

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

Luxembourg, 13 October 2017

To all the professionals subject to the prudential supervision of the CSSF and to all the entities subject to the public oversight of the audit profession by the CSSF

**CIRCULAR CSSF 17/671
as amended by Circular CSSF 18/698**

Re: Specifications regarding CSSF Regulation N° 16-07 of 26 October 2016 relating to out-of-court complaint resolution

Ladies and Gentlemen,

This CSSF circular provides additional information on the implementation of CSSF Regulation N° 16-07 of 26 October 2016 relating to out-of-court complaint resolution. The CSSF regulation, which repeals and replaces CSSF Regulation N° 13-02 of 15 October 2013, was adopted in order to take into account the amendments introduced by the Law of 17 February 2016 introducing alternative dispute resolution for consumer disputes into the Consumer Code and amending certain other provisions of the Consumer Code (the “ADR Law”).

The purpose of the ADR Law is, among other things, to transpose Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (“Directive 2013/11/EU”), into Luxembourg law.

CSSF Regulation N° 16-07 also applies to the complaints submitted under Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (“Regulation 524/2013”).

Henceforth, the CSSF notably acts as alternative dispute resolution entity (“ADR entity”) within the meaning of Directive 2013/11/EU. It is registered on the list of qualified entities for alternative dispute resolution for consumer disputes established by the Minister of Economy, in accordance with Article L-431-1 of the Consumer Code, and on the list of ADR entities drawn up and published by the European Commission.

It must be noted that besides acting as ADR entity, the CSSF also acts as alternative dispute resolution entity for complaints that are not consumer complaints, while they are complaints introduced by non-consumers (notably by commercial companies).

CSSF Regulation N° 16-07 also takes into account the ninth Principle on “Complaints Handling and Redress” included in the Ten G20 High-level Principles on Financial Consumer Protection drafted by the Organisation for Economic Co-operation and Development (OECD) and published in October 2011 and the “Guidelines for complaints-handling in the securities (ESMA) and banking (EBA) sectors” drafted by the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).

For the purpose of this circular, “professional” shall mean a professional subject to the prudential supervision of the CSSF, as well as a *réviseur d’entreprises agréé* (approved statutory auditor) or a *cabinet de révision agréé* (approved audit firm) subject to the public oversight of the CSSF¹ as regards third party disputes submitted to the CSSF in the context of statutory audit. Likewise, any reference to the manager responsible for the handling of complaints (the “responsible manager”) shall be understood as a reference to the *réviseur d’entreprises agréé* or the partner in charge of complaint handling in the *cabinet de révision agréé*.

1. Procedure for complaint handling by professionals

The professional shall have a complaint management policy that is set out in a written document and formalised in an internal complaint settlement procedure. This procedure shall be efficient and transparent, in view of the reasonable and prompt complaint handling. It shall include all aspects of complaint handling within the institution and specify the terms and conditions applicable where the complaints are handled at the level of the professional and where the CSSF is involved in the handling of a request for the out-of-court resolution of a complaint, respectively.

The professional shall ensure that each complaint as well as the measure(s) taken to handle them are properly registered. The registration arrangements are left to be determined by each professional, with respect to the number of complaints received. However, the registration shall be at least computerised and secured.

It is essential that a good internal organisation of complaint handling is put in place in order to ensure full compliance with all the provisions of CSSF Regulation N° 16-07.

In this respect, Articles 15 and 16 of CSSF Regulation N° 16-07 describe the conduct to be followed by professionals within the context of the handling of the complaints submitted to the professional. Each complaint shall, at all times, be properly handled and within a reasonable time, in view of the nature of the problem raised in the best interest of the complainants. No complaint shall remain unanswered by the professional. The measures referred to in Articles 15 and 16 of CSSF Regulation N° 16-07 are not exhaustive and should be completed when this proves necessary in the light of the number or the complexity of the complaints. This may include the establishment of a telephone hotline/call centre dedicated to complaints.

¹ By reference to the Law of 23 July 2016 on the audit profession and Circular CSSF 17/662, and notably point 1.6.

