

# CHAPTER V

## SUPERVISION OF THE OTHER PROFESSIONALS OF THE FINANCIAL SECTOR



1. Developments in 2003 of the other professionals of the financial sector (PFS) subject to the permanent supervision of the CSSF
2. Prudential supervisory practice
3. Developments in the regulatory framework

### 1. Developments in 2003 of the other professionals of the financial sector (PFS) subject to the permanent supervision of the CSSF

This section and the published official statistics only examine PSF subject to the prudential supervision of the CSSF, i.e.:

- Luxembourg-registered PFS (activities conducted by these establishments in another EU Member State, either by means of the establishment of a branch or by free provision of services, are also subject to the prudential supervision of the CSSF);
- branches of investment firms originating from countries outside the EU;
- branches of PFS other than investment firms originating from a EU Member State or from a country outside the EU.

Branches established in Luxembourg by investment firms originating from another EU Member State fall under the supervision of their home state.

The law of 2 August 2003 amending the law of 5 April 1993 on the financial sector subjects the entire financial sector to a prudential supervision. Thus, PFS governed by the general provisions of the law of 5 April 1993 on the financial sector as amended, as well as the professionals carrying out an activity of debt recovery and those executing cash-exchange transactions, are henceforth also under the supervision of the CSSF.

#### 1.1. Developments in the number of the other professionals of the financial sector

The year 2003 is characterised by a slight decrease in the number of PFS subject to the permanent supervision of the CSSF as compared to the year 2002, the number of PFS having indeed dropped from 145 entities at the end of 2002 to 142 entities as at 31 December 2003. This decrease is consistent with the overall slowdown of activities in the financial sector. The number of newly approved companies in 2003 falls slightly as compared to the number of entities that had been approved in the previous year. Eleven companies have been approved in 2003 as PFS (against ten in 2002), while fourteen entities renounced their status during the same period.

## Developments in the number of PFS

Categories	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Investment firms</b>									
Commission agents				4	7	10	14	15	17
(Brokers and commission agents)	14	14	14	/	/	/	/	/	/
Private portfolio managers	33	36	34	37	38	46	51	51	48
Professionals acting for their own account	18	18	20	15	17	14	17	16	16
Distributors of units/shares of investment funds	19	20	18	22	25	35	43	45	47
Underwriters				1	2	4	4	3	3
(Underwriters and market makers)	3	3	3	/	/	/	/	/	/
Professional custodians of securities	3	3	3	1	1	3	4	3	3
Registrar and transfer agents									1
<b>PFS other than investment firms</b>									
Financial advisors	6	6	7	9	10	9	10	9	9
Brokers				10	8	7	6	6	5
Market makers				1	2	2	2	2	2
<b>PFS performing a connected or complementary activity of the financial sector</b>									
Domiciliation agents of companies					1	14	32	36	34
Client communication agents									2
IT systems and communication networks operators of the financial sector									1
Institutions authorised to conduct all the PFS activities permitted by article 28 of the Law of 15 December 2000 on postal services and financial postal services							1	1	1
<b>Total<sup>1</sup></b>	<b>78</b>	<b>82</b>	<b>80</b>	<b>83</b>	<b>90</b>	<b>113</b>	<b>145</b>	<b>145</b>	<b>142</b>

<sup>1</sup> The total in the table is not equal to the arithmetic sum of all the categories mentioned because an institution may be included in several categories.

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Note on PFS registered on the official list:

As the official table of PFS posted on the CSSF Internet site, this table, under the company domiciliation agent heading, only includes companies that have been approved exclusively as company domiciliation agents under article 29 of the law of 5 April 1993 on the financial sector as amended. Entities authorised to exercise, in addition to the status of domiciliation agent, another PFS activity covered by Chapter 2 of Part 1 of the aforementioned law are included in this category, since approval obtained as other professional of the financial sector also authorises the provision of company domiciliation services in accordance with the law of 31 May 1999 on company domiciliation.

