



SUPERVISION OF SECURITIES MARKETS

CHAPTER

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1. Reporting of transactions on financial assets (TAF)

1.1. The reporting requirements

The project of the reporting on transactions on financial assets was finalised on 2 October 2002. On 31 December 2002, the number of connections amounted to 136.

The update of the *“Recueil d’Instructions”*, (version 2.1. of July 2002) allowed to solve some difficulties encountered in practice. In fact, it became necessary to create four new “security type codes”, namely:

- OBQ to report bonds quoted in quantity;
- ACP to report shares quoted in per cent;
- OCQ to report bonds cum warrant quoted in quantity;
- WAP to report warrants quoted in per cent.

Besides the publication of the updated version of the *“Recueil d’Instructions”*, the most frequent mistakes made as regards the reporting of transactions on financial assets were explained to the investment firms.

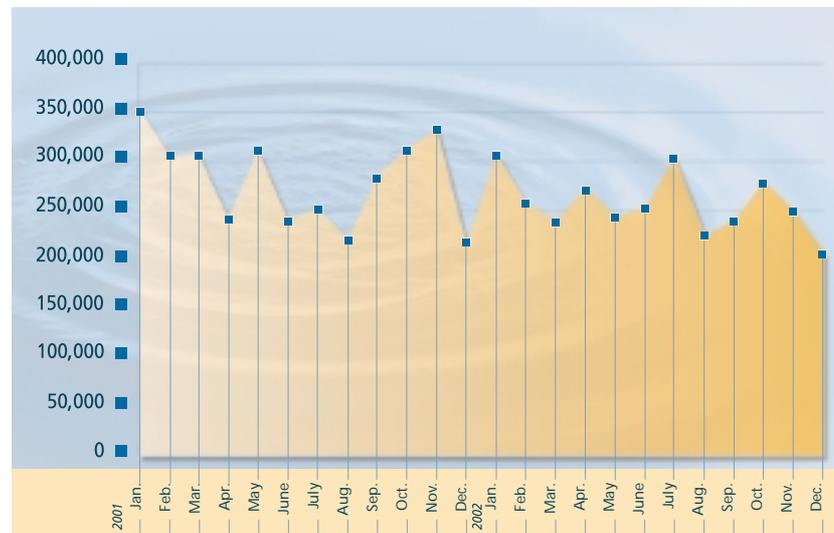
Investment firms were thus able to make the necessary corrections in order to adapt their transmissions to the requirements laid down in CSSF Circular 99/7 on reporting to the CSSF in accordance with the Law of 23 December 1998 on the supervision of securities markets as amended. Indeed, many firms had to rectify the field *“En-bourse, Hors-Bourse”* (indicating whether or not a transaction has been effected on the Luxembourg Stock Exchange), in order to be in line with the CSSF’s interpretation, according to which all transactions that have not been carried out by a member on the Luxembourg Stock Exchange are to be considered as transactions *“Hors-Bourse”*.

Information concerning TAF reporting is available on the CSSF website (www.cssf.lu) under the section *“Reporting légal”*, sub-section *“Reporting TAF”*. The information has been completed by a link allowing direct access to the website of the European Communities (http://europa.eu.int/comm/internal_market/fr/finances/mobil/isd/index.htm), which presents an updated list of regulated markets in the European Economic Area.

1.2. Developments in the number of trades reported

The number of trades reported in 2002 amounted to 3,077,255, representing a decrease of 33% as compared to 2001, where the number of trades reported amounted to 4,595,777. This fall can be explained by the negative development of stock markets, which slowed down stock market investments on the national as well as on the international level.

Monthly volume of trades reported



Breakdown of transactions by type of instrument

Type of instrument	Number of trades reported (as a % of total)
Shares	62.12%
Bonds	34.13%
Futures	1.27%
Options	1.20%
Warrants	1.14%
Bonds cum warrant	0.14%

The reported data enables the division for the supervision of securities markets to monitor the trends of the European and more particularly the Luxembourg market. The supervision of the securities markets essentially aims at preventing and detecting infringements of financial and stock market laws and regulations.

