article 74-2(4), point (2) of the Law of 7 March 1980 on judicial organisation.

The CSSF reported 40 cases to the Prosecutor's Office, over the course of the year, regarding entities which claimed to be established in Luxembourg and offered investment services without authorisation (68 in 2022). The number of these reports, mainly due to false websites aiming at scamming potential investors, has been decreasing since 2021.

2.3. Specialised PFS

During 2023, the CSSF imposed two administrative fines of EUR 114,000 and EUR 198,750, respectively, on two specialised PFS.

One of these fines was imposed pursuant to:

- the provisions of Article 2-1(1), as well as Article 8-4 of the Law of 12 November 2004 on AML/CFT for non-compliance with the AML/CFT professional obligations, while taking into account the criteria defined in Article 8-5(1) of that law, in particular the seriousness, the duration of the breach and the financial situation of the legal person held responsible for the breach;
- Article 63(1), 1st indent and (2), 3rd indent, of the Law of 5 April 1993 on the financial sector with respect to inadequate management of conflicts of interest, while taking into account the criteria defined in Article 63-4 of that law, in particular the seriousness, the duration of the infringement

and the financial situation of the legal person held responsible for the infringement.

The other fine, which followed an on-site inspection carried out by the CSSF, was imposed pursuant to the provisions of Article 63(1) and (2) of the Law of 5 April 1993 on the financial sector for non-compliance with several professional obligations relating to IT risk management, internal governance, professional secrecy obligation and the requirements regarding communication to the CSSF.

Furthermore, in 2023, the CSSF used its right of injunction in accordance with Article 59 of the Law of 5 April 1993 on the financial sector in seven cases for the following reasons:

- delay in submitting the 2022 annual closing documents to the CSSF by three specialised PFS;
- observations made in the context of verifying compliance with AML/CFT obligations in force during an introductory visit at a specialised PFS;
- deficiencies observed in the IT area during on-site inspections conducted at two specialised PFS;
- observations made during two on-site inspections in relation to the depositary function performed by two specialised PFS pursuant to the Law of 12 July 2013 on alternative investment fund managers;
- follow-up of a "Corporate Governance" on-site inspection at one specialised PFS.

During the year 2023, the CSSF decided to withdraw the professional standing of one person within a specialised PFS within the meaning of Article 19(1) of the Law of 5 April 1993 on the financial sector and refused the application of that same person for the position of day-to-day manager for a specialised PFS. This decision was taken pursuant to Article 19(4) of that law.

Finally, the CSSF transmitted two reports pursuant to Article 23(2) of the Code of Criminal Procedure and Article 74-2(4), point (2) of the Law of 7 March 1980 on judicial organisation.

2.4. Support PFS

In 2023, the CSSF imposed one administrative fine on a support PFS pursuant to Article 63 of the Law of 5 April 1993 on the financial sector. The entity was fined EUR 16,000 for non-compliance with the prudential obligations relating to the administrative and accounting organisation, as provided for by the provisions of Article 17(2), 2nd indent, of the Law of 5 April 1993 on the financial sector and point V. of Circular CSSF 12/544.

2.5. Payment institutions, electronic money institutions and virtual asset service providers

In 2023, the CSSF used its right of injunction, on the one hand, in accordance with the provisions of the Law of 10 November 2009 on payment services in reference to the provision of payment services and/or electronic money services via unauthorised intermediaries and, on the other hand, in accordance with the provisions of the Law of 19 December 2020 on the implementation of restrictive measures in financial matters in reference to the efficient and forthwith implementation of financial sanctions and restrictive measures.

2.6. Investment fund managers (IFMs)³ and investment funds

In 2023, the CSSF took the following decisions with respect to sanctions and prudential enforcement measures:

- pursuant to the Law of 13 February 2007 relating to specialised investment funds:
 - administrative fines of EUR 4,000 each on the *dirigeants* (directors) of one SIF for non-filing of the annual financial report or the management letter;
- pursuant to the Law of 15 June 2004 relating to the investment company in risk capital (SICAR):
 - administrative fines of EUR 500 each on the *dirigeants* of two SICARs for non-filing of the annual financial report or the management letter;
- pursuant to the Law of 17 December 2010 relating to undertakings for collective investment:
 - an administrative fine of EUR 8,000 on an IFM/registered AIFM for non-filing of the documents relating to the previous financial year;
- pursuant to the Law of 12 July 2013 on alternative investment fund managers:
 - an administrative fine of EUR 8,000 on an IFM/registered AIFM for non-filing of the documents relating to the previous financial year;
 - an administrative fine of EUR 200,000 on an IFM for breaches of applicable legal provisions, noted following an on-site inspection;
 - an administrative fine of EUR 18,878 on an IFM for breaches of legal provisions, identified during an on-site inspection and relating to requirements regarding the management of conflicts of interest and supervision of delegated activities;

³ It should be noted that some of these administrative fines are still subject to reviews (*recours gracieux* or *recours administratif*) which are pending before the administrative courts.

- pursuant to the Law of 12 November 2004 on AML/CFT:
 - administrative fines of EUR 25,000 each on five IFMs/registered AIFMs for non-filing of the AML/CFT report as required under Circular CSSF 21/788;
 - an administrative fine of EUR 1,250 on an IFM/registered AIFM for non-filing of the AML/CFT report as required under Circular CSSF 21/788;
- pursuant to the EMIR Law:
 - an administrative fine of EUR 30,205 on an IFM for occasional breaches of legal provisions, identified during an on-site inspection and relating to reporting of derivative contracts and supervision of delegated activities;
- pursuant to the Law of 22 March 2004 on securitisation:
 - administrative fines of EUR 2,000 each on the *dirigeants* of a securitisation undertaking for non-filing of the annual financial report or the management letter.

2.7. Securities markets

The review of financial reports under the Transparency Law led the CSSF to issue, pursuant to Article 25 of that law, two administrative fines amounting to a total of EUR 60,000 due to delays in the disclosure and filing of annual financial reports. At the same time, the CSSF issued seven warnings in relation to information concerning major holdings (provided for in Chapter III of the Transparency Law), of which four concerned shortcomings in shareholder notifications and three concerned shortcomings in relation to the disclosure of notifications of major holdings by the issuer concerned.

2.8. Audit profession

Pursuant to the provisions of Article 43(1)(f) of the Audit Law and taking into account the provisions of Article 44 of that law, the CSSF imposed an administrative fine on a *réviseur d'entreprises agréé* (approved statutory auditor) amounting to EUR 21,987.50. This administrative fine was imposed based on the provisions of Article 40(2) and Article 43(2)(a) and (b) of the Audit Law for professional misconduct and negligence which led to the infringement of the legal and regulatory requirements relating to statutory audits.

XIX. Resolution

The Law of 18 December 2015 on the failure of credit institutions and certain investment firms (BRRD Law), which notably transposes Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), designates the CSSF as the resolution authority in Luxembourg¹. The CSSF exercises the tasks and powers conferred on it as resolution authority through the Resolution Board, whereas the “Resolution” department (RES department) performs the day-to-day tasks related to these tasks. The Resolution Director, Mr Romain Strock, who chairs the Resolution Board, heads the RES department which counted 16 people as of 31 December 2023.

In line with the distribution of responsibilities, particularly between the Resolution Board and the Single Resolution Board (SRB), the RES department is in charge, among other things, at individual and group level, as concerns credit institutions and investment firms falling within the scope of the BRRD Law or Regulation (EU) No 806/2014

(the SRM Regulation)², of submitting the following for decision to the Resolution Board:

- adoption of resolution plans and resolvability assessments;
- measures to address or remove impediments to resolvability;
- appointment of a special manager;
- assurance regarding a fair, prudent and realistic valuation of the assets and liabilities;
- application of simplified obligations or granting waivers, among others, to the obligation to draw up a resolution plan;
- determination of the minimum requirement for own funds and eligible liabilities, in particular its level;
- adoption of resolution decisions and application of resolution tools in accordance with the relevant procedures and safeguards;

¹ Following the transposition of Directive 2019/879/EU (BRRD2) amending the BRRD, the BRRD Law was updated on 21 July 2021.

² The SRM Regulation (SRMR) was amended by Regulation (EU) 2019/877 (SRMR2).

- writing-down or conversion of relevant capital instruments;
- execution of the instructions issued by the SRB.

Following the entry into force of Regulation (EU) 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties, the Law of 20 July 2022 designates the CSSF as the resolution authority of central counterparties in Luxembourg according to Article 3(1) of the Regulation. There are currently no central counterparties established in Luxembourg.

The RES department represents the CSSF as resolution authority within international fora, such as the SRB, the EBA and ESMA.

As far as ESMA is concerned, the CSSF is represented in the CCP Resolution Committee, a permanent subgroup of ESMA set up in 2023 and gathering the resolution authorities of central counterparties.

As far as the EBA is concerned, the RES department is represented in the Resolution Committee (ResCo) which is a permanent internal committee of the EBA, set up in January 2015, for the purposes of taking decisions and fulfilling tasks conferred on the EBA and the national resolution authorities under the BRRD. The voting members are the directors of the national resolution authorities within the EU. In addition, the RES department participates in the work of the Subgroup on Resolution Planning and Preparedness (SGRPP), which is a subgroup of the Resolution Committee.

With respect to the SRB, the Resolution Director participates in the plenary session of the SRB as well as in the extended executive session when topics concerning Luxembourg entities are being discussed. This was the case in 2023 for the adoption by the SRB, which met in extended executive session, of resolution plans of several banking groups which included Luxembourg banking subsidiaries and of resolution plans of Luxembourg banking groups or systemic banks.

Moreover, the agents of the RES department participate in the work of the following permanent working sub-committees of the SRB: Resolution and its sub-structures, Contributions, Data Collection, Administrative and Budget as well as Legal Network. The CSSF also participates in the SRB ICT Network.

The RES department continues its collaboration with the SRB for the drafting of resolution plans for Luxembourg significant banks under the competence of the SRB. In this context, frequent meetings, videoconferences and information exchanges take place with the representatives of the SRB, the CSSF's Banking Departments and the relevant banks. The RES department also participates, within the Internal Resolution Teams coordinated by the SRB, in drafting resolution plans for significant banking groups in the Banking Union which have Luxembourg subsidiaries.

In a cross-border context outside the SRB, the RES department is chairing three resolution colleges. Moreover, it continues to participate in the work, meetings and teleconferences of colleges of resolution authorities chaired by group-level resolution authorities from other EU countries.

The RES department also drafted a certain number of resolution plans for less significant banks under the direct responsibility of the Resolution Board.

Resolution plans for the two colleges relating to banks for which the CSSF is the group-level resolution authority as well as several of the aforementioned resolution plans for less significant banks were adopted by the Resolution Board.

In 2023, three CSSF-CODERES circulars were published on the following respective topics:

- the raising of the 2023 contributions for the Single Resolution Fund;
- the collection of information for the calculation by the SRB of the 2024 contributions to this fund;
- the application of three EBA guidelines concerning in particular resolvability.

The RES department also implemented an EBA guideline by publishing, in December 2023, a technical document describing the CSSF's approach to the execution of the write-down and conversion of capital instruments and bail-inable liabilities in resolution.

Finally, members of the RES department assisted the representatives of the Ministry of Finance during the discussions within the EU Council on the draft delegated regulations of the European Commission relating to the CRR/CRD package, as these texts concerned certain resolution-related aspects.

XX. Protection of depositors and investors

The Council for the Protection of Depositors and Investors (CPDI) is the internal executive body of the CSSF in charge of managing and administering the deposit guarantee scheme, which is financed through the Fonds de garantie des dépôts Luxembourg (FGDL) and the Système d'indemnisation des investisseurs Luxembourg (SIIL). The FGDL is an *établissement public* (public body) separate from the CSSF and established by Article 154 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (BRRD Law). The missions of the CPDI are defined in Part III "Protection of depositors and investors" of the BRRD Law. The CPDI is assisted in the performance of its duties by the "Depositor and investor protection" department (PDI department) of the CSSF which has 4.6 full-time equivalent positions. In general, the PDI department performs the operational tasks of the FGDL and of the SIIL.

• Activities of the CPDI and of the PDI department

The CPDI met twice in 2023 as the day-to-day decisions were taken by written procedure. Under its management, the PDI department worked, in particular, on the following topics:

- support to the FGDL's Management Committee in extending the syndicated credit line agreement

entered into in 2022 to 10 November 2025, allowing the FGDL to meet its commitments in case its financial means are insufficient;

- reconfiguration of the call centre following a public tender in order to make it easier for depositors to contact the FGDL in the event of deposits being unavailable in accordance with Article 170 of the BRRD Law;
- improvement of the regulatory framework governing the deposit guarantee by way of the publication of Circulars CSSF-CPDI 23/34 on the method for calculating ex-ante contributions, CSSF-CPDI 23/35 on the scope of the deposit guarantee and CSSF-CPDI 23/36 on the "Single Customer View" file;
- contribution to the EBA work in relation to deposit guarantee schemes;
- quarterly collection of data on covered deposits through four circulars and verification of the data received;
- operational test made in June 2023 in order to confirm the adequacy of the FGDL's IT applications and which enabled the identification of a number of issues that call for improvement;

- management of the reimbursement campaigns of the depositors of ABLV Bank Luxembourg S.A. (in liquidation) and Fortuna Banque s.c. (in liquidation) (cf. below).

- **FGDL interventions**

On 12 October 2023, the *Tribunal d'arrondissement de Luxembourg* (Luxembourg District Court) ordered the judicial liquidation of Fortuna Banque s.c. In accordance with Article 171(1) of the BRRD Law, the FGDL was triggered in order to enable depositors to be compensated, within the limit of the covered deposits, for the unavailability of their deposits up to EUR 100,000 per person. As at 31 December 2023, the FGDL thus reimbursed 240 depositors for a total amount of EUR 5.2 million.

