

Q&A of the ABBL Webinar dedicated to Circular CSSF 12/552 as amended

9 FEBRUARY 2021

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The Webinar took place in a Q&A Form. Questions were collected beforehand by the ABBL.

#	Circular reference	Title	ABBL Questions
THEME 0 – INTRODUCTION			
General considerations			
1.			<p>What is, according to you, the importance of the amendments?</p> <p>The changes are rather limited, with overall little expected impact on governance and internal control arrangements in banks.</p> <p>The circular ensures the comprehensive transposition of different EBA Guidelines, mainly the 2017/11 on internal governance and the 2017/12 on the assessment of the suitability of members of the management body and key function holders. Most elements of these guidelines had already been in place.</p>
2.			<p>What are the domains of internal governance on which particular attention and effort should be made by the industry?</p> <p>Generally speaking, there is broad adherence to key principles and requirements on internal governance. Banks should pay particular attention to the following 4 points: 1. sustainability of the business model, 2. setting of the risk profile, 3. effectiveness of the 3 lines of defence and 4. board oversight.</p>

			<p>The amendment of circular 12/552 brought changes (and challenges) in a number of respects, including:</p> <ul style="list-style-type: none"> - The scope of application of the circular has been extended to financial holding companies and mixed financial holding companies - Precisions on the proportionality principle - New requirements on 1) diversity of members of the management body, on 2) the development and maintenance of a sustainable business model requiring to consider of all material risks, including (ESG) environmental, social and governance risks. - Enhanced say by the Luxembourg parent over control functions in the subgroup (located in subsidiaries and branches of LU banks) - The good practice to have one board member considered as independent.
			<p>The Circular is applicable since 1st January 2021 and most of the requirements were already disclosed in the EBA guidelines. Will the CSSF accept a period of “tolerance”, during which significant institutions but above all less significant institutions would have the time to take appropriate measures to address and comply with the changes?</p> <p>The circular applies to all Luxembourg credit institutions. For banks that fall under the direct remit of CSSF, i.e. banks that qualify as non Significant Institutions under the Single Supervisory Mechanism, CSSF will accept a period of tolerance of not more than 1 year and only as regards changes brought to the circular.</p> <p>There is an expectation that the annual compliance statement for year-end 2021, pursuant to § 62 of Part II of the circular 12/552, details gaps and delays in application.</p>
<p>THEME 1 – SCOPE OF APPLICATION AND PROPORTIONALITY PRINCIPLE</p>			

<p>The circular defines "Institution of significant importance" (Etablissements d'importance significative) as credit institutions of systemic importance in accordance with Article 59-3 of the LSF and, where applicable, other credit institutions determined by the competent authority</p>			
3.	Partie I, Chapitre 1 §1	Definitions	<p>Could you confirm that the credit institutions of systemic importance are those disclosed in the CSSF regulation 20-07 of 12 November 2020. i.e. the seven systemic institutions authorised in Luxembourg?</p> <p>Yes, as of today, credit institutions of significant importance, as defined in the circular, are the 7 systemic institutions. The CSSF regulation 20-07 of 12 November 2020 disclosed the current list and has been published in the "Journal Officiel" of 25 November 2020.</p> <p>As you said and as foreseen in the definition, this list could be completed if considered necessary, based on the assessment of the institutions' size and internal organisation as well as the nature, the scale and the complexity of the activities. If this were the case, CSSF would inform the bank and ensure the appropriate right to be heard.</p> <p>With this definition of "significant importance", we are providing a clear, transparent criterion for the application of enhanced governance requirements to larger or more complex institutions.</p>
<p>The Circular is applicable to credit institutions in Luxembourg including their branches.</p>			
5.	Partie I, Chapitre 2 §2	Scope of application	<p>How should the framework apply to branches, and how far should/ could they rely on their head office? Does the proportionality principle apply in this context?</p> <p>Concerning the application of the circular to the branches, there is no change in approach in comparison with the former version of the circular.</p> <p>The framework remains applicable to the branches mutatis mutandis. For example, provisions applicable to the supervisory body are not applicable as a</p>

