



CSSF Regulation No 23-03

CSSF Regulation No 23-03 of 30 June 2023

1) implementing Guideline (EU) 2022/508 of 25 March 2022 amending Guideline (EU) 2017/697 of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2022/12) and

2) amending CSSF Regulation No 18-03 of 5 June 2018.

(Mém. A 2023, No 385)

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended, and in particular Article 9(2) thereof;

Having regard to the Law of 5 April 1993 on the financial sector, as amended, and in particular Article 42 thereof;

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

Having regard to 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;

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014;

Having regard to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions;

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

Having regard to Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (ECB/2014/17);

Having regard to Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9);

Having regard to the Recommendation of the European Central Bank of 4 April 2017 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/10);

Having regard to Guideline (EU) 2022/508 of the European Central Bank of 25 March 2022 amending Guideline (EU) 2017/697 of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2022/12);

Having regard to the Recommendation of the European Central Bank of 25 March 2022 amending Recommendation ECB/2017/10 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2022/13);

Having regard to CSSF Regulation No 18-03 1) implementing certain discretions of Regulation (EU) No 575/2013 and implementing Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9) and 2) repealing CSSF Regulation No 14-01;

Having regard to the opinion of the Consultative Committee for Prudential Regulation;

Decides:

Article 1

Article 2 of CSSF Regulation No 18-03 is amended by adding the following sentence at the end of the paragraph:

“Article 3(1) and Article 4(1) shall also apply to investment firms other than CRR investment firms.”

Article 2

Section 1 of Part II of CSSF Regulation No 18-03 is amended as follows:

In Article 3(1) and in Article 4(1), the words *“CRR institutions”* are replaced by *“credit institutions and investment firms”*.

Article 3

Article 5 of CSSF Regulation No 18-03 is amended as follows:

(1) Paragraph 1 is replaced as follows:

“(1) Pursuant to Article 493(3) of Regulation (EU) No 575/2013, the provisions of paragraph 2 below shall apply instead of the provisions of Article 400(2)(a) to (j) and of Article 400(3) of Regulation (EU) No 575/2013 until 31 December 2028 or until the date of entry into force of any legal act following the review in accordance with Article 507 of that regulation, whichever is the earlier.”

(2) A new paragraph 3 is added, which reads as follows:

“(3) In accordance with Article 400(2)(k) and (l) of Regulation (EU) No 575/2013, the following exposures shall be fully exempted from the application of Article 395(1) of Regulation (EU) No 575/2013:

(a) exposures in the form of a collateral or a guarantee for residential loans, provided by an eligible protection provider referred to in Article 201 of Regulation (EU) No 575/2013 qualifying for the credit rating which is at least the lower of the following:

i) credit quality step 2;

ii) the credit quality step corresponding to the central government foreign currency rating of the Member State where the protection provider's headquarters are located;

(b) exposures in the form of a guarantee for officially supported export credits, provided by an export credit agency qualifying for the credit rating which is at least the lower of the following:

i) credit quality step 2;

ii) the credit quality step corresponding to the central government foreign currency rating of the Member State where the export credit agency's headquarters are located.”

Article 4

In Section 2 of Part III of CSSF Regulation No 18-03, the following Articles 16a to 16f are inserted:

Article 16a

Article 12(1)(c)(i) of Delegated Regulation (EU) 2015/61: liquidity coverage ratio - identification of Member State or third country major stock indices

The following indices shall qualify as major stock indices for the purpose of determining the scope of shares that could qualify as level 2B assets pursuant to Article 12(1)(c) of Commission Delegated Regulation (EU) 2015/61:

- i) the indices listed in Annex I to Commission Implementing Regulation (EU) 2016/1646;*
- ii) any major stock index, not included under point (i), in a Member State or in a third country, identified as such for the purposes of this point by the competent authority of the relevant Member State or third country public authority;*
- iii) any major stock index, not included under points (i) or (ii), which comprises leading companies in the relevant jurisdiction.*

Article 16b

Article 12(3) of Delegated Regulation (EU) 2015/61: liquidity coverage ratio - level 2B assets

(1) CRR institutions that in accordance with their statutes of incorporation are unable for reasons of religious observance to hold interest bearing assets may include corporate debt securities as level 2B liquid assets in accordance with the conditions laid down in Article 12(1)(b) of Delegated Regulation (EU) No 2015/61.

