

## Law of 15 December 2019

1° in view of the transposition of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)

- a) the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended;
- b) the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended;
- c) the Law of 7 December 2015 on the insurance sector, as amended;

2° the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

(Mém. A 2019, No 859)

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard our State Council;

With the consent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 3 December 2019 and that of the State Council of 10 December 2019 that a second vote is not required;

Ordered and order:

### **Chapter I – Amendment of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended**

#### **Article 1.**

Article 1 of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended, shall be amended as follows:

1. In the second indent of point 1., the words “individually or collectively,” shall be inserted between the words “self-employed persons,” and “in compliance with”, and the word “Member” shall be inserted between the words “host” and “States”

2. The new points 1a., 1b., 1c. and 1d. with the following content shall be inserted after point 1.:

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|------|---|
| “1a. | “transferring IORP” means “an IORP, other than a pension fund within the meaning of point 2., transferring all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of point 2.; |
| 1b.  | “transferring pension fund” means “a pension fund   |

within the meaning of point 2., transferring all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of point 2., or to a pension fund subject to the supervision of the Commissariat aux Assurances, hereinafter referred to as "CAA", or to an IORP registered or authorised in another Member State";

- 1c. "receiving IORP" means "an IORP, other than a pension fund within the meaning of point 2., receiving all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a pension fund within the meaning of point 2.";
  - 1d. "receiving pension fund" means "a pension fund within the meaning of point 2., receiving all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a pension fund within the meaning of point 2. or a pension fund subject to the supervision of the CAA or an IORP registered or authorised in another Member State";";
3. In point 7., the words ", or any combination thereof" shall be added after the words "lump sum";
  4. In point 8., the words ", other than a beneficiary or a prospective member," shall be inserted between the words "person" and "whose", and the words "past or current" shall be inserted between the words "whose" and "occupational";
  5. A new point 8a. with the following content shall be added:

"8a. "prospective member" means "a person who is eligible to join a pension scheme";";
  6. In point 11., the words "offers a pension scheme or" shall be inserted between the words "and which" and "pays", and the words "for occupational retirement provision" (not appearing in the English version) shall be deleted;
  7. Two new points 12a. and 12b. with the following content shall be inserted:

"12a. "durable medium" means "an instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored";

12b. "key function" ", within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function";";
  8. A full stop shall be added at the end of point 13. which shall be supplemented with a second sentence, which shall be worded as follows:

"The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union are deemed equivalent to Member States of the European Union, within the limits set forth by this agreement and related acts";
  9. Point 14. shall read as follows:

- "14. "home Member State" means "the Member State in which an IORP has been registered or authorised and in which its main administration is located";";
10. In point 15., the words "host State" shall be replaced by the words "host Member State" (already appearing in the English version), the word "Member" shall be inserted between the words "the" and "State, and the words "or beneficiaries" shall be added after the words "members";
11. A new point 15a. with the following content shall be added:
- "15a. "cross-border activity" means "operating a pension scheme where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State";";
12. In point 16., the words "Directive 2003/41/EC" shall be replaced by the words "Directive (EU) 2016/2341";
13. In point 17., the word "Member" shall be inserted between the words "home" and "State" (already appearing in the English version) and the words "Directive 2003/41/EC" shall be replaced by the words "Directive (EU) 2016/2341";
14. In point 18., the word "Member" shall be inserted between the words "host" and "State" (already appearing in the English version) and the words "Directive 2003/41/EC" shall be replaced by the words "Directive (EU) 2016/2341";
15. Four new points 18a., 18b., 18c. and 18d. with the following content shall be inserted:
- "18a. "EIOPA" means "European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC";
- 18b. "regulated market" means "a regulated market as defined in point 31. of Article 1 of the Law of 30 May 2018 on markets in financial instruments";
- 18c. "multilateral trading facility" or "MTF" means "a multilateral trading facility or MTF as defined in point 32. of Article 1 of the Law of 30 May 2018 on markets in financial instruments";
- 18d. "organised trading facility" or "OTF" means "an organised trading facility or OTF as defined in point 38. of Article 1 of the Law of 30 May 2018 on markets in financial instruments";";
16. Point 19. shall read as follows:
- "19. "Directive 2009/138/EC" means "Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)";";
17. Point 20. shall read as follows:
- "20. "Directive 2009/65/EC" means "Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the

coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)";";

18. Point 21. shall read as follows:

"21. "Directive 2014/65/EU" means "Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU";";

19. Point 22. shall read as follows:

"22. "Directive 2013/36/EU" means "Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC";";

20. Point 23. shall be deleted;

21. Point 24. shall read as follows:

"24. "Directive (EU) 2016/2341" means "Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)";";

22. Point 25. shall read as follows:

"25. "Regulation (EC) No 883/2004" means "Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems";";

23. Point 26. shall read as follows:

"26. "Regulation (EC) No 987/2009" means "Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems";"

## Article 2.

In Article 3 of the same law, the words "Regulations (EEC) No 1408/71 and (EEC) No 574/72, the liabilities and assets" shall be replaced by the words "Regulations (EC) No 883/2004 and (EC) No 987/2009, the liabilities and assets".

## Article 3.

Article 4 of the same law shall be amended as follows:

1. In paragraph (1), the words "of the law which contain the provisions of Articles 19 of Directive 2003/41/EC" shall be replaced by the words "18 to 23, 42 to 47, 57-1(1) and (2), and the first subparagraph of Article 78" and a new sentence shall be inserted at the end of paragraph (1), which shall be worded as follows: "Article 57-1(1) and (2), and the first subparagraph of Article 78 shall apply to pension funds which operate pension schemes which together have more than 15 members in total.";
2. In paragraph (2), the words "of the law which contain the provisions of Articles 9 to 17 of Directive 2003/41/EC" shall be replaced by the words "1 to 4, 18 to 23,

42 to 47, 78 to 82 and 84", and the last sentence shall be deleted.

#### **Article 4.**

In Article 6(1) of the same law, a third sentence shall be added, which shall be worded as follows:

"The Board of Directors of the SEPCAV shall be responsible for compliance with the provisions of this law and with the measures taken for its implementation."

#### **Article 5.**

Article 18 of the same law shall be amended as follows:

1. The first subparagraph of paragraph (1) shall be worded as follows:

"(1) A SEPCAV must appoint one depositary for the safekeeping of assets and oversight duties in accordance with the provisions of this chapter.";

2. In paragraph (2)a), the words "relating to a pension scheme" shall be inserted between the words "SEPCAV" and "any consideration";

3. In paragraph (2)b), the words "the proceeds received by the SEPCAV" shall be replaced by the words "the income produced by assets";

4. Paragraph (2)c) shall read as follows:

"c) carry out instructions of the SEPCAV, unless they conflict with the law, the articles of association of the SEPCAV or the pension rules;"

5. In paragraph (3), the words "in its custody" shall be replaced by the words "in its safekeeping".

#### **Article 6.**

Article 19 of the same law shall be amended as follows:

1. Paragraph (1) shall read as follows:

"The depositary shall be established in Luxembourg or in another EU Member State and duly authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU.";

2. A new paragraph (3) with the following content shall be inserted:

"(3) The SEPCAV shall appoint a depositary by means of a written contract. This contract shall stipulate the transmission of the information necessary for the depositary to perform its duties."

#### **Article 7.**

A new Article 19-1 shall be inserted after Article 19 of the same law, which shall read as follows:

"Article 19-1.

The safekeeping of a SEPCAV's assets must be entrusted to a depositary.

Where the assets of a SEPCAV relating to a pension scheme consisting of financial instruments can be held in custody, the depositary shall hold in custody all financial instruments which can be registered in a financial instruments account opened in the depositary's books and all financial instruments which can be physically delivered to the depositary.

For those purposes, the depositary shall ensure that the financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the SEPCAV, so that they can be clearly identified as belonging to the SEPCAV or the pension scheme's members and beneficiaries at all times.

Where the assets of a SEPCAV relating to a pension scheme consist of other assets than those referred to in the second subparagraph, the depositary shall verify that the SEPCAV is the owner of the assets and shall maintain a record of those assets. This verification shall be carried out on the basis of information or documents provided by the SEPCAV and, where available, on the basis of external evidence. The depositary shall keep its record up-to-date."

#### **Article 8.**

In Article 20 of the same law, the words "the shareholders" shall be replaced by the words "the SEPCAV and the members and beneficiaries", the word "unjustifiable" shall be inserted between the words "as a result of its" and "failure", and the word "culpable" shall be deleted.

#### **Article 9.**

In Article 21 of the same law, letter c) shall read as follows:

"c) where its authorisation, in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU is withdrawn;"

#### **Article 10.**

Article 22 of the same law shall read as follows:

"Article 22.

When carrying out the tasks laid down in Articles 18(2) and (3), 19-1 and 20, the SEPCAV and the depositary shall act honestly, fairly, professionally, independently and in the interest of the scheme's members and beneficiaries."

#### **Article 11.**

A new Article 22-1 shall be inserted after Article 22 of the same law, which shall read as follows:

"Article 22-1.

A depositary shall not carry out activities with regard to the SEPCAV which may create conflicts of interest between the SEPCAV, the scheme's members and beneficiaries and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the scheme's members and beneficiaries and to the administrative, management or supervisory body of the SEPCAV."

#### **Article 12.**

Article 23 of the same law shall be amended as follows:

1. In the first subparagraph of paragraph (1), the words "with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC, 2003/41/EC and 2011/61/EU, as well as

- to those referred to in Article 2(1) of Directive (EU) 2003/41/EC" shall be replaced by the words "with Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU as well as with those referred to in Article 2(1) of Directive (EU) 2016/2341" and the second sentence shall be deleted.
2. A new paragraph (7) shall be inserted, which shall be worded as follows:

"(7) The delegation by the SEPCAV of the asset management to an asset manager shall be subject to the provisions of Chapter 3a."

### **Article 13.**

A new Chapter 3a with the following content shall be inserted after Article 24 of the same law:

#### "Chapter 3a: Outsourcing

##### Article 24-1.

(1) SEPCAVs may entrust any activities, including key functions and the management of those SEPCAVs, in whole or in part, to service providers operating on behalf of those SEPCAVs.

(2) SEPCAVs shall remain fully responsible for compliance with their obligations under this law when they outsource key functions or any other activities.

(3) Outsourcing of key functions or any other activities shall not be undertaken in such a way as to lead to any of the following:

- a) impairing the quality of the system of governance of the SEPCAV concerned;
- b) unduly increasing the operational risk;
- c) impairing the CSSF's ability to monitor the compliance of the SEPCAV concerned with its obligations;
- d) undermining continuous and satisfactory service to members and beneficiaries.

(4) SEPCAVs shall ensure the proper functioning of the outsourced activities through the process of selecting a service provider and the ongoing monitoring of the activities of that service provider.

(5) SEPCAVs outsourcing key functions, the asset management, or other activities covered by this law shall enter into a written agreement with the service provider. Such agreement must clearly define the rights and obligations of the SEPCAV and the service provider.

(6) SEPCAVs shall notify the CSSF in a timely manner of any outsourcing of the activities covered by this law. Where the outsourcing relates to the key functions or management of SEPCAVs, this shall be notified to the CSSF before the agreement in respect of any such outsourcing enters into force. SEPCAVs shall notify the CSSF of any subsequent important developments with respect to any outsourced activities.

(7) The CSSF shall have the power to request information from SEPCAVs and from service providers about outsourced key functions or any other activities at any time."

### **Article 14.**

Article 39(1) of the same law shall be supplemented with a fourth sentence, which shall read as follows:

"The Board of Directors of the ASSEP shall be responsible for compliance with the provisions of this law and with the measures taken for its implementation."



#### **Article 15.**

Article 42 of the same law shall be amended as follows:

1. The first subparagraph of paragraph (1) shall read as follows:

“An ASSEP must appoint a depositary for the safekeeping of assets and oversight duties in accordance with the provisions of this chapter.”;

In paragraph (2)a), the words “relating to a pension scheme” shall be inserted between the words “ASSEP” and “any consideration”;

2. In paragraph (2)b), the words “the proceeds received by the ASSEP” shall be replaced by the words “the income produced by assets”;

3. Paragraph (2)c) shall read as follows:

“c) carry out instructions of the ASSEP, unless they conflict with the law, the pension rules or the technical note;”;

4. In paragraph (3), the words “in its custody” shall be replaced by the words “in its safekeeping”.

#### **Article 16.**

Article 43 of the same law shall be amended as follows:

1. Paragraph (1) shall read as follows:

“(1) The depositary shall be established in Luxembourg or in another EU Member State and duly authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU.”;

2. A new paragraph (3) with the following content shall be inserted:

“The ASSEP shall appoint a depositary by means of a written contract. This contract shall stipulate the transmission of the information necessary for the depositary to perform its duties.”.

#### **Article 17.**

A new Article 43-1 shall be inserted after Article 43 of the same law, which shall read as follows:

“Article 43-1.

The safekeeping of an ASSEP's assets must be entrusted to a depositary.

Where the assets of an ASSEP relating to a pension scheme consisting of financial instruments can be held in custody, the depositary shall hold in custody all financial instruments which can be registered in a financial instruments account opened in the depositary's books and all financial instruments which can be physically delivered to the depositary.

For those purposes, the depositary shall ensure that the financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the ASSEP, so that they can be clearly identified as belonging to the ASSEP or the pension scheme's members and beneficiaries at all times.

Where the assets of an ASSEP relating to a pension scheme consist of other assets than those referred to in the second subparagraph, the depositary shall verify that the ASSEP is the owner of the assets and shall maintain a record of those assets. This verification shall be carried out on the basis of information or documents



provided by the ASSEP and, where available, on the basis of external evidence. The depositary shall keep its record up-to-date.”.

**Article 18.**

In Article 44(1) of the same law, the word “unjustifiable” shall be inserted between the words “as a result of its” and “failure”, and the word “culpable” shall be deleted.

**Article 19.**

In Article 45 of the same law, letter c) shall read as follows:

- “c) where its authorisation, in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU is withdrawn;”.

**Article 20.**

Article 46 of the same law shall read as follows:

“Article 46.

When carrying out the tasks laid down in Articles 42(2) and (3), 43-1 and 44, the ASSEP and the depositary shall act honestly, fairly, professionally, independently and in the interest of the members and beneficiaries.”.

**Article 21.**

A new Article 46-1 shall be inserted after Article 46 of the same law:

“Article 46-1.

A depositary shall not carry out activities with regard to the ASSEP which may create conflicts of interest between the ASSEP, the scheme’s members and beneficiaries and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the scheme’s members and beneficiaries and to the administrative, management or supervisory body of the ASSEP.”.

**Article 22.**

Article 47 of the same law shall be amended as follows:

1. In the first subparagraph of paragraph (1), the words “with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC, 2003/41/EC and 2011/61/EU, as well as to those referred to in Article 2(1) of Directive (EU) 2003/41/EC” shall be replaced by the words “with Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU as well as to those referred to in Article 2(1) of Directive (EU) 2016/2341” and the second sentence shall be deleted.
2. A new paragraph (7) shall be inserted, which shall be worded as follows:

“(7) The delegation by the ASSEP of the asset management to an asset manager shall be subject to the provisions of Chapter 4a.”.

**Article 23.**

A new paragraph (7) with the following content shall be inserted in Article 49 of the same law:

“(7) The delegation by the ASSEP of the liability management to a liability manager shall be subject to the provisions of Chapter 4a.”

**Article 24.**

In Article 52(1) of the same law, the words “Law of 6 December 1991 on the insurance sector, as amended” shall be replaced by the words “Law of 7 December 2015 on the insurance sector, as amended”.

**Article 25.**

A new Chapter 4a with the following content shall be inserted after Article 52 of the same law:

“Chapter 4a: Outsourcing

Article 52-1.

(1) ASSEPs may entrust any activities including key functions, the management of those ASSEPs, their asset management and their liability management, in whole or in part, to service providers operating on behalf of those ASSEPs.

(2) ASSEPs shall remain fully responsible for discharging their obligations under this law when they outsource key functions or any other activities.

(3) Outsourcing of key functions or any other activities shall not be undertaken in such a way as to lead to any of the following:

- a) impairing the quality of the system of governance of the ASSEP concerned;
- b) unduly increasing the operational risk;
- c) impairing the CSSF’s ability to monitor the compliance of the ASSEP concerned with its obligations;
- d) undermining continuous and satisfactory service to members and beneficiaries.

(4) ASSEPs shall ensure the proper functioning of the outsourced activities through the process of selecting a service provider and the ongoing monitoring of the activities of that service provider.

(5) ASSEPs outsourcing key functions, the asset management, the liability management or other activities covered by this law shall enter into a written agreement with the service provider. Such agreement must clearly define the rights and obligations of the ASSEP and the service provider.

(6) ASSEPs shall notify the CSSF in a timely manner of any outsourcing of the activities covered by this law. Where the outsourcing relates to the key functions or management of ASSEPs, this shall be notified to the CSSF before the agreement in respect of any such outsourcing enters into force. ASSEPs shall notify the CSSF of any subsequent important developments with respect to any outsourced activities.

