

In case of discrepancies between the French and the English text, the French text shall prevail

As from 1 January 2011, the relevant FAQ and Circular CSSF 10/437 on the guidelines concerning the remuneration policies in the financial sector are not applicable any more to credit institutions and investment firms falling under the scope of Circulars CSSF 10/496 or 10/497.

Frequently Asked Questions: Circular CSSF 10/437 on guidelines concerning the remuneration policies in the financial sector (the "Circular")

Preliminary observations:

- Any reference made to the "CRD3 proposal" or "AIFM Directive proposal" in this FAQ shall mean the proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies or the proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC.

The CRD3 proposal as adopted by the European Parliament on 7 July 2010 is available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+20100707+TOC+DOC+XML+V0//EN&language=EN>

- For further information, please contact us at the following address:

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Provision concerned	General information	Question No.	1
Question			
Why do the remuneration policies in the financial sector undertakings fall under the scope of the CSSF's prudential supervision?			
Answer or Comment			
The protection of the financial stability of the supervised undertakings and of the financial sector in general is one objective of the prudential supervision of the financial sector undertakings exercised by the CSSF.			
At international level, the inappropriate remuneration structures of some financial institutions were identified as an element which contributed to the financial crisis. The remuneration policies which give incentives to take risks that exceed the general level of risk tolerated by an institution may harm the sound and effective risk management, exacerbate reckless behaviour and create risks for the financial soundness of the			

institution and for investors.

In general, even though Luxembourg did not encounter any excesses in this matter, the CSSF would like to avoid that undertakings subject to its prudential supervision take unnecessary risks in the future and to prevent the awarding and payout of remuneration in case of problems which might threaten the normal development of the undertaking's activity by implementing the Commission Recommendation 2009/384/EC on remuneration policies in the financial services sector *via* a circular.

However, the CSSF does not intend to set neither the form nor the amount of the remuneration. The purpose of the Circular is to prompt the financial undertakings to establish, implement and maintain a remuneration policy which is consistent with and promotes sound and effective risk management and which does not induce excessive risk-taking. Nevertheless, institutions remain responsible for drawing up and applying their own remuneration policy. The application of the proportionality principle allows them, where applicable, to keep some flexibility.

Although the principles set out in the Circular will lead to a formalisation of remuneration policies and practices, competitive remuneration practices should remain possible in the sector.

Provision concerned	General information - Entry into force	Question No.	2.1
Question			
When do the rules on remuneration policy take effect?			
Answer or Comment			
The principles of the remuneration policy of a financial undertaking shall be drawn up by 30 June 2010 at the latest. These principles shall be implemented as from the financial year 2011.			
Variable components of remuneration, owed for the financial year 2010 and payable in 2011, are henceforth outside the scope of the Circular ⁽¹⁾ .			
Credit institutions and investment firms shall communicate their remuneration policy to the CSSF by 30 September 2010. This requirement is not imposed on other financial undertakings as Part IV only applies to credit institutions and investment firms.			
(1) The CSSF points out that the second sub-paragraph of Article 3(1) of the CRD3 proposal sets out: " <i>(T)he laws, regulation and administrative provisions necessary to comply with point 1 of Annex I shall require credit institutions to apply the principles therein to (i) remuneration due on the basis of contracts concluded before the effective date of implementation in each Member State and awarded or paid after that date and to (ii) remuneration awarded, but not yet paid, before the date of effective implementation in each Member State, for services provided in 2010.</i> "			

Provision concerned	General information - Entry into force	Question No.	3
Question			
In which exceptional cases may a financial undertaking concerned by the Circular request an extension of the deadlines?			
Answer or Comment			
An extension of the deadlines provided in points 5.1 and 5.2 of the Circular may be granted based on a written request from the financial undertaking concerned. This request shall include all the information allowing the CSSF to decide whether there are reasonable grounds. Such extension might be granted, for example, when the requesting financial undertaking is involved in a merger or an acquisition resulting in a change of the shareholder structure of this financial undertaking.			