2. Manager in charge of complaint handling and disclosure obligations towards every complainant - specifications regarding Article 15 of CSSF Regulation N° 16-07

The professional's management shall be in charge of implementing, within the institution, the policy and procedures relating to the provisions of CSSF Regulation N° 16-07. The policies and procedures shall be laid down in writing. The professional's management shall ensure the proper implementation of these policies and procedures. It shall entrust one of its members with the task of handling complaints.

The responsible manager shall inform the relevant staff of its institution of the policies and procedures required by CSSF Regulation N° 16-07 and of any change thereto.

The responsible manager shall determine the human and technical means required to properly implement the policies and the procedures in question. S/he shall ensure that compliance with these policies and relevant procedures is checked on a regular basis by the compliance function of the professional and its internal audit function.

The internal procedure of the professional shall organise the communication to the responsible manager of all the necessary data on the complaints received at all levels. In particular, this information shall describe the problems identified, the corrective measures taken and the follow-up on these measures.

When, in view of the nature, the number or complexity of the complaints, the professional considers that it is appropriate to designate one or several persons in charge of the complaints, the responsible manager may delegate the management of these complaints internally provided that the CSSF is notified beforehand on the arrangements to ensure the full implementation of the provisions of Section 2 of CSSF Regulation N° 16-07. However, the responsible manager shall keep ongoing knowledge and control of the complaint handling internally.

Moreover, the professional shall ensure that each complainant is informed of the name and contact information of the person in charge of his/her file. As far as possible, that person will be the contact person of the complainant throughout the internal handling procedure for his/her complaint.

Where handling of A complaint by the responsible manager did not allow a satisfactory answer for the complainant, the professional shall inform the complainant about the alternative dispute resolution procedure within the CSSF (the "Procedure"). At that moment, if the professional committed to apply the Procedure beforehand, for example in its general conditions, the professional shall confirm this decision to have recourse to the procedure to the complainant. If the professional did not commit thereto beforehand, it may still take the decision to participate in the Procedure.

Even if a professional may decide not to participate in the Procedure, the CSSF draws the attention of the professionals on the fact that with Recital 49 of Directive 2013/11/EU, the European legislator wished to encourage the professionals in European Member States to participate in alternative dispute resolution procedures "in order to ensure that consumers have access to redress and that they are not obliged to forego their claims". The CSSF supports the European legislator's approach and expects professionals to participate in the alternative dispute resolution procedure.

Whether the professional has previously agreed to participate in the alternative dispute

resolution procedure, or decides to participate in the alternative dispute resolution procedure without having agreed to it beforehand, in both cases the professional shall communicate to the complainant the information referred to in subparagraphs 4 and 5 of Article 15(5) of CSSF Regulation N° 16-07, and notably the information that the request must be introduced with the CSSF within a year at the latest after the date on which the complainant has introduced his/her complaint (on the same subject) with the professional's responsible manager, in accordance with Article 5(1) of CSSF Regulation N° 16-07. The professional shall communicate this information in a clear, comprehensible and easily accessible manner.

If the complaint relates to a consumer dispute (cf. point (5) of Article L. 411-1(1) of the Consumer Code), the professional shall demonstrate the existence and accuracy of the information provided as referred to in the two previous paragraphs and the date on which the information was provided to the professional's responsible manager.

The CSSF also participates in the online alternative dispute resolution procedure under Regulation 524/2013. It is connected to the European platform for online dispute resolution which is an additional instrument made available (only) to the consumers that wish to start an online out-of-court settlement procedure for their national or cross-border dispute.

3. Communication of information to the CSSF

Article 16 of CSSF Regulation N° 16-07 provides that the responsible manager is required to communicate to the CSSF, on an annual basis, a table stating the number of complaints registered by the professional (the "table"), classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

In accordance with CSSF Regulation N° 16-07, a complaint shall mean any "complaint filed with a professional to recognise a right or to redress a harm". Thus, simple requests for information or clarification cannot be considered as complaints. Complaints that are not related to a financial product or service shall not be mentioned in the table.

The CSSF provides professionals with a template satisfying the requirement to communicate a table including the number of complaints registered by the professional, classified by type of complaints. That form is attached to this circular. Professionals may, where appropriate, use another template if the latter better suits their situation.