This table does not yet include the PFS that do not fall under a specific category and that are subject to the general provisions of the law of 5 April 1993 as amended, as the companies concerned have not yet taken the necessary steps to comply with the provisions introduced by the law of 2 August 2003 and whose time limit to comply expires on 31 March 2004. It has to be noted that the number of these entities has not changed in 2003.

The number of domiciliation agents of companies and private portfolio managers decreased, if only slightly, as opposed to the positive development in the previous years. No authorisation as new private portfolio manager has been granted in 2003.

The categories of registrar and transfer agents, client communication agents and IT systems and communication networks operators of the financial sector have been introduced by the law of 2 August 2003 amending the law of 5 April 1993 on the financial sector, which came into effect on 1 October 2003.

Moreover, the law introduced the following new categories:

- professionals performing credit offering;
- professionals performing securities lending;
- professionals performing money transfer services;
- administrators of collective savings funds;
- management companies of non-coordinated UCIs;
- administrative agents of the financial sector;
- professionals performing services of setting up and of management of companies.

As at 31 December 2003, no authorisation has been granted for any of the new categories, except for the companies registered on the official list in a category fully empowered to carry out the activities of a newly created category.

### Breakdown of PFS by geographic origin

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Belgium	26	29	27	25	24	21	22	22	18
France	9	11	10	10	10	11	14	13	9
United Kingdom	8	9	10	9	8	8	9	10	11
Switzerland	6	5	6	4	4	7	11	10	10
Luxembourg	8	8	11	12	17	22	31	31	32
Germany	8	6	6	6	7	11	11	10	10
United States	5	6	3	4	3	4	8	8	8
Netherlands	1	2	2	3	3	7	12	15	15
Others	7	6	5	10	14	22	27	26	29 <sup>2</sup>
<b>Total</b>	<b>78</b>	<b>82</b>	<b>80</b>	<b>83</b>	<b>90</b>	<b>113</b>	<b>145</b>	<b>145</b>	<b>142</b>

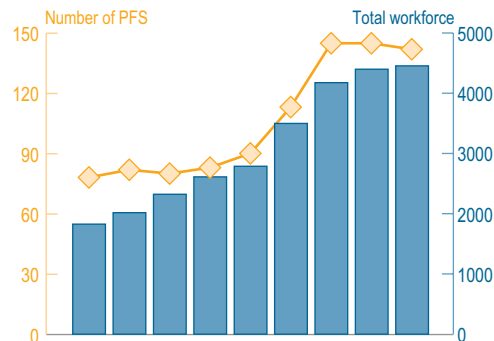
<sup>2</sup> Including Italy (3 entities), Sweden (3 entities), Denmark (4 entities).

PFS originating from Belgium and France each decreased by four entities, which can be connected with the fall in the number of private portfolio managers. It is noteworthy that PFS originating from Luxembourg remained the most numerous.

## 1.2. Development in employment of the other professionals of the financial sector

### Summary of employment per year and compared to the development in the number of PFS

Year	Number of PFS	Total workforce
1995	78	1,827
1996	82	2,017
1997	80	2,323
1998	83	2,612
1999	90	2,788
2000	113	3,499
2001	145	4,176
2002	145	4,399
2003	142	4,455



The analysis of employment in 2003 reveals a rather weak growth of the total workforce as compared to the previous years. Indeed, employment increases only 1.28% as compared to 31 December 2002. However, it has to be noted that the employment of other professionals of the financial sector developed positively although the number of PFS slightly decreased compared to the previous year.

Overall, the increase in employment from 4,399 persons as at 31 December 2002 to 4,455 persons as at 31 December 2003 can be explained on the one hand by newly approved PFS, which employ noticeably more personnel than those entities having renounced their status in 2003, and on the other hand by an increase in personnel employed by entities active in the distribution of units/shares of investment funds.

The year 2003 can be subdivided into two contrasting periods in terms of development in numbers.