As a reminder, the CSSF determined the unavailability of deposits at ABLV Bank Luxembourg S.A. on 24 February 2018, and the *Tribunal d'arrondissement de Luxembourg* (Luxembourg District Court) ordered the bank's liquidation on 2 July 2019. Since March 2018, the FGDL has been repaying the covered deposits as the depositors transmit, to the FGDL, the necessary information and once their eligibility is confirmed by the CPDI. In accordance with Article 176(8) of the BRRD Law, the depositors have 10 years, following the date the unavailability has been determined, to claim the repayment of their deposits by the FGDL, even in the absence of a claim accepted by the liquidators. In 2023, a new repayment was made upon a depositor's request. The total amount of the deposits repaid by the FGDL represents EUR 10 million.

- **Activation of the SIIL**

The SIIL comes into play in case a professional is unable to return funds or financial instruments in relation to investment business. The cover under the SIIL as governed by the BRRD Law is limited to EUR 20,000.

In 2023, the SIIL was activated twice in respect of the liquidations of Fuchs & Associés Finance S.A. and Fortuna Banque s.c. ordered by the *Tribunal d'arrondissement de Luxembourg* (Luxembourg District Court) in July and October 2023, respectively.

No compensation requests were received in 2023 from eligible customers of Fortuna Banque s.c. or Fuchs & Associés Finance S.A. or Anphiko Asset Management S.A. (for which the SIIL was activated in 2022).

- **Financing of the FGDL**

As at 31 December 2023, the FGDL had 88 member institutions as against 92 at the end of December 2022. In order to maintain the target level of its assets, i.e. 0.8% of the covered deposits pursuant to Article 179(1) of the BRRD Law, the FGDL raised EUR 1.8 million from member institutions in 2023 (EUR 9.4 million in 2022). Moreover, the FGDL collected EUR 38.8 million (EUR 41.2 million in 2022) as contributions for the buffer of additional financial means laid down in Article 180 of the BRRD Law. Finally, the FGDL also received EUR 1.4 million for the administrative contribution provided for in Article 154(12) of the BRRD Law, mainly in order to cover the costs related to the setting-up and maintenance of the credit line.

As at 31 December 2023, the FGDL's available financial means, including the buffer of additional financial means, thus amounted to EUR 516.3 million. Moreover, since November 2022, the FGDL has a credit line granted by a syndicate of Luxembourg banks with a volume of EUR 1 billion, pursuant to Article 179(2) of the BRRD Law, and guaranteed by the Luxembourg State in accordance with the Law of 6 April 2022 on the granting of State guarantee for credit lines contracted by the FGDL. No credit line was used in 2023.

Lastly, within the context of the judicial liquidation of ABLV Bank Luxembourg S.A. and following the filing of its declarations of claims with the *Tribunal d'arrondissement de Luxembourg* (Luxembourg District Court), the FGDL received an interim distribution of dividends amounting to EUR 9.8 million in 2023.

It should also be noted that the covered deposits decreased by 2.3% over a year to EUR 37.3 billion as at 31 December 2023.

XXI. Financial crime

This chapter presents the CSSF's commitment at national and international level, throughout 2023, to the fight against money laundering and terrorist financing (AML/CFT) and as regards international financial sanctions.

The year 2023 was marked by challenges and opportunities which further shaped the framework governing the fight against financial crime. For the CSSF, it was also an occasion to further confirm its commitments with respect to AML/CFT, to take action to promote public-private partnerships and to continue focussing on its cooperation with other national as well as European and international bodies.

1. CSSF supervision for combating money laundering and terrorist financing

Controlling compliance with professional AML/CFT obligations is an integral part of the supervisory framework established by the CSSF. AML/CFT supervision is based on a multiannual control programme which combines off-site and on-site supervisory measures. To this end, the different departments and teams in charge of AML/CFT at the CSSF follow an ML/TF risk-based approach.

1.1. Off-site AML/CFT supervision

1.1.1. Credit institutions and central securities depositories (CSDs)

As every year, the CSSF requested, in 2023, all credit institutions and CSDs to answer the annual AML/CFT questionnaire in order to collect quantitative and qualitative data. The collected quantitative data is of utmost importance for the CSSF as it ties in directly with the AML/CFT supervision of credit institutions and with the statistical processing for national and international authorities. In order to share its expectations regarding the questionnaire, the CSSF organised a videoconference on 25 January 2024, gathering around 250 participants of supervised entities.

Off-site AML/CFT supervision also includes the analysis of the long form audit reports drawn up by the *réviseurs d'entreprises agréés* (approved statutory auditors) and the analysis of the reports drawn up by the internal control functions of credit institutions and CSDs (compliance function and internal audit function). In 2023, 131 observation letters were sent to credit institutions with respect to AML/CFT shortcomings identified in the 2022 closing reports and during the follow-up to the on-site inspections carried out by the CSSF. The responses from the credit institutions to these letters provide the CSSF with an updated understanding of their AML/CFT control environment, which is important, for instance, for the exchanges during AML/CFT colleges.

Based on these reports and on the annual AML/CFT questionnaire, the CSSF identified, in particular, severe deficiencies in relation to the lack of consideration of certain high-risk countries and to delays in the name screening process. The CSSF sent 20 injunction letters in this context.

In 2023, the CSSF continued organising AML/CFT colleges in the context of the EBA's *AML/CFT Colleges Guidelines*, while pursuing a more risk-based approach. Thus, nine college meetings were organised in 2023 for a total of 18 colleges. The CSSF also participated in 28 AML/CFT college meetings organised by European authorities for 38 Luxembourg credit institutions, which makes the CSSF one of the most important actors as regards AML/CFT colleges activity in Europe. The European authorities competent for AML/CFT supervision are permanent members of the AML/CFT colleges organised by the CSSF as the lead supervisory authority. However, other authorities could participate as observers, like the ECB for significant institutions or the FIU, subject to the agreement of all members. In 2023, the CSSF continued extending the scope of observers to representatives of third-country supervisory authorities (Switzerland, United Kingdom, etc.) and requested the credit institutions concerned by the colleges to participate in the meetings it had organised.

The CSSF continued its exchanges with the Luxembourg banking sector, in particular through meetings and regular contacts with the compliance officers and the members of the management bodies and administrative bodies of these credit institutions. Thus, in 2023, 158 meetings relating specifically to AML/CFT aspects were organised.

In 2023, the CSSF updated its *Private Banking Sub-Sector ML/TF Risk Assessment* which was published on 7 February 2024. To this end, the Expert Working Group Private Banking of the CSSF, established with the ABBL and the FIU, met on 25 October 2023 to exchange views with its members on the development of ML/TF risk related to this activity since the last publication of the document in 2019.

1.1.2. Investment firms

A dedicated team, counting three agents as at 31 December 2023 within the "Supervision of investment firms" department, deals with the aspects of the off-site AML/CFT supervision of investment firms.

As every year, the annual AML/CFT questionnaire, which allows the CSSF to collect quantitative and qualitative data, was sent to investment firms in 2023. Based on this data, the CSSF assigns an automatic ML/TF risk scoring to each investment firm. This scoring is then subjected to an expert judgement built on all the on-site and off-site information available to the CSSF, leading to a final ML/TF scoring per investment firm. The final scoring allows establishing the CSSF's off-site and on-site AML/CFT supervisory programme in accordance with a risk-based approach. Indeed, these final ratings are in particular used as allocation key of the available resources (on-site and off-site) for AML/CFT supervision. The data from the annual AML/CFT questionnaire is also processed to detect potential weaknesses in the efficiency of the mitigation measures put in place by investment firms. To this end, the CSSF sent 45 observation letters and four injunction letters in relation to the frequency of name screening, the frequency of updates of the lists of financial sanctions used by investment firms and the existence of a name screening system covering negative public information.

Off-site AML/CFT supervision includes, inter alia, the analysis of the long form audit reports drawn up by the *réviseurs d'entreprises agréés* and the analysis of the reports drawn up by the internal control functions (compliance function, internal audit function and risk control function). In this context, 21 observation letters and two injunction letters were sent to investment firms with respect to the most important AML/CFT weaknesses identified in these reports. In particular, the letters related to the efficiency and proper functioning

of the transaction monitoring systems, the compliance of the AML/CFT procedures with the legal framework or the shortcomings identified in the application of ongoing due diligence measures.

Moreover, the CSSF analyses the ML/TF risk self-assessments established by investment firms as well as the AML/CFT procedures where weaknesses were identified through off-site AML/CFT supervision. The CSSF sent three observation letters and four injunction letters in this context.

In addition to the on-site inspections performed by dedicated teams, meetings with the Chief Compliance Officers of two investment firms were held to discuss specific AML/CFT attention points, resulting, in particular, from the answers provided in the annual AML/CFT questionnaire (client structure, organisation of the compliance function, efficiency of the mitigation measures in place, etc.). It should be noted that these meetings entailed a prior full review of the entity's AML/CFT policies and procedures. These meetings were followed by an observation letter relating in particular to a ML/TF risk assessment not compliant with Article 2-2 of the Law of 12 November 2004 on AML/CFT and Circular CSSF 11/529 on risk analysis regarding AML/CFT. Moreover, two observation letters were sent in relation to a meeting held in 2022.

Based on the information provided by the FIU, the CSSF conducted a thematic review in 2023 on the registration of investment firms on the goAML platform and on investment firms that had not transmitted any suspicious transaction reports over several business years. In the wake of this review, the CSSF sent 11 observation letters and 37 injunction letters.

Finally, as regards European cooperation and in the context of the *AML/CFT Colleges Guidelines*, the CSSF organised as lead supervisor two AML/CFT college meetings, in 2023, in relation to two investment firms with subsidiaries or branches in other EU Member States. The CSSF also established an information exchange channel with other authorities for three other investment firms with subsidiaries or branches in other EU Member States and took part in four AML/CFT college meetings organised by the authorities of other Member States.

1.1.3. Specialised PFS

The resources dedicated to the off-site AML/CFT team of the "Supervision of specialised PFS" department remained stable with five agents.

As in 2022, the CSSF requested, in 2023, all specialised PFS to answer the annual AML/CFT questionnaire in order to collect quantitative and qualitative data. The data collected was integrated in the off-site AML/CFT supervision which is performed by applying a risk-based approach.

Twenty-four observation letters were sent to specialised PFS with respect to shortcomings identified notably (i) in the reports issued in the framework of the closing documents for the year 2022, (ii) in the 2022 AML/CFT questionnaires, (iii) following face-to-face meetings at the premises of the CSSF, (iv) during initial control visits of the CSSF at newly authorised specialised PFS, (v) during the follow-up process of on-site inspections and (vi) following the review of the AML/CFT procedures during the licensing process.

After reviewing the appointments proposed by the specialised PFS for the roles of compliance officer in charge of the control of compliance with the professional obligations (RC) and person responsible for compliance with the professional obligations (RR), a total of 23 acknowledgement letters were sent.

In 2023, nine meetings with specialised PFS covered specific AML/CFT topics. Among the topics covered during these meetings, discussions concerned the activities of specialised PFS, the ML/TF risk to which they are exposed, the systems, training and resources put in place with respect to AML/CFT and compliance, the supervision of the delegated tasks relating to AML/CFT (where applicable), the involvement of members of the board of directors and/or of the board of managers in projects relating to AML/CFT and compliance, the cooperation with the authorities, etc. The fight against terrorist financing, the problems related to politically exposed persons (i.e. their detection, the case management and the exposure of specialised PFS to the risk of corruption) and those linked to the sanctions issued notably against entities and individuals in the context of the Ukraine conflict and the financing of the proliferation of weapons of mass destruction were also on the agenda of the meetings.

In 2023, AML/CFT controls were carried out during eight welcome visits. These controls included, among other things, tests on the name screening tool, the review of AML/CFT files and the presentation by the specialised PFS of its AML/CFT risk self-assessment, its risk appetite, its AML/CFT procedures and its transaction monitoring process.

As regards cooperation with the private sector, the CSSF held, in 2023, two meetings with the working group dedicated to specialised PFS in collaboration with the FIU, the Luxembourg Association of Compliance Officers (ALCO), the Luxembourg Alternative Administrators Association (L3A), the Luxembourg Private Equity and Venture Capital Association (LPEA) and the Luxembourg Association of Family Offices (LAFO). The first meeting of the working group covered, among other things, (i) the signature of the working group's operating rules by its members, (ii) the issues encountered by specialised PFS in opening a bank account for clients, (iii) the future update of the *Sub-Sector Risk Assessment on TCSP* for specialised PFS and (iv) general topics related to terrorism financing, name screening and corruption. The second meeting focussed on discussing the answers to a questionnaire sent to the members of the working group in order to collect information for the *Sub-Sector Risk Assessment on TCSP* for specialised PFS.

For the purpose of informing and educating supervised entities, the annual AML/CFT conference dedicated to specialised PFS was organised on 30 January 2023 with the participation of the FIU and the Ministry of Finance.

1.1.4. Payment institutions and electronic money institutions

A specialised team in charge of the off-site supervision of ML/TF risk of payment institutions and electronic money institutions has been set up within the "Innovation, payments, market infrastructures and governance" department. It centrally manages the aspects of the AML/CFT supervision of payment institutions and electronic money institutions as well as of branches, agents and distributors established in Luxembourg of payment institutions or electronic money institutions authorised in other EU Member States.

As is the case for the other financial sector professionals, an annual AML/CFT questionnaire is sent to payment institutions and electronic money institutions as well as to the branches, agents and distributors established in Luxembourg of payment institutions or electronic money institutions authorised in other EU Member States. In addition to the data collected via this questionnaire, information is collected within the framework of the on-site and off-site supervision of these institutions. This data and information allow a risk assessment and a harmonised evaluation of these entities, having regard, in particular, to the risk level of their activities. They are also used to allocate the available (on-site and off-site) resources to AML/CFT controls, in accordance with the basic principle governing the risk-based supervision.

