



CHAPTER IX

BANKING AND FINANCIAL LEGISLATION AND REGULATIONS

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1. List of proposals for Directives under discussion at the Council of the European Union

The CSSF participates in the groups examining the following proposals for Directives:

1.1. Proposal for a Directive on financial collateral arrangements

The purpose of this draft directive is to improve the effectiveness of the single market for financial services. It seeks to increase the harmonisation of the European financial market and foster the smooth functioning of the single monetary policy in the Economic and Monetary Union. To that end, it lays down a single, minimum legal framework applicable to the provision of securities and cash as collateral, and the pledging of securities or transfer of title, including repurchase agreements ("repos"). The proposal seeks to ensure that effective and simple regimes exist for the creation of collateral under either title transfer or pledge structures. It takes the protection of collateral arrangements from some rules of insolvency law, in particular those that inhibit the effective realisation of collateral or cast doubt on the validity of techniques such as close-out netting, the provision of top-up collateral and substitution of collateral.

The proposal also aims to limit the administrative burdens affecting the use of collateral in the financial markets by restricting the imposition of onerous formalities on either the creation or the enforcement of collateral arrangements. It ensures that agreements permitting the collateral taker to re-use the collateral for its own purposes under pledge structures are recognised as effective, as for repos.

The Council of Finance Ministers agreed a common position on the proposal for a Directive at the Ecofin Council of 13 December 2001.

1.2. Proposal for a Directive on financial conglomerates

In 2001, the Council began talks on a proposal for a Directive on the supplementary supervision of credit institutions, investment firms and insurance undertakings. The proposal seeks to supplement legislation on sectoral prudential supervision with a supervisory regime for financial conglomerates.

1.3. Proposal for a Directive concerning the distance marketing of consumer financial services

The Council of Ministers for the Internal Market, Consumers and Tourism held on 27 September 2001 reached political agreement on a proposal for a Directive on the distance selling of financial services. The proposal for a Directive will be finally adopted once the Parliament has finished its second reading under the co-decision procedure.

The scope *ratione personae* (or personal scope) of the proposal includes all financial services providers. The concept of financial services encompasses banking products, insurance products and investment services. The proposal deals with the distance marketing of financial services, whatever the means of communication are, i.e. electronic means, mail, fax or even telephone. Its objective is to define a harmonised legal framework to cover the conclusion of financial service contracts at a distance, so as to establish an appropriate level of consumer protection in all Member States and thereby promote cross-border trade of financial products and services. To that end, it introduces notably an obligation to provide various items of

information prior to the conclusion of a contract and to confirm this information in writing. Consumers enjoy a right to withdraw, except for a number of specific services. The proposal also provides protection for consumers for payments made by cards and limits the use of distance means of communication.

1.4. Proposal for a Regulation of the European Parliament and of the Council on the application of international accounting standards (IAS Regulation)

The Ecofin Council of 13 December 2001 agreed on a common position with regard to the proposal for a Regulation of the European Parliament and of the Council on the application of international accounting standards making it compulsory, from 2005 on, to apply IAS standards to the consolidated accounts of publicly traded companies. The Commission will have to adopt the applicable IAS standards using the comitology procedure within the new "Accounting Regulation Committee", the latter being advised by the European Financial Reporting Advisory Group (EFRAG). Each Member State will have the option to apply the IAS standards thus adopted to annual accounts on an optional or compulsory basis, as well as to companies not listed on the stock exchange. The compromise text has been forwarded to the European Parliament.

1.5. Proposal for a Directive on insider dealing and market manipulation (market abuse)

The Ecofin Council of 13 December 2001 adopted the proposal for a Directive on insider dealing and market manipulation (market abuse), which seeks to ensure the integrity of the European financial markets, to establish and implement common standards to combat market abuse throughout Europe and to enhance investor confidence in these markets.

Given the great variety in the different Member States' legislations on market manipulation, the fact that Directive 89/592/EEC on insider dealing was adopted more than a decade ago, and the new products and technologies that need to be taken into account, the proposal for a Directive on "market abuse" encompasses both market manipulation and insider dealing. Market integrity can only be guaranteed with a general application of the prohibition of abusive behaviour.

The proposal for a Directive defines the concepts of "market manipulation" and "insider dealing". It prohibits inside information obtained through the exercise of one's profession or duties from being used for the purpose of acquiring or disposing of transferable securities and requires issuers to disclose any inside information. The proposal affirms the principle of a single competent administrative authority for each Member State responsible for applying the Directive and provides for a closer, more prompt and efficient co-operation between national competent authorities. It also aims to impose prompt and dissuasive sanctions against market abuse. Finally, the proposal lists the technical implementing details to be set by the European Commission in accordance with the comitology procedure advocated by the Lamfalussy Report.

In the wake of the attacks of 11 September 2001, the Ministers of Finance agreed that the proposal is an important element in the fight against the financing of terrorism. For that reason, discussions within the group of experts had been stepped up in order to reach agreement on a common text.

The final adoption of the Directive on "market abuse" is scheduled for the first half of 2002.

1.6. Proposal for a Directive on the prospectus to be published when securities are offered to the public or admitted to trading

Based on the conclusions of the Lisbon summit with a view to improving the single market for financial services, the Lamfalussy Report seeking to accelerate at European Union level the drawing up of regulations on securities markets and the proposals on the implementation of a European passport for prospectuses submitted by FESCO/CESR, the European Commission presented a draft Directive on 30 May 2001 for the creation of a single European passport for public offers and the admission of securities to trading on regulated markets.

Currently, the content and layout of prospectuses, the methods used and the time required for checking the information given therein, as well as the concept of a public offer – which automatically involves preparing a prospectus – differ from one Member State to another. As a result, the complex and partial mutual recognition mechanism for prospectuses, although provided for in existing Directives, is unable to ensure the objective of a single passport for issuers.