(2) The CSSF may periodically review the requirement referred to in paragraph 1 and allow an exemption from Article 12(1)(b)(ii) and (iii) of Delegated Regulation (EU) 2015/61, where the conditions laid down in Article 12(3) of that Delegated Regulation have been met.

Article 16c

Article 428p(10) of Regulation (EU) No 575/2013: Net Stable Funding Ratio (NSFR) - required stable funding factors for off-balance-sheet exposures

Unless the CSSF determines different required stable funding factors, for the off-balance-sheet exposures in the scope of Article 428p(10) of Regulation (EU) No 575/2013, CRR institutions shall apply to off-balance-sheet exposures not referred to in Chapter 4 of Title IV of Part Six of Regulation (EU) No 575/2013 required stable funding factors that correspond to the outflow rates that they apply to related products and services in the context of Article 23 of Delegated Regulation (EU) 2015/61 in the liquidity coverage requirement.

Article 16d

Article 428q(2) of Regulation (EU) No 575/2013: NSFR – determination of the term of encumbrance for assets that have been segregated

Where assets have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012 of the European Parliament and of the Council and CRR institutions are not able to freely dispose of such assets, CRR institutions shall consider such assets as encumbered for a period corresponding to the term of the liabilities to the institutions' customers to whom that segregation requirement relates.

Article 16e

Article 428aq(10) of Regulation (EU) No 575/2013: NSFR – required stable funding factors for off-balance-sheet exposures

CRR institutions for which permission to apply the simplified net stable funding requirement referred to in Chapter 5 of Title IV of Part Six of Regulation (EU) No 575/2013 has been granted, shall follow the approach as specified in Article 7c.

Article 16f

Article 428ar(2) of Regulation (EU) No 575/2013: NSFR – determination of the term of encumbrance for assets that have been segregated

CRR institutions for which permission to calculate the simplified net stable funding ratio referred to in Chapter 5 of Title IV of Part Six of Regulation (EU) No 575/2013 has been granted, shall follow the approach specified in Article 7d."

Article 5

Articles 7, 11, 12 and 15 of CSSF Regulation No 18-03 are repealed.

Article 6

This regulation comes into force with immediate effect.

Article 7

This regulation shall be published in the Journal officiel du Grand-Duché de Luxembourg and on the website of the Commission de Surveillance du Secteur Financier.

Luxembourg, 30 June 2023

Commission de Surveillance du Secteur Financier

Claude WAMPACH
Director

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Comments on the articles

Explanatory memorandum

The purpose of this regulation is to amend CSSF Regulation No 18-03 following the entry into force of Guideline (EU) 2022/508 of 25 March 2022 amending Guideline (EU) 2017/697 of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2022/12).

As a reminder, CSSF Regulation No 18-03 concerns the implementation of certain discretions of Regulation (EU) No 575/2013 (**CRR**) and of Commission Delegated Regulation (EU) 2015/61 with regard to liquidity coverage requirement for credit institutions (**Liquidity Regulation**). Thus, CSSF Regulation No 18-03 indicates how the CSSF intends to exercise these discretions made available by the CRR and the Liquidity Regulation in relation to less significant credit institutions.

In this regard, the CSSF applies the guidelines of the European Central Bank (**ECB**) for national competent authorities (NCAs) of Member States participating in the Banking Union (including the CSSF) set out in Guideline (EU) 2017/697 of the ECB, as amended by Guideline (EU) 2022/508 of 25 March 2022 (ECB/2022/12) (**ECB Guideline**).