Indeed, the total workforce fell during the first half of 2003 to 4,243 persons as at 30 June 2003 against 4,399 persons at the end of the previous year. This decrease is essentially due to certain institutions with a high number of staff which changed their legal status into that of management company of UCIs.

A reversal of the situation took place during the second half of 2003. Thus, the workforce employed by the other professionals of the financial sector increased from 4,243 persons as at 30 June 2003 to 4,455 persons at the end of the year. This positive development partly results from the authorisation of new establishments, but also from the increase in employment of certain entities active in the distribution of units/shares of investment funds.

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### 1.3. Changes in 2003 in the official list of PFS

#### 1.3.1. Luxembourg-registered PFS approved in 2003

- **Investment firms**

According to chapter 2, section 2 of Part I of the law of 5 April 1993 on the financial sector as amended, the following are considered as investment firms: companies acting on a professional basis as commission agents (article 24A), private portfolio managers (article 24B), professionals acting for their own account (article 24C), distributors of units/shares of investment funds (article 24D), underwriters (article 24E), professional custodians of securities or other financial instruments (article 24F) or registrar and transfer agents (article 24G). An application for authorisation may relate to one or more of the categories mentioned.

The following institutions were approved as investment firms in 2003:

Name of PFS	Category
Barclays International Independent Financial Advisory Services S.A.	Commission agent
E. Oppenheimer & Son (Luxembourg) Ltd	Commission agent <sup>3</sup>
European Fund Services S.A.	Registrar and transfer agent, commission agent and distributor of units/shares of investment funds <sup>3</sup>
IKB CorporateLab S.A.	Professional acting for his own account
Nextra Distribution Services S.A.	Distributor of units/shares of investment funds

Five entities were approved as investment firms in 2003, including one entity that applied for approval for three different investment firm statuses, i.e. as commission agent, distributor of units/shares of investment funds and registrar and transfer agent.

Two entities were also approved as domiciliation agents of companies and one entity as IT systems and communication networks operator of the financial sector and are therefore listed as PFS carrying out an activity connected or complementary to the financial sector.

Combining several statuses allows a company to offer a broader range of services to its clients and to better adapt to temporary economic difficulties.

- **PFS other than investment firms**

According to the provisions of articles 25 to 28-8 of the law of 5 April 1993 on the financial sector as amended, financial advisors (article 25), brokers (article 26), market makers (article 27), operators of payment or securities settlement systems (article 28-1), persons performing cash-exchange transactions (article 28-2), debt recovery (article 28-3), professionals performing credit offering (article 28-4), professionals performing securities lending (article 28-5), professionals performing money transfer services (article 28-6), administrators of collective savings funds (article 28-7) and management companies of non-coordinated UCIs (article 28-8) constitute PFS other than investment firms.

<sup>3</sup> Also refer to the table of PFS performing an activity connected or complementary to the financial sector.

Only one entity was approved as PFS other than investment firms in 2003:

Name of PFS	Category
Bellatrix Investments S.A.	Financial advisor

It has to be noted that as at 31 December 2003, no application for approval has been requested for PFS categories other than investment firms newly created by the law of 2 August 2003.

#### Definition of the activity of independent intermediaries

The CSSF considers that the introduction, by a natural or legal person residing in Luxembourg, of customers to a professional of the financial sector, has to be considered as establishing a relationship between both parties with a view to agree on a specific financial transaction. The activity carried out by the intermediary in or from Luxembourg therefore requires an authorisation as broker as laid down in article 26 of the law of 5 April 1993 on the financial sector as amended.

- ***PFS performing a connected or complementary activity to the financial sector***

According to the provisions of articles 29 to 29-4 of the law of 5 April 1993 on the financial sector as amended, domiciliation agents of companies (article 29), client communication agents (article 29-1), administrative agents of the financial sector (article 29-2), IT systems and communication networks operators of the financial sector (article 29-3) and professionals performing services of setting up and of management of companies (article 29-4) are PFS performing a connected or complementary activity to the financial sector.