The key elements of the off-site supervision of the ML/TF risk include the analysis of the annual reports of the compliance function and the internal audit function, the work carried out by the *réviseur d'entreprises agréé* as part of the long form report, the analysis of the aforementioned annual AML/CFT questionnaires and, where relevant, a critical review of the ML/TF risk analyses and the AML/CFT policies and procedures of these entities, in particular, in the event of any material change having an impact on the provision of payment and electronic money services and/or the AML/CFT internal control arrangements in a broad sense.

Moreover, regular meetings and contacts are planned with the compliance officers and the members of the management and administration bodies of these entities in order to further examine certain aspects of their reports, to follow the regular developments of their activities (in conjunction with the significant technological

progress in this area) and of their organisation as well as of their internal control arrangements and to raise appropriate awareness to ML/TF risk.

In 2023, in reference to the crisis in the Middle East, the CSSF launched an enquiry with all the payment institutions and electronic money institutions in order to raise their awareness concerning the necessary reassessment of their AML/CFT arrangements, by taking into account the emerging risks associated with this crisis. In 2024, the CSSF will continue its awareness-raising and supervisory measures with reference to the emerging risks, but also to the risks linked to terrorist financing.

The CSSF also assesses the ML/TF risk and the AML/CFT policies and procedures submitted in the application files of new payment institutions or electronic money institutions and monitors, where applicable, the AML/CFT remediation plans to be put in place by the institutions identified, notably in the framework of on-site inspections (on-site supervision).

1.1.5. Virtual asset service providers

With reference to the Law of 25 March 2020 amending the Law of 12 November 2004 on AML/CFT, any virtual asset service provider (VASP) established or providing services in Luxembourg, on behalf of or for its customers, is subject to compliance with all the professional AML/CFT obligations and must be registered with the VASP register established by the CSSF.

A VASP means any person that provides, on behalf of or for its customers, one or more of the following services:

- exchange between virtual assets and fiat currencies, including the service of exchange between virtual currencies and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet service;
- participation in and provision of financial services related to an issuer's offer or sale of virtual assets.

In accordance with the legal provisions in force, the CSSF's role vis-à-vis these providers is limited to registration, supervision and enforcement for AML/CFT purposes only.

As at 31 December 2023, 11 providers were registered as VASP (against nine as at 31 December 2022), including seven that were established in Luxembourg and four in another country. Some registration files are being reviewed at the CSSF in order to ensure that the providers fulfil the relevant legal requirements and demonstrate the implementation of an AML/CFT framework adapted to the level of risk to which they are exposed, necessary for their registration in the CSSF's VASP register.

In 2023, the CSSF continued deploying its internal procedures for the supervision of VASPs as well as the assessment and understanding of the ML/TF risk related to virtual asset services. To this end, it continued collecting statistical information notably in relation to the customers and business volumes of the registered VASPs. Thus, by the end of 2023, a volume of around EUR 23 billion in virtual asset exchange transactions had been executed. These transactions mainly concerned activities in connection with Bitcoin, Ethereum and XRP processed by the registered entities. The entities offering virtual asset custody services held about EUR 1.8 billion in virtual assets as at 31 December 2023, corresponding mainly to Bitcoin and Ethereum.

In 2023, in reference to the crisis in the Middle East, the CSSF launched an enquiry with all the VASPs in order to raise their awareness concerning the necessary reassessment of their AML/CFT arrangements, notably by taking into account the emerging risks associated with this crisis. In 2024, the CSSF will continue its awareness-raising and supervisory measures with reference to the emerging risks, but also to the risks linked to terrorist financing.

As is the case for the other financial sector professionals, an annual AML/CFT questionnaire was sent to VASPs in 2023. The data and information collected via this questionnaire allow a risk assessment and a harmonised evaluation of these entities, having regard, in particular, to the risk level of their activities. They are also used to allocate the available (on-site and off-site) resources to AML/CFT controls, in accordance with the basic principle governing the risk-based supervision.

As for the other professionals, the key elements of the off-site supervision of the ML/TF risk include the analysis of the annual reports of the compliance function and, where applicable, the internal audit function, the quarterly collected quantitative data, the critical review of the ML/TF risk analyses and the AML/CFT policies and procedures of these entities, as well as the information collected during regular meetings and contacts with the compliance officers and the members of the management and/or administration body(ies) of the entities concerned.

In 2023, the CSSF continued its exchanges and meetings with the private sector in order to (i) raise its awareness of the new and future professional obligations such as, in particular, the obligations under the recast Regulation (EU) 2015/847 on the information accompanying transfers of funds (commonly referred to as the Travel Rule in the virtual asset ecosystem), (ii) clarify the CSSF's requirements and expectations with respect to AML/CFT, (iii) answer the questions of the industry as regards the provision of virtual asset services and (iv) identify the practical difficulties encountered by the private sector. Moreover, the CSSF also exchanged with other national, European and international authorities on issues relating to virtual assets and VASPs.

1.1.6. UCI departments

As part of the UCI departments, the "UCI AML" department conducts off-site controls and organises specific face-to-face meetings covering AML/CFT together with the other UCI departments. It analyses the answers provided by the IFMs and the products which have not designated a management company to the CSSF's annual AML/CFT questionnaire and the AML/CFT reports drawn up by the *réviseurs d'entreprises agréés* (approved statutory auditors) in accordance with Circular CSSF 21/788 (external AML/CFT reports).

On 11 December 2023, the CSSF organised a virtual AML/CFT conference in order to exchange with the supervised entities and to share feedback on the results of supervisory measures. It gathered 1,000 participants from the private sector. The FIU also participated and shared its insights concerning the developments in the collective investment sector.

As part of the off-site supervision, 42 meetings in 2023 specifically covered AML/CFT based on an annual control plan drawn up following a risk-based approach. The off-site supervision resulted in 390 observation letters as a result, in particular, of the analysis of AML/CFT reports of *réviseurs d'entreprises agréés* (Circular CSSF 21/788).

Moreover, the CSSF cooperated with various foreign supervisory authorities as part of its AML/CFT supervision of the entities of the collective management sector. Thus, it sent 30 international cooperation requests to foreign authorities and received 26 cooperation requests. In the context of the international cooperation and AML/CFT supervision of entities of the collective management sector, the CSSF organised, as in 2022, seven AML/CFT colleges in the context of the application of the AML/CFT rules of conduct issued by the European supervisory authorities.

Finally, the CSSF continued the activities of the Expert Working Group UCI AML set up in 2018. The working group met five times in 2023 and notably dealt with the digital RC report to be introduced in 2024.

1.2. On-site AML/CFT supervision

AML/CFT on-site inspections are carried out at all the professionals supervised by the CSSF in order to assess that the quality of the AML/CFT framework is in line with the legal and regulatory requirements.

In 2023, the “On-site inspection” department carried out 34 AML/CFT inspections focussing more particularly on professionals whose sector of activities is exposed to a high inherent ML/TF risk according to the national ML/TF risk assessment and/or whose individual ML/TF risk is considered high. On-site inspections were therefore carried out at credit institutions, and in particular at those providing private banking activities, as well as at those providing digital banking services in relation to e-commerce, at specialised PFS providing domiciliation or transfer agent services, at management companies for which the activity of transfer agent or individual discretionary portfolio management was covered, at investment firms, at electronic money institutions and payment institutions and at virtual asset service providers.

Twenty-one out of 34 inspections focussed on one or several high-risk processes according to the risk assessment performed by the CSSF’s off-site supervision departments. They covered, for instance, the processes of entering into a business relationship, transaction monitoring, screening/name matching and cooperation with the authorities.

The most significant shortcomings, in terms of frequency or seriousness, identified in 2023, concern the following issues:

- absence of controls aiming to ensure the efficiency of the name matching tools used by the professionals. The implementation of such controls would have allowed them, notably, to identify certain weaknesses observed during the AML/CFT inspections, such as delays in the update or integration of official lists, absence of certain names from the database used for name matching controls or an inadequate feeding frequency of the client database in the name matching tool;
- weaknesses regarding the processing of the alerts generated by name matching tools, such as a delay in the processing of the generated alerts, a lack of “four-eyes” controls during the processing of alerts relating to financial sanctions, a lack of second level control by the compliance function or a lack of formalisation of the reasons leading to the rejection of certain generated alerts;
- failure to take into account certain risk factors to determine the ML/TF risk level of customers, with the consequence that inappropriate due diligence measures were applied;
- deficiencies in the ongoing due diligence process applied to transaction monitoring with, in some cases, scenarios that did not appropriately cover risky situations, inadequate processing of the alerts generated by these scenarios or a delay in the processing of the alerts generated by these scenarios that led, in some cases, to a delayed reporting of suspicions of ML/TF to the FIU;
- deficiencies with respect to customer files, in particular as regards information (and corroborating documents according to the customer’s risk level) on the source of the funds and the origin of wealth, but also as regards the verification of beneficial owner identity in the case of some complex structures;
- failures to meet the obligation to report, or to report without delay, any ML/TF suspicions or any associated predicate offence to the FIU;
- lack of supervision of AML/CFT controls delegated to a third entity, including where this entity is part of the same group as the professional, or even its parent company. In this context, the CSSF also reiterated the importance of formalising, by way of a contract or an operating memorandum, the detail of the controls made by the delegate and the sufficient level of information that must be communicated to the professional in order to ensure efficient supervision.

As in 2022, particular attention was brought to the compliance by the professionals with the European financial sanctions and restrictive measures against Russia and Belarus with respect to the war in Ukraine. In this context, the CSSF notably continued verifying the sound functioning of the name matching system (applied to the customer base and payment systems) and ensured that the processing of the generated alerts was efficient and adequate. It also ensured that the professionals have in place controls allowing them to identify potential circumvention of financial sanctions (identification of potential straw men, unjustified changes of beneficial owners, etc.) and verified the proper application of restrictive measures and sound coordination of the professionals with the Ministry of Finance.

In addition to covering these aspects during standard AML/CFT inspections, two specific missions at professionals presenting a significant exposure towards Russia/Belarus were carried out. The first one took place in a particular context of de-risking, needing a particular attention at the closure of the business relationship. The second one, which concerned different professionals, focussed more particularly on identifying potential or attempted circumvention of European sanctions. As a whole, these missions allowed confirming that the professionals addressed all issues regarding financial sanctions with due care. However, in certain cases, professionals blocked transactions but did not report them to the Ministry of Finance or the FIU at all or at a late stage. The CSSF had to reiterate that where restrictive financial measures are applied, the Ministry of Finance must be notified without delay. It also drew the professionals' attention to the risk of circumvention of sanctions, such as through transactions from or to countries that are not subject to European regulations or by changing the role of shareholder to creditor of certain persons likely to appear on the sanctions lists.

In 2023, the CSSF also stepped up the number of AML/CFT inspections at professionals proposing innovative services and activities, such as, in particular, payment institutions, electronic money institutions or virtual asset service providers. The number of clients, but also the services that are mainly digital expose these professionals to new ML/TF risk typologies that generate a high inherent ML/TF risk for these business sectors. Therefore, an adapted control environment needs to be put in place, based on efficient and automated IT tools, allowing an appropriate and proportionate supervision of their activities.

The supervision of politically exposed persons and the way professionals covered the risk of laundering of the proceeds of corruption remained at the heart of the AML/CFT inspections. Certain good practices were observed, such as the risk level rating of politically exposed persons according to their place of residence and activity (by sharpening even more the supervision in the case of jurisdictions presenting a high corruption perception index). Beyond the supervision of politically exposed persons presenting a "passive" corruption risk, certain professionals sought to identify their customers presenting an increased risk of "active" corruption, owing to their sectors or business locations.

As in 2022, the CSSF continued focussing on professionals offering trade finance services. Although the CSSF noted that the professionals performed controls to verify the nature of the financed products, analyse the sea routes taken, verify compliance with sector-specific sanctions and, more globally, justify the controls performed to mitigate a ML/TF risk considered as particularly high in the import/export sector, these controls were, however, not sufficiently formalised in certain cases.

Beyond money laundering, the AML/CFT inspections performed by the CSSF also targeted the fight against terrorist financing in order to verify that professionals take into account this aspect in the risk assessment of their activities, the country risk and the client risk or in the transaction monitoring. For professionals in connection with platforms for online sale of goods, the CSSF notably noted that the type of good (where known) was not sufficiently considered.

As regards more particularly the collective management sector, the “UCI on-site inspection” department carried out, in 2023, seven inspections at (alternative) investment fund managers. The missions completed during the year gave rise to the following major observations at certain entities:

- weaknesses regarding the obligation to detect persons, entities and groups subject to prohibitions or financial restrictive measures, as provided for in Article 33 of CSSF Regulation No 12-02 (namely insufficient control frequency and incomplete controls with respect to beneficial owners and persons pretending to act on behalf of others for distributors and discretionary portfolio management relationships, as well as lack of formalisation of the rationale for dismissing alerts as false positive) and Article 39(1a) of CSSF Regulation No 12-02 at asset level. In one case concerning direct lending activity, the name of the ultimate beneficial owner/senior managing official of the relevant borrowers was not screened;
- weaknesses in customer due diligence measures, as required by Article 3 of the Law of 12 November 2004 on AML/CFT, and insufficient application of enhanced due diligence on intermediaries, as required by Article 3 of CSSF Regulation No 12-02;
- weaknesses with respect to AML/CFT procedures which did not describe the due diligence measures to be performed with respect to investments and related transactions, as set forth by Article 4(1) of the Law of 12 November 2004 on AML/CFT.

During 2023, five thematic AML/CFT on-site inspections focusing on shariah funds evidenced that AML/CFT controls in place for these investment vehicles are adequate and of good standard, despite some shortcomings detected in the following areas:

- insufficient name screening against targeted financial sanction and politically exposed persons lists;
- lack of receipt and review of the AML/CFT due diligence performed by third parties on sharia committee members, sharia advisors, sharia auditors and charities for purification.

