

**Law of 6 June 2018 on central securities depositories and implementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012**

(Mém. A 2018, No 462)

**Article 1. Designation of the competent authority**

(1) The Commission de Surveillance du Secteur Financier, hereinafter referred to as the "CSSF", shall be the competent authority, in accordance with Article 11(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, hereinafter referred to as "Regulation (EU) No 909/2014", in charge of exercising the duties under Regulation (EU) No 909/2014 for the authorisation and supervision of the central securities depositories established in Luxembourg.

(2) Paragraph 1 shall be without prejudice to the duties of the Banque centrale du Luxembourg under the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and of the European Central Bank, the Law of 23 December 1998 concerning the monetary status and the Banque centrale du Luxembourg, as amended, and Title V of the Law of 10 November 2009 on payment services, as amended.

(3) The CSSF shall inform the European Securities and Markets Authority, hereinafter "ESMA", of the decisions referred to in Articles 21(1) and 58(1) of Regulation (EU) No 909/2014, as well as of the information referred to in Article 61(6) of Regulation (EU) No 909/2014.

**Article 2. Powers of the CSSF**

For the purposes of application of Regulation (EU) No 909/2014, of this law and of their implementing measures, the CSSF shall have all the supervisory, intervention, inspection and investigatory powers that are necessary for the exercise of its functions within the limits set in the above-mentioned regulation and in this law.

The powers of the CSSF shall include the right to:

1. have access to any document and any data in any form whatsoever, and to receive or take a copy of it;
2. request information from any person and, if necessary, to summon and question any person;
3. carry out on-site inspections and investigations at the central securities depositories and designated credit institutions;
4. require existing telephone and existing data traffic records held by the central securities depositories and designated credit institutions;
5. require the cessation of any practice that is contrary to Regulation (EU) No 909/2014, this law and their implementing measures;
6. request temporary prohibition of professional activities with respect to central securities depositories and designated credit institutions, as well as members of their management body;
7. adopt any measure that is necessary to ensure that central securities depositories and designated credit institutions continue to comply with the requirements of Regulation (EU) No 909/2014, of this law or of their implementing measures;

8. refer information to the State Prosecutor for criminal prosecution.

### **Article 3. Internal reporting of infringements**

(1) Central securities depositories and designated credit institutions shall have in place appropriate procedures for their employees to report internally, through a specific, independent and autonomous channel, potential or actual infringements of Regulation (EU) No 909/2014, this law or their implementing measures. Such a channel may also be provided through arrangements provided for by social partners.

(2) The procedures, channels or arrangements referred to in paragraph 1 shall include at least:

1. appropriate protection for employees of central securities depositories and designated credit institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
2. protection of personal data concerning both the person who reports the potential or actual infringements and the natural person who is allegedly responsible for an infringement, in compliance with the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended;
3. protection of the identity of both the person who reports the infringements referred to in paragraph 1 and the natural person who is allegedly responsible for an infringement, at all stages of the procedures, unless such disclosure is required by or in accordance with a law.

### **Article 4. Reporting of infringements to the CSSF**

(1) The CSSF shall establish effective mechanisms to allow reporting of potential or actual infringements of Regulation (EU) No 909/2014, this law or their implementing measures to the CSSF.

(2) The mechanisms referred to in paragraph 1 shall include at least:

1. specific procedures for the receipt and investigation of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;
2. appropriate protection for employees of central securities depositories and designated credit institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
3. protection of personal data concerning both the person who reports the potential or actual infringements and the natural person who is allegedly responsible for an infringement, in compliance with the Law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, as amended;
4. protection of the identity of both the person who reports the infringements referred to in paragraph 1 and the natural person who is allegedly responsible for an infringement, at all stages of the procedures, unless such disclosure is required by or in accordance with a law.

### **Article 5. Administrative sanctions and other administrative measures**

(1) The CSSF may impose the administrative sanctions and take the administrative measures provided for in paragraph 2 where:

1. a natural or legal person provides services referred to in Sections A, B and C of the annex to Regulation (EU) No 909/2014, without complying with the provisions set out under Articles 16, 25 and 54 of said Regulation;
2. a natural or legal person has obtained the authorisation required under Articles 16 and 54 of Regulation (EU) No 909/2014 by making false statements or by any other unlawful means, as

provided for in point (b) of Article 20(1) and in point (b) of Article 57(1) of Regulation (EU) No 909/2014;

