

## **Law of 23 December 2016 on market abuse and:**

- 1. implementing Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;**
- 2. transposing:**
  - a) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive);**
  - b) Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation;**
- 3. amending the Law of 11 January 2008 on transparency requirements for issuers, as amended; and**
- 4. repealing the Law of 9 May 2006 on market abuse, as amended**

**(Mém. A 2016, No 279)**

as amended by:

- the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:
  1. the Law of 5 April 1993 on the financial sector, as amended;
  2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
  4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
  5. the Law of 10 November 2009 on payment services, as amended;
  6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
  8. the Law of 7 December 2015 on the insurance sector, as amended;
  9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
  10. the Law of 23 December 2016 on market abuse

**(Mém. A 2018, No 150)**

## **Chapter 1 - Definitions**

### **Article 1. Definitions.**

For the purposes of this law, the following definitions shall apply:

- (1) "competent authority" means the administrative authority designated by each Member State in accordance with Article 22 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, hereinafter referred to as "Regulation (EU) No 596/2014". In Luxembourg, the competent authority is the Commission de surveillance du secteur financier, hereinafter referred to as the "CSSF";
- (2) "spot commodity contract" means a spot commodity contract as defined in point (15) of Article 3(1) of Regulation (EU) No 596/2014;

- (3) "issuer" means an issuer as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014;
- (4) "Member State" means a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts, are assimilated to Member States of the European Union;
- (5) "benchmark" means a benchmark as defined in point (29) of Article 3(1) of Regulation (EU) No 596/2014;
- (6) "inside information" means information within the meaning of Article 7(1) to (4) of Regulation (EU) No 596/2014;
- (7) "financial instrument" means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, hereinafter referred to as "Directive 2014/65/EU";
- (8) "regulated market" means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (9) "third country" means a state that is not a Member State;
- (10) "persons subject to the prudential supervision of the CSSF" means the persons subject to the prudential supervision of the CSSF in accordance with Article 2(1) of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"). The persons carrying out an activity supervised by the CSSF without holding the authorisation required by law are considered as persons subject to the prudential supervision of the CSSF.
- (11) "trading venue" means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU;
- (12) "accepted market practice" means a market practice that is accepted by the competent authority of a Member State in accordance with Article 13 of Regulation (EU) No 596/2014;
- (13) "wholesale energy product" means a wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;
- (14) "buy-back programme" means transactions in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;
- (15) "emission allowance" means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU;
- (16) "stabilisation" means a stabilisation as defined in Article 3(2)(d) of Regulation (EU) No 596/2014;
- (17) "multilateral trading facility" or "MTF" means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU; and
- (18) "organised trading facility" or "OTF" means an organised trading facility as defined in point (23) of Article 4(1) of Directive 2014/65/EU.

## **Chapter 2 - Administrative enforcement with respect to market abuse**

### **Article 2. Scope.**

The scope of this chapter is determined by Articles 2, 5 and 6 of Regulation (EU) No 596/2014.

### **Article 3. Competent authority.**

(1) The CSSF is the competent authority in Luxembourg for the purposes of Regulation (EU) No 596/2014 and its implementing measures.

(2) The CSSF ensures the application of the provisions of Regulation (EU) No 596/2014 regarding all actions carried out in Luxembourg and actions carried out abroad relating to instruments:

11. admitted to trading on a regulated market operating in Luxembourg;
12. for which a request for admission to trading on such a market has been made;
13. auctioned on an auction platform operating in Luxembourg;
14. traded on an MTF operating in Luxembourg;
15. traded on an OTF operating in Luxembourg; or
16. for which a request for admission to trading on an MTF operating in Luxembourg has been made.

(3) The CSSF is the competent authority for international cooperation and information exchange in accordance with the provisions of this law and Regulation (EU) No 596/2014.

#### **Article 4. Powers of the CSSF.**

(1) For the purposes of application of Regulation (EU) No 596/2014 and this law, the CSSF shall be given all the supervisory and investigatory powers that are necessary for the exercise of its functions within the limits set in the above-mentioned regulation and in this law.

The powers of the CSSF include the right:

