COMMISSION
DE SURVEILLANCE
DU SECTEUR
FINANCIER

ANNUAL REPORT 2009

Commission de Surveillance du Secteur Financier

110, route d'Arlon

L - 2991 LUXEMBOURG

Tel.: (+352) 26 251-1

Fax: (+352) 26 251-601

E-mail: direction@cssf.lu

Website: http://www.cssf.lu

Cut-off date: 1 March 2010.

The reproduction of the annual report is authorised, provided the source is acknowledged.

Design: metaph

Printed by: Imprimerie Centrale

PREFACE

After the shock of the financial crisis in autumn 2008 which affected the Luxembourg financial centre, 2009 started in an atmosphere of suspense. Ultimately, that year finished with results which seem, at first glance, to suggest a return to a normal situation. The depositors' and investors' trust gradually returned and the actors of the financial sector started to spread again their activities. The financial markets in particular were revived, which generally allowed the different types of undertakings for collective investment, including specialised funds, SICARs, pension funds and securitisation vehicles to rake in new money and to observe a growth of their investment.

However, the profits which the banks registered again give a deceptive image of good health which cannot sustain when carrying out a more in-depth analysis. The profits mainly result from unusually high interest rate margins at the beginning of the year, from a slight decrease in operating costs and from the purely accounting effect registered following the partial offset of capital loss which had been incurred during the peak of the crisis.

Thus, if the 2009 results justify in themselves a certain feeling of relief given the prevailing fears at the beginning of the year, they still do not offer a solid basis for a sustainable growth in 2010 and after. Since, due to lack of growth in other areas, the financial sector remains predominant for the Luxembourg economy, the latter shall accommodate with the drawbacks which a direct or indirect drop in employment and consequently a decrease in tax revenues will induce.

The financial crisis left not only a banking landscape which changed in many respects. It also caused a profound change in the climate of the financial world and of the international financial centres in particular. The crisis exasperated the competition between centres and actors. This competition is not only in the prices, product and service quality any more. The economic and budget situations were so unbearable that many countries seek now to get back within their territory the financial activity and capital which benefited from advantages offered by professional and open financial centres such as Luxembourg when borders were removed and freedom of capital movement was allowed.

The challenge is to regain the trust of the clients who not only got more aware of the risks inherent to any activity, but also worry about the criticism against investment abroad. The actors of the Luxembourg financial sector took up this challenge. Undertakings for collective investment or bankers active in private banking focused more on sophisticated clients and offered them up-market products and services with high added value. The results of those who took on this path are promising and they can contemplate now to spread geographically to enlarge their clientele. These positive prospects come with a welcome diversification by the financial centre's actors under the various statutes of professionals of the financial sector. Even though these initiatives cannot all succeed, the potential of the support PFS, for example, particularly in IT, may be underlined.

Although the crisis is mainly a consequence of irresponsible behaviour of many economic actors rather than of a lack of regulations, the result is that regulatory and supervisory authorities have to master henceforth a delicate task. On the one hand, the depositors and investors request a guarantee for any kind of risk which is not feasible. On the other hand, the professionals of the financial sector assert that additional regulation and supervision would be a quality factor for business, but they fear, at the same time, to be over-regulated and are against the ensuing administrative costs and burden.

Furthermore, regulation and supervision is increasingly becoming a key element in the competition between the financial centres. A financial centre cannot afford having financial regulation and supervision which are not up to the standards imposed by formal and informal international institutions regularly verifying the compliance *via* on-site inspections. In the European Union, the harmonisation, already well-developed, will accomplish further qualitative and quantitative progress with the implementation of the European system of financial supervisors which will have three sectoral authorities.

The CSSF takes on its responsibilities by ensuring that the regulation of the Luxembourg financial sector fully observes the requirements provided for in the international and EU texts as well as the requirements resulting from the implementation of new international structures for the prudential supervision. The CSSF further continues to be attentive to the financial sector in order to accompany the development of new activities by drawing up an appropriate legal framework.

For its prudential supervision, the CSSF particularly focuses on efficient and strict verification of compliance with the legal conditions for the access to the financial centre. Compared to bigger countries, Luxembourg is more exposed to reputational risks and costs which would result from dubious activities exercised by actors who would not have been checked in-depth right from the start. Moreover, the supervisory authority increased its presence on the ground by carrying out more on-site inspections and setting up a team dedicated to this task. The CSSF will also strengthen the measures it uses to intervene with supervised entities and substantially improve the texts governing sanctions in case of non-compliance with financial sector regulations. These amendments shall allow, *inter alia*, a greater efficiency in the fight against money laundering and terrorist financing.

Given its broader mission in consumer protection, the CSSF contemplates contributing to a better financial education of the public and responding in an appropriate manner to customer complaints.

As of 1 May 2009, for the fulfilment of the multiple missions the CSSF is entrusted with, the Government allocated a larger executive board to the CSSF which forms a collegial and coherent team. The CSSF's missions were again expanded and include now the oversight of the audit profession. Consequently, the executive board has increased the CSSF staff through several recruitment campaigns which will be repeated according to the needs. Finally, the executive board would like to thank all the CSSF agents who show ongoing commitment in their missions and would like to pay tribute to the previous members of the executive board and more particularly to Director General Jean-Nicolas Schaus and Director Arthur Philippe, who have built up the CSSF's authority and identity since the beginning.

Jean GUILL

Director General

Corporate governing bodies of the Commission de Surveillance du Secteur Financier 8

Summary 10

CHAPTER I

GENERAL SUPERVISION AND INTERNATIONAL COOPERATION 13

1. General Supervision
2. Cooperation at EU level
3. Multilateral cooperation

CHAPTER II

SUPERVISION OF THE BANKING SECTOR 39

1. Developments in the banking sector in 2009
2. Prudential supervisory practice

CHAPTER III

SUPERVISION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT 75

1. Developments in the UCI sector in 2009
2. Developments of UCI entities in 2009
3. The Madoff Case
4. Performance analysis of the major Luxembourg UCI categories in 2009
5. Management companies set up under Chapter 13 of the law of 20 December 2002
6. Developments in the regulatory framework
7. Prudential supervisory practice

CHAPTER IV

SUPERVISION OF PENSION FUNDS 123

1. Developments in the pension funds sector in 2009
2. Liability managers

CHAPTER V

PRUDENTIAL SUPERVISION OF SICARS 127

1. Developments in the SICAR sector in 2009
2. Prudential practice

CHAPTER VI

SUPERVISION OF SECURITISATION UNDERTAKINGS 133

1. Developments in the sector of authorised securitisation undertakings
2. Prudential supervisory practice

CHAPTER VII

SUPERVISION OF PFS 137

1. Developments of PFS in 2009
2. Prudential supervisory practice
3. Support PFS

CHAPTER VIII

SUPERVISION OF SECURITIES MARKETS 157

1. Reporting of transactions in financial instruments
2. Supervisory practice
3. Developments in the regulatory framework

CHAPTER IX

SUPERVISION OF INFORMATION SYSTEMS 173

1. Activities in 2009
2. Supervisory practice

CHAPTER X

PUBLIC OVERSIGHT OF THE AUDIT PROFESSION 181

1. Legal and regulatory aspects
2. Quality assurance
3. Human and financial means
4. International standards on auditing
5. Ethics and independence
6. Third-country auditors and audit entities

CHAPTER XI

MEANS OF SANCTION AVAILABLE TO THE CSSF 185

1. Means of intervention available to the CSSF
2. Sanctions imposed in 2009

CHAPTER XII

CUSTOMER PROTECTION 189

1. Consumer protection
2. Customer complaints

CHAPTER XIII

FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING 199

1. Amendments to the legislation regarding the fight against money laundering and terrorist financing
2. Participation of the CSSF in meetings regarding the fight against money laundering and terrorist financing
3. Reports regarding the fight against money laundering and terrorist financing

CHAPTER XIV

BANKING AND FINANCIAL LAWS AND REGULATIONS 203

1. Directives and regulations under discussion at EU Council level
2. Directives and regulations adopted by the Council and the European Parliament but not yet implemented under national law
3. Luxembourg laws and regulations adopted in 2009

CHAPTER XV

INTERNAL ORGANISATION OF THE CSSF 211

1. Functioning of the CSSF
2. Human resources
3. IT systems
4. Staff members
5. Committees

ANNEXE 224

List of abbreviations

CORPORATE GOVERNING BODIES OF THE CSSF

Board of Directors

Chairman	Etienne REUTER	Premier Conseiller de Gouvernement, Ministry of Finance
Vice-chairman	Gaston REINESCH	General administrator, Ministry of Finance
Members	Rafik FISCHER	Member of the Board of Directors of the Association Luxembourgeoise des Fonds d'Investissement
	Jean FUCHS	Chairman of the Association Luxembourgeoise des Professionnels du Patrimoine
	Sarah KHABIRPOUR	Attaché de Gouvernement 1er en rang, Ministry of Finance
	Jean MEYER	Chairman of the Association des Banques et Banquiers, Luxembourg
	Claude WIRION	Member of the Executive Committee of the Commissariat aux Assurances
Secretary	Danielle MANDER	

Executive Board

Director General	Jean GUILL (from 1 May 2009)
	Jean-Nicolas SCHAUS (until 30 April 2009)
Directors	Simone DELCOURT
	Andrée BILLON (from 1 May 2009)
	Claude SIMON (from 1 May 2009)
	Arthur PHILIPPE (until 31 March 2009)

Executive Board of the CSSF
Left to right: Andrée BILLON, Jean GUILL, Simone DELCOURT, Claude SIMON

SUMMARY

Overall, the Luxembourg financial centre ended the financial year 2009 with satisfactory results despite the direct and indirect effects of the financial and economic crisis which did not spare Luxembourg. However, this revival does not mean that the difficult times are over. Now, the lessons learned from the crisis must be implemented, the knowledge consolidated and solid and diversified bases put in place in order to have a lasting financial centre.

438 international meetings

The preparation of new prudential rules which take into account the acquired experience, mainly in relation to the financial crisis and the standardisation of the existing regulations remain the main objectives of the international meetings in the framework of European (CEBS, CESR, CEIOPS, etc.) and international (Basel Committee on banking supervision, IOSCO, etc.) forums. Greater emphasis is also given to enhanced cooperation between competent authorities with the implementation of colleges of supervisors.

Therefore, the supervisory work on the international level requires more and more resources which is proved, among others, by the increasing number of meetings in which the CSSF participates.

149 credit institutions

Balance sheet total: EUR 792.6 billion

Net profit: EUR 2,740 million

The number of banks decreased by three entities to 149 as at 31 December 2009. During the year, five banks started their activities while two banks merged with other banks of the financial centre and six banks terminated their activities.

As a consequence of the financial crisis, the banks adapted and consolidated the structure of their balance sheet and reduced the risk-weighted assets which resulted in a 17.9% drop in the aggregated balance sheet total of the financial centre. Net profit of the Luxembourg banking sector reached EUR 2,740 million in 2009. This remarkable improvement compared to the historically low results of the previous year is mainly explained by the substantial decline in the creation of provisions. However, it should be borne in mind that there are great differences between the banks, 47% of which suffered a decrease in their net profit at the end of their financial year compared to 2008.

3,463 UCIs

12,232 economic entities

Total net assets: EUR 1,841.0 billion

In 2009, the UCI sector registered an 18.04% growth in net assets managed originating for 30% from net issues and for 70% from the increase in stock exchanges. The net capital investments in Luxembourg UCIs which amounted to EUR 84.4 billion in 2009 reflect the return of investors' confidence in the markets.

The number of UCIs grew by 2.73% during the year. This growth mainly results from the continuing boom of the specialised investment funds which represent 28.0% of the total number of UCIs (as regards assets managed, they represent 8.4%). When considering umbrella funds, a total of 12,232 economic entities were active on 31 December 2009, i.e. a 0.8% decrease compared to the end of 2008 due to a consolidation trend.

192 management companies

The number of management companies authorised in accordance with Chapter 13 of the law of 20 December 2002 relating to undertakings for collective investment increased from 189 as at 31 December 2008 to 192 at the end of 2009. The management companies focus more on the activity of collective management and abandon slowly the ancillary activities set out in the law.

15 pension funds

The pension funds sector registered a slight improvement after several years of stagnation, following the authorisation of two new pension funds in 2009. However, the cross-border activities of Luxembourg pension funds did not develop further yet.

236 SICARs

Balance sheet total: EUR 18.09 billion

The number of investment companies in risk capital (SICAR) continued to increase, but there was, nevertheless, a downturn in the growth in 2009. As regards the investment policy, the SICARs were slightly more inclined towards private equity.

23 authorised securitisation undertakings

The slow but ongoing development of the securitisation activity continued with four new securitisation undertakings authorised in 2009. Since the role of securitisation techniques was put forward several times in the context of the financial crisis, the CSSF will include the lessons learned from the crisis for the authorisation and supervision of securitisation undertakings.

286 PFS (110 investment firms, 102 other PFS, 74 support PFS)

Balance sheet total: EUR 22.46 billion

Net profit: EUR 1,577.04 million

With 42 new entities and 22 withdrawals in 2009, the PFS sector continued attracting new promoters. The positive development in the number is mainly attributable to PFS other than investment firms and, to a lesser extent, to support PFS.

The balance sheet total of PFS reached EUR 22,456 million as at 31 December 2009 against EUR 62,676 million at the end of 2008, i.e. an annual decrease of 64.17%. This important fall mainly results from the withdrawal, in 2009, of a professional performing securities lending which had a significant balance sheet total.

However, the net profit of PFS substantially rose by 77.07% over a year. The recovery of the financial markets is one element which allowed investment firms to register an overall increase in net results. This positive development in the difficult context of 2009 was also influenced by a significant rise in the results of an entity active as a professional performing credit offering. Support PFS suffered more and registered a decrease in net results compared to 2008.

Total employment in the supervised entities: 42,213 people

(of which banks: 26,420 people, PFS: 13,485 people, management companies: 2,308 people)

The employment fell by 2.3%, i.e. by 983 people due to the crisis. However, depending on the category of actors of the financial centre, the situation diverges.

Almost 80% of the decrease is attributable to banking employment which fell to 26,420 people (-785 jobs or -2.9%) following the economic restructuring and the measures to reduce the costs generated by the financial crisis. Nevertheless, 61.1% of the banks maintained or even increased their staff in 2009. Indeed, the current market state offers opportunities to fill vacancies needed internally which was difficult to do during the previous months.

The number of staff for PFS also suffered a slight decrease (-120 jobs or -0.9%). These job losses concerned some support PFS and could not be compensated by the creation of employment in the PFS newly authorised during the year.

Employment in management companies remained, however, stable in 2009.

1.2 million of transactions reported

1,406 prospectuses, base prospectuses and other documents approved

750 supervised issuers

In 2009, the CSSF received, among others, 1.2 million transaction reports in the context of the supervision of securities markets.

Moreover, under the law on market abuse, the CSSF received eight suspicious transaction reports and dealt with eleven suspicious transaction reports transmitted by foreign authorities.

The number of files submitted in Luxembourg for the approval of prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market decreased by 40.6% in 2009 due, among others, to the financial crisis. However, in the light of the increasing complexity of the transaction structures and of the relevant deposited documents and due to the increasing number of files relating to structured products, the amount of work did not lessen.

The CSSF exercises the supervision of issuers whose transferable securities are admitted to trading on a regulated market and for which Luxembourg is the home Member State for the purposes of the Transparency law. Their number reached 750, of which 233 Luxembourg issuers.

Public oversight of the audit profession

The law of 18 December 2009 confers to the CSSF the mission of public oversight of the audit profession. This mission includes the implementation of a quality assurance system which shall apply to all *réviseurs d'entreprises agréés* (approved statutory auditors) and approved audit firms for the statutory audit of accounts and for all other missions which are exclusively conferred to them by the law.

284 customer complaints

By virtue of its specific task of mediating as regards handling of customer complaints, the CSSF received 284 complaints during 2009, i.e. a substantial increase of 22.4% compared to 2008. A great part of these complaints concerned transactions relating to transferable securities resulting from the crisis which affected investors.

322 employees

33,883 letters sent and 1,113 meetings at national level in 2009

Operating costs of the CSSF in 2009: EUR 36 million

2009 was marked by a substantial increase in the CSSF human resources in order to face the growing work volume which results from the introduction of new prudential requirements, from the great importance of multilateral cooperation between supervisory authorities and, in general, from the increase in volume and complexity of the financial products. The total number of letters sent by the CSSF, of which almost 60% relate to UCIs, as well as meetings at national level indicate the volume of work at the CSSF. In addition, there are over 100 on-site inspections, the participation in international meetings (cf. above) and the work in different internal committees.

GENERAL SUPERVISION AND INTERNATIONAL COOPERATION

1. General Supervision
2. Cooperation at EU level
3. Multilateral cooperation

1. GENERAL SUPERVISION

The department "General Supervision" (SGE) was restructured in early June 2009 and comprises 19 agents (22 agents as from 1 April 2010) divided into four divisions which are described below in detail.

Each division of the department, apart from division 4, is responsible, within its given area, for the development and interpretation of national and international regulation, for the processing of general issues on the methodology of prudential supervision, for the rules of conduct and professional obligations in the financial sector as well as for the elaboration of global studies on professionals of the financial sector, the markets and financial products. Division 4 is responsible for the planning, coordination and carrying out of on-site inspections.

In 2009, the SGE sent 438 letters outlining the CSSF's position with respect to prudential and accounting supervision. SGE agents attended 212 meetings of international bodies and 49 meetings held in Luxembourg with representatives of the banking industry and international bodies. As in previous years, SGE agents were also asked to draft circulars or preparatory texts for new laws.

1.1. Division 1: International matters

This division deals with all the international files relating to the CSSF's mission, among which in particular those dealt with by the following bodies: the European Commission, the European Council, CEBS, CESR, CEIOPS, IOSCO, OECD, the Basel Committee and the European Central Bank.

Consequently, this division prepares instructions and circulars as well as the implementation of international regulation into national law.

During 2009, division 1 focused mainly on the participation in international groups which it follows up on and which are described in detail at points 2. and 3. of this Chapter. Its activities focused on working groups of the European Commission, the European Council, CEBS and CESR. The agents of division 1 also worked on the implementation of European directives and guidelines of committees, such as CESR or CEBS, as circulars or draft laws. Division 1 also worked together with division 6 of the department "Supervision of banks" on a mission relating to the validation of advanced approaches for a bank.

1.2. Division 2: Accounting, reporting and audit

This division is responsible for the follow-up at national level (*Commission des Normes Comptables,* Luxembourg Central Bank) and international level (European Commission, European Council, CEBS, CESR, IOSCO, Basel Committee, EFRAG) of all regulation relating to (1) accounting and financial information to be disclosed by professionals of the financial sector and by listed companies and (2) audit matters in relation to supervision of entities in the financial sector.

The division prepares instructions, circulars and draft laws on reporting and accounting by professionals of the financial sector, the design of new prudential tables and the new definition of the structure and content of existing tables. The division also deals with issues relating to accounting and financial information to be disclosed and prudential reporting.

Until the end of 2009, the division was responsible, together with the department "Supervision of securities markets", for the enforcement of financial information of companies admitted to trading on the regulated market of the Luxembourg Stock Exchange. This task has, from 2010, been taken over by the department "Supervision of securities markets".

Finally, the division is responsible for all questions relating to the elaboration and definition of the content of analytical reports prepared by *réviseurs d'entreprises agréés* (approved statutory auditors). The division is also responsible for the centralisation of information concerning *réviseurs d'entreprises agréés* which are authorised to audit the accounts of professionals of the financial sector and for processing, together with the departments concerned, the authorisation requests for *réviseurs d'entreprises agréés* wishing to audit the accounts of professionals of the financial sector.

During 2009, division 2 contributed to the CEBS works on the FINREP reporting scheme. This task consisted in responding to industry expectations on the harmonisation of reporting obligations in view of a diminution of the administrative burden and to achieving convergence of reporting obligations between the different supervisory authorities in the EU.

Division 2 also examined financial information by issuers of securities (enforcement) in application of Chapter II of the law of 11 January 2008 on transparency requirements for issuers of securities. In 2009, the division examined the published accounts of several issuers of securities and it intervened with these issuers to obtain further information and explanations. Following this examination, modifications were required in a few specific cases.

1.3. Division 3: Rules of conduct, crisis management and financial stability

The mission of division 3 concentrates on the methodology, on global studies and on assisting other departments on matters which require specific knowledge and expertise. Within the context of its mission, the division ensures the follow-up of principles and standards commonly accepted in corporate governance and compliance with rules of conduct which stem, *inter alia*, from Community texts.

The division also contributes to the drawing-up of crisis management procedures and the organisation of crisis simulation exercises.

The division, together with the relevant departments, follows up on issues regarding the safeguard of financial stability and, consequently, maintains the relations with other authorities which contribute to the safeguard of financial stability.

Finally, it contributes to the reform of the deposit guarantee scheme and arranges the implementation of the reformed system within the relevant legislative context.

During 2009, division 3 first started its study necessary to reform the deposit guarantee scheme. The division also undertook twelve on-site inspections testing MiFID compliance. It was thus noted that in certain situations the client suitability test was not performed prior to the provision of an asset management service. In an other case, trailer fees by a legal entity belonging to the group had not been disclosed to the clients. Following the CSSF's intervention, the institutions concerned took the necessary measures to comply with the MiFID provisions.

1.4. Division 4: On-site inspections / on-site visits

In the midst of the controversial debates both on a national and an international scale, on the optimisation of prudential supervision, following the financial crisis which hit the world during 2008, the CSSF's Executive board decided to further direct its prudential supervision on-site and to show an increased presence in the field with players in the Luxembourg financial market. A team specialised in on-site inspections, division 4, was therefore set up on 1 June 2009.

The CSSF had of course, before the setting in place of the specialist division, undertaken on-site inspections according to a yearly plan. Nevertheless, these missions were always performed by the relevant supervisory department. As a result of the new organisation, the CSSF can now, on the one hand, increase the number of on-site inspections and, on the other hand, organise a new type of "transversal" or "thematic" enforcement missions. The transversal missions will thus allow for peer group reviews and for comparisons between different players in the financial market. The ultimate objective of these missions shall be to lay down best practices regarding the organisation of financial activities and equally in terms of prudential supervision.

To the extent that it is supposed to collaborate with all the other supervisory departments of the CSSF, division 4 has been attached to the department "General Supervision". Over and above the transversal inspections referred to above, to which agents from the various supervisory departments and the Legal Department may participate, division 4 concentrates in particular on inspections of newly authorised professionals.

Division 4 can also be asked to undertake or to participate in unexpected *ad hoc* missions. During such a mission, the accent can be laid on the dialogue with the financial institution or on the prudential supervision, depending on the exact nature of the inspection.

During 2009, division 4 developed its concept and gave itself procedures in order to ensure the proper performance of its mission. Whereas the division only counted two agents at the end of 2009, it will reach a total of five agents by 1 April 2010. During the recruitment process, the emphasis was laid on experience in the professional sector, which exceeds ten years for each member of division 4.

During the year in progress, division 4 undertook 29 on-site inspections. Of these missions, 19 were "on-site visits" of professionals newly authorised during 2008 and 2009, together with the departments "Supervision of investment firms", "Supervision of other PFS" and "Information systems and supervision of support PFS".

Nine *ad hoc* missions were carried out, of which four with the department "Supervision of investment firms", two with the department "Supervision of banks", one with the department "Supervision of securities markets", one with the department "Supervision of pension funds, SICARs and securitisation undertakings" and one with the department "Supervision of UCIs".

One transversal mission on the fight against money laundering and terrorist financing was carried out in cooperation with the department "Supervision of banks" and with the Legal Department.

2. COOPERATION AT EU LEVEL

Article 3 of the law of 23 December 1998 creating a *Commission de Surveillance du Secteur Financier,* appoints the CSSF, *inter alia,* to deal with and participate in the negotiations concerning the financial sector issues, at both EU and international level. In accordance therewith, the CSSF participates in the work of the following forums.

2.1. Committee of European Banking Supervisors (CEBS)

The Committee of European Banking Supervisors (CEBS) was established by Commission Decision 2004/5 EC of 5 November 2003, which has in the meantime been replaced by Commission Decision 2009/78/EC of 23 January 2009. Its duties encompass reflecting, discussing and giving advice to the European Commission in the fields of banking regulation and supervision.

Mr Giovanni Carosio (Banca d'Italia, Italy) holds the chair of CEBS. He is assisted by Mr Thomas Huertas (Financial Services Authority, UK) as Vice-President. Mr Arnoud Vossen (De Nederlandsche Bank, Netherlands) is General Secretary. The Committee's Secretariat is based in London.

CEBS' mission is to advise the European Commission either at the Commission's request, within the time limit that the Commission may lay down according to the urgency of the matter, or on the Committee's own initiative, in particular as regards the preparation of draft implementing measures in the field of banking activities and financial conglomerates.

CEBS is moreover concerned with enhancing cooperation between supervisory authorities in the field of banking and fostering the convergence of Member States' supervisory practices and approaches throughout the Community. In this context, Commission Decision of 23 January 2009 lays down that CEBS shall carry out, at least, the following tasks:

- mediate or facilitate mediation between supervisory authorities in cases specified in the relevant legislation or at the request of a supervisory authority;
- provide opinions to supervisory authorities in cases specified in the relevant legislation or at their request;

- promote the effective bilateral and multilateral exchange of information between supervisory authorities subject to applicable confidentiality provisions;
- facilitate the delegation of tasks between supervisory authorities, in particular by identifying tasks which can be delegated and by promoting best practices;
- contribute to ensuring the efficient and consistent functioning of colleges of supervisors in particular through setting guidelines for the operational functioning of colleges, monitoring the coherence of practices of the different colleges and sharing best practices;
- contribute to developing high-quality and common supervisory reporting standards;
- review the practical application of the non-binding guidelines, recommendations and standards issued by the Committee.

Since the 2009 Decision, the Committee has been given the specific mission to monitor and assess developments in the banking sector, and, where necessary, inform the Committee of European Securities Regulators (CESR), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the European Commission. In this context, CEBS shall also ensure that the finance ministries and the national central banks are informed about potential or imminent problems.

CEBS shall, at least twice a year, provide assessments to the European Commission of micro-prudential trends, potential risks and vulnerabilities in the banking sector. The Council of Finance Ministers shall also be informed of CEBS' assessments.

The 2009 Decision also invites CEBS to ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with CESR and CEIOPS and the Banking Supervision Committee of the European System of Central Banks.

In addition to its guidelines and other documents worked out by its permanent working groups, which are set out in more detail below, the following CEBS publications deserve mentioning.

On 20 April 2009, CEBS published a finalised set of principles for remuneration policies in banking institutions, put together by the Internal Governance Task Force. The principles address key aspects of well functioning remuneration policies and thus support the sound application of these policies within the day-to-day operation of banks. The scope of the principles covers remuneration policies throughout organisation without focusing exclusively on executive pay or severance pay. The principles focus on the following, among others:

- improved alignment of the banking institution's and the staff's objectives;
- increased transparency of remuneration policies, both internally and externally;
- sound governance with respect to oversight and decision-making;
- adapted measure of realised performances with a view to variable remuneration ;
- appropriate mechanisms with respect to payment arrangements.

Following a public consultation launched on 17 September 2009, CEBS published Revised Guidelines on Supervisory Disclosure on 28 January 2010, which had been put together by the Task Force on Supervisory Disclosure. The Revised Guidelines seek in particular to extend the prudential reporting tables to other fields: acquisitions and increases in participation, securitisation, credit risk mitigation and large exposures. It is intended to transpose these changes by the end of March 2010. It should be borne in mind that the publication of information in the context of supervisory disclosure as developed by CEBS in relation to the transposition of Directives 2006/48/EC and 2006/49/EC (CRD) has been implemented since 2007 on the websites of CEBS and of the supervisory authorities of the EU Member States.

Following calls for advice to the European Commission concerning the CRD, CEBS published its advice on retention requirements for securitisations, on national options and discretions as well as on the exchange of information between home and host supervisors of branches.

CEBS, together with CESR and CEIOPS, published advice on the review of Directive 2002/87/EC (financial conglomerates) drafted by the Joint Committee on Financial Conglomerates.

All these publications are available for consultation on CEBS' website (www.c-ebs.org).

The works of the permanent sub-working groups (*Groupe de Contact*, Review Panel, Expert Group on Financial Information and Expert Group on Prudential Regulation) and the main works to which CEBS contributes together with other committees are briefly set out below.

2.1.1. CEBS - *Groupe de Contact*

Since its inception in 1972, the *Groupe de Contact* has been used as forum for informal cooperation between banking supervisory authorities at EU level. The *Groupe de Contact* acts as general CEBS working group within the structure of European regulation in the banking industry. In that capacity, it contributes to enhance convergence of the prudential supervisory practices in the EU.

The *Groupe de contact* continues to be a platform appreciated for informal exchanges concerning the situation of individual credit institutions, particularly in the event of problems. The *Groupe* keeps up with the developments in national regulations and discusses the practical aspects of the prudential supervision of banks.

In 2009, the *Groupe de contact* continued to focus on the implementation of the supervisory review process, Pillar 2 of the new capital adequacy framework, convergence and cooperation between supervisory authorities.

The works done in 2009 by the sub-working groups are also worth mentioning. Thus, the works of the Task Force on Internal Governance culminated, in April 2009, in the publication of the "CEBS principles on remuneration". The group's follow-up for 2010 will focus on the application of these principles by banks and supervisory authorities. As a result of the works of the Liquidity Risk Management Task Force, CEBS published the document entitled "Liquidity identity card" as well as the "CEBS Guidelines on Liquidity buffers". The work done by the Supervisory Operational Network (SON) led CEBS to launch a public consultation on 17 December 2009 on the Guidelines for the operational functioning of colleges. The application of this practical document is meant to lead to a closer cooperation between supervisory authorities which are responsible for the most important European banking groups. In this context, the proposals put forward by the Crisis Management Task Force on procedures governing colleges in the context of crisis management were integrated into the consultation document mentioned above.

Another important aspect of the *Groupe de contact*'s responsibilities concerns the exchange of information regarding specific problems encountered by one or several authorities on topical issues. This exchange of information between members, as well as between the *Groupe de contact* and CEBS, continued in 2009.

2.1.2. CEBS - Review Panel

The Review Panel is responsible for assisting CEBS in its task to ensure consistent and harmonised implementation of EU legislation in the Member States. The main role of the Review Panel is to analyse the degree of convergence reached by the supervisory authorities in their implementation of the provisions laid down in Community legislation and CEBS documents, with the purpose of promoting a day-to-day consistent application thereof and of enhancing supervisory convergence within the European Economic Area.

To this end, the peer review exercises are conducted on a self-assessment basis on specific topics, on compliance with Community legislation or CEBS guidelines.

In early 2009, the Review Panel finalised a peer review, commenced during 2008, relating to the validation of advanced approaches (internal-ratings based approaches for credit risk and advanced measurement approaches for operational risk) within cross-border groups, focusing on collaboration between competent authorities of the Member States concerned. The final report was published in April 2009.

During the second half of 2009, the Review Panel assessed the sound functioning of the colleges of supervisors in the context of supervision of cross-border groups. The peer review phase of this self-assessment will take place in 2010.

2.1.3. CEBS - Expert Group on Financial Information (EGFI)

The expert group assists CEBS in achieving its work programme as regards financial information, including the fields of accounting, prudential reporting and auditing.

The expert group's main activities are set forth below according to their different working subgroups or working groups.

- **Subgroup on Accounting**

The objective of this subgroup is to monitor, assess and comment on the developments of international accounting standards. This subgroup thus forwarded several comment letters to the International Accounting Standards Board (IASB) on IASB projects, including in particular the measures proposed by the IASB in the context of the financial crisis. The subgroup furthermore undertook a survey with banks in order to collect quantitative data on prudential filters. The resulting report was approved by CEBS in October 2009. The proposals put forward by this report which aim to further harmonise the prudential filters shall be reviewed by the subgroup once the final review of the definition of "capital" and the accounting developments relating to IAS 39 have been finalised.

- **Subgroup on Reporting**

The subgroup has the following missions:

- see to the proper transposition of the guidelines and standards published by CEBS on common European reporting frameworks FINREP and COREP, including the development of XBRL taxonomies;
- answer questions concerning the practical application regarding the implementation of these frameworks;
- assess the impact of changes to international accounting standards and European regulation for capital adequacy on these frameworks;
- where necessary, propose updates to the reporting schemes.

In response to the industry's expectations regarding the harmonisation of the requirements on financial reporting to reduce the administrative burden and to streamline reporting requirements by supervisory authorities within the EU, the subgroup is working on a reduced and harmonised version of the FINREP and COREP schemes.

On 15 December 2009, CEBS published a provisional revised version of the FINREP reporting framework (FINREP rev 2) which shall apply from January 2012. This provisional version shall be reviewed in order to take into account the changes to the international standard IAS 39, announced in 2009 by the IASB. An XBRL taxonomy developed for FINREP rev 2 was published in early 2010 and is available on the website www.eurofiling.info.

On 6 January 2010, CEBS published a revised COREP version which takes into account the changes to Directives 2009/27/EC, 2009/83/EC and 2009/111/EC (CRD II) and shall be applicable from 31 December 2010.

In addition, the subgroup is working on a project aiming at harmonising the reporting framework COREP (format, frequency and harmonised reporting dates), applicable as from 31 December 2012.