(7) The CSSF shall have the power to request information from ASSEPs and from service providers about outsourced key functions or any other activities at any time.”.

**Article 26.**

In the title of Part IV of the same law, the word “, Governance” shall be inserted between the words “Authorisation” and “and Prudential Supervision”.

#### Article 27.

Article 53 of the same law shall be amended as follows:

1. The following new paragraphs (2a) and (2b) shall be inserted after paragraph (2):
  - “(2a) A pension fund shall implement appropriate rules regarding the operation of the pension schemes offered.
  - (2b) A pension fund must be legally separated from any sponsoring undertaking in order that its assets are safeguarded in the interests of members and beneficiaries in the event of bankruptcy of the sponsoring undertaking.”;
2. In the first subparagraph of paragraph (6), the last sentence shall be supplemented with the words “, and how the investment policy takes environmental, social and governance factors into account”, and two new sentences shall be added, which shall be worded as follows:
  - “Where members bear investment risk and can take investment decisions, this statement shall also include information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years. This statement shall be made publicly available.”;
3. In paragraph (8), the words “, where the main strategic decisions are taken,” shall be inserted between “central administration” and “shall”.

#### Article 28.

The following new Article 53-1 shall be inserted after Article 53 of the same law:

“Article 53-1.

(1) Pension funds shall ensure that persons who effectively run the pension fund, persons who carry out key functions and, where applicable, persons or entities to which a key function has been outsourced in accordance with Article 24-1 or Article 52-1 fulfil the following requirements when carrying out their tasks:

- a) the requirement to be fit:
  - i) for persons who effectively run the pension fund, who carry out actuarial or internal audit key functions, this means their qualifications, knowledge and experience are collectively adequate to enable them to ensure a sound and prudent management of the pension fund;
  - ii) for persons who carry out other key functions, this means their qualifications, knowledge and experience are adequate to properly carry out their key functions;
- b) the requirement to be proper as referred to in Article 53(5).

(2) The CSSF shall assess whether the persons who effectively run the pension fund or carry out key functions fulfil the requirements laid down in paragraph (1).

(3) Where the CSSF requires proof of good repute, proof of no previous bankruptcy, or both, from the persons referred to in paragraph (1), it shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the judicial record of the other Member State, or in the absence of a judicial record in the other Member State, an equivalent document, showing that those requirements have been met, issued by a competent judicial or administrative authority either in the Member State of which the person concerned is a national or in Luxembourg.

(4) Where no competent judicial or administrative authority in either the Member State of which the person concerned is a national or in Luxembourg issues an

equivalent document as referred to in paragraph (3), the person shall be allowed to produce in its place a declaration on oath, or, in the Member States where there is no provision for declarations on oath to be made, a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where applicable, before a notary in the Member State of which the person concerned is a national or in Luxembourg.

(5) The proof in respect of no previous bankruptcy may also be provided in the form of a declaration made by the national of the other Member State concerned before a competent judicial, professional or trade body in that other Member State.

(6) The documents referred to in paragraphs (3), (4) and (5) shall be presented within three months of their date of issue.

(7) The CSSF shall inform the other Member States and the European Commission of the authorities and bodies competent to issue the documents referred to in paragraphs (3), (4) and (5), where Luxembourg is the home Member State of or the Member State of origin of the persons concerned.”.

## **Article 29.**

The following new Chapter 1a shall be inserted after Article 57 of the same law:

### 1. “Chapter 1a: System of governance

#### Article 57-1.

(1) Pension funds must have in place an effective system of governance which provides for sound and prudent management of their activities. That system shall include an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. The system of governance shall include consideration of the environmental, social and governance factors related to investment assets in investment decisions, and shall be subject to regular internal review.

(2) The system of governance referred to in paragraph (1) shall be proportionate to the size, nature, scale and complexity of the activities of the pension fund.

(3) Pension funds shall establish and apply written policies in relation to risk management, internal audit and, where relevant, actuarial and outsourced activities. Those written policies shall be subject to prior approval by the management or supervisory body of the pension fund and shall be reviewed at least every three years and adapted in view of any significant change in the system or area concerned.

(4) Pension funds shall have in place an effective internal control system. That system shall include administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements at all level of the pension fund.

(5) Pension funds shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, pension funds shall employ appropriate and proportionate systems, resources and procedures.

#### Article 57-2.

(1) Pension funds must establish and apply a sound remuneration policy for all those

persons or organisational unit that effectively run them and carry out key functions and other categories of staff whose professional activities have a material impact on the risk profile of the pension fund in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

(2) Pension funds shall regularly disclose publicly relevant information regarding their remuneration policy.

(3) When establishing and applying the remuneration policy referred to in paragraph (1), the pension funds shall comply with the following principles:

- a) the remuneration policy shall be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the pension fund as a whole, and shall support the sound, prudent and effective management of pension funds;
- b) the remuneration policy shall be in line with the long-term interests of members and beneficiaries of pension schemes operated by the pension fund;
- c) the remuneration policy shall include measures aimed at avoiding conflicts of interest;
- d) the remuneration policy shall be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the pension fund;
- e) the remuneration policy shall apply to the pension fund and to the service providers referred to in Article 24-1(1) or 52-1(1), unless those service providers are covered by Article 2(3)(b) of the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended;
- f) the pension fund shall establish the general principles of the remuneration policy, shall review and update it at least every three years, and shall be responsible for its implementation;
- g) there shall be clear, transparent and effective governance with respect to remuneration and its oversight.

#### Article 57-3.

(1) Pension funds must have in place the following key functions:

- a) a risk-management function;
- b) an internal audit function; and
- c) an actuarial function, providing that the conditions of Article 57-6 are fulfilled.

Pension funds shall ensure that the holders of key functions undertake their duties effectively in an objective, fair and independent manner.

(2) Pension funds may allow a single person or organisational unit to carry out more than one key function, with the exception of the internal audit function referred to in Article 57-5, which shall be independent from the other key functions.

(3) The single person or organisational unit carrying out the key function must be different from the one carrying out a similar key function in the sponsoring undertaking. The CSSF may, taking into account the size, nature, scale and complexity of the activities of the pension fund, allow the pension fund to carry out key functions through the same single person or organisational unit as in the sponsoring undertaking, provided that the pension fund explains how it prevents or manages any conflicts of interest with the sponsoring undertaking.

(4) The holders of a key function must report any material findings and recommendations in the area of their responsibility to the administrative, management or supervisory body of the pension fund which shall determine what actions are to be taken.

(5) Without prejudice to the privilege against self-incrimination, the holder of a key function must inform the CSSF if the administrative, management or supervisory body of the pension fund does not take appropriate and timely remedial action in the following cases:

- a) where the person or organisational unit carrying out the key function has detected a risk that the pension fund will not comply with a statutory requirement and reported it to the administrative, management or supervisory body of the pension fund and where this could have a significant impact on the interests of members and beneficiaries; or
- b) where the person or organisational unit carrying out the key function has observed a material breach of the law applicable to the pension fund and its activities in the context of the key function of that person or organisational unit, and reported it to the administrative, management or supervisory body of the pension fund.

(6) Disclosure to the CSSF of information referred to in paragraph (5) does not constitute a breach of any restriction on disclosure of information imposed by contract or by law and shall not involve the person disclosing in liability of any kind relating to such disclosure.

#### Article 57-4.

(1) Pension funds must have in place an effective risk-management function in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities. That function shall be structured in such a way as to facilitate the functioning of a risk-management system for which the pension funds shall adopt strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report to the administrative, management or supervisory body of the pension fund regularly the risks, at an individual and at an aggregated level, to which the pension funds and the pensions schemes operated by them are or could be exposed, and their interdependencies.

That risk-management system must be effective and well-integrated into the organisational structure and in the decision-making processes of the pension fund.

(2) The risk-management system must cover, in a manner that is proportionate to the size and internal organisation of the pension funds, as well as to the size, nature, scale and complexity of their activities, risks which can occur in pension funds or in undertakings to which tasks or activities of a pension fund have been outsourced, at least in the following areas, where applicable:

- a) underwriting and reserving;
- b) asset-liability management;
- c) investment, in particular derivatives, securitisations and similar commitments;
- d) liquidity and concentration risk management;
- e) operational risk management;
- f) insurance and other risk-mitigation techniques;
- g) environmental, social and governance risks relating to the investment portfolio and the management thereof.

(3) Where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risk-management system shall also consider those risks from the perspective of members and beneficiaries.

#### Article 57-5.

Pension funds must provide for an effective internal audit function in a manner that is proportionate to their size and internal organisation, as well as to the size, nature,

scale and complexity of their activities. The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance, including, where applicable, outsourced activities.

#### Article 57-6.

(1) Where a pension fund itself provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, the pension fund must provide for an effective actuarial function to:

- a) coordinate and oversee the calculation of technical provisions;
- b) assess the appropriateness of the methodologies and underlying models used in the calculation of technical provisions and the assumptions made for this purpose;
- c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
- d) compare the assumptions underlying the calculation of technical provisions with the experience;
- e) inform the administrative, management or supervisory body of the pension fund of the reliability and adequacy of the calculation of technical provisions;
- f) express an opinion on the overall underwriting policy in the event of the pension fund having such a policy;
- g) express an opinion on the adequacy of insurance arrangements in the event of the pension fund having such arrangements;
- h) contribute to the effective implementation of the risk-management system.

(2) Pension funds shall designate at least one independent person, inside or outside the pension fund, who is responsible for the actuarial function.

#### Article 57-7.

(1) Pension funds must carry out and document their own-risk assessment in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

That risk assessment shall be performed at least every three years or without delay following any significant change in the risk profile of the pension fund or of the pension schemes operated by the pension fund. Where there is a significant change in the risk profile of a specific pension scheme, the risk assessment may be limited to that pension scheme.

(2) The risk assessment referred to in paragraph (1), having regard to the size and internal organisation of the pension fund, as well as to the size, nature, scale and complexity of the pension fund's activities, shall include the following:

- a) a description of how own-risk assessment is integrated into the management process and into the decision-making processes of the pension fund;
- b) an assessment of the effectiveness of the risk-management system;
- c) a description of how the pension fund prevents conflicts of interest with the sponsoring undertaking, where the pension fund outsources key functions to the sponsoring undertaking in accordance with Article 57-3(3);
- d) an assessment of the overall funding needs of the pension funds, including a description of the recovery plan where applicable;
- e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action taking into account, where applicable:
  - i) indexation mechanisms;
  - ii) benefit reduction mechanisms, including the extent to which accrued pension



- benefits can be reduced, under which conditions and by whom;
- f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or other type of financial support by the sponsoring undertaking, insurance or reinsurance by an undertaking covered by Directive 2009/138/EC or coverage by a pension protection scheme, in favour of the pension fund or the members and beneficiaries;
  - g) a qualitative assessment of the operational risks;
  - h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.

(3) For the purposes of paragraph (2), pension funds must have in place methods to identify and assess the risks they are or could be exposed to in the short and in the long term and that may have an impact on the pension fund's ability to meet its obligations. Those methods shall be proportionate to the size, nature, scale and complexity of the risks inherent in their activities. The methods shall be described in the own-risk assessment.

(4) The own-risk assessment shall be taken into account in the strategic decisions of the pension fund.”.

#### **Article 30.**

In the title of Chapter 2 of Part IV of the same law, the word “Prudential” shall be inserted before the word “Supervision”.

#### **Article 31.**

Article 58 of the same law shall be amended as follows:

1. In the first subparagraph of paragraph (1), the words “The supervisory authority of the financial sector shall be the Commission de Surveillance du Secteur Financier” shall be replaced by the words “The competent authority shall be the CSSF which shall be responsible for the prudential supervision of pension funds”;
2. In the second subparagraph of paragraph (1), the word “prudential” shall be inserted between the words “its” and “supervision”;
3. A new paragraph (1a) with the following content shall be added after paragraph (1):

“(1a) The ongoing supervision of the CSSF shall be based on a forward-looking and risk-based approach and aims, in particular, at protecting the rights of members and beneficiaries, and to ensure the stability and soundness of the pension funds.

This supervision shall comprise an appropriate combination of off-site activities and on-site inspections.”;

4. The following new second subparagraph shall be inserted in paragraph (2):

“When exercising its supervisory powers, the CSSF shall take into account the size, nature, scale and complexity of the pension fund's activities.”.

### Article 32.

A new Article 58-1 shall be inserted after Article 58 of the same law, which shall read as follows:

“Article 58-1.

(1) The CSSF shall review the strategies, processes and reporting procedures which are established by pension funds to comply with this law and the measures taken for its implementation.

That review, whose frequency and scope shall be defined by the CSSF, shall take into account the circumstances in which the pension funds are operating, and, where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise the following elements:

- a) an assessment of the qualitative requirements relating to the system of governance;
- b) an assessment of the risks the pension fund faces;
- c) an assessment of the ability of the pension fund to assess and manage those risks.

(2) The CSSF shall have monitoring tools, including stress tests, that enable it to identify deteriorating financial conditions in a pension fund. It shall monitor the measures taken by the pension funds to remedy the identified deteriorations.

(3) The CSSF shall have the necessary powers to require pension funds to remedy weaknesses or deficiencies identified in the supervisory review process.”.

### Article 33.

Article 59 of the same law shall be amended as follows:

1. A new second subparagraph shall be inserted in paragraph (1), which shall be worded as follows:

“The first subparagraph shall not preclude the CSSF from divulging, within the European Union, confidential information in civil or commercial proceedings when a pension scheme is being wound up.”;

2. The third subparagraph of paragraph (2) shall be deleted;
3. Paragraph (4) shall read as follows:

“(4) Confidential information received by the CSSF under this law shall be used only for the following purposes:

- a) to check that the conditions for taking up occupational retirement provision business under this law are met by pension funds before commencing their activities;
- b) to facilitate the monitoring of the activities of pension funds, including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
- c) to impose corrective measures, including administrative sanctions;
- d) in administrative appeals against decisions taken by the CSSF; or
- e) in court proceedings regarding the provisions of this law.”;

4. The first subparagraph of paragraph (5) shall read as follows:

“(5) Paragraphs (1) and (4) shall not preclude any of the following:

- a) in Luxembourg, in the discharge of their supervisory functions, the exchange of information between the CSSF and
  - i) the CAA, the Inspection Générale de la Sécurité Sociale (Social Security General Inspectorate), hereinafter referred to as “IGSS”

- and the Comité du risque systémique (Systemic Risk Committee);
- ii) bodies involved in the winding up of a pension scheme and in other similar procedures;
  - iii) persons responsible for carrying out statutory audits of the accounts of institutions for occupational retirement provision, hereinafter "IORPs", insurance undertakings, credit institutions, investment firms and other financial institutions;
- b) the exchange of information between the CSSF and the asset managers and liability managers of IORPs;
  - c) within the European Union, the exchange of information between the CSSF and the competent authorities of other Member States, in the discharge of their supervisory functions under Directive (EU) 2016/2341;
  - d) the transmission of information necessary for the bodies involved in the winding up, bankruptcy and in other similar procedures of a pension scheme and any other undertaking contributing towards its business activity to perform their duties.";
5. The third subparagraph of paragraph (5) shall be deleted;
6. In the first subparagraph of paragraph (6), the third indent shall read as follows:
- "- the independent actuaries, liability managers of IORPs and other specialists in that field carrying out supervision of those IORPs and insurance undertakings, and the bodies responsible for overseeing such actuaries.";
7. The second and third subparagraphs of paragraph (6) shall be deleted;
8. The following new paragraphs (6a) and (6b) shall be added to paragraph (6):
- "(6a) For exchange of information under paragraphs (5) and (6) and transmission of information by the CSSF under paragraph (7), the following conditions shall be met:
- a) the information must be transmitted or exchanged for the purpose of carrying out oversight or supervision of the authorities receiving it;
  - b) the information communicated must be covered by the obligation of professional secrecy of the authorities receiving it and shall offer guarantees at least equivalent to the professional secrecy referred to in paragraph (1);
  - c) the authorities receiving information from the CSSF may not use it for purposes other than those for which it was communicated and must be in a position to ensure that no other use is made of it;
  - d) the CSSF may disclose information received from the supervisory authorities referred to in paragraphs (2) and (3) only with the express agreement of these authorities and, where appropriate, solely for the purposes for which these authorities have signified their agreement.
- (6b) Paragraph (4) shall not preclude the CSSF from exchanging, with the aim of strengthening the stability, and integrity, of the financial system, information with the authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings.
- The following conditions must at least be fulfilled:
- a) the information must be intended for the purpose of detection of breaches and investigations referred to in subparagraph (1);
  - b) the information received must be subject to the obligation of professional secrecy which offers guarantees equivalent to that referred to in paragraph (1);
  - c) where the information exchanged originates from another Member State,

it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Where, in Luxembourg, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions specified in the second subparagraph.”;

9. The first subparagraph of paragraph (7) shall read as follows:

“(7) Paragraphs (1) and (4) shall not prevent the CSSF from transmitting information to the following entities for the purposes of the exercise of their respective tasks:

- a) central banks and other bodies with a similar function in their capacity as monetary authorities;
- b) other public authorities responsible for overseeing payment systems, where appropriate;
- c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.”;

10. In the third subparagraph of paragraph (7), the words “This Article shall not” shall be replaced by the words: “Paragraphs (5), (6), (6a) and (7) shall not”.