1.3. Co-operation with the Luxembourg Stock Exchange as regards supervision of transactions on financial assets

The supervision of the securities markets by the CSSF was complemented by a closer co-operation with the Luxembourg Stock Exchange as from 2002. Indeed, in accordance with its Rules and Regulations, the Luxembourg Stock Exchange set up a supervisory body, responsible for the enforcement of the supervisory functions towards the member firms, called Market Surveillance Committee. This committee informs the CSSF of any suspected infringements of the law and regularly transmits reports on the supervision of the stock market to the CSSF. The work done by this committee helps to facilitate the ex post supervision carried out by the CSSF.

2. Investigations conducted by the CSSF in its supervision of securities markets

A distinction should be drawn between investigations conducted into breaches of stock exchange regulations and investigations into non-compliance with the rules of conduct in the financial sector laid down in CSSF Circular 2000/15 dated 2 August 2000.

2.1. Investigations into breaches of stock exchange regulations

The CSSF is the administrative authority competent to ensure that the provisions of the Law of 3 May 1991 on insider dealing are applied. Its aim is twofold: ensure fair and equal treatment of investors as well as protection against the illegal use of insider information.

In its supervision of securities markets, the CSSF either initiates enquiries itself or conducts them in response to a request for assistance from a foreign administrative authority within the framework of international co-operation.

2.1.1. Enquiries initiated by the CSSF

- *Enquiries concerning insider dealing*

In 2002, the CSSF initiated two enquiries into a possible breach of the Law of 3 May 1991 on insider dealing. One enquiry is still in progress. Based on evidence and information collected in relation to the other enquiry, the CSSF concluded that there were no infringements of the aforementioned Law.

Based on evidence and information it received regarding its investigations both at international and national level in an enquiry started in 2001, the CSSF decided to transmit the file to the Public Prosecutor under Article 6(2) of the law of 3 May 1991 on insider dealing.

- *Enquiries into price manipulation*

The CSSF continued its investigations regarding an enquiry opened in 2001 within the scope of its general mission of supervising the securities markets. The subject of these specific investigations was to verify whether the prices of a security officially listed on the Luxembourg Stock Exchange had been manipulated upwards. Based on the information received, the CSSF was not able yet to conclude that the price of the listed security had been manipulated by any fraudulent means.

2.1.2. Enquiries conducted by the CSSF at the request of a foreign administrative authority

- *Enquiries concerning insider dealing*

The number of requests for assistance from foreign authorities was slightly lower than in the previous year. In 2002, the CSSF processed 55 applications for enquiries into insider dealing (versus 57 in 2001), one of which having been filed by an administrative authority outside the European Economic Area.

The CSSF handled all these enquiries with the necessary diligence befitting co-operation between authorities and no major issues relating to the involved financial intermediaries have been raised.

- *Enquiries into price manipulation and fraudulent public offers*

The CSSF received two requests for assistance from foreign authorities in connection with price manipulation and two requests in connection with a fraudulent public offer of transferable securities. The CSSF replied to these requests within its legal competence.

2.2. Enquiries into non-compliance with the rules of conduct in the financial sector

CSSF Circular 2000/15 concerning the rules of conduct of professionals of the financial sector aims to ensure investor protection and market integrity. In this context, the CSSF addressed 19 letters in 2002 to financial institutions members of the Luxembourg Stock Exchange to make them aware of their duties to ensure compliance with the rules of conduct. This represents a substantial increase as compared to the six letters sent in 2001.

The decision to open an investigation or to intervene with a professional of the financial sector is first based on analytical reports of daily trading activity on the Luxembourg Stock Exchange as well as on the analysis of trades reported to the CSSF. The CSSF then summarises these data and decides on the appropriateness of an intervention.

The growing importance of this aspect of supervision of securities markets is due to the following facts:

- In the current context of high volatility and difficult markets, the CSSF must all the more play its role as regulator so as to restore investor confidence in financial and stock markets. For this reason, and in order to ensure better data analysis, the staff of this department has been reinforced.
- The CSSF, in close co-operation with the Luxembourg Stock Exchange, attaches an increasing importance to intervention in case of non-compliance with the rules of conduct in view of the future European Directive on market abuse.