- **Subgroup on Transparency**

In 2009, the subgroup published three documents containing the valuation results of the financial statements published by credit institutions in their results for the fourth quarter of 2008 and the preliminary results for the end of the year, in their audited annual report for 2008 and their report for Pillar 3. The subgroup also published the consultation document "Disclosure Guidelines: Lessons learned from the crisis", submitted to public consultation until 15 January 2010.

- **Subgroup on Auditing**

The subgroup assists CEBS by monitoring the developments at Community and international level in the area of audit and statutory audit in order to assess the consequences thereof from a banking supervisory standpoint.

- **Task Force on Pro-cyclicality and Accounting**

This task force was set up in order to work on the issue of the pro-cyclicality of the Basel II rules and drafted an interim report entitled "Pro-cyclicality and accounting". In October 2009, CEBS approved the conclusions contained in this report, among which in particular the recommendation to analyse the IASB proposals in further detail and their relevance in terms of reduction of pro-cyclicality. The report was sent to the European Commission.

2.1.4. CEBS - Expert Group on Prudential Regulation (EGPR)

As in previous years, the EGPR dedicated a substantial amount of its time to the issues of large exposures and capital instruments in 2009.

As regards large exposures, the EGPR developed the "CEBS Guidelines on the Revised Large Exposure Regime" aiming to complete certain provisions of Directives 2006/48/EC and 2006/49/EC (CRD) as amended by Directive 2009/111/EC, and in particular the definition of "connected clients", the treatment of structured products with underlying assets including UCITS and reporting requirements for large exposures. These guidelines were published on 11 December 2009.

The EGPR specified the conditions to be fulfilled for capital instruments to be eligible as original own funds. The "CEBS Guidelines on Hybrid Capital Instruments" were published on 10 December 2009. The group also worked out a consultation document on capital instruments which fall under Article 57(a) of Directive 2006/48/EC as amended. It refers to capital instruments eligible without limit for inclusion in the original own funds.

On the issue of operational risk, the EGPR published the "CEBS Guidelines on Operational Risk Mitigation Techniques" on 22 December 2009, as well as a consultation document dealing specifically with market activity.

The group also contributed to advice given by CEBS to the European Commission (in particular as regards securitisation) as well as to other CEBS publications in order to assess prudential implications.

In order to keep the number of working groups operating under EGPR's umbrella to a minimum, the group adopted a new structure made up of four permanent working groups (capital requirements, credit risk, market risk, operational risk) which now encompass the *ad hoc* groups set up in previous years.

2.1.5. Joint Committee on Financial Conglomerates (JCFC)

The Joint Committee on Financial Conglomerates is the forum in which CEBS and CEIOPS have cooperated in matters regarding the supervision of financial conglomerates since the end of 2005. JCFC members are high-level representatives of the banking and insurance supervisory authorities of Member States of the EU and the European Economic Area. The European Commission and the European Central Bank shall be invited to the meetings of the JCFC as observers whereas CESR can participate in the JCFC meetings. The Committee has the following functions:

- to assess results of the transposition of Directive 2002/87/EC on financial conglomerates and to contribute to its coherent application;
- to advise the European Commission, either at its own request or at the Committee's own initiative;
- to contribute to the review of the Directive on financial conglomerates;
- to contribute to the convergence of practices employed by national supervisors, particularly with regard to capital requirements, intra-group transactions and concentration risk;
- to facilitate the cooperation and coordination between supervisory authorities.

During 2009, the Committee's four meetings mainly focused on the finalisation of the technical advice to the European Commission on the review of the Financial Conglomerates Directive which had been prepared by its working group, the Financial Conglomerates Review Working Group (FRWG). After the approval by CEBS and CEIOPS, the final draft was sent to the European Commission on 30 October 2009 and published on the CEBS and CEIOPS websites.

The JCFC, by dealing with four key issues, provides possible solutions to the problems identified, underlines their advantages and disadvantages and, eventually, puts forward recommendations. The legal changes proposed or the areas and notions likely to be clarified by Level 3 guidelines cover in particular the definition of the different types of holding companies and the definition of the notion of "financial sector" (inclusion of management companies in the identification of financial conglomerates, application of the thresholds determining financial conglomerates). In this context, it should be noted that a more fundamental review of the Financial Conglomerates Directive is due to commence in 2010.

In 2009, the JCFC also completed its yearly update of the list of groups identified as financial conglomerates which is published on the website of the European Commission. A contribution by the JCFC to the 3L3 Task Force on Cross-Sectoral Risks also included the identification and assessment of the risk of contagion in the context of financial conglomerates.

2.1.6. BSC – CEBS Joint Task Force on the Impact of the new Capital Framework (JTFICF)

The joint task force of CEBS and the BSC (Banking Supervision Committee) is interested in the cyclicality of the components of the Basel II solvency ratio and assesses the potential impacts of the Basel II regulations on the pro-cyclicality of credit markets.

In 2009, the task force also undertook two empirical studies on the impact of the Basel II regulations on the components of the prudential ratios. The task force equally developed a first set of analyses which should permit to analyse the possible pro-cyclicality of the Basel II regulations.

2.2. Committee of European Securities Regulators (CESR)

The Committee of European Securities Regulators (CESR) is composed of representatives of 29 supervisory authorities of securities markets in the European Economic Area (Member States of the EU, Norway and Iceland). CESR is an independent body, which assists the European Commission in preparing implementing measures relating to Community legislation on transferable securities and is entrusted with ensuring the harmonised and continuous application of Community legislation in the Member States. CESR also works towards improving coordination among supervisory authorities. Since January 2007, Mr Eddy Wymeersch (Commission bancaire, financière et des assurances, Belgium) chairs CESR. Mr Carlos Tavares (Comissão do Mercado de Valores Mobiliários, Portugal) is CESR's Vice Chairman. CESR's Secretariat is based in Paris.

Like for CEBS, the initial decision by the European Commission setting up CESR was repealed and replaced in 2009 by Decision 2009/77/EC which lays down, *mutatis, mutandis*, the same general and specific principles for CESR in the field of transferable securities as those laid down for CEBS in the field of banking (cf. point 2.1. above).

In 2009, CESR continued its Level 3 works by drawing up recommendations, standards, common interpretations and procedures for the practical cooperation in different areas in order to enhance regulatory convergence at European level. In this context, CESR also organised a conference on 23 February 2009 on the future of legislation in the sector of financial markets.

The Market Consultative Panel, a committee comprising 17 market participants appointed in a personal capacity, among which one Luxembourg representative, is charged with assisting CESR. The committee's three meetings mainly dealt with the financial crisis, remuneration, the future European regulatory framework for financial markets, short selling, the regulation of alternative investment fund managers, compensation practices and packaged retail investment products (PRIPs).

Following the adoption of new guidelines for its working groups, CESR counts eight working groups since January 2010, namely: the CESR Standing Committee on corporate reporting, the CESR Standing Committee on corporate finance, the CESR Standing Committee on credit rating agencies, CESR-PoI, the CESR Standing Committee on secondary markets, the CESR Standing Committee on post-trading, the CESR Standing Committee on investor protection and intermediaries and the CESR Standing Committee on investment management.

2.2.1. CESR Review Panel

The Review Panel is responsible for assisting CESR in its task to ensure consistent and harmonised implementation of EU legislation in the Member States.

On 1 July 2009, the Review Panel published its report and conclusions on the powers of supervisory authorities in the context of the Transparency Directive.

The Review Panel finalised its peer review of the transposition and application of the competent authorities' enforcement powers as regards financial information to be provided by issuers (Standard no. 2). The Member States' final self-assessment report on the implementation and application of Standard no. 2 (CESR/09-212) as well as the peer review (CESR/09-188) were published on 6 July 2009.

The Review Panel finalised its review on the implementation of the CESR principles concerning the financial information to be provided by issuers and the competences and powers of the authorities in this respect (Standard no. 1), undertaken in 2006. The updated report on Member States' self-assessment as well as the peer review (CESR/09-374) were published on 25 September 2009.

The Review Panel also worked on the comparison of the implementation and application of options and discretions as well as gold plating in the context of the Market Abuse Directive and of its implementing measures as well as the Directive on Markets in Financial Instruments (MiFID) and its implementing measures.

The Review Panel also undertook some selective comparative work on certain areas of the Prospectus Directive.

The peer review of the implementation and application of CESR's guidelines to simplify the UCITS notification procedure was published on 29 January 2010.

All the documents are available on CESR's website (www.cesr.eu).

2.2.2. Operational groups established within CESR

- **CESR-Fin**

CESR-Fin is the permanent operational committee that coordinates CESR's work in all financial reporting areas in Europe. In 2009, the committee met six times.

On 7 January and 15 July 2009 respectively, CESR-Fin published two documents relating to changes to standards IAS 39 and IFRS 7 which were introduced by the IASB on the reclassification of financial instruments other than those "valued at fair value by their results" entitled "CESR statement on the reclassification of financial instruments and other related issues" (CESR/08-937) and "CESR statement on the application of and disclosures related to the reclassification of financial instruments" (CESR/09-575).

On 2 November 2009, CESR-Fin published the document entitled "CESR statement on the application of disclosure requirements related to financial instruments in 2008 financial statements" (CESR/09-821) which analyses the application by publicly traded companies of mandatory disclosure requirements of financial information in accordance with IFRS 7 and additional recommendations on disclosure on a voluntary basis.

CESR-Fin also finalised several comment letters prepared by its working group Project Group on IFRS regarding the IASB projects, either by commenting on the response of the European Financial Reporting Advisory Group (EFRAG), or by responding directly to the IASB.

As regards audit, CESR-Fin published a comment letter (CESR/09-766) on the consultation by the European Commission on the adoption of International Standards on Audit (ISA) within the EU on 22 October 2009.

CESR-Fin activities at international level

CESR-Fin regularly organises joint meetings with members of the IASB, either directly or *via* its the Project Group on IFRS. In August 2009, CESR-Fin's secretariat participated in a number of Technical Dialogue Meetings organised by the IASB with a view to meeting on a more regular basis with regulators and representatives of prudential supervision. CESR-Fin also took part in various round tables on financial instruments organised by the IASB and on the constitutional review organised by the International Accounting Standards Committee Foundation (IASCF).

Since the beginning of 2009, CESR-Fin has participated in two consultative groups the object of which is to discuss matters relating to fair value and the relation between fair value and the financial crisis. These are on the one hand the Financial Crisis Advisory Group (FCAG), a joint group of the IASB and the Financial Accounting Standards Board (FASB), and on the other hand the ECOFIN Working Group on Pro-cyclicality.

CESR-Fin's activities also include regular meetings with the Securities and Exchange Commission (SEC), the financial reporting supervisory authority of the United States. The subjects discussed include, *inter alia*, enforcement measures for the correct application of financial information reporting standards, projects relating to the IFRS standards of the IASB as well as the use of XBRL taxonomies.

CESR-Fin activities at EU level

The European Commission and CESR-Fin met on several occasions to discuss, among others, the proposed amendments by the IASB relating to financial instruments, the IASCF Monitoring Board and the equivalence of third-country financial information accounting standards.

CESR-Fin is in regular contact with EFRAG and takes part as observer. Equally, the President and/or EFRAG members are invited regularly to CESR-Fin meetings.

European Enforcers Coordination Sessions (EECS)

The main role of this CESR-Fin subgroup is to analyse decisions taken by national authorities in the European Economic Area responsible for the correct application of financial information reporting standards (enforcement) as well as emerging or urgent cases which the supervisory authorities are faced with during the exercise of their duties. The group met seven times in 2009.

CESR published a seventh extract of the decisions from the EECS database on 16 December 2009. As at 31 December 2009, 306 decisions were listed in the EECS database.

In December 2009, EECS organised a seminar on the enforcement activities in Europe and in the rest of the world.

- **CESR-PoI**

CESR-PoI's purpose is to enhance the sharing of information, cooperation and coordination of supervision between CESR members and to ensure an effective day-to-day implementation of the Market Abuse Directive at Level 3 of the Lamfalussy procedure.

As a result of the mandate received by CESR's Chairmen, CESR-PoI finalised the works commenced in 2007. Thus, the document (CESR/09-219) containing detailed guidance on the lists of insiders, suspicious transactions reporting, stabilisation and buy-back regimes as provided for in Regulation (EC) No 2273/2003 and the two-fold notion of "inside information" contained in Directive 2003/6/EC on insider dealing and market manipulation was published on 15 May 2009.

The working group set up by CESR-PoI continued the efforts for coordination of the measures decided on short selling by the competent authorities. A consultation document on the pan-European short selling disclosure regime was published on 8 July 2009.

CESR's response, prepared by CESR-PoI, to the European Commission's call for evidence on the review of the Market Abuse Directive was submitted to the European Commission and published on 10 July 2009.

The permanent work group Surveillance and Intelligence Group (S & I Group), set up in 2005, allowed to exchange practical experience in cooperation, daily supervision of investment firms and financial markets and unauthorised offers of financial services by persons or investment firms that have not been granted adequate authorisation.

CESR-PoI has also continued to establish Urgent Issues Groups every time several authorities of different Member States are involved in an investigation and it became necessary to ensure swift cooperation and to take prompt measures in cases of threats to one or several securities markets.

Furthermore, CESR-PoI continued to develop its network for the dissemination of warnings relating to illicit offers of financial services by investment firms or individuals that have not been granted the required authorisations.

CESR-PoI has also continued to enhance its dialogue with the International Organisation of Securities Commissions (IOSCO) in order to improve cooperation and exchange of information with non-cooperative countries and to coordinate the measures to be taken in this respect.

All the documents are available on CESR's website (www.cesr.eu).

2.2.3. Groups established within CESR

- **CESR MiFID Level 3 Expert Group**

In order to ensure an efficient and equivalent implementation and application and to develop a consistent interpretation of the provisions of the framework directive and its executive measures according to the Lamfalussy procedure, the expert group is tasked with dealing with a series of technical and operational issues of Levels 1 and 2 of the MiFID.

The expert group is assisted by two working groups for the preparation of guidelines, namely the Intermediaries group and the Markets group.

The Intermediaries group produced the following documents:

- Feedback statement - MiFID complex and non complex financial instruments for the purposes of the Directive's appropriateness requirements (CESR/09-558);

- Questions and Answers - MiFID complex and non complex financial instruments for the purposes of the Directive's appropriateness requirements (CESR/09-559);
- Consultation paper on Inducements: Good and poor practices (CESR/09-958);
- Protocol on the supervision of branches under MiFID (CESR/07-672).

The Markets group produced the following documents:

- finalisation of the report relating to the impact of MiFID on secondary markets for non-equity securities;
- submission, on 10 July 2009, to the European Commission of the Report on transparency of corporate bond, structured finance product and credit derivatives markets, recommending the introduction of a mandatory transparency regime;
- update of the protocol on the operation of the database that includes information on shares admitted to trading on a regulated market of the EU, as well as the lists of systematic internalisers, regulated markets, multilateral trading facilities (MTF) and central counterparties.

As concerns the exemption from pre-trade transparency requirements, all suggested systems or facilities are submitted for assessment by the Markets group, at the initiative of the respective Member State, in order to ensure an appropriate level of transparency of markets and a convergence of supervision across the EU.

All the documents and case studies undertaken by the group are available on CESR's website (www.cesr.eu).

• CESR Expert Group on Investment Management

In 2009, the expert group worked in particular on the following topics:

- passport for UCITS management companies and their organisational requirements;
- master/feeder UCITS structures, mergers of UCITS and UCITS notifications;
- procedures on risk management and measurement;
- changes to the regime applying to simplified prospectuses (Key Information Document);
- depositaries of UCITS, and
- operational prudential supervision (Operational Task Force).

Six working groups, which met overall 29 times during 2009, studied these subjects in particular.

The expert group is assisted by a consultative group consisting of 16 industry experts, including one representative of the Luxembourg investment fund sector. In 2009, one meeting was held between the expert group and the consultative group.

In 2009, CESR published the following documents:

- Technical advice to the European Commission on the UCITS management company passport (CESR/09-963): the advice advocates the largest possible alignment with the rules of the MiFID Directive. UCITS management companies shall apply the principles of the MiFID Directive while taking into account the specificities relating to UCITS. A management company shall therefore apply, where appropriate, the rules of the MiFID Directive as regards best execution, inducements and direct sale, including the appropriateness test.
- Technical advice on the Key Information Document - KID (CESR/09-949): the advice lays down that the KID shall not be longer than two pages DIN A4 and shall include a synthetic risk indicator. The KID may contain three pages DIN A4 for structured UCITS which adopt performance scenarios.

- Technical advice relating to master-feeder UCITS structures, mergers of UCITS and the notification of UCITS (CESR/09-1186): the advice details in particular the information to be provided to investors in both the merging and the receiving UCITS in case of a merger as well as the matters which have to be covered in the contracts between the master UCITS and the feeder UCITS, their depositaries and their auditors.
- Response to the consultation of the European Commission on the duties and liabilities of UCITS depositaries (CESR/09-781): CESR supports more clarity in the applicable concept and rules in order to improve the legal safety and advocates enhanced harmonisation of the duties and liabilities of UCITS depositaries.
- Consultation document on the common definition of money market funds (CESR/09-850): CESR proposes an approach which would include certain criteria to be fulfilled in order to be able to use the denomination of short term money market fund and longer term money market fund. Such criteria would apply both to UCITS covered by the UCITS Directive and to investment funds which do not fall under the directive. CESR intends to finalise guidelines in this context shortly.

• CESR Expert Group on Transparency (Level 3)

The expert group is tasked with Level 3 works under the Transparency Directive. The expert group thus discussed questions concerning the practical implementation of the Transparency Directive, the results of which were published in a "Frequently Asked Questions" document which is available on the CSSF website (www.cssf.lu/index.php?id=221).

In response to specific cases in which certain types of derivative instruments had been used with the intention to acquire control over a listed company while avoiding the notification of major holdings, the expert group reflected on the treatment of such instruments in the context of the notification of major holdings regime. This thought process led to a public consultation document (CESR/09-1215b) which was published on 9 February 2010.

The expert group also developed a call for evidence on the opportunity to adopt a unique format for the reporting of regulated information (periodic reports, etc.) In this context, XBRL was one of the most discussed formats. The expert group will have to look into the responses it receives from this exercise during 2010.

• CESR Expert Group on Credit Rating Agencies

While it could not await the publication of Regulation (EC) No 1060/2009 on credit rating agencies, the expert group started preparing the tasks arising from this Regulation from January 2009. As a matter of fact, Article 21 of the Regulation, which was eventually published in November 2009, tasks CESR with developing guidelines regarding the main elements of the new supervisory mechanism for credit rating agencies. A first draft of guidelines dealing in particular with the registration process, the functioning of the colleges of the supervisory authorities, the mediation between authorities and Annexe II of the Regulation was worked out and submitted to public consultation until 30 November 2009.

The expert group together with CESR-Tech also prepared the setting in place of a central repository for data relating to historical performance of credit rating agencies (Article 11 of Regulation (EC) No 1060/2009).

In order to practically implement Articles 4 and 5 of the Regulation, the expert group also contacted the authorities of a certain number of non-European countries in view of entering into cooperation agreements.

Following on from the launch of the second CESR report on the compliance of credit rating agencies with the IOSCO Code of conduct (CESR/08-277), the group published a report on compliance with the revised Code of conduct (CESR/09-417).

- **CESR-Tech**

CESR-Tech is CESR's governance body as regards information technology and it ensures coordination and follow-up on the progress of pan-European projects. The group is made up of persons responsible for information technology within the supervisory authorities of the CESR Member States and met six times during 2009, among which once on the premises of the CSSF.

In 2007, the group launched the Transaction Reporting Exchange Mechanism (TREM), a network permitting the exchange of transaction reporting for financial assets according to the requirements laid down by the MiFID Directive. Transaction reporting constitutes a key element in the detection and analysis of market abuse. On average 1.1 billion reports are exchanged each year over the TREM network. In 2009, the CSSF contributed 7,167,024 declarations to this exchange.

In June 2009, CESR-Tech launched the Instrument Reference Data System (IRDS), a reference system which enables the management of the identification of 539,717 financial instruments which are admitted on the currently 84 regulated markets in Europe. This vast database is updated daily and determines which authority is competent for the receipt of the transaction reports exchanged *via* TREM. It is thereby ensured that the competent supervisory authority receives all the declarations which fall under its supervision, independently of where the transaction is executed.

In order to finalise its first IT project, the CESR Secretariat gave itself its own technical and software infrastructure, which allows to host not only TREM and IRDS but also other IT solutions which might prove necessary as a result of current and future EU legislation, especially in view of the new responsibilities which shall in 2011 be laid upon ESMA, the European Securities and Markets Authority.

Given the scale of the project and the current IT infrastructure of the CESR Secretariat, the project has been realised in close cooperation with the Member States and under the responsibility of a CSSF representative.

CESR-Tech has taken on two working groups, namely the Joint Group CEREP and the TREM User Group.

The Joint Group CEREP's objective is to define the functionalities and requirements of the Central Repository (CEREP) which will form a central register grouping the data relating to historical performance of credit rating agencies. The system, which will be fed by the rating agencies, will allow the calculation of statistics per rating category by mid-2011. These results will be published on CESR's website. An investor can then observe rating statistics of several rating agencies and compare results.

The TREM User Group, which is made up of final TREM and IRDS users, worked on the quality of declarations on transactions in financial instruments exchanged between CESR members *via* the TREM exchange mechanism according to Article 25 of the MiFID Directive. The group's discussions covered the application of CESR guidelines on transaction reporting, the way in which to fill in the fields of the declaration, the valuation methods of the quality of the exchanged information and the implementation of controls within these reporting systems. The group also analysed the quality of the reference data which identifies the financial instruments admitted to trading and made available to CESR by the regulated markets in order to exchange reports.

- **Joint CESR-European System of Central Banks (ESCB) working group on securities clearing and settlement systems**

Following the ECOFIN decisions of June 2008, the group finalised its report published by CESR and the ESCB on 23 June 2009. This report contains in particular 19 recommendations relating to securities settlement systems and 15 recommendations relating to central counterparties.

The recommendations are addressed to supervisory authorities and central banks which will rely on them as a tool to achieve a coherent implementation of the recommendations and a level playing field for securities settlement systems and central counterparties within the EU.

- **Prospectus contact group**

In 2009, the contact group worked in particular on the re-examination of the Prospectus Directive for which the European Commission launched a consultation in January 2009. The discussions and comments were worked into a CESR response to the European Commission dated 24 March 2009 and published on 10 April 2009. The response took into account CESR's comments and analysis in its draft directive which sets out to improve and simplify the Prospectus Directive which has been in force since July 2005.

The group also produced the following documents:

- statistics relating to approved prospectuses and passported into the different Member States between July 2006 and December 2008 and between January 2009 and June 2009,
- update of the list of national requirements concerning notifications (language, translation of the summary, etc.) on 26 February 2009, and
- common position on questions raised in the context of the implementation of the Prospectus Directive by updating the "FAQ CESR" three times, in February, September and December 2009. The updates dealt, *inter alia*, with (1) the clarification of the notion of public offer as regards publication of the price of securities on the secondary market, and (2) the fact that it is no longer possible to apply squeeze-out rights in supplements where the issue and delivery of the securities in question have closed.

All the documents are available on CESR's website (www.cesr.eu).

- **Takeover bids network**

CESR organised two meetings in 2009 on the practical application of the Takeover Directive between representatives of the authorities responsible for takeover bids in the various Member States, whether or not they are CESR members. Within this European network made up of specialists in the matter, exchanges covered in particular concerted actions, exemptions from the mandatory takeover bid and possible adjustments of the offer price.

2.3. Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) comprises high level representatives from the insurance and occupational pensions supervisory authorities from EU Member States. The Committee's objectives are to advise the European Commission, either at the European Commission's request or on the Committee's own initiative, as regards the preparation of implementing measures in the fields of insurance, reinsurance and occupational pensions, to contribute to the consistent implementation of EU directives and to the convergence of Member States' supervisory practices and to constitute a forum for supervisory cooperation, including the exchange of information on supervised institutions.

In 2009, the Occupational Pensions Committee of CEIOPS followed-up on the observations and recommendations with regard to the reports published in 2008 and continued its fact-finding mission with respect to other topics. In November 2009, the Committee also published an update of the "CEIOPS Report on Market Developments" which provides an overview of the development in cross-border activity of institutions for occupational retirement provision (IORPs) in 2009.

CEIOPS also analysed practical aspects of different prudential approaches as regards the cross-border activity of IORPs. In parallel, the Committee worked on different national approaches on the ring-fencing of assets and commitments, including in stress situations. A report on the national requirements on risk management applicable to IORPs was also published.

CEIOPS reviewed the Budapest Protocol[1] which now includes a chapter on how to deal with cross-border customer complaints.

[1] Revised Protocol relating to the Collaboration of the Relevant Competent Authorities of the Member States of the European Union in Particular in the Application of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs) Operating Cross-Border (http://www.ceiops.eu/media/files/publications/protocols/Revised-Budapest-protocol-20091105/CEIOPS-Revised-Budapest-protocol.pdf).

Work was undertaken to produce a report dealing with the implications of the additional requirements on information to be provided to members and beneficiaries which could be imposed by the host Member State on IORPs with cross-border activities.

It should also be noted that a group was set up to analyse in detail the future application of the provisions on Packaged Retail Investment Products (PRIPs) within pension schemes.

The report on the investigation into internal control mechanisms of IORPs which was launched during the third term of 2009 will be published at the end of 2010.

Another project consists in extracting the lessons to be learnt by the sector of occupational pension schemes from the financial crisis as regards the prudential approaches in place before the crisis. This project will include in particular the topic of investment rules both for defined benefits and defined contributions schemes.

Given the increasing importance of defined contributions schemes, a project concentrating exclusively on the defined contributions regimes will identify the risks taken by the members during the key periods of their life cycle. It is anticipated that a report is published at the end of 2010.

CEIOPS remains at the European Commission's disposal regarding the initiatives it could set in place following the consultation and public hearing on 27 May 2009 on the harmonisation of solvency rules for IORPs.

An investigation will also be launched in order to analyse the existing link between various national prudential practices and different requirements on financial reporting.

The work undertaken by CEIOPS in 2009 on the various prudential approaches on cross-border activities of IORPs and on the national approaches regarding ring-fencing of assets of IORPs should be completed during 2010 by submitting two issues papers to the European Commission.

It should also be noted that CEIOPS publishes periodic press releases on the financial conditions and financial stability of the insurance and occupational pension fund sector in the EU (www.ceiops.eu)

2.4. Capital Requirements Directive Working Group (CRDWG)

This working group, which was set up by the European Commission in 2007 in order to discuss among Member States the amendments it wished to make to Directives 2006/48/EC and 2006/49/EC, took up its work again in 2009. The group first concentrated on matters such as remuneration policies of banks and trading books (subjects which are part of the draft CRD III Directive) as well as on national discretions contained in the CRD Directives.

The group then concentrated, *inter alia*, on regulated capital, liquidity, counterparty credit risk and dynamic provisioning, all aspects of the CRD Directives which should be more or less substantially amended in a future draft CRD IV Directive.

The aim of dynamic provisioning is to ensure that banks maintain adequate provisions at the right moment to cover all expected loss linked to credit risk, in a non pro-cyclical way. If the analysis of the accounting rules proposed by IASB for the reform of IAS 39 (expected cash flow) reveals a need for additional provisions in order to reach the above-mentioned aim, the drafting of an amendment to the CRD is planned for the end of March 2010.

2.5. Payment Services Directive Transposition Group

This working group is headed by the European Commission and includes representatives from the Member States in charge of transposing into national law Directive 2007/64/EC of 13 November 2007 on payment services in the internal market. It aims to support Member States during the implementation phase of said directive. The group is tasked with comparing approaches adopted by the Member States in order to identify any discrepancies at an early stage and to provide a clear and detailed interpretation of the provisions of the directive.

2.6. Committee on the prevention of money laundering and terrorist financing

Additional explanations on the works performed in 2009 by the Committee are given in Chapter XIII "Fight against money laundering and terrorist financing".

2.7. Anti-Money Laundering Task Force (AMLTF)

Additional explanations on the works performed in 2009 by the working group are given in Chapter XIII "Fight against money laundering and terrorist financing".

2.8. Accounting Regulatory Committee / Contact Committee on Accounting Directives

The objective of the Accounting Regulatory Committee, established by the European Commission in accordance with Article 6 of the IAS Regulation, is to provide advice on the proposals of the European Commission in order to adopt one or several international accounting standards IAS/IFRS of the IASB.

In 2009, the committee met five times, jointly with the Contact Committee on Accounting Directives, instituted under Article 52 of the fourth Company Law Directive (78/660/EEC). These meetings mainly addressed the adoption of the IASB standards, the draft IASB standards in progress and IASB governance. The committee's work can be followed on the European Commission's website (http://ec.europa.eu/internal_market/accounting/committees/arc_meetings_en.htm).

The current situation of the approval process of the international accounting standards in the EU is also available on the website of the European Commission (http://ec.europa.eu/internal_market/accounting/legal_framework/regulations_adopting_ias_text_en.htm).

2.9. European Group of Auditors' Oversight Bodies (EGAOB)

The European Group of Auditors' Oversight Bodies (EGAOB) was established by Decision 2005/909/EC of 14 December 2005 of the European Commission. The expert group advises the European Commission on any issue relating to the preparation of measures implementing Directive 2006/43/EC. It also provides technical support for the setting-up of comitology measures, in particular with respect to issues relating to the assessment and approval of international audit standards in view of their adoption at Community level and the assessment of third-country public oversight systems. In addition, the group is also an exchange platform for representatives of the audit profession and supervisory authorities of third countries.

The expert group has set up working subgroups the main activities of which are set forth below.

2.9.1. EGAOB - Sub-Group on Cooperation on Third Countries

The objective of this subgroup is to facilitate cooperation between public auditors' oversight bodies at Community level and third-country regulators.

In 2009, the subgroup continued analysing the equivalence of public oversight systems for third-country auditors of companies established outside the EU and whose securities are admitted to trading on European regulated markets. This exercise was conducted pursuant to Article 46 of Directive 2006/43/EC which provides, under certain conditions, the option to exempt third-country auditors from public oversight on the basis of reciprocity.

The Decision 2008/627/EC of the European Commission of 29 July 2008 granted a transition period to 34 third countries. This decision allows audit firms from these countries to pursue their audit activity and to delay their registration until 1 July 2010, in accordance with the transition period.

2.9.2. EGAOB - Sub-Group Intra EU members

The objective of this subgroup is to facilitate the exchange of information between public auditors' oversight bodies at Community level.

In 2009, the subgroup largely developed a best practice guide on the modalities for exchange of information between public supervisory authorities in Member States by distinguishing between requests for inspection and those for investigation.

2.9.3. EGAOB - Sub-Group on International Standards on Auditing

As Directive 2006/43/EC requires the application of international audit standards within the scope of statutory audit, this subgroup analyses the international audit standards and the developments in this field, with a view to their adoption at Community level.

The international audit standards are currently being translated into the different languages of the European Community. Only after this process is complete will the European Commission be in a position to adopt them.

2.9.4. EGAOB - Sub-Group on Inspections

The subgroup's mission is to allow public supervisory authorities of the Member States to confer on the best practices regarding quality assurance.

In 2009, the subgroup allowed to take stock of the common problems which supervisory authorities are faced with and initiated the development of means to remedy these situations. These works at a European level also aim to finalise a harmonised approach by the supervisory authorities of the different Member States as regards inspections.

2.10. Banking Supervision Committee

The Banking Supervision Committee of the European Central Bank is a committee comprising high level representatives of the banking supervisory authorities and the central banks of Member States. The Committee is chaired by Mr Peter Praet, Executive Director of the National Bank of Belgium since June 2007. The missions concerning prudential supervision conferred by the Treaty and the statutes of the European Central Bank on the ESCB (European System of Central Banks) are carried out by the Banking Supervision Committee on behalf of the ESCB.

Two working groups comprising members of the central banks and national supervisory authorities, i.e. the Working Group on Macro-Prudential Analysis and the Working Group on Developments in Banking, mainly assisted the Banking Supervision Committee in carrying out its mandate in 2009.

In order to systematise the analysis of macro-economic data with a view to identifying, as far as possible in time, the factors likely to weaken the financial institutions as a whole and thereby the financial system, the Working Group on Macro-Prudential Analysis monitors the macro-economic environment and reports to the Committee on trends and facts likely to be relevant to the prudential supervision of the financial sector. These works result in a recurring contribution to reports on financial sector stability which are published twice a year.

The aim of the Working Group on Developments in Banking is to identify and follow-up on structural developments which shape the European banking sector. This follow-up results in the yearly publication of a report entitled "EU Banking Structures".

3. MULTILATERAL COOPERATION

3.1. Basel Committee on banking supervision

In 2009, the Basel Committee continued working on improving and strengthening the rules on capital adequacy (mainly as regards trading book and securitisation), liquidity management, internal risk management and transparency. This work is part of a broader effort the Basel Committee has undertaken to strengthen the regulation and supervision of banks in light of weaknesses revealed by the financial markets crisis.

The Basel Committee thus published the final version of the following documents: "Guidelines for computing capital for incremental risk in the Trading Book", "Revisions to the Basel II Market Risk Framework", "Enhancements to the Basel II Framework" (July 2009) and "Principles for sound stress testing practices and supervision" (May 2009).