The ECB Guideline must be read jointly with the Recommendation of the ECB on common specifications for the exercise of some options and discretions available in Union law in relation to less significant institutions (ECB/2017/10), as amended by the Recommendation of 25 March 2022 (ECB/2022/13) (**ECB Recommendation**). As the purpose of the ECB Recommendation is merely to provide guidance to NCAs in the assessments and analyses to be performed when exercising such options or discretions, it is not transposed into Luxembourg law but represents an element of transparency for the market on the CSSF's expectations in relation to less significant credit institutions.

In addition to implementing the ECB Guideline, the purpose of this regulation is also to provide further clarification on the recognition of Additional Tier 1 instruments and Tier 2 instruments issued by investment firms subject to Regulation (EU) 2019/2033 of 27 November 2019 on the prudential requirements of investment firms (**IFR Regulation**).

Article-by-article comments

Article 1

Following the entry into force of the IFR Regulation, investment firms are subject to a new prudential regime which is based, for certain aspects, on the regime deriving from Regulation (EU) No 575/2013 (CRR) applicable to credit institutions and certain investment firms, the so-called "CRR investment firms" (as defined in Article 1(9a) of the Law of 5 April 1993 on the financial sector), whose activities justify that they remain subject to the CRR.

Thus, as far as the own funds composition is concerned, among which Additional Tier 1 capital and Tier 2 capital, investment firms are required to apply the recognition conditions as set out in the CRR, in accordance with Article 9(1) of the IFR Regulation.

Recital (75) of the CRR explicitly provides for the possibility for competent authorities to maintain pre-approval processes regarding the contracts governing Additional Tier 1 and Tier 2 capital instruments. In those cases such capital instruments should only be computed towards the institution's Additional Tier 1 capital or Tier 2 capital once they have successfully completed these approval processes.

Articles 3(1) and 4(1) of CSSF Regulation No 18-03 provide for this discretion for credit institutions and CRR investment firms. As the IFR Regulation henceforth sets out that the same recognition rules apply to investment firms, it is deemed appropriate to submit all investment firms to the pre-approval condition.

Article 2

The amendment to Article 2 mirrors Article 1, insofar as it provides for the obligation for credit institutions and all investment firms to obtain a pre-approval from the competent authority for the recognition of Additional Tier 1 capital and Tier 2 capital.

Article 3

Regulation (EU) 2019/876 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements (**CRR 2**) amended Article 400(2) of the CRR as regards the large exposures ratio exemptions by adding the possibility for the competent authority to fully or partially exempt two further types of additional exposures. These exposures are set out in points (k) and (l) of Article 400(2).

The CSSF, in its role as competent authority, intends to make use of the option granting these exemptions when appropriate, which is reflected in the new Article 3 of CSSF Regulation No 18-03. Thus, the exemptions already existing and applied in CSSF Regulation No 18-03 continue to apply through the new paragraph 1 of Article 3. The new paragraph 3 of Article 3 aims at applying the new exemptions introduced by CRR 2 to letters (k) and (l) of Article 400(2).

Article 4

Article 4 integrates into CSSF Regulation No 18-03 the discretions deriving from the Liquidity Regulation and the CRR as regards liquidity ratio and NSFR. Thus, Article 4 faithfully transposes the new Articles 7a, 7b, 7c, 7d, 7e and 7f of the ECB Guideline.

Article 5

Article 5 repeals Articles 7, 11, 12 and 15 of CSSF Regulation No 18-03.

Article 7 of CSSF Regulation No 18-03 is no longer relevant as the discretion provided for in Article 473 of the CRR is no longer in force.

Article 11 of CSSF Regulation No 18-03 is repealed as a consequence of the repeal of Article 8 in the amended ECB Guideline.

Article 12 of CSSF Regulation No 18-03 is repealed as the phase-out ended in 2021.

Article 15 of CSSF Regulation No 18-03 is repealed as a consequence of the repeal of Article 5 in the amended ECB Guideline.

Article 6

No comment.

Article 7

No comment.