Provision concerned	General information - Sanctions	Question No.	4
Question			
Which measures can the CSSF take or which sanctions can it impose in case of non-compliance with Section III, respectively, Section IV?			
Answer or Comment			
In accordance with Section III, the financial undertakings concerned shall disclose certain information to the relevant stakeholders. This information shall be in the form of an independent remuneration policy statement, a periodic disclosure in annual financial statements or any other form. Section IV which applies only to credit institutions or investment firms requires <i>inter alia</i> that these financial undertakings disclose their remuneration policy to the CSSF.			
Sanctions were not covered by the Circular. Nevertheless, the CSSF may use the powers and rights which the laws on sectoral supervision conferred to it. If the CSSF notices, for example, that a financial undertaking drew up an inappropriate remuneration policy, the CSSF may intervene and request that the remuneration policy be changed and, if the persons in charge of the administration or the management of that undertaking do not respond to that request, the CSSF may use its right of injunction.			

Provision concerned	Point 1.1	Question No.	5
Question			
Further information concerning the term "financial undertaking" of point 1.1 of the Circular.			
Answer or Comment			
In accordance with point 1.1 of the Circular, all entities, natural or legal persons, <u>subject to the CSSF's prudential supervision</u> , including their branches abroad as well as branches of similar entities set up in Luxembourg and whose registered office or central administration is situated outside the European Economic Area shall apply the provisions of this Circular.			

The term "financial undertakings" refers, among others, to credit institutions, investment firms, managers of pension funds and of collective investment schemes.

The following are also included (non-exhaustive list):

- Issuers referred to in the amended law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market insofar as they are subject to the CSSF's prudential supervision. For sake of completeness, it should be borne in mind that the above-mentioned financial undertakings also have to comply with Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies and Commission Recommendation 2009/385/EC of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.
- Institutions incorporated under Luxembourg law and subject to the CSSF's prudential supervision if the remuneration they grant to persons referred to in point 1.2 of the Circular includes a variable component.
- The Société de la Bourse de Luxembourg S.A.

However, support PFS i.e. the professionals of the financial sector referred to in Articles 29-1, 29-2, 29-3 and 29-4 of the law of 5 April 1993 on the financial sector, as amended, do not fall under the scope of the Circular. Considering their activity, these undertakings are not likely to be a risk factor for the financial stability.

Provision concerned	Point 1.1	Question No.	6
Question			
Do the banks which mainly act as custodian and central administration of investment funds fall under the scope of the Circular?			
Answer or Comment			
<p>First, it should be pointed out that if certain banks' activities are limited to the activity of custodian and central administration of investment funds, they have, nonetheless, an authorisation as credit institution within the meaning of Article 4(1) of Directive 2006/48/EC, as amended. Thus, CRD3 proposal aims also at the above-mentioned credit institutions.</p> <p>It is therefore normal that these institutions already fall under the scope of the Circular and draw up and implement a remuneration policy which is consistent with and promotes sound and effective risk management. The types of risks to which the custodian of a UCI is exposed are linked to the missions performed, i.e. the custody of assets, the control of the transactions of the UCI and the day-to-day administration of the investment fund's assets. These types include particularly the regulatory and counterparty risk, the operational risk and the reputational risk.</p> <p>If these banks are required to draw up and implement a remuneration policy, we may reasonably expect that the latter complies with the principles laid down in the Circular if</p>			

the possible variable remunerations are entirely discretionary and not important (e.g. the gross amount of the bonus should be equivalent to one or two times the gross monthly salary of December of the previous financial year) (cf. also Question No. 8).