The proposed amendments relate in particular to trading book positions and exposures in the context of securitisations. The Basel Committee aims to complete the rules relating to the calculation of the minimum capital requirements for trading book market risk as regards complex and illiquid products and to add a specific risk weighting which is far higher for "resecuritised" products.

The Committee further suggests to reinforce the supervisory review process, in particular as regards integrated risk management and stress testing. It also proposed new rules relating to information on exposures to be notified in the context of a securitisation.

Still in this context, the Basel Committee published consultation documents on the proposals to strengthen the resilience of the banking sector and liquidity management. These proposals cover the following issues:

- Capital base: the Basel Committee intends to raise the quality, consistency and transparency of the capital base in order to ensure that the banking system is in a better position to absorb losses both on a going concern and a gone concern basis.
- Capital requirements for Pillar 1: the Basel Committee seeks to improve the measures of counter-party credit risk on derivatives, "repos" and securities financing activities.
- Leverage ratio: the Basel Committee wants to introduce a leverage ratio as supplementary measure to the solvency ratio in the current framework. This ratio will help contain the build-up of excessive leverage in the banking system, and introduce additional safeguards against model risk and risk measurement errors.
- Capital buffers: the Basel Committee wishes to introduce a series of measures to promote the build-up of capital buffers in good times that can be drawn upon in periods of stress. Moreover, the Committee is promoting more forward-looking provisioning based on expected losses, which captures actual losses more transparently and is also less pro-cyclical than the current provisioning model.
- Liquidity ratio: the Basel Committee proposes a short-term liquidity ratio (Liquidity Coverage Ratio) which requires a 30-day liquidity coverage and is completed by a longer-term structural ratio (Net Stable Funding Ratio).

Among the other publications by the Basel Committee, it is useful to point out the "Report and Recommendations of the Cross-Border Bank Resolution Group" (September 2009). This report was prepared by the Cross-Border Bank Resolution Group (CBRG) and highlights the limits of national crisis management mechanisms in the event of restructuring or insolvency of international financial institutions and outlines possible improvements to these mechanisms. The CBRG's recommendations intend in particular to strengthen the national authorities' powers of intervention as well as cooperation between authorities in order to allow for a more efficient solution to a crisis affecting international financial institutions.

All of the publications of the Basel Committee are available on its website (www.bis.org).

The Basel Committee counts four permanent sub-committees, namely the Standards Implementation Group, the Policy Development Group, the Accounting Task Force and the Basel Consultative Group (in which the CSSF is not represented) as well as *ad hoc* groups.

3.1.1. Standards Implementation Group (SIG)

This group's aim is to promote the coherent application of different standards and guidelines issued by the Basel Committee. It succeeds the Accord Implementation Group (AIG) and takes over the latter's mission in implementation of the Basel II Accord. In 2009, this group worked on best practices for Pillar 2, colleges of supervisors and remuneration.

3.1.2. Policy Development Group (PDG)

While the CSSF is not represented in the PDG itself, it is represented in the following sub-working groups of the PDG:

- **Risk Management and Modelling Group (RMMG)**

The RMMG, tasked with specific risk management matters, dedicated the year 2009 to the review of regulatory own funds requirements needed to cover counter-party risk in the light of the lessons learnt from the crisis.

- **Working Group on Liquidity**

The works of this group, published in December 2009, mainly dealt with the drafting of proposals for consultation as regards the liquidity ratio.

- **Definition of Capital Subgroup**

Against the backdrop of the financial crisis on credit institutions' own funds, this subgroup was tasked with reflecting on the future structure of regulatory capital. While concentrating first on original own funds and hybrid capital instruments, the group's work took concrete shape over the course of the year 2009 and now includes all the elements of the definition for regulatory capital. The group's suggestions are likely to have a material impact on the nature of own capital held by banks. These suggestions constitute one of the key elements of the consultation document entitled "Strengthening the resilience of the banking sector" published by the Basel Committee in December 2009.

- **Capital Monitoring Group (CMG)**

In 2009, the CMG, whose mission it is to analyse the impact of the transition from Basel I to Basel II rules on regulatory capital, as well as on the capital requirements for credit institutions, undertook two empirical studies on the impact of the Basel II regulations on the components of the prudential ratios.

- **Quantitative Impact Study Working Group (WG QIS)**

In 2009, the WG QIS was tasked with conducting a general impact study during the first quarter of 2010 to assess the effects of the new measures proposed by the Basel Committee to strengthen the financial stability of credit institutions. The group therefore set out reporting tables for the banks in question and decided on the technical means needed to conduct the survey.

- **Cross-Border Bank Resolution Group (CBRG)**

The group's work mainly centred on drafting the document entitled "Report and Recommendations of the Cross-Border Bank Resolution Group" which was published in September 2009.

3.1.3. Accounting Task Force (ATF)

In the field of international accounting standards, the Accounting Task Force addressed several comment letters to the IASB on the IASB project, including in particular the measures proposed by the IASB in the context of the financial crisis. The ATF has also undertaken surveys with banks on the potential impact of a new standard "IFRS 9 Financial Instruments" or on the adoption of fair value, the impact of own credit risk and reclassifications.

The ATF also published the "Guiding principles for the replacement of IAS 39" in August 2009 which were submitted to the IASB in July 2009 and which are a response to the G20 leaders' recommendations in April 2009 to strengthen supervision and financial regulation. The G20 leaders called for accounting standard setters to work urgently with supervisors and regulators to improve standards on valuation and provisioning and achieve a single set of high-quality global accounting standards. The Basel Committee is of the opinion that these principles ought to ease the coordination between standard setters, prudential supervisory authorities and regulators in their respective efforts to implement the G20 recommendations.

As regards the document "Supervisory guidance for assessing banks' financial instrument fair value practices", published in April 2009, it should be mentioned that it proposes principles addressed to banks and prudential supervisory authorities in order to reinforce the valuation process of financial instruments.

As regards audit, the ATF continued its work with respect to international accounting standards and prepared comment letters on consultation documents for the International Auditing and Assurance Standards Board (IAASB).

3.1.4. Corporate Governance Task Force

The group updated the guidelines on corporate governance for banking organisations published on 13 February 2006 with the title "Enhancing Corporate Governance for Banking Organisations".

The prudential lessons learnt from the practical cases of recent deficiencies observed in the field of corporate governance helped identify five key areas in which the current text will be completed. Firstly, this concerns the appointment, the composition, the working and responsibilities of the board of directors. Secondly, the principles relating to the components of remuneration shall be substantially touched up. The positioning and missions of the risk management function will also be clarified. The principle of transparency will be further developed. Finally, the know your structure/know your business theme shall be dealt with more specifically to extract best practice principles as regards the use and implementation, for own account or on behalf of third parties, of complex legal and funding structures.

Representatives of the OECD, as well as of the World Bank participated in these works. Discussions and dialogue took place with other international organisations, namely with representatives of the International Association of Insurance Supervisors (IAIS). It is foreseen to submit a revised version to public consultation during spring 2010.

3.2. International Organisation of Securities Commissions (IOSCO)

3.2.1. 34th IOSCO Annual Conference

The securities and futures regulators as well as other members of the international financial community met in Tel Aviv (Israel), from 8 to 11 June 2009, on the occasion of the 34th Annual Conference of IOSCO.

IOSCO is currently concerned with the following topics:

- **Objectives and principles of IOSCO's financial regulation**

The objectives and principles of the financial regulation of securities (the IOSCO principles), ratified by IOSCO in 1998, aim to encourage countries to improve the quality of their regulation and prudential supervision. They represent the principal international benchmark on prudential supervision of securities markets.

In 2005, IOSCO created the Principles Assessment and Implementation Program in order to help jurisdictions implement these principles.

The G20 process reinforced the accent on the role of the standards defined by the IOSCO principles and the importance laid upon their implementation.

IOSCO introduced its proposals to the World Bank and the International Monetary Fund which are aimed at strengthening the Financial Sector Assessment Program (FSAP) by means of coordination with the IOSCO Assessment Program in order to assess the regulatory systems in the different countries at expert and high-quality level.

It was decided to set up a Task Force to review and, if appropriate, revise the IOSCO principles with a view to adopt the revised principles at the 35th Annual Conference.

- **IOSCO's Multilateral Memorandum on cooperation**[2]

As regards the Multilateral Memorandum of Understanding, IOSCO set itself the ambitious target of making all its members which are supervisory authorities sign up before 2010. As at 1 January 2010, 64 members had signed the MMoU and 46 members had committed to signing it, in compliance with Appendix B of the Memorandum. Only five members have still not signed up, be it as signatories to the Memorandum itself or to Appendix B.

- **Working group on cooperation in supervisory matters**

IOSCO has set up a working group which is tasked with defining the principles for cooperation as regards supervision, by taking a similar approach to that adopted in the 1900s to define principles of cooperation in the application of regulation.

Finally, it ought to be noted that the supervisory authority of the Cayman Islands (the Cayman Islands Monetary Authority) was accepted as ordinary IOSCO member and that three organisations as well as the European Commission were accepted as affiliate members.

3.2.2. IOSCO groups

The CSSF is a member of two IOSCO groups, i.e. the Standing Committee n° 1, dealing, among others, with subjects concerning accounting, and the Standing Committee n° 5 concerning UCIs and collective management.

- **Standing Committee n° 1 (SC1)**

As member of the permanent committee SC1, the CSSF attends the meetings of the SC1 and, as far as possible, those of the subcommittees on disclosure, accounting, auditing, as well as the implementation of IAS/IFRS.

The most prominent topic during 2009 was the crisis on financial markets. In this context, the SC1 participated in IASB's round tables on the improvement of the definitions and the coherence of information to be provided. In its report on the subprime crisis, the Technical Committee furthermore instructed the SC1 to assess in how far the existing internal controls, documentation procedures and necessary diligence regarding the ownership rights attached to the underlying assets of the publicly traded covered products protect investors' interests in these products.

The SC1 members therefore conducted a survey on the necessary diligence and internal control procedures laid down in the various member jurisdictions to ensure a "true sale" of the assets to the trust.

On 18 June 2009, at its annual conference, IOSCO published a press release on the IAASB's Clarity project and on the International Standards on Auditing (ISA).

The SC1's subcommittees' works are briefly set out below.

Disclosure Subcommittee

The final project on the disclosure principles on public offerings of ABS, such as requested in IOSCO's subprime report which was discussed throughout the year, was finalised for submission to the Technical Committee.

[2] Multilateral Memorandum of Understanding (MMoU) concerning consultation and cooperation and the exchange of information.

The project on the principles of periodic information to be published by issuers, including in particular a section on remuneration, will also be submitted to the Technical Committee.

The Committee will prepare the notes for two future possible projects, one relating to executives' remuneration and the other to periodic or continuous information for ABS or for complex instruments.

Auditing

The Audit Subcommittee (AuSC) continued to follow up on the development of the standards on auditing and the independence of the IAASB, the international regulator for standards on auditing.

The ISAs, clarified thanks to the IAASB Clarity project, finalised in December 2008 and approved by the PIOB (Public Interest Oversight Board) in February 2009 shall apply to the audit of financial statements for the periods starting from 15 December 2009.

The SC1 is currently reviewing the consultation documents which deal with the audit of complex financial instruments and the insurance on greenhouse effect issues.

The IAASB also intends to amend the standard ISA 610 on the use of the internal auditor's work by the external auditor.

There have also been discussions on the current work by IESBA (International Ethics Standards Board for Accountants) on its survey/paper entitled "IFAC Ethics Code - Clarity Redrafting".

Accounting

The Accounting Subcommittee (ASC) continued to follow the activities of the IASB closely and takes part in various working and consultative groups such as IFRIC, SAC, Financial Instruments Working Group, Insurance Working Group, Joint International Group on Performance Reporting, Extractive Industries, Lease Accounting, Employee Benefits and the XBRL Advisory Council.

The subcommittee analysed and sent comment letters on several papers, surveys and discussion papers.

It also commented on IFRIC's interpretations and decisions as well as on amendments to existing standards proposed by the IASB.

- **Standing Committee n°5 (SC5)**

The CSSF is a member of the permanent committee SC5 Investment Management which dealt with the following topics in 2009: Exchange Traded Funds, Fund of Hedge Funds Related Issues Based on Best Market Practices, Good Practices in relation to Investment Managers' Due Diligence when investing in Structured Finance Instruments, Principles on Point of Sale Disclosure, Principles for the Valuation of CIS Portfolios, Private Equity Conflicts of Interest, Protection and Segregation of CIS Portfolios and Suspensions of Funds' Subscriptions/Redemptions.

IOSCO published the following documents in 2009:

- the reports "Hedge Funds Oversight" and "Regulation of Short Selling" in June 2009;
- the final report "Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments" in July 2009;
- the final report "Elements of International Regulatory Standards on Funds of Hedge Funds Related Issues Based on Best Market Practices" in September 2009.

The documents are available on the IOSCO's website (www.iosco.org) under the heading IOSCO Library, Policy Documents, Public Documents.

3.3. Financial Action Task Force (FATF) against money laundering and terrorist financing

Additional explanations on the works performed in 2009 by FATF are given in Chapter XIII "Fight against money laundering and terrorist financing".

3.4. AML/CFT Expert Group

Additional explanations on the works performed in 2009 by the expert group are given in Chapter XIII "Fight against money laundering and terrorist financing".

3.5. Extended contact group "Undertakings for collective investment"

The CSSF participated in the annual meeting of the group, which was held from 16 to 18 September 2009 in the Isle of Man. The following matters were discussed: questions relating to prudential supervision, conflicts of interest/code of conduct, legal issues, financial issues, reporting and disclosure, management and administration of investment funds, UCITS and special investment funds.

3.6. *Institut francophone de la régulation financière* (IFREFI)

The *Institut francophone de la régulation financière* (IFREFI, Francophone institute for financial regulation), gathering the financial markets regulatory authorities of 16 French-speaking countries, is a flexible structure of cooperation and dialogue. IFREFI also aims at promoting professional training by organising training seminars on specific topics.

The annual meeting of IFREFI Chairmen, which took place in Cotonou (Benin) on 18 May 2009, dealt in particular with the regulatory developments in the different jurisdictions, the lessons to be learnt from the financial crisis and financial communication by listed companies in times of crisis. The meeting was followed by a seminar.

CSSF's heads of department
Left to right: Sonny BISDORFF-LETSCH, Jean-Marc GOY, Françoise KAUTHEN, Marc LIMPACH, Christiane CAMPILL, David HAGEN, Danielle MANDER, Marc WEITZEL, Geneviève PESCATORE, Alain OESTREICHER, Marie-Anne VOLTAIRE, Frank BISDORFF, Jean-François HEIN, Danièle BERNA-OST, Romain STROCK, Irmine GREISCHER, Frédéric TABAK

Absent: Carlo FELICETTI

SUPERVISION OF THE BANKING SECTOR

1. Developments in the banking sector in 2009
2. Prudential supervisory practice

02

1. DEVELOPMENTS IN THE BANKING SECTOR IN 2009

1.1. Major events in 2009

1.1.1. Consequences and provisional assessment of the financial crisis

The financial crisis, which broke out in July 2007 with the price collapse of a certain number of mostly subprime-related securitisations, peaked dramatically after the bankruptcy of Lehman Brothers on 15 September 2008. Things went progressively back to normal in 2009. Thus, money markets and bond markets both recovered.

- **Interventions of the Luxembourg State**

The Luxembourg State helped financially to stabilise certain banks. The direct financial impact for the State resulting from granting these aids cannot be precisely assessed yet, but should remain limited despite the historical character of the crisis and the weight of the financial sector in the national economy.

Fortis / BGL BNP Paribas

The State provided a total of EUR 2.5 billion of capital to the bank, which has become BGL BNP Paribas in the meantime. Part of BGL BNP Paribas shares were converted in BNP Paribas shares so that the State currently holds 34% of BGL BNP Paribas' shares and 1% of BNP Paribas' shares.

Dexia BIL

Initially the State participated with EUR 4.5 billion in the guarantee granted to the Dexia group, together with the States of Belgium and France. This guarantee, which has been reduced to EUR 3 billion in the meantime, provides income to the State of Luxembourg which is estimated at EUR 13 million for 2009.

Dexia BIL renounced to follow the State's offer to subscribe to convertible bonds for EUR 376 million.

Kaupthing Bank Luxembourg S.A.

Following the suspension of payments declared on 9 October 2008 of Kaupthing Bank Luxembourg S.A., the Commercial Court extended twice the duration of this measure in order to allow extra time for the provisional administrators to negotiate a recovery plan with the creditors and the potential buyers. Finally, a recovery programme was approved on 5 June 2009 by a quasi unanimity of creditors and ratified by the Court on 8 July 2009. This plan sets out the split of Kaupthing Bank Luxembourg S.A. into two new entities. One of these entities, Banque Havilland S.A., took over the banking activities (including direct deposits of customers) of Kaupthing Bank Luxembourg S.A. and became fully operational on 13 July 2009.

Depositors at the Belgian branch of Kaupthing Bank Luxembourg S.A. were able to access their deposits either at Crédit Agricole S.A. or Keytrade Bank S.A., depending on the type of deposit. The rights of the Swiss branch's depositors were taken into account in the collective procedure of that branch, governed by Swiss law.

The Luxembourg State, for its part, subscribed notes issued by the securitisation vehicle which realises the assets of former Kaupthing Bank Luxembourg S.A. for an amount of EUR 160 million (of which EUR 105 million with a super senior status).

- **Long-term impact on the banking landscape**

Although the direct final financial impact of the crisis for the Luxembourg State should remain limited, the banking landscape will change as certain business models will be abandoned and owing to the requirements of the European Commission as regards the approval of diverse State aids.

The business model consisting in taking important leverage by holding a portfolio that is financed in the short term through institutional deposits has been widely abandoned. This phenomenon, known as deleveraging, is the main cause of the drop in the balance sheet total.

It must be noted as well that the traditional activities of investment funds and private banking have not been directly impacted by the crisis. Likewise, the financial centre's long practised international credit and treasury activities remain steady.

There are possibilities to diversify financial activities provided that an attractive legal framework exists, costs are kept at a competitive level and a proper infrastructure is in place.

- **Recommendations of the special "economic and financial crisis" commission**

The *Chambre des Députés* set up a special "economic and financial crisis" commission. Its recommendations concerning the CSSF's functioning are the following:

- limit the CSSF's role to the sole supervision of the financial sector, thereby excluding a role of promoter of the financial sector;
- redefine the CSSF's and the BCL's missions and enhance cooperation between both institutions.

1.1.2. Risks for the Luxembourg banking sector

The Luxembourg banking sector being rather heterogeneous, it is almost impossible to identify the risks that would impact the sector as a whole. Indeed, the nature of the risks and their level vary strongly according to the activities performed by the different banks.

In 2009, two types of risk sparked the CSSF's attention, and have been subject to interventions, the remaining risks remaining limited as a whole.

- **Risks linked to the Luxembourg real estate sector**

The Luxembourg real estate sector was continuously on the up until the end of 2008. A stabilisation, even a slight adjustment was noted since then. Nonetheless, Luxembourg real estate prices reached abnormally high levels over the last years.

The CSSF therefore reminds banks to comply with the usual prudence criteria with respect to real estate credits.

As regards residential real estate financing, banks must comply with at least the following criteria:

- appropriate personal contribution of the debtor;
- sufficient available income of the debtor after deduction of the mortgage payment;
- refusal to finance objects that are plainly overpriced according to the banks' professional judgement and common sense.

As regards property development, banks must at least comply with the following criteria:

- sufficient pre-sale or pre-lease levels;
- appropriate personal contribution of the developer;
- personal commitment of the developer.

- **Sovereign risks**

As Luxembourg banks hold major volumes of state debts, the deterioration of sovereign risks is a major cause for concern for the CSSF. The CSSF considers that banks must keep a sound balance between their own funds and their exposure to the most vulnerable countries. The CSSF had to intervene with several banks when it considered that this proportion was no longer guaranteed.

1.2. Characteristics of the Luxembourg banking sector

The Luxembourg banking legislation provides for three types of banking licences, namely licences governing the activities of universal banks (144 institutions had this status on 31 December 2009), those governing the activities of banks issuing mortgage bonds (5 institutions had this status on 31 December 2009) and those governing the activities of banks issuing electronic means of payment (no institution had this status on 31 December 2009).

Banks fall under three categories according to their legal status and geographical origin:

- banks incorporated under Luxembourg law (110 on 31 December 2009);
- branches of banks originating from an EU Member State or assimilated (32 on 31 December 2009);
- branches of banks originating from a non-EU Member State (7 on 31 December 2009).

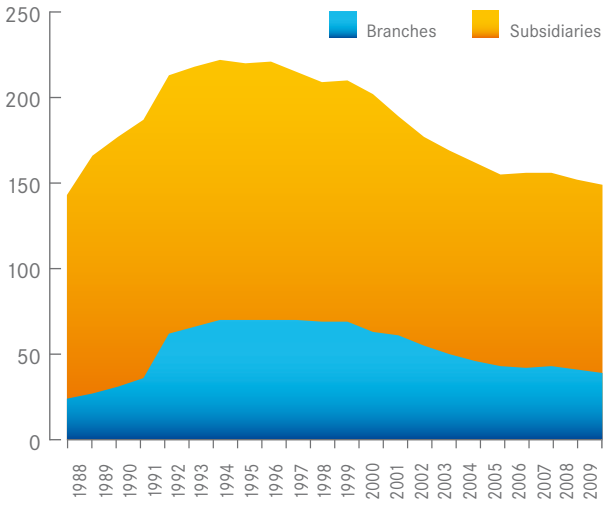
The *caisses rurales* (13 on 31 December 2009) and their central establishment, Banque Raiffeisen, which are to be considered as a single credit institution, according to the law on the financial sector, constitute a special case.

1.3. Development in the number of credit institutions

With 149 entities authorised at the end of the financial year 2009, the number of banks decreased by three entities as compared to 31 December 2008 (152). Among those 149 entities, 110 are banks incorporated under Luxembourg law (2008: 111) and 39 are branches (2008: 41).

Development in the number of banks established in Luxembourg

Year	Branches	Subsidiaries	Total
1988	24	119	143
1989	27	139	166
1990	31	146	177
1991	36	151	187
1992	62	151	213
1993	66	152	218
1994	70	152	222
1995	70	150	220
1996	70	151	221
1997	70	145	215
1998	69	140	209
1999	69	141	210
2000	63	139	202
2001	61	128	189
2002	55	122	177
2003	50	119	169
2004	46	116	162
2005	43	112	155
2006	42	114	156
2007	43	113	156
2008	41	111	152
2009	39	110	149



Eight banks were withdrawn from the official list during the year:

• BSI Niederlassung Luxemburg	cessation of activities on 30 April 2009
• Dresdner Bank Aktiengesellschaft, succursale de Luxembourg	merger with Commerzbank AG, Zweigniederlassung Luxemburg, on 11 May 2009
• Evli Bank Plc, succursale de Luxembourg	cessation of activities on 29 May 2009
• Glitnir Bank Luxembourg S.A.	voluntary liquidation on 25 June 2009
• Banco Santander Totta S.A., succursale de Luxembourg	cessation of activities on 31 July 2009
• Kaupthing Bank Luxembourg S.A.	dissolution without winding-up on 10 July 2009 (activities taken over by the new Banque Havilland S.A.)
• Unibanco - União de Bancos Brasileiros (Luxembourg) S.A.	merger with Banco Itaú Europa Luxembourg on 25 August 2009
• BNY Mellon Asset Servicing B.V., Luxembourg Branch	cessation of activities on 30 September 2009 (transfer towards The Bank of New York SA/NV, Bruxelles)

Five new banks started their activities in 2009:

• Banque Havilland S.A.	10 July 2009
• Fortis Prime Fund Solutions Bank (Ireland) Ltd., Luxembourg branch	1 September 2009
• The Bank of New York Mellon SA/NV, Luxembourg Branch	1 October 2009
• State Street Bank GmbH, Zweigniederlassung Luxemburg	8 October 2009
• RBS Global Banking (Luxembourg) S.A.	4 December 2009

Banque Havilland S.A., owned by the British Rowland family, took over the private banking activities of former Kaupthing Bank Luxembourg S.A. in order to develop that activity.

Fortis Prime Fund Solutions Bank (Ireland) Ltd, Luxembourg branch, is a branch under Irish law which is part of the Fortis Bank Nederland group. Its main activity is that of depositary bank for UCIs.

The Bank of New York Mellon SA/NV, succursale de Luxembourg, was opened within the framework of the reorganisation of The Bank of New York Mellon group. Indeed, the Dutch subsidiary of the group which had a branch in Luxembourg was taken over by the Belgian arm and the activities of its branch were rehoused in a new branch created by the Belgian arm. The branch's main activity is that of depositary bank for UCIs.

State Street Bank GmbH, Zweigniederlassung Luxemburg, is a branch of the German subsidiary of the State Street group and performs liquid assets activities for institutional customers.

RBS Global Banking (Luxembourg) S.A. results from the scission of ABN AMRO Bank Luxembourg S.A. the corporate banking activities of which it has taken over. It belongs to the Royal Bank of Scotland group.

The following six credit institutions changed their name in 2009:

Former corporate name	New corporate name (date of change)
CREDIT SUISSE Luxembourg Branch	CREDIT SUISSE AG Luxembourg Branch (17 Feburary 2009)
LRP Landesbank Rheinland-Pfalz, Niederlassung Luxemburg	Landesbank Baden-Württemberg Luxemburg Branch (4 May 2009)
Commerzbank AG, Zweigniederlassung Luxemburg	Commerzbank AG, Filiale Luxemburg (11 May 2009)
The Bank of New York (Luxembourg) S.A.	The Bank of New York Mellon (Luxembourg) S.A. (29 May 2009)
HVB Banque Luxembourg S.A.	UniCredit Luxembourg S.A. (1 August 2009)
BGL	BGL BNP Paribas (21 September 2009)

As regards the breakdown of banks according to geographic origin, the CSSF changed its methodology compared with previous years:

- A bank's country of origin is now determined according to the nationality of the ultimate shareholder, even if the latter is non-financial. This led to the re-categorisation of certain banks, mostly those considered as being of Luxembourg origin until now.
- Banks of Belgian and Luxembourg origin are now stated separately instead of together.

Geographical origin of banks

Country	Number
Germany	45
France	15
Italy	11
Switzerland	11
Belgium	9
United Kingdom	8
Sweden	7
United States	6
Japan	5
Luxembourg	5
China	4
Netherlands	4
Israel	3
Brazil	2
Denmark	2
Ireland	2
Norway	2
Portugal	2
Belgium / Canada	1
Canada	1
Greece	1
Liechtenstein	1
Russia	1
Turkey	1
Total	**149**

1.4. Employment development in the banking sector

Following five consecutive years on the up, employment in the Luxembourg banking sector exceeded 27,000 units at the end of 2008. In five years, employment thus increased by 4,676 units (+20.8%). This trend inverted in the last quarter of 2008. Against the background of financial crisis, employment shrank by 785 units (-2.9%) in 2009 to 26,420 people employed by the centre's credit institutions as at 31 December 2009.

At a non-aggregated level, employment in banks is disparate. Thus, 61.1% of credit institutions registered on the official list as at 31 December 2009 maintained or even increased their staff over a year. However, this percentage is worse than in the previous years when it exceeded 70%. Moreover, only 461 jobs were created against 1,246 jobs that were lost within the banks whose staff number decreases.

Economic restructurings and cost cuts due to the financial crisis are responsible for the decrease in employment. Banks that are hiring profit from the current market situation which allows them to fulfil their internal needs in human resources that were difficult to supplement in the past months.

The breakdown of total employment shows that the share of executives in total employment continued to grow, rising from 24.9% to 26.5% in 2009. The female employment rate remained almost unchanged with 45.4% (45.7% in 2008).

Breakdown of the number of employees per bank

	Number of banks					
Number of employees	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
> 1,000	4	4	5	5	5	5
500 to 1,000	2	6	7	9	8	9
400 to 500	6	4	3	2	4	3
300 to 400	8	7	8	10	11	9
200 to 300	8	7	10	9	8	8
100 to 200	19	20	18	18	16	18
50 to 100	21	18	18	21	20	20
< 50	94	89	87	82	80	77
Total	**162**	**155**	**156**	**156**	**152**	**149**

1.5. Development of balance sheets and profit and loss accounts

1.5.1. Balance sheet total of credit institutions

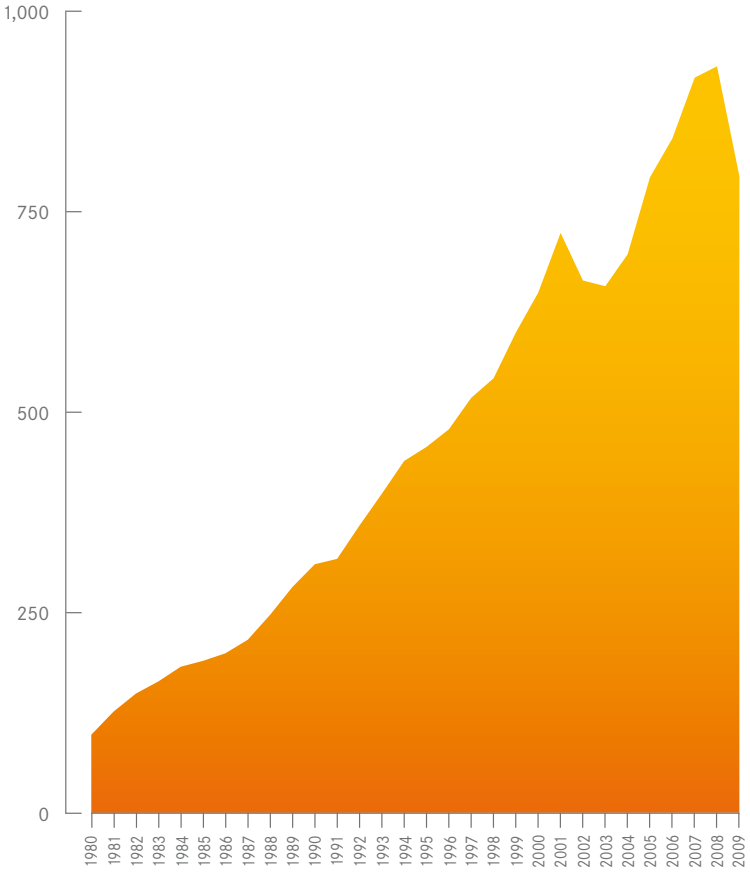
Since the peek of the financial crisis in the fourth quarter 2008, credit institutions sought to adapt and consolidate the structure of their balance sheets. In Luxembourg, these efforts resulted, in particular, in a significant drop in the balance sheet total. A fifth of the Luxembourg balance sheet total melted away between October 2008 and October 2009. Since then, the balance sheet total rose slightly to EUR 792.6 billion as at 31 December 2009, i.e. to almost the same level as in December 2005.

Situation of employment in credit institutions

	Total		Management			Office staff			Technical staff			Total staff		
	Luxbg.	Foreigners	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total
1995	8,170	10,113	2,533	451	2,984	7,318	7,813	15,131	49	119	168	9,900	8,383	18,283
1996	8,113	10,469	2,658	490	3,148	7,476	7,809	15,285	48	101	149	10,182	8,400	18,582
1997	8,003	11,086	2,765	547	3,312	7,631	8,013	15,644	44	89	133	10,440	8,649	19,089
1998	7,829	12,005	2,900	577	3,477	7,846	8,377	16,223	47	87	134	10,793	9,041	19,834
1999	7,797	13,400	3,119	670	3,789	8,362	8,961	17,323	34	51	85	11,515	9,682	21,197
2000	7,836	15,232	3,371	783	4,154	9,030	9,801	18,831	35	48	83	12,436	10,632	23,068
2001	7,713	16,148	3,581	917	4,498	9,222	10,046	19,268	33	62	95	12,836	11,025	23,861
2002	7,402	15,898	3,654	977	4,631	8,941	9,657	18,598	25	46	71	12,620	10,680	23,300
2003	7,117	15,412	3,720	1,049	4,769	8,486	9,211	17,691	23	40	63	12,229	10,300	22,529
2004	7,001	15,553	3,801	1,111	4,912	8,451	9,138	17,589	19	34	53	12,271	10,283	22,554
2005	6,822	16,405	3,948	1,183	5,131	8,641	9,397	18,038	20	38	58	12,609	10,618	23,227
2006	6,840	17,912	4,280	1,294	5,574	9,153	9,974	19,127	19	32	51	13,452	11,300	24,752
2007	6,962	19,177	4,669	1,475	6,144	9,525	10,407	19,932	32	31	63	14,226	11,913	26,139
2008	6,898	20,307	5,101	1,672	6,773	9,658	10,729	20,387	15	30	45	14,774	12,431	27,205
2009	6,599	19,821	5,221	1,781	7,002	9,184	10,199	19,383	15	20	35	14,420	12,000	26,420

Development in the balance sheet total of credit institutions – in billion EUR

1980	97.10
1981	125.95
1982	148.41
1983	163.41
1984	181.73
1985	189.09
1986	198.49
1987	215.32
1988	246.36
1989	281.04
1990	309.37
1991	316.09
1992	357.56
1993	397.15
1994	438.01
1995	455.47
1996	477.37
1997	516.59
1998	540.89
1999	598.01
2000	647.63
2001	721.98
2002	662.70
2003	655.60
2004	695.36
2005	791.25
2006	839.57
2007	915.34
2008	929.45
2009[1]	**792.64**



The drop in the balance sheets is a general trend which concerned two out of three banks in Luxembourg in 2009. It affects primarily subsidiaries and branches of foreign banking groups, which, out of prudence or within the context of a public support plan, consolidated their solvency and liquidity by decreasing the risks incurred. As for the remaining third of banks that avoided the said phenomenon, the rise in the balance sheet over a year came close to EUR 52 billion, spread mainly over a few operators.