#### **Article 34.**

The following new Article 59-1 and 59-2 shall be added to Article 59 of the same law:

##### Article 59-1.

The CSSF shall report to EIOPA the national provisions of a prudential nature relevant to the field of occupational pension schemes imposed by this law and its implementing measures. The CSSF shall update that information on a regular basis and at least every two years.

##### Article 59-2.

(1) In the exercise of its duties, the CSSF shall take into account the convergence in respect of the supervisory tools and supervisory practices in the application of the provisions of this law and its implementation measures.

(2) The CSSF shall collaborate closely with the European Commission with a view to facilitating supervision of the operations of IORPs.

(3) The CSSF shall report to EIOPA any information necessary for the performance of the duties assigned to it by Directive (EU) 2016/2341 and Regulation (EU) no 1094/2010, in accordance with Article 35 of said Regulation.

(4) The CSSF shall inform the European Commission and EIOPA of any major

difficulties to which the application of Directive (EU) 2016/2341 gives rise. The CSSF shall collaborate with the European Commission, EIOPA and the other supervisory authorities to examine such difficulties as quickly as possible in order to find an appropriate solution.”.

#### **Article 35.**

Article 61 of the same law shall be amended as follows:

1. Paragraph (1) shall be worded as follows:

“(1) The CSSF may require pension funds, the administrative, management or supervisory body of the pension fund or the persons who effectively run it or carry out key functions, asset managers and liability managers, depositaries or the persons who are responsible for supervision of pension funds to supply at any time about all business matters or forward all business documents.”;

2. In paragraph (2), the words “transfers functions to them” shall be replaced by the word “outsources”, and the words “key functions or any other activities to those companies or other IORPs and all subsequent re-outsourcing” shall be inserted between the words “outsources” and “which may affect”;

3. In the first subparagraph of paragraph (3), the words “lay down which documents are necessary for the purposes of supervision” shall be inserted between the words “The CSSF may” and “including” and the words “require communication of the following information,” shall be deleted;

4. In the third indent of paragraph (3), the word “liabilities” shall remain unchanged in the English version;

5. In the fifth indent of paragraph (3), the full stop shall be replaced by a semi-colon;

6. A sixth indent shall be inserted in paragraph (3), which shall be worded as follows:

“ - reports by the persons responsible for auditing the annual accounts referred to in Article 87(1).”;

7. In paragraph (4), the word “functions” shall be replaced by the word “activities” and the words “and all subsequent re-outsourced activities” shall be inserted between the words “outsourced activities” and “, and may carry”;

8. A new paragraph (5) with the following content shall be inserted after paragraph (4):

“(5) The CSSF may request information from pension funds about outsourced and all subsequent re-outsourced activities at any time.”.

#### **Article 36.**

Article 62 of the same law shall be amended as follows:

1. Paragraph (1) shall read as follows:

“(1) For the purposes of applying this law, the CSSF shall be given all supervisory and investigatory powers that are necessary to perform its duties in relation to any pension fund, asset manager, liability manager, depositary or the respective persons running them, including the power to impose administrative measures, to prevent or remedy any irregularities prejudicial to the interests of members and beneficiaries.

Without prejudice to the application of the provisions of Article 61 and the provisions of paragraphs (2), (3) and (4) the powers of the CSSF shall include the right to:

a) access any document and any data in any form whatsoever, and to receive or take a copy of it, including:

- i) the own-risk assessment;
  - ii) the statement of investment-policy principles;
  - iii) the annual accounts;
  - iv) the annual reports;
- b) require information from any person subject to its supervision under this law and, if necessary, to summon and question a person with a view to obtaining information;
- c) require the communication of existing recordings of telephone conversations or electronic communications or other data traffic records held by a pension fund, asset manager, liability manager or a depositary;
- d) require any person subject to its supervision under this law to comply with the provisions of this law and its implementing measures and to refrain from repeating any conduct which constitutes a breach of this law or its implementing measures;
- e) lay down any type of measure to ensure that pension funds, asset managers, liability managers and depositaries comply with the requirements of this law;
- f) withdraw the authorisation of a pension fund, asset manager, liability manager or a depositary;
- g) refer information to the State Prosecutor for criminal prosecution;
- h) instruct *réviseurs d'entreprises agréés* (approved statutory auditors) or experts to carry out verifications or investigations;
- i) carry out on-site inspections with respect to the persons subject to its supervision."

2. In paragraph (3), the words "fit to" shall remain unchanged in the English version.

#### **Article 37.**

In Article 63 of the same law, the words "Article 14 of Directive 2003/41/EC" shall be replaced by the words "Article 48 of Directive (EU) 2016/2346".

#### **Article 38.**

Article 65 of the same law shall read as follows:

"(1) Pension funds, asset managers, liability managers and depositaries subject to the CSSF's supervision under this law, directors or persons running the aforementioned entities, and liquidators in case of voluntary liquidation of a pension fund may be subject to sanctions by the CSSF where:

- a) they fail to comply with the requirements laid down in Articles 3, 6(5) and (7), 7(2), 8 to 10, 14, 15, 16(2) and (3), 17 to 19-1, 22, 22-1, 23(3) and (6), 24, 24-1(3) to (6), 26 to 33, 35, 38 to 43-1, 46, 46-1, 47(3) and (6), 48, 49(2) and (4), 50, 51(1) and (2), 52(13), 52-1(3) to (6), 53(2a) to (3), (6) and (7), 53-1(1), 57-1 to 57-7, 60, 68, 69(1), 70 to 74, 77(1), 77-1 to 78, 84 to 90, 94(1) and (2), 97, 98-1, 98-2, 98-3, 98-4 and 99 of this law or in the implementing measures relating to these articles;
- b) they refuse to provide the accounting documents or other requested information required by the CSSF for the purposes of applying this law;
- c) they provide documents or other information that prove to be incomplete, inaccurate or false;
- d) they preclude the performance of the powers of supervision, inspection and investigation of the CSSF;
- e) they contravene the rules governing the publication of balance sheets and accounts;
- f) they fail to act in response to the orders of CSSF issued in accordance with Article

62(1)d) or e);  
g) they act such as to jeopardise the sound and prudent management of the institution concerned.

(2) In order of seriousness, the CSSF may impose the following sanctions:

- a) a warning;
- b) a reprimand;
- c) an administrative fine of between EUR 250 and 250,000; and
- d) in the cases referred in paragraph (1)d), f) and g), one or more of the following measures:
  - i) a temporary or definitive prohibition on the execution of any number of operations or activities, as well as any other restrictions on the activities;
  - ii) a temporary or definitive professional prohibition on participation in the profession by the directors and the persons running the persons and entities subject to the CSSF's supervision under this law."

#### **Article 39.**

Article 66 of the same law shall be amended as follows:

1. In paragraph (1), the word "activities" shall be replaced by the words "or to restrict activities".
2. In paragraph (2), the words "as well as the CSSF's decisions on sanctions and administrative measures imposed under Articles 62 and 65" shall be inserted between the words "herein" and "may be referred to".

#### **Article 40.**

The following new Article 67-1 and 67-2 shall be inserted after Article 67 of the same law:

##### "Article 67-1.

(1) The CSSF shall publish on its website decisions against which no appeal was lodged and imposing an administrative sanction or measure based on Article 65, without undue delay, after the person subject to this decision has been notified thereof. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

However, where the publication of the identity of legal persons or of the personal data of 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 such publication jeopardises the stability of financial markets or an ongoing investigation, the CSSF shall:

- a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;
- b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with applicable law, if such anonymous publication ensures effective protection of the personal data concerned; or
- c) not publish the decision to impose a sanction or measure in the event that the options laid down in letters a) and b) are considered to be insufficient to ensure:
  - i) that the stability of financial markets would not be put in jeopardy; or
  - ii) 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 by the CSSF to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a



reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(2) The CSSF shall ensure that any decision that is published in accordance with this Article shall remain available on its website for a period of five years after its publication.

Personal data of natural persons contained in the publications referred to in the first subparagraph shall remain on the CSSF's website for a period not exceeding 12 months.

#### Article 67-2.

(1) The CSSF shall conduct its tasks in a transparent and accountable manner with due respect for the protection of confidential information.

(2) The CSSF shall publish the following information:

- a) the text of this law and its implementing measures, and general guidance in the field of occupational pension schemes, and information about whether Directive (EU) 2016/2341 shall apply in accordance with its Articles 4 and 5;
- b) information relating to the supervisory review process as set out in Article 58-1;
- c) aggregate statistical data on key aspects of the application of the prudential framework;
- d) the main objective of prudential supervision and information on the main functions and activities of the competent authorities;
- e) rules on administrative sanctions and other measures applicable.”.

#### **Article 41.**

The second subparagraph of Article 68(2) the same law shall read as follows:

“When the pension rules are amended, each member and beneficiary, or, where applicable, their representative, shall receive any relevant information within one month. Pension funds shall make available to them an explanation of the impact on members and beneficiaries of significant changes to technical provisions.”;

#### **Article 42.**

Article 69(1) of the same law shall be amended as follows:

1. A new point 1a. shall be added at the end of point 1., which shall be worded as follows:
  - “1a. the name of the pension fund, the fact of being authorised in Luxembourg and supervised by the CSSF,”;
2. Point 3. shall read as follows:
  - “3. the rights and obligations of the parties involved in the pension scheme, including:
    - a) all the obligations of the contributor(s), including in the event of a pension scheme being underfunded, and, where applicable, the obligations of the financial institutions assuming liabilities as provided for in Articles 74 and 76;
    - b) the pension fund's obligations in regard to providing information to the members and beneficiaries and, where applicable, their representatives;
    - c) the members' rights when they retire, in the event of disability, cessation of employment and in the event of insolvency of the

- contributing undertaking, as well as the dependants' rights upon a member's death,";
3. A new point 3a. shall be added at the end of point 3., which shall be worded as follows:
    - "3a. the calculation method for, and frequency of calculation of, the accrued entitlements of each member and each beneficiary and the rules on the disclosure of information on those entitlements,";
  4. Points 4., 5. and 6. shall be repealed;
  5. A new point 7a. shall be added at the end of point 7., which shall be worded as follows:
    - "7a. the mechanisms protecting accrued entitlements and the benefit reduction mechanisms, if any,";
  6. In point 8., the words ", including" shall be inserted between the words "rights" and "in the event";
  7. A new point 8a. shall be added at the end of point 8., which shall be worded as follows:
    - "8a. information on the investment profile,";
  8. A new point 9a. shall be added at the end of point 9., which shall be worded as follows:
    - "9a. the conditions regarding full or partial guarantees under the pension scheme or of a given level of benefits or, where no guarantee is provided under the pension scheme, a statement to that effect,";
  9. Point 10. shall read as follows:
    - "10. for schemes where members bear investment risk or can take investment decisions:
      - a) the definition of investment policy, its specific objectives and the criteria on which it is based,
      - b) in case of options between several investment profiles, the information of the conditions regarding the range of investment options available, and, where applicable, the default investment option and, the pension scheme's rule to allocate a particular member to an investment option,";
  10. The following two new points 10a. and 10b. shall be inserted after point 10.:
    - "10a. the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits,
    - 10b. the options available to members and beneficiaries in receiving their retirement benefits,".
  11. In point 11., the words " and technical note" shall be replaced by the words ", technical note and the Pension Benefit Statement".

#### **Article 43.**

Article 70. of the same law shall be amended as follows:

1. In point 2., the words "investment policy" shall remain unchanged in the English version";
2. In point 7., the words "in point 6." shall be replaced by the words "in letter c) of point 3. of paragraph (1)".

#### Article 44.

Article 72 of the same law shall be amended as follows:

1. In paragraph (2), the words “and/or” shall be replaced by the word “or”.
2. In the first subparagraph of paragraph (6), the words “and certified by an actuary or by another specialist in that field, including an auditor,” shall be inserted between the words “calculated” and “on the basis”;
3. In letter b) of paragraph (6), the word “maximum” shall be inserted between the words “the” and “interest rates”;
4. In the first indent of letter b) of paragraph (6), the word “projected” shall be inserted between the words “the” and “future investment returns”.
5. The second indent of letter b) of paragraph (6) shall be worded as follows:

“- the market yields of high-quality bonds, government bonds, European Stability Mechanism bonds, European Investment Bank (“EIB”) bonds or European Financial Stability Facility bonds;”;

#### Article 45.

Article 73 of the same law shall be amended as follows:

1. In paragraph (2), the words “with a timeline” shall be inserted between the words “recovery plan” and “in order to ensure”;
2. In letter b) of paragraph (2), the word “liabilities” and the words “retirement benefits” shall remain unchanged in the English version;
3. Letter c) of paragraph (2) shall read as follows:

“c) in the event of winding up of a pension scheme during the period referred to in the first sentence of this paragraph, the pension fund shall inform the CSSF. The pension fund shall establish a procedure in order to transfer the assets and the corresponding liabilities of that scheme to another IORP, to another insurance undertaking or other appropriate body. This procedure shall be disclosed to the CSSF and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality.”;

4. In paragraph (3), the words “as referred to in Article 97” shall be deleted and the words “intervene in accordance with Article 62” shall be replaced by the words “promptly intervene and require the pension fund to immediately draw up appropriate measures, i.e. ring-fencing of the assets and liabilities of one or several pension schemes, and implement them without delay in a way that members and beneficiaries are adequately protected.”.

#### Article 46.

Article 77 of the same law shall be amended as follows:

1. In paragraph (1), the words “asset base” shall be replaced by “the portfolio of assets”;
2. Paragraph (2) shall read as follows:

“(2) For the purposes of calculating the minimum amount of additional assets held, the rules laid down in Chapter 4a shall apply.”.

#### Article 47.

A new Chapter 4a shall be inserted after Article 77 of the same law, which shall read

as follows:

“Chapter 4a: Solvency margin

Article 77-1.

(1) Pension funds referred to in Article 77(1) shall have an adequate available solvency margin in respect of their entire business at all times which is at least equal to the requirements in this law in order to ensure long-term sustainability of occupational retirement provision.

(2) The available solvency margin shall consist of the assets of the pension fund free of any foreseeable liabilities, less any intangible items, including:

- a) the paid-up share capital;
- b) the statutory and free reserves not corresponding to underwriting liabilities;
- c) the profit or loss brought forward after deduction of dividends to be paid;
- d) the profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to members and beneficiaries.

The available solvency margin shall be reduced by the amount of own shares directly held by the pension fund.

(3) The available solvency margin may also comprise:

- a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that articles of association, contracts of issue or loan agreements exist under which, in the event of the bankruptcy or liquidation of the pension fund, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

The subordinated loan capital shall fulfil the following conditions:

- i) only fully paid-up funds shall be taken into account;
- ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the pension fund shall submit to the CSSF for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date. The CSSF may authorise the early repayment of such loans provided application is made by the issuing pension fund and its available solvency margin will not fall below the required level;
- iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the CSSF is specifically required for early repayment. In the latter event, the pension fund shall notify the CSSF at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The CSSF shall authorise repayment only where the pension fund's available solvency margin will not fall below the required level;
- iv) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the pension fund, the debt will become repayable before the agreed repayment dates;

- v) the loan agreement may be amended only after the CSSF has declared that it has no objection to the amendment.
- b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in point (a), provided they fulfil the following conditions:
  - i) they shall not be repaid on the initiative of the bearer or without the prior consent of the CSSF;
  - ii) the contract of issue shall enable the pension fund to defer the payment of interest on the loan;
  - iii) the lender's claims on the pension fund shall rank entirely after those of all non-subordinated creditors;
  - iv) the documents governing the issue of the securities must shall provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the pension fund to continue its business;
  - v) only fully paid-up amounts must shall be taken into account.

The total amount of the securities and instruments referred to in this letter and in letter a) included in the calculation of the available solvency margin shall be limited to a maximum of 50 % of the available solvency margin, or the required solvency margin, whichever the lesser.

#### Article 77-2.

(1) The required solvency margin shall be equal to the sum of the following results, according to the liabilities underwritten:

a) the first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, which shall not be less than 85 %, for the previous financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions;

b) the second result:

for policies on which the capital at risk is not a negative figure, a 0.3% fraction of such capital underwritten by the pension fund shall be multiplied by the ratio, which shall not be less than 50 %, for the previous financial year, of the total capital at risk retained as the pension fund's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance.

For temporary assurances on death of a maximum term of three years, that fraction shall be 0.1 %. For such assurance of a term of more than three years but not more than five years, that fraction shall be 0.15 %.