Provision concerned	Point 1.2	Question No.	7
Question			
Whose remuneration is referred to in the Circular?			
Answer or Comment			
<p>The Circular applies to the remuneration of the persons who are members of the administrative and management bodies of the institution and of those categories of staff whose professional activities have a material impact on the risk profile of the financial undertaking concerned. Thus, it applies to the remuneration policies of persons whose decisions may influence the level of risk taken by the institution.</p> <p>The financial undertaking shall determine the categories of persons falling under the remuneration policy, the principles of which shall be defined and developed, according to the nature, the size and the specific extent of its activities.</p> <p>The principles set out in the Circular apply, among others, to:</p> <ul style="list-style-type: none"> - members of the administrative body of the financial undertaking; - persons in charge of the effective management (i.e. authorised management) and members of the management committee of the financial undertaking; - staff members of the financial undertaking whose professional activity - carried out individually or within a group such as a department or a division of a department - is or is likely to have a material impact on the risk profile of financial undertaking; - staff members of the financial institution who carry out independent control functions, i.e. functions such as internal audit, compliance, risk management. <p>As regards the last sub-paragraph, point 2.23 of the Circular specifies that the staff members who perform independent control functions shall be compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.</p> <p>The term "material impact" shall be assessed on a case-by-case basis and the financial undertaking shall determine itself if and when the activity of one of its bodies or employees has a material impact on its risk profile. Therefore, it must take all the risks, even the risks which are difficult to measure such as the reputational, liquidity, capital, misselling risks etc. into account.</p>			

Provision concerned	Point 1.2	Question No.	8
Question			
In what way does the Circular apply to staff in charge of the support functions?			
Answer or Comment			
<p>The question is whether the staff members in charge of the support functions, i.e. whose activity is purely administrative and who do not take any material risk for the financial undertaking, should be excluded from the scope of the Circular even if they receive a bonus the amount of which would be linked, for example, to the financial undertaking's result.</p> <p>It should be borne in mind that a remuneration policy shall be adopted and implemented when the remuneration of one or several categories of staff includes a variable component notwithstanding the activities exercised by these staff members.</p> <p>However, it can be reasonably assumed that the remuneration policy follows the principles set by the Circular and is not affecting the financial stability of the financial undertaking if the following conditions are satisfied:</p> <ul style="list-style-type: none"> - the potential variable remuneration or bonus is entirely discretionary (i.e. not contractually guaranteed); - the financial undertaking has neither set an overall objective to achieve a certain result nor individual objectives for the staff members to achieve certain results or, in other words, the length of service, the professional experience and the particular commitment, for example, are taken into account for the determination of the individual bonuses; - the variable component of the remuneration is limited to two monthly salaries; - the variable component of the remuneration would only be paid in case a profit is realised at the end of the financial year; - the result at the end of the financial year is determined by applying the caution rules and by duly taking the risks effectively incurred by the financial undertaking into account. <p>The remuneration policy to be implemented shall be based in this matter on the above-mentioned conditions.</p>			

Provision concerned	Point 1.3	Question No.	9
Question			
Do the Luxembourg financial undertakings which are subsidiaries of an international group have to observe the principles of the Circular even though the guidelines concerning the remuneration policy are drawn up at group level?			
Answer or Comment			
<p>Even if nothing objects to the establishment of general principles governing the remuneration policy at group, international or European level, this may not prejudice the application of the rules of the Circular to which the Luxembourg subsidiary is subject. The drawing-up of the group's remuneration policy shall therefore take the provisions of</p>			

the Circular into account. The Luxembourg financial undertaking which is a subsidiary of a European or international group shall, thus, perform a gap analysis between the provisions of the Circular and those set at group level. If applicable, adaptations to the group policy shall be made in order to observe the relevant Luxembourgish provisions.