1.5.2. Development of the structure of the aggregate balance sheet

As regards the main items on the **assets** side, the fall in annual terms was the strongest regarding the exposures on credit institutions and central banks. Only debt securities issued by central administrations and, foremost, retail claims were not affected by the downward trend.

The economic downturn comes generally with a slowdown in financial intermediation activities of credit institutions. The central role that Luxembourg banks played in collecting and redistributing liquidities on an international level results, in this context, in a reduction of their interbank transactions. In 2009, **loans and advances to credit institutions** thus fell by EUR 72.7 billion (-17%). Besides this indirect intermediation role, the banks of the financial centre maintain a credit activity that amounted to EUR 173.1 billion as at 31 December 2009. These **loans and advances to customers** follow the downward trend of the balance sheet total, even though their rate of decline is slower (-9.8% over a year) and the overall drop conceals major disparities. Thus, retail loans and advances rose by EUR 1.8 billion over a year (+5.6%), while corporate loans dropped by EUR 16.9 billion (-11.9%).

Loans and advances to central banks and central governments decreased by 51.9% over a year. This remarkable development needs to be put in relation with the exceptionally high level reached at the end of 2008 where, following the suspicion that took hold of the financial markets, many banks turned to «safe» counterparties to invest their liquidities. With the slow resurgence of interbank markets in the first quarter of 2009, this situation gradually recovered. At the end of 2009, loans and advances to central banks and central governments found back to their historical pre-crisis levels.

[1] Provisional figure.

Fixed income portfolios, which represent almost a fourth of banking business, slightly decreased (-3% over a year). Their breakdown remains almost unchanged in terms of counterparties: 28% of exposures to central governments, 20% to companies and 52% to credit institutions and financial institutions. It should be noted that debt securities of central governments went against the tide, increasing by EUR 2.6 billion to EUR 53.2 billion as at 31 December 2009.

As regards the structure of the aggregated balance sheet, the aforementioned developments reduced the part of loans and advances to central banks and central governments, as well as loans and advances to credit institutions for the benefit of loans and advances to customers and fixed-income securities.

Aggregated balance sheet total – in million EUR

ASSETS	2008	2009 (*)	Variation	LIABILITIES	2008	2009 (*)	Variation
Loans and advances to central banks and central governments	54,940	26,453	-51.9%	Amounts owed to central banks	47,045	18,627	-60.4%
Loans and advances to credit institutions	427,841	355,187	-17.0%	Amounts owed to credit institutions	429,577	347,937	-19.0%
Loans and advances to customers	191,828	173,121	-9.8%	Amounts owed to customers	278,596	254,292	-8.7%
Financial assets held for trading	21,992	12,900	-41.3%	Amounts owed represented by securities	77,557	81,139	4.6%
Fixed-income securities	198,223	192,320	-3.0%	Liabilities (other than deposits) held for trading	21,595	13,046	-39.6%
Variable-yield securities	19,188	16,218	-15.5%	Provisions	6,000	5,823	-2.9%
Fixed assets and other assets	15,441	16,442	6.5%	Subordinated debts	14,682	10,877	-25.9%
				Other liabilities	15,762	15,448	-2.0%
				Equities	38,640	45,454	17.6%
Total	**929,454**	**792,642**	**-14.7%**	**Total**	**929,454**	**792,642**	**-14.7%**

(*) Preliminary figures

Owing to the decrease in balance sheet assets, banks need less refinancing on the liabilities side. At the same time, liabilities decrease naturally with the economic and financial crisis which made private wealth shrink and weighed on companies' liquidities. Moreover, the fall in interest rates and a re-emerging taste for risk made investors turn to other reinvestments than bank deposits.

Following these developments, receipt of repayable funds, in particular at credit institutions, recorded a strong fall as reflected by the 19% decline over a year of **amounts owed to credit institutions**. Despite this fall, interbank refinancing, representing 43.9% of liabilities, remains the main refinancing method of Luxembourg banks. It is made, as in the past, mainly via intra-group transactions. As regards **amounts owed to customers**, the drop is less strong (-8.7% over a year). These debts amounted to EUR 254.3 billion as at 31 December 2009, representing 32% of the global refinancing of the financial centre's banks. The volume of amounts owed to customers still allows the Luxembourg financial sector to easily refinance its loans and advances to customers.

Amounts owed to central banks dropped by 60.4% over a year. This fall mainly concerns about twenty banks which, in the last quarter of 2008, had noticeably increased their refinancing with central banks. With the financial markets recovery in the first quarter of 2009, these banks have gradually reduced their amounts owed to central banks. The relative weight of the amounts owed to central banks in the balance sheet's structure reached 2.3% as at 31 December 2009, a historically low level.

Structure of the balance sheet

ASSETS	2008	2009 (*)	LIABILITIES	2008	2009 (*)
Loans and advances to central banks and central governments	5.91%	3.34%	Amounts owed to central banks	5.06%	2.35%
Loans and advances to credit institutions	46.03%	44.81%	Amounts owed to credit institutions	46.22%	43.90%
Loans and advances to customers	20.64%	21.84%	Amounts owed to customers	29.97%	32.08%
Financial assets held for trading	2.37%	1.63%	Amounts owed represented by securities	8.34%	10.24%
Fixed-income securities	21.33%	24.26%	Liabilities (other than deposits) held for trading	2.32%	1.65%
Variable-yield securities	2.06%	2.05%	Provisions	0.65%	0.73%
Fixed assets and other assets	1.66%	2.07%	Subordinated debts	1.58%	1.37%
			Other liabilities	1.70%	1.95%
			Equities	4.16%	5.73%
Total	**100.00%**	**100.00%**	**Total**	**100.00%**	**100.00%**

(*) Preliminary figures

1.5.3. Use of derivative financial instruments by credit institutions

The banks of the financial centre used derivatives for a total nominal amount of EUR 647 billion in 2009 against EUR 826 billion in 2008. This fall takes place in the context of the decline of balance sheet totals which led to a decrease on hedging operations through derivative instruments. The net value of the derivative instruments market, included in the balance sheet items according to the IFRS standards, represented liabilities of EUR 4.7 billion as at 31 December 2009.

Use of diverse derivative financial instruments by credit institutions

Notional amounts *(in billion EUR)*	2008	2009 (*)	Variation		Structure	
			in volume	in %	in volume	en %
Transactions related to interest rate	**471.8**	**286.1**	**-185.6**	**-39%**	**57%**	**44%**
of which: options	13.3	9.0	-4.3	-32%	3%	3%
of which: interest rate swaps	444.5	266.4	-178.1	-40%	94%	93%
of which: future or forward rate agreements (FRA)	4.3	1.1	-3.2	-75%	1%	0%
of which: interest rate futures	9.7	9.7	0.0	0%	2%	3%
Transactions related to title deeds	**21.5**	**15.9**	**-5.6**	**-26%**	**3%**	**2%**
of which: futures	11.9	9.0	-2.8	-24%	55%	57%
of which: options	9.7	6.9	-2.8	-29%	45%	43%
Transactions related to exchange rates	**332.7**	**345.2**	**12.5**	**4%**	**40%**	**53%**
of which: forward foreign exchange transactions	273.0	280.0	7.0	3%	82%	81%
of which: cross-currency IRS	41.1	54.9	13.8	34%	12%	16%
of which: options	18.6	10.3	-8.3	-45%	6%	3%
Total	**826.0**	**647.3**	**-178.8**	**-22%**	**100%**	**100%**

(*) Preliminary figures

1.5.4. Off-balance sheet

As at 31 December 2009, the incidental exposure of the Luxembourg financial sector through loan commitments and guarantees given amounted to EUR 125,480 million. This exposure increased by 4.3% over a year. Credit lines and guarantees received rose by 31.4% to EUR 84,664 million as at 31 December 2009.

As regards assets deposited by customers, the volume in the off-balance sheet has largely followed the trend of the financial markets. The “other assets deposited”, comprising notably assets deposited by private customers, increased by 7.4% over a year. Given the level of interest rates, there has been a certain shift from bank deposits to financial instruments.

Assets deposited by customers as in the off-balance sheet

(in billion EUR)	2008	2009 (*)	Variation
Assets deposited by UCIs	1,459.4	1,830.0	25.4%
Assets deposited by clearing or settlement institutions	1,162.2	1,277.2	9.9%
Assets deposited by other professionals acting in the financial markets	6,361.5	6,072.2	-4.5%
Other deposited assets	268.0	287.8	7.4%

(*) Preliminary figures

1.6. Development in the profit and loss account

The profit and loss account of Luxembourg banks recorded net results of EUR 2,740 million as at 31 December 2009. This figure represents a EUR 2,522 million increase compared to 2008 which, against the background of the economic and financial crisis, had led to a historically low net result. Despite the remarkable progress of the net profit compared to 2008, the net result of the financial year 2009 remains quite below the extraordinary profits of the years 2005-2007.

The consequences of the economic and financial crisis doubly marks the 2009 profit and loss account:

- the fall in the activity over a year, as measured by the balance sheet total and the assets under management, makes the management commissions and interest income fall similarly;
- the rise in financial values since their lowest level increases the value of the securities valued at market price, thereby largely offsetting the losses recorded in 2008, resulting in a remarkable rise in other net income and, above all, a marked drop in the gross creation of provisions.

Development in the profit and loss account – in million EUR

	2008	Relative share	2009 (*)	Relative share	Variation 2008/2009	
					in volume	in %
Interest-rate margin	7,298	70%	6,511	62%	-787	-10.8%
Net commissions received	3,644	35%	3,157	30%	-487	-13.4%
Other net income	-505	-5%	873	8%	1,378	272.9%
Banking income	**10,437**	**100%**	**10,541**	**100%**	**104**	**1.0%**
General expenses	-4,560	44%	-4,447	42%	-113	-2.5%
of which: staff costs	*-2,461*	*24%*	*-2,458*	*23%*	*-2*	*-0.1%*
of which: general administrative expenses	*-2,099*	*20%*	*-1,988*	*19%*	*-111*	*-5.3%*
Result before depreciation	**5,877**	**56%**	**6,094**	**58%**	**217**	**3.7%**
Net depreciation	-5,399	52%	-2,592	25%	-2,807	-52.0%
Taxes	-259	2%	-762	7%	502	193.6%
Net result for the financial year	**218**	**2%**	**2,740**	**26%**	**2,522**	**1,154.5%**

(*) Preliminary figures

The **interest-rate margin**, which amounted to EUR 6,511 million, fell by 10.8% over a year. This development reflects the dividend income which was cut in half. These dividends were particularly high in 2008 due to the very good results recorded in 2007. The “pure” interest-rate margin (dividend income excluded) kept up the high 2008 level. But, against the background of less favourable market conditions and weaker balance sheet totals, this was only the case for a third of the financial centre’s banks. The net interest income of two out of three banks fell over a year.

Net commissions received, which represent 30% of income in the Luxembourg financial sector, dropped by 13.4% on a yearly comparison. This decline results from the financial crisis and the simultaneous fall in stock market values, which reduced the assets under management used as basis for the calculation of management fees and which discouraged stock exchange transactions generating brokerage commissions. Indeed, the first three quarters of 2008 were still positive as the financial crisis only increased in intensity as from 15 September 2008. Commission income dropped for activities linked to investment funds (-19.2%) and management functions (-17.1%). Credit is the only activity that avoided the downward trend (+4.7%).

Other net income, which generally closely follows the development in financial markets, increased by EUR 1,378 million, mainly due to the fair value changes of securities held by banks. In 2008, the overall decline of financial markets negatively affected the value of these securities as shown by the accounting loss of EUR 505 million recorded in other net income as at 31 December 2008. Since then, the risk premiums requested by investors were lowered, contributing to the rise in these securities’ market value and other net income recorded a surplus of EUR 873 million for 2009.

The whole operating income, as measured by the **banking income** amounted to EUR 10,541 million. Its 1% rise over a year was generated against the background of a sharp increase in other net income. In 2009, this highly volatile income offset the downward trend of recurring income of interests and commissions.

Gross profit before provisions and taxes increased by 3.7% over a year, given the 2.5% decrease in general expenses.

Net creation of provisions, which mainly represents the impairment for non-trading book assets, fell by EUR 2,807 million compared to 31 December 2008. While value re-adjustments kept up the 2008 level, the new creation of provisions massively declined compared to 31 December 2008. At that date, impairment caused by the crisis exceeded EUR 6 billion. With the stabilisation of the financial markets in 2009, this level of additional provisions was not required anymore.

Tax charges, whose amount recorded in the 2009 profit and loss account mainly concerns taxes due for payment, amounted to EUR 762 million[2]. It slightly increased compared to the real tax charge estimated at EUR 732 million as at 31 December 2008.

Overall, the above indicated factors taken as a whole made **net income** increase by EUR 2,522 million. The sharp rise of the aggregated net result hides great differences in performance by the banks of the financial centre. 47% of banks recorded net results which, as at 31 December 2009, declined compared to the end of 2008. The number of banks at loss decreased by a third to 22 entities.

Long-term development of profit and loss account – in million EUR

	2001	2002	2003	2004	2005	2006	2007	2008	2009*
Interest-rate margin	4,383	4,141	4,080	3,913	3,905	4,830	6,002	7,298	6,511
Net commissions received	2,793	2,615	2,533	2,771	3,209	3,674	4,010	3,644	3,157
Other net income	672	1,258	942	734	1,140	2,296	964	-505	873
Banking income	**7,848**	**8,014**	**7,554**	**7,418**	**8,255**	**10,800**	**10,976**	**10,437**	**10,541**
General expenses	-3,624	-3,490	-3,385	-3,461	-3,693	-3,981	-4,420	-4,560	-4,447
of which: staff costs	*-1,759*	*-1,809*	*-1,752*	*-1,798*	*-1,945*	*-2,160*	*-2,372*	*-2,461*	*-2,458*
of which: general administrative expenses	*-1,866*	*-1,681*	*-1,632*	*-1,663*	*-1,748*	*-1,821*	*-2,048*	*-2,099*	*-1,988*
Result before depreciation	**4,224**	**4,524**	**4,170**	**3,957**	**4,562**	**6,819**	**6,556**	**5,877**	**6,094**
Net depreciation	-536	-1,166	-637	-344	-296	-305	-1,038	-5,399	-2,592
Taxes	-826	-638	-658	-746	-768	-843	-780	-259[3]	-762
Net result for the financial year	**2,862**	**2,720**	**2,874**	**2,866**	**3,498**	**5,671**	**4,739**	**218**	**2,740**

(*) Preliminary figures

Development of certain indicators of the profit and loss account per employee

(in million EUR)	2008	2009*
Banking income / employee	0.384	0.399
Staff costs / employee	0.090	0.093

(*) Preliminary figures

[2] The difference between the real tax charge estimated at EUR 732 million and the tax charge of EUR 259 results from the possibility offered by the IFRS standards to activate future tax charges by crediting the tax charges account. By removing these positive tax expenses, mainly recorded by the six banks reporting important losses, a real tax charge of EUR 732 million remains for 2008.

[3] Please refer to footnote No. 2.

1.7. Development in own funds and in the solvency ratio

1.7.1. Number of banks required to meet a solvency ratio

As at 31 December 2009, the number of banks required to meet a non-consolidated solvency ratio stood at 111. Among those banks, 96 carry out limited trading activities, and are therefore authorised to calculate a simplified ratio. Actual trading activities remain confined to a limited number of banks (15 entities). Among the 31 banks that also calculate a consolidated solvency ratio, eleven are required to calculate an integrated ratio.

Number of banks required to meet a solvency ratio	Integrated ratio		Simplified ratio		Total	
	2008	2009	2008	2009	2008	2009
Non-consolidated	18	15	94	96	112	111
Consolidated	12	11	17	20	29	31

1.7.2. Development of the solvency ratio

The figures below are based on consolidated data for banks required to meet a consolidated solvency ratio. The periodic information is to be provided to the CSSF within a certain time limit which should allow banks to gather and validate the requested information. As these periods are longer for consolidated figures, the consolidated figures as at 31 December 2009 are available only after the cut-off date for the CSSF's annual report. As a consequence, the figures below reflect the situation as at 31 December 2009 except for banks required to calculate a solvency ratio on a consolidated basis. For these banks, the data relate to 30 June 2009, which is the last available reporting.

- **Aggregated solvency ratio**

The aggregated solvency ratio, which measures the volume of own funds compared to the total own funds requirements according to Circular CSSF 06/273, reached 17.5% as at 31 December 2009 and largely exceeds the minimum threshold of 8% required under the existing prudential regulations.

This ratio, which amounted to 14.3% at the end of 2008, increased considerably because of the rise in own funds (+15.7%) and the fall in capital requirements (-5.4%) over a year. The Tier 1 ratio, whose numerator is merely composed of core capital (Tier 1), rises from 11.9% at the end of 2008 to 15.1% as at 31 December 2009.

- **Own funds**

Aggregated own funds, eligible for the purpose of complying with prudential standards in terms of solvency, amounted to EUR 44,151 million as at 31 December 2009. Their almost EUR 6 billion increase is a result of the sizeable strengthening of original own funds (Tier 1) which appreciated by EUR 6,431 million (+20.3%). The quality of aggregated own funds is positively affected, the proportion of original own funds (Tier 1) rising from 83.1% to 86.4% at the end of 2009. At that date, additional own funds (Tier 2) and sub-additional own funds (Tier 3) represented 13.7% and 0.04%.

As regards the components of Tier 1, paid-up capital and share premium rose significantly by EUR 4.7 billion (+21.3%). This rise is half due to the recapitalisation operated by the Luxembourg State for former Fortis Banque Luxembourg S.A..

Own funds *(in million EUR)*

Numerator	2008	2009
Original own funds	*34,808.9*	*41,864.1*
Paid-up capital	12,876.4	14,234.5
Silent participation (*Stille Beteiligung*)	1,417.2	1,640.1
Share premium account	3,180.0	6,556.8
Reserves (including funds for general banking risks)	18,188.7	20,245.5
Prudential filters	-915.5	-618.2
Gains and losses brought forward for the financial year	-216.0	-389.6
Minority interests	278.2	195.0
Items to be deducted from original own funds	*-3,104.0*	*-3,728.2*
Own shares	-1.3	-1.7
Intangible assets	-1,534.0	-1,929.9
Other deductions from original own funds	-1,568.6	-1,796.6
ORIGINAL OWN FUNDS (Tier 1)	**31,704.9**	**38,135.9**
Additional own funds before capping	*7,686.9*	*7,243.6*
Upper Tier 2	3,845.6	3,652.9
Lower Tier 2: Lower Tier 2 subordinated debt instruments and cumulative preference shares with fixed maturity	3,841.3	3,590.7
Additional own funds after capping	*7,280.8*	*7,082.8*
Deductions from additional own funds	-979.4	-1,001.5
ADDITIONAL OWN FUNDS after capping and after deductions (Tier 2)	**6,301.3**	**6,081.3**
Sub-additional own funds before capping	463.2	250.2
SUB-ADDITIONAL OWN FUNDS after capping (Tier 3)	**274.5**	**18.5**
Own funds before deductions (T1 + T2 + T3)	*38,280.7*	*44,235.7*
Deductions from the total of own funds	-123.2	-84.9
ELIGIBLE OWN FUNDS (numerator of integrated ratio/simplified ratio)	**38,157.5**	**44,150.8**

• Capital requirements

Overall capital requirement fell by EUR 1,159 million (-5.4%). This decrease results, on the one hand, from the active policy pursued by banks with respect to reducing their total balance sheet and their risk assets and, on the other hand, from the mechanic application of “floor levels” laid down by Basel II standards.

Among the risk assets, credit risk exposures still mobilise the most important part of capital requirements. Their proportion in total requirement amounted to 85% as at 31 December 2009. The drop in the total balance sheet and credit risk reduced the capital requirements due by EUR 875 million (-4.9%). Owing to the activities carried on in the financial centre, the other capital requirements remain marginal, except for the requirements to cover operational risk that now represent 9.4% of total capital requirement.

Basel II standards were accompanied by transitional measures that provided in particular for the application of “floor levels”. These levels limit the prudential recognition of the reducing effects of capital requirements that could result from the implementation of advanced measurement methods. During the first year of implementation, total capital requirement according to Basel II could thus not fall below 90% of total capital requirements calculated according to Basel I. As this threshold was reduced to 80% in 2009, additional capital requirements considering these floors fell by EUR 725.2 million. Given the financial crisis and the regulatory changes in progress, the Basel Committee on banking supervision extended the floor level regime on 13 July 2009. The 80% threshold will thus remain applicable beyond 31 December 2009.

Capital requirements *(in million EUR)*

Denominator		
TOTAL CAPITAL ADEQUACY REQUIREMENT	**21,327.7**	**20,168.5**
Requirement to cover credit risk	18,027.1	17,151.3
Requirement to cover foreign exchange risk	75.8	131.6
Requirement to cover interest rate risk	106.5	77.4
Requirement to cover the risk in relation to equities	18.2	23.7
Requirement to cover the risk in relation to commodities	2.3	3.1
Requirement according to internal models	21.3	37.0
Requirement to cover settlement/delivery risk	0.3	0.6
Requirement to cover operational risk	1,501.5	1,894.5
Other capital adequacy requirements (amongst others exceeding large exposures, threshold, etc.)	1,574.7	849.4

RATIO		
Solvency ratio (base 8%) [4]	14.3%	17.5%
Solvency ratio (base 100%) [5]	178.9%	218.9%
Tier 1 Ratio (base 8%) [6]	11.9%	15.1%
Tier 1 Ratio (base 100%) [7]	148.7%	189.1%

As at 31 December 2009, twenty banks had obtained the authorisation to use an advanced approach regarding credit risk according to Basel II, twelve of which have used advanced methods with own estimates of probabilities of default and default rates. These twenty banks represent 46% of the aggregated balance sheet.

As regards operational risks, twelve banks have been authorised to use advanced measurement approaches. The other banks used the basic indicator approach (65 banks) and the standardised method (34 banks) to determine the capital requirements.

Only two banks have been authorised to use an internal model to determine capital requirements for market risks, which are of a lesser importance for the financial centre.

Basel II calculation methods implemented by the banks of the financial centre

Credit risk	
Standardised Approach	91
Internal Ratings Based Approach	20
including foundation approach	*8*
including advanced approach	*12*
Operational risk	
Basic Indicator Approach	65
Standardised Approach	34
Advanced Measurement Approaches	12

[4] Eligible own funds / (Total capital adequacy requirement * 12.5)

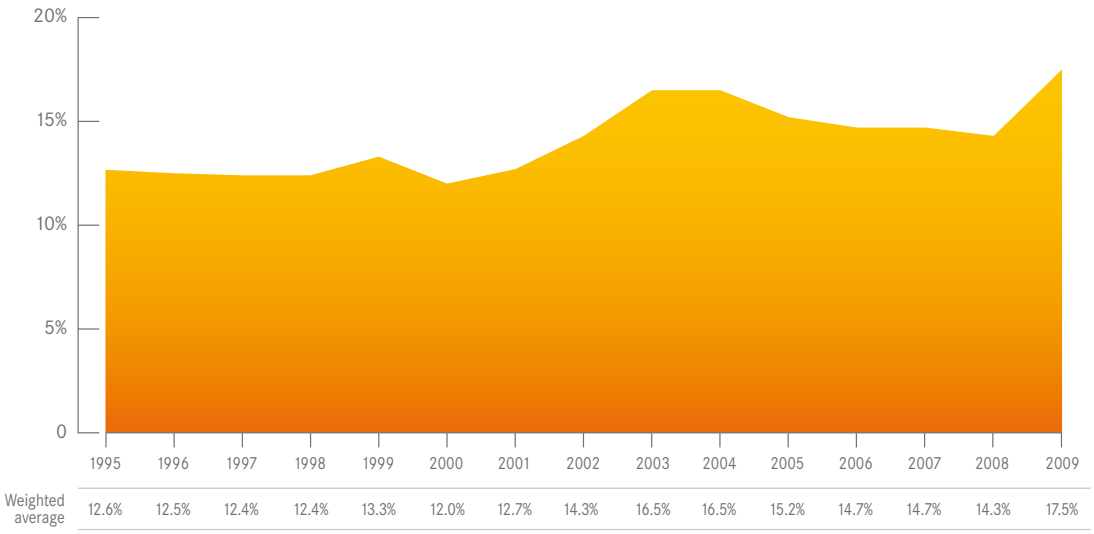
[5] Eligible own funds / Total capital adequacy requirement

[6] (Original own funds - Items to be deducted from original own funds) / (Capital adequacy requirement * 12.5)

[7] (Original own funds - Items to be deducted from original own funds) / Capital adequacy requirement

The following graph illustrates the development in the solvency ratio (base 8%) since 1995. The weighted average is the ratio of total eligible own funds in the financial centre and total weighted risks. This average takes into account credit institutions according to the volume and risk level of their business.

Development in the solvency ratio (base 8%)



1.7.3. Development in the solvency ratio distribution (base 8%)

The high level of capitalisation, reflected by the aggregated solvency ratio, also appears at the disaggregated level. A limited number of banks have a ratio situated within the weak capitalisation bands, i.e. below 10%. As at 31 December 2009, these banks represent 5.4% of the population. The improvement of the aggregated solvency ratio on an annual basis indeed results in a decrease of less capitalised banks from 16 to 6. At the other extreme, in the high capitalisation bands, the percentage of banks whose ratio exceeds 15% increased from 49.1% to 70.3% year-on-year.

Distribution of the solvency ratio (base 8%)

	2008		2009	
Ratio	Number of banks	as % of total	Number of banks	as % of total
<8%	1	1%	0	0%
8%-9%	5	4%	2	2%
9%-10%	10	9%	4	4%
10%-11%	8	7%	3	3%
11%-12%	6	5%	5	5%
12%-13%	11	10%	6	5%
13%-14%	9	8%	7	6%
14%-15%	7	6%	6	5%
15%-20%	24	21%	29	26%
>20%	31	28%	49	44%
Total	**112**	**100%**	**111**	**100%**

1.8. International presence of Luxembourg banks

Freedom to provide services within the EU/EEA as at 31 December 2009

Country	Luxembourg banks providing services in the EU/EEA	EU/EEA banks providing services in Luxembourg
Austria	35	25
Belgium	57	22
Bulgaria	15	-
Cyprus	18	3
Czech Republic	19	-
Denmark	38	8
Estonia	18	1
Finland	34	9
France	62	69
Germany	61	48
Gibraltar	1	5
Greece	35	2
Hungary	20	6
Iceland	4	2
Ireland	33	30
Italy	48	10
Latvia	18	-
Liechtenstein	4	2
Lithuania	18	1
Malta	16	5
Netherlands	50	30
Norway	14	2
Poland	24	1
Portugal	35	8
Romania	18	-
Slovakia	19	1
Slovenia	18	-
Spain	50	7
Sweden	34	6
United Kingdom	46	92
Total number of notifications	**862**	**395**
Total number of banks concerned	**75**	**395**

Branches established in the EU/EEA as at 31 December 2009

Country	Luxembourg branches established in the EU/EEA	Branches of EU/EEA banks established in Luxembourg
Austria	2	-
Belgium	4	1
France	1	4
Germany	3	16
Greece	1	-
Ireland	3	2
Italy	3	1
Netherlands	2	1
Poland	2	-
Portugal	2	1
Spain	5	-
Sweden	1	1
United Kingdom	2	4
Total	**33**	**31**

1.9. Banks issuing covered bonds *(Banques d'émission de lettres de gages, Pfandbriefbanken)*

Banks issuing covered bonds continued to suffer from the financial crisis, which hindered them from launching new important issues. They thus mostly concentrated on making more moderate issues, or even on managing only their existing cover assets.

Owing to the difficulties on the markets, the banks issuing covered bonds recorded a decline in their balance sheet total, amounting to only EUR 48.5 billion as at 31 December 2009 (against EUR 52.8 billion at the end of 2008), as well as in the public sector covered bonds issued, which amounted to EUR 31.1 billion at the end of 2009 (against EUR 34.1 billion at the end of 2008).

Issues of covered bonds are guaranteed by ordinary cover assets and by substitute cover assets. As at 31 December 2009, public sector covered bonds in circulation benefited from an over-collateralisation (nominal value) of EUR 9.3 billion. Over-collateralisation calculated according to the current value amounted to EUR 3.8 billion.

The ordinary cover assets of public sector mortgage bonds, for the five issuing banks, break down as follows:

- claims on or guaranteed by public organisations: EUR 10.6 billion;
- bonds issued by public organisations: EUR 13.2 billion;
- public sector mortgage bonds of other issuers: EUR 8.1 billion;
- derivative transactions: EUR 5.5 billion.

Besides these ordinary cover assets, the banks used substitute cover assets to cover their public sector covered bonds amounting to EUR 2.9 billion as at 31 December 2009.

Owing to the faultless quality of investments of these specialised banks and the scale of over-collateralisation in relation to the mortgage bonds issued, public sector mortgage bonds continue to receive an AAA rating from rating agencies.

Finally it should be noted that the activities of Luxembourg banks issuing mortgage bonds are currently limited to the issue of public sector covered bonds, despite the law of 24 October 2008 which modernised the legal framework by allowing to finance certain movable assets (aircrafts, ships, objects relating to railways, etc.) and to refinance them with moveable-property bonds.

2. PRUDENTIAL SUPERVISORY PRACTICE

2.1. Purpose of prudential supervision

It is commonly admitted that the purpose of the prudential supervision of banks is to maintain financial stability and protect the public's savings, i.e. to preserve the non-professional customers' deposits. This purpose is an obligation of means, not of results. Prudential supervision is not an absolute guarantee against banks' bankruptcies involving losses for depositors.

2.2. Monitoring of quantitative standards

In order to ensure financial stability and risk spreading, credit institutions must observe the following quantitative standards:

- evidence of minimum equity capital;
- a maximum ratio between own funds on the one hand and capital requirements on the other;

- limitation of the risk concentration to a single debtor or a group of associated debtors;
- liquidity ratio;
- limitation in qualifying holdings.

The CSSF monitors compliance with these standards and follows the banks' activities by means of a full reporting harmonised at European level. This reporting includes the Financial Reporting (balance sheet, profit and loss account and related detailed tables) and the Common Reporting (detailed calculation of the solvency ratio). In addition, the CSSF requires periodic tables on, among other things, currency positions, large exposures and liquidity.

In 2009, the CSSF did not have to intervene with regard to non-compliance with the capital ratio. The CSSF intervened twice in writing regarding failure to meet the liquidity ratio.

Within the scope of monitoring compliance with large exposure limits, the CSSF intervened 14 times in writing in 2009 (11 times in 2008), notably to inform that the maximum level of large exposures had been exceeded and to request the bank concerned to provide information on the measures it intended to take in order to bring back the commitments within the regulatory limits.

2.3. Monitoring of qualitative standards

The CSSF relies on the following instruments to assess the quality of the banks' organisation:

- analytical reports prepared by the *réviseurs d'entreprises* (statutory auditors);
- management letters and similar reports prepared by the *réviseurs d'entreprises*;
- on-site inspections undertaken by CSSF agents;
- reports prepared by the banks' internal auditors;
- compliance reports;
- ICAAP reports[8].

These reports are analysed according to a methodology laid down in the CSSF's internal procedures. The response of the CSSF depends on the seriousness of the problem raised and whether it is repetitive in nature. It varies from simple monitoring of the problem on the basis of reports, through the preparation of deficiency letters, to convening the bank's management or on-site inspections undertaken by CSSF agents. Where necessary, the CSSF may use its formal powers of injunction and suspension.

During 2009, the CSSF sent 75 deficiency letters to banks based on shortcomings in terms of organisation (77 in 2008).

One of the important lessons of the financial crisis is that prudential supervision must not be limited to verifying compliance with regulations. Banks had to be supported by the State or their payments suspended despite the strict compliance with prudential regulations. Within the process of prudential supervision laid down in Circular CSSF 07/301, the CSSF requires banks to maintain a sound relation between their risk exposures and their capacity to support those risks.

During 2009, the CSSF intervened 18 times in this respect. The major interventions regarded the following aspects:

- The CSSF intervened eight times to require the reduction of exposures on several debtors, including sovereign debtors.
- Six interventions concerned group exposures. In most of the cases, the CSSF required that the group exposure is concentrated within the group's main operational entity.

[8] Please refer to point 2.5.1 below for further information.

2.4. Supervision of the interest rate risk according to Circular CSSF 08/338

Financial intermediation, at the heart of the traditional banking activity, includes the collection of refundable deposits on the liabilities side and granting of credits on the assets side. In general, the duration of assets exceeds that of liabilities. In this case, a rise in interest rates increases the cost of short maturity deposits while fixed-rate assets continue to generate the same level of interest income until their maturity. This results in a decreasing profitability.

In Luxembourg, the diversification of the traditional banking activity, by means of private banking and investment funds services, entails that the interest rate risk is overall less marked. Moreover, the wide range of available interest rate risk cover instruments allows to efficiently reduce this risk. On the other hand, the instruments concerned could be used to take on higher interest rate risk positions.