1. to have access to any document and any data in any form whatsoever, and to receive or take a copy of it;
2. to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;
3. in relation to commodity derivatives, to request information from market participants on related spot markets according to standardised formats, obtain reports on transactions, and have direct access to traders' systems;
4. to carry out on-site inspections, including the seizing of any document, electronic file or other thing that seems useful to ascertaining the truth, with the persons subject to its prudential supervision and issuers and, subject to judicial authorisation provided for in Article 5, with any other natural or legal person;
5. to refer information to the State Prosecutor for criminal prosecution;
6. to require existing telephone recordings, electronic communications and data traffic records held by the persons subject to its prudential supervision;
7. subject to judicial authorisation provided for in Article 5, to require data traffic records held by providers of electronic communication services and public communication networks operators, where there is a reasonable suspicion of an infringement and where such records may be useful to ascertaining the truth in the context of an investigation regarding an investigation with respect to the infringement of Article 14 or 15 of Regulation (EU) No 596/2014;
8. to order the temporary cessation of any practice that the CSSF considers contrary to Regulation (EU) No 596/2014;
9. to suspend trading of the financial instrument concerned;
10. to request the freezing or sequestration of assets with the President of the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court) deciding on request;
11. to pronounce a temporary prohibition on the exercise of professional activity in the financial sector for persons subject to its prudential supervision as well as members of their administrative, management or supervisory bodies;
12. to take measures to ensure the correct information of the public, inter alia, measures to correct false or misleading disclosed information and to require an issuer or any other person that has published or disseminated false or misleading information to publish a corrective statement;
13. to request the appointment of experts for one or several specific issues raised in an investigation with respect to the infringement of the provisions of Regulation (EU) No 596/2014. The expenses shall be borne by the persons against whom sanctions or other administrative

measures are, where appropriate, imposed by the CSSF following the investigation concerned. In all other cases, the expenses shall be borne by the CSSF; and

14. to require that past or future publications based on the provisions of Regulation (EU) No 596/2014 are done in one of the following languages: Luxembourgish, French, German or English.

(2) Paragraph 1 shall apply without prejudice to the legal provisions on professional secrecy.

(3) A person making information available to the CSSF in accordance with Regulation (EU) No 596/2014 or this law shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

(4) Pursuant to the third subparagraph of Article 17(4) of Regulation (EU) No 596/2014, the record of the explanation as laid down in that subparagraph shall be provided only upon the request of the CSSF.

#### **Article 5. Judicial authorisation.**

(1) Without prejudice to the first subparagraph of Article 6(1), the CSSF exercises the powers laid down in point (4) of Article 4(1) on the persons who are neither subject to the prudential supervision of the CSSF nor issuers and the powers laid down in point (7) of Article 4(1), only after prior authorisation by order of the *juge d'instruction* (investigating judge) of the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court). The order shall be given upon reasoned request by the CSSF. The *juge d'instruction directeur* (chief investigating judge), or, should the latter not be available, the magistrate replacing him/her, shall appoint, for each request by the CSSF, the judge who shall be in charge.

(2) The *juge d'instruction* (investigating judge) verifies that the reasoned request submitted by the CSSF is justified and proportionate to the aim pursued. The request includes all elements of information that justify the requested authorisation. As regards on-site inspections, the *juge d'instruction* (investigating judge) appoints one or several members of the *Service de Police Judiciaire* (criminal investigation police), among which at least one member has to be an *officier de police judiciaire* (criminal investigation police officer), in charge of assisting the CSSF agents during the on-site inspection.

(3) The order referred to in paragraph 1 may be subject to the same remedies as the ones regarding orders of the *juge d'instruction* (investigating judge). The remedies shall not be suspensive.

#### **Article 6. On-site inspections.**

(1) The on-site inspections by the CSSF with persons who are neither persons subject to the prudential supervision of the CSSF nor issuers may not be carried out without the express consent of the person with whom the inspection shall take place, except in case of prior judicial authorisation in accordance with Article 5.

The on-site inspections with persons who are neither subject to the prudential supervision of the CSSF nor issuers and for which no express consent has been given, shall be carried out in accordance with the provisions of this article.

(2) The person concerned by the CSSF on-site inspection and its counsel may attend the on-site inspection; they shall receive notification thereof the day before, with the indication of the object and aim of the inspection, failing which the notification will be null and void. Exceptionally, if there is a possibility or probability that elements, whose certification and analysis seem useful to ascertaining the truth, might imminently be concealed, the CSSF agents and the members of the *Service de Police Judiciaire* (criminal investigation police) in charge of assisting them shall initiate immediately these operations without prior notification to the persons concerned being required. A report on their operations shall be drawn up. Where, due to the urgency of the matter, the persons concerned have not been notified, the reason thereof shall be mentioned in the report.

(3) The on-site inspections are carried out in all places where objects whose discovery would be useful to ascertaining the truth might be located. The *juge d'instruction* (investigating judge) shall previously

notify the State Prosecutor thereof. On-site inspections may not commence before 6.30 a.m. and after 8.00 p.m.; failure to do so shall render the inspection void.

During the on-site inspection, the CSSF agents and the members of the *Service de Police Judiciaire* (criminal investigation police) in charge of assisting them shall ensure the compliance with the legal provisions on criminal proceedings applicable to searches and seizures and the application of the legal rules governing the instruction and inspection measures as set out in the profession's own law.

