

FAQS

on how entities of the financial sector and issuers of listed securities can have the chosen *réviseur d'entreprises agréé* (approved statutory auditor) (REA)¹ recognised by the CSSF for the statutory audit of their accounts

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¹ In the subsequent text and as set out in the answer to question 2, reference is made to *réviseur d'entreprises agréé* (approved statutory auditor) (REA) to designate a *cabinet de révision agréé* (approved audit firm) (CRA). However, in certain cases, a distinction shall be made between a CRA which is a REA being a legal person, and a REA being a natural person. In this case, it is duly specified in the text with the notion of key audit partner.

1. Who shall require the recognition by the CSSF of the REA chosen to carry out the statutory audit of its accounts?

a) The entities of the financial sector subject to the prudential supervision of the CSSF in accordance with Article 2(1) and (2) of the law of 23 December 1998 establishing a financial sector supervisory commission ("CSSF Law"), on the one hand,

and

b) the Luxembourg issuers whose shares or units are admitted to trading on a regulated market authorised in Luxembourg, governed by the law of 13 July 2007 on markets in financial instruments ("MiFID Law"), on the other hand,

must entrust the statutory audit of their annual accounting documents/individual or consolidated annual accounts to one or several REAs who can show that they possess adequate professional experience.

In this respect, they are required to have the REA of their choice recognised beforehand by the CSSF in order to enable the CSSF to ensure that this REA possesses adequate professional experience, adapted to the profile of the supervised entity/issuer. Similarly, the applicable laws provide that any subsequent change of REA must be authorised in advance by the CSSF.

As the decisions taken by the CSSF in this context are considered as administrative decisions, the CSSF laid down a formal recognition procedure for REAs which defines the rules to be complied with for a recognition request, the reference criteria for the assessment of the adequate professional experience and the follow-up regime once the recognition has been granted.

2. Who must be recognised by the CSSF, the audit firm or the statutory auditor, and what does this recognition mean?

The 4th and 7th European Directives² on the annual accounts and consolidated accounts of companies with limited liability require a statutory audit. Under the 8th European Directive on the statutory audit of annual accounts and consolidated accounts, the statutory audit is assigned either to a natural person approved for that purpose (referred to as "statutory auditor"), or a legal person approved for that purpose (referred to as "audit firm").

References to "*réviseur d'entreprises agréé*" (approved statutory auditor) in Luxembourg laws applicable to the financial sector cover the two alternatives referred to in the European Directive.

In practice, the supervised entities/issuers propose a *cabinet de révision agréé* (approved audit firm) as statutory auditor. The recognition procedure of the CSSF is intended for the CRA, i.e. REA legal person. The CRA is represented by a REA natural person who acts as a key audit partner within the meaning of the law of 18 December 2009 concerning the audit profession (Audit Law). Both the audit firm and its key audit partner must be

² Repealed and replaced by Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

approved by the CSSF in accordance with the Audit Law to carry out the assignments reserved by law to the *réviseurs d'entreprises agréés* including, in particular, the statutory audit.

The recognition of a REA by the CSSF for the statutory audit of a supervised entity/issuer is separate from the approval under the Audit Law. It represents an additional specific authorisation subject to the condition that the REA possesses adequate professional experience, adapted to the mandate required in the financial sector.

3. What are the rules for filing a request for recognising a REA?

a) When shall a recognition request be filed?

An entity supervised by the CSSF shall have its REA recognised:

- within the context of the review of the initial authorisation file of the supervised entity;
- upon any subsequent change of the legal status of the supervised entity;
- upon any subsequent change of the REA.

An issuer shall have its REA recognised:

- within the context of the approval of its issue prospectus;
- upon any subsequent change of the REA.

A change of the key audit partner belonging to the already recognised REA does not represent a change of REA and, consequently, does not require a new recognition request.

b) Who shall file the recognition request?

The supervised entity or the issuer shall submit the recognition request to the CSSF by indicating the name of the proposed REA and the name of the key audit partner who shall be responsible for the statutory audit (cf. also answer to question 2).

The request shall be filed prior to the appointment of the REA by the bodies of the supervised entity/issuer.

c) In which form shall the recognition request be filed?

Insofar as the application file for obtaining/changing the legal status of a supervised entity or approval file of the prospectus of an issuer, respectively, includes information on the REA and its key audit partner, the CSSF does not require a separate formal recognition request. In this case, the introduction of such a file replaces the request for recognising the REA by the CSSF.

Upon any subsequent change of REA, the supervised entity/issuer shall file a written formal recognition request with the CSSF. This request shall include the reasons for the change of REA and specify as from what financial year the change will become effective. It is reminded that, in case of resignation or dismissal of the REA during his term of office, Article 26 of the Audit Law requires an adequate explanation for the resignation or dismissal of the REA.

d) To whom shall the request be filed?