In order to allow a uniform supervision of interest rate risk (non-trading book), Circular CSSF 08/338 requires banks to submit on a half-yearly basis the results of a stress test to the CSSF. This requirement is in line with an EU requirement laid down in Article 124(5) of Directive 2006/48/EC. The regime concerned, set up by the CSSF in 2008, was the object of the first overall prudential assessments based on the situations as at 31 December 2008 and 30 June 2009.

The CSSF analyses the situation of the non-trading book interest rate risk based on a ratio whose numerator is the result of the simulation of interest rate changes according to Circular CSSF 08/338 and whose denominator is given by regulatory capital. This ratio measures the percentage of own funds mobilised through the (unrealised) value losses resulting from an adverse change in interest rates. According to Article 124(5) of Directive 2006/48/EC, the CSSF must adopt measures when this ratio falls below -20%. Such measures aim to ensure that own funds of an institution remain adequate with respect to its risk situation, which includes in particular non-trading book interest rate risk. It should be borne in mind that the non-trading book interest rate risk is not subject to capital requirement according to Circular CSSF 06/273, as opposed to interest rate risk inherent in trading book portfolio.

The results of the stress test according to Circular CSSF 08/338 as at 31 December 2008 and 30 June 2009 show that the Luxembourg banking sector is only moderately exposed to structural interest rate risk. Indeed, the aforementioned ratio is about -5% on individual basis and -4.4% on consolidated basis. The impact of an immediate 2% rise in overall interest rates would cut the intrinsic value of banks only by about 5% of own funds. In terms of dispersion, 75% of the banks have a ratio greater than or equal to -5%. As regards the consolidated perimeter, the ratio of the remaining 25% of banks is between -10% and -5%. The dispersion of the results is more important in terms of individual perimeter with 14% of banks having a ratio between -10% and -5% and 11% of banks having a ratio lower than -10%. At the end of 2009, the CSSF intervened with two banks in the financial centre whose ratio was lower than the -20% threshold as at 30 June 2009. The CSSF's intervention was limited, at this stage, to requiring those institutions to prove that their overall risk management is sound and prudent.

Additionally, it must be noted that 32 banks use the option provided for in point 10 of Circular CSSF 08/338 which allows them, from a common group risk management point of view, to use interest rate change scenarios provided for by the supervisory authority of the home State of the group head, instead of the scenario specified by the CSSF.

2.5. Implementation of the supervisory review process

The term "supervisory review process" (SRP[9]) refers to the assessments, controls and measures as a whole, implemented by the CSSF in order to assess and preserve the capacity of a credit institution to manage and support the risks it incurs. The SRP's scope goes further than the risks that are regulated explicitly (regulation as regards solvency, liquidity or large exposures). The SRP covers all the risks that may undermine the financial stability of an institution, independent of the origin, nature or regulatory or accounting treatment of these risks.

[9] Supervisory Review Process according to the terminology adopted at European level ("CEBS Guidelines on the Application of the Supervisory Review Process under Pillar 2" of 25 January 2006).

The entry into force of the Basel II rules changed the CSSF's SRP in three ways. Firstly, the SRP now takes into account the internal capital adequacy assessment process (ICAAP) of banks, in particular based on the ICAAP report that banks submit to the CSSF on an annual basis. Furthermore, the SRP's form has been revised in order to establish a recurrent, more formalised and harmonised bank assessment procedure. This assessment procedure involves the allocation of internal rates that reflect the CSSF's assessment of the institution's risk profile and its capacity to support these risks. Finally, the CSSF set up a formal policy concerning specific capital requirements that meets the goal of maintaining a sound proportion between own funds and exposures.

2.5.1. The ICAAP report

Circular CSSF 07/301 (implementation of ICAAP) requires credit institutions to self-assess their capacity to manage and support the risks they incur. The results of this self-assessment must be clearly documented in an "ICAAP report" that the bank's management submits to the board of directors or supervisory body on an annual basis. The CSSF receives a copy of this report and analyses it in the context of SRP.

With the implementation of the Basel II rules on 1 January 2008, the first ICAAP reports were submitted to the CSSF in 2009 based on 2008 year-end figures. The analysis of these reports reveals that the banks have generally made noticeable efforts in terms of ICAAP, but the following attention points and improvable points must be stressed.

Profile of activities

The risks incurred by the banks arise from the business they carry on. In order to enable the members of the board of directors or supervisory body, who are not involved in the daily management of the bank, to decide on the bank's capacity to manage and assume these risks, it is imperative that the ICAAP report contains brief information on the extent, nature and reason of the bank's activities. If not, it will be difficult for these persons to assess the relevance of the risk profile that has been presented in the ICAAP report.

Establishment of the risk profile

ICAAP aims to protect an institution against all risks that could jeopardise its financial stability. Fulfilling this objective will necessarily require a prior and exhaustive analysis of inherent risks to the activities performed. The ICAAP report must briefly indicate in which manner the bank fulfilled this major task, i.e. risk identification, and explicitly mention whether the analysis is comprehensive. It must be added that ICAAP cannot be limited to an analysis perimeter of accounting or regulatory consolidation, if there are otherwise significant risks that would not be reflected therein. This would be the case in particular for risks which, in the bank's balance sheet total, would not leave any direct (service activities, outsourcing) or complete (participations the losses of which could exceed the value of the participation recorded in the financial accounts, letters of intent issued) trace. The bank should at least once a year revise its business activities in the light of the risks they shelter in order to assess if the bank's risk profile has changed by taking on new risks or changing the nature of the risks inherent in the activities already carried on.

Presentation of the risk profile

The ICAAP report must include a risk profile which clearly states the main risks the institution is exposed to. The risk profile is too often lost in a mass of technical details or brief descriptions, the reader ending up with doing the spadework on the ICAAP report in order to extract the essence. Moreover, the risk profile should be detailed enough to allow the reader to assess the effects thereof on the institution's financial stability. Simply stating that the bank bears a material credit risk does not allow readers to form an idea on the specific nature and consequences of this risk. The exact nature of the risk exposures must be stated. Finally, the institutions must ensure to present an articulated and consistent risk profile in their ICAAP report.

Concentration risk

While Circular CSSF 07/301 deliberately insists on concentration risk, ICAAP reports often remain silent on this subject. The ICAAP report should include a brief but clear description of the main concentrations, whichever the nature of the underlying risk. The bank must assess all concentrations that could jeopardise its financial situation. This does not only concern concentrations in credit exposures, but also concentrations of activities on a few major customers, refinancing concentrations on a few counterparties, concentrations in guarantees or outsourcing.

Capacity of the bank to assume its risks

This capacity includes own funds and internal liquidity reserves, as well as risk management and control processes. The ICAAP report must include a clear, relevant and consistent definition of the bank's capacity to assume the risks in order to allow readers to assess the nature and quality. While it is sufficient in the field of the risk management and control process to state salient elements of this processes (credible and exhaustive limits, stringent controls) in a brief manner, the description of own funds and liquidity reserves must be more detailed and motivated. This details are of particular importance for elements of own funds and liquidity reserves (of lesser quality) whose capacity to cover risks is not unconditional, but depends in particular on valuation and market liquidity assumptions. The CSSF is in line with international best practice and the market operators' tendency to critically eye own funds and liquidity whose availability is far from being evident and immediate. The ICAAP report must also precisely identify own funds or liquidity reserves elements, which, by virtue of unrealised losses or operational, accounting or legal links, cannot be used freely to cover the risks.

Clear and prospective affirmations

The ICAAP report, which is the result of a self-assessment exercise, must comprise clear and reasoned conclusions. These conclusions concern firstly the bank's capacity to assume its risks. In general, the institution's management makes a brief statement on the fact that the risks incurred are (or are not) fully supported by the institution's capacity to assume risks, but often omits to motivate its conclusion. Moreover, the management should issue a clear statement whether risk identification was performed with the required diligence, whether the comprehensiveness of risk coverage has been fulfilled and whether the management methods (in particular risk, own funds and liquidity reserves measurement methods) are appropriate. These affirmations must all be shored up. Finally, many ICAAP reports conclude that the risks incurred do not exceed the current management capacity of the bank, while the affirmation should above all concern the bank's capacity to assume the risks in the financial years to come.

Stress tests

The financial crisis showed that risk quantification based on quantitative models, calibrated on historical data, tends to highly underestimate unrealised losses in times of growth. The CSSF expects ICAAP to include a strict stress test programme allowing Luxembourg banks to assess potential losses that could result from their main risks in stress situations, that the results be stated and commented in the ICAAP report and that they be taken into account in the everyday business management, in particular as regards the planning of own funds (requirements) and the fixing of own funds and liquidity buffers. These tests must reflect a situation of severe stress as it might arise in extreme economic and financial situations.

Internal governance in relation to risk

ICAAP reports are often mute on the maximum amount of risk that institutions might tolerate. It is the responsibility of the bank's bodies to explicitly determine a maximum risk tolerance that identifies, through overall limits, the part of the bank's capacity to assume risks that the bank is willing to risk. In accordance with the major Pillar 2 principles, the CSSF expects banks to have adequate own funds and liquidity buffers and not to jeopardise their overall capacity to support risk. Besides these own funds buffers, the CSSF is also attentive to the quality of control (management reporting, internal audit, compliance, risk controlling, etc.). Moreover, the CSSF reminds that, in accordance with sub-chapter II.5 of Circular CSSF 07/301 as amended, the board of administrators or the supervisory body are required to make a statement on the bank's ICAAP. The CSSF expects that this assessment and monitoring exercise performed by the supervisory or administrative body will be considered with the required importance.

Use of the group ICAAP

Luxembourg banks, subsidiaries of a foreign banking group, often benefit from methods, processes and expertise regarding ICAAP that have been implemented at group level. The use of the group's resources is allowed and even encouraged, as long as these resources are appropriate at local level and adequately understood and mastered by the management in Luxembourg. A Luxembourg bank may thus not omit in its ICAAP the risks inherent in its wealth management activities on the pretext that these activities are excluded from the group's ICAAP owing to the non-materiality at consolidated level. Likewise, the Luxembourg bank may not use the group's risk calculation method if this method is not adapted to the local situation or if its managers are not able to assess the meaning, relevance and limits for the Luxembourg bank. This is the case for the use of risk measurements that are not representative of Luxembourg activities, such as diversification effects derived from a risk profile that is materially different from the Luxembourg bank's risk profile.

Economic capital models

While the CSSF accepts the use of advanced measurement methods, it is clear that these measures must be robust, prudent and compliant with the activities really carried on locally. These economic capital models very often base their estimates on purely statistical effects and ignore the characteristics of underlying exposures. This is notably the case for estimates of diversification profits which, too often, ignore operational, legal or market constraints in which these profits might be made.

In 2009, the CSSF exchanged many times views and mails with local banks on these points. The CSSF mainly insisted on the clarity and comprehensiveness of the risk profile's description. The aim is neither to describe the risks theoretically, nor to describe risk management, but to state where the risks are and why the management considers that they are under control. This description must consider all the traditional banking risks, but also, where appropriate, the specific risks of the institution, such as the risk of the depositary bank or the risks induced by using sub-depositaries. The CSSF also emphasized the implementation of strict stress tests and the inclusion in the ICAAP report of clear management affirmations concerning the adequacy of the risk situation and the bank's capacity to assume those risks. The CSSF expects that the 2009 ICAAP reports contain the improvements required in these areas and will continue, through exchanges of views, to enhance the quality of the ICAAP process in the coming years.

2.5.2. Developments regarding SRP

Until 2009, the CSSF's SRP was based on analysing legal reporting tables, observations from long-form reports of the external auditor, as well as on the information received in the context of meetings, specific information requests and on-site inspections. In 2009, the CSSF incorporated new information regarding the implementation of Pillar 2 in its SRP:

- the ICAAP report (Circular CSSF 07/301);
- the results of the stress tests aiming to assess interest rate risk arising from non-trading book activities (Circular CSSF 08/338).

According to CEBS guidelines ("CEBS Guidelines on the Application of the Supervisory Review Process under Pillar 2"), the SRP includes a formalised assessment tool, the Risk Assessment System, which allows managing assessments, summarising conclusions and organising the prudential monitoring of banks. Within the CSSF, the SRP is a permanent monitoring system synthesising at least annually the assessment of a bank in the form of two internal ratings. The first rating assesses the overall situation (quality of internal management and external support factors) and the second one assesses the risk profile (extent and nature of the risks incurred)[10] . In 2009, the CSSF implemented its internal rating system for all Luxembourg incorporated banks, as well as for Luxembourg branches of banks having their registered office outside the European Economic Area. These internal ratings are part of the criteria that determine the application of preventive measures or sanctions provided for in Article 53(2) of the law of 5 April 1993 on the financial sector.

The CSSF closed the first annual assessments according to the new SRP at the end of 2009. The CSSF will discuss the outcome at the beginning of 2010 with the management of the institutions concerned ("structured dialogue"). This will be the case when the conclusions are accompanied by measures provided for in Article 53(2) of the law of 5 April 1993 on the financial sector.

In 2010, the CSSF plans to adapt its formalised assessment tool in the light of the lessons learnt from the first year of use and the developments of prudential practices at an international level. It should be noted in this context that the colleges of supervisors, which consider assessments according to Pillar 2 as more and more important and which, under the influence of CEBS, work and exchange views between national authorities, bring more convergence in the SRP practices.

2.5.3. CSSF policy regarding specific capital requirements (add-ons)

The definition of regulatory capital requirement according to Circular CSSF 06/273, as amended, is that of the risk profile of a bank having a wide range of perfectly diversified international transactions. It goes without saying that this degree of diversification is rarely practised. Moreover, the requirements concerned do not apply to all the risks to which banks might be exposed. Non-trading book interest rate risk is just an example. These considerations are the basis of Pillar 2 of the Basel II framework, whose Principle 3 provides in particular that "supervisory authorities should expect banks to operate above the minimum regulatory capital ratios".

At an international level, the financial crisis proved that the levels of regulatory capital were not sufficient, in particular with respect to extreme losses suffered due to exposures concentrated on certain real estate markets and the high leverage with which many large banking groups operated. Throughout the world, supervisory authorities increasingly use specific requirements (add-ons) for capital as a means to consolidate the financial basis of banks in order to improve adequacy between capital and risk exposures.

Article 53(2) of the law of 5 April 1993 on the financial sector provides that a specific capital requirement in addition to the minimum laid down in Article 56[11] applies to credit institutions in respect of which a negative determination has been made by the CSSF in the context of the supervisory review process (SRP), as the own funds held do not ensure an adequate management and coverage of the risks incurred. In the context of updating its SRP, the CSSF adopted a formal policy of specific capital requirements which is in line with international best practice and which fulfils the objective of maintaining capital that is in proportion to the risks incurred.

[10] Please refer to the description of the internal rating system in Chapter I, point 2.16.2. of the CSSF's Annual Report 2008.

[11] i.e. regulatory capital requirements under Basel II.

The CSSF's policy provides for a specific capital requirement whose extent varies according to the following criteria and indicators:

- representativeness of risk measures (and capital requirements) laid down in Circular CSSF 06/273 with respect to Pillar 1;
- assessments resulting from the internal rating system and SRP;
- results of the stress test on credit risk exposures (migration risk);
- important leverage (ratio capital over assets), lower than 3%;
- regulatory solvency in case of a doubling of risk costs observed in the past.

It should be noted that the CSSF ensures that banks with similar business profile and risk are treated equally (maintaining the level playing field).

Given the medium risk profile of the banking centre, the policy concerned should lead the CSSF to require specific capital requirements from a limited number of banks, in particular from those that have significant credit risk exposures. These specific capital requirements generally correspond to a regulatory ratio between 10% and 12%. Considering the comfortable level of own funds of the banks in general, the CSSF's capital requirements policy should not cause new contributions of capital. Thus, these measures only confirm the capital situations that banks already keep up internally, as a consequence of their own ICAAP.

2.6. Developments regarding liquidity supervision

Overall, the liquidity situation of Luxembourg's banking sector is comfortable. Given their wealth management activities, banks indeed collect sizeable deposits from institutional and private customers. These liabilities allow local banks to ensure their own refinancing, the surplus being invested in securities portfolios or sold through the interbank market to counterparties that are, in general, part of the same group as the bank in Luxembourg.

In the fourth quarter of 2008, at the peak of the financial crisis, investors' distrust paralysed interbank markets and endangered banking groups whose financial soundness was fragile and whose refinancing sources volatile. While the refinancing situation of the majority of banks in Luxembourg was ensured, a few isolated banks had difficulties to refinance their activities. Without exception, these difficulties were linked to the problems encountered by their respective parent companies.

As a reaction to the weaknesses brought out by the crisis in internal governance and liquidity risk management, the Basel Committee on banking supervision and CEBS issued new rules aiming to strengthen the quality of liquidity risk management. These rules were enhanced in 2009 by the release of regulatory proposals aiming to consolidate the liquidity management on a quantitative level. The objective of these quantitative rules is to ensure that banks have permanently adequate amounts and quality of liquidity to fulfil their contractual obligations in the short and medium term.

The CSSF used the publication of Circular CSSF 09/403, which transposes the qualitative recommendations of CEBS and the Basel Committee concerning sound liquidity risk management into national regulations, to require institutions to be in line with best practice in this field and to define the liquidity risk management practices. It is useful to remind in this context that every institution must maintain a local "management capacity" in Luxembourg. This requirement, which remains compatible with the central liquidity management within a banking group, means that the Luxembourg bank's management must have a comprehensive view and understanding of the liquidity situation (current and under stress) and have the necessary local means (human expertise and technical infrastructure, decision and veto rights) to intervene where necessary, in accordance with its responsibility, in order to ensure the sound management of the bank's liquidity in Luxembourg. It should be borne in mind that, in accordance with the spirit of the European single market, the CSSF does not impose ring fencing and is not opposed to a central management by allowing local banks to be exempted from the large exposures regime from the group's point of view, in accordance with the European regulations on large exposures. However, free movement of liquidity may in no way whatsoever be made at the detriment

of the liquidity situation of the bank in Luxembourg. Where a Luxembourg credit institution provides liquidity to its group, it will only do so on the condition that the transaction concerned does not adversely affect the sound risk profile of the bank in Luxembourg. Prohibited intragroup transactions are those that result in risky liquidity transformations (maturity or currency transformations) or substantial counterparty risks (loans to peripheral group entities, which, in extreme situations, could loose the support of the parent company).

The CSSF will keep the table B1.5 "Liquidity ratio" in force until the regulatory proposals relating to the quantitative framework of liquidity management has been finalised at international level. This ratio, which dates back to 1993, is an adequate measure and limitation of the structural liquidity of banks whose activities solely consist in granting credits to companies and households based on the deposits collected from the public. It does not cover all aspects of liquidity risk for other business models. This is the case for contingent liquidity flows (credit and guaranteed commitments) which are not taken into account at present, and for the eligibility of banking bank debt as liquid assets which allows in particular to arbitrage ratio B1.5. At the close of the international discussions, the CSSF will amend table B1.5 to adapt it to best practice at international level.

The review of table B1.5 should be inspired by the rules proposed on 17 December 2009 by the Basel Committee (International framework for liquidity risk measurement, standards and monitoring). The framework concerned provides for the implementation of two regulatory liquidity ratios:

- a medium-term ratio called Net Stable Funding Ratio which is similar to the current ratio B1.5 although adapting it on the two above-mentioned points, and
- a one-month ratio, the Liquidity Coverage Ratio, which obliges banks to hold a liquid assets portfolio allowing to survive for at least 30 days to certain liquidity shocks precisely defined by the regulator. The monthly ratio provides a sort of regulatory floor to the possibilities of internal modelling of the 30 days liquidity as provided for by CEBS in its guidelines published on 9 December 2009 ("Guidelines on Liquidity Buffers & Survival Periods").

The version of the Basel Committee's regime currently under consultation contains certain noticeable restrictions:

- the definition of liquid assets excludes debts and financial (including banking) securities;
- stress hypothesis involving complete lack of deposit renewal of financial counterparties (including interbank) at maturity;
- ineligibility of financial counterparty deposits (including fiduciary deposits and cash deposited by investment funds) with a less than a year maturity to refinance assets;
- assimilation of intragroup liquidity to wholesale (it should be noted however that the issue of applying standards on a solo or sub-consolidated basis remains open).

Since its inception in 1999, only the CSSF was responsible for the prudential supervision of banks in Luxembourg. With the law of 24 October 2008 improving the legislative framework of the Luxembourg financial centre, the legislator gave, with the approval of the professional representatives of the centre, the responsibility of supervising the banks' liquidity situation to the Luxembourg Central Bank (BCL) without withdrawing that competence from the CSSF. The legislator thus provided for a parallel control of liquidity by virtue of the complementarity of the specific competences and interests of the CSSF and the BCL. As far as the responsibility of this supervision cannot be delegated, certain cross-checks are inevitable. However, the legislator took care to require both institutions to ensure that the double attribution of liquidity supervision does not lead to "an unnecessary increment of the charges imposed on market operators". In practice, this requirement materialises through exchanges of information, prior consultations to any publication of regulations, as well as on-site inspections comprising, in case of shared interests and objectives, representatives of both institutions. In this context, the CSSF and the BCL keep up continuous dialogue regarding the adaptation of national regulatory liquidity standards with the objective not to create multiple prudential regimes. These efforts aim to implement in Luxembourg the aforementioned proposals of CEBS and the Basel Committee in a coordinated manner in order to avoid "an unnecessary increment of charges" for the banking centre.

Until the review of table B1.5, the CSSF monitors the structural development of liquidity mainly through existing prudential reports and self-assessments to be provided under the ICAAP regime. By virtue of point 10 of Circular CSSF 09/403, credit institutions must indeed, as from financial year 2009, give their opinion on the adequacy of available liquidity reserves for liquidity risk to which they are or might be exposed in the ICAAP report. This particular point will be on the agenda of regular ICAAP meetings the CSSF will organise with risk managers of the main banks of the financial centre in 2010.

2.7. Analytical reports

The analytical report prepared by the *réviseur d'entreprises* (statutory auditor) is an important instrument to assess the Luxembourg credit institutions' quality of the organisation and exposure to different risks. The CSSF requires an analytical report on a yearly basis for every Luxembourg credit institution as well as for the Luxembourg branches of non-EU credit institutions. Furthermore, credit institutions supervised on a consolidated basis are required to submit a yearly consolidated analytical report and individual analytical reports of each subsidiary included in the consolidation and carrying out an activity of the financial sector.

In 2009, the CSSF analysed 112 analytical reports, 23 of which were consolidated analytical reports and 98 were analytical reports of subsidiaries of Luxembourg banks.

2.8. Cooperation with the *réviseurs d'entreprises* (statutory auditors)

Article 54 of the law on the financial sector governs the relationship between the CSSF and the *réviseurs d'entreprises*. This article confers upon the CSSF the power to establish the rules relating to the scope of the audit mandate and the content of the audit report. The supervised professionals shall communicate all the reports issued by the *réviseur d'entreprises* within the course of the audit of the accounting documents to the CSSF.

Furthermore, the *réviseurs d'entreprises* are required by law to inform the CSSF swiftly of any serious facts, defined more specifically under Article 54(3) of the aforementioned law, which have come to their attention in the course of their duties.

Since 2002, the CSSF holds annual meetings with the main audit firms in order to exchange opinions on specific issues encountered within the supervised institutions. Discussions also address the quality of the reports produced and the results of the inspections.

2.9. On-site inspections

The programme of inspections to be carried out by CSSF agents during the year is set up at the beginning of the year and is based on the assessment of the risk areas of the various credit institutions. On-site inspections generally follow standard inspection procedures, in the form of discussions with the people responsible, assessment of procedures and verification of files and systems.

Since 2004, inspections focus on the internal governance of credit institutions, i.e. the functioning of the banks' bodies, the position of the bank within the group, as well as the efficiency of the control functions such as internal audit. Indeed, the verification of the proper operation of internal governance and control functions has proved to present the best means used/results ratio for the CSSF teams.

Control of compliance with professional obligations regarding the fight against money laundering and terrorist financing is also one of the areas to which the CSSF pays particular attention during on-site inspections.

During the year under review, 38 controls were made, against 66 in 2008. This drop is mainly due to an important number of missions on liquidity carried out in 2008 and not renewed in 2009. Besides the inspections of control functions, emphasis was laid on the control of compliance with professional obligations regarding the fight against money laundering and terrorist financing. Moreover, the missions to validate the internal models within the scope of the implementation of the Basel II framework continue to absorb a very important part of the resources.

In the context of cooperation between authorities, the CSSF took part in five on-site inspections together with foreign supervisory authorities.

In addition to the actual on-site inspections, the CSSF also visits the newly established banks on their premises.

It should be noted that the CSSF will enhance its efforts as regards on-site inspections in 2010.

2.10. Combating money laundering

Article 15 of the law of 12 November 2004 concerning the fight against money laundering and financing of terrorism provides that the CSSF is the relevant authority to ensure that every person subject to its supervision complies with the professional obligations as regards the fight against money laundering and financing of terrorism. However, non-compliance with the professional obligations in full knowledge falls under the penal law and relevant proceedings thus fall within the competence of the State Prosecutor's office.

The CSSF uses the following instruments to monitor compliance with these rules: reports of *réviseurs d'entreprises* (statutory auditors) and those prepared by internal auditors, as well as the inspections made by CSSF agents. In 2009, the CSSF made ten on-site inspections with respect to compliance with professional obligations concerning money laundering (16 in 2008).

During the year under review, the CSSF sent 17 letters to banks in relation with shortcomings concerning money laundering. These letters, based on on-site inspections carried out by the CSSF or on external or internal audit reports, listed the shortcomings identified and enquired about the corrective measures envisaged. Among the most frequently observed shortcomings are:

- incomplete or inadequate procedures;
- weaknesses in the verification of various lists of persons submitted to sanctions;
- lack of systematic staff training in the fight against money laundering and terrorist financing;
- deficiencies in classifying the customers according to their risk profile.

The yearly analytical report prepared by the *réviseurs d'entreprises* must specifically cover compliance with legal requirements and the adequate implementation of internal procedures concerning the prevention of money laundering.

The law of 12 November 2004 requires banks with branches or subsidiaries abroad to ensure that these entities comply with Luxembourg professional obligations, as far as these foreign subsidiaries or branches are not subject to equivalent professional obligations provided for by the laws applicable at the country of their establishment. The CSSF verifies compliance with this requirement by means of analytical reports of the *réviseurs d'entreprises* to be prepared for each subsidiary carrying out an activity of the financial sector. Furthermore, the CSSF requires that the internal audit of the Luxembourg parent company periodically verifies that subsidiaries and branches abroad comply with the group's anti-money laundering directives. The result of these inspections must be described in the summary report which has to be submitted to the CSSF on an annual basis.

2.11. Management letters

Management letters drawn up by the *réviseurs d'entreprises* (statutory auditors) for the attention of the banks' management are an important source of information as regards the quality of the credit institutions' organisation. In these reports, the *réviseurs d'entreprises* point out weaknesses they observed in the internal control system in the course of their assignment. During 2009, the CSSF analysed 57 management letters and similar documents (68 in 2008).

2.12. Meetings

The CSSF regularly holds meetings with bank executives to discuss business and any problems. It also requires prompt notification by the banks if a serious problem arises. In 2009, 275 meetings were held between CSSF representatives and bank executives.

2.13. Specific controls

Article 54(2) of the law of 5 April 1993 on the financial sector allows the CSSF to require a *réviseur d'entreprises* (statutory auditor) to conduct a specific audit in a given institution.

In 2009, the CSSF used this right eight times as against three in 2008. Most of these controls concerned the verification of compliance with Pillar 3 requirements under Basel II.

2.14. Internal audit and compliance reports

The CSSF takes into account the work of the internal audit when assessing the quality of the organisation and risk management by analysing the summary report which the internal auditor must prepare every year, as well as the report of the Compliance officer. In 2009, the CSSF analysed 117 summary reports (*idem* in 2008). It also requested 50 specific internal audit reports in order to obtain more detailed information on particular subjects (45 in 2008). The CSSF also analysed 117 compliance reports (113 in 2008).

2.15. Supervision of branches of EU banks

The supervision of EU branches established in Luxembourg carried out by the CSSF is limited to the areas in which the CSSF is responsible as host authority. Thus, Article 45(3) of the law of 5 April 1993 on the financial sector appoints the CSSF to supervise the liquidity of these branches, in cooperation with the competent authority of the home Member State. To allow the CSSF to exercise its duties in this matter, these branches must provide the same information as the Luxembourg credit institution to the CSSF.

In addition, the branches of EU banks must mandate their *réviseur d'entreprises* (statutory auditor) to issue the following reports:

- a report on the control of compliance with the legal professional obligations relating to the fight against money laundering and terrorist financing;
- a report on the compliance with the rules of conduct for the provision of investment services to clients, in accordance with the provisions of Circular CSSF 07/307 concerning conduct of business rules in the financial sector.

2.16. Supervision on a consolidated basis

As at 31 December 2009, 30 banks under Luxembourg law (31 at the end of 2008), two financial holding companies under Luxembourg law (*idem* in 2008), as well as one financial holding company incorporated under foreign law (*idem* in 2008) were supervised by the CSSF on a consolidated basis.

The conditions governing submission to a consolidated supervision, the scope, content and methods of supervision on a consolidated basis are laid down in Part III, Chapter 3 of the law of 5 April 1993 on the financial sector. The practical application of the rules governing supervision on a consolidated basis is explained in Circular IML 96/125.

As Circular IML 96/125 does not take into account the amendments of the legislation introduced by the law of 7 November 2007 (the "Basel II Law") transposing Directive 2006/48/EC into national law, this circular is being recast. The major amendments are in relation to the following points:

- enhanced cooperation between prudential supervisory authorities with respect to consolidated supervision (Article 50-1 of the law on the financial sector);
- extension of the scope of consolidated supervision which now also includes capital adequacy for operational risk, the internal capital adequacy assessment process and internal governance (Article 51 of the law on the financial sector).

The CSSF pays particular attention to the "group head" function set up at the Luxembourg establishment falling under its consolidated supervision. Thus, the CSSF sees more specifically to the way the Luxembourg parent company communicates its policies and strategies to its subsidiaries as well as to the controls set up at the Luxembourg parent company in order to monitor the organisation and activities of the subsidiaries, and their exposures.

The means the CSSF may use for its supervision on a consolidated basis are manifold:

- The CSSF requires periodic reports reflecting the financial situation and the consolidated risks of a group subject to its consolidated supervision.
- The ICAAP report shall provide an assessment of the consolidated capital adequacy in relation to the risks taken by the group or sub-group. Part of this report concentrates on the consolidated risk profile of the group or sub-group subject to the consolidated supervision.
- The reports prepared by the *réviseurs d'entreprises* are another source of information. Circular CSSF 01/27 on practical rules regarding the mission of the external auditor requires that a consolidated analytical report of a group subject to the consolidated supervision of the CSSF must be drawn up. The purpose of this consolidated report is to provide the CSSF with an overview of the group's situation and to inform on the risk management and structures of the group.
- The CSSF requires an individual analytical report for each major subsidiary.
- By virtue of Circular IML 98/143 on internal control, a summary report on the activities carried out by the internal audit department is to be communicated to the CSSF on an annual basis. The CSSF requires that the scope of intervention of the internal audit of the Luxembourg parent company be extended also to the subsidiaries in Luxembourg and abroad. This report must mention the controls carried out within the subsidiaries and the results thereof. The main observations made within the subsidiaries as regards the compliance function defined in Circular CSSF 04/155 shall also be mentioned therein.
- The CSSF's information is supplemented by contacts, exchange of letters and meetings with supervisory authorities of the subsidiaries' host countries. Within the scope of its supervision on a consolidated basis, the CSSF expects to systematically obtain, from the banks and financial holding companies subject to consolidated supervision, information on any intervention of the host country authorities with the subsidiaries, where these interventions concern non-compliance with domestic regulations and aspects regarding organisation or risks of these subsidiaries.

- As regards groups with an important network of subsidiaries, the CSSF follows the development of the financial situation and the risks of the subsidiaries included in the consolidated supervision by means of regular meetings with the management of the credit institution or of the financial holding company under consolidated supervision.
- The CSSF performs on-site inspections that cover, on the one hand, the manner in which the parent company sets up its policies and implements its strategies within the subsidiaries and, on the other hand, the follow-up applied to the subsidiaries. Until now, the CSSF has not carried out itself any on-site inspection at the premises of foreign subsidiaries of Luxembourg banks.

The CSSF also investigates indirect participations of banks subject to its consolidated supervision in accordance with the terms of Circular IML 96/125.

The law of 5 November 2006 on the supervision of financial conglomerates and amending the law of 5 April 1993 on the financial sector requires the CSSF to verify that Luxembourg credit institutions whose parent undertaking is a credit institution or a financial holding company having its head office in a third country, are subject to a consolidated supervision by the competent authority of that third country that is equivalent to the consolidated supervision performed by the CSSF on credit institutions and financial holding companies. If there is no equivalent consolidated supervision by the third country, the CSSF must perform a consolidated supervision of this group or apply another method in order to achieve the objectives of consolidated supervision.

2.17. Supplementary supervision of financial conglomerates

The law of 5 November 2006 on the supervision of financial conglomerates introduces a supplementary supervision on financial conglomerates into Luxembourg law. A financial conglomerate is a group that includes at least one important regulated entity within the banking or investment services sector and one important entity within the insurance sector.