Although AML/CFT oversight on the specific service providers (shariah advisers and shariah supervisory board members) used by shariah funds differed from one IFM to another, no major shortcomings were noted. As regards charities used by shariah funds and their IFMs for purification purposes, it is required – against a background of terrorist financing risk – to apply enhanced vigilance in cases of charities which themselves support numerous local charities, also in conflict zones. Overall, AML/CFT controls applied to charities appear to be adequate.

Moreover, five missions concerned AML/CFT controls applied by authorised Luxembourg IFMs to funds which are not authorised by the CSSF. These inspections were carried out in cooperation with the Administration de l’enregistrement, des domaines et de la TVA (AED) in application of Article 9-1 of the Law of 12 November 2004 on AML/CFT which sets forth that supervisory authorities shall cooperate closely and are authorised to exchange information that is necessary for the fulfilment of their respective AML/CFT duties. The main outcome of these inspections was that procedures and AML/CFT framework are applied by IFMs regardless of the type of investment vehicles. In addition, these missions foster the interaction between the CSSF and the AED in terms of AML/CFT supervision of CSSF-supervised AIFMs and investment funds which are not authorised by the CSSF.

The controls performed in the frame of the above-mentioned thematic on-site inspections led to the detection of weaknesses similar to those detected during full and partial scope inspections.

At the annual AML/CFT conferences organised for the collective management sector on 11 December 2023 and 19 February 2024, the CSSF presented its work priorities and the main weaknesses encountered during its inspections with a focus on sanctioned weaknesses, providing examples of sanctions decided in recent years for breaches in the following areas:

- name screening, i.e. alert handling process, frequency and formalisation of alert review (Articles 33 and 39 of CSSF Regulation No 12-02);
- due diligence on investors as well as AML delegates (Articles 3 and 3-2 of the Law of 12 November 2004 on AML/CFT);

- enhanced due diligence performed on intermediary investors (Article 3(2) of CSSF Regulation No 12-02);
- AML/CFT oversight (Article 37 of CSSF Regulation No 12-02);
- AML/CFT risk assessment (Article 2-2 of the Law of 12 November 2004 on AML/CFT);
- cooperation with the authorities (Article 5(1) of the Law of 12 November 2004 on AML/CFT).

In addition, awareness was raised to the following areas of attention:

- IFMs must regularly control the parameters of ongoing monitoring tools in order to adapt the system, where necessary, to the development of the activities, the customers and the AML/CFT standards and measures in accordance with Article 39(6) of CSSF Regulation No 12-02;
- when applying AML/CFT oversight, IFMs shall perform a regular monitoring by obtaining sufficiently detailed key performance indicators (i.e. containing a minima information of results from name screening and transaction monitoring, number of politically exposed persons and new high-risk customers) in accordance with Article 37(2) of CSSF Regulation No 12-02 and point 474 of Circular CSSF 18/698;
- the high importance of cooperation with the authorities in charge of AML/CFT through suspicious activity/transaction reports of good quality (done without delay, containing complete account information and accompanied by all supporting information and documents having prompted the report) in accordance with Article 5(1) of the Law of 12 November 2004 on AML/CFT;
- continue ensuring that countering terrorism financing is adequately covered by IFMs.

2. Enhanced AML/CFT and financial sanctions framework

This section highlights the main points to remember from 2023 at the national, European or international level, concerning the AML/CFT and financial sanctions framework, as a supplement to the previous sections of this chapter.

2.1. An effective Luxembourg AML/CFT framework: evaluation of Luxembourg by the Financial Action Task Force (FATF)

As the COVID-19 pandemic had delayed the initial agenda of the FATF to perform the mutual evaluation of the Luxembourg framework, the review of the national framework was ultimately finalised with the visit of the FATF assessors in Luxembourg in November 2022 and the publication, on 27 September 2023, of the mutual evaluation report adopted by the FATF during its plenary meeting of June 2023.

The report includes, on the one hand, an evaluation of the technical compliance of the Luxembourg framework relating to the fight against money laundering, terrorist financing and proliferation of weapons of mass destruction and, on the other hand, the evaluation of the effectiveness of the implementation of the Luxembourg framework¹. It recognises the very high level of compliance of the Luxembourg framework and the performance and effectiveness of this framework, in particular within the financial sector. The report highlights the effectiveness and quality of the supervision exercised by the CSSF. It also mentions the areas for improvement at national level for which action plans have already been initiated concerning the financial as well as non-financial sector in Luxembourg. The CSSF relies on these recommendations in order to best target its follow-up actions concerning the sector under its supervision. A point of higher attention will notably be the fight against terrorist financing and the means of prevention implemented to this end.

Based on these good results, Luxembourg will only need to report to FATF with respect to the follow-up of the areas of improvement in 2026, in line with the regular follow-up process of the FATF.

¹ For further information, please refer to the press release <https://www.cssf.lu/en/2023/09/luxembourgs-good-result-in-the-4th-mutual-evaluation-report-by-the-fatf/>.

2.2. An enhanced national cooperation in AML/CFT matters

The exchanges on AML/CFT between the CSSF and the private financial sector players (and other competent public authorities and/or self-regulatory bodies) continued in 2023. The two existing public-private partnerships, in the banking sector on the one hand, and in the investment fund sector on the other hand, were reviewed by way of updates to the respective agreements: the one with the banking sector was signed in October 2023 and the other one will be signed in 2024.

In addition, the collaboration was strengthened through the signature of a partnership establishing a new exchange platform between the CSSF, the FIU and the organisations of the specialised PFS sector².

This public-private cooperation is of paramount importance to the fight against financial crime, as it contributes to enhancing the exchange of knowledge and understanding of ML/TF risks, notably by catalysing discussions between the CSSF, the FIU and representatives of the professionals/professional organisations on the implementation of new regulatory provisions or on specific topics concerning the financial sector.

The year 2023 was also an opportunity to formalise the already existing bilateral exchanges between the CSSF and certain self-regulatory bodies through the establishment of cooperation agreements on AML/CFT, notably that between the CSSF and the Ordre des Experts-Comptables (OEC) and the Barreau de Luxembourg, formally signed in 2024.

In addition to its bilateral exchanges with other competent authorities, including the FIU, the Commissariat aux Assurances and the Administration de l'enregistrement, des domaines et de la TVA (AED), as well as with AML/CFT self-regulatory bodies, the CSSF was particularly involved, throughout 2023, in the work of the Committee for the prevention of money laundering and terrorist financing, the Committee on the prevention of corruption and the Monitoring Committee regarding financial sanctions.

2.3. Better equipped national authorities thanks to central registers

In 2023, direct access to the central electronic data retrieval system related to IBAN accounts and safe-deposit boxes (CRBA) was extended to the tax authorities (AED and Administration des contributions directes) as per the Law of 16 May 2023 on the mandatory automatic exchange of information reported by the Platform Operators in order to improve administrative cooperation in the field of taxation and mutual assistance for the recovery of certain claims.

The accuracy and exhaustiveness of the data transmitted to the CRBA (cf. reminder of the CSSF in this regard³), as well as to the other registers established in the framework of AML/CFT, i.e. the Beneficial Owner Register (RBE) and the Register on Fiducies and Trusts (RFT), are of paramount importance for the efficiency of these instruments. This is also true for the requirement to comply with the deadlines for transmitting data to these registers. The CSSF thus reminds the professionals to pay particular attention thereto, notably in case of detection of discrepancies with information available to the professional. Sanctions and other administrative measures may be imposed where the legal and regulatory provisions establishing these central registers are not observed.

2 ALCO (Association of Luxembourg Compliance Officers), L3A (Luxembourg Alternative Administrators Association), LAFO (Luxembourg Association of Family Offices) and LPEA (Luxembourg Private Equity Association)

3 <https://www.cssf.lu/en/2023/12/reminder-of-professional-obligations-law-of-25-march-2020-as-amended-establishing-a-central-electronic-data-retrieval-system-related-to-payment-accounts-and-bank-accounts-identified-by-iba/>

2.4. An ever more granular supervisory system: development of synergies with respect to data use

As stated in point 1. above, the CSSF continued, in 2023, to enhance the data usable for AML/CFT purposes, notably through the annual AML/CFT questionnaires and AML/CFT reports submitted by the various internal and external protagonists of the supervised entities (compliance, external auditors reports, etc.). This information is considerably helpful for the CSSF's supervision during the ML/TF risk analysis notably when assessing the situation of a particular entity, but also as regards a sector in general or a specific topic, or even when selecting supervised entities in the control process. Faced with ever more detailed and precise requests for information and statistics (e.g. for the EBA, the European Commission, the future AML/CFT European authority (AMLA), the OECD, etc.), efficient, effective and swift exploitation of data received from the financial sector is all the more crucial and represents a challenge on its own for the authorities. As a consequence, data and information provided by the professionals must be correct and relevant.

3. Developments regarding the legal and regulatory AML/CFT and financial sanctions framework

3.1. Developments regarding the international AML/CFT framework - Financial Action Task Force (FATF)

As every year, the work of the FATF generated a wealth of pertinent and diversified information. Among the priorities of the Singapore Presidency is the recovery of proceeds of crime. Work thus continued in 2023 and as a result thereof, Recommendations 4 (Confiscation and provisional measures), 30 (Responsibilities of law enforcement and investigative authorities), 31 (Powers of law enforcement and investigative authorities), 38 (Mutual legal assistance: freezing and confiscation) and 40 (Other forms of international cooperation), as well as their interpretive notes, were updated. By this means, the FATF specified the tools that countries should use to effectively trace, seize and confiscate proceeds of crime, at the national level as well as in the framework of international cooperation.

As regards work with respect to the fight against the abuse of non-profit organisations (NPOs) for terrorist financing, please refer to the communiqué published by the CSSF on 30 May 2024⁴.

Another key subject remains the implementation of the FATF's standards relating to virtual assets. Based, notably, on the mutual evaluation reports, the FATF noted that notwithstanding Recommendation 15 (New technologies) relating to virtual asset service providers (VASP) and virtual assets, already adopted in 2018, the vast majority of jurisdictions are not or only partially compliant with the requirements in force. A particular issue is the implementation of the Travel Rule which requires that specific originator and beneficiary information is obtained, held, and transmitted when transferring virtual assets. Indeed, filling the loopholes in this respect to prevent criminals from exploiting these is an urgent priority of the FATF (cf. FATF report of 27 June 2023). The FATF thus adopted a roadmap to strengthen compliance and will closely monitor the development notably by means of a table, published in March 2024, showing

⁴ <https://www.cssf.lu/en/2024/05/communique-concerning-non-profit-organisations-and-the-fight-against-terrorism-financing/>

the measures taken by the FATF members and other jurisdictions with materially important VASP activity to implement Recommendation 15.

A vast review project launched by the FATF in 2023 and which mainly has an impact on payment service providers, concerns the revisions to Recommendation 16 (Wire transfers) in order to make cross-border payments faster, cheaper, more transparent and inclusive whilst remaining safe and secure. These discussions will continue in 2024 following consultation of the private sector.

The revision of Recommendation 25 concerning beneficial owners of legal arrangements and its interpretive note was finalised in March 2023 and the relating Guidance submitted to public consultation in October 2023. This Guidance provides details on the measures to be implemented for the sake of transparency and to avoid notably that shell companies are being used as a cover for illicit proceeds linked to crime or terrorism.

Regarding country risk and FATF assessments (i.e. statements by the FATF concerning the list of high-risk jurisdictions on which enhanced due diligence and, where appropriate, countermeasures are imposed, as well as of jurisdictions under increased monitoring of the FATF), reference should be made to the updates to the annex of Circular CSSF 22/822 published on the CSSF website as related documents under Circular CSSF 22/822⁵.

In addition to the report on Luxembourg, the FATF adopted, in 2023, the mutual evaluation reports of Brazil and Indonesia, the latter report having notably helped the country becoming a new FATF member following a decision taken during the Plenary meeting in October 2023.

In preparation for the next, i.e. the fifth, mutual evaluation round starting in 2024, the FATF members agreed in February 2023 on the sequence of countries to evaluate during the first year of the evaluation round. According to the methodology and procedures adopted in 2022, the members agreed that the fifth round will last six years so that about seven countries will be assessed per year.

As the FATF endeavours, since 2021, to mitigate involuntary consequences of an incorrect or inconsistent implementation of its recommendations, which may notably lead to de-risking or financial exclusion, this aspect will be particularly scrutinised by the assessors, in addition to the technical compliance and effectiveness. Also, it is important to stress that the measures against financing of proliferation of weapons of mass destruction are an integral part of the scope of the fifth round.

Given the war in Ukraine, the participation of Russia as a member of the FATF has been suspended since 24 February 2023.

Finally, it must be noted that the FATF published several thematic reports and guidance documents which may be of particular interest to the financial sector:

- Countering Ransomware Financing⁶: owing to the growing phenomenon of ransomware attacks by use of the latest technologies, allowing criminals to generate large amounts of money or virtual assets, the FATF published, in March 2023, a report analysing the methods used by the criminals for their ransomware attacks and to obtain and then launder ransom payments. The report also includes a list of indicators;
- Illicit Financial Flows from Cyber-enabled Fraud and Crowdfunding for Terrorism Financing⁷: for further details on these reports, please refer to CSSF Newsletter No 274;
- Misuse of Citizenship and Residency by Investment Programmes⁸: this FATF guidance of November 2023 primarily addresses countries/authorities rather than the private sector, but is also of interest to the fight against corruption, a FATF key subject for many years;

5 <https://www.cssf.lu/en/Document/circular-cssf-22-822/>

6 <https://www.fatf-gafi.org/en/publications/Methodsandtrends/countering-ransomware-financing.html>

7 <https://www.fatf-gafi.org/en/publications/Methodsandtrends/illicit-financial-flows-cyber-enabled-fraud.html> and <https://www.fatf-gafi.org/en/publications/Methodsandtrends/crowdfunding-for-terrorism-financing.html>

8 <https://www.fatf-gafi.org/en/publications/Methodsandtrends/misuse-CBI-RBI-programmes.html>

- Money Laundering and Terrorist Financing in the Art and Antiquities Market⁹: this report of November 2023 explores the link between money laundering and terrorist financing and the trade in high-value art and antiquities.

