

VII

MEASURES OF SANCTION AVAILABLE TO THE CSSF

1. Measures of intervention available to the CSSF
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1. Measures of intervention available to the CSSF

The following means of intervention are available to the CSSF to ensure that the persons subject to its supervision comply with the laws and regulations relating to the financial sector:

- injunction, sent by registered letter, requesting the establishment concerned to remedy the particular situation (Article 59(1) of the Law of 5 April 1993 on the financial sector as amended);
- suspension of persons, suspension of the voting rights of certain shareholders or the suspension of the activities or a sector of activities of the establishment concerned (Article 59(2) of the Law of 5 April 1993 as amended).

In addition, the CSSF may:

- impose administrative fines on the persons in charge of the administration or management of the establishments concerned (Article 63 of the Law of 5 April 1993 as amended, Article 84 of the Law of 30 March 1988 on undertakings for collective investment as amended, Article 108 of the Law of 20 December 2002 on undertakings for collective investment);
- under certain conditions, request the commercial division of the District Court to have payments suspended and place an establishment under controlled administration (Article 60 of the Law of 5 April 1993 as amended);
- refuse or withdraw registration if an establishment does not fulfil or no longer fulfils the conditions for being or continuing to be registered on the official list of undertakings for collective investment (Article 72(2) of the Law of 30 March 1988 as amended, Article 94(2) of the Law of 20 December 2002);
- in extreme cases and under precise conditions laid down by Law, request the commercial division of the District Court to order the winding up and liquidation of an undertaking (Article 61 of the Law of 5 April 1993 as amended, Article 80 of the Law of 30 March 1988 as amended, Article 104 of the Law of 20 December 2002).

Moreover, the CSSF informs the Public Prosecutor of any situation of non-compliance with legal provisions relating to the financial sector, giving rise to penal sanctions and that could entail prosecution against the implicated persons. The following cases are concerned:

- persons exercising an activity of the financial sector without holding a licence;
- persons active in the field of company domiciliation without belonging to any of the professions entitled by the Law of 31 May 1999 governing the domiciliation of companies to exercise the activity of company domiciliation;
- persons other than those registered on the official lists of the CSSF (credit institutions, other professionals of the financial sector) who use a title or appellation, thereby breaching Article 52(2) of the Law of 5 April 1993 on the financial sector as amended, that gives the appearance that they are authorised to exercise one of the activities reserved for persons registered on one of the lists;
- attempted fraud.

2. Sanctions imposed in 2002

2.1. Credit institutions

In 2002, the CSSF did not have to formally use its right of injunction and suspension conferred on it by law.

However, the CSSF imposed disciplinary fines in four cases against bank managers. In two cases, fines of EUR 8,000 each were imposed on account of transmission of information that proved to be incorrect. In the other two cases, EUR 1,500 fines were imposed because the managers did not communicate the required information by the CSSF in accordance with CSSF Circular 01/40 on professional obligations of professionals of the financial sector as regards the fight against money laundering and the circular letter of 19 December 2001 on the same matter.

Moreover, four managers of credit institutions were led to resign without the CSSF having to formally use its right of suspension.

In one case, the CSSF noted that the bank failed the obligation to co-operate with the relevant authorities as laid down in Article 40(1) of the Law of 5 April 1993 on the financial sector as amended and that it failed to provide the CSSF with complete and correct information. In the other cases, the managers' behaviour was not in accordance with the professional requirements.

The CSSF filed five complaints with the Public Prosecutor's Office for illegal banking activities and two complaints for violation of Article 52(2) of the Law of 5 April 1993 as amended. In two other cases, the CSSF informed the Public Prosecutor's Office about the fact that companies exercised activities of the financial sector without holding the required authorisation and likely to constitute attempted frauds.

2.2. Other professionals of the financial sector (PFS)

In 2002, the CSSF did not have to formally use its right of suspension conferred on it by law.

However, the CSSF adopted a stricter position with respect to the use of the other rights conferred on it by Law. It thus used its right of injunction on four occasions. The imposed injunctions concerned situations of insufficient financial bases, governed by Article 20 of the Law of 5 April 1993 as amended, and non-compliance with legal provisions applicable to central administration and daily management according to Articles 17 and 19 of the aforementioned Law.