(2) For supplementary insurances referred to in Article 2(3)(a)(iii) of Directive 2009/138/EC, the required solvency margin shall be equal to the required solvency margin for pension funds as laid down in Article 77-3.

(3) For capital redemption operations referred to in Article 2(3)(b)(ii) of Directive 2009/138/EC, the required solvency margin shall be equal to a 4% fraction of the mathematical provisions calculated in compliance with paragraph (1)(a).

(4) For operations referred to in Article 2(3)(b)(i) of Directive 2009/138/EC, the required solvency margin shall be equal to 1 % of their assets.

(5) For assurances linked to investment funds and covered by Article 2(3)(a)(i) and (ii) of Directive 2009/138/EC and for the operations referred to in Article 2(3)(b)(iii), (iv) and (v) of that Directive, the required solvency margin shall be equal to the sum of the following:

a) insofar as the pension fund bears an investment risk, a 4% fraction

- of the technical provisions, calculated in compliance with paragraph (1)(a);
- b) insofar as the pension fund bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph (1)(a);
- c) insofar as the pension fund bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25% of the net administrative expenses of the previous financial year pertaining to such assurances and operations;
- d) insofar as the pension fund covers a death risk, a 0.3 % fraction of the capital at risk, calculated in compliance with paragraph (1)(b).

#### Article 77-3.

(1) For supplementary insurances referred to in Article 77-2(2), the required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

(2) The amount of the required solvency margin shall be equal to the higher of the two calculation results as set out in paragraphs (3) and (4).

(3) The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated in accordance with paragraph (4), or gross earned premiums or contributions.

The premiums or contributions, inclusive of charges ancillary to premiums or contributions, due in respect of direct business in the previous financial year shall be aggregated.

To that sum there shall be added the amount of premiums accepted for all reinsurance in the previous financial year.

From that sum there shall then be deducted the total amount of premiums or contributions cancelled in the previous financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first extending up to EUR 50,000,000, the second comprising the excess; 18% of the first portion and 16% of the second shall be added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the pension fund after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

(4) The claims basis shall be calculated, as follows:

The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph (1) shall be aggregated.

To that sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the previous financial year both for direct business and for reinsurance acceptances.

From that sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph (1).

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One third of the amount so obtained shall be divided into two portions, the first extending up to EUR 35,000,000 and the second comprising the excess; 26 % of the first portion and 23 % of the second, shall be added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the pension fund after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50 %.

(5) Where the required solvency margin as calculated in paragraphs (2) to (4) is lower than the required solvency margin of the preceding year, the required solvency margin shall be at least equal to the required solvency margin of the preceding year, multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the previous financial year and the amount of the technical provisions for claims outstanding at the beginning of the previous financial year. In those calculations, technical provisions shall be calculated net of reinsurance but the ratio may be no higher than 1."

#### **Article 48.**

Article 78 of the same law shall be amended as follows:

1. In letter a) of the first subparagraph, the words "in the best interests of the members and beneficiaries" shall be replaced by "in the best long-term interests of members and beneficiaries as a whole", and the first sentence shall be supplemented with the words ", having regard to the principle of equitable spread of risks and benefits between generations";
2. In letter b) of the first subparagraph, the full stop of the first sentence shall be replaced by a semi-colon, and the second sentence shall be deleted;
3. In letter f) of the first subparagraph, the full stop of the second sentence shall be replaced by a semi-colon, and a new letter g) with the following content shall be inserted:  
"g) within the prudent person rule, the pension funds shall take into account the potential long-term impact of investment decisions on environmental, social, and governance factors."
4. In the third subparagraph, the words "the size," shall be inserted between "Taking into account" and "the nature", and the word "investment" shall remain unchanged in the English version.



#### Article 49.

Article 81 of the same law shall be amended as follows:

1. Letter a) shall be amended as follows:

- a) the words “, MTFs or OTFs” shall be inserted between the words “ trading on regulated markets” and “and deciding on”;
- b) the words “ a lower limit” shall be replaced by the words “a lower limit of no lower than 35 %”;
- c) the words “provide retirement products” shall be replaced by the words “operate pension schemes”.

2. In letter c), the words “in instruments that have a long-term investment horizon and are not traded” shall be inserted between the words “investing” and the words “in risk capital markets” which shall be replaced by the words “on regulated markets, MTFs or OTFs;”;

3. The following new letter d) shall be inserted:

“d) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments, European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds. “.

#### Article 50.

Article 83 of the same law shall be repealed.

#### Article 51.

The title of Chapter 6 of Part V of the same law shall read as follows:

“Chapter 6: Information to be given to the prospective members, members and beneficiaries”.

#### Article 52.

Article 85 of the same law shall read as follows:

“Article 85.

(1) Without prejudice to the pension rules of the pension scheme, and taking into account the nature of the pension scheme established, each pension fund shall provide

- a) prospective members with at least the information set out in Article 87-1;
- b) members with at least the information set out in Articles 69, 85-1, 87-2, 88 and 89;
- c) beneficiaries with at least the information set out in Articles 69, 88 and 89-1.

(2) The information referred to in paragraph (1) shall be:

- a) regularly updated;
- b) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
- c) not misleading, and consistency shall be ensured in the vocabulary and content;
- d) presented in a way that is easy to read;
- e) available in an official language of the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned;
- f) made available to prospective members, members and beneficiaries free of charge

through electronic means, including on a durable medium or by means of a website, or on paper.”.

### **Article 53.**

The following new Article 85-1 shall be added to Article 85 of the same law:

#### “Article 85-1.

(1) Pension funds shall draw up a concise document containing key information for each member taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law, hereinafter referred to as “Pension Benefit Statement”. The title of the document shall contain the words “Pension Benefit Statement”.

(2) The exact date to which the information in the Pension Benefit Statement refers to shall be stated prominently.

(3) The information contained in the Pension Benefit Statement shall be accurate, updated and made available to each member free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually. A paper copy shall be provided to members on request in addition to any information through electronic means.

(4) Any material change to the information contained in the Pension Benefit Statement compared to the previous year shall be clearly indicated.

(5) The Pension Benefit Statement shall include, at least, the following key information for members:

- a) personal details of the member, including a clear indication of the statutory retirement age, the retirement age laid down in the pension scheme or estimated by the IORP, or the retirement age set by the member, as applicable;
- b) the name of the pension fund and its contact address and identification of the pension scheme of the member;
- c) where applicable, information on full or partial guarantees under the pension scheme and if relevant, where further information can be found;
- d) information on pension benefit projections based on the retirement age as specified in letter a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;
- e) information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the pension scheme;
- f) information on the contributions paid by the sponsoring undertaking and the member into the pension scheme, at least over the last 12 months, taking into consideration the specific nature of the pension scheme;
- g) a breakdown of the costs deducted by the pension fund at least over the last 12 months;
- h) information on the funding level of the pension scheme as a whole.

For the purposes of determining the assumptions of the projections referred to in letter d) of the first subparagraph, the pension funds shall take into account the following rules:

- a) they shall favour official sources;
- b) they shall choose their sources, taking account of the quality and timeliness of the data;
- c) they shall take appropriate measures to identify and manage any possible conflicts of interest related to the choice of sources;

d) they shall be able to provide information on the sources, the methods and procedures they use.

Those rules shall be applied by pension funds to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

(6) The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

- a) further practical information about the member's options provided under the pension scheme;
- b) the information specified in Articles 87(1) and 53(6);
- c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;
- d) information on the level of benefits, in case of cessation of employment.

(7) For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the Pension Benefit Statement shall indicate where additional information is available.”.

#### **Article 54.**

Article 87 of the same law shall be amended as follows:

1. In the first sentence of paragraph (1), the words “and disclose publicly” shall be inserted between the words “draw up” and “annual accounts”, and the words “operated by a pension fund” shall be inserted between the words “pension scheme” and “and, where appropriate”;
2. In the third sentence of paragraph (1), the word “liabilities” shall remain unchanged in the English version, and the words “and include disclosure of significant investment holdings” shall be inserted at the end of the sentence;
3. Paragraph (4) shall be repealed.

#### **Article 55.**

The following new Article 87-1 and 87-2 shall be inserted after Article 87 of the same law:

##### “Article 87-1.

(1) Pension funds shall ensure that prospective members of a pension scheme are informed about:

- a) any relevant options available to them including investment options;
- b) the relevant features of the pension scheme including the kind of benefits;
- c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach;
- d) where further information is available.

(2) The information referred to in paragraph (1) shall be provided to prospective members:

- a) before joining a pension scheme if they are not automatically enrolled in a pension scheme; or
- b) promptly after their enrolment if it takes place automatically.

(3) Where members bear investment risk and can take investment decisions, the pension fund shall provide prospective members with information on the past performance of investments related to the pension scheme for a minimum of five

years, or for all the years that the scheme has been operating where this is less than five years and information on the structure of costs borne by members and beneficiaries.

Article 87-2.

In addition to the Pension Benefit Statement, pension funds shall provide each member, in due time before the retirement age as specified in letter a) of the first subparagraph of Article 85-1(5), with information about the benefit pay-out options available in taking their retirement benefits.

The information referred in the first subparagraph shall be provided to each member that requests it.”.

**Article 56.**

Article 88 of the same law shall read as follows:

“Article 88.

On request of a member, a beneficiary or their representatives, the pension fund shall provide the following additional information:

- a) the annual accounts and the annual reports referred to in Article 87, or where a pension fund is responsible for more than one scheme, those accounts and reports relating to their particular pension scheme;
- b) the statement of investment-policy principles referred to in Article 53(6);
- c) any further information about the assumptions used to generate the projections appearing in the Pension Benefit Statement.

Sponsoring undertakings may also, on request, be provided with the annual accounts and annual reports of the pension fund.

By way of derogation from Article 73 of the Law of 10 August 1915 on commercial companies, as amended, the annual report must not be sent to the shareholders of a SEPCAV prior to the general meeting.”.

**Article 57.**

Article 89 of the same law shall be amended as follows:

1. In paragraph (1), the words “or in the Pension Benefit Statement” shall be inserted after the words “in the pension scheme’s pension rules”;
2. At the end of paragraph (2) the words “and the current level of financing level of their own accrued entitlements” shall be deleted; Paragraph (3) shall be repealed.

**Article 58.**

A new Article 89-1 shall be inserted after Article 89 of the same law, which shall read as follows:

“Article 89-1.

(1) Pension funds shall periodically provide beneficiaries with information about the benefits due and the corresponding pay-out options.

(2) Pension funds shall inform beneficiaries without delay after a final decision has been taken resulting in any reduction in the level of benefits due, and three months before that decision is implemented.

(3) When a significant level of investment risk is borne by beneficiaries in the pay-

out phase, beneficiaries shall receive appropriate information regularly.”.

#### **Article 59.**

The title of Part VI shall read as follows: “Cross-border Activities, Cross-border Transfers, National Transfers and Cooperation”.

#### **Article 60.**

Article 97 of the same law shall be amended as follows:

1. In letter a) of paragraph (3), the words “identified, where applicable, by the sponsoring undertaking” shall be inserted at the end of the sentence;
2. In letter b) of paragraph (3), the words “and the location of its or their main administration” shall be inserted at the end of the sentence;
3. Paragraph (4) shall read as follows:

“(4) Where the CSSF is notified under paragraph (2), and unless it has issued a reasoned decision that the administrative structure or the financial situation of the pension fund or the good repute or professional qualifications or experience of the persons running the pension fund are not compatible with the proposed cross-border activity contemplated in the host Member State, it shall within three months of receiving all the information referred to in paragraph (3) communicate that information to the competent authority of the host Member State and inform the pension fund accordingly.

The reasoned decision referred to in the first subparagraph shall be issued within three months of receiving all the information referred to in paragraph (3).”.

4. A new paragraph (4a) with the following content shall be inserted after paragraph (4):

“(4a) Where the CSSF does not communicate the information referred to in paragraph (3) to the host authority, it shall give the reasons for this to the pension fund concerned within three months of receiving all that information.

The non-communication of the information shall constitute refusal and shall be subject to the right to bring an action for annulment with the *Tribunal administratif* (Administrative Tribunal).”;

5. Paragraphs (5), (6), (7), (8) and (9) shall read as follows:

“(5) Pension funds carrying out cross-border activity shall be subject to the information requirements referred to in Title IV of Directive (EU) 2016/2341 imposed by the host Member State in respect of the prospective members, members and beneficiaries which that cross-border activity concerns.

(6) The CSSF shall communicate the information received from the host authority pursuant to Article 11(7) of Directive (EU) 2016/2341 to the pension fund.

(7) On receiving the communication referred to in paragraph (6), or if no communication is received from the CSSF on expiry of the period provided for in Article 11(7) of Directive (EU) 2016/2341, the pension fund may start to carry out a cross-border activity in accordance with the host Member State’s requirements of social and labour law relevant to the field of occupational pension schemes and with the host Member State’s information requirements as referred to in Article 11(7) of said directive.

(8) The CSSF shall communicate the information received from the host authority pursuant to Article 11(9) of Directive (EU) 2016/2341 to the pension fund.

(9) If the host authority informs the CSSF of irregularities identified within the framework of its supervision in accordance with Article 11(7) of Directive (EU)

2016/2341, the CSSF shall, in coordination with the host authority, take the necessary measures to ensure that the relevant pension fund puts a stop to the detected breach.”;

6. Paragraph (10) shall be repealed.

#### **Article 61.**

The following new Chapters 1a and 1b shall be inserted after Article 98 of the same law:

#### “Chapter 3a: Cross-border Transfers

##### Article 98-1.

(1) Pension funds, which are authorised under this law, may receive all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring IORP established in another Member State.

(2) The costs of the transfer shall not be incurred by the remaining members and beneficiaries of the transferring IORP or by the incumbent members and beneficiaries of the receiving pension fund.

(3) The transfer shall be subject to prior approval by:

- a) a majority of members and a majority of the beneficiaries concerned of the transferring IORP or, where applicable, a majority of their representatives, as defined in accordance with the national law of the Member State of the transferring IORP. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the transferring IORP before the application referred to in paragraph (4) is submitted;
- b) the sponsoring undertaking, where applicable.

(4) The transfer of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, between transferring IORPs and receiving pension funds, shall be subject to authorisation by the CSSF, in its capacity as competent authority of the receiving pension fund, after obtaining the prior consent of the competent authority of the home Member State of the transferring IORP, provided for in Article 12(4) of Directive (EU) 2016/2341.

The application for authorisation of the transfer shall be submitted by the receiving pension fund. The CSSF shall grant or refuse the authorisation and communicate its decision to the receiving pension fund within three months of receipt of the application.

(5) The application for the authorisation of transfer referred to in paragraph (4) shall contain the following information:

- a) the written agreement between transferring IORPs and receiving pension funds setting out the conditions of the transfer;
- b) a description of the main characteristics of the pension scheme;
- c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
- d) the name and the location in Luxembourg of the main administration of the receiving pension fund and the name and the location of the main administration of the transferring IORP and the Member State in which the transferring IORP is registered or authorised;

- e) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;
- f) evidence of the prior approval in accordance with paragraph (3);
- g) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

(6) The CSSF shall forward the application referred to in paragraph (4) to the competent authority of the transferring IORP, without delay following its receipt.

(7) The CSSF, in its capacity as competent authority of the receiving pension fund, shall only assess whether:

- a) all the information referred to in paragraph (5) has been provided by the receiving pension fund;
- b) the administrative structure, the financial situation of the receiving pension fund and the good repute or professional qualifications or experience of the persons running the receiving pension fund are compatible with the proposed transfer;
- c) the long-term interests of the members and beneficiaries of the receiving pension fund and the transferred part of the scheme are adequately protected during and after the transfer;
- d) the technical provisions of the receiving pension fund are fully funded at the date of the transfer, where the transfer results in a cross-border activity;
- e) the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with this law and its implementing measures.

(8) Where the CSSF refuses the authorisation, it shall provide the receiving pension fund with the reasoning for such refusal within the three-month period referred to in paragraph (4). That refusal, or failure to act by the CSSF shall be subject to the right to bring an action for annulment with the *Tribunal administratif* (Administrative Tribunal).

(9) The CSSF shall inform the competent authority of the home Member State of the transferring IORP of the decision referred to in paragraph (4), within two weeks of taking that decision.

The CSSF shall transmit the information received from the competent authority of the home Member State of the transferring IORP pursuant to Article 12(11) of Directive (EU) 2016/2341, to the receiving pension fund within one week of receiving this information.

(10) Upon receipt of a decision to grant an authorisation as referred to in paragraph (4), or if no information on the decision is received from the CSSF on expiry of the period referred to in the second subparagraph of paragraph (9), the receiving pension fund may start to operate the pension scheme.

(11) In the case of a disagreement about the procedure or content of an action or inaction of the competent authority of the home Member State of the transferring IORP, including a decision to authorise or refuse a cross-border transfer, EIOPA may carry out non-binding mediation in accordance with letter c) of the second subparagraph of Article 31 of Regulation (EU) No 1094/2010.

