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Law of 1 April 2015 establishing a Systemic Risk Committee and amending the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended

(Mém. A 2015, No. 64)

Parl. doc. 6653

as amended by:

- the Law of 4 December 2019 amending:
 - 1° the Law of 5 April 1993 on the financial sector, as amended;
 - 2° the Law of 1 April 2015 establishing a Systemic Risk Committee and amending the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended;enacting macroprudential measures on residential mortgage loans.

(Mém. A 2019, No 811)

Parl.doc.7218

Article 1. (1) A Systemic Risk Committee (“SRC”) shall be created hereby; its task shall be to co-ordinate the implementation, by the authorities represented in the SRC, of the macro-prudential policy whose ultimate objective is to contribute to maintaining the stability of the Luxembourg financial system, notably by strengthening the resilience of the financial system and decreasing the build-up of systemic risks, thereby ensuring a sustainable contribution of the financial sector to economic growth.

(2) The SRC shall be created, in accordance with the Recommendation of the European Systemic Risk Board (ESRB) of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3), in the form of a collegial committee which contributes to an adequate co-operation among the authorities invested with the respective competences in the field of micro- and macro-prudential supervision.

The co-ordination of the macro-prudential policy implementation by the SRC shall be carried out without prejudice to the own competences granted, by virtue of the Treaty on the Functioning of the European Union, to the European Central Bank (ECB) and the Banque centrale du Luxembourg (BCL) as member of the European System of Central Banks (ESCB) and of the Eurosystem, as well as by virtue of its organic law.

(3) To achieve the objective of macro-prudential policy, the SRC shall pursue intermediate objectives, which serve as operational specifications of the ultimate objective of macro-prudential policy, taking into account the structure and vulnerabilities of the national financial system.

The SRC shall be empowered to recommend the use of any macro-prudential instrument which it deems necessary to achieve the objective of macro-prudential policy and the intermediate objectives taking into account the structure and vulnerabilities of the national financial system, the cyclical dimension of systemic risks in Luxembourg and the regulations, decisions, opinions and recommendations of the competent European institutions, authorities and committees.

(4) The SRC shall periodically assess the appropriateness of the intermediate objectives as well as the effectiveness and efficiency of the selected macro-prudential instruments with regard to the achievement of the objective of macro-prudential policy, the experience gained in operating the macro-prudential policy, the structural developments in the national and international financial system, the emergence of new types of systemic risks and the expansion or mitigation of existing systemic risks.

Article 2. For the purposes of fulfilling its task and without prejudice to the legal competences of the member authorities, the SRC shall:

- (a) identify, assess and monitor the risks to financial stability with the aim to prevent or mitigate these risks, notably based on the analyses of the economic situation, the situation of the financial sector and of the financial markets performed by the authorities represented in the SRC or by international financial fora and by taking into account the decisions, opinions and recommendations of the competent European institutions, authorities and committees;
- (b) determine, based on the analyses performed by the authorities represented in the SRC, the financial players and the market infrastructures of the financial sector or their activities which constitute or are likely to constitute a systemic risk for Luxembourg;
- (c) be empowered to issue any opinion it deems useful and necessary to achieve the objective of macro-prudential policy and the intermediate objectives and, where applicable, to make such opinions public;
- (d) be empowered to issue warnings where risks to financial stability are deemed significant and, where applicable, to make such warnings public;
- (e) be empowered to issue recommendations on corrective measures to be taken to address the identified risks, including recommendations on the macro-prudential instruments to be used to achieve the objective of macro-prudential policy and the intermediate objectives, and, where applicable, to make these recommendations public;
- (f) assess and monitor the responses to the opinions, warnings and recommendations of the SRC made by the addressees;
- (g) contribute to strengthening co-operation and information exchange between the authorities represented in the SRC, in normal and crisis situations;
- (h) co-operate and exchange information with the ESRB and other foreign macro-prudential authorities within the limits, under the conditions and in accordance with the provisions set out in EU law and invite the Director General of the BCL, as voting member of the ESRB, to inform the ESRB of any significant adjustment to the macro-prudential policy pursuant to Article 1(4) and the reasons motivating this adjustment;
- (i) follow up on the ESRB recommendations and inform the ESRB of the measures taken in order to address the systemic risks identified in Luxembourg in accordance with the provisions set out in EU law.

In fulfilling its task, the SRC shall comply with the financial stability objectives within the European Union.

Article 3. (1) The SRC shall comprise four members, i.e.:

- the Government, represented by the member of the Government responsible for the financial centre;
- the BCL, represented by its Director General;
- the Commission de Surveillance du Secteur Financier (CSSF), represented by its Director General;
- the Commissariat aux Assurances (CAA), represented by its Director.

(2) Each member of the SRC shall designate an alternate representative; the representative may be accompanied by the alternate representative at the meetings of the SRC and be replaced by him/her if he/she is prevented from attending.

(3) The SRC shall be chaired by the member of the Government responsible for the financial centre and, in his/her absence, by the Director General of the BCL.

(4) The secretariat of the SRC shall be provided by the BCL under the hierarchical authority of its Director General. Each member shall designate one person to serve as correspondent within its authority to contribute to the work of the SRC's secretariat.