The proposal therefore seeks to introduce appropriate and equivalent disclosure standards in all Member States for publicly offered securities or securities admitted to trading on a regulated market, thereby enabling the creation of a single European passport for prospectuses and ensuring equal treatment for investors in terms of the information they receive.

The key features of the proposed system are as follows:

- Introduction of enhanced disclosure standards, in line with international standards, as well as standards of transparency.
- Change of the key criterion from admission to listing – a wording which is not harmonised at European level – to admission to trading on a regulated market and definition of the concept of public offer, the second criterion involving the obligation to draw up a prospectus.
- Publication of a prospectus split into three parts, i.e. a registration document of a permanent nature in the form of an extended annual report yearly updated, a note on transferable securities and a summary.
- Possibility to offer or admit transferable securities to trading on a regulated market in a host Member State on the basis of a simple notification of the prospectus approved by the home Member State.
- Concentration of the responsibility in the home competent authority, defined as that of the country in which the issuer has its registered office, and introduction of the concept of a single independent authority for each Member State, in charge of supervision, approval and registration tasks.
- Use of the comitology process, i.e. adopting a "framework Directive" under the co-decision procedure and entrusting the European Securities Committee and the Committee of European Securities Regulators (represented by the CESR) with the relevant implementing measures.

The Directive is scheduled to be adopted in 2002.

1.7. Proposal for a Directive on institutions for occupational retirement provision

Talks on this proposal for a Directive commenced at the Council of the European Union in January 2001. The proposal seeks a minimal harmonisation of prudential standards for institutions for occupational retirement provision (IORPs), the mutual recognition of supervisory authorities and the introduction of a European passport operating in accordance with the principle of the freedom to provide services. It is one of the legal priorities identified by the Lisbon and Stockholm European Councils within the framework of the Financial Services Action Plan.

This proposal is concerned with institutions operating occupational pension schemes; it seeks to cover supplementary private pension-savings schemes operating on a funded basis. The proposal does not cover statutory social security schemes or book-reserve or pay-as-you-go schemes, life-assurance companies or UCITS. However, it does authorise Member States to apply the prudential requirements that apply to IORPs to occupational retirement products offered by life-assurance companies.

An institutional approach has been adopted with the aim of achieving minimal harmonisation, taking account of the variety of ways in which IORPs operate in the various Member States, while at the same time providing a high degree of protection by imposing rigorous prudential criteria with regard to the financing of liabilities, requirements regarding the competence and good repute of managers, diversification of assets, and information to be provided to supervisory authorities, members and beneficiaries. The proposal advocates a qualitative approach to investment rules; it recommends that the management of assets should comply with principles of security, quality, liquidity, performance and diversification, rather than uniform quantitative requirements. The proposal also removes all prudential barriers to the cross-border management of pension schemes by IORPs, establishing mutual recognition of national prudential systems and proposing a system of notification and co-operation between competent authorities.

The Directive is expected to be adopted in 2002.

2. List of Directives adopted by the Council and the European Parliament, but not yet implemented under national legislation

This section lists the various Directives adopted by the European Parliament and the Council for which a draft law has been submitted to the Luxembourg Parliament (Chambre des Députés) or for which a preliminary draft is under discussion by committees operating within the CSSF or which are still being implemented by the CSSF.

2.1. Directive 2001/24/EC of 4 April 2001 on the re-organisation and winding-up of credit institutions

This Directive is the natural continuation of the First and Second Banking Coordination Directives. Whereas these Directives deal with the taking up and pursuit of banking activities, Directive 2001/24/EC relates to the measures to be taken in the event of solvency problems concerning a bank and in particular to co-operation between prudential supervisory authorities in the Community in times of crisis. Like the framework Directives, it affirms the principle of supervisory and jurisdictional competence of the authorities at the site of the registered office and the application of measures drawn up by the home Member State. The section on re-organisation establishes the exclusive competence of the prudential or legal authorities of the home Member State. The measures taken by the authorities in the home country produce their effects on the territory of the host country. The section on winding-up affirms the principle of the unity and universality of bankruptcy. The Directive seeks to organise the winding-up of credit institutions by confirming the exclusive competence of the jurisdictions of the home country of the credit institution (application of *lex fori*), and by enabling decisions taken by these jurisdictions to be of full effect in other Member States. It is not possible for secondary liquidation procedures to be opened in host Member States, even if such procedures have only territorial effect. The application of the bankruptcy law of the country of the registered office as a matter of principle has the merit of assuring equal treatment for all creditors of the defaulting institution.

Finally, the Directive establishes procedures for the exchange of information between the authorities of the Member States concerned and clearly determines the legislation to be applied in specific cases, e.g. with regard to the transactions carried out and the procedures applicable within a regulated market.

2.2 Directive 2000/28/EC of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions Directive 2000/46/EC of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions

Both Directives are the subject of a single draft law (no. 4813), which will transpose into Luxembourg law the Community regulations on the taking up and pursuit of the business of electronic money institutions. Electronic money means prepaid cards and money stored on an electronic device, where the value stored electronically is accepted as means of payment by businesses other than the issuing institution. The relevant legislative framework is defined in the two complementary Directives.

- The first Directive changes the definition of "credit institution" given in consolidated Directive 2000/12/EC on banking to include the business of electronic money institutions. The consequences of this change are two-fold: firstly, it subjects electronic money institutions to the entire set of Community prudential regulations on banks and, therefore, grants them a European passport. Secondly, it subjects these institutions to the minimum reserve requirement of the European Central Bank.

- The second Directive is designed to adapt the supervisory regime applicable to banks with regard to the specific nature of electronic money institutions. These institutions are subject to less strict requirements for initial capital and own funds. They must be run by experienced managers fulfilling the conditions of professional standing and may exercise a limited list of ancillary activities. The Directive specifies rules limiting the investment opportunities available to electronic money institutions; funds received in return for electronic money issued can only be invested in liquid, low-risk assets. The Directive also allows Member States, under certain conditions, to exempt relatively small electronic money institutions from the scope of the Directive.