(4) The documents, electronic files and other things seized shall be listed in the report. If an on-site inventory is difficult to carry out, the documents, files and other things seized shall be sealed off until they are listed in the inventory, in presence of the persons that attended the on-site inspection. The CSSF immediately receives a copy or, where appropriate, takes a copy of all the documents and electronic files seized. The original documents, electronic files and other things seized are deposited at the registry (*greffe*) or entrusted to a judicial custodian (*gardien de saisie*) or the CSSF. The provisions of the criminal proceedings relating to seizures shall apply.

(5) The on-site inspection report shall be signed by the person with whom the inspection was carried out and by the persons who attended the inspection. Any refusal to sign shall be mentioned in the report. A copy of the report shall be provided to them. A copy of the report shall be provided to the *juge d'instruction* (investigating judge) who delivered the order and to the person concerned by the inspection.

#### **Article 7. Cooperation between the CSSF and the State Prosecutor.**

(1) The CSSF shall cooperate with the State Prosecutor for administrative or criminal enforcement of infringements or breaches of the provisions of Regulation (EU) No 596/2014 or this law and their implementing measures. To this end, the CSSF, the State Prosecutor and the *Service de Police Judiciaire* (criminal investigation police) may exchange any information they deem useful or necessary.

(2) Where there are indications that might substantiate the opening of administrative proceedings by the CSSF liable to result in an administrative sanction for breaching Article 14 or 15 of Regulation (EU) No 596/2014, the CSSF shall inform the State Prosecutor thereof. The State Prosecutor shall decide within two weeks from the receipt of this information whether prosecution is initiated and shall inform the CSSF of its decision.

If the State Prosecutor decides to prosecute, the CSSF shall refrain from proceeding. In case of a negative decision or in the absence of a reply by the State Prosecutor after the period of two weeks, the CSSF shall proceed.

Where, during the proceedings, the CSSF notices that there are indications of a possible breach of the provisions of Chapter 3 by the persons suspected, it shall relinquish the file and transmit it to the State Prosecutor to carry on with the proceedings.

If, during the course of its investigation and before summoning to appear, the State Prosecutor deems that the conditions provided for in Chapter 3 are not fulfilled, but that Article 12 might be applicable, it shall transmit the file to the CSSF to carry on with the proceedings.

(3) When the State Prosecutor is referred to based on a complaint of facts liable to constitute a breach of the provisions of Chapter 3, and he or she decides to prosecute, he or she shall inform the CSSF thereof. In this case, the CSSF refrains from proceeding. If the State Prosecutor decides not to prosecute, the CSSF shall proceed.

If, during the course of its investigation and before summoning to appear, the State Prosecutor deems that the conditions provided for in Chapter 3 are not fulfilled, but that Article 12 might be applicable, it shall transmit the file to the CSSF to carry on with the proceedings.

## **Article 8. Reporting of infringements.**

(1) The CSSF shall establish effective mechanisms to enable reporting of actual or potential infringements of Regulation (EU) No 596/2014 to the CSSF. These mechanisms shall be established in compliance with the provisions of the Annex to this law.

(2) The employers who carry out activities that are regulated by financial services regulation shall have in place appropriate internal procedures for their employees to report any infringements of Regulation (EU) No 596/2014.

## **Article 9. Confidentiality of the notifications to the CSSF.**

(1) Persons notifying to the CSSF in accordance with Article 16(1) or (2) of Regulation (EU) No 596/2014, shall not inform any other person, including the persons on behalf of whom the transactions have been carried out or parties related to those persons, of this notification, except by virtue of provisions laid down by law.

(2) The CSSF shall not disclose to any person the identity of the persons who reported to the CSSF pursuant to Article 16(1) or (2) of Regulation (EU) No 596/2014, if disclosure would, or would be likely to, harm these persons. This provision is without prejudice to the requirements of the enforcement and sanctioning regimes under Regulation (EU) No 596/2014, this law and the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data.

## **Article 10. Cooperation with the competent authorities of Member States.**

(1) The CSSF shall cooperate with the competent authorities of the other Member States as well as with the other bodies referred to in Article 25 of Regulation (EU) No 596/2014 within the limits provided for in this article and by making use of the powers conferred on it by the law.

(2) Where the CSSF cooperates with the competent authorities of the other Member States in order to facilitate the recovery of pecuniary sanctions, the expenses for this recovery other than the expenses for the functioning of the CSSF shall be borne by the requesting authority.

(3) Without prejudice to the obligations to which it is subject in judicial proceedings under criminal law, the CSSF may use information received pursuant to this article or Regulation (EU) No 596/2014 only for the exercise of its functions as defined by this law and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority communicating information consents thereto, the CSSF may use the information received for other purposes or forward it to a foreign competent authority.

(4) In accordance with Article 25(6) of Regulation (EU) No 596/2014, the CSSF may request a foreign competent authority to carry out an investigation or on-site inspection on the territory of that competent authority. It may request to be allowed to participate, through its agents, in the investigation or on-site inspection.