			<p>branch has no board of directors. Such differences are understood and no explicit carveouts appear in the circular.</p> <p>Recourse to head office resources and solution continues to be possible. In this domain, there is no change in approach either.</p> <p>Also, the principle of proportionality still continues to apply in this context.</p>
<p>In case the entity is acting as parent company of a Group, the Circular 12/552 as amended is applicable to the entire Group, meaning the parent company and the legal entities part of the Group, even if outside of the consolidation scope as per CRR.</p>			
6.	Partie I, Chapitre 2 §3	Scope of application	<p>Are all requirements of the Circular fully applicable to all legal entities of the Group? Should materiality be a factor to consider to scope out certain entities? Does it also apply to non-financial and non-regulated entities?</p> <p>There are three basic principles at work:</p> <p>First, the requirements of the circular are fully applicable on an individual, a sub-consolidated and consolidated basis to the Luxembourg credit institution, where consolidation refers to CRR consolidation.</p> <p>Second, Luxembourg parent undertakings shall apply the requirements to their subsidiaries inside the CRR scope of consolidation, whether or not these subsidiaries are subject to CRR.</p> <p>These two principles are codified in EU level 1 texts on the CRR scope of application and consolidation (article 109 of CRD V).</p> <p>Third, Luxembourg parent undertakings must ensure that effective arrangements are in place throughout their subgroup, extending beyond the perimeter of consolidation as per the CRR, where necessary, in order to guarantee the control over all the activities and the risks to which the different entities of the group are or may be exposed.</p>

			Proportionality applies. Banks should perform their own assessment, keeping in mind the broad objective to ensure comprehensive control of activities and risks, and, if doubts remain, liaise with their competent authority.
7.	Partie I, Chapitre 2 §3	Scope of application	<p>In case of non-financial and/or non-regulated entities, which are the expectations in terms of governance framework and of oversight from the parent company?</p> <p>CSSF expects full oversight over activities and risks. In practice, this requires some form of governance arrangements within such entities, but on a proportionate basis.</p>
Proportionality			
8.	Partie I, Chapitre 2 §3	Proportionality	<p>Does the CSSF expect Banks to have a formal stand-alone documented assessment addressing proportionality, and demonstrating the consistency of the governance framework vis à vis of the size and the complexity of the organisation?</p> <p>If proportionality is used in implementing some parts of the circular, banks shall document their proportionality analysis in writing and shall have their conclusions approved by the supervisory body.</p> <p>Proportionality applies on the downside (less risks) as well as on the upside (higher risk). A bank's governance framework has to be fit for purpose.</p>
THEME 2: INTERNAL GOVERNANCE			
The risk and compliance culture must be strong and reflected throughout all strategies, policies, communication and trainings of credit institutions.			

9.	Partie II, Chapitre 2 §7	Internal governance framework	<p>Which framework do you expect credit institutions to implement in order to address requirements in term of risk and compliance culture?</p> <p>The basic underlying principle is that regulation determines the objectives, and the means to achieve the objectives are in the hands of the banks, subject to compliance with explicit legal and regulatory provisions. The framework has to be fit for purpose.</p> <p>CSSF's main expectation is that banks operate without losses to third parties (depositors) and within a strong compliance culture as regards money-laundering regulation.</p>
10.	Partie II, Chapitre 2 §7	Internal governance framework	<p>How will you assess the robustness of the tone from the top on this particular topic during on-site inspection, and what will you expect?</p> <p>Tone from the top and belief at the top are essential, even in the absence of on-site inspections.</p> <p>Key factors CSSF considers are:</p> <ol style="list-style-type: none"> 1) a clear business model and risk appetite 2) a strong support for control functions 3) absence of excessive pressure from shareholders 4) a supervisory body which critically assesses business sustainability and risks
THEME 3 – MANAGEMENT BODY			
SUB THEME 1 - Management body in its supervisory function			