The recognition request shall be addressed to the department of the CSSF in charge of the authorisation and the prudential supervision of the supervised entity or the approval of the prospectus of the issuer, respectively.

4. How does the CSSF proceed after having received a request for recognising a REA: full procedure or simplified procedure?

After having received a request for recognising a REA, the CSSF first examines whether this REA has already been recognised by the CSSF for a similar mandate as statutory auditor. If so, the CSSF applies the simplified procedure set out in the answer to question 6. If not, the CSSF applies the full procedure of the first recognition set out in the answer to question 5.

5. How does the full procedure for the first recognition apply?

In the event of a first request for recognising a REA for a mandate as statutory auditor of a supervised entity or an issuer, the CSSF first requires that the REA submits a complete presentation file based on a standardised information sheet (cf. annexe to the FAQs).

In addition, the REA, represented by the key audit partner proposed for the mandate is contacted for an interview. This interview enables the CSSF to supplement the information received in the file and to assess the professional qualification of the key audit partner. It also enables the key audit partner to demonstrate his level of competence and thus his apparent ability to fulfil a mandate as statutory auditor of a given supervised entity/issuer. Following this interview, the CSSF may, if necessary, request additional information/documents.

Based on the collected data, the CSSF assesses the "adequate professional experience" in view of the conditions laid down (cf. answers to questions 8 and 9) and issues a decision of recognition or refusal of recognition.

The decision to recognise or not to recognise is then communicated to the supervised entity/issuer and/or the REA, as the case may be (cf. answer to question 10).

6. When and how does the CSSF apply the simplified recognition procedure?

When the proposed REA has already been recognised by the CSSF for a similar mandate as statutory auditor, the CSSF applies a simplified recognition procedure.

In general, when the request concerns a type of entity for which the REA has already been recognised or a different type of entity that is less complex and the quality of the audit work of the key audit partner who shall be responsible for the conduct of the proposed mandate is satisfactory, the recognition is directly granted.

When the request concerns an entity of the same type but whose activities are more complex or an entity of a different type requiring a different professional experience, the procedure mainly consists in assessing whether the skills and the resources of the key audit partner, who shall be responsible for fulfilling the proposed mandate, continue to be sufficient and adapted to the complexity of the activities of the entity/issuer concerned by the request. In this respect, the key audit partner shall provide the CSSF, a priori, only with detailed information on the proposed mandate (cf. answer to question 5 - standardised information sheet, part II). If conditions warrant, the key audit partner may be contacted for an interview.

7. What does the recognition procedure relate to?

The recognition procedure corresponds to an ex ante validation of the apparent ability of the REA to execute a mandate as statutory auditor of a given supervised entity/issuer. This analysis takes into account the professional skills and experience of the key audit partner, the organisational aspects of the audit firm as well as the specificities related to the status

and the activity of the supervised entity/issuer. The combination of these three elements enables the CSSF to assess whether the choice of the REA is suitable.

Concretely, the assessment of the "adequate professional experience" centres around seven conditions that shall be fulfilled simultaneously (cf. answer to question 8).

Certain additional conditions apply due to the legal status of the supervised entity/issuer or the complexity of its activity (cf. answer to question 9).

8. How does the CSSF assess the concept of "adequate professional experience"?

The assessment of the "adequate professional experience" centres around seven conditions that shall be fulfilled simultaneously:

1. The audit firm as well as the key audit partner shall have an approval from the CSSF, granted in accordance with the Audit Law to carry out assignments reserved by law to REAs.
2. The key audit partner shall have current experience in statutory audit. This implies that the key audit partner shall carry out, in a routine manner and on a regular basis, statutory audit assignments in Luxembourg.
3. The key audit partner shall have sufficient knowledge and a current experience of the accounting standard on the basis of which annual accounting documents/individual or consolidated accounts, subject to statutory audit, are established.
4. The key audit partner shall have sufficient technical knowledge of the activities carried out by the supervised entity/issuer and the risks arising therefrom.
5. The key audit partner shall have current knowledge of the regulations (laws, regulations and circulars, etc.) applicable to the supervised entity/issuer which he intends to.
6. The REA shall have sufficient human and technical means adapted to the complexity of the activities of the type of supervised entity/issuer targeted.
7. The audit quality of the key audit partner and of the audit firm, respectively, shall be satisfactory.

Certain specific conditions may apply due to the legal status of the supervised entity/issuer or the complexity of its activity (cf. answer to question 9).