3. a central securities depository does not hold the required capital, thus infringing Article 47(1) of Regulation (EU) No 909/2014;
4. a central securities depository does not comply with the organisational requirements, thus infringing Articles 26 to 30 of Regulation (EU) No 909/2014;
5. a central securities depository does not comply with the conduct of business rules, thus infringing Articles 32 to 35 of Regulation (EU) No 909/2014;
6. a central securities depository does not comply with the requirements for central securities depository services, thus infringing Articles 37 to 41 of Regulation (EU) No 909/2014;
7. a central securities depository does not comply with the prudential requirements, thus infringing Articles 43 to 47 of Regulation (EU) No 909/2014;
8. a central securities depository does not comply with the requirements for central securities depository links, thus infringing Article 48 of Regulation (EU) No 909/2014;
9. a central securities depository abusively refuses to grant different types of access, thus infringing Articles 49 to 53 of Regulation (EU) No 909/2014;
10. a designated credit institution does not comply with the specific prudential requirements related to credit risks, thus infringing Article 59(3) of Regulation (EU) No 909/2014;
11. a designated credit institution does not comply with the specific prudential requirements related to liquidity risks, thus infringing Article 59(4) of Regulation (EU) No 909/2014;
12. a central securities depository or a designated credit institution fails to comply with its requirement to have in place appropriate procedures for its employees to internally report potential or actual infringements of Regulation (EU) No 909/2014, this law or their implementing measures, thus infringing Article 3.

(2) In the cases referred to in paragraph 1, the CSSF may impose the following administrative sanctions and take the following administrative measures against central securities depositories and designated credit institutions, against the members of their management body, against any other person who effectively controls their business as well as any other person responsible for an infringement:

1. a public statement which indicates the person responsible for the infringement and the nature of the infringement in accordance with Article 62 of Regulation (EU) No 909/2014;
2. a warning;
3. a reprimand;
4. the withdrawal of the authorisations granted under Article 16 or 54 of Regulation (EU) No 909/2014, in accordance with Article 20 or 57 of said Regulation;
5. a temporary or, for repeated serious infringements, a permanent ban against any member of the management body of the central securities depository or designated credit institution or any other natural person, who is held responsible, from exercising management functions in the central securities depository or designated credit institution;
6. administrative fines of a maximum amount corresponding to twice the amount of the profit gained as a result of the infringement where this profit can be determined;
7. in respect of a natural person, maximum administrative fines of up to EUR 5,000,000;

8. in the case of a legal person, maximum administrative fines of up to EUR 20,000,000 or 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body. Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to 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, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(3) The CSSF may impose an administrative fine of EUR 250 up to EUR 250,000 on those who obstruct application of its supervisory, intervention, inspection and investigatory powers, who do not follow up on its orders given pursuant to point (5) of the second subparagraph of Article 2, who have knowingly given it inaccurate or incomplete information following requests based on Article 2 or who do not comply with the CSSF requirements based on Article 2.

#### **Article 6. Effective application of sanctions and exercise of the sanctioning powers by the CSSF**

When determining the type and level of administrative sanctions or other administrative measures, the CSSF shall take into account all relevant circumstances, including, where appropriate:

1. the gravity and the duration of the infringement;
2. the degree of responsibility of the person responsible for the infringement;
3. the financial strength of the person responsible for the infringement, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
4. the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
5. the level of cooperation of the person responsible for the infringement with the CSSF, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
6. previous infringements by the person responsible for the infringement.

#### **Article 7. Publication of administrative sanctions and other administrative measures**

(1) The CSSF shall publish on its website any decision imposing an administrative sanction or other administrative measure for an infringement of Regulation (EU) No 909/2014 without undue delay after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the natural or legal person on whom the sanction has been imposed.

Where the decision to impose a sanction or other measure is subject to an appeal, the CSSF shall, without undue delay, also publish on its website information on the appeal status and outcome thereof. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CSSF to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the CSSF shall:

1. delay the publication of the decision to impose the sanction or other measure until the moment when the reasons for non-publication cease to exist;
2. publish the decision to impose the sanction or other measure on an anonymous basis, if such anonymous publication ensures effective protection of the personal data;
3. not publish the decision to impose a sanction or other measure at all in the event that the options set out in points (1) and (2) above are considered to be insufficient to ensure:
  - a) that the stability of the financial markets would not be put in jeopardy;
  - b) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or other measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period if it is envisaged that, within that period, the reasons for anonymous publication will cease to exist.

The CSSF shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (3) of the third subparagraph including any appeal in relation thereto and the outcome thereof.

(2) The CSSF shall keep any publication in accordance with this Article on its website for a period of five years.

Personal data contained in the publication referred to in the first subparagraph shall be kept on the CSSF's website only for a period not exceeding 12 months.

#### **Article 8. Right of appeal**

Any decision taken by the CSSF pursuant to this law may be referred to the *Tribunal administratif* (Administrative Tribunal), which deals with the merits of the case. The case may be filed within one month as from the notification of the decision, or else shall be time-barred.

#### **Article 9. Abbreviated designation**

Reference to this law shall be made as follows: "Law of 6 June 2018 on central securities depositories".