

In case of discrepancies between the French and the English text, the French text shall prevail.

Law of 17 April 2018 implementing Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 and amending:

- 1. the Consumer Code;**
- 2. the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;**
- 3. the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; and**
- 4. the Law of 7 December 2015 on the insurance sector, as amended.**

(Mém. A 2018, No 257)

Chapter 1 - Indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds

Art. 1.

(1) The Commission de Surveillance du Secteur Financier (hereinafter, the “CSSF”) shall be the competent authority in Luxembourg to ensure compliance with Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (hereinafter, “Regulation (EU) 2016/1011”) by administrators.

The CSSF shall also be the competent authority in Luxembourg for the purposes of Article 32 of Regulation (EU) 2016/1011 where Luxembourg is the Member State of reference of an administrator located in a third country, and for the purposes of Article 33 of that regulation where an administrator or a supervised entity established in Luxembourg applies for the endorsement of a benchmark or a family of benchmarks provided in a third country.

(2) Moreover, the CSSF shall be the competent authority in Luxembourg to ensure compliance with Regulation (EU) 2016/1011 by the supervised entities referred to in point (17)(a) to (l) of Article 3(1) of that regulation.

By way of derogation from the first subparagraph, the Commissariat aux assurances shall be the competent authority in Luxembourg to ensure compliance with Regulation (EU) 2016/1011 by the supervised entities, referred to in point (17)(a) to (l) of Article 3(1) of that regulation, which are subject to its supervision.

(3) The CSSF shall be in charge of the cooperation and exchange of information with the European Commission, the European Securities and Markets Authority and other Member States’ competent authorities in accordance with Article 40(2) of Regulation (EU) 2016/1011.

The CSSF and the Commissariat aux assurances shall cooperate for the purposes of Regulation (EU) 2016/1011 and of this law.

Art. 2.

(1) For the purposes of the application of Regulation (EU) 2016/1011 and of this law, the competent authorities referred to in Article 1 (hereinafter, the “competent authorities”), shall have all supervisory and investigatory powers that are necessary to fulfil their respective duties within the limits set in that regulation.

The powers of the competent authorities shall include the right to:

1. access any document and any other data in any form, and to receive or take a copy thereof;

2. require or demand information from any person involved in the provision of, and contribution to, a benchmark, including any service provider to which functions, services or activities in the provision of a benchmark have been outsourced as provided for in Article 10 of Regulation (EU) 2016/1011, as well as their principals, and if necessary, summon and question any such person with a view to obtaining information;
3. request, in relation to commodity benchmarks, information from contributors on related spot markets according, where applicable, to standardised formats and reports on transactions, and direct access to traders' systems;
4. carry out on-site inspections, including to seize any document, electronic file or other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove a breach of Regulation (EU) 2016/1011, at the premises of persons subject to their respective supervision, and, subject to the judicial authorisation provided for in Article 3, at the premises of any other person, at sites other than the private residences of natural persons;
5. require existing recordings of telephone conversations, electronic communications or other data traffic records held by supervised entities;
6. request the freezing or sequestration of assets from the President of the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court) deciding on request;
7. require temporary cessation of any practice that the competent authority considers contrary to Regulation (EU) 2016/1011;
8. impose a temporary prohibition on the exercise of a professional activity in the financial sector for supervised entities, as well as members of their administrative, management or supervisory bodies;
9. take all necessary measures to ensure that the public is correctly informed about the provision of a benchmark, including by requiring the relevant administrator or a person that has published or disseminated the benchmark or both to publish a corrective statement about past contributions to or figures of the benchmark.

Art. 3.

(1) The on-site inspections by the competent authorities at the premises of persons that are not subject to the supervision of the CSSF or the Commissariat aux assurances, may not be carried out without the express consent of the person with whom the inspection takes place, except in case of prior judicial authorisation in accordance with paragraph 2. On-site inspections at the premises of these persons and for which no express consent has been given, shall be carried out in accordance with this article.

(2) Where this consent is not given, the competent authority shall exercise the power provided for in point (4) of the second subparagraph of Article 2 towards the persons that are not subject to the supervision of the CSSF or the Commissariat aux assurances, only after prior authorisation by order of the *juge d'instruction* (investigating judge) with the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court). The order shall be given upon reasoned request by the competent authority. The *juge d'instruction directeur* (chief investigating judge), or, should the latter not be available, the magistrate replacing him/her, shall appoint, for each request by the competent authority, the judge who shall be in charge.