2.3. Directive 2001/97/EC of 4 December 2001 amending Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering

As the basic 1991 Directive did not clearly state the authorities of which Member State should receive declarations on suspicious transactions filed by the EU branches of credit and financial institutions, this Directive states that it is the Member State in which the branch is located which should receive such declarations. These authorities are also responsible for ensuring branches comply with the Directive. For these responsibilities to be clearly determined, the Directive redefines the terms "credit institution" and "financial institution".

In order to cover as much of the financial sector as possible, the Directive specifies that it also applies to investment firms as defined in Directive 93/22/EEC. The Directive extends the scope *ratione personae* (or personal scope) notably to notaries and other members of legal professions when they assist their customers in various real estate or financial transactions.

Finally, the Directive calls on the Member States to take specific and adequate measures necessary to cope with the greater risk of money laundering which arises when financial sector professionals do business with a customer who has not been physically present for identification purposes.

2.4. "Fair value" Directive

Directive 2001/65/EC of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, known as the "fair value" Directive, gives Member States the option to require or permit credit institutions to apply the fair value valuation method to a wider range of financial instruments. From now on, the field of application will include all derivative instruments (assets and liabilities), financial instruments on the assets side, with the exception of loans and receivables originated by the company or items held to maturity, as well as trading items on the liabilities side. Member States may, in respect of any assets and liabilities which may qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.

The "fair value" Directive was adopted ahead of the vast project to update accounting Directives (see Chapter VIII, point 1.1.3. "Contact committee on the Accounting Directives") to provide for the application of accounting standard IAS 39, which came into force on 1 January 2001 and constituted the greatest incompatibility with existing Community regulations on accounting.

2.5. "UCITS III" Directives

Directive 2001/107/EC of 21 January 2002 amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses, and Directive 2001/108/EC of 21 January 2002 amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS, known as the "UCITS III" Directives, are to be transposed into Luxembourg law by 13 August 2003.

Directive 2001/107/EC seeks to align regulations covering management companies with the rules applicable to other financial service operators (i.e. banks, investment firms and insurance companies) to enable them to set up branches in other Member States and operate throughout the EU under the freedom to provide services. It also introduces the possibility for management companies to provide portfolio management services for individual customers (private persons or institutional investors such as pension funds), as well as a number of specific auxiliary services related to the core service. Finally, it affirms the principle of simplified prospectuses.

Directive 2001/108/EC seeks to extend the European passport to undertakings for collective investment that invest in financial assets other than transferable securities, such as units in other UCIs ("funds of funds"), money market instruments and bank deposits, as well as UCITS tracking a stock exchange index.

3. Laws passed in 2001

3.1. Law of 12 January 2001 implementing the provisions of Directive 98/26/EC on settlement finality in payment and securities settlement systems under the amended law of 5 April 1993 and supplementing the law of 23 December 1998 creating a supervisory commission for the financial sector

This law has already been commented in the 2000 Annual Report.

3.2. Law of 1 August 2001 on the transfer of title as collateral

This law amends and completes the law of 21 December 1994 on repurchase agreements carried out by credit institutions, the amended law of 5 April 1993 on the financial sector and the law of 21 June 1984 on futures traded on the Luxembourg Stock Exchange and on forward markets in which a credit institution is involved.

The law brings the Luxembourg legal framework into line with international practice in the transfer of title as collateral in order to eliminate any form of legal insecurity and retain the competitiveness of the local financial market. In particular, it seeks to ensure the validity and enforceability in respect of third parties of transfers of title as collateral for securities, especially in cases of bankruptcy. This means that in the event of bankruptcy, the creditor will be able to realise his collateral by way of netting, notwithstanding any composition or restructuring.

- 3.3. Law of 1 August 2001:**
- implementing the provisions of Article 1 of Directive 98/33/EC amending Directives 77/780/EEC, 89/647/EEC and 93/6/EEC and partially implementing the provisions of Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries, in the amended law of 5 April 1993 on the financial sector
 - amending Article 8 of the law of 23 December 1998 on the supervision of securities markets

The law enlarges the list of authorities, organisations and persons from third countries with whom the CSSF can exchange, as part of its supervisory role, information required to fulfil their respective tasks. It establishes the conditions under which these exchanges of information can take place.

As regards the supervision of the financial markets, the law confers the CSSF with the same powers and limits on the exchange of information as for the supervision of banks and investment firms.

- 3.4. Law of 1 August 2001:**
- implementing, in the amended law of 30 March 1988 on undertakings for collective investment, the provisions of Article 1 of Directive 2000/64/EC amending Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries
 - amending Article 76 of the amended law of 30 March 1988 on undertakings for collective investment

The law lists the authorities, organisations and persons from third countries with whom the Commission can exchange information as part of the prudential supervision of undertakings for collective investment. It also extends the procedure for the exchange of information to all undertakings for collective investment, rather than UCITS alone.

3.5. Law of 1 August 2001 on the circulation of securities and other financial instruments

This law replaces the Grand-Ducal Regulation of 17 February 1971 concerning the circulation of transferable securities, as amended. Developments on the financial markets over the past few decades made a revision of the above regulation urgent. The law seeks to strengthen legal security with regard to the safekeeping of transferable securities and securities settlement, which is one of the strengths of the local financial market.

The key changes are as follows:

- the scope of application of the Grand-Ducal Regulation has been widened by redefining securities and custodians;
- the legal status of depositors has been strengthened by specifying the nature of their rights;
- the rules for the creation and realisation of pledges have been relaxed and are more in keeping with customers' requirements.