<p>ESG risks: One of the key elements to formally document and validate by the Bank is the business strategy with a particular focus on the sustainability of the strategy by taking into account all risks, including environmental, social and governance risks.</p>			
11.	Partie II, Chapitre 4 §11, 1 st bullet point	Responsibilities of the management body in its supervisory function	<p>What are the expectations of the CSSF in term of framework, indicators and reporting?</p> <p>On ESG, the main supervisory focus today is with respect to the supervisory authorities' prudential mandate (that is financial stability) and conduct (that is checking compliance with applicable regulation).</p> <p>As regards the prudential side, ESG risks, where they impact financial stability, have to be accounted for in the banks' risk management frameworks. The current regulatory framework for doing so is in place today, generally speaking. Indeed, banks are required to manage and mitigate risks, whatever their origin, including ESG.</p> <p>As regards conduct, rules have been put into place recently. I refer to the enhanced sustainability test under MiFID and transparency rules under the SFRD (Sustainable Finance Disclosure Regulation).</p> <p>Specific guidance and expectations, over and beyond the rules mentioned above, is developing progressively, based on best practice.</p>
12.	Partie II, Chapitre 4 §11, 1 st bullet point	Responsibilities of the management body in its supervisory function	<p>Should ESG risks be addressed through 1) products proposed by the Bank to his/ her clients, or 2) the way the Bank implements its business strategy or 3) from a global perspective by addressing the entire spectrum of activities and functions of the Bank?</p> <p>CSSF sets objectives as described in question 11. Banks are free to choose their preferred means to attain these objectives, subject to minimum requirements (for instance comprehensive coverage of risks).</p>
<p>Diversity: Guiding principles set up by the supervisory body include a principle regarding appointment and succession rules applicable to the management body (i.e. in its supervisory function and in its management function) and to key function holders. Such rules should</p>			

<p>also consider the diversity principle (including age, gender, geographical origin and education and professional background). Diversity is based on non-discrimination principle as well as measures guaranteeing equality of chance.</p>			
<p>13.</p>	<p>Partie II, Chapitre 4 §11, last bullet point</p>	<p>Responsibilities of the management body in its supervisory function</p>	<p>By specifying factors of diversity such as age or geographical origin, what does CSSF expect from credit institutions to encourage and monitor progress on diversity?</p> <p>The provisions on diversity among members of the management body aim at fostering more balanced and robust risk taking, by incorporating a broader range of views, opinions, experiences, perceptions, values and backgrounds.</p> <p>There is no hard quota required by CSSF, yet. The current minimal objective is to strengthen the principle of non-discrimination and encourage measures ensuring equal opportunities.</p> <p>As described in the last up-date of the Prudential Procedure, credit institutions of significant importance must set themselves a quantitative objective concerning the representation of the under-represented gender in the management body. They also have to yearly document their compliance level with the diversity goal set.</p>
<p>14.</p>	<p>Partie II, Chapitre 4 §11, last bullet point</p>	<p>Responsibilities of the management body in its supervisory function</p>	<p>Should credit institutions encourage “positive discrimination”, thus impairing the principle of equality of chance?</p> <p>Measures of “positive discrimination” are not required by the circular. It is up to institutions to set their preferred way to achieve their objectives. This could involve positive discrimination.</p>

15.	Partie II, Chapitre 4 §23	Composition and qualification of the management body in its supervisory function	<p>For significant institutions, which criteria would the CSSF consider to assess the “sufficient” number of independent members in the Management Body in its supervisory function?</p> <p>§89 of the EBA guidelines on suitability provide some guidance in this respect.</p> <p>There are no hard evaluation criteria. The assessment will be on a case by case basis, considering the organisation and the nature, the scale and the complexity of the activities and the structure of shareholding. The main question is about the value added of independent directors in ensuring sound and prudent banking and an appropriate balance between all shareholders and relevant stakeholders.</p> <p>We expect banks to come up with their own analysis and proposal. We will carefully evaluate the arguments put forward in their proposal.</p>
16.	Partie II, Chapitre 4 §23	Composition and qualification of the management body in its supervisory function	<p>Should we understand that the requirement to have at least one independent Board member for less significant institutions is mandatory (“should” versus “shall” in the first sentence of § 23)?</p> <p>Having one independent board member is not a hard requirement, but is considered good practice.</p> <p>CSSF expects the supervisory body (management body in its supervisory function) to analyse and document its conclusion in this respect.</p>
SUB THEME 2 - Specialized Committees			
Risk Committee			
17.	Partie II, Chapitre 4 §49	Risk Committee	Regarding compliance and pricing of products with business model and risk strategy, what does the CSSF expect in term of