Provision concerned	Point 1.5	Question No.	10
Question			
Is it possible to define tangible criteria to specify the nature, the size and the complexity of the activities of a financial undertaking?			
Answer or Comment			
<p>Point 1.5 allows adapting the policies and practices regarding the remuneration to the business structure and model of every financial undertaking. The text provides for the necessary flexibility by requiring the financial undertakings that they observe the principles set in the Circular so as to be adapted to their size as well as to the nature and the complexity of their activities. Thus, it could be disproportionate for some financial undertakings to implement all principles of the Circular. This approach should allow reducing the costs of compliance and upholding the compliance.</p> <p>It is a principle used in a recurring manner at international and European level.</p> <p>The application of this proportionality principle requires that the financial undertakings concerned perform an internal assessment based on an analysis of risks on a case-by-case basis. Therefore, it is neither possible nor appropriate to draw up a list of tangible and quantitative criteria e.g. number of employees, turnover, assets under management, ... The criteria "number of employees" especially does not constitute a reliable criteria since a small undertaking may take excessive risks whereas a company with half a thousand employees may be exposed to fewer risks.</p>			

Provision concerned	Point 1.6	Question No.	11
Question			
What situations are referred to in point 1.6?			
Answer or Comment			
<p>Point 1.6 of the Circular allows its provisions not to be applied to fees and commissions received by intermediaries and external service providers in case of outsourced activities.</p> <p>These fees and commissions are excluded insofar as these remunerations are already subject to specific regimes set out notably in Directive 2004/39/EC on markets in financial instruments.</p> <p>However, point 1.6 does <u>not</u> allow ruling out the Circular's application to an undertaking which exercises the activity of bank broker, thereby only acting as an intermediary between banks.</p>			

Provision concerned	Point 2.3	Question No.	12
Question			
Shall the contractual bonuses the amount of which is fixed be included in the variable remuneration?			
Answer or Comment			
Generally, attention should be paid not to infer that a fixed amount is a fixed remuneration.			
Moreover, the CRD3 proposal and the Implementation Standards published by the Financial Stability Board (FSB) on 25 September 2009 both provide that guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle. Pursuant to CRD3 and the FSB, guaranteed variable remuneration should be exceptional, should only occur when hiring new staff and should be limited to the first year of employment.			
The financial undertakings are hereby notified that they shall take these provisions into account when drawing up their remuneration policy.			

Provision concerned	Point 2.3	Question No.	13
Question			
Shall the welcome bonus, which is a fixed amount, guaranteed and granted when hiring a new member of staff, be considered as a fixed or variable remuneration component?			
Answer or Comment			
Insofar as these welcome bonuses vary according to the newcomer and with reference to the CRD3 proposal, the welcome bonuses which are applied when hiring new staff shall be considered as a form of guaranteed variable remuneration. Such practice shall be limited to the first year.			
Indeed, the CRD3 proposal and the Implementation Standards published by the Financial Stability Board (FSB) on 25 September 2009 both provide that the guaranteed variable remuneration is not consistent with sound risk management or with the pay-for-performance principle. Guaranteed variable remuneration should be exceptional, should only occur when hiring new staff and should be limited to the first year of employment.			

Provision concerned	Point 2.3	Question No.	14
Question			
What is "an appropriate balance of fixed and variable components of total remuneration"?			
Answer or Comment			
Pursuant to point 2.3 of the Circular, the remuneration policy shall be structured with an appropriate balance of fixed and variable remuneration components.			
The fixed component shall represent a sufficiently high proportion of the total			

remuneration to allow the financial undertaking to operate a fully flexible bonus policy which includes the possibility to pay no bonus at all (cf. FAQ No. 16).