3.6. Law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain statutory provisions

Article 14 of the law states that the limit of "LUF 500,000", above which customers must be identified, as specified in Article 39(2) of the amended law of 5 April 1993 on the financial sector, was reduced on 1 January 2002 to "EUR 10,000". Furthermore, the law states that the maturity date fixed at 31 December 2001 for any contractual obligation incumbent upon a financial sector professional is brought forward to 28 December 2001. These contractual obligations shall be fulfilled in accordance with the terms applicable on 28 December 2001.

3.7. Law of 1 August 2001 amending certain provisions of the law of 8 June 1999 creating pension funds in the form of pension savings companies with variable capital (Sepcav) and pension savings associations (Assep)

This law is covered separately in point 2 of Chapter III "Supervision of pension funds".

3.8. Law of 9 November 2001 amending the law of 23 December 1998 creating a supervisory commission for the financial sector

The law amends the provisions relating to the personnel in the law of 23 December 1998, introducing broader derogations from the general status of "civil servant".

3.9. Law of 21 December 2001 amending certain provisions on direct and indirect taxes

This law reduces, among other things, the annual subscription tax due by undertakings specified in the amended law of 30 March 1988 from 0.06% to 0.05%. This decision was taken as part of the policy to enhance the competitiveness of Luxembourg-based investment funds. The lower rate of subscription tax came into force on 1 January 2002.

3.10. Law of 13 January 2002: - approving the International Convention for the suppression of counterfeiting currency and the related protocol, signed in Geneva on 20 April 1929 - amending certain provisions of the Penal Code and the Code of Criminal Procedure

This law seeks to approve the aforementioned International Convention and transpose into Luxembourg law the framework decision of the Justice and Home Affairs Council of 29 May 2000 aimed at strengthening, by means of penal and other sanctions, protection against counterfeiting in connection with the introduction of the euro. It also inserts a new Article 64-1 in the amended law of 5 April 1993 on the financial sector enabling, with regard to (EC) Council Regulation No. 1338/2001 of 28 June 2001, managers and employees of credit and similar institutions to be sanctioned if they fail to discharge their obligation to withdraw from circulation counterfeit euro notes and coins received or to hand them over to the competent authorities.

4. Circulars issued in 2001

From 1 January 2001 to 1 March 2002, 32 Circulars were issued by the CSSF, 16 of which dealt with the fight against money laundering and identifying business relations with terrorist circles.

The following Circulars were the most important, and are also detailed in the Annual Report.

- Circular 01/27 on practical rules regarding the role of external auditors
- Circular 01/29 defining the minimum content of a company domiciliation agreement
- Circular 01/40 specifying the extent of the professional obligations laid down in Part II of the amended law of 5 April 1993 on the financial sector and IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
- Circular 01/50 specifying the professional obligations of company domiciliation agents and general recommendations

5. Circulars in force (as at 1 March 2002)

5.1. Circulars issued by the Commissariat au *Contrôle des Banques*

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|----------|-------------|-----------|-------------------|---|
| <i>B</i> | <i>79/2</i> | <i>of</i> | <i>07.05.1979</i> | European Code of Conduct on securities transactions |
| <i>B</i> | <i>83/6</i> | <i>of</i> | <i>16.03.1983</i> | Participating interest held by credit institutions |
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5.2. Circulars issued by the *Institut Monétaire Luxembourgeois*

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|------------|--------------|-----------|-------------------|--|
| <i>IML</i> | <i>84/18</i> | <i>of</i> | <i>19.07.1984</i> | Futures markets (law of 21 June 1984) |
| <i>IML</i> | <i>86/32</i> | <i>of</i> | <i>18.03.1986</i> | Control of the annual accounts of credit institutions |
| <i>IML</i> | <i>88/49</i> | <i>of</i> | <i>08.06.1988</i> | New legal provisions concerning controls carried out by auditors |
| <i>IML</i> | <i>91/75</i> | <i>of</i> | <i>21.01.1991</i> | Revision and recasting of rules governing Luxembourg undertakings covered by the law of 30 March 1988 on undertakings for collective investment |
| <i>IML</i> | <i>91/78</i> | <i>of</i> | <i>17.09.1991</i> | Terms of application of Article 60 of the amended law of 27 November 1984 regulating private portfolio managers |
| <i>IML</i> | <i>92/85</i> | <i>of</i> | <i>19.06.1992</i> | New compilation of instructions to banks |
| <i>IML</i> | <i>92/86</i> | <i>of</i> | <i>03.07.1992</i> | Law of 17 June 1992 concerning the accounts of credit institutions |
| <i>IML</i> | <i>92/87</i> | <i>of</i> | <i>21.10.1992</i> | Reporting to be supplied by other financial sector professionals |
| <i>IML</i> | <i>92/88</i> | <i>of</i> | <i>30.11.1992</i> | Certain periodic data to be supplied by credit institutions under Luxembourg law and by branches of banks originating from a country outside the EEC |