The *juge d'instruction* shall verify that the reasoned request submitted by the competent authority is justified and proportionate to the aim pursued. The request shall include all elements of information that justify the requested authorisation. The *juge d'instruction* shall appoint one or several members of the *Service de Police Judiciaire* (criminal investigation police), among which at least one member has to be an *officier de police judiciaire* (criminal investigation police officer), in charge of assisting the agents of the competent authority during the on-site inspection.

The order referred to in the first subparagraph may be subject to the same remedies as the ones regarding orders of the *juge d'instruction*. The remedies shall not be suspensive.

(3) The person concerned by the on-site inspection and his/her counsel may attend the on-site inspection. They shall receive notification thereof the day before, with the indication, on pain of nullity, of the object and aim of the inspection. Exceptionally, if there is a possibility or probability that elements, whose certification and analysis seem useful to ascertaining the truth, might imminently be concealed, the agents

of the competent authority and the members of the *Service de Police Judiciaire* in charge of assisting them shall initiate immediately these operations without prior notification to the persons concerned being required. A report on their operations shall be drawn up. Where the urgency of the request did not require notification to the persons concerned, the reason thereof shall be mentioned in the report.

(4) On-site inspections may not, on pain of nullity, commence before 6.30 a.m. or after 8.00 p.m. .

During the on-site inspection, the agents of the competent authority and the members of the *Service de Police Judiciaire* in charge of assisting them shall ensure the compliance with the legal provisions on criminal proceedings applicable to searches and seizures and the application of the legal rules governing the instruction and inspection measures as set out in the profession's own law.

(5) The documents, electronic files and other things seized shall be listed in the report. If an on-site inventory is difficult to carry out, they shall be sealed off until they are listed in the inventory in presence of the persons that attended the on-site inspection. The competent authority shall immediately receive a copy or, where appropriate, shall take a copy of all the documents and electronic files seized. The original documents, electronic files and other things seized shall be deposited at the *greffe* (registry) or entrusted to a *gardien de saisie* (judicial custodian) or the competent authority. The provisions of the criminal proceedings relating to seizures shall apply.

(6) The on-site inspection report shall be signed by the person with whom the inspection was carried out and by the persons who attended the inspection. Any refusal to sign shall be mentioned in the report. A copy of the report shall be provided to them. A copy of the report shall be provided to the investigating judge who delivered the order and to the person concerned by the inspection.

Art. 4.

(1) The competent authorities, in compliance with their respective competences, shall have the power to impose the administrative sanctions and other administrative measures referred to in paragraph 2:

1. for infringement of Articles 4 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011 where they apply; and
2. on those who obstruct the exercise of their supervisory and investigatory powers, who do not follow up on their orders given pursuant to paragraph 2, or who have knowingly provided inaccurate or incomplete information following requests based on Article 2 or who do not comply with their requirements based on Article 2.

(2) For the cases referred to in paragraph 1, the competent authorities may impose, in compliance with their respective competences:

1. an order requiring the administrator or supervised entity responsible for the infringement to cease the conduct and to desist from repeating that conduct;
2. the disgorgement of the profits gained or losses avoided because of the infringement where those can be determined;
3. a public warning which indicates the administrator or supervised entity responsible for the infringement and the nature of the infringement;
4. withdrawal or suspension of the authorisation or the registration of an administrator;
5. a temporary ban prohibiting any natural person, who is held responsible for the infringement, from exercising management functions in administrators or supervised contributors;
6. the imposition of maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement where those can be determined;
7. in respect of a natural person, administrative pecuniary sanctions of up to:
 - a) EUR 500,000 for infringements of Articles 4 to 10, points (a), (b) (c) and (e) of Article 11(1), and Article 11(2) and (3), and Articles 12 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011; or
 - b) EUR 100,000 for infringements referred to in point (2) of the first paragraph or for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011;
8. in respect of a legal person, administrative pecuniary sanctions of up to:
 - a) EUR 1,000,000 or 10 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher, for infringements of Articles 4 to 10, points (a), (b),

(c) and (e) of Article 11(1) and Article 11(2) and (3), and Articles 12 to 16, 21, 23 to 29 and 34 of Regulation (EU) 2016/1011; or

b) EUR 250,000 or 2% of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher, for infringements referred to in point (2) of the first paragraph or for infringements of point (d) of Article 11(1) or of Article 11(4) of Regulation (EU) 2016/1011.