Provision concerned	Points 2.3 and 2.5	Question No.	15
Question			
From which threshold is a bonus considered as important? What is the meaning of a "maximum limit" on the variable component?			
Answer or Comment			
Point 2.3 of the Circular requires that the remuneration policy of a financial undertaking sets a maximum limit on the variable component. The Circular does not elaborate on this maximum limit. It does not prescribe neither the setting of an absolute amount nor the setting of a percentage in relation to the fixed component of the remuneration. When setting a maximum limit on the variable component, one should turn towards the key objectives of the financial undertaking's remuneration policy which should be consistent with a sound and effective risk management, which should promote such management and which should not lead to an excessive risk-taking.			
The same applies to the term "significant bonus" which cannot be defined <i>ex cathedra</i> since each financial undertaking shall assess the threshold on a case-by-case basis according to the size as well as the nature and the complexity of the undertaking's activities. It should be noted that the CRD3 proposal refers generally to the term "variable remuneration component" without specifying the different conceivable forms, as for example the bonus. Similarly, the CRD3 proposal does not use the term "significant bonus".			

Provision concerned	Point 2.4	Question No.	16
Question			
As from which level do we consider that the fixed component of the remuneration represents a "sufficiently high proportion of the total remuneration"? Shall we set an absolute amount or use a benchmark of the exercised functions?			
Answer or Comment			
In accordance with point 2.4 of the Circular the fixed component of the remuneration shall represent a sufficiently high proportion of the total remuneration allowing the financial undertaking to operate a fully flexible bonus policy.			
This proportion of the total remuneration is considered as sufficiently high if the staff members are not deemed to rely on the allocation of variable remuneration components in order to get an appropriate salary guaranteeing an adequate lifestyle in Luxembourg.			
In order to ensure a certain logic, the reasonable fixed component shall be assessed <i>via</i> a benchmark of the exercised functions e.g. low, medium, high. In other words, we may reasonably consider that the fixed component of the general manager is proportionally higher than that of a junior trader.			

Provision concerned	Point 2.5	Question No.	17
Question			
What percentage(s) may we contemplate regarding the "main part of the significant bonus"?			
Answer or Comment			
<p>Pursuant to point 2.5 of the Circular, where a significant bonus is awarded, the main part of the bonus shall be deferred with a minimum deferment period. The amount of the deferred part of the bonus shall be determined in relation to the total amount of the bonus as compared to the total amount of the remuneration.</p> <p>It should be borne in mind that even if point 2.5 and points 2.4 and 2.6 exclusively refer to the term "bonus", the general variable remuneration component in all its forms shall be taken into account. The terms "bonus" and "variable component" have the same meaning.</p> <p>As regards the setting of the "main part", the financial undertakings are recommended to take the standards which are currently being drawn up at European level into account and especially those included in the CRD3 proposal. The CRD3 proposal lays down that "a substantial portion, which is at least 40% of the variable remuneration component is deferred (...). In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred. "</p>			

Provision concerned	Point 2.5	Question No.	18
Question			
Point 2.5 lays down that the main part of the bonus shall be deferred with a minimum deferment period. How long shall this minimum deferment period be?			
Answer or Comment			
<p>The Circular does not specify the duration of the minimum deferment period.</p> <p>The financial undertakings are recommended to take the standards which are currently being drawn up at European and international level into account and especially those included in the CRD3 proposal and those enacted on 25 September 2009 by the Financial Stability Board (FSB). The CRD3 proposal provides for "a period which is not less than three years". The FSB considers that a minimum period of three years shall only be applied provided that there is a correct alignment of this period with the activity area, the risk resulting from this activity for the undertaking and the activities exercised by the employee concerned.</p>			

Provision concerned	Point 2.5	Question No.	19
Question			
May we contemplate a vesting of the main bonus part over a minimum period rather than a single payment deferred at the end of the minimum period?			
Answer or Comment			
<p>The Circular does not provide further clarifications on this subject. The French version of the CRD3 proposal only lays down that "remuneration payable under deferral arrangements is acquired at most on a pro-rata basis".</p> <p>Therefore, it is recommended that the financial undertakings refer to the English version of the CRD3 proposal and to the "Implementation Standards" published by the Financial Stability Board (FSB) on 25 September 2009 which lay down: "Remuneration payable under deferral arrangements vests no faster than on a pro-rata basis". Currently, nothing seems to oppose to a vesting of the main bonus part over a minimum period which should be of at least three years pursuant to Question No. 18.</p>			