3.2. Developments regarding the European legal and regulatory AML/CFT and financial sanctions framework

3.2.1. Progress of the AML/CFT European legislative package

On 24 April 2024, the European legislative package to strengthen the fight against money laundering and terrorist financing, proposed in 2021, was adopted by the European Parliament following an inter-institutional agreement in January 2024. Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849, which had already been adopted in May 2023, is also part of the package. This regulation, which aims at improving transparency for payments, is thus one of the four pillars of the aforementioned legislative package, the other three initiatives being the recast of the 4th AML/CFT directive, a European regulation introducing a single rulebook on, inter alia, professional obligations, and a European regulation establishing a new European authority with respect to AML/CFT (AMLA).

In short¹⁰, this package aims at introducing or at strengthening in the EU:

- the consistent and more uniform application of the professional obligations and sanctions applicable in case of breaches of these rules;
- enhanced transparency, notably by means of verified information on beneficial owners and the extent of information to be included in the account and safe deposit boxes register;
- an authority (AMLA), to be established in Frankfurt, with (direct and indirect) supervisory and investigatory powers to ensure compliance with AML/CFT requirements.

These texts will be further specified in the coming years by other legal/technical acts and guidance of the future AMLA. The Luxembourg legal and regulatory AML/CFT framework will be fully revised based on this package as soon as all the aforementioned texts have been published.

3.2.2. Drafting of a European directive relating to the fight against corruption

In May 2023, the European Commission published a proposal for a directive on combating corruption. It intends to integrate corruption prevention measures as from the design of EU policies and aims at supporting the Member States in implementing strong legislation in this area. An EU network against corruption, bringing together national authorities and agencies, the civil society and independent experts, will be created. Furthermore, the proposed directive harmonises the definitions of criminal offences associated with corruption, including trading in influence, abuse of functions, enrichment related to corruption offences, misappropriation and obstruction of justice.

The CSSF wishes to stress that the control of the measures put in place by the professionals with respect to the fight against corruption, which is a predicate offence to money laundering, is and will be one of its supervisory focal points.

3.2.3. Adoption of the European directive on restrictive measures

The proposal for a directive of December 2022 on the definition of criminal offences and penalties for the violation of Union restrictive measures, was subject to inter-institutional dialogue in 2023 resulting in its adoption and publication in the Official Journal of the EU of 29 April 2024. This directive provides for minimum common rules concerning the definition of offences linked to the intentional violation of Union restrictive measures and concerning the definition of effective, proportionate and dissuasive penalties for the corresponding offences.

Among the specified offences, it is worth mentioning the one relating to the circumvention of a Union restrictive measure by using, transferring to a third party or making available in any other way funds or economic resources directly or indirectly held or controlled by a designated person, entity or body, that must be frozen

⁹ <https://www.fatf-gafi.org/en/publications/Methodsand Trends/Money-Laundering-Terrorist-Financing-Art-Antiquities-Market.html>

¹⁰ Cf. CSSF Newsletter No 251

pursuant to a Union restrictive measure in order to hide these funds or economic resources.

3.2.4. Other EU publications in relation to financial crime

In July 2023, the European Commission adopted a report¹¹ which assesses the extent to which the Member States have taken the measures necessary to comply with Directive (EU) 2019/713 on combating fraud and counterfeiting of non-cash means of payment. It should be noted that fraud cases have exploded since the COVID-19 pandemic mainly due to the development and greater use of new technologies. For Luxembourg, the report notably refers to the “Financial fraud” section on the CSSF website which explains how to report fraud and invites the supervised institutions to report, as soon as possible, fraud and incident cases caused by external IT attacks.

In the proposal for a regulation on the establishment of the digital euro published in June 2023, the EU institutions also anticipate the future challenges with respect to AML/CFT brought about by this type of currency. The initiative already excludes total anonymity for payments using the digital euro and provides for an adaptation of the AML/CFT framework for offline payment transactions in digital euros, whose level of protection of privacy will be higher, as is the case for payments in fiat currency.

Having observed that environmental crime is one of the most lucrative illegal activities, as illicit proceeds are only rarely detected, the Council and the European Parliament reached, in November 2023, a provisional agreement on a proposal for a directive on environmental crime. The Council of Europe, for its part, appointed a committee to draft a new agreement on the protection of the environment through criminal law, the European Commission taking part in the negotiations. Annual losses stemming from environmental crime makes it the fourth largest global criminal enterprise. Further information on this topic for the supervised professionals is available in the CSSF Newsletter No 270.

Top of the list of EU anti-crime priorities¹² are the criminal networks as they present a high risk. The dismantling of such structures is essential, and, in December 2023, the Council and the European Parliament agreed on rules allowing to identify, freeze and confiscate criminal money. The purpose of this next directive is to deprive criminals of these illicit profits in order to disrupt their activities and prevent the infiltration of these illicit profits into the legal economy.

As regards the risks associated with certain countries (cf. the EU lists), the European Commission added, in May 2023, Nigeria and South Africa to the list of high-risk third-country jurisdictions having strategic deficiencies in their AML/CFT regimes. Furthermore, in October 2023, Antigua and Barbuda, Belize and Seychelles were added to the EU list of non-cooperative jurisdictions for tax purposes. This list is composed of countries which have failed to comply with tax good governance criteria within a specific timeframe and countries which have refused to do so.

Finally, the CSSF wishes to reiterate that the European Commission published the list of prominent public functions in the different Member States and that the natural persons exercising the functions in this list are to be considered as politically exposed persons¹³.

¹¹ Explanatory Memorandum to COM(2023)363 - Assessing the extent to which the Member States comply with Directive (EU) 2019/713 on combating fraud and counterfeiting of non-cash means of payment - EU monitor

¹² <https://www.consilium.europa.eu/en/policies/eu-fight-against-crime/>

¹³ <https://www.cssf.lu/en/Document/prominent-public-functions-at-national-level-at-the-level-of-international-organisations-and-at-the-level-of-the-european-union-institutions-and-bodies/>

3.2.5. Work within the AML/CFT Committee of the EBA

The CSSF took part in the substantial work of the EBA's AML/CFT Committee (and its new ad hoc working groups to accompany and prepare the transfer to AMLA) and contributed to the preparation of different documents relating to AML/CFT adopted in 2023 by the EBA¹⁴. Reference is made in this context to the CSSF circulars transposing some of these documents, including Circular CSSF 23/842 on the adoption of the revised Guidelines, by the EBA, on money laundering and terrorist financing risk factors and Circular CSSF 23/843 on the adoption of the Guidelines, by the EBA, on money laundering and terrorist financing risk factors when providing access to financial services. The implementation of the EBA Guidelines on the use of remote customer onboarding solutions is pending.

The EBA also issued the following reports and opinions:

- *EBA 2023 Opinion on ML/TF risks;*
- *Report on the functioning of AML/CFT colleges in 2022;*
- *AML implementation review report – Report on competent authorities' approaches to the AML/CFT supervision of banks;*
- *Report on ML/TF risks associated with payment institutions.*

Other documents, such as the *Guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering and terrorist financing purposes* and the *Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures* were submitted to public consultation at the end of 2023.

3.2.6. Developments of the national legal and regulatory AML/CFT and financial sanctions framework

In 2023, the Luxembourg AML/CFT framework was mainly supplemented by the Law of 7 August 2023 on non-profit associations (NPAs) and foundations which repeals the Law of 21 April 1928 on non-profit associations and foundations and which entered into force on 23 September 2023. The reform not only brings about an adapted and legal framework to NPAs, but also introduces new transparency measures with the aim of addressing FATF Recommendation 8 mentioned above.

3.2.7. European financial restrictive measures

As regards financial restrictive measures (or financial sanctions), the CSSF is, based on the Law of 19 December 2020 on the implementation of restrictive measures in financial matters, the authority in charge of the supervision of persons under its remit, to ensure that they efficiently implement the financial restrictive measures referred to in that law. While financial sanctions are not a new topic in Luxembourg – the CSSF website has been dedicating for several years now a page with a list of countries under financial sanctions to this topic – international news shed new light on the Law of 19 December 2020 owing notably to the invasion of Ukraine by Russia as from 24 February 2022 and the terrorist attacks of 7 October 2023 against Israel.

A coordinated response of all the EU Member States is necessary to supplement or to strengthen, by way of regulations, the financial sanctions regime in the face of such attacks. Thus, in 2023 for instance, the restrictive measures against Russia apply to 1,931 persons/groups submitted to freezing of assets/economic resources. Indeed, the 10th, 11th and 12th rounds of sanctions were published during the year and introduced a certain number of key measures aiming at strengthening the previous restrictions and targeting new areas in order to intensify pressure on Russia. Among these measures, the following should be noted: the prohibition for Russian nationals to hold positions in governing bodies of critical infrastructure operators, new bans and restrictions regarding exports imposed by the EU, in particular on dual use technologies, new obligations of reporting to the competent authority, such as the obligation to report transactions performed before registration on the list of sanctions and new measures to

¹⁴ <https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-counteracting-financing-terrorism>

counter circumvention based on cooperation with third countries identified as being used for circumvention purposes.

In general, among these targeted restrictive measures, the following needs to be stressed: freezing without delay of funds, assets or economic resources of natural or legal persons/entities or groups referred to in European/UNO regulations, and the communication, without delay, to the Ministry of Finance, with a copy to the CSSF, of the execution of every restrictive measure taken with respect to a State, a natural or legal person, an entity or a group designated in accordance with the Law of 19 December 2020 and the regulatory implementation texts, including attempted transactions, by the professionals of the financial sector under the supervision of the CSSF, in accordance with the provisions of the Grand-ducal Regulation of 14 November 2022 providing details on the Law of 19 December 2020 on the implementation of restrictive measures in financial matters and with CSSF Regulation No 12-02 of 14 December 2012 on AML/CFT (cf. Article 33).

It must be borne in mind that in case of a suspected breach of restrictive measures, or suspected attempted breach of these measures, the aforementioned professionals must also report these suspicions to the FIU, which is competent in this matter. Indeed, the breach of the provisions of the Law of 19 December 2020 is considered, since July 2022, as a predicate offence to money laundering pursuant to Article 506-1 of the Penal Code.

XXII. Financial consumer protection

1. Financial consumer protection and financial education

1.1. Financial consumer protection and financial education at national level

As part of its duty of financial education, the CSSF continued to develop its information portal www.letzfin.lu which contains a broad range of information on personal finance.

Faced with the need to raise public awareness of sustainable finance, the CSSF has engaged in educational efforts, launching a national awareness-raising campaign together with the Fondation ABL pour l'éducation financière, the Association of the Luxembourg Fund Industry (ALFI) and the Ministry for Consumer Protection. The aim was to raise public awareness about the existence of sustainable investments, to enhance public knowledge of the various dimensions beyond green finance, i.e. the entire environmental, social and governance (ESG) spectrum, and to help the public understand that it can have a positive impact on the society and the planet through its investment choices.

As part of this public awareness-raising drive, the CSSF published short “True or False?” videos in respect of sustainable finance and over-indebtedness.

Within the framework of the “Woch vun de Suen”, CSSF’s agents went into primary school classes to talk about money issues and to conduct an educational game. Activities were also organised in secondary schools, particularly as part of the “Fit for Life” programme initiated by the association Jonk Entrepreneuren.

During the World Investor Week initiated by IOSCO, an animated video was published by the CSSF to better understand crypto-related risks. Moreover, an influencer marketing campaign was carried out in order to make young residents aware of the frauds related to crypto-assets and other investments.

Interestingly, Luxembourg participated for the first time in the OECD/INFE international study on financial literacy. The representative survey was launched by the CSSF and the Fondation ABL pour l'éducation financière and conducted by the polling institute ILRES. The study found that in Luxembourg, only 53% of the population reached the minimum score required to be able to manage their finances in an autonomous way. In general,

while the results of the study are mixed for the entire population, they are quite worrying for young people aged between 18 and 29 years. Thus, as regards financial knowledge, the Luxembourg young people are below the average of all young people in the participating countries.

1.2. Financial consumer protection and financial education at international level

1.2.1. Task Force on Consumer Protection of the OECD Committee on Financial Markets

The Task Force's work concerns particularly the G20 High-Level Principles on Financial Consumer Protection totalling 12 since December 2022. In 2023, the Task Force endeavoured to disseminate the update of these principles.

The work of the Task Force also focussed on sustainable finance, which led, on 24 July 2023, to the publication of the report entitled *Financial consumers and sustainable finance – Policy implications and approaches*. This report, to which the CSSF contributed, explores the opportunities and challenges for consumers of financial products related to sustainable finance. It examines current trends in terms of consumers' demand and experience as regards sustainable finance products as well as the new risks these products pose to consumers.

The Task Force also addressed the digitalisation of the financial sector, including by organising two round tables on *Digitalisation: latest developments in Artificial Intelligence in consumer financial products and services* and *Digitalisation: developments in crypto-assets (non-CBDC)*.

Moreover, the Task Force also asked its members to participate in a survey in order to identify the risks faced by consumers of financial products and services. The CSSF participated in this survey which should lead to the publication of a report in 2024.

1.2.2. International Financial Consumer Protection Network (FinCoNet)

FinCoNet is an international organisation gathering supervisory authorities from 32 countries that are responsible for financial consumer protection. FinCoNet aims at fostering information exchange and cooperation between supervisory authorities in order to encourage proper conduct of the market and strong consumer protection in finance.