For the purposes of points (a) and (b), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, for banks or Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, for insurance companies, according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10 % of the aggregate turnovers of its members.

(3) In order to determine the type and level of administrative sanctions and other administrative measures, the competent authorities shall take into account all relevant circumstances including, where appropriate:

1. the gravity and duration of the infringement;
2. the criticality of the benchmark to financial stability and the real economy;
3. the degree of responsibility of the responsible person;
4. the financial strength of the responsible person, as indicated, in particular, by the total annual turnover of the responsible legal person or the annual income of the responsible natural person;
5. the level of the profits gained or losses avoided by the responsible person, insofar as they can be determined;
6. the level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
7. previous infringements by the person concerned;
8. measures taken, after the infringement, by a responsible person to prevent the repetition of the infringement.

(4) The decision to impose a sanction or measure may be referred to the *Tribunal administratif* (Administrative Court) which deals with the substance of the case. The case shall be filed within one month, or else shall be time-barred.

Art. 5.

The competent authorities shall ensure that any decision that is published in accordance with Article 45 of Regulation (EU) 2016/1011 shall remain accessible on their website for a period of five years after its publication.

Personal data contained in the publications referred to in the first subparagraph shall remain on the website for a period not exceeding 12 months.

Chapter 2 - Amendment of the Consumer Code

Art. 6.

In Article L. 224-6(1), a new fourth subparagraph shall be inserted after the third subparagraph which shall read as follows:

“Where the credit agreement references a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of

investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (hereinafter, "Regulation (EU) 2016/1011"), the name of the benchmark and of its administrator and the potential implications on the consumer shall be provided by the creditor or, where applicable, by the credit intermediary, to the consumer in a separate document, which may be annexed to the "Standard European Consumer Credit Information" form. "

Art. 7.

In the second subparagraph of Article L.226-10 of the Consumer Code, the word "and" at the end of point 14 shall be deleted, the full stop at the end of point 15 shall be replaced by "; and", and a new point 16 which reads as follows, shall be added:

"16) where mortgage credit agreements reference a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/1011, the names of the benchmarks and of their administrators and the potential implications on the consumer."

Art. 8.

The following new paragraph 4 shall be added in Article L.226-45 of the Consumer Code:

"(4) Point 16 of the second subparagraph of Article L.226-10 shall not apply to mortgage credit agreements existing on 1 July 2018."

Chapter 3 - Amendment of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended

Art. 9.

In Article 2 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended, a new paragraph 2a which reads as follows shall be inserted:

"(2a) The CSSF is the competent authority for the supervision of administrators as defined in point (6) of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (hereinafter, "Regulation (EU) 2016/1011")."

Art. 10.

In Article 24(1) of the same law, the following subparagraph shall be added:

"The CSSF shall be authorised to collect the sums required to meet its staff costs, financial costs and operating costs related to the duties laid down Regulation (EU) 2016/1011 through fees payable by the persons for which it is competent in accordance with Article 2(1) of the Law of 17 April 2018 on benchmarks."

Chapter 4 – Amendment of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

Art. 11.

In the second subparagraph of Article 2-1(1) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, the word "supervised," shall be inserted before the word "authorised".

Chapter 5 - Amendment of the Law of 7 December 2015 on the insurance sector, as amended

Art. 12.

In Article 2(1) of the Law of 7 December 2015 on the insurance sector, the full stop at the end of point (j) shall be replaced by a semicolon, and a new point (k) which reads as follows shall be inserted:

“(k) carry out the duties conferred on it by the Law of 16 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services, by the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products and by the Law of 17 April 2018 on benchmarks”.

Chapter 6 - Final provisions

Art. 13.

Reference to this law shall be made as follows:

“Law of 17 April 2018 on benchmarks”.

Art. 14.

Articles 6 to 8 shall enter into force on 1 July 2018.