Provision concerned	Point 2.6	Question No.	20
Question			
In the context of the deferral of substantial bonuses, which amount or part may be paid in cash? Which part shall be paid in shares or other? What shall a financial undertaking whose securities are not listed on a stock exchange do?			
Answer or Comment			
<p>According to point 2.6 of the Circular, the portion of the substantial bonus whose payment is deferred may consist of equity, options, cash, or other funds the payment of which is postponed for the duration of the deferment period.</p> <p>It should be noted that this point only applies if a <u>substantial</u> bonus is paid.</p> <p>Neither the Circular, nor the Recommendation of the European Commission on the remuneration policies in the financial services sector provide for further information in this matter. It is particularly not clear if a part shall be paid in shares and, where applicable, which part.</p> <p>Nevertheless, the CRD3 proposal sets out indications in numbers. Thus, it lays down that "a substantial portion which is at least 50% of any variable remuneration component is made in shares or in share-linked instruments of the credit institution (...)." In case of non-listed credit institutions, such payment shall be made in other non-cash instruments, as the case may be. In other words, after the transposition of the CRD3 proposal, the credit institutions or investment firms shall limit the portion of the variable remuneration component to be paid in cash and the variable remuneration granted in the form of securities or equivalent instruments shall represent at least 50% of the granted variable remuneration.</p> <p>However, the CRD3 proposal lays down in a recital that the application of these</p>			

requirements is not always appropriate within smaller institutions which may thus refer to the proportionality principle.

Provision concerned	2.7	Question No.	21
Question			
What approach does the Circular adopt as regards "golden parachutes"?			
Answer or Comment			
<p>Generally, a "golden parachute" may be defined as a contractual severance payment negotiated between a manager of a company and the company which employs him, and paid following a redundancy, a restructuring, a merger with another company or the expected departure of the manager concerned. This severance payment is added to the legal allowances which the manager concerned is eventually entitled to.</p> <p>The legal allowances are outside the scope of the Circular.</p> <p>In accordance with point 2.7 of the Circular, the severance payments in case of departure which represent more than the legally required amount shall be related to performance achieved over time and designed in a way that does not reward failure. Moreover, the financial undertaking shall be able to withhold the severance payments when the situation significantly worsened.</p> <p>Similarly, the termination payments in relation to a merger or takeover transaction shall also correspond to the actual performance, shall be formed so as not to reward failures and the undertaking must be able to withhold them.</p> <p>Therefore, it is not acceptable any more that a manager leaves the company with severance payments when the company failed or when the manager himself failed.</p>			

Provision concerned	Point 2.8	Question No.	22
Question			
Who may be forced, where applicable, to pay back the granted bonuses? Does the provision only apply in cases of fraud?			
Answer or Comment			
<p>Point 2.8 of the Circular provides that "the board of directors of a financial undertaking shall be able to require staff members to repay all or part of the bonuses that have been awarded for performance based on data which was subsequently proven to be fraudulent."</p> <p>The financial undertaking shall, where applicable, be able to recover or claw back these bonuses not only from the categories of the staff identified as risk takers pursuant to the Circular but also from the members of administrative and management bodies. It should be borne in mind that in accordance with point 2.16, the remuneration of the administrators other than those who participate in the daily management of the undertaking or who represent the personnel shall take the factors such as the time spent</p>			

on their function and their respective responsibilities into account.

The bonuses already paid, granted to beneficiaries for recognised past performances are also concerned.

Finally, the financial undertaking may only require the reimbursement of these bonuses in case of fraud.