## **Article 11. Cooperation with third-country supervisory authorities.**

(1) The CSSF shall cooperate with third-country supervisory authorities, where necessary to fulfil their respective mission and in order to apply Regulation (EU) No 596/2014 within the limits laid down in this regulation and this law and by making use of the powers conferred on it by the law. The CSSF shall lend assistance to the third-country supervisory authorities, in particular by exchange of information and cooperation in investigations.

(2) The CSSF shall, on request, immediately supply any information required for the purpose referred to in paragraph 1. Upon receiving a request of information, the CSSF shall immediately take all necessary measures in order to gather the required information. If the CSSF is not able to supply the required information immediately, it shall notify the requesting supervisory authority of the reasons.

(3) The transmission of information by the CSSF to a third-country supervisory authority is subject to the following conditions:

1. the information supplied must be necessary for the accomplishment of the mission of the supervisory authority receiving it;
2. the information supplied must be covered by the professional secrecy of the supervisory authority receiving it. That authority's professional secrecy must provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to;
3. the supervisory authority receiving information from the CSSF may use it only for the purpose for which it was supplied to it and must be able to ensure that it will not be used for any other purpose.

Moreover, the CSSF may refuse to act on a request for information by a third-country supervisory authority where:

1. communication might adversely affect the sovereignty, security or public policy of the State of Luxembourg;
2. judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg courts;
3. a final judgement has already been delivered in relation to such persons for the same actions in Luxembourg; or
4. that authority does not grant the CSSF the same right to information.

In the cases referred to in points (2) and (3) of the second subparagraph, the CSSF shall provide the supervisory authority making the request with as detailed information as possible on those proceedings or the judgement.

(4) Without prejudice to the obligations to which it is subject in judicial proceedings under criminal law, the CSSF may use information received pursuant to this article only for the exercise of its functions as defined by this law and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the third-country supervisory authority communicating information consents thereto, the CSSF may use the information received for other purposes or forward it to a competent authority or third-country supervisory authority.

(5) Where the CSSF is convinced that acts contrary to the provisions of Regulation (EU) No 596/2014 are being, or have been, carried out in a third country, or that acts carried out in Luxembourg are affecting financial instruments which are traded on a market operating in a third country and for which the market abuse provisions and prohibitions are similar to those of Regulation (EU) No 596/2014, it shall give the third-country supervisory authority concerned notice of that fact in as specific a manner as possible.

(6) Where a third-country supervisory authority informs the CSSF that acts are being, or have been, carried out in Luxembourg contrary to foreign laws on market abuse, or that acts carried out in a third country are affecting financial instruments traded on a trading venue located or operated in Luxembourg, the CSSF shall take the appropriate measures. It shall inform the notifying supervisory authority of the outcome of those measures and, so far as possible, of significant interim developments.

The CSSF shall consult the third-country supervisory authorities on the proposed follow-up to its action.

(7) The CSSF may request that a third-country supervisory authority carry out an investigation or on-site inspection on the territory of this supervisory authority. It may further request to be allowed to participate, through its agents, in the investigation or on-site inspection.

(8) Where a third-country supervisory authority requests that the CSSF carry out an investigation in Luxembourg, the latter shall agree to do so without prejudice to the provisions of paragraph 9. It may, on request, allow certain members of the requesting authority's personnel to accompany it during the investigation or on-site inspection. The investigation or on-site inspection shall, however, be subject throughout to the overall control of the CSSF.

(9) The CSSF may refuse to act on a request by a third-country supervisory authority for an investigation or on-site inspection to be conducted, or for its personnel to be accompanied by the personnel of the requesting supervisory authority, where:

1. such an investigation or on-site inspection might adversely affect the sovereignty, security or public policy of the State of Luxembourg;
2. judicial proceedings have already been initiated in Luxembourg in respect of the same actions and against the same persons;
3. a final judgement has already been delivered in relation to such persons for the same actions in Luxembourg;
4. the requesting authority does not grant the CSSF the same right; or
5. the professional secrecy of the requesting authority does not provide guarantees at least equivalent to the professional secrecy which the CSSF is subject to.

In the cases referred to in points (2) and (3) of the first subparagraph, the CSSF shall provide the supervisory authority making the request with as detailed information as possible on those proceedings or the judgement.

## **Article 12. Administrative sanctions and other administrative measures.**

(1) Without prejudice to any criminal sanctions and without prejudice to powers of the CSSF under Article 4, the CSSF has the power to take appropriate administrative sanctions and other administrative measures in relation to the following infringements:

1. infringements of Articles 14 and 15, Article 16(1) or (2), Article 17(1), (2), (4), (5) or (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) or (11) or Article 20(1) of Regulation (EU) No 596/2014;
2. infringements of Article 11(3), (5), (6), (7) or (8) of Regulation (EU) No 596/2014;
3. infringements of Article 8(2) or Article 9(1).