In 2023, FinCoNet published several documents in the field of financial consumer protection, including notably three Briefing Notes entitled (i) *Market Conduct Supervisory Implications of Non-traditional Financial Entities Offering Financial Services, Especially Payments*, (ii) *Mortgage Distribution – Sales Incentives, Consumer Outcomes and Supervisory Approaches* and (iii) *Impact of COVID-19 on market conduct supervision* as well as the Summary Report entitled *Seminar on Developments in Central Bank Digital Currencies and issues for consumers*.

The CSSF, as a member of FinCoNet, also attended two international seminars. The first one was held on 22 March 2023 and concerned the developments of digital currencies of central banks and the stakes for financial consumers. The second seminar took place on 24 November 2023 and allowed regulators to exchange views on the monitoring of market behaviours in difficult times.

1.2.3. OECD's International Network on Financial Education (INFE)

This international network created by the OECD seeks to promote and facilitate international cooperation between the different participants (politicians, regulators, associations, etc.) involved in financial education. In 2023, 282 institutions from 131 countries were represented in the INFE. A total of 98 authorities, including the CSSF, have the status of full members.

In 2023, the OECD/INFE and the European Commission published a joint financial competence framework for children and young people with the aim of reaching a common vision between the Member States on the fundamental financial competences children and young people should have at different ages. This document aims at being used to develop programmes and learning material for children and young people as part of financial education in the different Member States.

The OECD/INFE also published a report entitled *Financial consumers and sustainable finance* which analyses the issues, opportunities and challenges related to sustainable finance that affect consumers of financial products.

1.2.4. IOSCO's Committee 8 on Retail Investors

The primary mandate of Committee 8 is to conduct IOSCO's policy work on financial education. Its secondary mandate is to advise the IOSCO Board on issues relating to investor protection and to work on the policy to be adopted in this field.

In 2023, two working groups have been set up to discuss the topics of crypto-assets and influencers. Another working group is in charge of the World Investor Week organisation.

1.2.5. Joint Committee Sub-Committee on Consumer Protection and Financial Innovation

The subgroup on financial education of the Joint Committee Sub-Committee of the European Supervisory Authorities on Consumer Protection and Financial Innovation drafted the following publications in 2023:

- interactive information sheet on inflation and rise in interest rates;
- interactive information sheet on sustainable finance.

2. Alternative dispute resolution

In 2023, the CSSF continued to fulfil its functions as entity competent for the alternative resolution of consumer disputes, which it takes on, in particular, pursuant to the provisions of the Consumer Code. In this respect, the CSSF does not only process requests for the alternative resolution of disputes made by consumers as such, but it also deals with disputes between financial sector professionals in order to provide an amicable resolution.

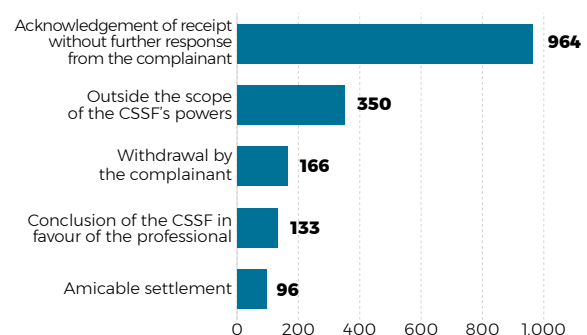
Article L. 432-4 of the Consumer Code provides that the entities qualified for alternative consumer dispute resolution must publish their annual reports. It also determines the information to be included in these reports.

In this chapter, the CSSF informs the public of its activities as qualified entity for alternative consumer dispute resolution, by providing, inter alia, the information required under Article L. 432-4 above.

2.1. Statistics regarding CSSF complaint handling in 2023

In 2023, the CSSF received 1,764 and closed 1,709 complaint files (including files received before 1 January 2023).

Outcome of the CSSF's intervention/reasons for closing the files



Upon receiving a complaint, the CSSF generally responds with an acknowledgement of receipt which provides useful instructions for the complainant on how to resolve the dispute with the professional without additional intervention of the CSSF. This acknowledgement of receipt indicates, among others, the full name of the manager in charge of handling complaints whom the complainant should contact at the

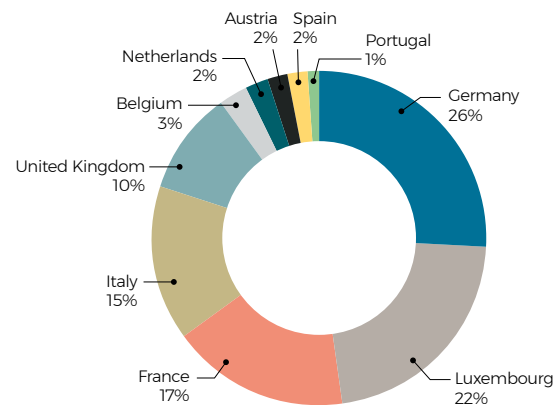
entity concerned in order to reach an amicable settlement, and the link to the CSSF's webpage where useful information on the alternative handling of complaints by the CSSF is available to the complainant. Judging by the high number of disputes closed following these first instructions by the CSSF, the CSSF's approach consisting in favouring the dialogue between the parties to the disputes and not intervening immediately with the supervised entity concerned by a complaint, allows resolving a number of conflicts prior to the alternative dispute resolution procedure.

It should be noted that in 2023, the CSSF took 89 days on average to close a duly examined file.

A total of 350 requests for the alternative resolution of complaints were inadmissible for the following reasons:

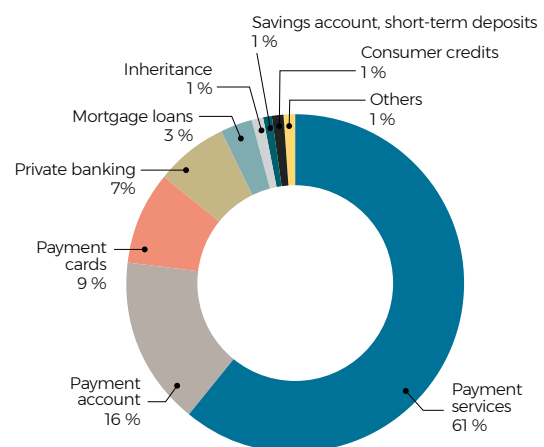
- complaints involving entities that are not subject to the CSSF's supervision (55%)¹;
- failure by the complainant to act (20%);
- complaints falling within the scope of the insurance sector (10%);
- complaints concerning a non-financial product (10%);
- expiry of the time limit for filing the complaint with the CSSF (3%);
- complaints already heard by a court (1%);
- frivolous or vexatious request (1%).

Breakdown of the disputes according to the complainants' country of residence



There is a dominant part of complaints from Germany with 26% of the total, which is similar to 2022 (25%). With 22% in 2023, against 13% in 2022, the number of complaints from Luxembourg increased significantly. The share of complainants from France also recorded a substantial growth (17% in 2023 against 11% in 2022). With a share of 15%, the complainants residing in Italy were also more numerous in 2023 than in 2022 (9%).

Breakdown of complaints according to their object



The breakdown of complaints according to their object remained stable compared to the previous years. The major share of complaints (61%) concerned problems linked to the use of electronic payment services. The share of complaints relating to payment accounts (16%) remained at the same level as in the previous financial year.

¹ Excluding complaints concerning entities of the insurance sector

2.2. Complaints handled in 2023

The CSSF describes below some disputes resolved in 2023 which may be rich in lessons for financial consumers and professionals.

2.2.1. Mandate

The CSSF regularly receives complaints involving transactions carried out by proxyholders of banks' customers. In such cases, the principals (customers) are not always aware of the extent of the powers they have given to their proxyholders and they would often complain to their bank and dispute the transactions executed to their detriment and in their name by the proxyholders and claim compensation.

Thus, a complainant who was a joint holder of a joint account opened in his name as well as in the name of a joint holder to whom he gave a proxy to represent him in relations with the bank, blamed his bank for having made a number of relatively high-value transfers from the joint account without prior consultation with him and without having provided him with transaction notices certifying the execution of the transactions. He also criticised the bank for not having been involved in the closure of the joint account. According to the complainant, the proxyholder had no power to place the disputed transfer orders from the joint account, or to unilaterally close the account.

The bank defended itself by pointing out that it was under the obligation to execute the disputed transfer orders as a banker who is asked to execute a transfer order is, from a legal point of view, subject to an obligation of result. It also argued that it had no objective reason to suspend the execution of the disputed transfer orders.

The complaint file submitted to the CSSF included two proxies, one of which was enacted before a notary. These proxies were duly signed by the complainant and their drafting left no doubt that he granted to his proxyholder the broadest powers to act in his name in all circumstances. Consequently, it was established for the CSSF that the proxyholder had been given the power to make any transfer on behalf of the complainant.

Even though the complainant revoked the proxies before contacting the CSSF, the latter noticed rightfully that they had been in force when the disputed facts arose and the bank was thus required, in principle, to carry out the instructions received from the proxyholder.

While the complainant claimed that the proxyholder closed the joint account without his consent, the CSSF noticed that a joint account agreement, which was an integral part of the account opening documents, was signed by the complainant and his proxyholder, who were both joint holders of the joint account. This agreement entitled each joint account holder to make use of the bank account as if he was the sole account holder.

The CSSF concluded that the bank could not be reproached for executing the transfer orders placed with it by the proxyholder of the complainant by virtue of the aforementioned proxies. In its opinion, the bank could rightly close the joint account at the request of one of the two joint account holders. Consequently, the complaint file was closed concluding that the claims of the complainant were unjustified.

2.2.2. Forged transfer

The CSSF was entrusted with a case where the complainant blamed her bank for having transferred the remaining balance of her account to an account that did not belong to her, based on a written letter usurping her identity and using a forged bank account identification document (RIB). According to the complainant, the bank has not been sufficiently diligent and should have noticed that the disputed transfer order included "anomalies", which should have led it to make some verifications with its customer before executing the transfer order.

The CSSF noted that the complainant sent a written letter to her bank to instruct it, within the context of the closure of her bank account, to transfer the balance to her new bank account opened with another bank. The complainant did not know that this mail had been intercepted by a malicious person who modified, in his/her favour, the details of the bank account to which the balance of the closed bank account should have been transferred. This is why when the complainant was contacted by her bank (where she closed the account) in order to make sure that she actually ordered the transfer

in question, she answered that she was indeed the initiator of this transfer. After having obtained this confirmation, the bank executed the forged transfer order, transferring the complainant's money to the bank account of the dishonest person.

When the complainant became aware of the fact that the bank account to which the funds had been transferred was not her own bank account opened with the new bank, but an account opened with a bank established abroad, she immediately contacted the bank to claim compensation for the loss suffered, arguing that the bank was at fault for not verifying whether the account receiving the disputed funds belonged to her. The bank replied that it did contact her to ascertain the origin of the transfer request and that it executed the transfer in question after having obtained the complainant's confirmation.

Having analysed the explanations and documents provided by both parties to the dispute, the CSSF drew the attention of the complainant to the provisions of Article 100(1) of the Law on payment services which the bank invoked in its defence and which provides that "if a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier".

The CSSF considered that by having executed the disputed transfer order using the unique identifier, which the bank could legitimately assume that it originated from its customer, the bank could not be held liable for the defective execution of the transaction.

As regards the "anomalies" in the transfer order reported by the complainant, i.e. inter alia the block letters used by the usurper or the forging of the complainant's signature, the CSSF considered that they were not apparent enough to make the bank question them before executing the disputed transfer order.

The CSSF further observed that the bank contacted the beneficiary bank of the disputed transfer on the day the transfer was found to be forged in order to request a return of funds. In doing so, the bank took adequate steps to recover the disputed funds and thus took sufficient care to comply with its obligations arising from Article 100(2) of the Law on payment services according to which the payment service provider must make reasonable efforts

to recover the funds involved in the payment transaction if the unique identifier provided by the payment service user is incorrect.

The CSSF closed the file without finding any misconduct on the side of the bank.

2.2.3. Computer hacking

The CSSF regularly receives complaints where customers are hacked by dishonest people accessing their accounts, without their knowledge, to misappropriate their accounts' funds to themselves.

In such a file, the complainant contacted the CSSF to dispute several transfers made from his bank account, of which he denied being at the origin. He claimed that his computer had been hacked, following which fraudulent transactions were made and he asked his bank for the reimbursement of the stolen amount.

The complainant explained that he immediately informed the bank that his computer had been hacked when he became aware of it. At that point, the bank informed him that it had identified suspicious attempts to withdraw money with his credit cards which it was able to foil. When he asked the bank how to secure his bank account in these alarming circumstances, the bank advised him to contact the company which made the electronic identification means available to him because this company could inform him about the steps to be taken to counter attacks of cybercriminals.

The complainant immediately contacted this company which notably advised him to change his password, which he did. However, as his computer had been hacked, the criminals learned about the new password and used it to the detriment of the complainant by making transfers in their favour from his account without his knowledge. The complainant asked his bank to provide compensation for his loss by claiming that it should have blocked his account immediately after having been informed of the hacking.

The CSSF resolved the dispute concluding that the complainant acted with gross negligence as he changed the password of his digital identity device using his computer even though he knew that it had been hacked. Consequently, he did not take all reasonable steps to safeguard the security of his elements of personal identification.

However, the CSSF also concluded that the bank lacked diligence in protecting its customer. Indeed, the bank was informed, without delay, that the computer had been hacked and it was thus able to assess the possible risks for its customer. At this point, it was also aware of several recent fraudulent attempts to withdraw money and accordingly it should have prevented any harm to the complainant due to hacking. According to the CSSF, the bank should have made all reasonable efforts to block the e-banking space of its customer immediately after having been informed of the hacking and the fraudulent attempts to withdraw money from his account.

Finally, the CSSF found a shared responsibility and requested the bank to take this into account in the compensation proposal it was invited to make to the complainant. The bank finally accepted to return half of the disputed amount to the complainant.

