

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 6 October 2015

To all the persons subject to the supervision of the CSSF in accordance with the law on the financial sector

CIRCULAR CSSF 15/620

Re: Transposition into Luxembourg law of 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 (hereinafter "**CRD IV**")

Ladies and Gentlemen,

We would like to draw your attention to:

- the law of 23 July 2015 transposing, among others, CRD IV which was published in Mémorial A No. 149 of 31 July 2015 and which entered into force on 4 August 2015 (hereinafter the "**Law**");
- CSSF Regulation N° 15-01 on the calculation of institution-specific countercyclical capital buffer rates, transposing Article 140 of CRD IV which was published in Mémorial A No. 161 of 14 August 2015 (hereinafter the "**Capital Buffer Regulation**"); and
- CSSF Regulation N° 15-02 relating to the supervisory review and evaluation process that applies to CRR institutions which was published in Mémorial A No. 161 of 14 August 2015 (hereinafter the "**Pillar II Regulation**").

The package consisting of the Law, the Capital Buffer Regulation and the Pillar II Regulation (hereinafter the "**CRD IV Package**") transposes CRD IV into Luxembourg law.

The main purpose of the Law is to transpose into Luxembourg law the provisions of CRD IV by amending the law of 5 April 1993 on the financial sector (hereinafter the "**LFS**").

As a reminder, Directives 2006/48/EC and 2006/49/EC, which were transposed into the LFS and CSSF circulars, among which, Circulars CSSF 06/273 and 07/290, are repealed¹ by CRD

¹ On this subject, please refer to paragraph 6 of Circular CSSF 14/583 on the entry into force of the CRR.

IV and replaced by the package consisting of CRD IV and Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (hereinafter the "**CRR**"). Consequently, the Law removed the provisions of Directives 2006/48/EC and 2006/49/EC which were not included in CRD IV but in the CRR thus avoiding duplication since the CRR is directly applicable in Luxembourg law and does not require transposition.

This circular is mainly intended for CRR institutions (within the meaning of Article 1(11a) of the LFS).

1) Main innovations of CRD IV and amendments to the LFS

- Capital buffer

The most innovative parts of CRD IV are those which require credit institutions and relevant investment firms to hold, in addition to own funds requirements, capital buffers. These capital buffers are a new set of tools for prudential supervision, in particular of macroprudential nature, which are dealt with in a new Chapter 5 of Part III of the LFS.

The architecture of the capital buffer is supplemented by the Capital Buffer Regulation on the institution-specific countercyclical capital buffer which transposes Article 140 of CRD IV into Luxembourg law.

In accordance with Article 59-2(10) of the LFS, the CSSF is the "designated authority" within the meaning of CRD IV. Therefore, the CSSF shall take certain decisions after consulting the Banque Centrale du Luxembourg and following the opinion or recommendation of the Comité du Risque Systémique (Systemic Risk Board).

- Governance and remuneration policies

The Law strengthens the requirements as regards governance and remuneration policies in the financial sector.

These new requirements are subject to a new Chapter 4a under Part II of the LFS. The purpose of these provisions is to address the potentially detrimental effect of poorly designed corporate governance arrangements on the sound management of risks within CRR institutions.

Thus, the Law introduces, among others, principles and standards to ensure effective oversight by the management body and promote a sound risk culture at all levels of the CRR institutions. Moreover, it defines the general requirements as regards composition, competence, knowledge, collective experience and diversity of the members of the management body. The Law also introduces into national law a principle of limitation of the mandates within the management bodies and aims to ensure that the members have sufficient time to carry out their duties adequately.

More broadly, in relation to governance, the new provisions of the Law should be read together with the Pillar II Regulation which transposes into Luxembourg law some provisions of CRD IV on the supervisory review and evaluation process (provisions called "Pillar II provisions").

As far as remuneration policy is concerned, the Law transposes the CRD IV requirements which oblige CRR institutions to have in place sound remuneration practices to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and on the control of risk-taking behaviour by individuals. The Law also defines the requirements on the variable elements of remuneration.

- Powers of the CSSF, administrative penalties and other administrative measures

The Law specifies the scope of the powers of supervision, of information gathering and of investigation vested in the CSSF in its capacity as Luxembourg competent authority pursuant to CRD IV. For instance, Articles 53 and 53-1 of the LFS are supplemented to specify the CSSF's means of intervention.

Moreover, the Law strengthens the administrative penalties which may be imposed by the CSSF by transposing in Part V of the LFS the range of breaches and administrative penalties or other administrative measures provided for in Articles 66 and 67 of CRD IV. The Law, aligned with the text of the directive, lays down that in certain listed situations, the CSSF has the right to impose administrative penalties to an extent harmonised at EU level.

The Law also regulates the publication of administrative penalties imposed by the CSSF. Thus, the Law lays down that the CSSF shall systematically publish administrative penalties for which there is no further possibility of legal remedy and which are imposed as a result of breaches in the provisions of the LFS, the CRR or their implementing measures.

2) Forthcoming amendments

Finally, please note that, following the entry into force of the CRD IV Package, the CSSF is currently amending Circulars CSSF 06/273 and 07/290 defining the capital ratios pursuant to Article 56 of the LFS, CSSF Regulation N° 14-01 on the implementation of certain discretions of the CRR as well as Circular CSSF 12/552 on central administration, internal governance and risk management.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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