

CHAPTER VI

SUPERVISION OF SECURITIES MARKETS



1. Reporting of transactions on financial assets
2. Investigations conducted by the CSSF in its supervision of securities markets
3. Supervisory practice

1. Reporting of transactions on financial assets

1.1. The reporting requirements

The project of the reporting on transactions on financial assets having been finalised in 2002, more attention was paid to the supervision of reporting of transactions on financial assets by investment firms during 2003.

The year 2002 having been marked by the publication of the updated version of the *Recueil d'instructions* and the identification and rectifications of the most frequent mistakes made by the investment firms, stress was laid in 2003 on compliance with the requirements laid down in circular CSSF 99/7 on reporting to the CSSF in accordance with the law of 23 December 1998 on the supervision of securities markets.

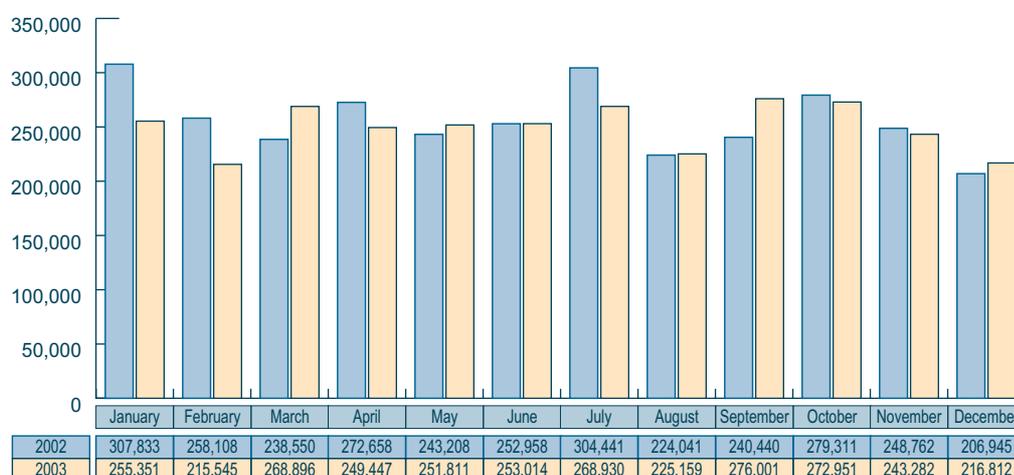
In this context and within the scope of its daily supervisory mission, the CSSF addressed a total of 84 letters covering the following subjects to the investment firms:

Subject	Number
Mailing of the <i>Recueil</i> to new firms	7
Various authorisations (reporting via fax, exemptions, deferrals)	8
Reporting irregularities (erroneous quotes, technical issues, quotes deviating from the market, block transactions)	32
Request for explanations	14
Code of ethics	8
Reminders	8
Various	7
Total	84

1.2. Development in the number of trades reported

The number of trades reported in 2003 amounted to 2,997,199, representing a decrease of 2.60% as compared to 2002, when the number of trades reported amounted to 3,077,255.

Monthly volume of trades reported



Breakdown of transactions by type of instrument

Type of instrument	Number of trades reported (as a % of total)	
	2002	2003
Shares	62.12 %	62.19 %
Bonds	34.13 %	33.34 %
Futures	1.27 %	0.99 %
Options	1.20 %	1.77 %
Warrants	1.14 %	1.37 %
Bonds cum warrant	0.14 %	0.34 %

The reported data allows to monitor the trends of the European and more particularly the Luxembourg market. The main purpose of the supervision of the securities markets is to prevent and detect infringements of financial and stock market laws and regulations. In this context, weekly internal reports, as well as specific internal reports, based on the trades reported, are drawn up. These *ex post* analyses of transactions on financial assets are likely to be used as a starting point for enquiries of 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 as laid down in circular CSSF 2000/15 of 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**

An enquiry initiated by the CSSF in 2002 into a possible infringement of the law of 3 May 1991 on insider dealing has been closed in 2003 with no further action taken, considering the evidence and information received.