			<p>monitoring? For example, should all deviations from material activities to pricing policy be disclosed?</p> <p>We clearly expect a monitoring of the pricing versus risk for products and services with the objective to maintain a viable and sustainable business.</p> <p>The framework to put in place will depend of the banks' activities and their organisation.</p>
18.	Partie II, Chapitre 4 §49	Risk Committee	<p>Regarding stress testing and scenario, does the CSSF expect that risk committee members have an enhanced understanding of all scenario, stress testing and factors?</p> <p>The risk committee is a specialized committee with the purpose to assist the supervisory body on matters of risk. CSSF expects risk committee members to have a fair understanding of scenarii and methodology in order to challenge the stress testing framework and its results. The committee could be assisted by experts, but risk committee members should be fit to understand and challenge key assumptions and results. Their primary mission is to provide the supervisory body with critical assessments.</p>
19.	Partie II, Chapitre 4 §49	Risk Committee	<p>Regarding the assessment of the remuneration framework, what is the exact role to be played by the risk committee in comparison with the role of the remuneration committee that is also ruled by the financial sector law of April 1993 (Art 38-9)?</p> <p>The risk committee will have a risk view on the appropriateness of the benefits provided for in the remuneration policies and practices and their impact on incentives, that is risk taking and its bearing upon profit, capital and liquidity.</p> <p>The assessment by the risk committee should be seen as an input to the remuneration committee. It does not amend the responsibilities of the remuneration committee to provide the board with an overall assessment on the adequacy of the remuneration package.</p>

SUB THEME 3 - Management body in its management function (Authorised Management)

The Management body in its management function is required to be permanently in the credit institutions (being in Luxembourg). In the previous version, it was indicated “in principle”.

20	Partie II, Chapitre 4 §53	Responsibilities of the management body in its management function	<p>What are the elements to consider when assessing the permanent feature of the management body in its management function?</p> <p>This question is about substance. There are two main factors to consider:</p> <ol style="list-style-type: none"> 1) First, authorised Managers shall be based in Luxembourg. This criterion does not exclude business trips or work remotely. CSSF currently has no hard time quota in place, but expects that authorised managers spend most of their time in their entity's premises so as to ensure appropriate oversight. 2) Secondly, “authorised manager” is a full-time job. Authorised managers cannot have other jobs in other companies that would distract them from or interfere with their position as an authorised manager. Additional responsibilities within the group are possible, subject to strict rules on conflicts of interest and time commitment. <p>On this subject, there is no change in approach in comparison with the former version of the circular.</p>
21	Partie II, Chapitre 4 §53	Responsibilities of the management body in its management function	<p>Is there a link between being permanently present in the credit institution (in Luxembourg) and the place of residence of the members?</p> <p>While there is no direct link, permanence, as referred to in question 20, requires that authorised managers live nearby so as to be in a position to join the office swiftly, and without undue delay in times of need.</p>