The law requires the CSSF to perform a supplementary supervision of the financial conglomerates for which it exercises the role of coordinator of the supervision, the coordinator being the authority responsible for the coordination and supplementary supervision of the financial conglomerate.

The CSSF's supplementary supervision of financial conglomerates does not affect at all the sectoral prudential supervision, both on the individual and consolidated level, by the relevant competent authorities.

The practical consequences of this law for Luxembourg credit institutions and investment firms are limited as things stand at present. Indeed, the CSSF has not identified any financial conglomerate for which it should exercise the role of coordinator of this supplementary supervision at this stage.

2.18. International cooperation in matters of banking supervision

International cooperation, which has already been very comprehensive in the past, was further strengthened by Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions. There are two types of cooperation:

- the traditional bilateral cooperation as performed since the beginning of the 1980s;
- the cooperation as set out in Article 129 of the above-mentioned directive.

2.18.1. Traditional bilateral cooperation

Following the implementation of the second banking Directive, the CSSF concluded memoranda of understanding with the banking supervisory authorities of several Member States of the European Economic Area in the 1990s, with a view to specifying the terms of cooperation. These memoranda concern, in particular, the supervision of credit institutions involved in cross-border operations by way of the freedom to provide services or through the creation of branches.

Moreover, in accordance with the legal provisions in force, the CSSF cooperates and exchanges information on an informal basis with a number of other counterpart authorities.

In 2009, the CSSF held three bilateral meetings and one trilateral meeting with banking supervisory authorities in order to exchange prudential information on supervised institutions having a presence in those countries.

Besides the consultations required under the European directives, the CSSF also informs the relevant authorities of all significant facts relating to supervision. In particular, it consults the relevant authorities regarding acquisitions of major holdings and restructurings of share ownerships.

2.18.2. Cooperation in accordance with Article 129 of Directive 2006/48/EC

Cooperation between competent European authorities, which may also extend to non-EU authorities, assumes a new dimension under Article 129 of Directive 2006/48/EC. This Article requires intensive cooperation between the relevant competent authorities of cross-border banking groups and strives towards a more centralised supervision of these large cross-border groups at EU level. In 2009, many cooperations between competent authorities were formalised through so-called “Multilateral Cooperation and Coordination Agreements”. The CSSF signed agreements for fifteen cross-border banking groups (supervisory colleges).

Based on said Article 129, the competent authority for the consolidated supervision of a European banking group shall henceforth plan and coordinate the prudential activities in cooperation with the other relevant competent authorities. The CSSF is thus in charge of coordinating the prudential activities for one cross-border banking group.

In 2009, the CSSF participated in twenty meetings concerning each a large banking group and which were held within the context of strengthening the cooperation between authorities for the purpose of consolidated supervision.

Cooperation between authorities is enacted on several levels:

- close consultation between the authorities in order to coordinate and align their prudential supervision;
- continuous and systematic exchange of information on any significant event likely to impact the group or its main constituent entities;
- regular consultation for the principal purpose of updating the list of points requiring the attention of the authorities within these groups and coordinating the drafting of control plans;
- joint on-site inspections on various subjects.

Similarly, for cross-border banking groups seeking to use advanced approaches for the calculation of capital requirements for credit risk or operational risk, European regulations require that the competent authorities cooperate closely to decide on authorising the use of these advanced approaches by the banking group. In the absence of a joint decision, the authority competent for the consolidated supervision of the banking group makes its own decision, which must be recognised by the other competent authorities as final and be applied by these authorities. In this context, the CSSF verifies the local use by the Luxembourg entity of the new risk management models and capital measurement models implemented by various banking groups and communicates its conclusions to the competent authorities in charge of the consolidated supervision.

2.19. CSSF's policy regarding disclosure requirements in accordance with Circular CSSF 06/273 (Pillar 3)

As regards information to be published by credit institutions in accordance with Part XIX of Circular CSSF 06/273 on the capital ratio, commonly called "Pillar 3", the CSSF applies the provisions laid down in the respective European directives. Further to the minimum requirements set out in the European directives, the CSSF encourages credit institutions to get in line with best practices, as well as to take into account the developments at international level as regards disclosure while preserving the principle of proportionality. In 2008, it issued a circular letter encouraging the credit institutions concerned to get in line with the recommendations of the Financial Stability Board (FSB) notably as regards securitisation positions and liquidity risk management.

Pillar 3 applies to all credit institutions incorporated under Luxembourg law, excluding subsidiaries of Community parent companies if the Luxembourg entity falls under the consolidated supervision of another EU Member State. Substantial Luxembourg subsidiaries of European groups however are required to disclose global information on own funds and capital adequacy on an individual basis or, where appropriate, a sub-consolidated level. This disclosure may be part of a special section of consolidated disclosure of the group.

Luxembourg subsidiaries where the consolidated supervision is carried out outside the EU may also be exempted from all or part of Pillar 3 provisions as long as it is certain that the subsidiary concerned is included in the disclosure of comparable consolidated information at group level. In order to benefit from this exemption, the subsidiary concerned must make a documented gap analysis highlighting the comparability of the disclosed information and the disclosure requirements described in Part XIX of Circular CSSF 06/273. The conclusions of this analysis must be transmitted to the CSSF by a letter signed by the authorised management as well as by the Compliance officer.

Credit institutions that are not exempted must give a special mandate to their *réviseur d'entreprises* (statutory auditor) in order to check that the information to be disclosed is complete. The specific report of the *réviseur d'entreprises* must contain information on politics, the means and supports chosen by the credit institution, as well as a list of the non-disclosed information owing to the "delicate" or "confidential" character of the information.

SUPERVISION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT

1. Developments in the UCI sector in 2009
2. Developments of UCI entities in 2009
3. The Madoff Case
4. Performance analysis of the major Luxembourg UCI categories in 2009
5. Management companies set up under Chapter 13 of the law of 20 December 2002
6. Developments in the regulatory framework
7. Prudential supervisory practice

1. DEVELOPMENTS IN THE UCI SECTOR IN 2009

1.1. Major events in 2009

In 2009, the Luxembourg sector of undertakings for collective investment (UCIs) recorded a growth of 18.04% in the net assets under management and of 2.73% in the number of UCIs.

As regards the development in net assets of Luxembourg UCIs, the volatility in the financial markets resulting from the credit crunch continued to be a worry for the players on the global financial markets during the first quarter of 2009, so that the UCI sector did not progress during that quarter.

Thanks to the ongoing expansive and joint monetary and fiscal policies by most of the G20 Member States, market liquidity improved and the price of securities stabilised on monetary and financial markets during the second quarter of 2009. The MSCI World index thus increased by 25.94% during 2009 and the European bond index JPMorgan Credit + Pfandbriefe + EMU Local Index Level Euro increased by 6.92%.

The resurgence of activity on global financial markets coupled with a tendency of decreasing risk aversion led investors to increase their demand in higher risk UCIs. Net capital investments thus reached EUR 35.226 billion in 2009 for equity UCIs, EUR 48.478 billion for bond UCIs and EUR 20.158 billion for diversified UCIs. That said, when taking into account decreasing interest rates on money markets and a reduced preference by investors for liquidity, money market UCIs suffered net redemptions of EUR 15.354 billion.

Following the positive development in financial markets and the increase in net capital investments in UCIs, the volume of net assets of Luxembourg UCIs increased from EUR 1,559.7 billion to EUR 1,841.0 billion over the course of the year. This 18.04% increase in relative terms and EUR 281.3 billion in absolute terms is due to 30% to the net capital investment and to 70% to the positive impact of financial markets.

The number of UCIs and specialised investment funds (SIFs) totalled 3,463 as at 31 December 2009 as against 3,371 at the end of 2008. The number of SIFs increased most with 134 new entities whereas UCITS only registered a weak increase of 17 new entities. The number of UCIs subject to Part II of the law of 20 December 2002 on undertakings for collective investment decreased by 59 entities.

53.22% of the 3,463 UCIs registered on the official list as at 31 December 2009 were UCITS governed by Part I of the law of 20 December 2002.

As a result of the credit crisis, the year 2009 was characterised by a tendency towards consolidation which resulted in a reduction of the number of UCI sub-funds to 12,232 (-93 sub-funds).

While the number of equity UCIs, fixed income UCIs and fund of funds slightly decreased during 2009, diversified UCIs, real estate UCIs and guarantee-type UCIs increased in terms of entities.

On the regulatory side, the new UCITS IV Directive was adopted by the European Parliament and the Council of the EU on 22 June 2009. The directive introduced five new measures, in particular the option, for management companies, to manage UCITS located in another Member State (passport for management companies), the possibility for UCITS to adopt Master-Feeder type structures, the introduction of harmonised European regulation permitting mergers between UCITS on a cross-border basis, the replacement of the current simplified prospectus with a harmonised document providing investors with essential information on the investment objective, performance and costs (Key Information Document or KID) as well as the simplification of the registration of UCITS in another Member State.

Nine new management companies were set up in Luxembourg under Chapter 13 of the law of 20 December 2002 whereas six management companies ceased their activities during the year gone by.

1.2. Developments in the UCI sector

1.2.1. Development in the number of UCIs

The number of UCIs registered on the official list is of 3,463 UCIs as at 31 December 2009 against 3,371 UCIs at the end of the previous year, representing an increase of 92 entities (+2,7%). Over the year, 408 new UCIs were registered and 316 entities were withdrawn from the official list.

Over the last ten years, the number of UCIs has grown by 1,833 entities to reach 3,463 entities in 2009, which corresponds to an average growth of 11.2% per year. The increase for 2009 can therefore be described as weak in comparison to previous years.

2009 was characterised by a high number of withdrawals of UCIs. The explanation lies in the fact that several fund promoters restructured their product offering following the 2008 financial crisis.

Development in the number of UCIs

	Number of UCIs	Registrations on the official list	Withdrawals from the list	Net variation	in %
1999	1,630	265	156	109	7.2%
2000	1,785	278	123	155	9.5%
2001	1,908	299	176	123	6.9%
2002	1,941	222	189	33	1.7%
2003	1,870	175	246	-71	-3.7%
2004	1,968	202	104	98	5.2%
2005	2,060	266	174	92	4.7%
2006	2,238	345	167	178	8.6%
2007	2,868	824	194	630	28.2%
2008	3,371	712	209	503	17.5%
2009	3,463	408	316	92	2.7%

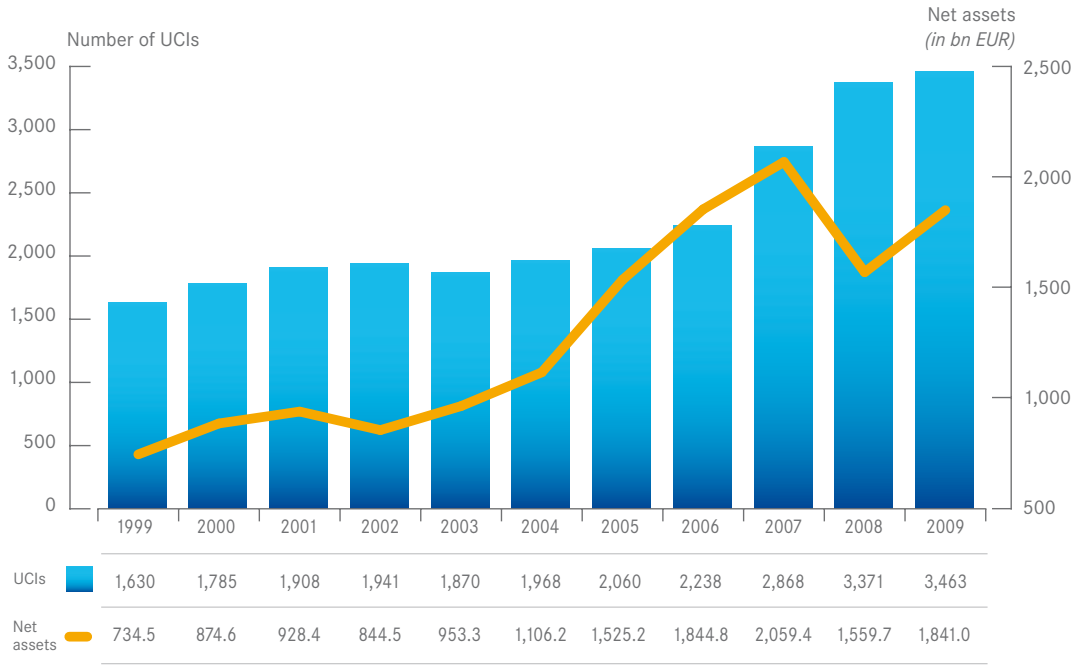
1.2.2. Development in the net assets of UCIs

The influx of new capital and the performance on the major financial stock markets resulted in a EUR 281.3 billion increase over one year in Luxembourg UCIs' global assets to reach EUR 1,841.0 billion as at 31 December 2009 (+18.0%). This growth originates to 30% from net issues and to 70% from the increase in stock markets. Net capital investments in Luxembourg UCIs amounted to EUR 84.4 billion in 2009, which proves that investors regained confidence in the markets.

Development in the net assets of UCIs

(in billion EUR)	Net assets	Net issues	Net asset variation	in %	Average net assets per UCI
1999	734.5	140.1	247.7	50.9%	0.451
2000	874.6	168.1	140.1	19.1%	0.490
2001	928.4	121.7	53.8	6.2%	0.487
2002	844.5	57.3	-83.9	-9.0%	0.435
2003	953.3	82.6	108.8	12.9%	0.510
2004	1,106.2	113.7	152.9	16.0%	0.562
2005	1,525.2	236.3	419.0	37.9%	0.740
2006	1,844.8	241.3	319.6	21.0%	0.824
2007	2,059.4	188.5	214.6	11.6%	0.718
2008	1,559.7	-77.2	-499.7	-24.3%	0.463
2009	1,841.0	84.4	281.3	18.0%	0.532

Development in the number and net assets of UCIs



1.2.3. Development of UCI entities[1]

As at 31 December 2009, 2,108 out of 3,463 UCIs had adopted a multiple sub-fund structure. Given that the number of sub-funds regressed from 10,973 to 10,877 (-0.9%) and that the number of traditionally structured UCIs only increased slightly from 1,352 to 1,355, the total number of economic entities passed from the record level achieved last year of 12,325 to 12,232 as at 31 December 2009 which represents a decrease of 0.8%.

Development of UCI entities

	Total number of UCIs	of which traditionally structured UCIs	*as % of total*	of which umbrella funds	*as % of total*	Number of sub-funds	*Average number of sub-funds per umbrella fund*	**Total number of entities**	Variation in %
1999	1,630	717	*44.0%*	913	*56.0%*	5,119	*5.61*	5,836	12.7%
2000	1,785	757	*42.4%*	1,028	*57.6%*	6,238	*6.07*	6,995	19.9%
2001	1,908	779	*40.8%*	1,129	*59.2%*	6,740	*5.97*	7,519	7.5%
2002	1,941	751	*38.7%*	1,190	*61.3%*	7,055	*5.93*	7,806	3.8%
2003	1,870	690	*36.9%*	1,180	*63.1%*	6,819	*5.78*	7,509	-3.8%
2004	1,968	742	*37.7%*	1,226	*62.3%*	7,134	*5.82*	7,876	4.9%
2005	2,060	762	*37.0%*	1,298	*63.0%*	7,735	*5.96*	8,497	7.9%
2006	2,238	851	*38.0%*	1,387	*62.0%*	8,622	*6.22*	9,473	11.5%
2007	2,868	1,180	*41.1%*	1,688	*58.9%*	9,935	*5.89*	11,115	17.3%
2008	3,371	1,352	*40.1%*	2,019	*59.9%*	10,973	*5.43*	12,325	10.9%
2009	3,463	1,355	*39.1%*	2,108	*60.9%*	10,877	*5.16*	12,232	-0.8%

Similar to the development in the number of UCIs, the total number of entities decreased in 2009. The reason is the same as the one described in point 1.2.1. above.

[1] The term "entity" refers both to traditional UCIs and to sub-funds of umbrella funds. The number of new "entities" therefore means, from an economic point of view, the number of economic vehicles created.

1.2.4. Breakdown of UCIs and of their net assets according to legal status and applicable law

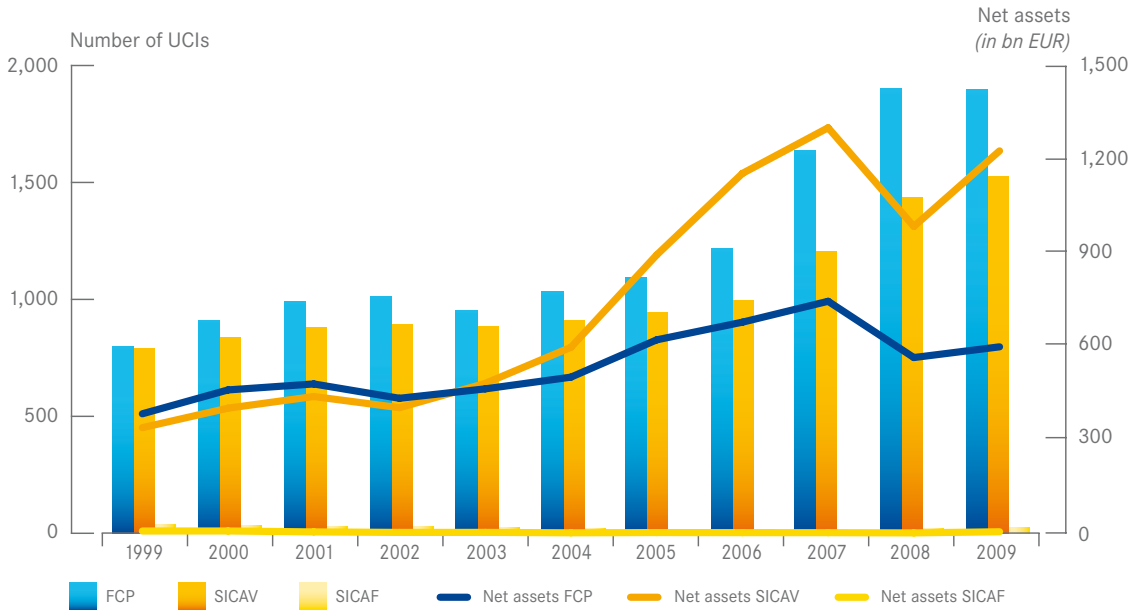
The breakdown of UCIs into *fonds communs de placement* (FCP), *sociétés d'investissement à capital variable* (SICAV) and *sociétés d'investissement à capital fixe* (SICAF) reveals that as at 31 December 2009, FCPs were still the prevailing form with 1,907 entities out of a total of 3,463 active UCIs, against 1,533 entities operating as SICAVs and 23 as SICAFs. After several years of decline, the legal form of SICAF has, since 2008, seen a slight increase, mainly in the area of specialised investment funds (SIF).

Breakdown of UCIs according to legal status

	FCPs		SICAVs		SICAFs		Total	
	Number	Net assets *(in bn EUR)*	Number	Net assets *(in bn EUR)*	Number	Net assets *(in bn EUR)*	Number	Net assets *(in bn EUR)*
1999	800	385.8	795	341.0	35	7.7	1,630	734.5
2000	914	462.8	840	404.0	31	7.8	1,785	874.6
2001	994	482.1	885	441.5	29	4.8	1,908	928.4
2002	1,017	435.8	896	405.5	28	3.2	1,941	844.5
2003	957	466.2	888	483.8	25	3.3	1,870	953.3
2004	1,036	504.0	913	600.3	19	1.9	1,968	1,106.2
2005	1,099	624.3	946	898.2	15	2.7	2,060	1,525.2
2006	1,224	681.3	1,000	1,161.1	14	2.4	2,238	1,844.8
2007	1,645	748.7	1,211	1,308.4	12	2.3	2,868	2,059.4
2008	1,910	567.2	1,443	990.9	18	1.6	3,371	1,559.7
2009	1,907	601.8	1,533	1,233.9	23	5.3	3,463	1,841.0

At the end of 2009, FCPs' net assets reached EUR 601.8 billion, representing 32.7% of the total net assets of UCIs. SICAVs' net assets reached EUR 1,233.9 billion representing 67.0% of total net assets of UCIs. SICAFs' net assets amounted to EUR 5.3 billion as at 31 December 2009.

Breakdown of UCIs and of their net assets according to legal status



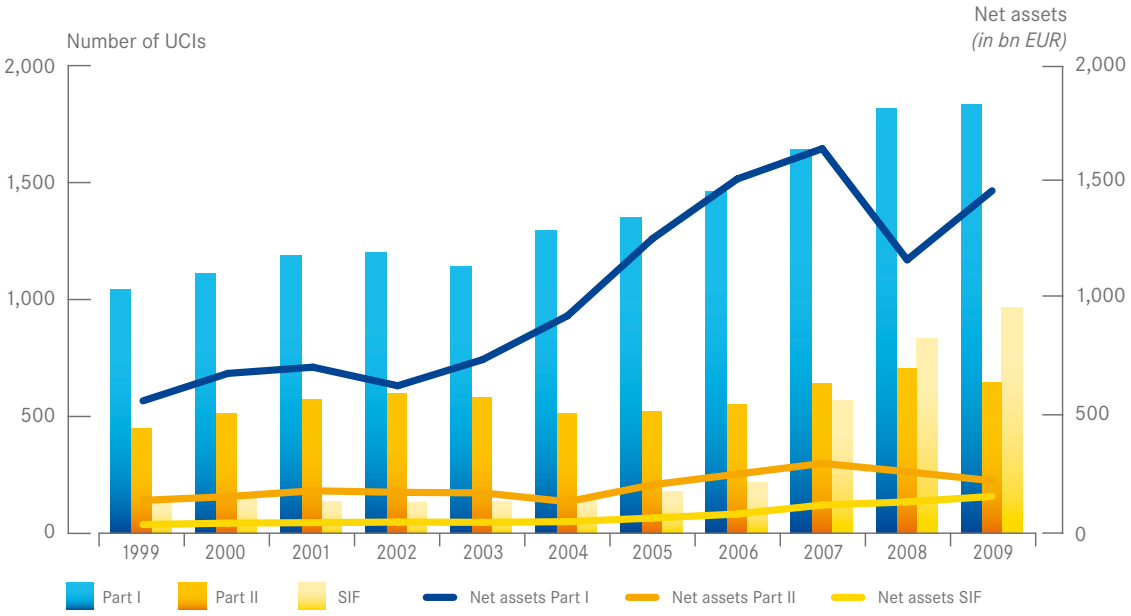
The following table illustrates the distribution of UCIs depending on whether they fall within the scope of Part I or II of the law of 20 December 2002 or of the law of 13 February 2007 relating to specialised investment funds (SIFs).

Breakdown of UCIs according to Parts I and II of the 2002 law and specialised investment funds

	Part I		Part II		SIFs	
	Number	Net assets *(in bn EUR)*	Number	Net assets *(in bn EUR)*	Number	Net assets *(in bn EUR)*
1999	1,048	564.2	450	137.0	132	33.3
2000	1,119	682.0	513	153.3	153	39.3
2001	1,196	708.6	577	178.2	135	41.6
2002	1,206	628.9	602	171.6	133	44.0
2003	1,149	741.1	583	169.3	138	42.9
2004	1,303	929.3	516	131.2	149	45.7
2005	1,358	1,260.0	524	204.0	178	61.2
2006	1,469	1,516.5	552	249.9	217	78.4
2007	1,653	1,646.4	643	295.9	572	117.1
2008	1,826	1,169.4	708	259.8	837	130.5
2009	1,843	1,465.7	649	221.2	971	154.1

UCIs falling under Part I of the law of 20 December 2002 are those which comply with the provisions of the UCITS Directive and which can therefore benefit from the marketing facilities provided therein. Part II encompasses all the other UCIs which solicit the public for the subscription of their units, whereas specialised investment funds are UCIs whose securities are reserved to well-informed investors according to the criteria set out in Article 2 of the law of 13 February 2007.

Breakdown of UCIs according to Parts I and II of the 2002 law and specialised investment funds



53.2% of UCIs registered on the official list as at 31 December 2009 were UCITS governed by Part I of the 2002 law and 18.7% were other UCIs governed by Part II (non-coordinated UCIs). Specialised investment funds

represent 28.0% of the 3,463 Luxembourg UCIs. Net assets were distributed at the same date as follows: 79.6% for UCIs under Part I, 12.0% for UCIs set up under Part II and 8.4% for specialised investment funds.

The following table compares the development in 2009 of the number of UCIs and net assets according both to the legal status and scope of the laws.

Breakdown of UCIs and of their net assets according to legal status and applicable law

	2008				2009				Variation 2008/2009			
Number of UCIs	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total
Part I	1,181	645	0	1,826	1,185	658	0	1,843	0.34%	2.02%	0.00%	0.93%
Part II	312	387	9	708	287	355	7	649	-8.01%	-8.27%	-22.22%	-8.33%
SIFs	417	411	9	837	435	520	16	971	4.32%	26.52%	77.78%	16.01%
Total	**1,910**	**1,443**	**18**	**3,371**	**1,907**	**1,533**	**23**	**3,463**	**-0.16%**	**6.24%**	**27.78%**	**2.73%**

Net assets *(in bn EUR)*	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total
Part I	409.65	759.74	0.00	1,169.39	446.80	1,018.94	0.00	1,465.74	9.07%	34.12%	0.00%	25.34%
Part II	83.63	174.68	1.50	259.81	80.51	139.80	0.89	221.20	-3.73%	-19.97%	-40.49%	-14.86%
SIFs	73.91	56.42	0.13	130.46	74.48	75.19	4.38	154.05	0.77%	33.27%	3,403.20%	18.08%
Total	**567.19**	**990.84**	**1.62**	**1,559.66**	**601.79**	**1,233.93**	**5.27**	**1,840.99**	**6.10%**	**24.53%**	**224.57%**	**18.04%**

As regards Part I, a slight increase of 0.93% of the number of UCIs can be noted, compared to 2008 and an increase of 25.24% of net assets whereas the number of UCIs under Part II decreased by 8.33% and their net assets decreased by 14.86%. The number of specialised investment funds however increased by 16.01% and their net assets increased by 18.08%.

1.2.5. Net issues

In 2009, UCIs under Part I of the law of 2002 showed important net issues totalling EUR 111.986 billion. However, UCIs under Part II of the law of 2002 showed important net redemptions totalling EUR 45.992 billion. Net issues in specialised investment funds amounted to EUR 18.375 billion.

Breakdown of net issues according to Parts I and II of the law and specialised investment funds

(in million EUR)	FCPs	SICAVs	SICAFs	Total	in %
Part I	-3,586	115,572	0	111,986	132.7%
Part II	-7,784	-38,003	-205	-45,992	-54.5%
SIFs	-747	15,482	3,640	18,375	21.8%
Total	**-12,117**	**93,051**	**3,435**	**84,369**	**100.0%**

1.3. Valuation currencies used

As regards the valuation currencies used, most entities (8,481 out of a total of 12,232) are denominated in Euro, followed by those in US dollars (2,543) and those in Swiss francs (328). In terms of net assets, the entities denominated in Euro encompass EUR 1,127.250 billion of a total EUR 1,840.993 billion, ahead of entities expressed in US dollars (EUR 561.103 billion) and Swiss francs (EUR 45.852 billion).

1.4. UCIs' investment policy

The table below describes the development in the number of UCIs and net assets according to their investment policy. It should be noted that UCIs investing in other assets include notably UCIs investing in venture capital and UCIs investing in insurance contracts or in debt.

Net assets and entities of UCIs according to their investment policy

	2008		2009		Variation in %	
	Number of entities	Net assets *(in bn EUR)*	Number of entities	Net assets *(in bn EUR)*	Number of entities	Net assets *(in bn EUR)*
Fixed-income transferable securities	3,208	723.778	3,157	801.826[2]	-1.59%	10.78%
Variable-yield transferable securities	3,710	375.624	3,502	544.113[3]	-5.61%	44.86%
Mixed transferable securities	2,901	246.201	3,076	296.444[4]	6.03%	20.41%
Fund of funds	2,021	152.003	1,947	141.254[5]	-3.66%	-7.07%
Cash	151	22.211	159	14.511	5.30%	-34.67%
Real estate	137	20.926	150	18.965	9.49%	-9.37%
Futures, options, warrants	141	16.998	147	19.372	4.26%	13.97%
Other securities	56	1.912	94	4.508[6]	67.86%	135.77%
Total	**12,325**	**1,559.653**	**12,232**	**1,840.993**	**-0.75%**	**18.04%**

Apart from the UCIs investing principally in money-market instruments and in liquidities which saw their net assets decrease as a result of significant redemptions, the other categories of UCIs, among which mainly those with variable-yield transferable securities, took advantage of the general increase in stock markets.

Investment policy of UCIs according to Parts I and II of the 2002 law and specialised investment funds

Situation as at 31 December 2009	**Number of entities**	**Net assets** *(in bn EUR)*	**Net assets** *(in %)*
UCITS subject to Part I			
Fixed-income transferable securities[7]	2,275	692.150	37.6%
Variable-yield transferable securities	3,012	495.960	26.9%
Mixed transferable securities	1,956	228.025	12.4%
Fund of funds	632	37.875	2.1%
Cash	37	3.837	0.2%
Futures and/or options	51	7.048	0.4%
Other securities	13	0.848	0.1%

(...Next page)

[2] Including EUR 314.476 billion in money market instruments and other short-term securities.

[3] Including EUR 4.073 billion in non-listed securities and EUR 0.276 billion in venture capital.

[4] Including EUR 1.542 billion in non-listed securities and EUR 0.317 billion in venture capital.

[5] Including EUR 0.190 billion in non-listed securities.

[6] Including EUR 0.056 billion in venture capital.

[7] Including EUR 265.053 billion in money market instruments and other short-term securities (254 entities).

	Number of entities	Net assets *(in bn EUR)*	Net assets *(in %)*
UCITS subject to Part II[8]			
Fixed-income transferable securities[9]	429	70.451	3.8%
Variable-yield transferable securities	176	19.917	1.1%
Mixed transferable securities	487	29.287	1.6%
Fund of funds	824	75.169	4.1%
Cash	100	8.983	0.5%
UCITS subject to Part II[10]			
Non-listed transferable securities	23	2.648	0.2%
Venture capital	9	0.289	0.0%
Other UCIs subject to Part II			
Real estate	15	4.126	0.2%
Futures, options, warrants	64	9.737	0.5%
Other securities	10	0.596	0.0%
Specialised investment funds			
Fixed-income transferable securities[11]	453	39.225	2.1%
Variable-yield transferable securities	260	23.887	1.3%
Mixed transferable securities	589	37.273	2.0%
Non-listed transferable securities	53	3.157	0.2%
Fund of funds	487	28.020	1.5%
Cash	22	1.691	0.1%
Venture capital	18	0.360	0.0%
Real estate	135	14.839	0.8%
Futures and/or options	32	2.587	0.1%
Other securities	70	3.008	0.2%
Total	**12,232**	**1,840.993**	**100.0%**

The following table illustrates, per quarter, the flow of subscriptions and redemptions during 2009 divided into the main investment policies:

1 - Variable-yield transferable securities (equities)

2 - Fixed-income transferable securities (excluding money market instruments and other short-term securities)

3 - Mixed transferable securities

4 - Cash, money market instruments and other short-term securities

5 - Other securities

(in million EUR)

	1st quarter 2009			2nd quarter 2009			3rd quarter 2009			4th quarter 2009			Totals		
Pol.	**subscr.**	**red.**	**n. iss.**	**subscr.**	**red.**	**n. iss.**	**subscr.**	**red.**	**n. iss.**	**subscr.**	**red.**	**n. iss.**	**subscr.**	**red.**	**n. iss.**
1	46,813	49,183	-2,370	62,295	52,221	10,074	68,987	52,868	16,119	75,045	63,642	11,403	253,140	217,914	35,226
2	52,199	56,807	-4,608	63,887	51,353	12,534	75,329	52,307	23,022	81,324	63,794	17,530	272,739	224,261	48,478
3	23,625	23,956	-331	31,555	27,170	4,385	30,575	23,394	7,181	35,203	26,280	8,923	120,958	100,800	20,158
4	1,034,290	1,021,689	12,601	686,580	700,343	-13,763	240,178	236,334	3,844	269,762	287,798	-18,036	2,230,810	2,246,164	-15,354
5	25,191	31,626	-6,435	29,816	23,689	6,127	27,728	28,851	-1,123	27,624	30,332	-2,708	110,359	114,498	-4,139
Total	**1,182,118**	**1,183,261**	**-1,143**	**874,133**	**854,776**	**19,357**	**442,797**	**393,754**	**49,043**	**488,958**	**471,846**	**17,112**	**2,988,006**	**2,903,637**	**84,369**

[8] UCITS excluded from Part I of the law of 20 December 2002 pursuant to Article 3, points 1 to 3, i.e. UCITS disallowing any repurchase, not promoted in the EU or only sold to individuals in third-party countries outside the EU.

[9] Including EUR 42.478 billion in money market instruments and other short-term securities (117 entities).

[10] UCITS excluded from Part I of the law of 20 December 2002 pursuant to Article 3, point 4, i.e. UCITS under one of the categories laid down by Circular CSSF 03/88 owing to their investment and loan policy.

[11] Including EUR 6.945 billion in money market instruments and other short-term securities (13 entities).