(12) Where, taking into account the transfer, the pension fund carries out cross-border activities, the CSSF shall inform the host authorities concerned. Article 97(8) and (9) shall apply.

#### Article 98-2.

(1) Pension funds, which are authorised under this law, may transfer all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights,



as well as corresponding assets or cash equivalent thereof, to a receiving IORP established in another Member State.

(2) The costs of such a transfer shall not be incurred by the remaining members and beneficiaries of the transferring pension fund or by the incumbent members and beneficiaries of the receiving IORP.

(3) The transfer shall be subject to prior approval by:

- a) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives, in accordance with the quorum and majority requirements laid down in Article 450-3(2) of the Law of 10 August 1915 on commercial companies, as amended, for SEPCAVs and in Article 33 of this law for ASSEPs. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the transferring pension fund before the application referred to in paragraph (4) is submitted;
- b) the sponsoring undertaking, where applicable.

(4) The transfer of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, between transferring pension funds and receiving IORPs shall be subject to authorisation by the competent authority of the home Member State of the receiving IORP after obtaining the prior consent of the CSSF in its capacity of competent authority of the transferring pension fund.

(5) Where the CSSF, in its capacity as competent authority of the transferring pension fund, receives the application referred to in Article 12(4) of Directive (EU) 2016/2341 by the competent authority of the home Member State of the receiving IORP, it shall only assess whether:

- a) in the case of a partial transfer of the pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
- b) the individual entitlements of the members and beneficiaries are at least the same after the transfer;
- c) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the applicable rules in Luxembourg.

(6) The CSSF shall communicate the results of the assessment referred to in paragraph (5) within eight weeks of receipt of the application referred to in Article 12(6) of Directive (EU) 2016/2341.

(7) Where a cross-border transfer results in a cross-border activity or concerns a pre-existing cross-border activity, the CSSF shall inform the home authority of the receiving IORP of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV of Directive (EU) 2016/2341 which shall apply to the cross-border activity. The CSSF shall communicate this information within four weeks of the date on which it is informed of the decision which the competent authority of the home Member State of the receiving IORP took pursuant to Article 12(4) of Directive (EU) 2016/2341.

Where a cross-border transfer results in a cross-border activity within the meaning of Article 7(1)

of the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended, the CSSF shall inform the IGSS (Inspection Générale de la Sécurité Sociale - Social Security General Inspectorate),

without delay, of the decision referred to in Article 12(4) of Directive (EU) 2016/2341.

(8) In the case of a disagreement about the procedure or content of an action or inaction of the competent authority of the home Member State of the receiving IORP, including a decision to authorise or refuse a cross-border transfer, the CSSF may request EIOPA to carry out non-binding mediation in accordance with letter c) of the second subparagraph of Article 31 of Regulation (EU) No 1094/2010.

### Chapter 1b: National transfers

#### Article 98-3.

(1) Pension funds may transfer all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a pension fund within the meaning of point 14 of Article 32(1) of the Law of 7 December 2015 on the insurance sector, as amended, referred to as "receiving IORP" for the purposes of this article.

(2) The costs of such a transfer shall not be incurred by the remaining members and beneficiaries of the pension fund or by the incumbent members and beneficiaries of the receiving IORP.

(3) The transfer shall be subject to prior approval by:

- a) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives, in accordance with the quorum and majority requirements laid down in Article 450-3(2) of the Law of 10 August 1915 on commercial companies, as amended, for SEPCAVs and in Article 33 of this law for ASSEPs. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the pension fund before the application referred to in paragraph (4) is submitted;
- b) the sponsoring undertaking, where applicable.

(4) The transfer of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, between the pension fund and the receiving IORP shall be subject to authorisation by the CAA after obtaining the prior consent of the CSSF. The application for authorisation of the transfer shall be submitted simultaneously to the CAA and the CSSF.

(5) The application for the authorisation of transfer referred to in paragraph (4) shall contain the following information:

- a) the written agreement between the pension fund and the receiving IORP setting out the conditions of the transfer;
- b) a description of the main characteristics of the pension scheme;
- c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
- d) the name and the location in Luxembourg of the main administration of the receiving IORP and the name and the location of the main administration of the pension fund;
- e) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;
- f) evidence of the prior approval in accordance with paragraph (3);
- g) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

(6) The CAA shall assess whether:

- a) all the information referred to in paragraph (5) has been provided;
- b) the administrative structure, the financial situation of the receiving IORP and the good repute or professional qualifications or experience of the persons running the receiving IORP are compatible with the proposed transfer;
- c) the long-term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are adequately protected during and after the transfer;
- d) the technical provisions of the receiving IORP are fully funded at the date of the transfer, where the transfer results in a cross-border activity;
- e) the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the Law of 7 December 2015 on the insurance sector, as amended, and its implementing measures.

(7) The CSSF shall assess whether:

- a) in the case of a partial transfer of the pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
- b) the individual entitlements of the members and beneficiaries are at least the same after the transfer;
- c) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred.

(8) The CSSF shall provide the CAA with the results of the assessment referred to in paragraph (7) within eight weeks of receipt of the application referred to in paragraph (4) in order to allow the CAA to take a decision in accordance with paragraph (9).

(9) The CAA shall grant or refuse the authorisation and communicate its decision to the pension fund and the receiving IORP within three months of receipt of the application.

(10) Where the CAA refuses the authorisation, it shall provide the pension fund and the receiving IORP with the reasoning for such refusal within the three-month period referred to in paragraph (9). That refusal, or a failure to act by the CAA shall be subject to the right to bring an action for annulment with the *Tribunal administratif* (Administrative Tribunal).

(11) The CAA shall inform the CSSF and, where applicable, the IGSS or the host authorities concerned by the transfer, of the decision referred to in paragraph (9), within two weeks of taking that decision.

(12) Where the transfer concerns a pre-existing cross-border activity, the CSSF shall inform the CAA of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV of Directive (EU) 2016/2341 which shall apply to the cross-border activity. The CSSF shall communicate this information within four weeks of the date on which it is informed of the decision taken by the CAA in accordance with paragraph (9).

The CAA shall communicate this information to the receiving IORP within one week of its receipt.

(13) Upon receipt of a decision to grant the authorisation as referred to in paragraph (9), the receiving IORP may start to operate the pension scheme.

Article 98-4.

(1) Pension funds may transfer all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to another pension fund subject to the CSSF's authorisation.

(2) The costs of the transfer shall not be incurred by the remaining members and beneficiaries of the transferring pension fund or by the incumbent members and beneficiaries of the receiving pension fund.

(3) The transfer shall be subject to prior approval by:

- a) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives, in accordance with the quorum and majority requirements laid down in Article 450-3(2) of the Law of 10 August 1915 on commercial companies, as amended, for SEPCAVs and in Article 33 of this law for ASSEPs. The information on the conditions of the transfer shall be made available to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner by the transferring pension fund before the application referred to in paragraph (4) is submitted;
- b) the sponsoring undertaking, where applicable.

(4) The transfer of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, between the transferring pension fund and the receiving pension fund shall be subject to authorisation by the CSSF.

(5) The application for the authorisation of transfer referred to in paragraph (4) shall contain the following information:

- a) the written agreement between transferring pension funds and receiving pension funds setting out the conditions of the transfer;
- b) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
- c) evidence of the prior approval in accordance with paragraph (3);
- d) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned.

(6) The CSSF shall assess whether:

- a) the administrative structure, the financial situation of the receiving pension fund and the good repute or professional qualifications or experience of the persons running the receiving pension fund are compatible with the proposed transfer;
- b) the long-term interests of the members and beneficiaries of the receiving pension fund and the transferred part of the scheme are adequately protected during and after the transfer;
- c) the technical provisions of the receiving pension fund are fully funded at the date of the transfer, where the transfer results in a cross-border activity;
- d) the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with this law and its implementing measures;
- e) in the case of a partial transfer of the pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
- f) the individual entitlements of the members and beneficiaries are at least the same after the transfer;
- g) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred.

(8) The CSSF shall grant or refuse the authorisation and communicate its decision to the transferring pension fund and to the receiving pension fund within three months of receipt of the application.

Where the granted transfer concerns a pre-existing cross-border activity, the CSSF shall inform the receiving pension fund of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV of Directive (EU) 2016/2341 which shall apply to the cross-border activity.

(9) Where the CSSF refuses the authorisation, it shall provide the transferring pension fund and the receiving pension fund with the reasoning for such refusal within the three-month period referred to in paragraph (8). That refusal, or failure to act by the CSSF shall be subject to the right to bring an action for annulment with the *Tribunal administratif* (Administrative Tribunal).

(10) The CSSF shall inform, where applicable, the IGSS or the host authorities concerned by the transfer, of the decision referred to in paragraph (8), within two weeks of taking that decision.

(11) Upon receipt of the decision to grant the authorisation as referred to in paragraph (8), the receiving pension fund may start to operate the pension scheme.”.

#### **Article 62.**

In point 2. of Article 101(1) of the same law, the words “investment policy” shall remain unchanged in the English version.

## Chapter II - Amendment of the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended

### Article 63.

Article 1 of the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision, as amended, shall be amended as follows:

1. Point 1. shall be amended as follows:
  - a) the words "or "IORP"" shall be inserted after the words "institution for occupational retirement provision";
  - b) in the second indent, the words "individually or collectively" shall be inserted between the words "self-employed persons" and the words ", in compliance with" and the words ", and which carries out activities directly arising therefrom" shall be deleted;
  - c) a new second subparagraph shall be inserted after the second indent, which shall read as follows: "and which carries out activities directly arising therefrom.";
2. The new points 1a. and 1b. shall be inserted after point 1., which shall read as follows:
  - 1a. "transferring IORP" means "an IORP transferring all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to an IORP registered or authorised in another Member State;
  - 1b. "receiving IORP" means "an IORP receiving all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from an IORP registered or authorised in another Member State";
3. In point 4., the words "Article 25(1) (hh) of the law of 6 December 1991 on the insurance sector, as amended" shall be replaced by the words "point 14. of Article 32(1) of the Law of 7 December 2015 on the insurance sector, as amended";
4. In point 6, the words "offers a pension scheme or" shall be inserted between the words "and which" and "pays contributions", and the words "institution for occupational retirement provision" shall remain unchanged in the English version;
5. In point 7, the words "or as a lump sum" shall be replaced by the words ", a lump sum, or any combination thereof";
6. In point 8, the words "other than beneficiaries or prospective members" shall be inserted between the words "persons" and "whose", and the words "past or present" shall be inserted between the words "whose" and "occupational";
7. A new point 8a. with the following content shall be added:
  - 8a. "prospective member" means "a person who is eligible to join a pension scheme";
8. Point 10. shall read as follows:
  10. "Directive 2009/138/EC" means "Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)";

9. Point 11. shall read as follows:

"11. "Directive 2009/65/EC" means "Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)";";

10. Point 12. shall read as follows:

"12. "Directive 2014/65/EU" means "Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU";";

11. Point 13. shall read as follows:

"13. "Directive 2013/36/EU" means "Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC";";

12. Point 14. shall be deleted;

13. Point 15. shall read as follows:

"15. "Directive (EU) 2016/2341" means "Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)";";

14. Point 16. shall read as follows:

"16. "Regulation EU No 883/2004" means "Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems";";

15. Point 17. shall read as follows:

"17. "Regulation EU No 987/2009" means "Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems";";

16. A new point 17a. shall be added, which shall read as follows:

"17a. "durable medium" means "an instrument which enables a member or a beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored";";

17. Point 18 shall be supplemented with a full stop and a second sentence, which shall read as follows:

"The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union are deemed equivalent to Member States of the European Union, within the limits set forth by this agreement and related acts.";

18. Point 19. shall read as follows:



- “19. “home Member State” means “the Member State in which the institution for occupational retirement provision has been registered or authorised and in which its main administration is located”;”;
19. In point 20., the words “host State” shall be replaced by the words “host Member State” (appears already in the English version), the word “Member” shall be inserted between the words “the” and “State (appears already in the English version), and the words “or beneficiaries” shall be added after the words “members”;
20. A new point 20a. shall be added, which shall read as follows:
- “20a. “cross-border activity”: “operating a pension scheme where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State other than the home Member State”;”;
21. In point 21., the words “2003/41/EC” shall be replaced by the words “(EU) 2016/2341”;
22. In point 22, the word “Member” shall be inserted between the words “home” and “State”, and the words “2003/41/EC” shall be replaced by the words “(EU) 2016/2341”;
23. In point 23., the word “Member” shall be inserted between the words “home” and “State” (appears already in the English version), the words “2003/41/EC” shall be replaced by the words “(EU) 2016/2341”, and the full stop shall be replaced by a semi-colon;
24. A new point 24. with the following content shall be inserted after point 23.:
- “24. “EIOPA” means “European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC”.“.

#### **Article 64.**

Article 2(3) of the same law shall be amended as follows:

1. Letter a) shall read as follows:

“a) institutions operating social security schemes which are covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council;”;

2. Letter b) shall read as follows:

“b) institutions which are covered by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU of the European Parliament and of the Council;”;

3. In letter e), the words “benefits” shall remain unchanged in the English version.

#### **Article 65.**

In Article 4(2) of the same law, the words “the law of 6 December 1991 on the insurance sector, as amended” shall be replaced by the words “Law of 7 December 2015 on the insurance sector, as amended”.

#### **Article 66.**

In Article 5(2) of the same law, the words “Grand-ducal regulation of 31 August 2000 implementing Article 26(3) of the amended law of 6 December 1991 on the insurance sector” shall be replaced by the words “Law of 7 December 2015 on the insurance sector, as amended”.

#### **Article 67.**

Article 6 of the same law shall be amended as follows:

1. The sole subparagraph shall become the new paragraph (1), and in new paragraph (1), the words “in Article 7” shall be replaced by the words “in paragraph (2), in Articles 7 and 9 to 15” and the words “, as amended” shall be inserted after pension schemes.

2. A new paragraph (2) shall be inserted after paragraph (1), which shall read as follows:

“2. In the case of an occupational pension scheme where members and beneficiaries fully bear the investment risk, the institution for occupational retirement provision shall appoint a depositary established in a Member State and duly authorised, in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU, for the safe-keeping of assets and oversight duties in accordance with Articles 34(1) to (4) and 35(1) and (2) of Directive (EU) 2016/2341.”.

#### **Article 68.**

Article 7 of the same law shall be amended as follows:

1. In letter a) of paragraph (2), the words “and the location of its main administration” shall be inserted after the words “sponsoring undertaking”;

2. Paragraph (3) shall read as follows:

“3. Before the institution for occupational retirement provision starts to operate a pension scheme for a Luxembourg sponsoring undertaking, the IGSS shall, within six weeks of receiving the information referred to in paragraph (2), inform the competent authority of the home Member State, of the requirements of Luxembourg social and labour law relevant to the field of occupational pension schemes under which the pension scheme shall be operated for a Luxembourg sponsoring undertaking, of the requirements of the depositary referred to in Article 6(2) and of the information requirements referred to in Chapter 5.”;

3. Paragraph (4) shall read as follows:

“4. Where a cross-border transfer, as provided for in Article 98-2 of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended, or in Article 256-9 of the Law of 7 December 2015 on the insurance sector, as amended, results in a cross-border activity within the meaning of paragraph (1), the IGSS shall inform the competent authority of the home Member State of the receiving IORP of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated, of the requirements of the depositary referred to in Article 6(2) and of the information requirements referred to in Chapter 5.

This information shall be communicated within four weeks of the receipt by the Commission de Surveillance du Secteur Financier or the Commissariat aux Assurances of the notification of the decision referred to in the first subparagraph of Article 98-2(7) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of SEPCAVs and ASSEPs, as amended, or in the first subparagraph of Article 256-9(7) of the Law of 7 December 2015 on the insurance sector, as amended, which shall forward it to the IGSS without delay.”;

4. In paragraph (5), the word “authorities” shall be replaced by the word “authority” and the words “the operation of the pension scheme sponsored by a Luxembourg undertaking and in any rules that are to be applied in accordance with Article 18(7) of Directive 2003/41/EC and in respect of the information of the members and beneficiaries” shall be replaced by the words “the cross-border activity and any significant change in the depositary’s information requirements as referred to in Article 6(2) and of the information requirements referred to in Chapter 5.”;
5. Paragraph (6) shall read as follows:

“(6) The institution for occupational retirement provision shall be subject to ongoing supervision by the IGSS as to the compliance of its activities with the requirements of Luxembourg labour and social law relevant to the field of occupational pension schemes, with the depositary’s requirements referred to in Article 6(2) and with the information requirements referred to in Chapter 5. Should the supervision by the IGSS as regards compliance with the provisions of Article 6(2) and of Chapter 5 and of the Law of 8 June 1999 relating to supplementary pension schemes, as amended, bring irregularities to light, the IGSS shall inform the competent authority of the home Member State without delay.”;
6. In paragraph (7), the words “of social and labour law” shall be deleted;
7. In paragraph (8), the words “of the Law of 8 June 1999” shall be replaced by the words “of Article 6(2), the provisions of Chapter 5 or the provisions of the Law of 8 June 1999”, and the word “authorities” shall be replaced by the word “authority”;
8. In paragraph (9), the words “, as provided for in Article 16(3) and Article 18(7) of Directive 2003/41/EC” shall be deleted;
9. A new paragraph (10) shall be inserted after paragraph (9), which shall be worded as follows:

“10. Where the IGSS is informed by the competent authority of a receiving IORP of a cross-border transfer, other than that provided for in paragraph (4), paragraphs (5) to (8) shall apply to cross-border activities in Luxembourg.”.