<i>IML</i>	<i>93/92</i>	<i>of</i>	<i>03.03.1993</i>	Computerised transmission of periodic data
<i>IML</i>	<i>93/94</i>	<i>of</i>	<i>30.04.1993</i>	Entry into force for banks of the law of 5 April 1993 on the financial sector
<i>IML</i>	<i>93/95</i>	<i>of</i>	<i>04.05.1993</i>	Entry into force for other financial sector professionals of the law of 5 April 1993 on the financial sector
<i>IML</i>	<i>93/99</i>	<i>of</i>	<i>21.07.1993</i>	Provisions for Luxembourg credit institutions wishing to exercise banking activities in other EEC countries through the establishment of branches or under the freedom to provide services
<i>IML</i>	<i>93/100</i>	<i>of</i>	<i>21.07.1993</i>	Provisions for credit institutions of Community origin exercising banking activities in Luxembourg through branches or under the freedom to provide services
<i>IML</i>	<i>93/101</i>	<i>of</i>	<i>15.10.1993</i>	Rules concerning the organisation and internal control of the market activity of credit institutions
<i>IML</i>	<i>93/102</i>	<i>of</i>	<i>15.10.1993</i>	Rules concerning the organisation and internal control of the activities of brokers or commission agents exercised by other financial sector professionals
<i>IML</i>	<i>93/104</i>	<i>of</i>	<i>13.12.1993</i>	Definition of a liquidity ratio to be observed by credit institutions
<i>IML</i>	<i>93/105</i>	<i>of</i>	<i>13.12.1993</i>	Introduction of table 4.5. "Shareholder Composition"
<i>IML</i>	<i>94/109</i>	<i>of</i>	<i>08.03.1994</i>	Allocation of responsibilities for the establishment of equipment for transmitting computerised data to the IML
<i>IML</i>	<i>94/112</i>	<i>of</i>	<i>25.11.1994</i>	The fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>IML</i>	<i>94/113</i>	<i>of</i>	<i>07.12.1994</i>	Explanations of various questions on accounting - treatment of premiums and discounts on transferable securities, repurchase agreements, spot and forward transactions, and definition of "multilateral development banks"
				A supplement to the Compilation of instructions to banks
<i>IML</i>	<i>95/116</i>	<i>of</i>	<i>20.02.1995</i>	Entry into force of: <ul style="list-style-type: none"> - the law of 21 December 1994 amending certain legal provisions concerning the transfer of claims and pledging - the law of 21 December 1994 concerning repurchase agreements transacted by credit institutions
<i>IML</i>	<i>95/118</i>	<i>of</i>	<i>05.04.1995</i>	Treatment of customer complaints
<i>IML</i>	<i>95/119</i>	<i>of</i>	<i>21.06.1995</i>	Rules for the management of risks linked to derivatives transactions
<i>IML</i>	<i>95/120</i>	<i>of</i>	<i>28.07.1995</i>	Central administration
<i>IML</i>	<i>96/123</i>	<i>of</i>	<i>10.01.1996</i>	Staff numbers (new table S 2.9.)
<i>IML</i>	<i>96/124</i>	<i>of</i>	<i>10.01.1996</i>	Staff numbers (new table S 2.9. for other financial sector professionals)
<i>IML</i>	<i>96/125</i>	<i>of</i>	<i>30.01.1996</i>	Supervision of credit institutions on a consolidated basis

<i>IML</i>	<i>96/126 of 11.04.1996</i>	Administrative and accounting organisation
<i>IML</i>	<i>96/129 of 19.07.1996</i>	The law of 9 May 1996 on the netting of claims in the financial sector
<i>IML</i>	<i>96/130 of 29.11.1996</i>	Calculation of a simplified ratio in application of IML Circular 96/127
<i>IML</i>	<i>97/134 of 17.03.1997</i>	Provision for the cost of migration to the euro for banking systems
<i>IML</i>	<i>97/135 of 12.06.1997</i>	Transmission of supervisory data and statistics by telecommunications media
<i>IML</i>	<i>97/136 of 13.06.1997</i>	Financial information for the IML and Statec
<i>IML</i>	<i>97/137 of 31.07.1997</i>	Updating the Compilation of instructions for banks Report 1.4.: Integrated ratio / simplified ratio Report 3.2.: Details of calculation of the overall capital requirement
<i>IML</i>	<i>97/138 of 25.09.1997</i>	New collection of statistical data with a view to Economic and Monetary Union
<i>IML</i>	<i>98/142 of 01.04.1998</i>	Financial data to be supplied periodically to the IML
<i>IML</i>	<i>98/143 of 01.04.1998</i>	Internal control
<i>IML</i>	<i>98/144 of 10.04.1998</i>	New collection of statistical data from undertakings for collective investment in money market instruments with a view to Economic and Monetary Union
<i>IML</i>	<i>98/146 of 14.05.1998</i>	Updating the Compilation of instructions for banks: Report 6.4.: Consolidated integrated ratio / consolidated simplified ratio Report 7.3.: Details of calculation of the consolidated overall capital requirement
<i>IML</i>	<i>98/147 of 14.05.1998</i>	Provisions for EC investment firms exercising their activities in Luxembourg through branches or under the freedom to provide services
<i>IML</i>	<i>98/148 of 14.05.1998</i>	Provisions for Luxembourg investment firms wishing to exercise their activities in other EC countries through the establishment of branches or under the freedom to provide services
<i>IML</i>	<i>98/149 of 29.05.1998</i>	Updating the Compilation of instructions for banks: Table S 1.2.: Simplified monthly statistical balance sheet

5.3. Circulars issued by the Luxembourg Central Bank (up to 31 December 1998)

<i>LCB</i>	<i>98/151 of 24.09.1998</i>	Accounting aspects of switching to the euro
<i>LCB</i>	<i>98/152 of 06.11.1998</i>	Introduction of a minimum reserve system
<i>LCB</i>	<i>98/153 of 24.11.1998</i>	Supplement to IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>LCB</i>	<i>98/155 of 09.12.1998</i>	Minimum reserve requirements

5.4. Circulars issued by the Stock Exchange Commission

SEC	90/1	of	13.12.1990	Conditions for drafting, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public, or of listing particulars, to be published for the admission of transferable securities to official stock exchange listing
SEC	91/2	of	01.07.1991	Law of 3 May 1991 on insider dealing
SEC	91/3	of	17.07.1991	Admission to official listing on the Luxembourg stock exchange of foreign undertakings for collective investment (UCIs)
SEC	93/4	of	04.01.1993	Law of 4 December 1992 on reporting requirements concerning the acquisition or disposal of major holdings in a listed company
SEC	94/5	of	30.06.1994	Publication of forecasts in the admission prospectus for an official listing
SEC	98/6	of	24.09.1998	Information to be included in the prospectus for a public offering or for admission to official listing of certain debt issues whose income and/or redemption is/are linked to underlying shares
SEC	98/7	of	15.10.1998	Information to be shown in the prospectus for a public offering or for admission to official listing of certain categories of warrants, bonds, or issue programmes