9. What are the additional conditions applicable to specific areas of activity of the financial sector?

The conditions set out in the answer to question 8 are supplemented by additional conditions in order to take into account the specificities related to the status or activity of certain supervised entities/certain issuers. The conditions concerned are the following:

- Credit institutions, investment firms, payment institutions, operators of a regulated market authorised in Luxembourg, UCIs: The ad hoc use of experts shall be guaranteed, insofar as the key audit partner shall have himself a sufficient level of knowledge to assess the quality and adequacy of the due diligence performed and the conclusions drawn up by the expert. Experts may be used either by way of membership in an international audit network³, or by the development, through co-operation agreements, of a network of standardised professional relations, whereby unconditional and immediate access to expert resources is guaranteed.
- Specialised PFS: Given the diversity of the statuses regrouped under the term specialised PFS, a nuanced approach is applied. In particular, PFS acting under the status of administrative agent (AA) or registrar agent (RA) include a dimension of contagion risks for the financial sector. Consequently, for these PFS, the key audit partner shall carry out, normally, the statutory audit of entities likely to use the services of an administrative agent or a registrar agent.
- Support PFS, electronic money institutions and entities using complex or significant IT organisation: The REA shall have skills and experience adapted to the specificity of the IT environment to ensure a good understanding of the risks arising therefrom and the implementation of an appropriate audit approach. A REA has the required technical skills if his team includes a sufficient number of IT expert analysts⁴ or if he can use them forthwith through a network or pursuant to co-operation agreements.
- UCIs, AIFs, SIFs, SICARs, securitisation undertakings, pension funds: These vehicles engage in investments whose valuation may be very complex. In the recognition procedure, emphasis is placed on the experience of the key audit partner in the valuation of complex assets and, as far as the REA is concerned, on the means to use experts in the valuation, through a network or through co-operation agreements.

If necessary, other specific conditions may be laid down to meet specific requirements in terms of adequate professional experience of the REA for a given supervised entity/given issuer.

10. Who shall be informed of the decision of recognition?

i. Decision of recognition

- **Within the context of an authorisation request of a new supervised entity, a request for a change of status of a supervised entity or for the approval of the prospectus of an issuer**

a) Communication to the entity

Entity of the financial sector

The authorisation of the supervised entity implies the recognition of the REA; the CSSF does not send a specific recognition letter in this respect to the supervised entity.

³ Notion of network according to IFAC Code of Ethics, failing any common definition in Europe.

⁴ Holders of professional certificates such as CISA (Certified Information System Auditor).

Issuer

Within the context of the request for approval of the prospectus of an issuer, the recognition decision is directly and explicitly communicated to the issuer.

b) Communication to the REA

In case of a first recognition decision for the REA for a type of entity, the CSSF sends its recognition decision by letter, following the authorisation of the new supervised entity, change of status or approval of prospectus.

The recognition letter confirms, on the one hand, the recognition decision applicable to the specific supervised entity/issuer. On the other hand, it serves as a reminder of the main obligations of the REA in the field of co-operation and communication with the CSSF. In this respect, it includes also an inventory of the reports to be provided by the REA as part of his mandate.

➤ **Within the context of a request for a change of REA**

The decision is:

- communicated to the REA by letter;
- and simply confirmed to the entity by letter.

ii. Decision not to recognise

The rules of the non-litigious administrative procedure (PANC) are applicable.

First, and before taking the final decision not to recognise the REA, the CSSF notifies its intention not to grant the recognition to the REA and at the same time to the supervised entity/issuer. The letter sent to the supervised entity/the issuer does only include, where appropriate, the factual elements on the relevant REA.

This first letter, sent by registered letter with acknowledgement of receipt, includes the intention of the CSSF not to grant the recognition of the REA as well as elements of fact and law on which the CSSF bases its intention. It invites the recipients to take position and to comment on the decision which the CSSF envisages to take. In this respect, the letter mentions a period which cannot be less than eight days as from the receipt of the letter. In exceptional cases (to be assessed on a case-by-case basis), the facts taken into consideration for the refusal may be established through an interview with conflicting views.

Then, the final decision occurs after the recipients have submitted their comments, or after the expiry of the period for comments. The final decision is reasoned and includes the legal basis as well as the elements of fact which are at the source of it. Moreover, it includes the remedies available. The decision is sent by registered letter with acknowledgement of receipt.

11. What is the status of a decision of recognition or refusal of recognition?

Any decision on recognition represents a specific administrative decision because it takes into consideration the suitability of the professional experience of the REA with respect to a specific supervised entity/issuer by taking into account the "type of entity", i.e. the legal status of the supervised entity/issuer, as defined in the sectoral law governing its activity, as well as the specificities of the mandate.

A recognition decision means that the CSSF considers that the REA appears to possess adequate professional experience adapted to the nature and complexity of the activities of a given supervised entity/issuer.

A decision not to grant recognition implies that the REA does not meet all the requirements laid down by the CSSF to assess the legal condition of the adequate professional experience for a proposed mandate. A decision of refusal constitutes an administrative decision communicated to the REA and to the supervised entity/issuer in compliance with the provisions of the non-litigious procedure (PANC) (cf. also answer to question 10).