Name of PFS	Category
AIB Administrative Services Luxembourg S.à.r.l.	Domiciliation agent of companies
E. Oppenheimer & Son (Luxembourg) Ltd	Domiciliation agent of companies <sup>4</sup>
European Fund Services S.A.	Domiciliation agent of companies and IT systems and communication networks operator of the financial sector <sup>4</sup>
Lettershop S.A.	Client communication agent
LGT Trust & Consulting S.A.	Domiciliation agent of companies
Victor Buck Services S.A.	Client communication agent

<sup>4</sup> Also refer to the table of investment firms.

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In 2003, four entities were authorised as domiciliation agents of companies.

As far as the new statuses introduced by the law of 2 August 2003 are concerned, three entities were approved as client communication agents, one of them being listed on the official list of investment firms as registrar and transfer agent fully empowered to carry on the activities of administrative agent of the financial sector and client communication agent. One entity was authorised to act as IT systems and communication networks operator of the financial sector.

The relatively weak number of entities having submitted an application to be authorised to carry on one of the activities introduced by the law of 2 August 2003 is, on the one hand, due to the fact that the law came into force only on 1 October 2003, and on the other hand to the fact that the time limit to comply with the law granted to persons who carried on, when the law came into force, an activity subject to a new status, only expires on 31 March 2004.

### Interpretation of the concept of financial advisor

The definition of the activities of financial advisors has been specified so that the persons, who, on an individual basis, provide general financial advice, also fall under the scope of article 25 of the law on the financial sector. Until now, article 25 only concerned the persons who provided, on an individual basis, advice on specific financial transactions.

### 1.3.2. PFS that renounced their status in 2003

Ten entities, including five investment firms, renounced their PFS status in 2003. Three PFS have merged with their parent company or another entity of the group to which they belong. Besides the liquidation of one entity, the other renunciations were all due to discontinuation of activities or change in activities no longer requiring an authorisation as PFS, as the activities no longer fall under the scope of the law of 5 April 1993 on the financial sector as amended.

Moreover, the Minister responsible for the CSSF has withdrawn the approval of one entity upon the CSSF's request, as the PFS concerned no longer fulfilled the necessary conditions of approval.

Name of PFS	Category	Reason for renouncement
BBL Trust Services Luxembourg	Domiciliation agent of companies	Merger with ING Trust (Luxembourg) S.A.
Beta Europa Management S.A.	Professional acting for his own account	Ceased its PFS activities
BNP Fund Administration S.A.	Distributor of units/shares of investment funds	Ceased its PFS activities
Crédit Lyonnais Asset Management (Luxembourg) S.A.	Commission agent and distributor of units/shares of investment funds	Ceased its PFS activities
Cogent Investment Operations Luxembourg S.A.	Domiciliation agent of companies	Merger by take-over with BNP Paribas Fund Services
Degroof, Thierry, Portabella & Associés S.A.	Private portfolio manager and distributor of units/shares of investment funds	Merger with Banque Degroof Luxembourg S.A.



F.G.P. (Luxembourg) S.A.	Financial advisor	Ceased its PFS activities
Graham Turner Trust Services (Luxembourg) S.A.	Domiciliation agent of companies	Ceased its PFS activities
Havaux Gestion (Luxembourg) S.A.	Private portfolio manager	Voluntary liquidation
Infigest S.A.	Domiciliation agent of companies	Ceased its PFS activities
LISSA-Luxembourg Investment Strategies S.A.	Commission agent	Withdrawal of approval

### 1.3.3. Changes in category in 2003

The analysis of changes in the categories of the professionals of the financial sector in 2003 confirms the diversification of market activities. Most of the requested changes relate to the adoption of an additional status with a view to expanding the business covered.