During 2003, the CSSF opened three enquiries into a possible breach of the law of 3 May 1991 on insider dealing. Two enquiries are still in progress. Based on the evidence and information collected in relation to the third enquiry, the CSSF concluded that there were no infringements of the aforementioned law.

- **Enquiries into price manipulation**

The CSSF conducted investigations regarding an enquiry into a possible price manipulation of securities of an international group whose bonds are listed on the Luxembourg Stock Exchange. Based on the analysis of the information received, the CSSF could not conclude that



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the price of the listed securities had been manipulated by any fraudulent means and has closed this case without taking any further action.

The CSSF continued its investigations regarding an enquiry opened in 2001 within the scope of its general mission of supervising the securities markets. The purpose of these specific investigations is 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 could not conclude that the price of the listed security had been manipulated by any fraudulent means and has closed this part of the case without taking any further action.

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

- **Enquiries concerning insider dealing**

In 2003, the CSSF processed 51 requests for assistance relating to enquiries into insider dealing (against 55 in 2002), 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, fraudulent public offers, breaches of the requirement to report major shareholdings and other breaches of the law**

The CSSF received three applications for assistance from foreign authorities (one of which from an administrative authority outside the European Economic Area) regarding price manipulation, two applications (one of which from an administrative authority outside the European Economic Area) regarding fraudulent public offers of securities, five applications (two of which from an administrative authority outside the European Economic Area) regarding breaches of the requirement to report major shareholdings, two applications regarding non-compliance with the rules of conduct, two requests (one of which from an administrative authority outside the European Economic Area) regarding illegal practice of activity of the financial sector, one application regarding false information in the prospectus published in relation with a capital increase and one request regarding breaches of the stock market legislation.

The CSSF responded to all these requests within the scope of its legal competence. The CSSF could not respond favourably to one application concerning a request regarding accounting information on a company affiliated to a company listed in a non-EEA country, as the requested information falls outside the competence of the CSSF.

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

Circular CSSF 2000/15 concerning the rules of conduct of the professionals of the financial sector aims to ensure investor protection and market integrity. In this context, the CSSF intervened eight times in 2003 with financial institutions members of the Luxembourg Stock Exchange to make them aware of their duties as regards deontology, notably to ensure compliance with the rules of conduct.

The CSSF's interventions were mainly motivated by the will to protect investors. The decision to open an investigation or to intervene with a professional of the financial sector is 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 analyses this information and decides on the appropriateness of an intervention.

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 offers 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 a 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 securities market, as well as the proper application of the related regulations. The CSSF also attends the meetings of the Luxembourg Stock Exchange authorities.

3.1.1. Regulatory changes

In its 2002 Annual Report, the CSSF indicated that a high number of application files received in 2002 were related to structured issues, whose proceeds are entirely or partly invested in funds not subject to a permanent supervision in their home country. This trend has been confirmed in 2003.

In this context, it must be stressed that the CSSF's decision not to agree to the listing of structured financial instruments linked to foreign UCIs which are not subject to a supervision in their home country, is based on the decision of the Government in Council of 4 March 1988 concerning the admission to the Luxembourg Stock Exchange of foreign UCIs not subject to a supervision abroad. In accordance with this decision, the aforementioned UCIs could not be admitted to trading on the Luxembourg Stock Exchange.

Taking account of the market trends and the legislative development in this field at national and international level, the Government in Council decided on 19 December 2003 to revoke the decision of 4 March 1988. Indeed, the Government considered that the restrictive interpretation of article 70 of the law of 30 March 1988 on UCIs as amended is no longer consistent with the national and international developments in this area. In particular, the Government took into consideration that it is no longer possible to generalise the principle according to which a public stock exchange listing is a public offer or exposure and that the Luxembourg Stock Exchange must be allowed to list foreign UCIs and products linked to such UCIs without being hindered by an approach outdated in other financial centres.

