

Law of 6 June 2018 implementing Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, and amending:

- 1. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;**
- 2. the Law of 12 July 2013 on alternative investment fund managers, as amended, and**
- 3. the Law of 7 December 2015 on the insurance sector, as amended**

(Mém. A 2018, No 463)

Article 1.

1. The Commission de Surveillance du Secteur Financier (hereinafter, the "CSSF") and the Commissariat aux assurances (hereinafter, the "CAA"), in their capacity as competent authorities designated under Article 16 of Regulation (EU) 2015/2365, shall have the power to impose administrative sanctions and other administrative measures referred to in paragraph 2 in case of an infringement of Articles 4 and 15 of Regulation (EU) 2015/2365 or their implementing measures.

Where the provisions referred to in the first subparagraph apply to legal persons, the CSSF and the CAA may also sanction members of the management body, including members of the administrative, managing and supervisory bodies, and other persons responsible for the infringement.

2. In the cases referred to in paragraph 1, the CSSF and the CAA may, within the limits of their respective competences:
 - (1) issue an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
 - (2) issue a public statement which indicates the person responsible and the nature of the infringement in accordance with Article 26 of Regulation (EU) 2015/2365;
 - (3) a temporary ban against any person discharging managerial responsibilities, or any natural person who is held responsible for such an infringement, from exercising management functions;
 - (4) an administrative fine of up to three times the amount of the profits gained or losses avoided because of the infringement where those can be determined by the relevant authority, even if those sanctions exceed the amounts referred to in points (5) and (6);
 - (5) in respect of a natural person, an administrative fine of up to EUR 5,000,000;
 - (6) in respect of a legal person, an administrative fine of up to:
 - a) EUR 5,000,000 or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Article 4 of Regulation (EU) 2015/2365 or its implementing measures;
 - b) EUR 15,000,000 or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Article 15 of Regulation (EU) 2015/2365.

For the purposes of point (6) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with 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 according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Moreover, in the cases referred to in paragraph 1, the authorisation may be withdrawn or suspended.

3. When determining the type and level of administrative sanctions and other administrative measures, the CSSF and the CAA shall take into account all relevant circumstances, including, where appropriate:
 - (1) the gravity and duration of the infringement;
 - (2) the degree of responsibility of the person responsible for the infringement;
 - (3) the financial situation of the person responsible for the infringement, by considering factors such as the total turnover in the case of a legal person or the annual income in the case of a natural person;
 - (4) the importance of the profits gained or losses avoided by the person responsible for the infringement, in so far as they can be determined;
 - (5) the level of cooperation of the person responsible for the infringement with the competent authority, 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 2.

1. The CSSF and the CAA shall publish, in accordance with the arrangements laid down in Article 26 of Regulation (EU) 2015/2365, any decision imposing an administrative sanction or other administrative measure in relation to infringements of Article 4 or 15 of Regulation (EU) 2015/2365 on their respective websites immediately after the person subject to that decision has been informed of that decision.
2. The CSSF and the CAA shall ensure that any decision that is published in accordance with this article and with Article 26 of Regulation (EU) No 2015/2365 remains accessible on their websites for a period of five years after its publication.

Personal data contained in such decision shall only be kept on the website for a maximum period of twelve months.

Article 3.

The decisions taken by the CSSF and the CAA pursuant to this law or Regulation (EU) 2015/2365 may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case shall be filed within one month, or else shall be time-barred.

Article 4.

In Article 148(2) of the Law of 17 December 2010 relating to undertakings for collective investment, as amended, the full stop at the end of letter (p) is replaced by a semicolon and the following new letter (q) is inserted after letter (p):

“(q) non-compliance with the provisions of Articles 13 and 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.”

Article 5.

In Article 51(1) of the Law of 12 July 2013 on alternative investment fund managers, as amended, the full stop at the end of the seventh indent is replaced by a comma and the following new eighth indent is added:

“- they do not comply with the requirements set out in Articles 13 and 14 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.”

Article 6.

In Article 2(1)(k) of the Law of 7 December 2015 on the insurance sector, as amended, the words “and by” are replaced by “, by”, and letter (k) is supplemented by the words “and by Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012”.

Article 7.

Reference to this law shall be made as follows:

“Law of 6 June 2018 on transparency of securities financing transactions”