(2) In the event of an infringement referred to in point (1) of paragraph 1, the CSSF has the power to impose the following administrative sanctions and to take the following administrative measures:

1. an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
2. the disgorgement of the profits gained or losses avoided due to the infringement in so far as they can be determined;
3. a public warning which indicates the person responsible for the infringement and the nature of the infringement;
4. the withdrawal or suspension of the authorisation of a person subject to the prudential supervision of the CSSF;
5. a temporary ban of a person discharging managerial responsibilities within a person subject to the prudential supervision of the CSSF or any other natural person, who is held responsible for the infringement, from exercising management functions in a person subject to the prudential supervision of the CSSF. The temporary ban may not exceed five years;
6. in the event of repeated infringements of Article 14 or 15 of Regulation (EU) No 596/2014, a permanent ban of any person discharging managerial responsibilities within a person subject to the prudential supervision of the CSSF or any other natural person who is held responsible for the infringement, from exercising management functions in a person subject to the prudential supervision of the CSSF;
7. a temporary ban, not exceeding five years, of a person discharging managerial responsibilities within a person subject to the prudential supervision of the CSSF or another natural person who is held responsible for the infringement, from dealing on own account;
8. requiring a person's suspension or exclusion from being member or participant of a trading venue;
9. administrative fines of ten times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;
10. in respect of a natural person, administrative fines of up to:
  - a) EUR 5,000,000 for infringements of Article 14 or 15 of Regulation (EU) No 596/2014;
  - b) EUR 1,000,000 for infringements of Article 16 or 17 of Regulation (EU) No 596/2014;
  - c) EUR 500,000 for infringements of Article 18, 19 or 20 of Regulation (EU) No 596/2014;
 and



11. in respect of legal persons, administrative fines of up to:
  - a) EUR 15,000,000 or 15% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Article 14 or 15 of Regulation (EU) No 596/2014;
  - b) EUR 2,500,000 or 2% of its total annual turnover according to the last available accounts approved by the management body for infringements of Article 16 or 17 of Regulation (EU) No 596/2014;
  - c) EUR 1,000,000 for infringements of Article 18, 19 or 20 of Regulation (EU) No 596/2014.

For the purposes of point (11)(a) and (b) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking. This obligation is laid down in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, for banks, and in Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, for insurance companies.

(3) Where the CSSF observes an infringement of the provisions referred to in point (2) or (3) of paragraph 1, the CSSF may impose an administrative fine of EUR 250 up to EUR 250,000 on the person responsible for the infringement.

(4) The CSSF may impose an administrative fine of EUR 250 up to EUR 250,000 on those who obstruct application of its supervisory and investigatory powers, who do not follow up on its orders given pursuant to point (8) of Article 4(1), who have knowingly given it inaccurate or incomplete information following requests based on point (1), (2), (3), (6) or (7) of Article 4(1) or who do not comply with the CSSF requirements based on point (12) or (14) of Article 4(1).

(5) The costs incurred for the forced recovery of administrative fines shall be borne by the persons on whom these fines have been imposed.

### **Article 13. Exercise of supervisory powers and imposition of sanctions.**

When determining the type and level of administrative sanctions, the CSSF shall take into account all relevant circumstances, including, where appropriate:

1. the gravity and duration of the infringement;
2. the degree of responsibility of the person responsible for the infringement;
3. the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
4. the importance of the profits gained or losses avoided by the person responsible for the infringement, in so far as they can be determined;
5. the level of cooperation of the person responsible for the infringement with the CSSF, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
6. previous infringements by the person responsible for the infringement; and
7. measures taken by the person responsible for the infringement to prevent its repetition.

### **Article 14. Publication of the CSSF's decisions.**

The CSSF shall ensure that any decision that is published in accordance with Article 34 of Regulation (EU) No 596/2014 shall remain accessible on its website for a period of five years after its publication.

Personal data contained in the publications referred to in the first subparagraph shall be kept on the CSSF's website for a period not exceeding 12 months.

## **Article 15. Administrative remedies.**

The *Tribunal administratif* (Administrative Tribunal) can undertake a full review of the merits of the decision adopted by the CSSF in implementation of this law (*recours en pleine juridiction*).

### **Chapter 3 - Criminal enforcement with respect to market abuse**

## **Article 16. Scope.**

(1) This chapter shall apply to the following:

1. financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
2. financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
3. financial instruments traded on an OTF;
4. financial instruments not covered by point (1), (2) or (3), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

This chapter shall also apply to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, hereinafter "Regulation (EU) No 1031/2010". Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any provisions in this chapter referring to orders to trade shall apply to such bids.