Name of PFS	Category (before change)	Category (after change)
Alternative Leaders S.A.	Private portfolio manager	Private portfolio manager and distributor of units/shares of investment funds not authorised to accept and effect payments
European Fund Services S.A.	Commission agent, distributor of units/shares of investment funds not authorised to accept and effect payments and domiciliation agent of companies	Commission agent and distributor of units/shares of investment funds not authorised to accept and effect payments, domiciliation agent of companies, IT systems and communication networks operator of the financial sector and registrar and transfer agent
Fidessa Asset Management S.A.	Private portfolio manager	Private portfolio manager and distributor of units/shares of investment funds not authorised to accept and effect payments
Franklin Templeton International Services S.A.	Distributor of units/shares of investment funds authorised to accept and effect payments	Distributor of units/shares of investment funds authorised to accept and effect payments and commission agent
Keytrade Luxembourg S.A.	Broker	Commission agent and auxiliary service point 7 of section C of annexe II of the law of 5 April 1993 on the financial sector as amended
Kredietrust Luxembourg S.A.	Private portfolio manager	Private portfolio manager and distributor of units/shares of investment funds authorised to accept and effect payments

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### 1.4. Development in the balance sheet totals and results

#### Development in the balance sheet total of PFS

CATEGORIES	Balance sheet total in EUR		
	2001	2002	2003 <sup>5</sup>
<b><i>Investment firms</i></b>			
Commission agents	101 666 465	147 610 385	165 509 334
Private portfolio managers	866 060 509	823 033 277	903 461 433
Professionals acting for their own account	261 465 164	195 589 363	270 166 720
Distributors of units/shares of investment funds	810 254 091	778 601 009	919 379 123
Underwriters	139 269 208	55 453 654	107 130 510
Professional custodians of securities or other financial instruments	818 743 262	847 861 986	998 633 250
Registrar and transfer agents	/	/	1 595 044
<b><i>PFS other than investment firms</i></b>			
Financial advisors	8 327 976	8 548 297	11 303 419
Brokers	53 352 363	45 163 287	43 161 613
Market makers	17 406 945	17 721 824	17 578 705
<b><i>PFS performing a connected or complementary activity to the financial sector</i></b>			
Domiciliation agents of companies	72 508 986	82 607 292	108 516 585
Client communication agents	/	/	3 587 059
IT systems and communication networks operators of the financial sector	/	/	1 595 044
Institutions authorised to conduct all the PFS activities permitted by article 28 of the law of 15 December 2000 on postal services and financial postal services	/	/	/
<b>Total</b>	<b>2 316 353 170</b>	<b>2 292 287 619</b>	<b>2 546 754 660</b>

<sup>5</sup> Provisional figures.

## Development in the net results of PFS

CATEGORIES	Net results in EUR		
	2001	2002	2003 <sup>6</sup>
<b><i>Investment firms</i></b>			
Commission agents	5 836 317	1 195 685	6 151 947
Private portfolio managers	149 394 686	151 487 146	152 201 330
Professionals acting for their own account	17 481 305	26 831 928	26 284 405
Distributor of units/shares of investment funds	76 656 488	106 542 893	95 158 301
Underwriters	4 320 486	1 938 609	2 567 253
Professional custodians of securities or other financial instruments	51 089 607	82 936 378	142 812 697
Registrar and transfer agents	/	/	- 484 488
<b><i>PFS other than investment firms</i></b>			
Financial advisors	743 640	1 251 178	1 365 051
Brokers	18 339 295	18 056 064	16 298 578
Market makers	984 879	422 867	239 971
<b><i>PFS performing a connected or complementary activity to the financial sector</i></b>			
Domiciliation agents of companies	7 706 452	10 032 141	8 321 390
Client communication agents	/	/	833 489
IT systems and communication networks operators of the financial sector	/	/	- 484 488
Institutions authorised to conduct all the PFS activities permitted by article 28 of the law of 15 December 2000 on postal services and financial postal services	/	/	/
<b>Total</b>	<b>283 518 190</b>	<b>320 234 143</b>	<b>365 917 699</b>

<sup>6</sup> Provisional figures.