1.5. Development of several specific categories of UCIs

1.5.1. Guarantee-type UCIs

Given the fluctuations inherent in financial markets, guarantee-type UCIs aim to offer investors greater security than that offered by traditional collective management products. According to the investment policy pursued by the funds concerned, the guarantee ensures that the investor is reimbursed either a proportion of the capital invested or is fully reimbursed his initial investment or even receives a return on his investment at the end of one or several pre-determined periods.

In 2009, the number of guarantee-type UCIs rose from 176 to 194 and the number of entities from 382 to 409. In terms of entities, the rise is attributable to the launch of 69 new entities, while the given guarantee came to maturity or was not extended for 41 entities.

As at 31 December 2009, the 409 entities comprised 43 entities guaranteeing investors only a proportion of the invested capital, 176 entities guaranteeing repayment in full of the invested capital (money-back guarantee) and 190 entities offering their investors a surplus as compared to the initial subscription price.

UCIs offering their investors a surplus compared to their initial investment thus remain dominant. These funds generally track a stock market index and, through the use of derivatives, enable investors to participate to some extent in the growth of this index.

Net assets of guarantee-type UCIs increased by EUR 1.0 billion to EUR 45.83 billion in 2009, i.e. a 2.2% increase. It is also worth noting that guarantee-type UCIs set up by German promoters alone accounted for 88.2% of the total net assets of guarantee-type UCIs.

Development in guarantee-type UCIs

	Number of UCIs	Number of economic entities	Net assets *(in bn EUR)*
1999	85	116	17.13
2000	79	119	14.30
2001	74	115	17.09
2002	75	151	17.40
2003	76	166	20.89
2004	90	207	21.41
2005	104	248	24.69
2006	121	297	32.56
2007	154	360	43.73
2008	176	382	44.83
2009	194	409	45.83

1.5.2. Real estate UCIs

The development over the years shows that SIFs are a preferred vehicle for real estate investments.

In 2009, net assets of UCIs investing principally in real estate dropped by 6.6%, notwithstanding the increasing number of vehicles and positive net issues. This decline in net assets can be explained by a drop in the value of the real estate assets held by UCIs.

Development of real estate UCIs

	Number of real estate entities	of which Part II	of which SIFs	Number of active real estate entities	Net issues *(in bn EUR)*	Net assets *(in bn EUR)*
2005	52	16	36	41	1.591	5.287
2006	76	22	54	64	2.653	8.057
2007	104	21	83	80	6.497	15.446
2008	137	16	121	111	7.126	20.926
2009	150	15	135	125	1.977	18.965

1.5.3. Sharia UCIs

The number of Sharia UCIs remained stable during 2009. Their net assets nevertheless increased by 44%.

Development of UCIs underlying Sharia law

	Number of Sharia entities	Net assets *(in mn EUR)*
2005	7	74.5
2006	8	93.6
2007	9	202.2
2008	22	212.8
2009	23	308.3

1.5.4. Microfinance UCIs

UCIs investing in microfinance have recently witnessed a substantial development. As a matter of fact, their number as well as their net assets nearly doubled in two years.

Development of UCIs in the microfinance sector

	Number of microfinance entities	Net assets *(in mn EUR)*
2005	3	104.8
2006	11	505.3
2007	15	771.1
2008	18	1,200.3
2009	29	1,675.7

1.6. Promoters of Luxembourg UCIs

The breakdown of Luxembourg UCIs according to geographic origin of their promoters highlights the multitude of countries represented in the financial centre. Promoters of Luxembourg UCIs spread over 50 countries.

The main countries actively promoting UCIs in Luxembourg are the United States, Germany, Switzerland, Great Britain, Italy, Belgium and France.

Origin of the promoters of Luxembourg UCIs

Situation as at 31 December 2009	Net assets *(in bn EUR)*	in %	Number of UCIs	in %	Number of entities	in %
United States	389.191	21.1%	132	3.8%	842	6.9%
Germany	350.482	19.0%	1,584	45.8%	2,869	23.5%
Switzerland	292.784	15.9%	416	12.0%	2,254	18.4%
Great Britain	218.794	11.9%	208	6.0%	1,074	8.8%
Italy	156.095	8.5%	128	3.7%	859	7.0%
Belgium	140.974	7.7%	171	4.9%	1,632	13.3%
France	124.154	6.8%	218	6.3%	950	7.8%
Netherlands	39.126	2.1%	56	1.6%	275	2.3%
Sweden	30.064	1.6%	94	2.7%	235	1.9%
Luxembourg	28.772	1.6%	120	3.5%	285	2.3%
Others	70.557	3.8%	336	9.7%	957	7.8%
Total	**1,840.993**	**100.0%**	**3,463**	**100.0%**	**12,232**	**100.0%**

1.7. Marketing of Luxembourg UCIs in the EU and marketing of foreign UCIs in Luxembourg

In the context of the notification procedure laid down in Circular CSSF 07/277, the CSSF sent in 2009 3,578 letters of notification, as provided for in Annexe I of the CESR document CESR/06-120b to 1,347 different UCITS. These letters of notification concerned 8,755 different sub-funds.

Over the past year, five UCITS each received more than 20 certifications, 33 UCITS received between 10 and 19 certifications, 162 UCITS received between five and nine certifications and 1,147 UCITS received between one and four certifications (among which 572 UCITS having received a single certification). These figures show that UCITS structures are regularly updated and amended which equally brings about changes to the offering documents.

Furthermore, 219 foreign UCITS took advantage of the marketing facilities laid down in the European directive to offer their units/shares in Luxembourg. Furthermore, ten foreign UCIs were also authorised to market their shares in Luxembourg.

Marketing of foreign UCIs in Luxembourg

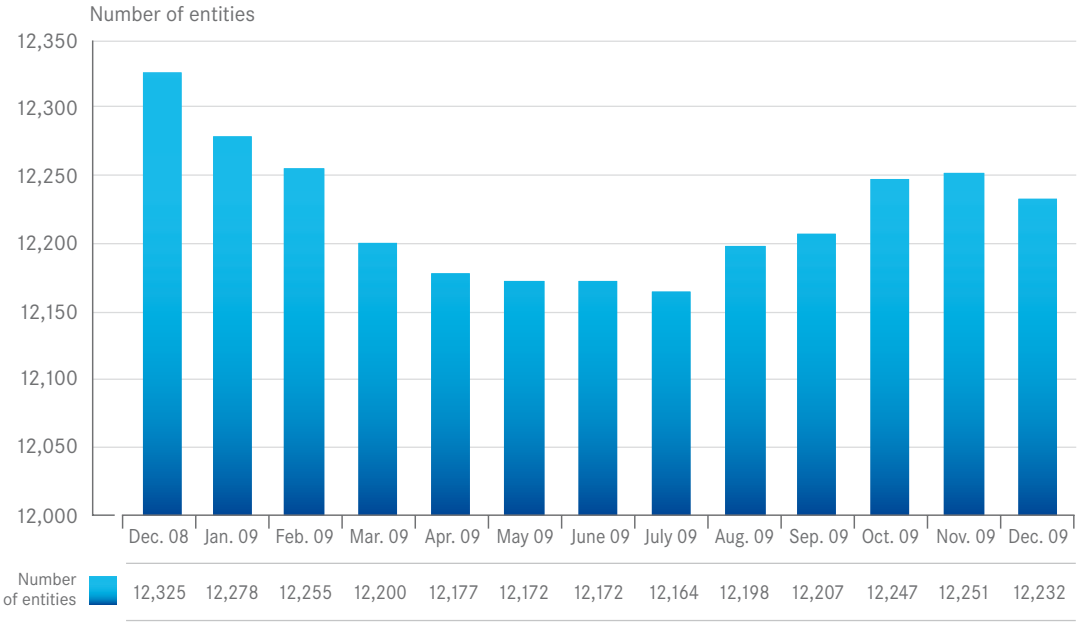
Country of origin	2005	2006	2007	2008	2009
EU UCITS					
France	28	35	44	52	87
Ireland	33	41	42	48	50
Germany	63	67	60	54	27
Great Britain	6	7	9	13	15
Belgium	11	13	14	14	14
Sweden	0	5	19	19	12
Norway	0	6	6	6	6
Finland	0	4	5	4	4
Denmark	0	0	1	1	2
Austria	0	0	1	1	1
Malta	0	0	1	1	1
Sub-total	**141**	**178**	**202**	**213**	**219**
Other foreign UCIs					
Germany	9	8	8	7	5
Switzerland	6	6	6	6	5
Sub-total	**15**	**14**	**14**	**13**	**10**
Total	**156**	**192**	**216**	**226**	**229**

2. DEVELOPMENTS OF UCI ENTITIES IN 2009

2.1. General situation

In 2009, the number of entities[12] slightly decreased (-93 entities). While this decrease was constant during the first half of the year, the last months of the year were characterised by an upturn.

Monthly development of the number of entities



2.2. Entities approved in 2009

In 2009, 1,999 new entities were authorised, i.e. 1,362 entities less than in 2008 and 879 entities less than in 2007. In relative terms, this accounts for a decrease of 40.5% as compared to 2008 and of 30.5% as compared to 2007.

	2005	2006	2007	2008	2009
Newly approved entities	1,806	2,119	2,878	3,361	1,999
of which launched in the same year	*1,022*	*1,263*	*1,916*	*2,008*	*1,068*
In %	56.6%	59.6%	66.6%	59.7%	53.4%

The proportion of entities newly authorised in 2009 that chose to invest in fixed-income transferable securities has more than doubled compared to 2008. On the other hand, the units investing in variable-yield transferable securities and the units investing in mixed transferable securities have decreased.

[12] The term "entity" refers both to traditional UCIs and to sub-funds of umbrella funds. The number of new "entities" therefore means, from an economic point of view, the number of economic vehicles created.

Investment policy of UCI entities approved in 2009

Investment policy	2008		2009	
	Number of entities	in %	Number of entities	in %
Fixed-income transferable securities (excluding money market instruments and other short-term securities)	425	12.65%	521	26.07%
Variable-yield transferable securities	754	22.43%	360	18.01%
Mixed transferable securities	1,337	39.78%	622	31.11%
Fund of funds	558	16.60%	289	14.46%
Cash, money market instruments and other short-term securities	146	4.34%	70	3.50%
Futures, options, warrants (derivative instruments)	47	1.40%	31	1.55%
Real estate	44	1.31%	33	1.65%
Other securities	50	1.49%	73	3.65%
Total	**3,361**	**100.00%**	**1,999**	**100.00%**

2.3. Entities closed down in 2009

With 1,542 entities closed down in 2009, the number of entities closed down increased as compared to the previous year (+221 entities or +16.7%). The number of matured entities and merged entities practically remained stable whereas the number of liquidated entities increased by 28.7%.

	2003	2004	2005	2006	2007	2008	2009
Liquidated entities	643	393	426	412	424	752	968
Matured entities	47	64	70	45	83	84	92
Merged entities	488	237	202	223	282	485	482
Total	**1,178**	**694**	**698**	**680**	**789**	**1,321**	**1,542**

The distribution by investment policy shows that the closed entities having invested in variable-yield transferable securities account for the largest proportion of entities closed in 2009.

Investment policy of UCI entities closed down in 2009

Investment policy	2008		2009	
	Number of entities	in %	Number of entities	in %
Fixed-income transferable securities (excluding money market instruments and other short-term securities)	349	26.42%	344	22.31%
Variable-yield transferable securities	394	29.83%	463	30.03%
Mixed transferable securities	274	20.74%	354	22.96%
Fund of funds	197	14.91%	274	17.77%
Cash, money market instruments and other short-term securities	75	5.68%	71	4.60%
Futures, options, warrants (derivative instruments)	15	1.13%	25	1.62%
Real estate	8	0.61%	3	0.19%
Other securities	9	0.68%	8	0.52%
Total	**1,321**	**100.00%**	**1,542**	**100.00%**

3. THE MADOFF CASE

3.1. The general context

The CSSF is the competent authority in Luxembourg for prudential supervision, *inter alia*, of credit institutions, other professionals of the financial sector and undertakings for collective investment.

In the context more specifically of Luxembourg UCIs authorised under the law of 20 December 2002 and registered on the official list of UCIs, the CSSF approves the "constitutional documents" of these UCIs, i.e. the prospectus and the articles of association or the UCI's management regulations, and the choice of Luxembourg depositary and, where appropriate, the Luxembourg management company. The replacement of a management company or depositary as well as any modification to the "constitutional documents" are subject to approval by the CSSF. The registration and maintaining on the aforementioned list is subject to the condition that UCIs comply with all legislative, regulatory and contractual provisions relating to the organisation and operation of UCIs, as well as to the distribution, investment or sale of their securities.

The CSSF's supervision thus concentrates, first and foremost on the approval procedure of the "constitutional documents", during which the CSSF ensures that the content of the prospectus, such as for instance the rules relating to the investment policy, complies with the provisions of the law of 20 December 2002. Thereafter, the CSSF's supervision takes the form of a regular check of periodic information submitted by the UCI (reporting). The supervision of an authorised UCI therefore relies on the analysis of the UCI's long form report drawn up by a *réviseur d'entreprises* (statutory auditor) in accordance with the provisions of Circular CSSF 02/81 on the practical rules regarding the mission of the *réviseur d'entreprises* of an undertaking for collective investment. Furthermore, the half-yearly and annual reports submitted to the CSSF allow the verification of compliance with the investment policy. The UCI has to send to the CSSF each report issued by the *réviseur d'entreprises*. The other supervised and authorised entities, i.e. the management company and the Luxembourg depositary bank, shall of course also send their financial reports to the CSSF.

3.2. Prudential measures by the CSSF in the Madoff case

The primary objectives of the CSSF's prudential supervision of undertakings in the financial sector include the following: (i) to protect the financial stability of entities under its supervision and of the financial sector in its entirety; (ii) to ensure quality of the organisation and internal control mechanisms; (iii) to assess the professional repute of the members of the administrative, management and supervisory bodies and the shareholders or associates of the supervised entity. In carrying out its mission, the CSSF acts exclusively in the public interest.

In the matter linked to Bernard L. Madoff Investment Securities LLC ("BMIS"), the CSSF first had to analyse the potential effects of the case on the financial stability of entities under its supervision and of the financial sector in its entirety. The CSSF thus gathered the information required to analyse the impact of the fraud by the American broker (supervised by the SEC) on the Luxembourg financial sector.

As soon as the Madoff affair broke out, the CSSF also opened an investigation into the prudential obligations of the supervised entities. During its inquiries, the CSSF at first prioritised the examination of the quality of the general administrative organisation and of the internal control of the supervised entities (in order to ensure, generally, the protection of all investors which entertained business relations with these entities).

(i) In December 2008, the CSSF first analysed the potential effects of the case on the financial stability of undertakings under its supervision and of the financial sector seen as a whole (cf. CSSF press releases of 22 December 2008, 2 January 2009 and 23 January 2009).

(ii) At the same time, the CSSF, under its prudential supervisory powers, opened investigations into those supervised Luxembourg entities concerned with the Madoff case. During its inquiries, the CSSF at first prioritised the examination of the quality of the general administrative organisation and of the internal

and external control of the supervised entities in order to ensure, generally, the protection of all investors which entertained business relations with these entities. It was the CSSF's role, in its capacity as prudential supervisory authority, to detect any potential violations by the different parties and service providers of their respective legal duties. Thus the CSSF conducted inquiries, in particular in relation to the different service providers (cf. CSSF press releases of 25 February 2009, 27 May 2009 and 18 November 2009). In this context, the CSSF did not limit its investigations to those entities which acted on behalf of the UCIs directly impacted by the Madoff affair at the time of its breakout, but extended its inquiry to those entities which had been involved with the structure of these UCIs since they were set up.

(iii) Furthermore, the members of the administrative, management and supervisory bodies and the shareholders or associates of a supervised entity shall at any given moment prove their professional repute to the CSSF. Thus the CSSF examines in particular whether the directors or members of the board of directors of each implicated supervised entity personally produced evidence of their professional repute in the course of their duties. A multitude of procedures were opened in this context. The investigations relating to natural persons fall under the CSSF's duty of professional secrecy and the result of such investigations will in principle not be communicated to the public.

In accordance with general principles of Luxembourg law, the CSSF, in its capacity as public supervisory authority, has therefore taken all necessary administrative measures with regard to the supervised entities concerned and their respective directors. However, the final decision regarding contractual liability between private parties can only be taken conclusively by a competent Luxembourg court. Hence, in accordance with the principle of separation of powers, the competence of deciding on the civil liability of an entity towards individual investors (including tort, damage suffered and their causal link) lies exclusively within the power of the judiciary and therefore of the courts with civil and commercial jurisdiction.

According to administrative law, the CSSF's first intervention tool towards a supervised entity is the right to injunction applicable in different cases relating to the mismanagement of such a supervised entity, together with, as a second step, the option of declaring various types of suspensions (including the suspension of the activities) or, where applicable, the CSSF's power for withdrawal of the authorisation. In this context, the CSSF's research thus provided the necessary elements to reach a conclusion regarding the obligations of UBS (Luxembourg) S.A. ("UBSL") in its capacity as depositary bank of LUXALPHA SICAV on 25 February 2009 (cf. CSSF press release of the same day.) The CSSF, in accordance with its legal powers, ordered UBSL to implement the necessary infrastructure, i.e. sufficient human and technical means and the necessary internal rules in order to fulfil all the tasks relating to its function of depositary bank of a Luxembourg UCI in accordance with the law of 20 December 2002 and Circular IML 91/75. In May 2009, UBSL submitted to the CSSF a final detailed report regarding improvements made to its infrastructure and significant amendments to its internal procedures relating to the function of depositary bank. After analysing said report, the CSSF considers that UBSL has delivered evidence and guarantees of having the necessary infrastructure and the necessary rules for its internal organisation in place, in line with the injunction imposed on it and in compliance with professional standards applicable in Luxembourg. The CSSF, in its capacity as prudential supervisory authority, will supervise the ongoing compliance with these measures in practice, in particular through on-site inspections.

In line with the above, the CSSF's investigations as regards prudential supervision included HSBC Securities Services (Luxembourg) S.A. ("HSSL") in order to establish the nature and degree of responsibility of this entity in connection with the fund HERALD (Lux). It should be noted, in this context, that HSSL acted as depositary bank and central administration for HERALD (Lux). It has to be added that Bank Medici AG, a credit institution set up under Austrian law, from which the *Finanzmarktaufsicht* (FMA), the Austrian supervisory authority, withdrew its authorisation on 28 May 2009, had been appointed sponsor (*promoteur*) and investment manager of HERALD (Lux). The investment company HERALD (Lux) qualifies as a so-called self-managed investment company given the fact that it has not appointed a management company within the meaning of Article 27 of the law of 20 December 2002. In relation to its examination of the different responsibilities involving HERALD (Lux), the CSSF completed its first investigations on 9 March 2009 with an on-site inspection at HSSL's premises. Following its analysis of the documents and information received by HSSL, the CSSF took a decision towards HSSL on 17 November 2009 (cf. CSSF press release of 18 November 2009).

The CSSF's investigations were of course not limited only to the relevant depositary banks. In this context it should be borne in mind that the CSSF does not and cannot publicly disclose the results of its investigations in every case, but has to examine on a case by case basis the notion of public interest which shall determine, where appropriate, a communication to the public. The CSSF verified and continues to verify that all the other intermediaries related to the funds concerned by the Madoff case have acted with the diligent conduct imposed by Luxembourg law. On-site inspections were in particular undertaken on the premises of the two Luxembourg entities of the Access group.

It should further be noted that the CSSF works closely together with the liquidators appointed by the competent court and ensured the keeping of the records of all the accessible documents which might, where applicable, be useful to the Luxembourg judges to decide on the disputes before them. The CSSF also contacted all the Luxembourg nominees which appear in the shareholder register in order to ask them for detailed information on the nature of their investment in order to establish whether the investment was made on their own account or the account of third parties and the contractual basis on which such an investment was made. The CSSF further created awareness for nominees to help end investors understand their shareholder rights and informed foreign authorities of the measures taken by the CSSF in order to encourage them to introduce similar measures for foreign nominees appearing in the register. In June 2009, the French supervisory authority, the AMF, adopted this approach spontaneously.

3.3. Examination of the constitutional documents of the SICAVs related to the Madoff case

As regards the three Luxembourg investment companies affected by the Madoff case and currently in judicial liquidation, namely LUXALPHA SICAV, HERALD (Lux) and LUXEMBOURG INVESTMENT FUND (the "SICAVs", cf. CSSF press releases of 15 April 2009 and 13 May 2009), the CSSF has already stressed and clarified the following points in its press release of 18 November 2009:

- As mentioned above, during the authorisation procedure, the CSSF approves a UCI's constitutional documents, i.e. the prospectus and the articles of incorporation, or the relevant UCI's management regulations. In accordance with the law of 20 December 2002, a UCI's prospectus has to contain all the necessary information for an investor to reach a properly informed decision on the proposed investment. Internal documents which merely govern the practical terms and conditions between professionals (such as operating memoranda) have to comply with the contents of the approved and published prospectus and cannot deviate therefrom. These internal documents are not submitted to the CSSF. At the same time, the CSSF could not decide whether the limited liability clauses on the subscription forms should be acceptable in accordance with contractual freedom or whether the formulation of such clauses was too wide and therefore contrary to the public interest provisions (this is in particular the case for clauses which misrepresent the main obligations of the concerned party). As the CSSF could not undertake such in-principle assessment of the application file, given that it did not know the content of these clauses, the competent courts are now charged with the assessment of their validity and, where appropriate, with their enforceability in the context of the disputes in process.
- The documents submitted to the CSSF relating to the authorisation procedure of the three SICAVs respectively[13], based upon which they were admitted to the official list of UCIs, did not contain any reference either to the identity of BMIS or to the multiple responsibilities carried on *de facto* by one entity. Between the launch of the various SICAVs and the breakout of the Madoff affair in December 2008, the CSSF was never informed in a transparent manner, by the professionals involved, of the structure actually set in place nor of the role played in practice by BMIS at different levels of this structure.

[13] As regards the SICAV LUXEMBOURG INVESTMENT FUND which contains multiple compartments, this applies equally to the authorisation procedure of the SICAV itself and that of the relevant compartment, US Equity Plus, which intervened at a later stage. At the time of their registration on the official list of UCIs, both LUXALPHA SICAV and HERALD (LUX) had a single compartment and no new compartment had been set up within their structures until the moment of their judicial liquidation.

4. PERFORMANCE ANALYSIS OF THE MAJOR LUXEMBOURG UCI CATEGORIES IN 2009

4.1. Objectives and methodology

The objective of this section is to analyse the performance distribution of several Luxembourg UCI categories in relation to their investment policy.

The UCI categories selected are the following:

Monetary UCIs	Bond UCIs	Equity UCIs
EURO	Europe	Europe
	Global	Global
	Emerging markets	Emerging markets

The category "European bonds" only takes into account entities investing in standard European bonds. Entities investing in High Yield bonds have not been considered.

For the interpretation of the results, it is important to highlight that past performances do not presume future performances.

Methodological aspects:

- Base currency: to measure the performance of the various UCI categories, the Euro has been used as base currency.
- Population considered: the population considered is composed of a total of EUR 460.349 billion net assets and 1,880 entities. The entities with no performance in all twelve months of 2009 have not been taken into consideration.
- The average return and the average standard deviation per UCI category have been calculated with the weighting of the entities' average net assets.
- To compare the performances of the various investment policies, a risk-performance indicator is applied, i.e. the Sharpe ratio.

  The Sharpe ratio was developed by William Sharpe, Nobel Laureate in Economics in 1990. The Sharpe ratio divides the difference between the return of a securities portfolio and a risk-free rate, i.e. a fixed-rate investment, by the portfolio standard deviation. It measures in this manner the excess return, realised per risk unit considered. The Sharpe ratio is calculated as follows:

$$\text{Sharpe ratio} = \frac{\text{Portfolio return} - \text{Risk-free rate}}{\text{Portfolio standard deviation}}$$

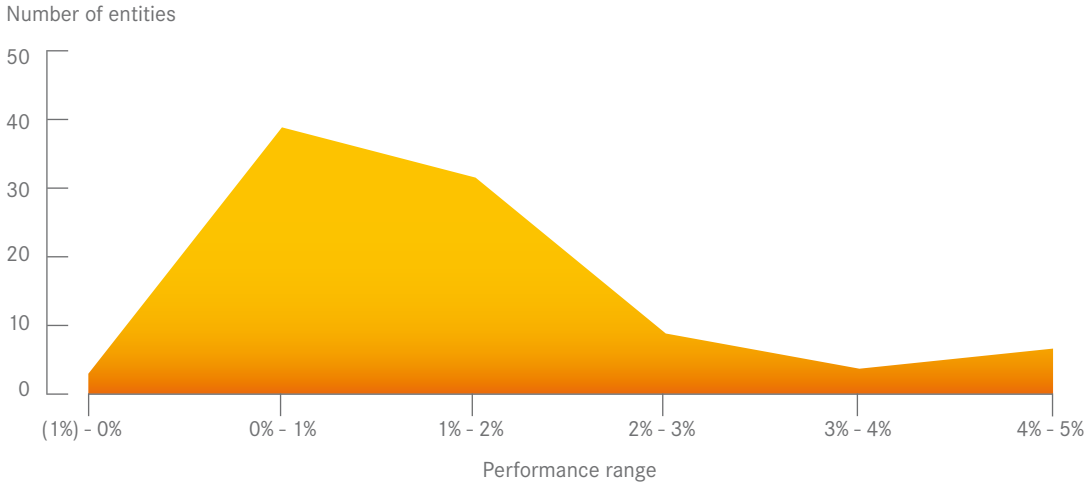
- The 12-month money market rate applicable beginning of January 2009, i.e. 3.025%, has been used as risk-free rate.
- Source of UCI data: CSSF database.
- For entities investing in bonds, JPMorgan indices are used as benchmark.
- For entities investing in equity, MSCI indices are used as benchmark.
- For the categories "international bonds" and "emerging market bonds", hedged indices are used in order to exclude the influence of currency movements on the performance of the benchmark.
- The term "entity" refers both to traditional UCIs and to sub-funds of umbrella funds.

4.2. Performance of the major Luxembourg UCI categories in 2009

4.2.1. Entities whose investment policy consists in investing in Euro money market instruments and short-term fixed-income instruments

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in Euro money market instruments and short-term fixed-income instruments.

Performance of entities investing in Euro money market instruments and short-term fixed-income instruments in 2009



The average performance realised in 2009 by entities whose investment policy consists in investing in Euro money market instruments and short-term fixed-income instruments is of 1.38%. The average performance of the maximum return class amounts to 4.58% whereas the average performance of the minimum return class is of -0.30%. The standard deviation of the performance of these entities amounts to 1.18%.

Central values and dispersion characteristics

Average performance	1.38%
Maximum performance	4.58%
Minimum performance	-0.30%
Standard deviation of performance	1.18%
Performance spread	4.88%
Statistical population	94

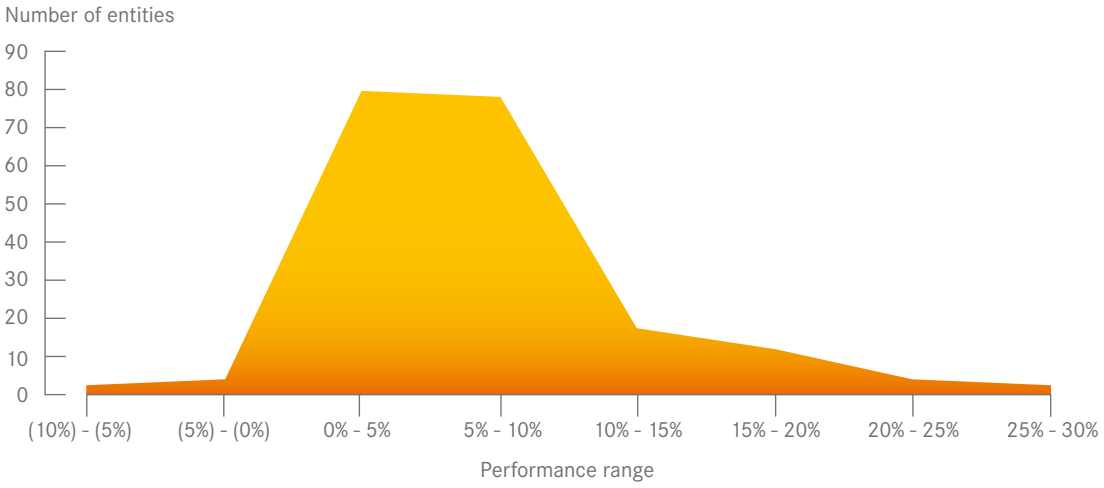
Statistical performance distribution of entities investing in Euro money market instruments and short-term fixed-income instruments

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-1% to 0%	3	3.19%	3	3.19%
0% to 1%	39	41.49%	42	44.68%
1% to 2%	32	34.04%	74	78.72%
2% to 3%	9	9.57%	83	88.30%
3% to 4%	4	4.26%	87	92.55%
4% to 5%	7	7.45%	94	100.00%
Total	**94**	**100.00%**		

4.2.2. Entities whose investment policy consists in investing in EUR-denominated bonds

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in EUR-denominated bonds. It should be noted that entities investing in High Yield bonds are not included in this category.

Performance of entities investing in EUR-denominated bonds in 2009



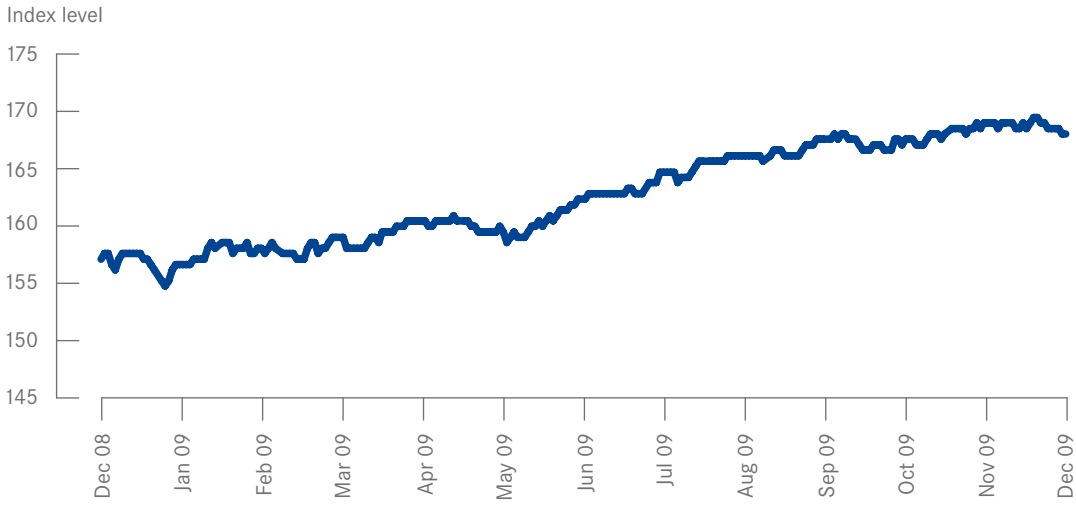
The average performance realised in 2009 by entities whose investment policy consists in investing in EUR-denominated bonds is of 6.93%. The average performance of the maximum return class amounts to 26.33% whereas the average performance of the minimum return class is of -7.80%. The standard deviation of the performance of these entities amounts to 5.24%.

Statistical performance distribution of entities investing in EUR-denominated bonds

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-10% to -5%	2	1.01%	2	1.01%
-5% to 0%	4	2.01%	6	3.02%
0% to 5%	80	40.20%	86	43.22%
5% to 10%	78	39.20%	164	82.41%
10% to 15%	17	8.54%	181	90.95%
15% to 20%	12	6.03%	193	96.98%
20% to 25%	4	2.01%	197	98.99%
25% to 30%	2	1.01%	199	100.00%
Total	**199**	**100.00%**		

The index JPMorgan Euro denominated Aggregate: Credit + Pfandbriefe + EMU Local Index Level Euro realised a performance of 6.92% in 2009. 69 entities investing in European bonds, i.e. 34.67% of all entities, realised a higher performance than this index. The market volatility for European bonds is of 3.47% in 2009 (source: JPMorgan, CSSF calculation).

JPMorgan Euro denominated Aggregate: Credit + Pfandbriefe + EMU Local Index Level Euro 2009



Source : JPMorgan

Interpretation of the Sharpe ratio

UCIs investing in EUR-denominated bonds realised in 2009 on average a return of 0.92% per risk entity considered. For the performance of the maximum return class, a positive return of 1.79% on average could be observed per risk entity. For the performance of the minimum return class, a negative return of -0.68% on average could be observed per risk entity considered.

