

CHAPTER IX

MEANS OF SANCTION AVAILABLE TO THE CSSF

1. Means of intervention available to the CSSF
2. Sanctions imposed in 2005



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 of 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 towards an establishment suspended;
- 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 undertakings, 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 2005

2.1. Credit institutions

In 2005, the CSSF did not need to order fines nor to impose sanctions against managers (against two cases in 2004).

However, the CSSF exercised its right of injunction with respect to one case, as the specific information it had required had not been delivered within the granted time limit despite several reminders.

2.2. Other professionals of the financial sector (PFS)

During 2005, the CSSF did not impose disciplinary fines under article 63 of the law of 5 April 1993 on the financial sector as amended on persons responsible for the daily administration or management of PFS.

However, the CSSF used its right of injunction, in accordance with article 59 of the abovementioned law, on two occasions. One of the imposed injunctions concerned a situation of non-compliance with various legal provisions, including, among other things, insufficient financial bases, non-compliance with the shareholder structure as laid down in article 18(6) of the law on the financial sector, as well as the failure to deliver information as provided for by article 53 of this law.

The other injunction related more particularly to serious deficiencies with regard to legal provisions concerning professional repute under article 19(1) of the law on the financial sector, as well as to shareholder quality governed by article 18(1) of this law.

In the latter case, the CSSF exercised its right of suspension conferred on it by the law on the financial sector. Considering that, at the expiry of the deadline, the situation had not been remedied, and given the need to ensure proper and prudent management of the PFS, the CSSF decided indeed, in accordance with article 59(2) of the aforementioned law, to suspend the voting rights attached to the shares held by one of the shareholders of the PFS concerned.

In 2005, the CSSF filed two complaints with the Public Prosecutor's Office for illegal domiciliation activities of companies not authorised thereto. The CSSF also lodged three complaints for illegal financial activity with the Public Prosecutor's Office. In two cases, the entities concerned had pooled funds from the public without being authorised thereto.

2.3. Undertakings for collective investment

According to article 94(2) of the law of 20 December 2002 as amended on undertakings for collective investment, the registration and maintaining on the official list of UCIs are subject to observance of all the provisions of laws, regulations and agreements relating to the organisation and operation of UCIs, as well as to the distribution, placing or sale of their securities.

Pursuant to this legal provision, the CSSF has decided to withdraw AMIS FUNDS SICAV and TOP TEN MULTIFONDS SICAV from the official list of collective investment schemes with effect from 7 November 2005. The decision of the CSSF to withdraw the SICAVs was motivated by the fact that AMIS FUNDS SICAV and TOP TEN MULTIFONDS SICAV no longer observed all the legal provisions relating to their operation, as well as to the distribution and investment of their securities.

On 23 December 2005, the Luxembourg District Court ordered the liquidation of AMIS FUNDS SICAV and TOP TEN MULTIFONDS SICAV and appointed Mrs Yvette Hamilius, Attorney-at-law, 2, rue du Nord / rue du Palais de Justice, L-2229 Luxembourg, as liquidator.

