

CHAPTER VIII

MEANS OF SANCTION AVAILABLE TO THE CSSF



1. Means of intervention available to the CSSF
2. Sanctions imposed in 2003

1. Means 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;
- suspension of persons, suspension of the voting rights of certain shareholders or suspension of the activities or a sector of activities of the establishment concerned.

In addition, the CSSF has the right to:

- impose or ask the Minister of Treasury and Budget to impose disciplinary fines on the persons in charge of the administration or management of the establishments concerned;
- under certain conditions, request the District Court responsible for commercial affairs to have payments suspended and place an establishment under controlled administration;
- ask the Minister of Treasury and Budget to refuse or withdraw registration from the official list of credit institutions or the other professionals of the financial sector, if an establishment does not fulfil or no longer fulfils the conditions for being or continuing to be registered on the official list in question;
- refuse or withdraw registration from the official list of undertakings for collective investment, pension funds or management companies (Chapter 13 of the law of 20 December 2002 as amended), if an establishment does not fulfil or no longer fulfils the conditions for being or continuing to be registered on the official list in question;
- in extreme cases and under precise conditions laid down by law, request the District Court responsible for commercial affairs to order the winding up and liquidation of an undertaking.

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 performing 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 as amended to carry on this activity;
- persons other than those registered on the official lists of the CSSF, 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 perform one of the activities reserved for persons registered on one of the lists;
- attempted fraud.

2. Sanctions imposed in 2003

2.1. Credit institutions

In 2003, the CSSF did not have to formally use its right of injunction and suspension conferred on it by law.

However, the CSSF required the departure of six managers and directors. In two cases, the legislation concerning money laundering was seriously infringed. The other cases concerned unprofessional and deontological incorrect behaviour relating to the granting of a credit which resulted in a loss for the bank.

The CSSF filed one complaint with the Public Prosecutor's Office for illegal banking activities and one complaint for violation of article 52(2) of the law of 5 April 1993 on the financial sector as amended.

2.2. The other professionals of the financial sector (PFS)

In 2003, the CSSF did not have to formally use its right of suspension conferred on it by law.

However, it used its right of injunction on three occasions. The imposed injunctions concerned situations of non-compliance with legal provisions regarding daily management according to article 19 of the law of 5 April 1993 on the financial sector as amended.

During 2003, the CSSF also imposed disciplinary fines of EUR 1,500 each on persons responsible for the daily management of three PFS. These were imposed on account of refusal to transmit information in accordance with article 54 of the aforementioned law, i.e. closing documents for the financial year ending 31 December 2001.

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

Following an on-site inspection at the premises of one professional of the financial sector acting as domiciliation agent of companies, the CSSF had to require the PFS concerned to cease all activities of the financial sector due to non-compliance with certain legal provisions.

In 2003, the CSSF filed twelve complaints with the Public Prosecutor's Office for illegal domiciliation activities of companies not authorised thereto. The CSSF also lodged five complaints with the Public Prosecutor's Office for illegal activity of the financial sector, including two cases where the companies concerned collected third-party funds without being authorised thereto.

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2.3. Undertakings for collective investment

In 2003, the CSSF decided to require one UCI not to accept any new requests for subscription. This measure became necessary due to the fact that legal proceedings had been instituted against the promoter of the Luxembourg UCI in its home country. These proceedings, entailing a payment and transfer prohibition of the promoter, led to its liquidation. The Luxembourg UCI has finally also been put into liquidation.

The CSSF has observed serious deficiencies for one UCI as regards the transmission and the quality of financial information to be reported to the CSSF in accordance with circular IML 97/136 of 13 June 1997 concerning the financial information for the CSSF and Statec. Indeed, the financial information reported by this UCI was incomplete, incorrect or false and, despite several reminders concerning the provisions of the aforementioned circular, the CSSF did not note any improvement in the transmission and the quality of the monthly financial information of the UCI concerned. The CSSF has therefore decided, by virtue of article 84 of the law of 30 March 1988 on UCIs as amended, to impose a disciplinary fine on each of the UCI's directors for non-compliance with the provisions of circular IML 97/136.

Moreover, following certain events relating to the manager of two UCIs, the latter was led to resign his post at both UCIs, since the CSSF considered that he no longer fulfilled the criteria of good reputation requested by law.