



MEANS OF SANCTION AVAILABLE TO THE CSSF

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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, management companies (Chapter 13 of the law of 20 December 2002 as amended), SICARs or securitisation vehicles 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 instance 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 2004

2.1. Credit institutions

In 2004, the CSSF did not have to formally use its right of injunction and suspension conferred on it by law.

However, the CSSF required the resignation of two managers. In one case, the legislation governing money laundering was seriously infringed. The other case was about unprofessional and deontologically incorrect behaviour with relation to a client.

The CSSF filed one complaint with the Public Prosecutor's Office for illegal electronic money issuance.

2.2. Other professionals of the financial sector (PFS)

In 2004, the CSSF did not use its right of suspension conferred on it by the law of 5 April 1993 on the financial sector as amended.

However, the CSSF used its right of injunction, in accordance with article 59 of the abovementioned law, on two occasions. The imposed injunctions concerned a situation of insufficient financial base, governed by article 20 of the law on the financial sector and a situation of non-compliance with legal provisions regarding central administration and administrative and accounting organisation according to article 17 of this law.

During 2004, the CSSF also imposed disciplinary fines of EUR 1,500 each on persons responsible for the daily management of four PFS, in accordance with article 63 of the law of 5 April 1993 on the financial sector as amended. These were imposed on account of refusal to transmit information in accordance with articles 53 and 54 of the aforementioned law, i.e. documents and information relating to the closing of previous financial years which had not been transmitted to the CSSF by the PFS concerned.

In 2004, the CSSF filed three complaints with the Public Prosecutor's Office for illegal domiciliation activities of companies not authorised thereto. The CSSF also lodged nine complaints with the Public Prosecutor's Office for illegal activity of the financial sector, including four cases where the companies concerned pooled funds from the public without being authorised thereto.

2.3. Undertakings for collective investment

In 2004, the CSSF had to suspend the issues and redemptions of shares of two SICAVs.

The CSSF applied article 27(5) of the law of 30 March 1988 as amended and article 71 implementing article 28(5) of the law of 20 December 2002 on undertakings for collective investment as amended. These articles entitle the CSSF, in the interest of shareholders, to suspend redemptions if the provisions of laws, regulations or the articles of incorporation concerning the activity and operation of the SICAV are not observed.