Besides interventions on so-called “off-setting” of operations, under rule 1.7. concerning market manipulation of CSSF Circular 2000/15, several enquiries were based on rule 1.2. of the Circular. According to this principle, the professional shall do his utmost in order to ensure that orders received and accepted by him are carried out in the best possible manner, considering for instance the type of requests, the situation in the concerned market(s) and the object of the orders received.

Ensuring investor protection and market integrity are the reasons why the CSSF will pursue its efforts in this area.

3. Supervisory practice

In accordance with the Law of 23 December 1998 on the supervision of securities markets as amended, the CSSF supervises stock exchanges and carries out supervisory functions related to public offerings and listed Luxembourg companies.

3.1. Supervision of stock exchanges

The establishment of a stock exchange in Luxembourg is subject to a concession to be granted by grand-ducal decree. The only stock exchange currently licensed under Luxembourg Law is the “*Société de la Bourse de Luxembourg*” (Luxembourg Stock Exchange). The CSSF monitors the proper functioning of the market operated by the Luxembourg Stock Exchange as well as the proper application of the related regulations. It also attends the meetings of the Luxembourg Stock Exchange authorities.

3.1.1. Regulatory changes

Changes of the stock exchange regulations included in particular modifications made to the Rules and Regulations of the Luxembourg Stock Exchange, which came into effect on 1 January 2002. These modifications are connected with the new approach adopted in October 2001 as regards the registration procedures of natural persons representing authorised members of the Luxembourg Stock Exchange. The registration with the bodies of the Luxembourg Stock Exchange is henceforth limited to persons responsible of the trading room or functions dedicated to the access to trading systems. Those persons are accountable for the allocation of access rights to the trading systems for the persons in charge.

3.1.2. The market ensured by the Luxembourg Stock Exchange and its members

The CSSF is kept informed of market activities and related problems on a daily basis through an activity report provided by the Luxembourg Stock Exchange.

As far as market activities are concerned, turnover fell by 27.79% compared to 2001 to reach EUR 1.74 billion. Total turnover of bonds represented 70% of trading compared to variable income securities, which accounted for the remaining 30%, which confirms that trends in trading continued to develop to the benefit of bonds. This development is due to an overall negative economic situation that shook investor confidence in variable income products and, at national level, to difficulties linked to the treatment of minority shareholders in Luxembourg.

At the end of 2002, the Luxembourg Stock Exchange had 76 members, 21 of which were ‘cross members’.

Considering that turnover fell in 2002, the year was nevertheless marked by intense activity in new admissions to the Luxembourg Stock Exchange. A total of 7,513 new securities were admitted, representing an increase of about 4% in relation to the number of quotation lines, compared to an increase of 19% in 2001. The total number of securities admitted as at 31 December 2002 amounted to 26,486 securities, divided into 18,883 bonds, 268 shares, 1,537 warrants and 5,798 investment funds and subfunds. The new admissions included in particular the Arcelor shares, which were listed on 18 February 2002. The ARBED shares, which were the flagship securities amongst the shares listed on the Luxembourg Stock Exchange for almost three quarters of a century, were withdrawn from the official list at the close of 30 December 2002.

3.2. Documentation relating to public offers and listings

Under the supervision of the CSSF, the Luxembourg Stock Exchange is entrusted with the examination of prospectuses, pursuant to the Grand Ducal regulation of 28 December 1990 on the requirements for the drawing up, scrutinising and distribution of the prospectus to be published where 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. Under the Grand Ducal regulation, the Luxembourg Stock Exchange approves the prospectuses to be published where transferable securities are admitted to official listing and where public offers of transferable securities are followed by a listing on the Luxembourg Stock Exchange. Prospectuses relating to public offers of transferable securities not followed by a listing are approved by the CSSF.

During 2002, some 40 public offers of transferable securities were made in Luxembourg, 17 of which were public exchange offers in relation to securities listed on the Luxembourg Stock Exchange. The CSSF approved the documentation relating to seven public offers that were not the subject of an application for admission to official listing of the Luxembourg Stock Exchange and refused approval relating to two exchange offers that were made in breach of applicable regulations.