5.5. Circulars issued by the *Commission de surveillance du secteur financier* (CSSF)

CSSF	99/1	of	12.01.1999	Creation of the Commission de Surveillance du Secteur Financier (CSSF) (list of Circulars in force appended)
CSSF	99/2	of	20.05.1999	Entry into force of three new laws dated 29 April 1999
CSSF	99/4	of	29.07.1999	Entry into force of the law of 8 June 1999 creating pension funds in the form of pension savings companies with variable capital (Sepcav) and pension savings associations (Assep)
CSSF	99/7	of	27.12.1999	Declarations to be sent to the CSSF in accordance with Articles 5 and 6 of the law of 23 December 1998 on the supervision of the securities markets
CSSF	00/8	of	15.03.2000	Protection of investors in the event of errors in the calculation of the NAV and compensation for non-compliance with the investment restrictions applicable to UCIs
CSSF	00/10	of	23.03.2000	Definition of capital ratios pursuant to Article 56 of the amended law of 5 April 1993 on the financial sector (application to credit institutions)
CSSF	00/12	of	31.03.2000	Definition of capital ratios pursuant to Article 56 of the amended law of 5 April 1993 on the financial sector (application to investment firms)
CSSF	00/13	of	06.06.2000	Sanctions against the Federal Republic of Yugoslavia and the Taliban in Afghanistan
CSSF	00/14	of	27.07.2000	Adoption of the law of 17 July 2000 amending certain provisions of the law of 30 March 1988 on undertakings for collective investment

<i>CSSF</i>	<i>00/15</i>	<i>of</i>	<i>02.08.2000</i>	Rules of conduct for the financial sector
<i>CSSF</i>	<i>00/16</i>	<i>of</i>	<i>23.08.2000</i>	Supplement to IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>00/17</i>	<i>of</i>	<i>13.09.2000</i>	Entry into force of the law of 27 July 2000 bringing into force the provisions of Directive 97/9/EC concerning investor compensation schemes under the amended law of 5 April 1993 on the financial sector
<i>CSSF</i>	<i>00/18</i>	<i>of</i>	<i>20.10.2000</i>	Bank accounts of the State of Luxembourg
<i>CSSF</i>	<i>00/19</i>	<i>of</i>	<i>27.11.2000</i>	Appointment of those in charge of certain functions
<i>CSSF</i>	<i>00/20</i>	<i>of</i>	<i>30.11.2000</i>	EC Council Regulation maintaining a freeze of funds in relation to Mr Milosevic and those persons associated with him
<i>CSSF</i>	<i>00/21</i>	<i>of</i>	<i>11.12.2000</i>	Supplement to Circulars IML 94/112 and BCL 98/153 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>00/22</i>	<i>of</i>	<i>20.12.2000</i>	Supervision of investment firms on a consolidated basis carried out by the Commission de Surveillance du Secteur Financier
<i>CSSF</i>	<i>01/25</i>	<i>of</i>	<i>16.03.2001</i>	Sanctions against the Taliban in Afghanistan
<i>CSSF</i>	<i>01/26</i>	<i>of</i>	<i>21.03.2001</i>	Law of 12 January 2001 implementing the provisions of Directive 98/26/EC on settlement finality in payment and securities settlement systems under the amended law of 5 April 1993 and supplementing the law of 23 December 1998 creating a supervisory commission for the financial sector
<i>CSSF</i>	<i>01/27</i>	<i>of</i>	<i>23.03.2001</i>	Practical rules on the role of external auditors
<i>CSSF</i>	<i>01/28</i>	<i>of</i>	<i>06.06.2001</i>	Verification by banks and FSPs that the legal requirements on domiciliation are satisfied
<i>CSSF</i>	<i>01/29</i>	<i>of</i>	<i>07.06.2001</i>	Minimum content of a company domiciliation agreement
<i>CSSF</i>	<i>01/30</i>	<i>of</i>	<i>28.06.2001</i>	Table E 1.1. "Simplified asset and liability situation" Table E 2.1. "Simplified profit and loss account" Update of references in Table B 1.5. "Liquidity ratio"
<i>CSSF</i>	<i>01/31</i>	<i>of</i>	<i>04.07.2001</i>	Supplement to CSSF Circular 00/16 and IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>01/32</i>	<i>of</i>	<i>11.07.2001</i>	Publication of information on financial instruments
<i>CSSF</i>	<i>01/33</i>	<i>of</i>	<i>19.09.2001</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>01/34</i>	<i>of</i>	<i>24.09.2001</i>	Entry into force of a series of laws concerning the financial sector
<i>CSSF</i>	<i>01/36</i>	<i>of</i>	<i>03.10.2001</i>	Publication in the Mémorial A of the law of 1 August 2001 on the changeover to the euro on 1 January 2002 and amending certain legal provisions