Provision concerned	Points 2.10 to 2.14	Question No.	23
Question			
Which principles shall be taken into account for the performance measurement in order to determine the variable remuneration?			
Answer or Comment			
As regards the remuneration which is performance-related, the purpose of the remuneration policy of the financial undertaking shall be to align the personal objectives of staff members with the long-term interests of the financial undertaking concerned. The performance measurement shall thus be set in a multi-year framework . It should be excluded that the performance of a person is only assessed in relation to the short-term result.			
The total amount of variable remuneration shall be based on a combination of the assessment of the performance of the individual and of the business unit to which this individual is appointed or to which he belongs and the assessment of the overall results of the financial undertaking .			
Financial parameters are from now on not the only criteria to be taken into account when assessing individual performance. The financial undertaking shall consider both financial and non-financial criteria such as compliance with internal rules and procedures, compliance with systems and control mechanisms of the financial institution, as well as compliance with the standards governing the relationship with clients and investors. Thus, two employees who have fulfilled the same economic objectives but who have taken different levels of risk in the name of the undertaking shall not be treated in the same manner according to the remuneration policy of the undertaking.			

Provision concerned	Points 2.17, 2.21 and 2.22	Question No.	24
Question			
Which are the responsibilities of the board of directors, respectively of the authorised management regarding the drawing-up and implementation of the remuneration policy?			
Answer or Comment			
The board of directors shall establish the general principles of the remuneration policy of the financial undertaking (point 2.17). The financial undertaking's authorised management (i.e. the members of the "four eyes" authorised by the CSSF) is responsible for implementing the remuneration policy (point 2.21) by drawing up the procedures and practical modalities executing the general principles set by the board of directors. The			

above-mentioned procedures elaborated by the authorised management shall be subject to approval by the board of directors (point 2.21).

Provision concerned	Point 3.1	Question No.	28
Question			
Which date shall be used for the external disclosure of relevant information concerning the remuneration policy?			
Answer or Comment			
According to point 3.1 of the Circular, relevant information concerning the remuneration policy as well as any updates in case of policy changes shall be disclosed by the financial undertaking. The disclosure may take the form of an independent statement, a periodic disclosure in annual financial statements or any other form.			
When the financial undertaking chooses to disclose in its annual financial statements, it should carry out this disclosure at the latest in 2012, i.e. in the financial statements regarding the financial year 2011.			
In case the financial undertaking chooses a disclosure in the form of an independent statement or publication on its website for example, it may carry out the disclosure already in January 2011 but in any case before the deadline for the publication of the financial statements concerning the financial year 2011.			

Provision concerned	Point 4.1	Question No.	25
Question			
Which financial undertakings shall have their remuneration policy assessed by the CSSF regarding the compliance with the principles laid down in the Circular?			
Answer or Comment			
Point 4.1 of the Circular specifies that Section IV - Supervision only applies to financial undertakings which are credit institutions or investment firms incorporated under Luxembourg law as well as Luxembourg branches of credit institutions and investment firms whose registered office or central administration is situated outside the European Economic Area.			
Even if the Circular does not provide for an immediate supervisory review of other financial undertakings' provisions in this matter, it is not excluded that the CSSF performs <i>ad hoc</i> controls at the level of these undertakings in order to ensure the concrete application of the Circular's provisions.			