22	Partie II, Chapitre 4 §53	Responsibilities of the management body in its management function	<p>Considering the current COVID19 circumstances, is working remotely for an authorised manager acceptable? From Luxembourg? From Germany, France and Belgium? From elsewhere?</p> <p>Yes, it is acceptable, if justified by the overall sanitary conditions or legal requirements (e.g. lockdown). On the other hand, authorised management should organise working conditions in such a way that safe working in the office premises is possible and substance (on-site presence) is guaranteed.</p>
THEME 4 – INTERNAL CONTROL FRAMEWORK			
Scope of internal control functions			
23	Partie II, Chapitre 6 §100	Internal control framework	<p>What is the view of the CSSF on the composition of the second line of defence and how does the CSSF define the support functions?</p> <p>Based on EBA guidelines, the second line of defence is only Compliance and Risk. This strict reading is reflected in Circular CSSF 12/552 that foresees enhanced requirements on Risk Control and Compliance only.</p> <p>Nevertheless, we chose to keep in the up-dated version of the circular a reference to the role that other support functions play as a second line of defence mechanism, for instance parts of IT or Finance and Accounting. These are ancillary in comparison with the role of the Compliance and Risk functions in the second line of defence.</p> <p>When institutions decide to leverage on such functions, whose work may serve as an input to Risk Control and Compliance, they should endow them with the necessary authority and independence to effectively perform their tasks.</p>
24	Partie II, Chapitre 6 §100	Internal control framework	<p>What does the CSSF foresee for the support functions of the second line of defence in terms of independence, segregation</p>

			<p>of duties, power to effectively perform their duties, reporting lines, authority etc.?</p> <p>For those support functions to fully align with the spirit of a second line of defence, we expect independence from the operational units, with segregation of tasks and separate reporting lines, as well as sufficient statute, resources and means available to perform the duties effectively.</p>
25	Partie II, Chapitre 6 §100	Internal control framework	<p>How should finance and accounting or IT be treated in this context?</p> <p>As a general principle, it is not the function, but the tasks performed that matter. It is a bank's decision to decide for itself whether part of Finance or IT, for instance, require a stronger standing given the nature of controls performed.</p>
THEME 5 – RISK CONTROL FUNCTION			
For significant institutions, the head of the risk control function is a member of the Authorised Management, independent and individually responsible of the risk control function as required by CSSF Regulation 15-02.			
26	Partie II, Chapitre 6 §135	Organisation of the Risk control function	<p>How can a member of the Authorised Management be truly independent from the Management Body in its management function, and how should the independence criteria be assessed in this case?</p> <p>The CRO has its mandate focussed on risk control and intervenes in this capacity, independently from other authorised managers, within the authorised management.</p> <p>Obviously, one needs to ensure that the CRO is not involved in business activities and risk taking (i.e. subject to conflicts of interest).</p>
27	Partie II, Chapitre 6 §135	Organisation of the Risk control function	<p>Could a veto right reinforce this independence?</p>

			<p>Maybe. However, this is not the leading model found in practice.</p> <p>Independence, as described in question 26, builds on factors other than veto rights.</p>
<p>The head of the risk control function must be able to challenge the decisions of the authorised management. These challenges and the reasons cited must be documented by the institution. Where the institution gives a veto right over the decisions of the authorised management to the Chief Risk Officer, the scope of this right must be decided clearly and in writing, including the escalation process of the supervisory body.</p> <p>The decisions which were given a reasoned negative opinion by the Chief Risk Officer should be subject to an enhanced decision-making process.</p>			
28	Partie II, Chapitre 6 §136	Organisation of the risk control function	<p>What is the scope of dispute? Is it restricted to certain category of risks?</p> <p>There is no limitation in the scope of dispute but the proportionality principle applies. From the prudential point of view, it should cover significant risks that threaten the financial stability or the sustainability of the bank's operations.</p>
29	Partie II, Chapitre 6 §136	Organisation of the risk control function	<p>What are the expectations with regards to the enhanced decisional process required in case of veto of the CRO?</p> <p>The objective of the enhanced decision process is to have sound decision making, commensurate with sound and prudent banking and clear accountability for important risks, involving as required the supervisory board.</p> <p>As with other provisions of Circular CSSF 12/552, the CSSF sets the objective ("sound and prudent banking") and institutions have the choice over the means to reach that goal.</p>
30	Partie II, Chapitre 6 §136	Organisation of the risk control function	<p>Could the veto right impair the collective responsibility of the Authorised Management?</p> <p>If the veto right were used by the CRO, as an authorised manager, it would obviously temper the collective responsibility of the authorised management.</p>