<i>CSSF</i>	<i>01/37</i>	<i>of</i>	<i>04.10.2001</i>	Supplement to CSSF Circulars 00/16 and 00/31 and IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>01/38</i>	<i>of</i>	<i>19.10.2001</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>01/39</i>	<i>of</i>	<i>08.11.2001</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>01/40</i>	<i>of</i>	<i>14.11.2001</i>	Specifications on the extent of the professional obligations laid down in Part II of the amended law of 5 April 1993 on the financial sector and in IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>01/41</i>	<i>of</i>	<i>19.11.2001</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>01/42</i>	<i>of</i>	<i>19.11.2001</i>	Mortgage bond banks: rules on real estate valuation
<i>CSSF</i>	<i>01/43</i>	<i>of</i>	<i>29.11.2001</i>	Measures taken against UNITA (União Nacional para a Independência Total de Angola)
<i>CSSF</i>	<i>01/44</i>	<i>of</i>	<i>13.12.2001</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>01/45</i>	<i>of</i>	<i>18.12.2001</i>	Statistics on guaranteed deposits and instruments on 31 December 2001
<i>CSSF</i>	<i>01/46</i>	<i>of</i>	<i>19.12.2001</i>	Repeal of CSSF Circular 01/35
<i>CSSF</i>	<i>01/47</i>	<i>of</i>	<i>21.12.2001</i>	Professional obligations of domiciliation agents of companies and general recommendations Amendment to CSSF Circular 01/28
<i>CSSF</i>	<i>01/48</i>	<i>of</i>	<i>20.12.2001</i>	Supplement to CSSF Circulars 00/16, 00/31 and 01/37 and IML Circular 94/112 on the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering
<i>CSSF</i>	<i>01/49</i>	<i>of</i>	<i>20.12.2001</i>	Update of CSSF Circular 2000/10 defining capital ratios pursuant to the amended law of 5 April 1993 on the financial sector (definition zone A)
<i>CSSF</i>	<i>01/50</i>	<i>of</i>	<i>21.12.2001</i>	Update of CSSF Circular 2000/12 defining capital ratios pursuant to the amended law of 5 April 1993 on the financial sector (definition zone A)
<i>CSSF</i>	<i>02/51</i>	<i>of</i>	<i>03.01.2002</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>02/52</i>	<i>of</i>	<i>09.01.2002</i>	Measures taken against UNITA (União Nacional para a Independência Total de Angola)
<i>CSSF</i>	<i>02/53</i>	<i>of</i>	<i>23.01.2002</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>02/54</i>	<i>of</i>	<i>24.01.2002</i>	Breakdown of value adjustments made by credit institutions as at 31.12.01
<i>CSSF</i>	<i>02/55</i>	<i>of</i>	<i>30.01.2002</i>	Identification and declaration of business relations with terrorist circles
<i>CSSF</i>	<i>02/56</i>	<i>of</i>	<i>20.02.2002</i>	Measures taken against UNITA (União Nacional para a Independência Total de Angola)

6. The complete set of rules on the fight against money laundering

Luxembourg was concerned very early about tackling the problem of money laundering: the law of 7 July 1989 made the laundering of money from drug-related sources a criminal offence, supplementing the law of 19 February 1973 on the sale of medicinal substances and measures to combat drug addiction. It was one of the first countries in the world to have a law aimed at combating money laundering and one of the first to put this law into practice – with successful results.

Since this law was introduced, there have been considerable developments in the international agreements to which Luxembourg is signatory. Our legislation has been up-dated accordingly.

The European Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering – one of the main instruments used to combat money laundering at international level – was implemented in Luxembourg law through the amended law of 5 April 1993 on the financial sector. This law also incorporates the recommendations of the Financial Action Task Force (FATF).

Ratification of the Vienna Convention against illicit traffic in narcotic drugs and psychotropic substances and the Strasbourg Convention on laundering, search, seizure and confiscation of the proceeds from crime, as well as approval of the European Convention on the suppression of terrorism and various United Nations conventions on suppression of the financing of terrorism, demonstrate Luxembourg's determination to combat money laundering.

6.1. Professional obligations with regard to money laundering

The amended law of 5 April 1993 on the financial sector imposes far-reaching professional obligations on financial sector professionals to ensure they are not used for money laundering purposes. The most important of these obligations – some of which having been further explained by way of Circulars, including IML Circular 94/112 – are the following:

- Identify customers using probative documents. The term "customer" refers to direct customers or the beneficial owners of so-called shell companies. This means not only knowing the customer's identity, but also gathering information on his activities and the business objective he pursues.
- Introduce adequate internal control and communication procedures in order to anticipate and prevent money laundering.
- Raise awareness among employees of measures to combat money laundering, and organise training programmes.
- Track operations conducted by customers and closely examine suspicious-looking operations.
- Co-operate with the authorities responsible for applying laws by fulfilling their requests for information to the best of their ability and by notifying the Prosecutor, on their own initiative, of any fact that may be evidence of money laundering.

CSSF Circular 01/40 of 14 November 2001 further specified the extent and application of professional obligations with regard to the fight against money laundering and prevention of the use of the financial sector for the purpose of money laundering. These include the following:

- The financial sector professionals must notify the State Prosecutor of any fact that may be evidence of money laundering, even if they have come into contact with a person or company without having set up a business relationship or having effected a transaction.
- The assumption that a customer (for example, a lawyer or notary) whose normal professional activity involves the conservation of third-party funds with a professional of the financial sector is acting for his

own account is no longer justified. The financial sector professional must now inquire as to whether his customer is acting for his own or for third-party account. If the customer declares that he is acting for third-party account, the professional must ascertain whether the funds on the accounts are derived from the customer's normal business activity or another professional activity. In the latter case, the professional is required to identify the beneficial owners.

- The obligation to co-operate with the authorities implies that financial sector professionals may not invoke professional secrecy when faced with a request from the Prosecutor. Similarly, when faced with such request, the professional must consider whether he should declare a suspicious transaction on his own initiative.
- All declarations of suspicious transactions must be submitted to the Prosecutor and the CSSF for the latter to fulfil its role of prudential supervision.

Through its Circular Letter of 19 December 2001, the CSSF surveyed the changes to the internal procedures made by the financial sector professionals in order to comply with the provisions of Circular 01/40. The Circular Letter also provides additional guidelines to help the professionals devise new procedures for the cases specified in Circular 01/40.