Provision concerned	Points 4.3 and 4.5	Question No.	26.1
Question			
<p>What is the definition of a "sound" remuneration policy? Which financial undertakings shall communicate their remuneration policy to the CSSF? What is the deadline? How does the CSSF assess the compliance of the remuneration policy?</p>			
Answer or Comment			
<p>The credit institutions and investment firms incorporated under Luxembourg law as well as Luxembourg branches of credit institutions or investment firms whose registered office or central administration is situated outside the European Economic Area shall communicate their remuneration policy to the CSSF. The CSSF shall receive the remuneration policy by 30 September 2010 at the latest. (cf. also Question No. 2)</p>			
<p>A "good" remuneration policy or in other words an "appropriate" remuneration policy is a policy which is compliant with the principles contained in the Circular and with the European and international requirements.</p>			
<p>The Circular does not set out numbered criteria (absolute or relative) for the different quantifiable elements that the financial undertakings will have to specify in their remuneration policy. In order to enable the CSSF to assess the declaration on the remuneration policy which the undertakings concerned shall communicate to the former, it is important that this declaration informs of the essential numbered data.</p>			
<p>The information (qualitative and quantitative) which the CSSF would like to receive particularly at this stage is listed below. It should be borne in mind that further details may be requested with regard to all the elements of the Circular, e.g. governance, ICAAP inclusion, at a later stage.</p>			
<u>Application</u>			
<ul style="list-style-type: none"> - Definition of material risk takers (MRT) (point 1.2) and number of staff per category of population - Amount of the variable remuneration in % of the total annual remuneration for the persons concerned with point 1.2 of the Circular - Amount of the total variable remuneration in % of the total annual remuneration, i.e. for the entire staff - Details concerning the application to Luxembourg or foreign subsidiaries in case a credit institution or an investment firm is subject to a supervision on a consolidated basis 			
<u>Governance</u>			
<ul style="list-style-type: none"> - Description of the functions of the Board of Directors in the drawing-up of the general principles governing the remuneration policy and the follow-up of their implementation (points 2.15, 2.16, 2.17, 2.20, 2.21) 			

- Where applicable, the composition (name and first name of the directors who are natural persons) and the functioning of the remuneration committee (point 2.18)
- Where applicable, the names of the external experts whose services are sought by the financial undertaking for the design of the remuneration policy (point 2.19)

The control functions

- Remuneration method for staff engaged in control functions (point 2.23) and the members of the human resources department, ... (point 2.19)

Structure of the remuneration policy

- Description of the fixed and variable remuneration components per category of population. Justification of the classification in "fixed" or in "variable".
- Maximum limit on the variable component (point 2.3)
- In case of granting of an important bonus, description of the deferral period (point 2.5)
- Composition of the deferred part e.g. shares, options, cash or other funds... (point 2.6)
- Flexibility of the bonus policy: possibility to withhold bonuses partly or entirely (point 2.4)

Performance measurement

- Description of the performance criteria (points 2.10, 2.14)
- Description of the assessment procedure of performance (point 2.12)

Disclosure

Form of the disclosure (point 3.1)

The financial undertakings which do not have to communicate their remuneration policy to the CSSF, i.e. all the entities which are not credit institutions or investment firms, may take the detailed information above into account for the drawing-up of their remuneration policies.

Provision concerned	General information	Question No.	27
Question			
Will there be other amendments with regard to the supervisory review of the financial undertakings' remuneration policies?			
Answer or Comment			
The Circular informs that while the recommendations of the European Commission, namely Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector, are gradually taken up by sectoral directives, the provisions of the Circular will be taken over by the implementation of these directives into Luxembourg law.			

As regards credit institutions and investment firms, the purpose of the proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies ("CRD3 proposal"), is to complete the current requirements with an express requirement to establish, implement and maintain remuneration policies and practices consistent with and promoting sound and effective risk management for the categories of staff whose activities have a significant impact on the risk profile. The principles outlined in the CRD3 proposal will be brought in line with those defined in the Commission Recommendation on remuneration policies in the financial services sector. However, the CRD3 proposal will develop some points or will be even more restrictive, where appropriate.

Please note also the proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC ("AIFM Directive proposal"). The purpose of this proposal is to require the alternative investment funds to establish remuneration policies and practices like those applicable to credit institutions and investment firms.

The texts of the CRD3 and AIFM Directive proposals are available on the website of the European Council (Interinstitutional Files No. 2009/0099 (COD) and 2009/0064 (COD)).

Finally, it should be pointed out that Mr Michel Barnier, European commissioner in charge of the financial regulation, has recently noted during a press conference that the new rules regulating the remuneration provided for in the CRD3 proposal will also be expanded to managers of UCITS and to the insurance sector.