31	Partie II, Chapitre 6 §136	Organisation of the risk control function	<p>Can other governance bodies bypass the veto right?</p> <p>This has to be defined by the bank.</p> <p>In the end, the final say could reside with the Supervisory body.</p>
THEME 6 – COMPLIANCE FUNCTION			
<p>The compliance function shall be organized in order to address all domains that could create risks of compliance. It is acceptable that certain areas (other than those clearly disclosed in the Circular) would not be addressed and managed directly by the compliance function. These domains shall then be addressed by other internal control functions, based on rules and principles defined in the compliance policy and in line with the segregation of duty principles.</p>			
32	Partie II, Chapitre 6 §141, 7 th bullet point	Scope of application and specific responsibilities of the Compliance function	<p>The 2nd sentence refers to the possible delegation to other internal control functions; does this mean that we can also delegate to the internal audit function? Could this impair the independence of the internal audit function?</p> <p>No, the delegation of some part of compliance risk cannot be delegated to the internal audit function.</p> <p>The internal audit function cannot take over operational tasks of the second line of defence.</p>
33	Partie II, Chapitre 6 §141, 7 th bullet point	Scope of application and specific responsibilities of the Compliance function	<p>Certain risks of compliance can no longer be covered by finance and/or legal functions. Is this understanding correct?</p> <p>No, this is not correct. The approach has not changed: Finance and or legal functions can continue to cover certain risks of compliance.</p> <p>The Compliance function continues to cover all compliance risks, either directly (typically the fight against money laundering and terrorist financing, the investment services, the prevention regarding market abuse and personal transactions or the frauds as listed in §141) or indirectly.</p>

			For those areas, which do not directly fall within his/her scope of intervention, the Chief Compliance Officer assumes a role of coordination, centralization of information and verification to ensure effective and comprehensive coverage.
The compliance function shall centralize all information on compliance issues including non-compliance with procedures and limits.			
34	Partie II, Chapitre 6 §143	Scope of application and specific responsibilities of the Compliance function	<p>What are the expectations of the CSSF regarding these limits? What kind of limits are in scope in this context?</p> <p>Limits, as referred to in this §, are with respect to the risk appetite in terms of compliance risks (for instance number of complains or regulatory breaches). These limits are within the scope of activity of the Compliance function, regarding reputational, legal and regulatory limits and not financial, e.g. credit limits, which remain in the scope of the Risk Control function.</p>
THEME 7 – INTERNAL AUDIT FUNCTION			
The internal audit plan shall have an adequate coverage of all domains/activities including AML/CFT, in order for the internal audit function to annually report in its summary report the level of compliance with the AML/CFT policy and standards.			
35	Partie II, Chapitre 6 §154	Execution of internal audit work	<p>The circular is referring to adequate coverage of domains embedding risk of financial crime. Does this mean that all domains of financial crime should be addressed yearly, or can a risk-based approach be applied to address all domains related to AMLFT through the multi-year internal audit plan?</p> <p>The internal audit plan should be risk based, with an annual coverage for AML/CFT. No comprehensive annual coverage of all domains/activities is required if justified by a risk-based approach.</p> <p>Please also refer to article 44 of CSSF regulation 12-02 that requires Internal Audit to report to the Authorised Management and Board of Directors at least once a year on the compliance with the AML/CFT “policies and procedures”.</p>

THEME 8 – SPECIFIC REQUIREMENTS

New product approval. The EBA guidelines provide a definition of material changes and exceptional transactions that should be in scope of the new product approval process.

36	Partie II, Chapitre 7 §175	New product approval procedure	<p>Should credit institutions apply the EBA definition of exceptional transactions in this context?</p> <p>Yes, as stated in §147 of the EBA guidelines on internal governance, exceptional transactions should be in scope of the new product approval process.</p> <p>“An institution should have in place a well-documented new product approval policy, approved by the management body, that addresses the development of new markets, products and services, and significant changes to existing ones, <u>as well as exceptional transactions.</u>”</p>
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The risk control function should perform an initial risk assessment regarding the capacity of the credit institution to support, manage and control inherent risks related to the foreseen project/activity, including identification and assessment of all compliance risks by the compliance function.