(2) This chapter shall not apply to:

1. trading in own shares in buy-back programmes where this trading is carried out in accordance with Article 5(1), (2) and (3) of Regulation (EU) No 596/2014;
2. trading in securities or associated instruments referred to in letters (a) and (b) of Article 3(2) of Regulation (EU) No 596/2014 for the stabilisation of securities where such trading is carried out in accordance with Article 5(4) and (5) of that regulation;
3. transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of Regulation (EU) No 596/2014, transactions, orders or behaviours carried out in accordance with Article 6(2) thereof, activities in pursuit of the EU climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the EU Common Agricultural Policy or of the EU Common Fisheries Policy in accordance with Article 6(4) thereof.

(3) Articles 23 and 24 also apply to:

1. spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in paragraph 1;
2. types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments;
3. behaviour in relation to benchmarks.

(4) This chapter shall apply to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 1 and 3, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

### **Article 17. Insider dealing.**

(1) Insider dealing arises where a person who possesses inside information uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.

(2) Insider dealing also arises when using inside information to cancel or amend an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information.

(3) In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information referred to in paragraph 2 shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or the account of a third party.

(4) Insider dealing also arises when using recommendations or inducements referred to in Article 19, where the person using the recommendation or inducement knows it is based upon inside information.

(5) This article shall apply to any person who possesses inside information as a result of:

1. being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
2. having a holding in the capital of the issuer or emission allowance market participant;
3. having access to the information through the exercise of an employment, profession or duties;  
or
4. being involved in criminal activities.

This article shall also apply to any person who has obtained inside information under circumstances other than those referred to in the first subparagraph where that person knows that it is inside information.

(6) For the purposes of this article, it shall not be deemed from the mere fact that a person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate under Article 9 of Regulation (EU) No 596/2014.

### **Article 18. Sanctions applicable to insider dealing.**

The persons referred to in Article 17(5) who are natural persons and who engaged in insider dealing as laid down in Article 17, with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect, shall incur a term of imprisonment of between 3 months and 4 years and a fine of between EUR 251 and EUR 5,000,000, or only one of these sanctions. Where these persons are legal persons, these actions shall be sanctioned with a fine of between EUR 500 and EUR 15,000,000.

The fines indicated in the first subparagraph may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

Any attempt to commit the breaches referred to in the first subparagraph shall incur the same sanctions.

### **Article 19. Recommending or inducing another person to engage in insider dealing.**

(1) Any person referred to in Article 17(5) shall not recommend that another person engage in insider dealing or induce another person to engage in insider dealing.

(2) For the purposes of paragraph 1, recommending that another person engage in insider dealing or inducing another person to engage in insider dealing, arises where the person possesses inside information and

1. recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which this information relates, or induces that person to make such an acquisition or disposal; or
2. recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

**Article 20. Sanctions applicable to the fact of recommending or inducing another person to engage in insider dealing.**

The persons who are natural persons and who infringed the prohibition laid down in Article 19, with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect, shall incur a term of imprisonment of between 3 months and 4 years and a fine of between EUR 251 and EUR 5,000,000, or only one of these sanctions. Where these persons are legal persons, these actions shall be sanctioned with a fine of between EUR 500 and EUR 15,000,000.

The fines indicated in the first subparagraph may be increased to ten times the amount of the profit realised and shall under no circumstances be less than the said profit.

**Article 21. Unlawful disclosure of inside information.**

(1) Unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of its employment, profession or duties, including where the disclosure qualifies as a market sounding made in compliance with Article 11(1) to (8) of Regulation (EU) No 596/2014.

(2) This article shall apply to any person in the situations or circumstances referred to in Article 17(5).

(3) Unlawful disclosure of inside information also arises in case of onward disclosure of recommendations or inducements referred to in Article 19, where the person disclosing the recommendation or inducement knows that it was based on inside information.

**Article 22. Sanctions applicable to unlawful disclosure of inside information.**

The persons who are natural persons and who unlawfully disclosed inside information as laid down in Article 21, with the intention to obtain for themselves or a third person, by any fraudulent means, an illicit profit and/or benefit, even indirect, shall incur a term of imprisonment of between 8 days and 2 years and a fine of between EUR 251 and EUR 500,000, or only one of these sanctions. Where these persons are legal persons, these actions shall be sanctioned with a fine of between EUR 500 and EUR 1,500,000.

**Article 23. Market manipulation.**

Market manipulation arises when:

1. entering into a transaction, placing an order to trade or any other behaviour which:
  - a) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or
  - b) secures the price of one or several financial instruments or related spot commodity contract at an abnormal or artificial level;

unless, the reasons for so doing of the person who entered into the transaction or issued the orders to trade are legitimate, and those transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;

2. entering into a transaction, placing an order to trade or any other activity or behaviour which affects the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;
3. disseminating information through the media, including the internet, or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial

- instrument or a related spot commodity contract or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, where the persons who made the dissemination derive, for themselves or for another person, an advantage or profit from the dissemination of the information in question; or
4. transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.