The decision of the Government in Council of 19 December 2003 thus allows the CSSF to agree to the listing of the aforementioned financial instruments. The legislative texts relating to the conditions for approval and the contents of the prospectus applicable to this category of financial instrument are being adapted to this new situation.

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

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

As far as market activities are concerned, turnover fell by 54.43% as compared to 2002 to reach EUR 792.84 million. Total turnover of variable income securities represented 52.11% of trading compared to 47.89% for bonds.

At the end of 2003, the Luxembourg Stock Exchange counted 71 members (against 76 in 2002), including 17 cross members.

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Considering that turnover decreased in 2003, the year was nevertheless marked by intense activity in new admissions to the Luxembourg Stock Exchange. 8,246 new securities (against 7,513 in 2002) were admitted, representing an increase of about 10% in relation to the number of quotation lines, compared to an increase of 4% in 2002. The total number of admissions as at 31 December 2003 amounted to 29,102 securities (against 26,486 in 2002), composed of 21,285 bonds, 268 shares, 1,795 warrants and rights and 5,754 undertakings for collective investment and compartments.

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.

In 2003, twenty-five public offers of transferable securities were made in Luxembourg, seventeen 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 on the Luxembourg Stock Exchange.

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.

In 2003, the Luxembourg Stock Exchange submitted around thirty 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. In addition, the Stock Exchange referred twenty-seven applications for an exemption from specific regulatory provisions concerning prospectuses to the CSSF. Seventeen 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 59 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 whose shares are listed amounted to 45 on 31 December 2003.

- **The IAS Regulation**

The IAS Regulation of the European Parliament and of the Council 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.

Continuing the work initiated in 2002, the CSSF explored and analysed the responses received to its letter sent to the Luxembourg companies whose shares are listed on the Luxembourg Stock Exchange, enquiring about the progress made by these companies (first concerned by the regulation) to adapt to these standards planned for 2005.

In order to assess the extent of the implementation of the second stage of the IAS regulation and in the context of the CSSF's participation in the CESRFin group, the CSSF started an analysis of the Luxembourg-registered companies of which only non-equity securities are listed.

- **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 can ask an independent external auditor to prepare a written report on individual and consolidated annual accounts of these companies.

Due to the difficulties encountered by certain listed companies concerning their transition to IAS/IFRS standards, the CSSF took a prudent approach in formulating observations and questions following the examination of the annual reports. The CSSF intervened several times as regards financial information submitted in 2003.

The CSSF intervened firmly with one company after having observed infringements of the requirements of continuous financial information, disclosure requirements of major shareholdings and the legal accounting requirements. Following a meeting with representatives of the company and several exchanges of letters, the CSSF communicated its grievances to the Luxembourg Stock Exchange, which decided to withdraw the securities from the official listing, and the CSSF transmitted the case to the Public Prosecutor in connection with the suspicions of infringements of the Luxembourg law.

While reviewing the accounts of another Luxembourg-registered company whose securities are admitted to the official listing of the Luxembourg Stock Exchange, the CSSF considered that the non-consolidated accounts did not reflect the economic reality and as a consequence, required the company to draw up consolidated accounts, integrating all the group's companies whose risks and profits it takes into account. The CSSF intervened with the persons in charge of the company in this respect.

The CSSF gave a negative response to a question relating to the application of article 9 of the IAS regulation, as it considers that the company must apply the IAS/IFRS standards as of 2005, since the latter does currently only provide a reconciliation with the accounting rules that apply in the United States.

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, notably by considering attendance registers of ordinary and extraordinary meetings, as well as any other source of information.

The CSSF intervened more specifically in one case where the transparency of the transactions was not given. Following several exchanges of letters, details of the transactions have been reported in accordance with the legal provisions.