#### **Article 69.**

In Article 8 of the same law, the words “law of 8 June 1999 relating to supplementary pension scheme” shall be replaced by the words “Law of 8 June 1999 relating to supplementary pension schemes, as amended, and of the depositary’s requirements referred to in Article 6(2) and information requirements referred to in Chapter 5 of this law”;

#### **Article 70.**

A new Chapter 5 shall be inserted after Article 8 of the same law, which shall read as follows:

“Chapter 5: Information requirements applicable to institutions for occupational

retirement provision authorised in another Member State

Article 9. Principles

1. Without prejudice to the pension rules of the pension scheme, and taking into account the nature of the pension scheme established, each IORP shall provide:

- a) prospective members with at least the information set out in Article 13;
- b) members with at least the information set out in Articles 11, 12, 14 and 15;
- c) beneficiaries with at least the information set out in Articles 11, 15(1) and (16).

2. The information referred to in paragraph (1) shall be:

- a) regularly updated;
- b) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
- c) not misleading, and consistency shall be ensured in the vocabulary and content;
- d) presented in a way that is easy to read;
- e) available in an official language of the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the pension scheme concerned;
- f) made available to prospective members, members and beneficiaries free of charge through electronic means, including on a durable medium or by means of a website, or on paper.

Article 10. Communication to members and beneficiaries

1. Within the month of the IORP's authorisation, each member or beneficiary shall be notified by mail of the entry of his/her full name, address and capacities in a register of members and beneficiaries, and shall receive an updated copy of the pension rules the minimum content of which is reflected in Article 11.

2. Any new member shall be informed in the same way within one month of his/her joining the IORP.

3. The IORP shall provide any members and beneficiaries concerned, who so request, and likewise their representatives, where applicable, with an up-to-date version of the pension rules.

4. When the pension rules are amended, each member and beneficiary, or, where applicable, their representative, shall receive any relevant information within one month. IORPs shall make available to them an explanation of the impact on members and beneficiaries of significant changes to technical provisions.

Article 11. Pension rules

For each pension scheme, the pension rules shall contain the following indications, at least:

- a) the name of the IORP, the Member State in which it is authorised and the name of its competent authority;
- b) the group of persons eligible to become members and beneficiaries;
- c) a definition of the contributors and, where applicable, the financial institutions assuming liabilities vis-à-vis the IORP;
- d) the rights and obligations of the parties involved in the pension scheme, including:
  - i) all the obligations of the contributor(s), including, in the event of a pension scheme being underfunded, and where applicable, the obligations of the financial institutions assuming liabilities vis-à-vis the IORP;

- ii) the IORP's obligations in regard to providing information to the members and beneficiaries, and, where applicable, their representatives;
- iii) the members' rights when they retire, in the event of disability, cessation of employment and in the event of insolvency of the contributing undertaking, as well as the dependants' rights upon a member's death;
- e) the calculation method for, and frequency of calculation of, the accrued entitlements of each member and each beneficiary, and the rules on the disclosure of information on those entitlements;
- f) the conditions for joining and leaving for members and beneficiaries and, where applicable, an indication of the vesting period;
- g) the mechanisms protecting accrued entitlements or the benefit reduction mechanisms, if any;
- h) the terms and conditions relating to the maintenance, transfer and redemption of the members' acquired entitlements, including in the event of cessation of employment and non-acceptance of the pension rules or a clause thereof or an amendment thereto;
- i) information on the investment profile;
- j) information on the financial and technical risks and other risks associated with the pension scheme, and the nature and distribution of such risks, including the statement of the investment-policy principles referred to in Article 30 of Directive (EU) 2016/2341;
- k) the conditions regarding full or partial guarantees under the pension scheme or of a given level of benefits or, where no guarantee is provided under the pension scheme, a statement to that effect;
- l) for schemes where members bear investment risk or can take investment decisions:
  - i) the definition of investment policy, its specific objectives and the criteria on which it is based;
  - ii) in case of options between several investment profiles, the information of the conditions regarding the range of investment options available, and, where applicable, the default investment option and, the pension scheme's rules to allocate a particular member to an investment option;
  - iii) where information on the past performance of investments can be found, which is related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years;
- m) the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits;
- n) the options available to members and beneficiaries in receiving their retirement benefits;
- o) the terms and conditions for drawing up and amending the pension rules and the Pension Benefit Statement, as determined in the articles of association;
- p) where appropriate, a description of the principles governing the allocation of any surplus remaining after liquidation of the pension scheme.

#### Article 12. Pension Benefit Statement

1. IORPs shall draw up a concise document containing key information for each member taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law, hereinafter referred to as "Pension Benefit Statement". The title of the document shall contain the words "Pension Benefit Statement".

2. The exact date to which the information in the Pension Benefit Statement refers to shall be stated prominently.

3. The information contained in the Pension Benefit Statement shall be accurate, updated and made available to each member free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually. A paper copy shall be provided to members on request in addition to any information through electronic means.

4. Any material change to the information contained in the Pension Benefit Statement compared to the previous year shall be clearly indicated.

5. The Pension Benefit Statement shall include, at least, the following key information for members:

- a) personal details of the member, including a clear indication of the statutory retirement age, the retirement age laid down in the pension scheme or estimated by the IORP, or the retirement age set by the member, as applicable;
- b) the name of the IORP and its contact address and identification of the pension scheme of the member;
- c) where applicable, information on full or partial guarantees under the pension scheme and if relevant, where further information can be found;
- d) information on pension benefit projections based on the retirement age as specified in letter a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;
- e) information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the pension scheme;
- f) information on the contributions paid by the sponsoring undertaking and the member into the pension scheme, at least over the last 12 months, taking into consideration the specific nature of the pension scheme;
- g) a breakdown of the costs deducted by the IORP at least over the last 12 months;
- h) information on the funding level of the pension scheme as a whole.

For the purposes of determining the assumptions of the projections referred to in letter d) of the first subparagraph, the IORPs funds shall take into account the following rules:

- a) they shall favour official sources;
- b) they shall choose their sources, taking account of the quality and timeliness of the data;
- c) they shall take appropriate measures to identify and manage any possible conflicts of interest related to the choice of sources;
- d) they shall be able to provide information on the sources, the methods and procedures they use.

Those rules shall be applied by IORPs to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

6. The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

- a) further practical information about the member's options provided under the pension scheme;
- b) the information referred to in Articles 29 and 30 of Directive (EU) 2016/2341;
- c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;
- d) information on the level of benefits, in case of cessation of employment.

7. For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the Pension Benefit Statement shall indicate where additional information is available.

#### Article 13. Information to be given to prospective members

1. IORPs shall ensure that prospective members of a pension scheme are informed about:

- a) any relevant options available to them including investment options;
- b) the relevant features of the pension scheme including the kind of benefits;
- c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach;
- d) where further information is available.

2. The information referred to in paragraph (1) shall be provided to prospective members:

- a) before joining a scheme if they are not automatically enrolled in a pension scheme; or
- b) promptly after their enrolment if it takes place automatically.

3. Where members bear investment risk and can take investment decisions, the IORP shall provide prospective members with information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years and information on the structure of costs borne by members and beneficiaries.

#### Article 14. Information to be given to members during the pre-retirement phase

In addition to the Pension Benefit Statement, IORPs shall provide each member, in due time before the retirement age as specified in letter a) of Article 12(6), with information about the benefit pay-out options available in taking their retirement benefits.

The information referred to in the first subparagraph shall be provided to each member that requests it.

#### Article 15. Additional information to be given on request to members, beneficiaries and sponsoring undertakings

1. On request of a member, a beneficiary or their representatives, the IORP shall provide the following additional information:

- a) the annual accounts and the annual reports referred to in Article 29 of Directive (EU) 2016/2341;
- b) the statement of investment-policy principles referred to in Article 30 of Directive (EU) 2016/2341;
- c) any further information about the assumptions used to generate the projections appearing in the Pension Benefit Statement.

2. Without prejudice to more binding provisions in the pension rules of the pension scheme or the Pension Benefit Statement, each member shall also, on request, receive detailed information on:

- a) the target level of the retirement benefits, if applicable;
- b) the level of benefits in case of cessation of employment;
- c) where the member bears the investment risk, the range of investment options,



- if applicable, and the actual investment portfolio as well as information on risk exposure and costs related to the investments;
- d) the arrangements relating to the transfer of pension rights to another IORP in the event of termination of the employment relationship.
3. Sponsoring undertakings may also, on request, be provided with the annual accounts and annual reports of the IORP.

Article 16. Information to be given to beneficiaries during the pay-out phase

1. IORPs shall periodically provide beneficiaries with information about the benefits due and the corresponding pay-out options.
2. IORPs shall inform beneficiaries without delay after a final decision has been taken resulting in any reduction in the level of benefits due, and three months before that decision is implemented.
3. When a significant level of investment risk is borne by beneficiaries in the pay-out phase, beneficiaries shall receive appropriate information regularly."

**Article 71.**

A new Chapter 6 shall be inserted after Article 5 of the same law, which shall read as follows:

"Chapter 6: Professional secrecy and exchange of information

Article 17. Professional secrecy

1. All persons acting, or having acted, on behalf of the IGSS, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts appointed by the CSSF, are bound by the professional secrecy.

Such secrecy means that the confidential information they receive in the performance of their duties may not be divulged to any person or authority, except in summary or consolidated form, thus ensuring that no IORP, no asset manager, liability manager, or no depositary can be identified individually, without prejudice to cases covered by criminal law.

2. Paragraph (1) shall not preclude the IGSS from divulging, within the European Union, confidential information in civil or commercial proceedings when a pension scheme is being wound up.

Article 18. Use of confidential information

The IGSS receiving confidential information under this law, may use it only in the course of its functions and only for the following purposes:

- a) to check that the conditions for taking up occupational retirement provision business under this law are met by IORPs before commencing their activities;
- b) to facilitate the monitoring of compliance with the provisions of Article 6(2) and of Chapter 5 of this law;
- c) to impose corrective measures, including administrative sanctions;
- d) in administrative appeals against decisions taken by the IGSS; or
- e) in court proceedings regarding the provisions of this law.

#### Article 19. Exchange of information between authorities

1. Articles 17 and 18 shall not preclude any of the following:

- a) in Luxembourg, in the discharge of their supervisory functions, the exchange of information between the IGSS and
  - i) the Commission de Surveillance du Secteur Financier and the Commissariat aux Assurances;
  - ii) the Comité du risque systémique (Systemic Risk Committee);
  - iii) bodies involved in the winding up of a pension scheme and in other similar procedures;
  - iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
  - v) persons responsible for carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;
- b) the exchange of information between the IGSS and the asset managers and liability managers of IORPs;
- c) within the European Union, the exchange of information between the IGSS and the competent authorities of other Member States, in the discharge of their supervisory functions under Directive (EU) 2016/2341;
- d) the transmission of information necessary for the bodies involved in the winding up of a pension scheme to perform their duties.

2. Articles 17 and 18 shall not preclude the exchange of information, within the European Union, between the IGSS and the following authorities or persons:

- a) the authorities responsible for overseeing the bodies involved in the winding up of pension schemes and other similar procedures;
- b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions;
- c) independent actuaries of IORPs carrying out supervision of those IORPs and the bodies responsible for overseeing such actuaries.

#### Article 20. Conditions for the exchange of information

1. The exchange of information under Article 19 and the transmission of information under Article 21 shall be subject to the following conditions:

- a) the information shall be exchanged or transmitted for the purpose of carrying out oversight or supervision;
- b) the information shall be subject to the obligation of professional secrecy, which offers guarantees equivalent to that laid down in Article 17;
- c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

2. Article 18 shall not preclude the IGSS from exchanging, with the aim of strengthening the stability, and integrity, of the financial system, information with the authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings.

The following conditions must at least be fulfilled:

- a) the information must be intended for the purpose of detection of breaches and investigation as referred to in the first subparagraph;
- b) the information received must be subject to the obligation of professional secrecy which offers guarantees equivalent to that referred to in Article 17;

c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

3. Where, in Luxembourg, the authorities or bodies referred to in the first subparagraph of paragraph (2) perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph of paragraph (2) may be extended to such persons under the conditions specified in the second subparagraph of paragraph (2).

#### Article 21. Transmission of information to central banks, monetary authorities, European Supervisory Authorities and the European Systemic Risk Board

1. Articles 17 and 18 shall not prevent the IGSS from transmitting information to the following entities for the purposes of the exercise of their respective tasks:

- a) central banks and other bodies with a similar function in their capacity as monetary authorities;
- b) other public authorities responsible for overseeing payment systems, where appropriate;
- c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

2. Moreover, this chapter shall not prevent the authorities referred to in paragraph (1) from communicating to the IGSS such information as they may need for the purposes of Article 18.

3. Information received by the IGSS, in accordance with paragraphs (1) and (2) shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 17.

#### Article 22. Applicability

This chapter shall apply to the IGSS as host authority of IORPs.

It shall apply without prejudice to Articles 20 and 30 of the Law of 8 June 1999 relating to supplementary pension schemes, as amended.”.

(...)

## **Chapter IV - Amendment of the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products**

### **Article 96.**

In the second subparagraph of Article 2 of the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products, the words "31 December 2019" shall be replaced by the words "31 December 2021".

## **Chapter 1 - Definitions**

### **Article 1**

- (1) For the purposes of this law:
  - (a) "National authorities" means the following authorities, administrations and entities:
  - (b) the General State Prosecutor, State Prosecutors, and members of their State Prosecution Offices;
  - (c) Investigative Judges;
  - (d) the Financial Intelligence Unit, hereinafter referred to as "CRF";
  - (e) the judicial police officers referred to in Article 10 of the Code of Criminal Procedure and approved by the General Director of the Grand-Ducal Police;
  - (f) the Financial Supervisory Authority, hereinafter referred to as the "CSSF";
  - (g) the Commissariat aux Assurances (Insurance Supervisory Authority), hereinafter referred to as "CAA";
  - (h) the Administration de l'enregistrement, des domaines et de la TVA (Registration Duties, Estates and VAT Authority), hereinafter referred to as "AED";
  - (i) the Customs and Excise Administration;
  - (j) the State Intelligence Service;
  - (k) the Luxembourg Inland Revenue Authority;
  - (l) the Ministry of Foreign and European Affairs within the framework of its specific competences in the field of the fight against money laundering and terrorist financing;
  - (m) the Ministry of Finance within the framework of its specific powers in the field of the fight against money laundering and terrorist financing;
  - (n) the Office of Export, Import and Transit Control acting in the framework of issuing authorisations for import, export, transfer, transit, brokerage, technical assistance and intangible transfer of technology;
- (2) "supervisory authorities" means the supervisory authorities as defined in Article 1(16) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

- (3) “beneficial owner” means the beneficial owner as defined in Article 1(7) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- (4) “Member State” means a Member State of the European Union. Member States of the European Union shall be assimilated to the Member States of the European Union if they are parties to the Agreement on the European Economic Area other than the Member States of the European Union, within the limits defined by that agreement and the acts relating thereto;
- (5) “Fiduciaire” means the person who, in the context of a fiducie and under the obligations determined by the parties, becomes the owner of the property forming the fiduciary estate;
- (6) “fiducie” means a fiducie agreement subject to the Law of 27 July 2003 on trusts and fiduciary agreements, as amended;
- (7) “self-regulatory bodies” means the organisations referred to in point 21 of Article 1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- (8) “professionals” means the persons referred to in Article 2 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- (9) “Register of Fiducies and Trusts” means the file in which information on fiducies and trusts is kept;
- (10) “Trust” means a trust within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition, signed at The Hague on July 1, 1985, and approved by the amended Law of 27 July 2003;
- (11) “Trustee” means a trustee within the meaning of the Convention on the Law Applicable to Trusts and on their Recognition, signed at The Hague on 1 July 1985, and approved by the amended Law of 27 July 2003;
- (12) “Express trust” means a trust clearly established by the settlor, usually by means of a document such as a written instrument creating the trust. This type of trust is opposed to trusts which arise by operation of law and which do not result from the clear intention or decision of a settlor to create a trust or a similar legal arrangement.

(2) For the purposes of this law, fiducies and trusts include legal arrangements that are similar in structure or function to fiducies and trusts.