The summary report referred to in Article 16 of CSSF Regulation N° 16-07 is not supposed to be a compilation of complaint summaries of complaints, but shall present the recurrent issues encountered by the professional, and contain, where appropriate, an account of the measures that have been taken to handle these complaints.

It should be noted that the table that includes the number of complaints registered by the professional, classified by type of complaints, as well as the summary report of the complaints, must include the complaints registered by the professional's branches abroad.

According to Article 16 of CSSF Regulation N° 16-07, the documents (table and report) must be submitted to the CSSF (for the attention of the CSSF department in charge of the prudential supervision or the public oversight of the audit profession) by 1 March each year and shall cover the previous calendar year. As regards the management companies referred to in Article 2 of CSSF Regulation N° 10-04, this communication shall be received by the CSSF at the latest

“within five months after the date of closing of the financial year”² of the management company.

4. Repeal of Circular CSSF 14/589

This Circular repeals Circular CSSF 14/589.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude SIMON
Director

Simone DELCOURT
Director

Claude MARX
Director General

ANNEX

² Amended by Circular CSSF 18/698

**Table listing the claims registered
by the professional (sub-paragraph
1 of Article 16(3) of CSSF
Regulation N° 16-07 relating to
out-of-court complaint resolution)**

1. GENERAL DATA ON YOUR INSTITUTION

1.1 Name of the institution

1.2 Identification number*

1.3 Name of the person responsible within the management for complaint handling

2. COMPLAINTS REGISTERED BY YOUR INSTITUTION

2.1. General information on complaints

2.1.1. Reference period

From to

2.1.2. Total number of complaints received by your institution during the reference period

2.2. Number of complaints by category

Categories

Number of complaints

Complaints that do not relate to a specific product or service

Staff behaviour

Fees in general

Banking secrecy

Taxation

Provision of documents (statements, account summaries, etc.)

Inheritance

Guarantees/collateral

Insurance advice

Others (please specify)

TOTAL

* including letter "B" (Bank), "P" (PFS), etc. indicating the type of activity of the institution.

Accounts and payment services

Account opening refusal	
Account termination	
Account blocking	
Dispute of a transaction	
Execution of a transaction	
Cash withdrawal at bank counter	
Pricing	
Others (please specify)	
TOTAL	

Savings products

Savings account termination	
Yield]
Pricing	
Others (please specify)	
TOTAL	

Consumer credits

Loan refusal	
Loan termination	
Request for debt restructuring	
Early repayment	
Interest rate	
Advice and information	
Pricing	
Others (please specify)	
TOTAL	

Mortgage loans

Loan refusal	
Loan termination	
Request for debt restructuring	
Early repayment	
Interest rate	
Advice and information	
Pricing	
Others (please specify)	
TOTAL	

Loans to professionals[†]/Other loans

Loan refusal	
Loan termination	
Request for debt restructuring	
Early repayment	
Interest rate	
Advice and information	
Pricing	
Others (please specify)	
TOTAL	

Home loan and savings contracts

Contract termination	
Yield	
Redemption of the contract	
Advice and information	
Pricing	
Others (please specify)	
TOTAL	

[†] Investment loans, credit lines, etc.

Payment cards

Card refusal

Refusal to raise the usage limit

Card withdrawal

Unauthorised use

Cash withdrawal (ATM)

Blocking of card

Pricing

Others (please specify)

TOTAL

Web Banking

Service unavailable

Technical failure

Others (please specify)

TOTAL

Safe deposit box

Access to safe deposit box

Pricing

Others (please specify)

TOTAL

Investment activities

Conflict of interests

Dispute on order execution

Quality of advice

Investment performance

Non-observance of the client's investment profile

Non-compliance with the management agreement

Transfer of portfolio/securities

Pricing/Fees

Others (please specify)

TOTAL

Undertakings for collective investment

Prospectus

Investment policy

Subscription/Redemption of shares/units

Obligations of depositary banks

Advertising document

NAV calculation errors	
Fund management	
Service quality in general	
Others (please specify)	
TOTAL	
Other categories of complaints (please specify)	
TOTAL	
Other categories of complaints (please specify)	
TOTAL	
Other categories of complaints (please specify)	
TOTAL	