12. How is the recognition procedure (ex post assessment of the quality of the audit work for a supervised entity/issuer) followed?

The responsibility entrusted to the CSSF, within the context of the supervision of the financial sector and markets in financial instruments, implies that it assesses both the qualification of the REA at the time of recognition for a mandate as statutory auditor of a supervised entity/issuer and also that it monitors and assesses the quality of the documents provided by the key audit partner.

At the level of the mandate as statutory auditor, the report of the REA on the annual accounts/individual and consolidated accounts as well as, where appropriate, his long form report and his management letter are assessed.

The reports issued by a key audit partner for a supervised entity within the context of other assignments, such as an outsourced internal audit function or within the context of contributions other than in cash (contributions in kind) may also be taken into consideration.

Moreover, the CSSF assesses whether the key audit partner has met the legal and prudential provisions in terms of communication to the CSSF (whistleblowing procedure).

Furthermore, the review of the annual reports of the supervised entities may allow identifying indicators which might arise from a lack of diligence in the audit.

Finally, quality assurance reviews performed on the basis of audit files by the CSSF within the context of its mission of public oversight of the audit profession provide an in-depth assessment of the quality of a REA's work. This quality assurance is distinct from the monitoring of the quality of the audit work which the CSSF carries out at the level of REAs recognised to carry out the supervisory audit of the accounts of supervised entities/issuers, whether in terms of scope of application or of objective. Quality assurance covers, indeed, all the statutory audit assignments and other assignments reserved by law to REAs. It aims at verifying whether the REA carried out these mandates in accordance with the audit standards applicable to it, the standard-setting provisions on quality control, the code of ethics and, in particular, the independence rules. The conclusions set forth in this context are also taken into account within the context of the follow-up of the REAs recognised for the financial sector. In particular, the safeguards against a key audit partner in the broader context of the public oversight of the audit profession may lead to decisions on other mandates held by this key audit partner in the financial sector.

13. What means of action are available to the CSSF in case of poor quality of the documents submitted by the REA for a supervised entity/issuer?

In case of unsatisfactory ex post assessment of the quality of the reports of a key audit partner, the CSSF may contact this partner for an interview, send him a letter or take other appropriate measures.

Depending on the severity of the various facts, the CSSF may request an entity to change the REA, prohibit a REA to carry out the statutory audit in a particular business area of the financial sector, i.e. to withdraw its recognition as REA for the financial sector for a specified term or permanently.

The shortcomings identified during the quality assurance review carried out by the CSSF within its mission of public oversight of the audit profession may lead to the implementation of a "double-signature" safeguard measure⁵ against a key audit partner. For the entities of the financial sector subject to the prudential supervision of the CSSF (as described in answer a) to question 1), the double-signature measure imposed on their REA is systematically extended to the long-form report.

Moreover, the key audit partner subject to this safeguard measure shall request prior approval from the CSSF for any new statutory audit mandate in the financial sector for which he would act as a key audit partner.

During the assessment of such a request, the CSSF examines, in particular, the experience, the skills, the authority and the availability of the second signatory.

Any decision taken by the CSSF and which is likely to have an impact on the exercise of the activity of statutory audit of account by the REA in the financial sector constitutes a non-litigious administrative decision which is communicated to the REA in compliance with the provisions of the non-litigious administrative procedure (PANC).

⁵ This measure means that all the audit files of a key audit partner shall be reviewed by a second audit partner REA and that all the audit reports issued by this key audit partner shall be countersigned by this second audit partner REA.

Constituent components of a recognition request file by the CSSF of a *réviseur d'entreprises agréé* (REA) for a mandate as statutory auditor

1. General data on the REA

a. "Statutory audit" activities:

i. annual number of statutory audit assignments (over the last three months) in the following sectors:

1. financial sector

2. stock market

3. insurance sector

4. unregulated investment companies (unregulated private equity, unregulated securitisation companies, Soparfi);

ii. names of the key audit partners assigned to the audit of the entities of the financial sector;

iii. staff (number, including those assigned to the audit in the financial sector, by seniority level, experience and qualification);

b. Other engagements performed by the REA in the financial sector (outsourced internal auditor, consulting, etc.);

c. Audit approach (audit manual, technical means (audit softwares and other devices) available);

d. Membership of a network: general information on the network and/or technical association, global ranking, existence of a quality assurance system, quality control report of the network and/or technical association, etc..

2. Data relating to the audit mandate of the applicant client entity?

a. Description of the client acceptance approach with emphasis on the assessment of the risk profile of the regulated entity and the procedures provided for in this respect.

b. Name and curriculum vitae of the key audit partner of the mandate;

c. Audit team (including external experts if need be);

d. Detailed budget/hours and audit fees for the mandate in question;

e. "Non-audit" service provision for the same client (nature and fees).