In this context, the CSSF reiterates that users of payment services are responsible for taking all reasonable steps to safeguard the security of their personalised security credentials. These elements must, in no case, be communicated to others.

2.2.4. Guarantee document

The CSSF received a complaint from a person who provided a joint and several guarantee to a loan granted to a customer. As the obligor faced financial difficulties, he was unable to meet his contractual obligations and the bank asked the complainant to settle the full amount of the debt of the obligor, in accordance with the terms and conditions of the guarantee contract.

After having fulfilled her obligations as guarantor, the complainant blamed the bank for having first asked her to settle the debt, without having previously taken the necessary steps in order to recover the claim from the defaulting debtor. The complainant took the view that the contractual liability of the bank was thus incurred, and she asked it to reimburse the amounts paid. She also blamed the bank for not having informed her of the deterioration in the obligor's financial situation.

The bank refused to grant the complainant's request as it considered having taken all the efficient and effective steps required to recover its claim both vis-à-vis the principal debtor and the guarantor in strict compliance with its legal, regulatory and contractual obligations.

The bank invoked the provisions of the guarantee document which expressly state that the guarantor cannot ask the bank to address first the obligor for the settlement of the entire amount of the debt guaranteed. It also highlighted that it was agreed in the guarantee document that the complainant would be committed to pay to the bank, where applicable, the entire amount lent to the obligor without being able to somehow divide up the amount to be paid between her and the obligor.

Moreover, the bank explained to the CSSF, with supporting documents, that it sent letters to the defaulting debtor even though it was not required to do so as it could directly pursue the guarantor pursuant to the commitments the latter had made by signing the guarantee document.

The CSSF noticed that the bank's position was justified under the provisions of the guarantee document which indeed provided that the complainant had given her commitment to the bank to settle, upon the bank's first request, all the amounts due by the defaulting debtor in respect of the guaranteed obligation.

The CSSF also read that it was agreed in the guarantee document that the complainant had enough information about the debtor's financial situation and that the obligor's financial situation was not a prerequisite for the guarantee. In addition, the guarantee document did not include any provisions according to which the bank should inform the complainant of the steps it took with the obligor.

In the light of all the elements of the file, the CSSF did not decide on any misconduct by the bank which acted in accordance with the contractual provisions signed between the parties. Before acting as a guarantor for a third party, it is important for a consumer to have a clear understanding of the scope and nature of his/her commitment.

2.2.5. Non-execution of a market order

The CSSF received a case where the complainant blamed his bank for not having executed a sale order on the stock exchange, which had been given via the secured messaging of the bank, requesting the sale of some securities as soon as their market value would fall below a certain predefined price.

The bank argued notably that the messaging system of its e-banking tool is a secured communication service between the bank and its customer and not a tool for processing market orders.

The bank explained to the CSSF that the secured messages it receives from customers are sorted upon reception and then assigned to the agency in charge of managing the relationship of the customer sending the message before being progressively handled by the bank's agents, at the earliest opportunity. According to the bank, the complainant could not be unaware of the fact that he had chosen inappropriate means to send the market orders, given that he had accepted the bank's terms and conditions outlining the e-banking tool.

The bank also drew the CSSF's attention to the fact that even if the complainant had used the special tool available to its customers to enter market orders, it could not have executed the market order at the time when it was given as the market price of the security was at that time already below the limit set by the complainant.

The CSSF agreed with the bank's position, given that the market order could indeed not be executed at the time when it was given as it is proven by reports from stock information agencies that the market price of the security already fell below the price limit that should have triggered its sale. Moreover, the CSSF considered that the complainant could not blame the bank for not having executed earlier his market order because he did not send his order via the special tool for market orders which the bank has made available to its customers.

Consequently, the CSSF did not decide on any misconduct of the bank and closed the file.

2.3. FIN-NET

FIN-NET was launched in 2001 by the European Commission with the purposes of enhancing cooperation between national ombudsmen in financial services and offering consumers easy access to extrajudicial mechanisms for alternative dispute resolution in the area of financial services.

In 2023, the CSSF took part in two FIN-NET plenary meetings where FIN-NET members exchanged their views on some topical issues, including a proposal for amending Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes with a view to creating a simpler and more efficient procedure.

Moreover, FIN-NET members had also the opportunity to express their views on the review of the Payment Services Directive (PSD2 intended to become PSD3). The new rules drafted in this respect aim to ensure better consumer protection in the area of electronic payments by focussing on fair competition, security and trust.

FIN-NET members also examined, once again, the issue of detection and prevention of frauds within the context of transactions in virtual assets.

3. Website comparing payment account-related fees

In accordance with the Law of 13 June 2017 on payment accounts, the CSSF launched, on 1 November 2018, a comparison website² relating to the fees charged for the most representative services linked to payment accounts. This website, which is updated on the first day of each month, lists the prices communicated to the CSSF by payment service providers supervised by the CSSF, meeting specific criteria defined by the Luxembourg legislator.

Payment service providers required to publish their prices on the comparison website are subject to the following two cumulative criteria: (i) have at least 25 agencies in Luxembourg and (ii) hold at least 2.5% of the deposits covered under the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.

Payment service providers which do not meet these two conditions set by the legislator may, on their own initiative, request the CSSF for the publication of their prices on the comparison website.

Currently, the fees charged for the most representative services linked to payment accounts of the following six payment service providers are published on the CSSF's comparison website:

- Banque et Caisse d'Épargne de l'État, Luxembourg;
- Banque Internationale à Luxembourg;
- Banque Raiffeisen;
- BGL BNP Paribas;
- POST Luxembourg;
- ING Luxembourg.

² <https://www.frais-compte-paiement.lu/en/>

XXIII. Procedure for reporting breaches of financial sector regulations to the CSSF (whistleblowing)

1. Presentation of the reporting procedure

1.1. Introduction

Since the entry into force of Regulation (EU) No 468/2014 of 16 April 2014 (SSM Framework Regulation), a communication tool designed as an electronic form¹ available on the CSSF website and a dedicated email address (whistleblowing@cssf.lu) have been implemented at the CSSF in order to allow whistleblowers, i.e. any person acting in good faith and especially persons working or who have worked for an entity of the Luxembourg financial sector, to report to the CSSF, in a confidential and secure manner, potential shortcomings or breaches of applicable regulations committed by or within entities supervised by the CSSF (reports of breaches or whistleblowing)².

Information on the whistleblower's identity and on the reported facts, including the identity of any third parties who may be involved, is treated with utmost confidentiality by any CSSF agent who has knowledge of it. This confidentiality is essential to create a trust environment that is conducive to reports being made in good faith by whistleblowers, without fear of retaliation notably by their employer, where applicable.

Anonymous reports are also accepted by the CSSF. However, any reporting person is requested to communicate at least contact details (anonymous or not) or any means of contact so that the CSSF may, where appropriate, be able to ask for additional information necessary to adequately address the issues raised.

¹ <https://whistleblowing.apps.cssf.lu/index.html?language=en>

² A page providing details on the protection of whistleblowers is available on the CSSF website (<https://www.cssf.lu/en/whistleblower-protection/>).

1.2. New legal context

1.2.1. Transposition into Luxembourg law of Directive (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law

Directive (EU) 2019/1937 (Whistleblowing Directive) is an initiative by the EU, not limited to the financial sector, whose objective is to create a common framework setting up a legal protection for whistleblowers in certain EU policy areas.

The text establishes rules and procedures to protect the individuals against potential retaliation when they report information they acquired in a work-related context on breaches of EU law in key policy areas. Breaches include both unlawful acts or omissions and abusive practices. Thus, the directive supplements the specific financial laws which are already in force.

In Luxembourg, the Whistleblowing Directive was transposed by the Law of 16 May 2023³. The scope of the new law goes beyond that of the Whistleblowing Directive and extends the protection of whistleblowers to breaches of national law as a whole. Whistleblowers meeting the conditions of the law who report breaches of the rules of law, be they administrative or criminal, are therefore protected against any form of retaliation.

1.2.2. Impacts on the external reporting procedure of the CSSF

As the CSSF established independent and autonomous external reporting channels for receiving and handling information on breaches almost a decade ago, the Law of 16 May 2023 does not represent an innovation as such for the financial sector supervisory authority, but it essentially provides details and clarifications on the establishment and management of these channels.

Indeed, it is worth mentioning that the rules applicable to the external reporting of potential or actual breaches in the financial sector to the CSSF resulting from the Law of 16 May 2023 are supplemented by existing special provisions in the following sectoral laws:

- Article 58-1 of the Law of 5 April 1993 on the financial sector;
- Article 8-3 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, introduced by the Law of 25 March 2020;
- Article 58-10 of the Law of 10 November 2009 on payment services, allowing the CSSF to set up effective mechanisms to encourage reporting of breaches of Regulation (EU) 2015/847 to the CSSF;
- Article 149b of the Law of 17 December 2010 relating to undertakings for collective investment;
- Article 23 of Regulation (EU) No 1024/2013 (SSM Regulation) of 15 October 2013;
- Title 3 (Articles 36 to 38) of Regulation (EU) No 468/2014 (SSM Framework Regulation) of 16 April 2014;
- Article 36(7) of the Law of 23 July 2016 concerning the audit profession;
- Article 8 and Annex of the Law of 23 December 2016 on market abuse;
- Article 46 of the Law of 30 May 2018 on markets in financial instruments;
- Article 271-1 et seq. of the Labour Code, introduced by the Law of 13 February 2011 strengthening the means against corruption;
- Article 4 of the Law of 6 June 2018 on central securities depositories and implementing Regulation (EU) No 909/2014.

The CSSF's external reporting channels ensure the completeness, integrity and confidentiality of the transmitted information. The access to the information transmitted is limited to certain authorised CSSF agents who are bound to respect professional secrecy pursuant to Article 16 of the Law of 23 December 1998 establishing a financial

3 <https://www.cssf.lu/en/Document/law-of-16-may-2023/>

sector supervisory commission (“Commission de surveillance du secteur financier”), which refers to Article 458 of the Criminal Code.

1.2.3. Implementation of a cooperation mechanism between competent authorities

Where a report does not fall within the CSSF’s remit, it is transmitted in a confidential and secure manner to the competent authority referred to in Article 18 of the above-mentioned Law of 16 May 2023. The collected data may be transmitted to other national competent authorities or to EU bodies, offices or agencies that are competent in the framework of the cooperation provided for in Article 19 of the Law of 16 May 2023.

1.2.4. New internal reporting requirements for entities of the financial sector

Under the new applicable legislation, every private sector entity (with 50 or more workers) must henceforth propose channels and procedures for internal reporting and for follow-up.

The financial sector entities under the supervision of the CSSF are subject to the provisions of the Law of 16 May 2023 which are supplemented by existing special provisions in the following sectoral laws:

- Articles 29-8, 38-12 and 38-16 of the Law of 5 April 1993 on the financial sector;
- Article 4(4) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, introduced by the Law of 25 March 2020;
- Article 149b of the Law of 17 December 2010 relating to undertakings for collective investment;
- Article 24(3) of the Law of 23 July 2016 concerning the audit profession;
- Article 3 of the Law of 6 June 2018 on central securities depositories and implementing Regulation (EU) No 909/2014;
- Article 10 of the Law of 16 July 2019 on prospectuses for securities.

1.3. Confidentiality principle

The CSSF is committed to protecting the whistleblower’s identity within the limits of the applicable legislation. In other words, neither the identity of the reporting employee, nor the identity of any third parties who may be involved, will be disclosed to the professional concerned.

The identity of the whistleblower or of third parties will only be disclosed in circumstances in which such a disclosure becomes unavoidable according to the applicable law (e.g. as a result of the CSSF’s duty to inform the State Prosecutor if the acts may constitute a crime or an offence⁴, or in the context of criminal proceedings against the entity concerned where the reporting person may, as the case may be, be called as a witness).

Although it may not always be entirely excluded, despite all the precautions taken, that the employer discovers the whistleblower’s identity by cross-checking information, the CSSF will of course make every effort to protect it, which implies that strict internal procedures are implemented and followed by all of its agents.

Notwithstanding the entry into force of the Law of 16 May 2023, the CSSF will handle with the same degree of confidentiality the reports received from any person acting in good faith who wishes to report any shortcomings or breaches committed by or within entities subject to the supervision of the CSSF, including from persons who do not fulfil the conditions for qualifying for protection under the new legislation.

⁴ Obligation under Article 23(2) of the Code of Criminal Procedure and under point (2) of Article 74-2(4) of the Law of 7 March 1980 on the organisation of the judicial system

1.4. Professional secrecy and feedback to the reporting person

Professional secrecy laid down in Article 458 of the Penal Code to which the CSSF is subject⁵ prohibits communicating the outcome of the analysis of a report to the informant. However, the CSSF publishes (on a named or anonymous basis, according to the context and applicable law) the measures and sanctions imposed on the entities, including those resulting from investigations carried out following a report, without providing the trigger event.

1.5. Whistleblowing and Single Supervisory Mechanism (SSM)

The obligation to set up a similar reporting mechanism as well as rules on the cooperation with national authorities with regard to the transmission and processing of reports at the ECB level were introduced by Article 23 of Regulation (EU) No 1024/2013 of 15 October 2013 and Articles 36 to 38 of Regulation (EU) No 468/2014 of 16 April 2014.

Whistleblowers are requested to use the whistleblowing procedure at the ECB⁶ to report breaches by significant banks within the meaning of the SSM⁷. In case the CSSF receives a report concerning a significant bank, it forwards that report to the ECB and informs the whistleblower thereof.

Where the CSSF receives a report concerning a breach of regulations or decisions of the ECB by a less significant entity within the meaning of the SSM, it transmits this report to the ECB without communicating the identity of the reporting person, unless the whistleblower gives their explicit consent.