37	Partie II, Chapitre 7 §177	New product approval procedure	<p>The previous version of the 12/552 envisages that internal control functions could leverage on analysis performed by operational units. Does this mean that this option is no longer available in the new circular?</p> <p>This leverage remains possible.</p> <p>The risk control function shall carry out a prior, objective and comprehensive analysis of the risks associated with any proposed change in the activities.</p> <p>The circular doesn't exclude the use of existing analysis by operational units to complement the review. But the review shall not entirely rely on such analysis. The internal control functions shall assess such information with an independent and critical mind.</p>
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THEME 9 - RISK MANAGEMENT

Loans to real estate developers

The circular states that each financing of a real estate development project must provide at the time of granting the credit a date for the commencement of repayment of the principal. This date cannot exceed a reasonable period of time in relation to the start of funding for the project. Exceeding this deadline **automatically** implies classification of the loan in the "default" category according to the CRR, and the full provisioning of unpaid interests. In practice, projects may be delayed due to technical reasons, e.g. delays in receiving the authorization or the PAP from the local authority, unexpected decontamination work, bad weather, etc. Such delays do not reflect a worsening of the solvency of the real estate developer.

38	Partie III, Chapitre 3 § 17	Loans to real estate developers	<p>How could the requirements of the CRR in terms of default classification be reconciled with the specificities of financing real estate development in terms of technical delays?</p> <p>This requirement had been introduced in 2012 following the spreading of credit granting standards contrary to sound and prudent banking. At that time loans to real estate promoters were increasingly granted without any repayment date. They were rolled over every year with the argument that it was apparently impossible to know when the construction work would start. This practice led to risk building up in a proportion that put at risk the financial stability of some banks. Since then, the European rules on default recognition got also strengthened.</p> <p>It is key that defaults are identified and recognized as such on a timely basis. Technical delays should not be (mis-)used to delay such recognition. Hence the CSSF expectation that such loans should be recognized as defaulted.</p> <p>Concretely, in case of delays in the scheduled terms of payments, independent of their cause and prior to classifying as default, the bank has the option to restructure the credit if such restructuring leads to sustainable remediation. Note however that pursuant to EU regulation, distressed restructuring leads to default.</p> <p>In case the bank does not grant a restructuring option to the obligor and if 1) there is uncertainty as regards the obligor's financial capacity to cover for the additional costs and possibly also for the full repayment due to delay, or 2)</p>
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			after past due of 90 days, it is required that the banks classify such exposures in default.
Rules on private portfolio management include a provision for static client data to be controlled by staff independent from the business.			
39	Partie III, Chapitre 5 §31	Private portfolio management	<p>How should this requirement be interpreted? Should it be functions from the second LOD or functions in the first LOD not subordinated to business units?</p> <p>This provision is not new. Controls could be logged within the first Line of defence, but with appropriate standing in order to avoid ineffectiveness, errors or frauds.</p>
THEME 10 – ADMINISTRATIVE, ACCOUNTING AND IT ORGANISATION			
Procedures must reflect all steps of operations from their origination to the filing of the documentation.			
40	Partie II, Chapitre 5 §75	Administrative, accounting and IT organisation	<p>The terminology “workflow” has been added. Do you expect/encourage banks to hold workflow (flowcharts) to document their procedures?</p> <p>No. As a general principle, we do not encourage one methodology over another.</p>
Documentation related to transactions engaging the bank must be up to date, documented and stored.			
41	Partie II, Chapitre 5 §76	Administrative, accounting and IT organisation	<p>Can credit institutions leverage on electronic group solutions for archiving purpose?</p> <p>The circular does not exclude such group solutions. Key considerations to implement such a solution include compliance with corporate law, GDPR and professional secrecy, the assessment and control of IT risks and the respect to outsourcing requirements.</p>



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