A legal arrangement is considered to have a structure or functions similar to those of a trust and a trust when it enables a person to create legal relationships that place property under the control of a third party in the interest of a beneficiary or for a specified purpose and when it has the following characteristics:

1. the property placed under the control of the third party constitutes a separate estate and does not form part of the estate of the third party;
2. the title to the property placed under the control of the third party is established in the name of the third party or of another person on behalf of the third party;

3. the third party is vested with the power and charged with the obligation, for which he or she is accountable, to administer, manage or dispose of the property placed under his or her control in accordance with the terms of the legal arrangement and the special rules imposed on the third party by law.

For the purposes of this law, trustees and fiduciaires are persons who occupy an equivalent position in a legal arrangement not referred to in paragraph 1, point 6, and which has a structure or functions similar to those of a fiducie and trust.

## **Chapter 2 - Obtaining and Maintaining Beneficial Ownership Information by Trustees and Fiduciaires**

### **Article 2**

(1) Trustees and fiduciaires shall obtain and keep, at the place of administration of the express trust or fiducie, information on the beneficial owners of any express trust administered in the Grand Duchy of Luxembourg and of any fiducie for which they act as trustee or fiduciaire. This information includes the identity of:

1. the settlor(s);
2. the trustee(s) or fiduciaire(s);
3. the protector(s), if any;
4. the beneficiaries or class of beneficiaries; and
5. any other natural person exercising effective control over the trust or fiducie.

(2) The information referred to in paragraph 1 shall be adequate, accurate and up-to-date. It shall be updated within a reasonable time after any change.

(3) The persons referred to in points (1) to (5) of paragraph 1 shall provide trustees and fiduciaires with all information necessary to enable them to comply with their obligations under Article 15(1) and (2).

### **Article 3**

(1) The trustees of express trusts administered in the Grand Duchy of Luxembourg and the fiduciaires shall obtain and keep basic information on other professionals and entities governed by foreign law which, if their registered office were located in the Grand Duchy of Luxembourg, would be considered as professionals, which provide services to the trust or fiducie or which enter into a business relationship with the trust or fiducie. This information is accurate and up to date. It is updated within a reasonable period of time after any change.

The basic information referred to in the first paragraph must enable trustees and fiduciaires to identify the persons concerned and shall include in the case of a natural person the information referred to in Article 14(2), point 1, letters a) to c) and h) to (i) and, in the case of a legal person, the information referred to in Article 14(2), point 2, letters a) to c).

(2) The persons referred to in paragraph 1 shall provide the trustees and fiduciaires with all the information necessary to enable them to fulfil their obligations under paragraph 1.

#### **Article 4**

Trustees and fiduciaires retain the information referred to in Articles 2 and 3 for five years after ceasing to be involved in the trust or fiducie.

#### **Article 5**

(1) Trustees and fiduciaires shall provide to the national authorities for the purposes of their duties, upon request, the information referred to in Articles 2 and 3 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of the information on beneficial owners kept in such a register.

(2) Trustees and fiduciaires shall provide to the self-regulatory bodies for the purposes of their tasks under this law and the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, upon request, the information referred to in Articles 2 and 3 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate proving registration in an equivalent register set up by another Member State or an extract of the information on beneficial owners kept in such a register.

#### **Article 6**

(1) Trustees and fiduciaires shall declare their status and provide professionals, in due time, with the information referred to in Article 2 and, where applicable, the unique registration number referred to in Article 13(3), or a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of information on beneficial owners kept in such a register where, in their capacity as trustees or fiduciaries, they enter into a business relationship with them or carry out, on an occasional basis, a transaction the amount of which exceeds the thresholds laid down in Article 3(1), point s b), ba) and bb) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

(2) In the cases referred to in paragraph 1, trustees and fiduciaires shall provide professionals, upon request, for the sole purpose of implementing their due diligence obligations under the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, with information on the trust assets and the fiduciary estate held or managed in the context of the business relationship.



### Article 7

The CSSF, the CAA and the self-regulatory bodies shall monitor the compliance with the obligations provided for in this chapter by the persons for whom they are respectively responsible for ensuring compliance with the professional obligations, in the exercise of their professional activity, relating to the fight against money laundering and terrorist financing in accordance with Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

The AED supervises compliance with the obligations provided for in this chapter by professionals, trustees and fiduciaires who are established or resident in the Grand Duchy of Luxembourg and who are not subject to the supervisory power of another supervisory authority or self-regulatory body pursuant to paragraph 1.

### Article 8

(1) For the purposes of applying this chapter, the supervisory authorities are vested with all the supervisory and investigative powers necessary for the exercise of their functions within the limits defined by this chapter.

The powers of the supervisory authorities referred to in paragraph 1 are as follows:

1. to have access to any document in any form whatsoever and to receive or take copies thereof;
2. to request information from any person and, if necessary, to summon any person subject to their respective powers of supervision in accordance with Article 7 and to hear him or her in order to obtain information;
3. to carry out on-site inspections or investigations, including the seizure of any document, electronic file or other thing that appears useful for ascertaining the truth, from the persons subject to their respective powers of supervision in accordance with Article 7;
4. to order the persons subject to their respective powers of supervision in accordance with Article 7 to put an end to any practice contrary to the provisions referred to in Article 9(1), and to refrain from repeating it, within a period of time to be determined by them.

(2) The AED shall have the power to order:

- (a) the persons referred to in Article 2(1), points 1 to 5, to comply with their obligations under Article 2(3);
- (b) the persons referred to in Article 3(1), to comply with their obligations under Article 3(2).

By way of derogation from the paragraph 1, the power of injunction provided for therein shall be exercised by the CSSF and the CAA in respect of the persons subject to their respective powers of supervision in accordance with Article 7.

(3) When issuing the injunction provided for in paragraph 1, point 4, or in paragraph 2, the supervisory authorities concerned may impose a periodic penalty payment against the person subject to such measure in order to induce that person to comply with the injunction. The amount of the periodic penalty payment per day in for non-compliance may not exceed EUR 1 250, but the total amount imposed for non-compliance may not exceed EUR 25 000.

(4) The decision to issue an injunction in accordance with paragraph 1, point 4, or paragraph 2 and, where appropriate, to impose a periodic penalty payment in accordance with paragraph 3, shall be taken, in the case of fiduciaires subject to the supervisory powers of the AED in accordance with Article 7 and in the case of the persons referred to in paragraph 2, by the Director of the AED or his or her delegate.

(5) Trustees and fiduciaires shall provide, upon request, to the national authorities referred to in Article 1(2), point 1, letters a) to c), and to the supervisory authorities, any information they hold on any fiducie or trust for which they serve as trustees or fiduciaires.

(6) Professionals shall, upon request, provide the national authorities referred to in Article 1(1), point 1, letters a) to c), and the supervisory authorities with any information they hold on any fiducie or any trust, including:

1. the beneficial owners of a trust or fiducie;
2. the residence of the trustee or fiduciaire; and
3. any assets held or managed in connection with any trustee or fiduciaire with whom they have a business relationship or for whom they perform an occasional operation.

## **Article 9**

(1) The supervisory authorities shall have the power to impose the administrative sanctions and to take the other administrative measures provided for in paragraph 3 in respect of trustees or fiduciaires subject to their respective powers of supervision in accordance with Article 7 and, where appropriate, in respect of the members of their management bodies, their effective directors or other persons responsible for non-compliance with their obligations, where such trustees or fiduciaires:

1. fail to obtain the information referred to in Article 2(1), to ensure that such information is adequate, accurate and up-to-date or to update such information in accordance with Article 2(2);
2. fail to obtain the information referred to in Article 3, to ensure that such information is adequate, accurate and up to date, or to update such information in accordance with the provisions of Article 3;
3. fail to maintain the information referred to in Articles 2 and 3 in accordance with the provisions of Article 4;

4. fail to fulfil their obligation to provide, in accordance with Article 5, the national authorities with the information referred to in that Article, or knowingly provide those authorities with information referred to in that Article which is inaccurate or out-of-date
5. fail to declare their status or to provide the information referred to in Article 6(1), to traders in accordance with that paragraph;
6. fail to comply with their obligation to provide, in accordance with Article 8(5), the supervisory authorities or the CRF with the information referred to in that paragraph, or knowingly provide those authorities with information referred to in that paragraph which is inaccurate or out-of-date.

(2) The supervisory authorities shall have the power to impose the administrative sanctions and to take the other administrative measures provided for in paragraph 3 in respect of the professionals for whom they are respectively responsible for ensuring compliance with the professional obligations relating to the fight against money laundering and terrorist financing in accordance with Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, as well as, where applicable, in respect of members of their management bodies, their effective directors or other persons responsible for non-compliance, where those professionals fail to comply with their obligation to provide, in accordance with Article 8(6), the supervisory authorities or the CRF with the information referred to in that paragraph or knowingly provide those authorities with information referred to in that paragraph which is inaccurate or not up-to-date.

(3) In the cases referred to in paragraphs 1 and 2, the supervisory authorities shall have the power to impose the following administrative sanctions and to take the following administrative measures:

1. a warning;
2. a reprimand;
3. a public statement specifying the identity of the natural or legal person and the nature of the violation; or
4. administrative fines of up to twice the amount of the benefit derived from the violation, where this can be determined, or up to a maximum of EUR 1 250 000.

(4) The supervisory authorities may impose a fine of between EUR 250 and EUR 250 000 on natural and legal persons who obstruct the exercise of their powers under Article 8(1), who fail to comply with their orders provided for in Article 8(1), point 4, or Article 8(2), or who knowingly provide them with documents or other information which are found to be incomplete, incorrect or false in response to requests based on Article 8(1).

(5) When determining the type and level of administrative penalties, the supervisory authorities shall take into account all relevant circumstances, including, where appropriate:

1. the seriousness and duration of the violation;
2. the degree of responsibility of the natural or legal person held liable for the violation;
3. the financial situation of the natural or legal person held liable for the violation, for example as reflected in the total turnover of the legal person held liable or in the annual income of the natural person held liable;
4. the benefit derived from the violation by the natural or legal person held liable, to the extent that this can be determined;
5. the damage suffered by third parties as a result of the violation, to the extent that it can be determined;
6. the degree of cooperation of the natural or legal person held liable for the violation with the supervisory authorities and the CRF;
7. previous violations committed by the natural or legal person held liable.

(6) The costs incurred for the forced recovery of fines shall be borne by the persons on whom the fines were imposed.

(7) The decision to impose a sanction or other administrative measure in accordance with the provisions of this Article shall be taken, with respect to the persons subject to the supervisory power of AED pursuant to Article 7 and the persons referred to in Article 8(2), by the Director of AED or his or her delegate.

(8) The recovery by AED of amounts due resulting from sanctions and other administrative measures imposed by the Director of AED or his or her delegate in accordance with the provisions of this Article, shall be carried out in accordance with the procedures laid down in Article 8-9 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

(9) The supervisory authorities shall publish any decision that has acquired the force of *res judicata* or finality and imposing a sanction or administrative measure on account of one or more of the breaches referred to in paragraphs 1 and 2 on their official website immediately after the person sanctioned has been informed of such decision. This publication shall mention the type and nature of the infringement committed and the identity of the person responsible.

The supervisory authorities shall assess on a case-by-case basis the proportionality of the publication of the identity of the responsible persons referred to in paragraph 1 or of their personal data. Where they consider such publication to be disproportionate or where such publication jeopardises the stability of the financial markets or an ongoing inquiry, the supervisory authorities:

1. delay the publication of the decision to impose a sanction or administrative measure until the reasons for not publishing it cease to exist;

2. publish the decision to impose a sanction or administrative measure on the basis of anonymity, if such anonymous publication guarantees effective protection of the relevant personal data; if it is decided to publish a sanction or administrative measure on the basis of anonymity, the publication of the relevant data may be deferred for a reasonable period of time if it is anticipated that by the end of that period the reasons for anonymous publication will have ceased to exist;
3. do not publish the decision to impose a sanction or administrative measure, when the options envisaged in points 1 and 2 are considered insufficient:
  - (i) to avoid jeopardising the stability of the financial markets; or
  - (ii) to ensure proportionality in the publication of the decision, where the measures concerned are considered to be minor.

The supervisory authorities shall ensure that any document published in accordance with this paragraph remains on their official website for five years after its publication. However, the personal data referred to in the published document shall only be kept on the official website of the supervisory authority for a maximum period of 12 months.

#### **Article 10**

Against decisions taken by the supervisory authorities pursuant to this chapter, an appeal for reversal shall be lodged with the Administrative Tribunal. The appeal must be lodged under penalty of foreclosure within one month from the notification of the contested decision.

#### **Article 11**

As regards trustees or professionals subject to the supervisory power of a self-regulatory body, the obligations provided for in this chapter are considered as professional obligations arising from the legislation on the fight against money laundering and terrorist financing within the meaning of Articles 71, point 1a and 100-1 of the Law of 9 December 1976 on the organisation of the notarial profession, as amended, Articles 31(1), point 1a, 44-1 and 46-1 of the Law of 4 December 1990 on the organisation of Court Bailiffs, as amended, Articles 17, 19, point 6, and 30-1 of the Law of August 10, 1991 on the profession of lawyer, as amended, Articles 11, letter f), and 38-1 of the Law of 10 June 1999 organising the profession of Chartered Professional Accountant, as amended, and Articles 62, letter d), and 78(1a), of the Law of 23 July 2016 on the audit profession, as amended.

### **Chapter 3 - Creation of the Register of Fiducies and Trusts**

#### **Article 12**

A register, to be known as the "Register of Fiducies and Trusts", shall be established at the AED, the purpose of which shall be to keep and make available the

information referred to in Article 14 on express fiducies and trusts subject to the obligation to register in accordance with Article 13.

## **Chapter 4 - Registration and conservation of information in the Register of Fiducies and Trusts**

### **Article 13**

(1) Every fiducie and every express trust of which a trustee or fiduciaire is established or resides in the Grand Duchy of Luxembourg shall be registered with the Register of Fiducies and Trusts.

Where the fiduciaries of a fiducie or the trustees of an express trust referred to in paragraph 1 are established or resident in different Member States, the submission to the AED by the trustee established or resident in the Grand Duchy of Luxembourg of a certificate providing evidence of registration in an equivalent register established by another Member State or an extract of the information on the beneficial owners kept in such a register shall be considered sufficient to consider that the registration requirement is fulfilled.

(2) Any fiducie and any express trust whose fiduciaires or trustees are not established either in the Grand Duchy of Luxembourg or in another Member State shall be registered in the Register of Fiducies and Trusts where the trustee or fiduciaire, on behalf of the trust or fiducie, enters into a business relationship in the Grand Duchy of Luxembourg with a professional or acquires real estate which is situated in the Grand Duchy of Luxembourg.

Where the fiduciaries of such a fiducie or express trust enters into multiple business relationships in different Member States in the name of the fiducie or express trust, a certificate providing evidence of registration in an equivalent register set up by another Member State or an extract of the information on the beneficial owners kept in such a register shall be considered sufficient to consider that the registration requirement is fulfilled.

(3) Each fiducie and express trust registered in the Register of Fiducies and Trusts shall be assigned a unique registration number.

### **Article 14**

(1) The registration referred to in Article 13(1) or (2), shall specify:

1. the registration number;
2. the name of the fiducie or express trust, if any;
3. the date on which the fiducie or express trust was entered into;
4. the information referred to in paragraph 2 for each beneficial owner of the trust or fiducie;

5. whether the fiducie or express trust holds or has a controlling interest in a company or other legal entity other than those referred to in Article 30(1), of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, hereinafter referred to as “EU Directive 2015/849”, through direct or indirect ownership, including through bearer shares or through control by other means.

(2) The following information shall be recorded and kept in the Register of Fiducies and Trusts for each beneficial owner of the fiducie or express trust:

1. in the case of a natural person:
  - (a) the name;
  - (b) the first names;
  - (c) the nationalities;
  - (d) day of birth;
  - (e) the month of birth;
  - (f) the year of birth;
  - (g) the place of birth;
  - (h) country of residence;
  - (i) the precise home address or the precise business address stating:
    - (i) for addresses in the Grand Duchy of Luxembourg: the habitual residence listed in the national Register of Natural Persons or, for business addresses, the municipality, street and number of the building listed in the national register of municipalities and streets, as provided for in Article 2, letter g), of the Law of 25 July 2002 on the reorganisation of the Land Registry and Topography Administration, as amended, as well as the postal code;
    - (ii) for addresses abroad: the municipality, street and number of the building abroad, the postal code and the country;
  - (j) for persons registered in the national Register of Natural Persons: the identification number as provided for by the Law of 19 June 2013 on the identification of natural persons, as amended;
  - (k) for non-resident persons not registered in the national Register of Natural Persons: a foreign identification number;
  - (l) the nature of the involvement of the person concerned in the fiducie or express trust and the extent of the beneficial interests held.
2. in the case of a legal person entered in a register in accordance with Article 30 of Directive (EU) 2015/849:
  - (a) the name of the legal person and, where applicable, the abbreviation and the commercial sign used;
  - (b) the precise address of the registered office of the legal person;
  - (c) in the case of



- (i) a legal person registered with the Trade and Company Register of the Grand Duchy of Luxembourg, the registration number;
  - (ii) a legal person not registered with the Trade and Company Register of the Grand Duchy of Luxembourg, where applicable, the name of the register in which the legal person is registered and the registration number in the register, if the legislation of the State to which it is subject provides for such a number.
- (d) the nature of the involvement of the person concerned in the fiducie or express trust and the extent of the beneficial interests held.