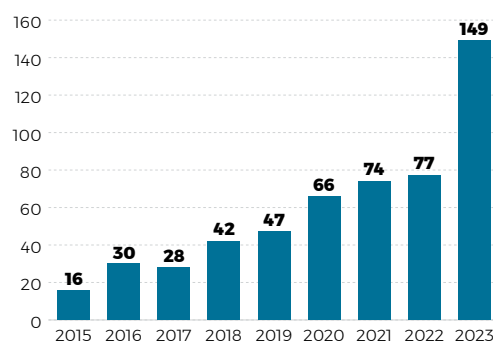
The ECB also treats all the reports confidentially in compliance with the EU data protection framework and ensures appropriate protection for the reporting party and the accused party.

2. Statistical data for 2023

2.1. Number of reports received and communication channels

In 2023, the CSSF received 149 new reports via different official communication channels (contact form or dedicated email address) or others. This exponential increase compared to the 77 reports received in 2022 is closely correlated with the entry into force of the Law of 16 May 2023 and, thus, with the introduction of a legal protection for whistleblowers.

Number of messages received⁸



Although the relevance of the reports received remains variable, the CSSF notes nevertheless that the reporting mechanism allows, each year, collecting useful information and opening or providing input for ongoing investigations.

A significant portion of the messages received are communicated by means other than the CSSF's reporting procedure (for instance, via other email addresses of the CSSF). Apart from the fact that the communication through other channels may extend the processing time of the message, using the dedicated procedure allows above all ensuring the application of strict confidentiality rules necessary in the light of the sensitivity of the transmitted information. The CSSF insists on the importance and efficiency for the reporting person to transmit the information they wish to share by using the dedicated procedure available on the CSSF website⁹.

⁵ Cf. Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier")

⁶ <https://www.bankingsupervision.europa.eu/banking/breach/html/index.en.html>

⁷ <https://www.bankingsupervision.europa.eu/banking/list/html/index.en.html>

⁸ The messages received which are clearly not whistleblowing reports are not counted.

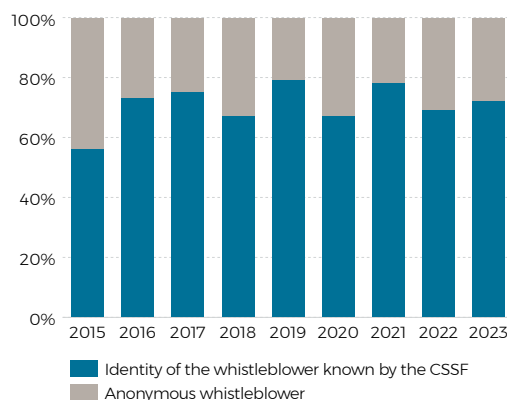
⁹ <https://whistleblowing.apps.cssf.lu/index.html?language=en>

150 - XXIII. Procedure for reporting breaches of financial sector regulations to the CSSF (whistleblowing)

2.2. Whistleblowers

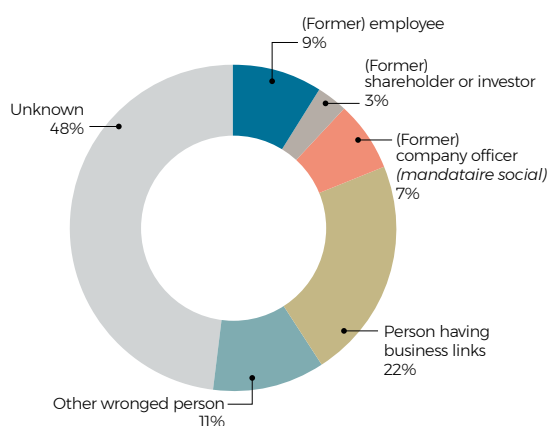
In recent years, the share of anonymous reports decreased in favour of messages where informants are identified, confirming again the existence of a certain trust in the CSSF within the Luxembourg financial sector.

Identity of the whistleblowers



In 2023, in contrast with previous years, the share of reports transmitted by employees (or former employees) of the financial sector decreased, so that the other sources should not be disregarded. It is noteworthy that the high percentage of unknown connections is closely correlated with the anonymity of a portion of the reports received.

Whistleblower's connection to the person concerned by the report



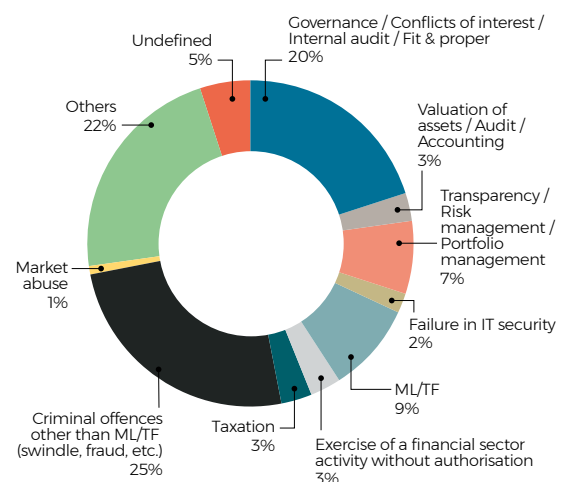
2.3. Nature of the reported failures/breaches

Around 20% of the reports received in 2023 concerned potential governance issues within supervised entities (for instance, reconsideration of the good reputation and/or professional experience of *dirigeants* (managers), possible conflicts of interest, disruptions in the internal organisation of the entity), followed by messages describing possible failures regarding transparency, risk management and portfolio management.

Many messages received concerned AML/CFT issues (around 11%), or at least included an element pertaining to this topic.

As a significant portion of the reports concerned in fact potential criminal offences (around 20%), it is reminded that the CSSF is not competent in this matter and that any information that may lead to the opening of a judicial criminal investigation may be communicated to the Prosecutor's Office of Luxembourg for analysis. It should also be noted that the CSSF is not competent to deal with private disputes¹⁰ and that it does not provide legal advice in this context.

Nature of the reported failures



¹⁰ Except for mediation conducted by the CSSF in the framework of customer complaints (cf. <https://www.cssf.lu/en/customer-complaints/>)

2.4. Actions taken in response to the reports received

The CSSF thoroughly analyses each message received in the framework of its whistleblowing procedure in order to provide the most appropriate response to the information received. As it is subject to professional secrecy, the CSSF cannot inform each reporting person about the outcome of the analysis and about the actions taken, if any, notwithstanding the provisions of the Law of 16 May 2023 relating to feedback to the reporting person.

Nevertheless, in order to provide the public with an overview of the potential responses, a summary of the CSSF's decisions regarding the reports received since the implementation of the whistleblowing procedure is presented below.

Actions taken in response to the reports received

Response	% of total
Allegations do not fall in the scope of the CSSF's supervision (entity not supervised, competence of another authority)	30%
No territorial competence of the CSSF - coordination with the competent supervisory authority	14%
Alleged failures that could not be confirmed or that proved to be false following an investigation or inquiry by the CSSF	13%
Others (for instance, not relevant or not serious facts)	9%
Referral to the Prosecutor's Office of Luxembourg (ML/TF, tax fraud, etc.)	8%
Information useful for an ongoing supervisory mission of the CSSF	6%
Opening of an investigation	6%
Insufficient information for the CSSF to conduct an investigation (for instance, whistleblower's silence)	4%
Information already known by the CSSF	3%
Restoration of compliance by the professional concerned following the CSSF's inquiry	3%
Reported failures corrected by the professional without the CSSF's intervention	3%
Publication of a warning	1%



XXIV. European Account Preservation Order procedure

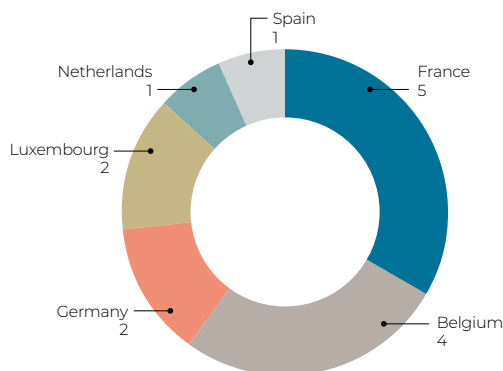
Regulation (EU) No 655/2014 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters establishes an EU procedure enabling a creditor to obtain a European Account Preservation Order which prevents the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the order which are held by the debtor or on his/her behalf in a bank account maintained in a Member State.

Accordingly, where the creditor has obtained in a Member State an enforceable judgement, court settlement or authentic instrument which requires the debtor to pay the creditor's claim and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific Member State, but knows neither the name and/or address of the bank nor the IBAN, BIC or another bank number allowing the bank to be identified, s/he may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank(s) and the debtor's account(s) to be identified.

The Law of 17 May 2017¹ designates the CSSF as the information authority within the meaning of Article 14 of Regulation (EU) No 655/2014. In order to allow the CSSF to fully perform these tasks, the law provides that the CSSF must use the method of obtaining information referred to in Article 14(5)(a) of the aforementioned regulation, namely the obligation on all banks in the Luxembourg territory to disclose to the CSSF whether a certain debtor holds an account with them.

In 2023, the CSSF received 15 requests for the obtaining of account information pursuant to Article 14 of Regulation (EU) No 655/2014 from courts of the following Member States.

Breakdown by Member State of the requests received

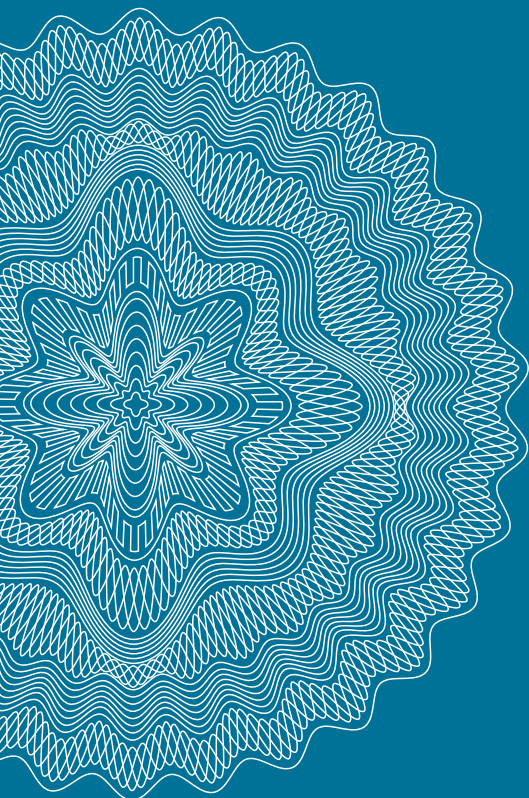


¹ Law of 17 May 2017 on the application of Regulation (EU) No 655/2014 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, amending the New Code of Civil Procedure and the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended

List of abbreviations

2010 Law	Law of 17 December 2010 relating to undertakings for collective investment
2013 Law	Law of 12 July 2013 on alternative investment fund managers
ABBL	Luxembourg Bankers' Association
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers
ALFI	Association of the Luxembourg Fund Industry
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
Audit Law	Law of 23 July 2016 concerning the audit profession
BCL	Luxembourg Central Bank
BRRD	Bank Recovery and Resolution Directive - Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms
BRRD2	Bank Recovery and Resolution Directive 2 - Directive (EU) 2019/879 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
BRRD Law	Law of 18 December 2015 on the failure of credit institutions and certain investment firms
CdRS	Comité du risque systémique - Systemic Risk Board
CPDI	Conseil de protection des déposants et des investisseurs - Council for the Protection of Depositors and Investors
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSA	Common Supervisory Action
CSD	Central Securities Depository
CSDR	Central Securities Depositories Regulation - Regulation (EU) No 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories
CSSF	Commission de Surveillance du Secteur Financier - Luxembourg supervisory authority of the financial sector
DLT	Distributed Ledger Technology
DORA	Digital Operational Resilience Act - Regulation (EU) 2022/2554 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
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation - Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
ESA	European Supervisory Authorities
ESEF	European Single Electronic Format
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange Traded Fund
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FGDL	Fonds de garantie des dépôts Luxembourg - Luxembourg Deposit Guarantee Fund
FIU	Financial Intelligence Unit
FSB	Financial Stability Board
ICT	Information and Communication Technology

IFD	Investment Firms Directive - Directive (EU) 2019/2034 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
IFM	Investment Fund Manager
IFR	Investment Firms Regulation - Regulation (EU) 2019/2033 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
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
ISA	International Standard on Auditing
ITS	Implementing Technical Standards
JST	Joint Supervisory Team
LSI	Less Significant Institution
MiCA	Markets in Crypto-Assets
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation - European Regulation on markets in financial instruments and amending Regulation (EU) No 648/2012
ML/TF	Money Laundering and Terrorist Financing
MMF	Money Market Fund
NAV	Net Asset Value
OECD	Organisation for Economic Co-operation and Development
PFS	Professional of the Financial Sector
PIE	Public-Interest Entity
PSD2	Payment Services Directive 2 - Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market
REA	Réviseur d'entreprises agréé - Approved statutory auditor
RTS	Regulatory Technical Standards
SFDR	Sustainable Finance Disclosure Regulation - Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector
SFTR	Securities Financing Transactions Regulation - Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse
SI	Significant Institution
SICAR	Société d'investissement en capital à risque - Investment company in risk capital
SIF	Specialised Investment Fund
SIIL	Système d'indemnisation des investisseurs Luxembourg - Investor Compensation Scheme Luxembourg
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
STOR	Suspicious Transaction and Order Report
UCI	Undertaking for Collective Investment
UCITS	Undertaking for Collective Investment in Transferable Securities
UCITS Directive	Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
VASP	Virtual Asset Service Providers



Commission de Surveillance du Secteur Financier

283, route d'Arlon
L-2991 LUXEMBOURG
Tel.: (+352) 26 251-1
Email: direction@cssf.lu
Website: www.cssf.lu

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