The criteria applied by the CSSF regarding the supervision of the specific task of approval of prospectuses carried out by the Luxembourg Stock Exchange are based on close co-operation between the Stock Exchange and the supervisory authority.

During 2002, the Luxembourg Stock Exchange submitted around twenty application files drawn up for the purpose of the due examination of the public offer prospectus or listing particulars to the CSSF in order to obtain the CSSF's view on these issues. It has to be noted that many of these application files concerned issues, the proceeds of which are entirely or partly invested in funds not subject to a permanent supervision in their home country. In addition, fifty-five applications for an exemption from specific regulatory provisions concerning prospectuses were referred to the CSSF by the Stock Exchange. Forty-four of these were duly justified and thus granted.

As regards co-operation with foreign authorities concerning mutual recognition of prospectuses, the CSSF issued certificates of approval relating to 81 public offers or admission to the official stock exchange listing made simultaneously or within short interval in several Member States of the European Economic Area.

3.3. Luxembourg companies listed on the Luxembourg Stock Exchange

3.3.1. Financial information disclosed by listed companies

The Law of 23 December 1998 on the supervision of securities markets as amended lays down the principle of monitoring the disclosure of financial information by companies admitted to the official listing on the Luxembourg Stock Exchange. The number of Luxembourg companies, the shares of which are listed, amounted to 48 on 31 December 2002.

- *The IAS regulation*

The Regulation of the European Parliament and of the Council on the application of international accounting standards of 19 July 2002 introduces the obligation for companies, the securities of which are traded on a regulated market, to draw up their consolidated financial statements in accordance with IAS standards.

The CSSF sent a letter to Luxembourg companies whose shares are listed on the Luxembourg Stock Exchange, enquiring about the progress made by these companies (first concerned by the Regulation), regarding their efforts to adapt to these standards. In the same context, the CSSF, which took part in the drawing up within the CESRFin group of standards and principles of enforcement of financial information in Europe, sent a consultation document on these principles to listed Luxembourg companies as well as to other players in the financial market in order to obtain their view on the subject.

- ***The control of financial information***

The CSSF verifies all the financial data submitted to it, in particular the annual and half-yearly reports published by Luxembourg companies whose shares and parts are listed on a Luxembourg stock exchange. The CSSF may ask an independent external auditor to prepare a written report on individual and consolidated annual accounts of these companies.

As far as their financial statements are concerned, almost all the listed companies are currently in a transition period between applying current, local accounting standards and IAS standards. The latter may lead to substantial discrepancies on certain points such as consolidation, intangibles (goodwill), etc. Owing to the inherent difficulties, the CSSF took a prudent approach in formulating observations and questions following the examination of the annual reports.

The CSSF sent about a dozen letters to companies requiring them to transmit their annual and half-yearly reports and other documents, or reminding them of their obligation to prepare a half-yearly report. It also intervened on the initiative of an investor in order to require supplementary information from a listed company as concerns its annual accounts. Similarly, the CSSF responded to a request related to its views on the annual accounts of one listed company.

Furthermore, within the scope of its supervisory tasks, certain items of the annual accounts of a particular listed company have been subject to a more thorough analysis by the CSSF. Following an exchange of letters and in order to obtain the necessary information and explanations, the CSSF convened representatives of the company for a meeting.

3.3.2. Information on major shareholdings

The CSSF systematically checks compliance with the Law of 4 December 1992 on the information to be published when a major holding in a listed company is acquired or disposed of.

The CSSF noted, in particular by considering attendance registers of ordinary and extraordinary meetings, that the legal provisions relating to reporting of acquisitions and disposals of major holdings were not always observed to the letter. Thus, the CSSF had to remind several companies of the provisions of CAB Circular 93/4 of 4 January 1993 on the practical application of the Law of 4 December 1992, notably as regards the deadlines to observe for the transmission and publication of notifications and their content.



Department "Supervision of Investment Activities" - staff members recruited in 2002

From left to right:

Maggy WAMPACH - Gérard BRIMEYER - Simone GLOESENER - Carlo FELICETTI

Absent: Marie-Josée PULCINI