During 2002, the CSSF also imposed disciplinary fines of EUR 1,500 each on persons responsible for the daily management of two PFS. These were imposed on account of refusal to transmit information as required by CSSF Circular 01/40 on professional obligations of financial professionals within the scope of the fight against money laundering and the circular letter of 19 December 2001 on the same matter, and refusal to transmit information in accordance with Article 54 of the aforementioned Law and IML Circular 98/142 on periodic financial reporting to the CSSF. In the latter case, the PFS in question had transmitted neither the monthly reporting nor the closing documents for the financial year ending 31 December 2001.

On the basis of the reports relating to specific controls of external auditors carried out on two PFS upon request of the CSSF, the latter was led to ask a PFS to withdraw from the financial centre on the grounds of poor organisation and doubts concerning the professional repute of the majority shareholder. As regards the other PFS concerned, a change of shareholders was requested, owing to conflicts of interests as regards several natural persons involved in the company and, to a lesser extent, to organisational deficiencies of the PFS.

The CSSF also requested in one particular case the withdrawal of the ministerial authorisation from the Minister of Treasury and Budget, as the PFS concerned did no longer fulfil the necessary conditions for the authorisation to be maintained.

In 2002, the CSSF filed ten complaints with the Public Prosecutor's Office for illegal domiciliation activities of companies not authorised thereto. The CSSF also lodged two complaints with the Public Prosecutor's Office for illegal activity of private portfolio management (Article 24B of the Law of 5 April 1993 on the financial sector as amended) and financial adviser (Article 25 of the aforementioned Law) respectively.

2.3. Undertakings for collective investment

In 2002, the CSSF decided to suspend the subscription and redemption of the shares of a SICAV and its withdrawal from the official list of UCIs, as well as its liquidation by decision of court. This set of measures was necessary following the cancellation of the custodian bank and central administration contract by the service provider in charge of these functions.

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Indeed, given the absence of any entity in charge of the central administration, and notably of calculating the Net Asset Value and the issue and redemption price of the shares, the CSSF decided to suspend subscriptions and redemptions of the SICAV's shares from the moment the cancellation of the custodian bank and central administration contract became effective.

In this context, it should be borne in mind that Article 36 of the Law of 30 March 1988 as amended stipulates that in the case of withdrawal of the custodian, which must be replaced within two months, the custodian shall take all appropriate measures for the good preservation of the interests of the shareholders.

Following the expiry of this two months time limit, the CSSF decided to withdraw the SICAV concerned from the official list of UCIs, in accordance with Article 72(2) of the Law of 30 March 1988 as amended. As a direct consequence, the CSSF had to submit a request to the Public Prosecutor pursuant to Article 80 of the aforementioned Law in order to request the liquidation by decision of court of the SICAV. The Luxembourg District Court then pronounced the liquidation of the SICAV.

During 2002, the CSSF also imposed a EUR 495.78 disciplinary fine on each of the three persons responsible of a SICAV. These disciplinary fines were imposed for their refusal to communicate the management letter provided for by Chapter P of IML Circular 91/75 of 21 January 1991.

Moreover, the CSSF had to intervene with the managers of a SICAV and the managers of a management company without having to formally use its right of suspension. In the first case, the CSSF invited the SICAV managers to take the necessary steps so as to liquidate the SICAV as its future was put in jeopardy and the interests of the shareholders were no longer preserved. The SICAV was withdrawn from the official list on 30 October 2002. In the second case, the CSSF invited the managers of a management company to liquidate the company, as it never met its purpose. The company was liquidated on 2 August 2002.

2.4. Securities markets

In 2002, the CSSF imposed disciplinary fines of EUR 12,500 on each of the managers of a financial intermediary. These fines were imposed on the one hand because of communication of incomplete, incorrect, and, in certain cases, even false information, and on the other hand on the account of non-compliance with provisions relating to internal organisation, rules concerning stock exchanges and rules of conduct.