6.2. The definition of money laundering

With the increasing global trend not to limit the definition of money laundering to the proceeds of offences related to drug-trafficking, but to give it a much broader definition, the Luxembourg law of 11 August 1998 extended the field of application of the crime of money laundering and, at the same time, the authorities' reporting requirements. Crimes or offences committed by or involving within the context or in conjunction with a group of criminals or a criminal organisation, abduction of minors, crimes of procuring, offences of corruption and infringements of legislation on arms and munitions are henceforth included.

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6.3. The identification and monitoring of customers' transactions

Since 1948, it has been illegal to open an anonymous account in Luxembourg. In accordance with the legal provisions, financial sector professionals must identify customers by means of probative official documents before entering a business relationship with them. This identification requirement also applies to occasional customers once the amount of the transaction exceeds EUR 10,000.

All applications to open an account must be subject to a strict authorisation procedure involving an official or even – depending on the type of customer or its legal status – a director or a committee for customer approval.

As part of the fight against money laundering, financial sector professionals are required to examine in detail any transaction that may involve money laundering. IML Circular 94/112 specified the manner in which financials sector professionals are expected to fulfil this professional obligation.

Financial sector professionals should be well acquainted with the transactions their customers call on them to execute. To that end, they must keep a close eye on the development of transactions executed on behalf of their customers and, if necessary, gather as much information as possible to rule out the risk of money laundering.

Transactions which, by their nature, are likely to involve money laundering include transactions which are unusual in themselves and those which are unusual for the customer in question.

Monitoring customers' transactions therefore involves familiarity with the customer, his activities, the purpose of his transactions and the origin of his funds. This information must be gathered when opening the account and be updated regularly. It is usually derived from statements made by the customer, but has to be corroborated by probative elements.

For practical reasons, reasonably large banks should also monitor transactions by computer. A number of flexible software packages are available on the market, enabling settings to be defined for the type of transaction and customer profile. The department responsible for dealing with exceptions identified by the software should then gather all plausible explanations, if necessary by contacting the customer.

If evidence of money laundering is uncovered when monitoring transactions, it must be reported to the competent authorities. The manager responsible for combating money laundering takes the decision to report the customer, upon advice from the person designated to the Prosecutor's office as being in charge of the fight against money laundering.

The financial professional's management must be directly involved in the company's fight against money laundering. This means being involved in all aspects of combating money laundering, i.e. the production of written procedures, staff awareness and training and the internal control methods employed. Management should receive regular reports on incomplete files for opening new accounts, on the follow-up of incomplete files for opening new accounts, on dormant accounts and on the monitoring of dubious transactions.

6.4. Money derived from corruption

CSSF Circular 00/21 of 11 December 2000, which predates the law of 15 January 2001 approving the OECD Convention of 21 November 1997 on combating bribery of foreign Public officials in international business transactions, is an important step in the fight against money laundering in that it defines the term "corruption". The Circular requires all financial sector professionals to be particularly vigilant when doing business with senior public officials in a country or persons associated with them (or holding or accepting assets belonging to them) and warns them of the potential legal and financial risks – as well as risks to their reputation – if they do business with such individuals. The Circular also requires that particular procedures for accepting and monitoring such customers should be in place.

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6.5. Relations with uncooperative countries and territories

CSSF Circular 00/16 of 23 August 2000 refers to the FATF report identifying countries and territories that are uncooperative in helping to combat money laundering. The report identifies countries and territories whose money laundering regulations are considered not to be in line with the recommendations of the FATF. The Circular emphasises the obligation incumbent upon financial sector professionals to examine in detail transactions executed with counterparties based in the countries and territories listed in the report and calls for a specific strategy to be devised for relations with these countries and territories, as well as for the implementation of sufficient internal procedures to monitor them. Updates of the FATF report, mainly related to the list of uncooperative countries and territories, were distributed in Circulars 01/31, 01/37 and 01/48.

6.6. Specific measures

CSSF Circulars contain all Community regulations dealing with the fight against money laundering. These include Circular 00/20 maintaining a freeze of funds in relation to Mr Milosevic and persons associated with him, CSSF Circulars 00/13, 01/25, 01/33, 01/38, 01/39, 01/41, 01/44, 01/46, 02/51, 02/53 and 02/55 on measures taken against the Taliban in Afghanistan, and CSSF Circulars 01/43, 02/52 and 02/56 on Measures taken against UNITA (*União Nacional para a Independência Total de Angola*).

6.7. Money Laundering Steering Committee

In the wake of recent international initiatives to combat money laundering and the preliminary conclusions of the International Monetary Fund within the framework of the Financial Sector Assessment Programme (FSAP) for Luxembourg, the Commission set up a Money Laundering Steering Committee in February 2002. The Committee's main task is to advise on questions with regard to the prevention of money laundering and to help the government and the CSSF when drawing up laws and regulations on the fight against money laundering. In addition to representatives from the financial sector, the Committee also includes representatives from the judicial system and non-financial sector professionals involved in the fight against money laundering and affected by the relevant Community Directives.



Participants in the weekly meeting between the management and staff responsible for the departments and functions

First row from left to right :

Sonny BILDORFF-LETSCH - Simone DELCOURT - Marie-Anne VOLTAIRE - Arthur PHILIPPE - Charles KIEFFER
Annick ZIMMER - Danièle BERNA-OST - Jean-Nicolas SCHAUS - Isabelle GOUBIN - Anne CONRATH
Iwona MASTALSKA

Second row from left to right :

Frank BILDORFF - Romain STROCK - Pascale FELTEN-ENDERS - Marc WEITZEL - François HENTGEN
Pierre BODRY - Danielle MANDER - David HAGEN - Jean-Luc FRANCK - Pascale DAMSCHEN
Edmond JUNGERS - Georges BECHTOLD

Absent : Irmine GREISCHER - Françoise KAUTHEN - Claude SIMON - Michel HEINTZ