### **Comment on the tables**

Since the same company may operate in several sectors, the total does not reflect the arithmetical sum of headings under the different PFS categories. For professionals of the financial sector authorised to conduct business as defined in articles 24A to 24D, 24G, 25, 26, 29-1 and 29-2 of the law of 5 April 1993 as amended, the balance sheet total and the net results respectively are recorded only once in the total in the category for which the capital requirements are the most stringent. If the professional conducts additional business outside of the above-mentioned categories, as covered in section 2 of chapter 2 of the aforementioned law, the balance sheet total and total results respectively are aggregated for each category but are not included in the grand total to avoid double counting.

The balance sheet total posted by PFS established in Luxembourg increased during 2003 to EUR 2,546 million, compared to EUR 2,292 million at the end of 2002, representing a net increase of 11.11%. This positive development was mainly due to the development of a few large-sized entities which were able to benefit from the recovery of the stock markets.

PFS net results at 31 December 2003 were also higher than in the previous year, amounting to EUR 365 million as against EUR 320 million at 31 December 2002, representing a growth of 14.27%. Considering the decrease in the total number of authorised PFS, the net results in 2003 thus recorded a notable growth compared to the previous year. This development, which is largely attributable to the increase in the results of commission agents and professional custodians of securities, is consistent with the general improvement of the international economic situation and the recovery of stock markets.

The tables on the development of the balance sheet total and net results reveal that the different categories of PFS posted divergent results in 2003. Certain categories recorded a fall compared to the previous year, while others were more stable or even recorded a significant increase in the balance sheet total and/or net results. Among the PFS categories that recorded a fall in their net results are the distributors of units/shares of investment funds and domiciliation agents of companies, with a decline of 10.69% and 17.06% respectively.

### **Commission agents**

The net results of the commission agents increased substantially as compared to end of 2002. This development is due to the growth in the results of a significant player in this category.

### **Private portfolio managers**

Despite the slight decrease in the number of private portfolio managers during the year 2003, declining from 51 to 48 entities as at 31 December 2003, this category shows a slight increase in the balance sheet total and net results.

### **Distributors of units/shares of investment funds**

Distributors of units/shares of investment funds, the number of which increased from 45 to 47 in 2003, record a decrease in results while the balance sheet total is on the increase as compared to the previous year. A few large-sized market participants were responsible for the financial development of the category distributors of units/shares of investment funds.

### **Professional custodians of securities or other financial instruments**

The table reveals an important increase in net results, which is essentially due to the development of a major player in the market.

### Registrar and transfer agents IT systems and communication networks operators of the financial sector

The entity that falls under these two categories is a new company, which has adopted the statuses of registrar and transfer agent and IT systems and communication networks operator of the financial sector as introduced by the law of 2 August 2003 only in December 2003. The negative net results of these categories are thus not representative.

### Domiciliation agents of companies

The balance sheet total of the company domiciliation agents increased while their net results decreased, reflecting the general trend recorded for entities of this category.

## 1.5. Expansion of PFS at international level

### • Formation of subsidiaries in 2003

The investment firm Hottinger & Cie, authorised as private portfolio manager, opened a subsidiary in Switzerland in 2003.

### • Freedom of establishment

Three Luxembourg-registered investment firms established a branch in another EU Member State in accordance with the principle of freedom of establishment in 2003, namely J.P. Morgan Fleming Asset Management (Europe) S.à.r.l. which set up a branch in Germany, Nordea Investment Funds which set up a branch in Austria and SZL S.A. which set up in Belgium by means of a branch.

The company Carl Kiem, on the other hand, closed its branch in Belgium on 31 December 2003.

The following table shows all the Luxembourg investment firms, which are represented by means of a branch in one or several EU Member States as at 31 December 2003.