By way of derogation from the first paragraph, where the persons referred to in Article 2, paragraph 1, point 4, are designated by characteristics or category, the entry shall specify that such persons are designated by characteristics or category and shall provide a description of such characteristics or class.

#### **Article 15**

(1) The trustees and fiduciaires of express fiducies and trusts that must be registered with the Register of Fiducies and Trusts in accordance with Article 13 shall electronically register the information referred to in Article 14 and amend the registered information within one month at the latest of the event that makes it necessary. They shall inform the AED by electronic means within the same period of time after the termination of the trust or fiducie or after the grounds for the registration of the information referred to in Article 13, paragraphs 1 or 2 have ceased to exist.

(2) The information referred to in Article 14 shall be accurate and up-to-date.

#### **Article 16**

(1) The AED is a data controller within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as "Regulation (EU) 2016/679".

(2) The AED is responsible for the safeguarding, administrative management and provision of the information recorded on fiducies and express trusts in accordance with the provisions of this law.

(3) The AED is not responsible for the content of the registered information.

(4) The registration, modification, storage, administration and availability of information on express fiducies and trusts and the assignment of the unique registration number referred to in Article 13, paragraph 3, in accordance with the provisions of this law shall be carried out through automated and secure processes.

(5) The State Information and Technology Centre is responsible for the computerised management of the file within the meaning of Regulation (EU) 2016/679.

The State Information and Technology Centre is a subcontractor of the file within the meaning of the EU Regulation 2016/679.

#### **Article 17**

The entries and amendments referred to in Article 15(1), shall be made by electronic means in accordance with the procedures to be laid down by grand-ducal regulation.

#### **Article 18**

(1) Any application for registration that is incomplete or does not comply with the legal or regulatory provisions shall be refused.

(2) If the application for registration is refused for one of the reasons referred to in paragraph 1, the applicant shall regularize his or her application by supplementing, amending or withdrawing the information which is the subject of the application for registration, or by submitting the supporting documents proving the said information.

(3) The applicant shall have 15 days from the date of refusal to comply.

#### **Article 19**

Any person having access to the information recorded in the Register of Fiducies and Trusts shall promptly report to AED any discrepancies that he or she encounters between the information on beneficial owners available in the Register of Fiducies and Trusts and the information on beneficial owners available to him or her.

In the cases referred to in paragraph 1, the AED shall use its powers under Articles 21 and 22 to ensure that the information in the Register of Fiducies and Trusts is updated.

Until the relevant information has been updated, a specific entry shall be made in the Register of Fiducies and Trusts and the persons to whom access to such information is granted pursuant to Chapter 5 shall be informed that an update of the information has been requested.

#### **Article 20**

(1) The entry referred to in Article 13, paragraphs 1 or 2, and the information referred to in Article 14(1), points 1, 2, 3 and 5 shall be kept by the Register of Fiducies and Trusts for five years after the termination of the fiducie or express trust or after the grounds for the entry of the information referred to in Article 13(1) or (2), have ceased to exist.

(2) The information referred to in Article 14(2), shall be kept by the Register of Fiducies and Trusts for five years after the termination of the involvement of the person concerned in the fiducie or express trust.

#### **Article 21**

(1) The AED shall monitor compliance with the obligations under this chapter by the trustees and fiduciaires referred to in Article 15(1).

(2) For the purposes of this chapter, the AED is vested with the power:

1. to have access to any document relating to a fiducie or express trust that is required to be registered with the Register of Fiducies and Trusts in accordance with Article 13 and that may provide information in any form about the beneficial owners of the fiducie or express trust and to receive or take copies thereof;
2. to request from other supervisory authorities information available to them relating to the identity of the beneficial owners of any express trust to be entered in the Register of Fiducies and Trusts in accordance with Article 13;
3. to instruct the Trustees and Fiduciaires referred to in Article 15(1), to enter the information referred to in Article 14 in the Register of Fiducies and Trusts or to update the information referred to in Article 14 entered in the Register of Fiducies and Trusts
4. to instruct the trustees and fiduciaires referred to in Article 15(1), to cease and desist from any practice contrary to the provisions referred to in Article 22(1), within the period of time fixed by it.

(3) The decision to issue an injunction in accordance with paragraph 2, points 3 or 4, shall be taken by the Director of the AED or his or her delegate.

(4) When issuing an injunction pursuant to paragraph 2, points 3 or 4, the AED Director or his or her delegate may impose a periodic penalty payment against the person subject to the injunction in order to induce that person to comply with the injunction. The amount of the periodic penalty payment per day for non-compliance may not exceed EUR 1 250, but the total amount imposed for non-compliance may not exceed EUR 25 000.

#### **Article 22**

(1) The Director of the AED or his or her delegate may impose the administrative sanctions and take the other administrative measures provided for in paragraph 2 on the trustees and fiduciaires referred to in Article 15(1), as well as on the members of their management bodies, their effective directors or other persons responsible for the failure to comply with the obligations, where such trustees or fiduciaires:

1. fail to enter the information referred to in Article 14 in the Register of Fiducies and Trusts within the period referred to in Article 15(1);

2. fail to amend, within the period referred to in Article 15(1), the information referred to in Article 14 entered in the Register of Fiducies and Trusts within the period referred to in Article 15(1);
3. knowingly make an entry in the Register of Fiducies and Trusts of information referred to in Article 14 that is inaccurate or out-of-date.

(2) In the cases referred to in paragraph 1, the AED Director or his or her or her delegate may impose the following administrative penalties and take the following administrative actions:

1. a warning;
2. a reprimand;
3. a public statement specifying the identity of the person or entity and the nature of the violation;
4. administrative fines of up to twice the amount of the benefit derived from the violation, where this can be determined, or of up to EUR 1 250 000.

(3) The Director of the AED or his or her delegate may impose a fine of between EUR 250 and EUR 250 000 on natural and legal persons who obstruct the exercise of the powers provided for in Article 21(1), points 1, 3 and 4, or who fail to comply with the injunctions issued under Article 21(2), point 3 or 4.

(4) The costs incurred for the enforced recovery of fines shall be borne by the persons on whom such fines have been imposed.

(5) The recovery by the AED of amounts due resulting from sanctions and other administrative measures imposed by the Director of AED or his or her delegate in accordance with the provisions of this chapter shall be carried out in accordance with the procedures provided for in Article 8-9 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

### **Article 23**

In determining the type and level of administrative sanctions, the Director of the AED or his or her delegate shall take into account all relevant circumstances, including, where appropriate:

1. the seriousness and duration of the violation;
2. the degree of responsibility of the person or entity held liable for the violation;
3. the financial situation of the natural or legal person held liable for the violation, e.g. as shown by the total turnover of the legal person held liable or the annual income of the natural person held liable;
4. the benefit derived from the violation by the natural or legal person held liable, to the extent that this can be determined;
5. the damage suffered by third parties as a result of the violation, to the extent that it can be determined;
6. the degree of cooperation of the natural or legal person held liable for the violation with AED;

7. previous violations committed by the natural or legal person held liable.

#### **Article 24**

An appeal for reversal of the decisions taken by the AED under this chapter shall be filed with the Administrative Tribunal. The appeal must be filed under penalty of foreclosure within one month from the notification of the contested decision.

### **Chapter 5 - Access to the Register of Fiducies and Trusts**

#### **Article 25**

(1) In the performance of their duties, national authorities shall have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

(2) The implementing rules concerning the granting of access by the agents of the national authorities are laid down by grand-ducal regulation.

#### **Article 26**

(1) In the performance of their supervisory role in the fight against money laundering and terrorist financing, the self-regulatory bodies shall have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

(2) In the context of the application of customer due diligence measures in accordance with Articles 3 to 3-3 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, professionals have access to the information referred to in Article 14 entered in the Register of Fiducies and Trusts.

#### **Article 27**

(1) Without prejudice to Article 31, access to the information concerning a fiducie or an express trust referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d), and subparagraph 2, shall be granted, on the basis of a case-by-case decision by the AED Director or his or her delegate, to any natural or legal person that demonstrates a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

(2) Any natural or legal person that demonstrates a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing may request access to the information referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d) and paragraph 2, on the basis of a duly motivated request for access addressed to the AED.

The request for access may only relate to a fiducie or express trust by request and may only relate to a search by registration number, name or date of conclusion and the surnames and first names, or the business name, as the case may be, of the settlor of the fiducie or express trust.

The request shall specify, failing which it shall be void:

1. if the claimant is a natural person: the surnames, first names, nationalities, date of birth, place of birth and domicile or residence of the claimant; if the claimant is a legal person: the name, the precise address of the registered office and the person or body qualified to represent it in court;
2. for each fiducie or express trust to which the claim relates:
  - (a) the registration number; or
  - (b) the business name; or
  - (c) the date of conclusion and the surname and first names, or the name, if any, of the settlor of the fiducie or express trust;
3. the basis of the request and the uses for which access to the information is sought.

In support of the request, any document that could justify the existence of a legitimate interest shall be attached.

(3) The Director of the AED or his or her delegate shall decide on the merits in assessing the existence of a legitimate interest in the prevention of the use of the financial system for the purpose of money laundering or terrorist financing of the request for access and shall notify the requesting natural or legal person and each of the natural persons referred to in Article 2(1) concerned of his or her decision.

In assessing the existence of a legitimate interest, the Director of the AED or his or her delegate shall take into account any relevant circumstances that may indicate whether access to the information is requested in the context of the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

The AED Director or his or her delegate shall take into account the protection of the fundamental rights of individuals, in particular the right to privacy and the right to protection of personal data when making decisions.

(4) In the event of a favourable decision by the AED Director or his or her delegate, the AED shall provide the requesting natural or legal person with an extract containing the information referred to in paragraph 1 at the earliest one month after the decision. In the event of an appeal against the decision of the AED Director or his or her or her delegate in accordance with the provisions of paragraph 5, the AED shall refrain from transmitting the extract until the decision has become final. The extract shall indicate the use for which access is granted. The requesting natural or legal person may not use the information for purposes other than those specified in the extract.

(5) Against the decision of the AED Director or his or her delegate referred to in paragraph 3, an appeal for reversal shall be lodged with the Administrative Tribunal. It must be lodged within one month of notification.

(6) The provision of the information referred to in paragraph 1 is subject to the payment of a fee, the amount of which is determined by grand-ducal regulation. The amount of the fee shall not exceed the administrative costs of making the information available, including the costs of maintaining and developing the Register of Fiducies and Trusts.

#### **Article 28**

Any natural or legal person who has used the information to which he or she has had access on the basis of this chapter for purposes other than those for which such access has been granted in accordance with this chapter shall be punished by a fine of between EUR 1 250 and EUR 1 250 000.

#### **Article 29**

(1) The information referred to in Article 14(2), subparagraph 1, point 1, letters a) to c), e), f), h) and l), subparagraph 1, point 2, letters a), c) and d) and paragraph 2, relating to a fiducie or express trust which holds or has a controlling interest in a company or other legal entity other than those referred to in Article 30, paragraph 1, of Directive (EU) 2015/849, through direct or indirect ownership, in particular by means of bearer shares or through control by other means, shall be accessible to any natural or legal person who submits a written application relating to such fiducie or express trust.

(2) The provision of the information referred to in paragraph 1 is subject to the payment of a fee, the amount of which is determined by grand-ducal regulation. The amount of the fee shall not exceed the administrative costs related to the provision of the information, including the costs of maintenance and development of the Register of Fiducies and Trusts.

#### **Article 30**

(1) Access for consultation of the Register of Fiducies and Trusts is carried out in accordance with the terms of access laid down by grand-ducal regulation.

(2) The computer system by which access to the Register of Fiducies and Trusts is carried out shall be set up in such a way that access to the files is secured by means of strong authentication, that the information relating to the person having made the consultation, the information consulted, the date, time and reference of the file in which the consultation was made and the precise reason for the consultation can be traced. The logging data shall be kept for a period of five years from the date of recording, after which it shall be deleted.



(3) No information on a search of the data by a national authority or a self-regulatory body may be disclosed to trustees or fiduciaires or to the beneficial owners. The Director of the AED or his or her delegate shall ensure that consultation of data from the Register of Fiducies and Trusts is carried out without alerting the trust or fiducie concerned or its beneficial owners.

### **Article 31**

(1) A beneficial owner or his or her nominee may request, on a case-by-case basis and in the following exceptional circumstances, on the basis of a duly motivated request addressed to the AED, that access to all or part of the information referred to in Article 14 be limited to national authorities, self-regulatory bodies, credit and financial institutions only, as well as bailiffs and notaries acting in their capacity as public officers, where access by other persons to such information would expose the beneficial owner to a disproportionate risk, to a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or is otherwise incapacitated.

The application shall specify, failing which it shall be void:

1. if the applicant is a natural person: the surnames, first names and domicile or residence of the applicant; if the applicant is a legal person: the name, precise address of the registered office and the person or body qualified to represent it in court;
2. the data necessary for the identification of the trust or fiducie concerned;
3. the basis of the claim;
4. the surnames, first names, date of birth, nationality and domicile or residence of the beneficial owners for whom access to the information is to be restricted and the category to which they belong;
5. the information for which access is to be restricted.

In support of the request, any document is attached that can justify the existence of the exceptional circumstances referred to in paragraph 1.

(2) The AED shall provisionally limit access to the information referred to in Article 14 only to national authorities, self-regulating bodies, credit and financial institutions, as well as to bailiffs and notaries acting in their capacity as public officers, upon receipt of the request.

If the request is refused, access to the information shall remain restricted for a further period of one month. In the event of an appeal against a decision of refusal, the limitation of access to information is maintained until the decision of refusal is no longer subject to judicial review.

(3) A limitation of access to information may be granted only on the basis of a detailed assessment of the exceptional nature of the circumstances and only for the duration of the circumstances justifying it without exceeding a maximum period of three years. It may be renewed by decision of the AED, on the basis of a reasoned request for renewal from the beneficial owner, addressed to the AED no later than one month before the expiry date of the limitation.

(4) A notice informing about the access limitation to information and the date of the related decision is published on the AED website for a period of one month.

(5) Against the decision of the AED Director or his or her delegate referred to in paragraph 2 or 3, an appeal for reversal is lodged with the Administrative Tribunal. It must be filed within one month from the notification.

(6) The AED shall publish annual statistical data on the number of derogations granted and the reasons given and shall communicate these data to the European Commission.

## **Chapter 6 - Miscellaneous, amending and transitional provisions**

### **Article 32**

(1) The CRF, the supervisory authorities and the self-regulatory bodies shall cooperate closely with each other.

For the purposes of paragraph 1, the supervisory authorities and the CRF are authorised to exchange any information obtained in accordance with this law that is necessary for the performance of their respective tasks in the fight against money laundering and terrorist financing. The supervisory authorities and the CRF shall solely use the information exchanged for the performance of these tasks.

(2) For the purposes of this law, the supervisory authorities shall cooperate with their foreign counterpart authorities in compliance with and within the limits of the provisions “of Articles 9-2a and 9-2b”<sup>1</sup> of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

### **Article 33**

(1) The AED may take the necessary measures to ensure the interconnection of the Register of Fiducies and Trusts with the registers referred to in Article 31(3a), of Directive (EU) 2015/849 established by the other Member States through the

<sup>1</sup> Law of 25 February 2021

European Central Platform established by Article 22(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of company law, hereinafter referred to as “Directive (EU) 2017/1132”, in accordance with the technical specifications and procedures referred to in Article 31(9), subparagraph 1 of Directive (EU) 2015/849.

(2) The information referred to in Article 14 recorded in the Register of Fiducies and Trusts shall be available through the system of interconnection of registers established by Article 22(2), of Directive (EU) 2017/1132 in accordance with the access arrangements provided for by this law and the measures taken for its implementation.

#### **Article 34**

In Article 6 of the Law of 27 July 2003 on trusts and fiduciary contracts, as amended, a paragraph 3 is added to Article 6, which reads as follows:

“(3) Each separate fiduciary estate shall be recorded in the books of the fiduciaire in an account clearly identified as a fiduciary account. The account must include a reference to the fiduciary agreement to which it relates.”

#### **Article 35**

The Law of August 10, 2018 on information to be obtained and kept by fiduciaires and implementing Article 31 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC is repealed.

#### **Article 36**

The reference to this law is made in the following form: “Law of 10 July 2020 establishing a Register of Fiducies and Trusts”.