

Administrative sanctions of 17 January 2024 for non-compliance with the obligation of cooperation with the CSSF covered by the provisions of the amended law of 12 November 2004 relating to the fight against money laundering and the financing of terrorism

Luxembourg, 14 June 2024

Administrative sanctions imposed on three alternative investment fund managers

Administrative decision

On 17 January 2024, the CSSF issued three reprimands against three managers of alternative investment funds ("AIFM") covered by the provisions of Article 3 (2) of the amended law of 12 July 2013 relating to alternative investment fund managers.

Legal framework/motivation

The reprimands were imposed by the CSSF in accordance with the provisions of Article 8-4 (1) and (2) b) of the amended law of 12 November 2004 relating to the fight against money laundering and the financing of terrorism ("AML/CFT law") due to non-compliance, by each of the AIFMs, with the obligation of cooperation with the CSSF referred to in Article 5 (1) of the AML/CFT law.

In order to determine the type and level of the administrative sanction, the CSSF took into account, in accordance with Article 8-5 of the AML/CFT law, all relevant circumstances, including the arguments and observations respectively presented by the three AIFMs in the context of the right to be heard procedure.

Legal base for the publication

This publication is made anonymously in application of the provisions provided for by Article 8-6 (1), second subparagraph of the AML/CFT law, following an assessment on a case-by-case basis, by the CSSF, of the proportionality of the publication of the identity of the persons responsible for the above-mentioned breaches.

Context and identified breach

Article 49 of CSSF Regulation No. 12-02 of 14 December 2012 relating to the fight against money laundering and the financing of terrorism, as amended ("RCSSF 12-02") requires from certain

professionals of the collective investment sector the submission to the CSSF of a dedicated report on the fight against money laundering and the financing of terrorism according to the terms detailed in Circular CSSF 21/788. Said report, also called "AML/CFT External Report", must be prepared by an approved statutory auditor and must be submitted annually to the CSSF, within 6 months following the closing of the annual accounts. The said report forms an essential source of information in the context of the CSSF's AML/CFT supervision.

In the case at hand, said report relating to the closing of the annual accounts on 31 December 2022 had to be submitted no later than the 30 June 2023.

The report not having been submitted to the CSSF by 30 June 2023, the CSSF sent two reminders to the three AIFMs requiring the latter to submit the required report. Despite these reminders the CSSF had to note the non-submission of the said reports on 24 October 2023, which constitutes a violation of the obligation of cooperation laid down by Article 5 (1) of the AML/CFT law.

Following the announcement on this basis of a fine of around EUR 10,000 to the AIFMs in question, the AIFMs made use of the right to be heard and provided explanations which the CSSF took into account and informed them of its decision to review the sanction initially announced and to commute it to a reprimand.