#### **Article 24. Sanctions applicable to market manipulation.**

The persons who are natural persons and who engaged in market manipulation as laid down in Article 23, with the intention to obtain for themselves or a third person, “by any fraudulent means”<sup>1</sup>, an illicit profit and/or benefit, even indirect, shall incur a term of imprisonment of between 3 months and 4 years and a fine of between EUR 251 and EUR 5,000,000, or only one of these sanctions. Where these persons are legal persons, these actions shall be sanctioned with a fine of between EUR 500 and EUR 15,000,000.

Any attempt to commit the breaches referred to in the first subparagraph shall incur the same sanctions.

### **Chapter 4 - Final provisions**

#### **Article 25. Amending provisions.**

Under point (10) of Article 1 of the Law of 11 January 2008 on transparency requirements for issuers, as amended, the words “under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation” are replaced by the words “under Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.”

#### **Article 26. Repealing provisions.**

The Law of 9 May 2006 on market abuse, as amended, is repealed.

#### **Article 27. Transitional provisions.**

Before 3 January 2018, references in this law to Directive 2014/65/EU shall be read as references to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, referred to hereinafter as “Directive 2004/39/EC”, in accordance with the Correlation table of Annex IV of Directive 2014/65/EU, in so far as this Correlation table includes provisions referring to Directive 2004/39/EC.

The provisions of this law shall only apply as from 3 January 2018 to OTFs, emission allowances or auctioned products based thereon.

#### **Article 28. Abbreviated form.**

Reference to this law may be made under a shortened name by referring to the following title: “Law of 23 December 2016 on market abuse”.

We instruct and order that this law be inserted in the Mémorial in order to be implemented and complied with by all the persons concerned.

Parl. doc. 7022; sess. ord. 2015-2016 et 2016-2017; Dir. 2014/57/UE et 2015/2392/UE.

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<sup>1</sup> Law of 27 February 2018

## **Annex**

### **I. Subject matter**

The sections II to XII define the rules specifying the mechanisms referred to in Article 8(1) for reporting actual or potential infringements of Regulation (EU) No 596/2014 to the CSSF.

### **II. Definitions**

For the purposes of this Annex, the following definitions shall apply:

- (1) “reporting person” shall mean a person reporting an actual or potential infringement of Regulation (EU) No 596/2014 to the CSSF;
- (2) “reported person” shall mean a person who is accused of having committed, or intending to commit, an infringement of Regulation (EU) No 596/2014 by the reporting person; and
- (3) “report of infringement” shall mean a communication by the reporting person to the CSSF regarding an actual or potential infringement of Regulation (EU) No 596/2014.

### **III. Dedicated staff members**

(1) The CSSF shall assign dedicated members of its staff, hereinafter referred to as “dedicated staff members”, to handle reports of infringements. Dedicated staff members shall be trained for the purposes of handling reports of infringements.

(2) Dedicated staff members shall exercise the following functions:

1. providing any interested person with information on the procedures for reporting infringements;
2. receiving and following-up reports of infringements;
3. maintaining contact with the reporting person where the latter has identified itself.

### **IV. Information regarding the receipt of reports of infringements and their follow-up**

(1) The CSSF shall publish on its website in a separate, easily identifiable and accessible section the information regarding the receipt of reports of infringements set out in paragraph 2.

(2) The information referred to in paragraph 1 shall include all of the following:

1. the communication channels for receiving and following-up the reporting of infringements and for contacting the dedicated staff members in accordance with paragraph 1 of Section VI, including:
  - a) the phone numbers, indicating whether conversations are recorded or unrecorded when using those phone lines;
  - b) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;
2. the procedures applicable to reports of infringements referred to in Section V;
3. the confidentiality regime applicable to reports of infringements in accordance with the procedures applicable to reports of infringements referred to in Section V;
4. the procedures for the protection of employees;
5. a statement clearly explaining that persons making information available to the CSSF in accordance with Regulation (EU) No 596/2014 are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability related to such disclosure.

(3) The CSSF may publish on its website more detailed information regarding the receipt and follow-up of infringements set out in paragraph 2.

### **V. Procedures applicable to reports of infringements**

(1) The procedures applicable to reports of infringements referred to in point 2 of paragraph 2 of Section IV shall clearly indicate:

1. the possibility to report infringements anonymously;
2. the manner in which the CSSF may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;
3. the type, content and timeframe of the feed-back about the outcome of the report of infringement that the reporting person can expect after the reporting;
4. the confidentiality regime applicable to reports of infringements, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27, 28 and 29 of Regulation (EU) No 596/2014.

(2) The detailed description referred to in point (4) of paragraph 1 shall ensure awareness of the reporting person concerning the exceptional cases in which confidentiality of data may not be ensured, including where the disclosure of data is imposed by the Luxembourg or EU law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the reported person, and in each case subject to appropriate safeguards under such laws.