Name of PFS	Category	Branch
AIG Financial Advisor Services (Europe) S.A.	Distributor of units/shares of investment funds	Germany Italy
Creutz & Partners, Global Asset Management S.A.	Private portfolio manager	Germany
J.P. Morgan Fleming Asset Management (Europe) S.à R.L.	Private portfolio manager and distributor of units/shares of investment funds	Sweden Austria Netherlands Germany
Le Foyer, Patrimonium & Associés S.A.	Private portfolio manager and distributor of units/shares of investment funds	Belgium
Moventum S.A.	Private portfolio manager and distributor of units/shares of investment funds	Germany
Nordea Investment Funds S.A.	Distributor of units/shares of investment funds	Austria
SZL S.A.	Professional acting for his own account	Belgium

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At 31 December 2003, the number of branches established in Luxembourg by investment firms originating from another EU Member State amounts to four, which is a decrease compared to end of last year, where the number stood at five entities.

A branch originating from the United Kingdom, i.e. GNI Fund Management Limited, stopped its activities in Luxembourg in 2003.

Name of branch	Country of origin
Compagnie de Gestion Privée	Belgium
Morgan Stanley Investment Management Limited	United Kingdom
PFPC International Limited	Ireland
Prudential-Bache International Limited	United Kingdom

- **Freedom to provide services**

In 2003, fourteen Luxembourg-registered investment firms applied to pursue business in one or several EU Member States under the principle of freedom to provide services. The upward trend in preceding years is *de facto* confirmed. It needs to be added that the majority of investment firms concerned pursue business in several other EU countries by means of a notification.

Notifications to freely provide services in Luxembourg from investment firms situated in other EU Member States decreased in 2003, confirming the trend that crystallised in 2002. Indeed, the number of notifications received by the CSSF amounted to 68 as against 105 in 2002.

The geographical breakdown of investment firms that submitted a notification in 2003 shows that British investment firms continue to introduce the most notifications to freely provide services in Luxembourg, followed by the French investment firms.

Country of origin	Number of entities having submitted a notification to freely provide services in 2002	Number of entities having submitted a notification to freely provide services in 2003
Germany	4	1
Austria	4	2
Belgium	4	1
Spain	3	3
Finland	/	1
France	7	13
Greece	2	/
Ireland	11	3
Italy	/	/
Norway	2	/
Netherlands	7	6
United Kingdom	59	37
Sweden	2	1
<b>Total</b>	<b>105</b>	<b>68</b>

While the geographical breakdown shows a slight decrease for the majority of countries as compared to the previous year, the number of entities originating from France increased by six entities.

The United Kingdom and Ireland recorded a substantial decrease in the number of entities having introduced a notification to freely provide services in Luxembourg, standing at only 37 entities as against 59 for the United Kingdom and at 3 entities as against 11 for Ireland. This decrease in the number of notifications from these two countries is the main reason for the drop in the total number of notifications in 2003 as compared to the previous year.

At 31 December 2003, 965 investment firms of Community origin were authorised to freely provide services on Luxembourg territory.

## 2. Prudential supervisory practice

### 2.1. Prudential supervision instruments

Prudential supervision is exercised by the CSSF by means of four types of instruments:

- financial information submitted periodically to the CSSF enabling the continuous monitoring of the activities of PFS and of inherent risks, and the periodic supervision of the capital adequacy ratio as laid down in article 56 of the law of 5 April 1993 on the financial sector as amended;
- the report drawn up annually by the external auditors (including a certificate concerning anti-money laundering and a certificate concerning compliance with CSSF Circular 2000/15);
- internal audit reports relating to inspections carried out during the year, and the management's report on the state of the internal auditing of the PFS;
- on-site inspections carried out by the CSSF.

### 2.2. On-site inspections

In 2003, the CSSF carried out on-site inspections at the premises of four professionals of the financial sector.

The purpose of these on-site inspections was to control more particularly the functioning of the PFS concerned and to ascertain, among other things, that an adequate administrative and accounting structure is set up.

The CSSF attaches particular importance to this instrument of permanent supervision, which allows a global and direct view of the situation and functioning of the PFS in practice.