The secretariat shall be in charge of preparing the SRC meetings. As such, it shall prepare drafts of the SRC opinions, warnings or recommendations and draft minutes of the SRC meetings. It may also draw up analyses relating to the SRC's field of competence.

(5) The SRC members, the SRC members' representatives and the alternate representatives shall not bear civil liability for their decisions, acts or conduct in exercising their function, except in the case of fraud or gross negligence.

(6) The representatives of the SRC members and the alternate representatives shall act objectively and in the general interest.

Article 4. (1) For the SRC meetings to be validly convened, at least two representatives shall be present and the two other representatives shall be represented by their alternates.

(2) The Chair of the SRC shall convene the meetings and determine the agenda. The SRC members' representatives may propose topics to be included in the agenda to the Chair.

(3) The SRC shall meet twice a year, or, in case of need, on a proposal from its Chair or from two of the members' representatives.

(4) In urgent cases identified by the Chair, the SRC may convene a meeting using a voice communication system.

Article 5. (1) The representatives shall have a voting right. The alternate representatives act in an advisory capacity and, when replacing a representative, they shall exercise his/her voting right.

(2) The SRC shall adopt its opinions, warnings, recommendations and annual reports and decide on their publication by unanimity of the votes cast.

(3) The SRC shall approve the minutes of its meetings by unanimity of the votes cast, where applicable, by written procedure.

(4) The SRC shall draw up its rules of procedure, to be unanimously adopted by the members' representatives.

Article 6. (1) The SRC may, in case of need, invite persons active in the economic field and individual financial sector players or financial sector market infrastructures to participate in certain items of the agenda, on condition that there are no conflicts of interest with the topic on the agenda.

(2) The SRC may request the opinion of experts with no conflicts of interest on an issue relating to the implementation of this law.

Article 7. (1) The addressees of the opinions, warnings and recommendations issued by the SRC are the Government, the CSSF, the CAA, and the BCL for its tasks of liquidity and systems supervision, in accordance with its organic law, as well as all or part of the financial sector, including credit institutions, insurance and reinsurance undertakings, investment funds, market infrastructures, that may, collectively or individually, threaten the financial stability of the financial system or of one of its components.

(2) The opinions, warnings and recommendations shall be made public, in due course, if this contributes to achieving the objectives of the SRC.

(3) The addressees of the opinions, warnings and recommendations shall inform the SRC of the follow-up they performed on these opinions, warnings or recommendations and adequately justify any inaction following a recommendation.

Article 8. (1) The members of the SRC shall provide to the SRC, on their own initiative, and in compliance with their legal competences and obligations resulting from EU and national law, all the information they consider useful and necessary to the fulfilment of the SRC's tasks.

(2) The SRC shall be empowered to request the authorities represented in the SRC as well as any other national body to provide it with all economic and financial information useful and necessary to perform its duties, including macro-economic data and prudential information relating to individual financial players or financial sector market infrastructures. The national bodies receiving these information requests shall provide the information to the SRC within the specified timeline for response, in compliance with their legal competences and obligations deriving from EU and national law.

(Law of 4 December 2019)

“Without prejudice to Article 32 of the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg and - repealing the legal tender on notes issued by the Banque Internationale à Luxembourg; - amending Article 1 of the Law of 12 July 1895 on the payment of workers' salaries, as amended, the Banque centrale du Luxembourg shall have the right to access aggregate information available from State departments, public institutions apart from those placed under the supervision of the communes and other competent State authorities, as long as that information is required to perform its research and analysis activities with regard to the role of the Systemic Risk Committee.”

(3) Without prejudice to Article 37 of the Statute of the European System of Central Banks and of the European Central Bank, the professional secrecy of the representatives of the members of the SRC, and, where applicable, of the persons invited under the conditions set out in Article 6(1), does not hinder communication to the SRC of information covered by the obligation of professional secrecy of the persons concerned.

(4) The information referred to in paragraphs 1 and 2 shall be used by the SRC only for the purpose of fulfilling its tasks.

(5) Except in the cases laid down by national law or EU law, the SRC members' representatives, the alternate representatives and the persons in charge of the secretariat as well as any other person that attended the SRC meetings or the persons that performed, in the past, the aforementioned functions shall be bound to secrecy regarding information of which knowledge was acquired in the exercise of their duties or otherwise incidentally to such exercise, on pain of penalties provided for in Article 458 of the Criminal Code.

Article 9. During the first quarter of the civil year, the SRC shall transmit a report on the activities of the previous year to the Conseil de Gouvernement (government in council) and the Chambre des députés (Luxembourg chamber of deputies). Upon request by the Chambre des députés, the SRC shall present the report to the competent committee of the Chambre des députés. A summary version of the report shall be published by the SRC.

Article 10. The amended Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg is modified through the insertion of a new title “Civil liability” and a new provision which reads as follows:

“Civil liability

Art. 34-1 The Banque centrale du Luxembourg performs its tasks in the public interest. For the Banque centrale du Luxembourg to assume civil liability, it must be demonstrated that the damage suffered was caused through gross negligence in the choice and application of the means implemented to carry out the public service remit of the Banque centrale du Luxembourg.”