## **VI. Communication channels**

(1) The CSSF shall establish independent and autonomous communication channels, which are both secure and ensure confidentiality, for receiving and following-up the reporting of infringements.

(2) These communication channels shall be considered independent and autonomous, provided that they meet all of the following criteria:

1. they are separated from the general communication channels of the CSSF, including those through which the CSSF communicates internally and with third parties in its ordinary course of business;
2. they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access to non-authorised staff members of the CSSF;
3. they enable the storage of durable information in accordance with Section VII to allow for further investigations.

(3) These communication channels shall allow for reporting of actual or potential infringements in at least all of the following ways:

1. written report of infringements in electronic or paper format;
2. oral report of infringements through telephone lines, whether recorded or unrecorded;
3. physical meeting with dedicated staff members of the CSSF.

(4) The CSSF shall provide the information referred to in paragraph 2 of Section IV to the reporting person before receiving the report of infringement, or at the moment of receiving it at the least.

(5) The CSSF shall ensure that a report of infringement received by means other than the communication channels referred to in paragraph 1 is promptly forwarded without modification to the dedicated staff members of the CSSF by using the communication channels referred to in paragraph 1.

## **VII. Record-keeping of reports received**

(1) The CSSF shall keep records of every report of infringement received in accordance with Regulation (EU) No 596/2014 and this law.

(2) The CSSF shall promptly acknowledge the receipt of written reports of infringements to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or where the CSSF reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

(3) Where a phone recording is used for reporting of infringements, the CSSF shall have the right to document the oral reporting in the form of:

1. an audio recording of the conversation in a durable and retrievable form; or
2. a complete and accurate transcript of the conversation prepared by the dedicated staff members of the CSSF. In cases where the reporting person has disclosed its identity, the CSSF shall offer the possibility to the reporting person to check, rectify and agree with the transcript of the call by signing it.

(4) Where an unrecorded telephone line is used for reporting of infringements, the CSSF shall have the right to document oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members of the CSSF. In cases where the reporting person has disclosed its identity, the CSSF shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.

(5) Where a person requests a physical meeting with the dedicated staff members of the CSSF for reporting an infringement according to point (3) of paragraph 3 of Section VI, the CSSF shall ensure that complete and accurate records of the meeting are kept in a durable and retrievable form. The CSSF shall have the right to document the records of the physical meeting in the form of:

1. an audio recording of the conversation in a durable and retrievable form; or
2. accurate minutes of the meeting prepared by the dedicated staff members of the CSSF. In cases where the reporting person has disclosed its identity, the CSSF shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

#### **VIII. Protection of employees**

(1) The CSSF and the *Inspection du Travail et des Mines* (Labour and Mines Inspectorate) shall exchange information and cooperate for the protection of employees who report infringements of Regulation (EU) No 596/2014 to the CSSF or are accused of such infringements, against retaliation, discrimination or other types of unfair treatment, arising due to or in connection with reporting of infringements of Regulation (EU) No 596/2014.

(2) The CSSF and the *Inspection du Travail et des Mines* shall establish common procedures detailing the exchange of information and the cooperation referred to in paragraph 1 and ensuring at least the following:

1. reporting persons have access to comprehensive information and advice on the remedies and procedures available under Luxembourg law to protect them against unfair treatment, including on the procedures for claiming pecuniary compensation;
2. reporting persons have access to assistance from the CSSF before any relevant authority involved in their protection against unfair treatment, including by certifying the condition of whistle-blower of the reporting person in employment disputes.

#### **IX. Protection procedures for personal data**

(1) The CSSF shall store the records referred to in Section VII in a confidential and secure system.

(2) Access to the system referred to in paragraph 1 shall be subject to restrictions ensuring that the data stored therein is only available to the CSSF staff members for whom access to that data is necessary to perform their professional duties.

#### **X. Transmission of data inside and outside of the CSSF**

(1) The CSSF shall have in place adequate procedures for the transmission of personal data of the reporting person and reported person inside and outside of the CSSF.

(2) The CSSF shall also ensure that the transmission of data related to a report of infringement within or outside the CSSF does not reveal, directly or indirectly, the identity of the reporting person or reported person or any other references to circumstances that would allow the identity of the reporting person or reported person to be deducted, unless such transmission is in accordance with the confidentiality regime referred to in point (4) of paragraph 1 of Section V.



## **XI. Procedures for the protection of the reported persons**

(1) Where the identity of reported persons is not known to the public, their identity shall be protected at least in the same manner as for persons that are under investigation by the CSSF.

(2) The procedures set out in Section IX shall also apply for the protection of the identity of the reported persons.

## **XII. Review of the procedures by competent authorities**

The CSSF shall review its procedures for receiving reports of infringements and their follow-up regularly, and at least once every two years. In reviewing such procedures the CSSF shall take account of its experience and that of other competent authorities and adapt its procedures accordingly and in line with market and technological developments.