Thus, an on-site inspection at the premises of one professional of the financial sector in 2003 led the CSSF to require the entity concerned to renounce its PFS activities due to non-compliance with certain legal provisions. The on-site inspection at the premises of another entity led to CSSF to require the entity concerned to charge an external auditor with controlling a particular aspect of the PFS activities.

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### 2.3. Meetings

A total of 95 meetings concerning PFS activities were held in 2003 at the CSSF's premises. Half of these meetings related to applications for approval as PFS, submitted by firms newly incorporated or to be created, or from existing entities that intend to conduct business in the financial sector that requires prior authorisation.

The remainder of the meetings held with representatives of PFS covered the following areas in particular:

- planned changes in business;
- presentation of the general context and business of the company concerned;
- courtesy visits.

### 2.4. Specific audits

Article 54(2) of the law of 5 April 1993 on the financial sector as amended specifies that the CSSF can ask external auditors to carry out a specific audit on a financial professional, covering one or several specific aspects of the business or functioning of the entity concerned. The ensuing costs are to be borne by the professional concerned. The CSSF made formally use of this right in one case in 2003.

### 2.5. Supervision on a consolidated basis

The supervision of investment firms on a consolidated basis is governed by the law of 5 April 1993 on the financial sector as amended and more particularly by chapter 3bis of Part III. The relevant articles define the conditions governing the supervision of investment firms on a consolidated basis and its scope. The form, extent, content and means of supervision on a consolidated basis are also laid down by the law.

At 31 December 2003, the CSSF had carried out supervision on a consolidated basis on 20 investment firms falling under the above-mentioned law. An in-depth study of the financial groups to which most of the PFS investment firms belong was required in order to determine whether, at what level and in what form, consolidation should apply. For the investment firms concerned, Circular CSSF 00/22 on the supervision of investment firms on a consolidated basis specifies the practical aspects of the rules as regards this type of supervision. Many companies that are supervised on a consolidated basis belong to major groups operating in the financial sector and whose ultimate parent company is usually a credit institution.

The following PFS were subject to supervision by the CSSF on a consolidated basis at 31 December 2003:

- ABN Amro Investment Funds S.A.
- Atag Asset Management (Luxembourg) S.A.
- BNP Paribas Fund Services
- Brianfid-Lux S.A.
- Capital @ Work International S.A.
- Citco (Luxembourg) S.A.
- Clearstream International S.A.
- Corluy Luxembourg S.A.
- Crédit Lyonnais Management Services (Luxembourg) S.A.
- Dewaay Luxembourg S.A.
- Dexia Asset Management Luxembourg S.A.
- Foyer Asset Management S.A.
- Fund-Market Research & Development S.A.
- Hottinger & Cie



- Interinvest S.à r.l.
- Kredietrust S.A.
- Le Foyer, Patrimonium & Associés S.A.
- Petercam (Luxembourg) S.A.
- Premium Select Lux S.A.
- UBS Fund Services (Luxembourg) S.A.

### 3. Developments in the regulatory framework

#### **Circular CSSF 03/113 on practical rules concerning the task of external auditors of investment firms**

Circular CSSF 03/113 of 21 October 2003 defines the scope of the auditing mandate of yearly accounting documents, as well as the content of the audit report, as provided for by Article 54 (1) of the law of 5 April 1993 on the financial sector as amended. It applies to all the investment firms and to the branches of non-EU investment firms.

The long-form audit report introduced by the circular, as it exists already for credit institutions, is an important source of information for the management of the financial professional, as well as for the CSSF in its supervisory mission.

The provisions of the circular have to be observed for yearly accounts of the financial years closing after 31 December 2003.

#### **Interpretation of the legal condition for educational qualifications to be held by managers of domiciliation agents of companies (article 29(2) of the law of 5 April 1993 on the financial sector as amended)**

The CSSF considers that the requirement concerning the proof of a completed university education in law, economics or business management by the managers of domiciliation agents of companies is fulfilled by any final university degree in these areas, no matter how many years of study this degree awards.