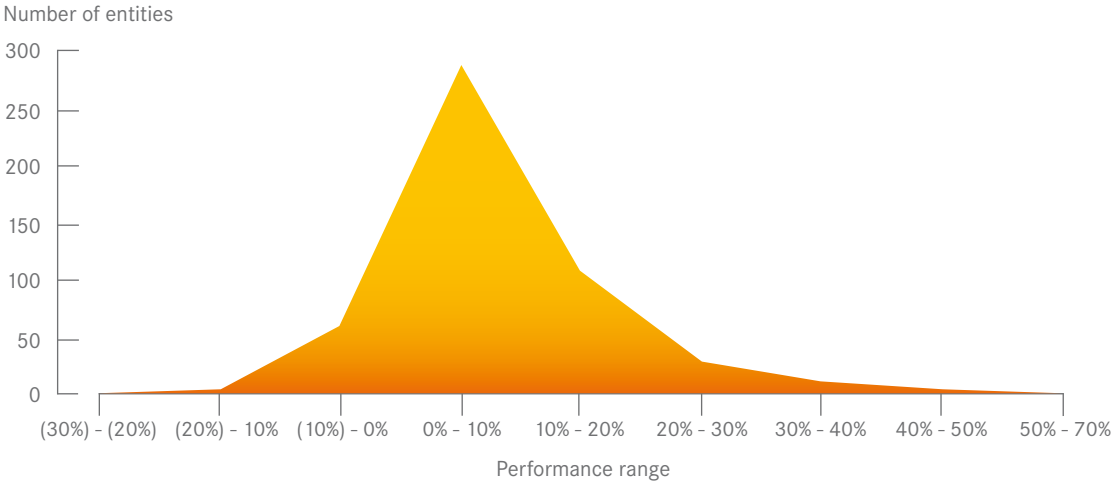
Summary table of the category of entities investing in EUR-denominated bonds

Average performance	6.93%
Maximum performance	26.33%
Minimum performance	-7.80%
Standard deviation of performance	5.24%
Performance spread	34.13%
Statistical population	199
Performance of the index JPMorgan Euro denominated Aggregate: Credit + Pfandbriefe + EMU Local Index Level Euro	6.92%
Market volatility	3.47%
Number of entities with higher performance than JPMorgan Euro denominated Aggregate: Credit + Pfandbriefe + EMU Local Index Level Euro	69
Sharpe ratio – average performance	0.92
Sharpe ratio – maximum performance	1.79
Sharpe ratio – minimum performance	-0.68

4.2.3. Entities whose investment policy consists in investing in global bonds

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in global bonds.

Performance of entities investing in global bonds in 2009



The average performance realised in 2009 by entities whose investment policy consists in investing in global bonds is of 9.05%. The average performance of the maximum return class amounts to 64.65% whereas the average performance of the minimum return class is of -22.42%. The standard deviation of the performance of these entities amounts to 8.96%.

Statistical performance distribution of entities investing in global bonds

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-30% to -20%	1	0.20%	1	0.20%
-20% to -10%	3	0.60%	4	0.80%
-10% to 0%	58	11.67%	62	12.47%
0% to 10%	285	57.34%	347	69.82%
10% to 20%	107	21.53%	454	91.35%
20% to 30%	26	5.23%	480	96.58%
30% to 40%	12	2.41%	492	98.99%
40% to 50%	4	0.80%	496	99.80%
50% to 70%	1	0.20%	497	100.00%
Total	**497**	**100.00%**		

The index JPMorgan GBI Global Traded Index Hedged Index Level Euro realised a performance of 0.84% in 2009. 413 entities investing in global bonds, i.e. 83.10% of all entities, realised a higher performance than this index. The market volatility for global bonds is of 3.15% (source: JPMorgan, CSSF calculation).

JPMorgan GBI Global Traded Index Hedged Index Level Euro 2009

Source : JPMorgan

Interpretation of the Sharpe ratio

UCIs investing in global bonds realised in 2009 on average a return of 0.96% per risk entity considered. For the performance of the maximum return class, a positive return of 1.29% on average could be observed per risk entity. For the performance of the minimum return class, a negative return of -2.52% on average could be observed per risk entity considered.

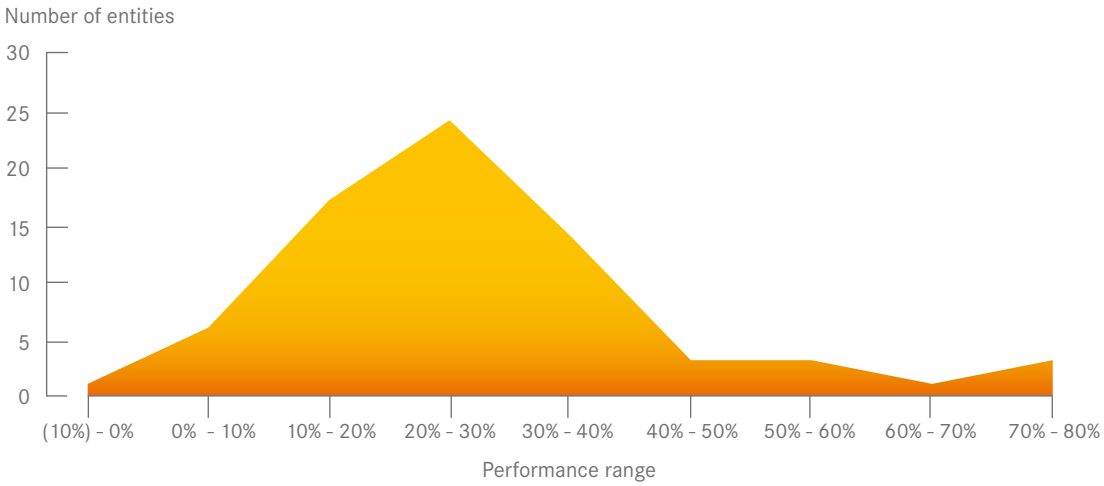
Summary table of the category of entities investing in global bonds

Average performance	9.05%
Maximum performance	64.65%
Minimum performance	-22.42%
Standard deviation of performance	8.96%
Performance spread	87.07%
Statistical population	497
Performance of the index JPMorgan GBI Global Traded Index Hedged Index Level Euro	0.84%
Market volatility	3.15%
Number of entities with higher performance than the JPMorgan GBI Global Traded Index Hedged Index Level Euro	413
Sharpe ratio – average performance	0.96
Sharpe ratio – maximum performance	1.29
Sharpe ratio – minimum performance	-2.52

4.2.4. Entities whose investment policy consists in investing in emerging market bonds

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in emerging market bonds.

Performance of entities investing in emerging market bonds in 2009



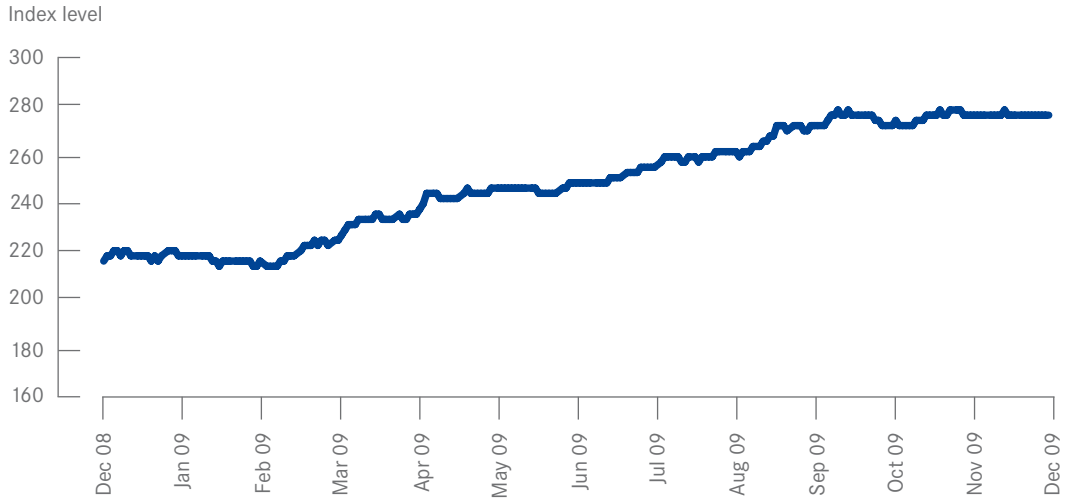
The average performance realised in 2009 by entities whose investment policy consists in investing in emerging market bonds is of 24.28%. The average performance of the maximum return class amounts to 75.48% whereas the average performance of the minimum return class is of -8.03%. The standard deviation of the performance of these entities amounts to 16.59%.

Statistical performance distribution of entities investing in emerging market bonds

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-10% to 0%	1	1.39%	1	1.39%
0% to 10%	6	8.33%	7	9.72%
10% to 20%	17	23.61%	24	33.33%
20% to 30%	24	33.33%	48	66.67%
30% to 40%	14	19.44%	62	86.11%
40% to 50%	3	4.17%	65	90.28%
50% to 60%	3	4.17%	68	94.44%
60% to 70%	1	1.39%	69	95.83%
70% to 80%	3	4.17%	72	100.00%
Total	**72**	**100.00%**		

The index JPMorgan EMBI Global - EUR Hedged Index Levels realised a performance of 27.65% in 2009. 27 entities investing in emerging market bonds, i.e. 37.50% of all entities, realised a higher performance than this index. The market volatility for emerging market bonds is of 5.53% (source: JPMorgan, CSSF calculation).

JPMorgan EMBI Global - EUR Hedged Index Levels 2009



Source : JPMorgan

Interpretation of the Sharpe ratio

UCIs investing in emerging market bonds realised in 2009 on average a return of 2.10% per risk entity considered. For the performance of the maximum return class, a return of 3.52% on average could be observed per risk entity. For the performance of the minimum return class, a negative return of -0.30% on average could be observed per risk entity considered.

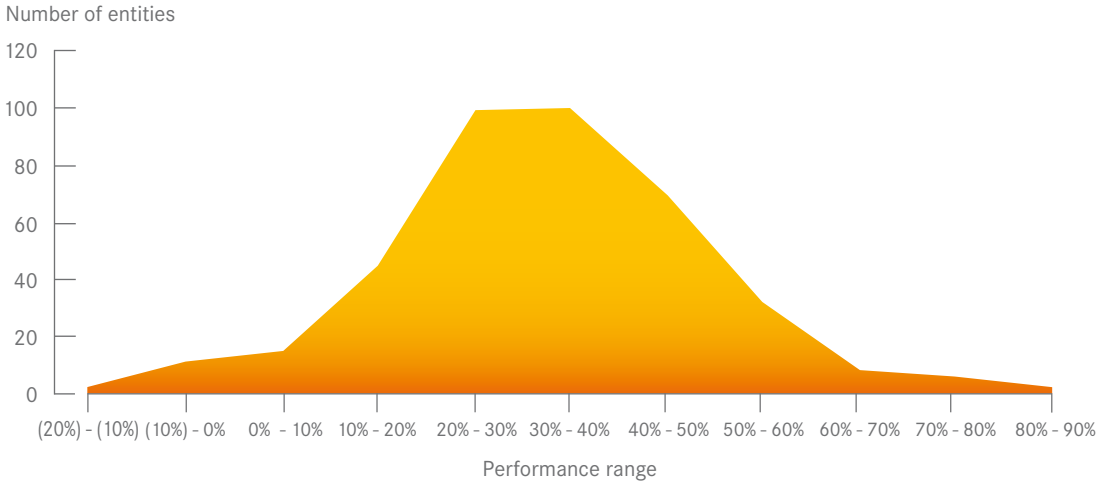
Summary table of the category of entities investing in emerging market bonds

Average performance	24.28%
Maximum performance	75.48%
Minimum performance	-8.03%
Standard deviation of performance	16.59%
Performance spread	83.51%
Statistical population	72
Performance of the index JPMorgan EMBI Global - EUR Hedged Index Levels	27.65%
Market volatility	5.53%
Number of entities with higher performance than the JPMorgan EMBI Global - EUR Hedged Index Levels	27
Sharpe ratio – average performance	2.10
Sharpe ratio – maximum performance	3.52
Sharpe ratio – minimum performance	-0.30

4.2.5. Entities whose investment policy consists in investing in European equity

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in European equity.

Performance of entities investing in European equity in 2009



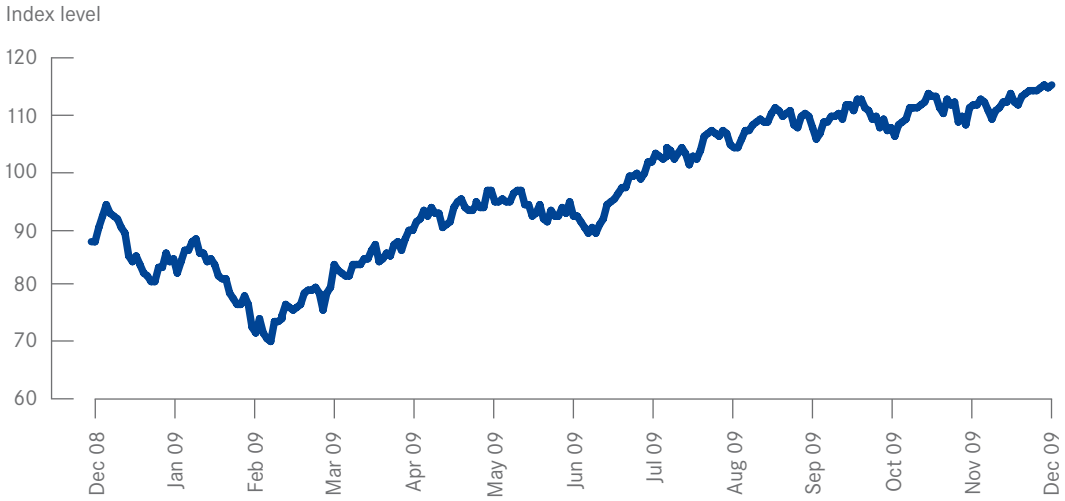
The average performance realised in 2009 by entities whose investment policy consists in investing in European equity is of 31.05%. The average performance of the maximum return class amounts to 83.66% whereas the average performance of the minimum return class is of -12.79%. The standard deviation of the performance of these entities amounts to 16.15%.

Statistical performance distribution of entities investing in European equity

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-20% to -10%	2	0.51%	2	0.51%
-10% to 0%	11	2.83%	13	3.34%
0% to 10%	15	3.86%	28	7.20%
10% to 20%	45	11.57%	73	18.77%
20% to 30%	99	25.45%	172	44.22%
30% to 40%	100	25.71%	272	69.92%
40% to 50%	69	17.74%	341	87.66%
50% to 60%	32	8.23%	373	95.89%
60% to 70%	8	2.06%	381	97.94%
70% to 80%	6	1.54%	387	99.49%
80% to 90%	2	0.51%	389	100.00%
Total	**389**	**100.00%**		

The index MSCI EUROPE Standard Core Net Index (EUR), which includes dividends, realised a performance of 31.60% in 2009. 202 entities investing in European equity, i.e. 51.93% of all entities, realised a higher performance than this index. The market volatility for European equity is of 24.56% (source: MSCI Barra, CSSF calculation).

MSCI EUROPE Standard Core Net Index (EUR) 2009



Source : MSCI Barra[14]

Interpretation of the Sharpe ratio

The population of UCI entities investing in European equity realised in 2009 on average a return of 1.46% per risk entity considered. For the performance of the maximum return class, a return of 2.75% on average could be observed per risk entity. For the performance of the minimum return class, a negative return of -1.37% on average could be observed per risk entity considered.

Summary table of the category of entities investing in European equity

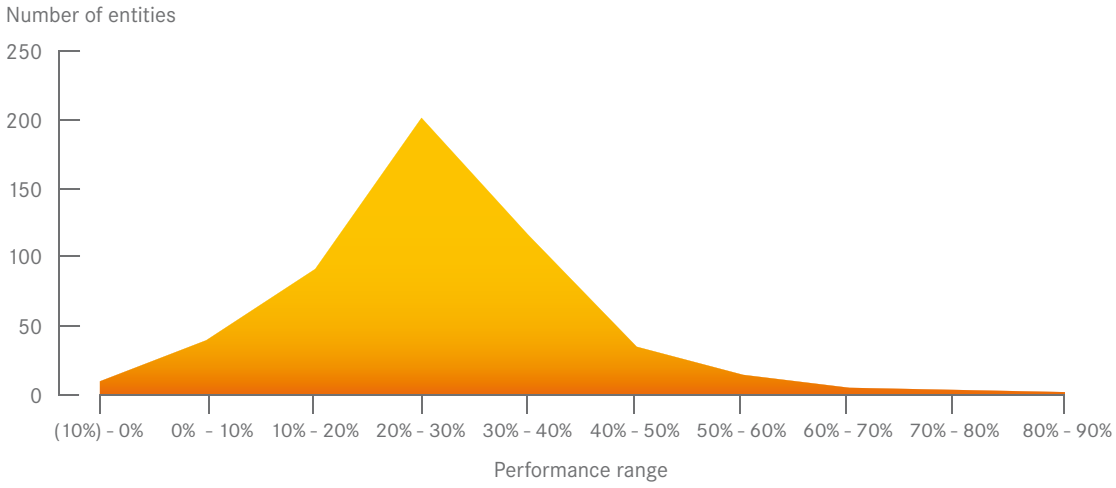
Average performance	31.05%
Maximum performance	83.66%
Minimum performance	-12.79%
Standard deviation of performance	16.15%
Performance spread	96.45%
Statistical population	389
Performance of the index MSCI EUROPE Standard Core Net Index (EUR)	31.60%
Market volatility	24.56%
Number of entities with higher performance than MSCI EUROPE Standard Core Net Index (EUR)	202
Sharpe ratio – average performance	1.46
Sharpe ratio – maximum performance	2.75
Sharpe ratio – minimum performance	-1.37

[14] This information is the exclusive property of MSCI Inc. and may not be reproduced or redisseminated in any form or used to create any financial products or indices without MSCI's prior written permission. This information is provided "as is" and none of MSCI. Its affiliates or any other person involved in or related to the compilation of this information (collectively, the "MSCI Parties") makes any express or implied warranties or representations with respect to the information or the results to be obtained by the use thereof, and the MSCI Parties hereby expressly disclaim all implied warranties (including, without limitation, the implied warranties of merchantability and fitness for a particular purpose) with respect to this information. In no event shall any MSCI Party have any liability of any kind to any person or entity arising from or related to this information.

4.2.6. Entities whose investment policy consists in investing in international equity

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in international equity.

Performance of entities investing in international equity in 2009



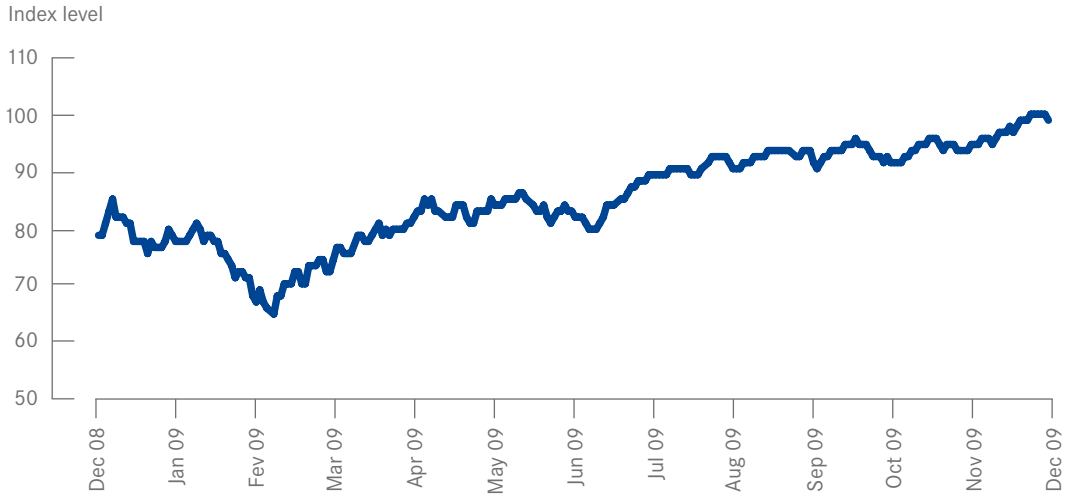
The average performance realised in 2009 by entities whose investment policy consists in investing in international equity is of 22.90%. The average performance of the maximum return class amounts to 89.85% whereas the average performance of the minimum return class is of -2.66%. The standard deviation of the performance of these UCIs amounts to 12.67%.

Statistical performance distribution of entities investing in international equity

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
-10% to 0%	9	1.74%	9	1.74%
0% to 10%	40	7.75%	49	9.50%
10% to 20%	91	17.64%	140	27.13%
20% to 30%	201	38.95%	341	66.09%
30% to 40%	117	22.67%	458	88.76%
40% to 50%	35	6.78%	493	95.54%
50% to 60%	14	2.71%	507	98.26%
60% to 70%	5	0.97%	512	99.22%
70% to 80%	3	0.58%	515	99.81%
80% to 90%	1	0.19%	516	100.00%
Total	**516**	**100.00%**		

The index MSCI WORLD INDEX Standard (Large+Mid Cap) which includes dividends, realised a performance of 25,94% in 2009. 245 entities investing in international equity, i.e. 47.48% of all entities, realised a higher performance than this index. The market volatility for international equity is of 19.65% (source: MSCI Barra, CSSF calculation).

MSCI WORLD INDEX Standard (Large+Mid Cap) (EUR) 2009



Source : MSCI Barra

Interpretation of the Sharpe ratio

The population of UCI entities investing in international equity realised in 2009 on average a return of 1.13% per risk entity considered. For the performance of the maximum return class, a positive return of 3.93% on average could be observed per risk entity. For the performance of the minimum return class, a negative return of -0.70% on average could be observed per risk entity considered.

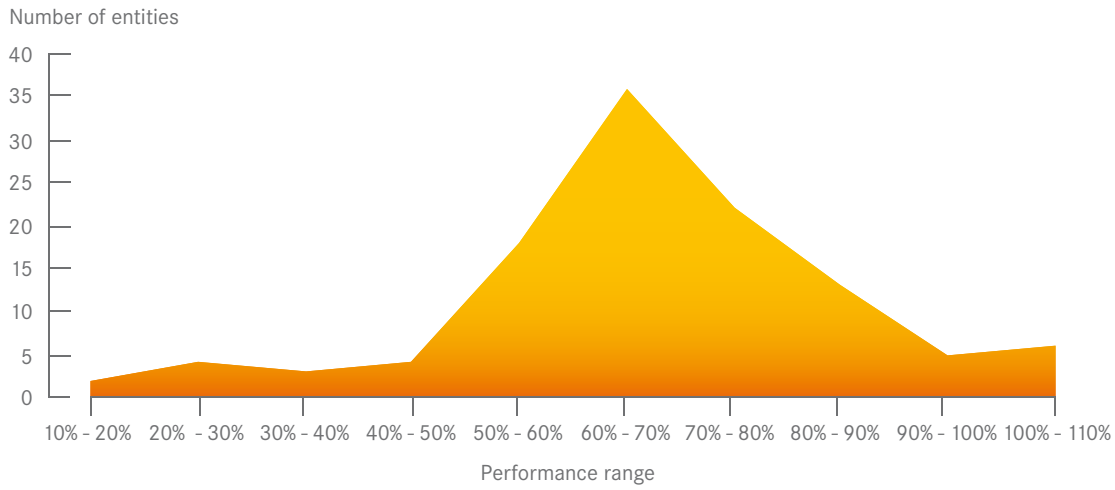
Summary table of the category of entities investing in international equity

Average performance	22.90%
Maximum performance	89.85%
Minimum performance	-2.66%
Standard deviation of performance	12.67%
Performance spread	92.51%
Statistical population	516
Performance of the index MSCI WORLD INDEX Standard (Large+Mid Cap)	25.94%
Market volatility	19.65%
Number of entities with higher performance than MSCI WORLD INDEX Standard (Large+Mid Cap)	245
Sharpe ratio – average performance	1.13
Sharpe ratio – maximum performance	3.93
Sharpe ratio – minimum performance	-0.70

4.2.7. Entities whose investment policy consists in investing in emerging market equity

The following graph illustrates the performance distribution of entities whose investment policy consists in investing in emerging market equity.

Performance of entities investing in emerging market equity in 2009



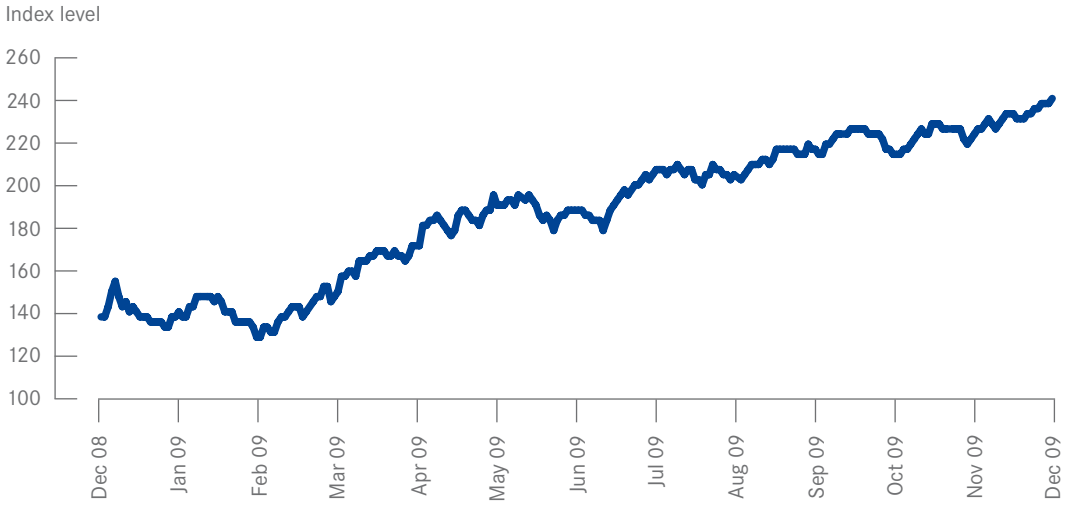
The average performance realised in 2009 by entities whose investment policy consists in investing in emerging market equity is of 44.86%. The average performance of the maximum return class amounts to 105.75% whereas the average performance of the minimum return class is of 16.56%. The standard deviation of the performance of these entities amounts to 18.74%.

Statistical performance distribution of entities investing in emerging market equity

Performance	Number of entities			
Return classes	Absolute frequency	Relative frequency	Cumulative absolute frequency	Cumulative relative frequency
10% to 20%	2	1.77%	2	1.77%
20% to 30%	4	3.54%	6	5.31%
30% to 40%	3	2.65%	9	7.96%
40% to 50%	4	3.54%	13	11.50%
50% to 60%	18	15.93%	31	27.43%
60% to 70%	36	31.86%	67	59.29%
70% to 80%	22	19.47%	89	78.76%
80% to 90%	13	11.50%	102	90.27%
90% to 100%	5	4.42%	107	94.69%
100% to 110%	6	5.31%	113	100.00%
Total	**113**	**100.00%**		

The index MSCI EM (EMERGING MARKETS) Standard (Large+Mid Cap) (EUR) which includes dividends, realised a performance of 72.94% in 2009. 42 entities investing in emerging market equity, i.e. 37.17% of all entities, realised a higher performance than this index. The market volatility for emerging market equity is of 23.30% (source: MSCI Barra, CSSF calculation).

MSCI EM (EMERGING MARKETS) Standard (Large+Mid Cap) (EUR)



Source : MSCI Barra

Interpretation of the Sharpe ratio

The population of UCI entities investing in emerging market equity realised in 2009 on average a return of 1.89% per risk entity considered. For the performance of the maximum return class, a return of 3.71% on average could be observed per risk entity. For the performance of the minimum return class, a return of 0.69% on average could be observed per risk entity considered.

Summary table of the category of entities investing in emerging market equity

Average performance	44.86%
Maximum performance	105.75%
Minimum performance	16.56%
Standard deviation of performance	18.74%
Performance spread	89.19%
Statistical population	113
Performance of the index MSCI EM (EMERGING MARKETS) Standard (Large+Mid Cap) (EUR)	72.94%
Market volatility	23.30%
Number of entities with higher performance than MSCI EM (EMERGING MARKETS) Standard (Large+Mid Cap) (EUR)	42
Sharpe ratio – average performance	1.89
Sharpe ratio – maximum performance	3.71
Sharpe ratio - minimum performance	0.69

5. MANAGEMENT COMPANIES SET UP UNDER CHAPTER 13 OF THE LAW OF 20 DECEMBER 2002

5.1. Development in number

In 2009, eight applications for approval as management companies in accordance with the provisions of Chapter 13 of the law of 20 December 2002 (against 11 in 2008) were submitted to the CSSF, consisting of:

- six projects for the setting-up of a new management company,
- two projects for the transformation of companies authorised under the status of professional of the financial sector (PFS) into a management company.

One project was withdrawn during its review.

When adding the two application files received in 2008 and finalised in 2009, nine new entities were registered in 2009 on the official list of management companies under Chapter 13 of the law of 2002. As at 31 December 2009, the number of management companies approved in accordance with Chapter 13 totals 192 entities.

Development in the number of management companies set up under Chapter 13 of the law of 2002

	2003	2004	2005	2006	2007	2008	2009
Registrations	3	23	47	80	31	13	9
Withdrawals	/	/	1	3	/	4	6
Total	**3**	**26**	**72**	**149**	**180**	**189**	**192**

Six out of the nine new authorisations were granted to financial players which set up for the first time in Luxembourg. Moreover, all the new authorisations exclusively cover the activity of collective management within the meaning of Article 77(2) of the law of 2002.

Among the six withdrawals in 2009, two resulted from mergers between management companies and four from dissolutions.

Development in the number of management companies whose authorisation covers, in addition to the activity of collective management, one or several services referred to in Article 77(3) of the law of 2002

	2003	2004	2005	2006	2007	2008	2009
Registration	2	6	5	10	4	1	/
Cessation of extended activities	/	/	/	/	3	4	2
Total	**2**	**8**	**13**	**23**	**24**	**21**	**19**

The downward trend of the number of management companies offering ancillary services was confirmed in 2009.

5.2. Geographical origin of management companies

2009 saw no major change to the geographic origin of management companies. Compared to the past, management companies of German and Swiss origin remain predominant on the Luxembourg market, followed by entities from France and Italy.

Breakdown of management companies under Chapter 13 of the law of 2002 according to their geographical origin

Country	2004	2005	2006	2007	2008	2009
Andorra	/	/	/	/	/	1
Austria	/	/	/	/	/	1
Belgium	2	4	5	7	8	6
Canada	/	/	/	1	1	1
Denmark	1	2	3	3	3	3
Finland	/	/	/	/	/	1
France	3	5	14	20	21	22
Germany	8	15	39	42	46	46
Great Britain	3	6	7	8	10	11
Greece	/	/	1	2	2	3
Iceland	/	/	1	1	1	1
Italy	3	8	17	19	20	21
Japan	/	/	1	1	1	1
Liechtenstein	/	/	1	1	1	1
Luxembourg	/	1	8	9	8	8
Netherlands	2	3	3	4	3	4
Portugal	/	/	/	2	2	2
Spain	/	1	2	3	3	3
Sweden	2	4	5	6	6	6
Switzerland	1	18	35	44	45	42
United Arab Emirates	/	/	/	/	/	1
United States	1	5	7	7	8	7
Total	**26**	**72**	**149**	**180**	**189**	**192**

5.3. Assets managed

As at 31 December 2009, the total net assets managed by management companies set up under Chapter 13 of the law of 2002 amounted to EUR 1,293.3 billion, against EUR 1,107.1 billion at the end of 2008, representing an increase of 16.81%. This increase is attributable to two thirds to the positive performance of the main financial stock exchanges and to one third to new subscriptions. Taking into account total net assets of EUR 1,841 billion invested as at 31 December 2009 in Luxembourg UCIs, management companies set up under Chapter 13 of the law of 2002 manage around 70% of the total assets of Luxembourg UCIs.

Development in the net assets of management companies

(in billion EUR)	2006	2007	2008	2009	Variation 2008/2009
Total net assets	1,306.0	1,476.8	1,107.1	1,293.3	16.81%
of which:					
in fonds communs de placement	594.6	657.0	479.4	515.1	7.44%
in investment companies	711.4	819.8	627.7	778.2	23.97%

Distribution of management companies in terms of assets under management as at 31 December 2009

Assets under management	Number of management companies			
	2006	2007	2008	2009
< 100 million EUR	15	32	41	37
100 - 500 million EUR	30	26	33	34
500 – 1,000 million EUR	13	25	21	21
1 - 5 billion EUR	34	40	49	51
5 - 10 billion EUR	23	21	17	18
10 - 20 billion EUR	16	15	13	14
> 20 billion EUR	18	21	15	17
Total	**149**	**180**	**189**	**192**

5.4. Movements in staff numbers

The total number of employees working for management companies amounts to 2,308 people as at 31 December 2009, against 2,386 people as at 31 December 2008, which represents a decrease of 78 employees (-3.27%) over a year. This negative development is mainly due to two players which chose to outsource certain functions previously done in-house. Some of the staff affected by these reorganisations have however been taken on by new employers, i.e. a bank and a PFS in the financial place. The reduction of staff in certain management companies is also partially set off by the creation of new jobs with other companies. Generally speaking, it can be said that the financial year 2009, albeit difficult, did not have too heavy an impact on the staffing of management companies.

5.5. Balance sheet and profit and loss account

The provisional total balance sheet of management companies reached EUR 6.470 billion as at 31 December 2009, as against EUR 6.353 billion at the end of 2008 (+1.84%). This growth can be explained by a slight increase of activities of management companies following the resumption of financial markets.

The provisional net profits amount to EUR 1.548 billion as at 31 December 2009 against EUR 1.454 billion as at 31 December 2008. The 6.46% increase is a result of the reduction in general administrative expenses over one year (-3.51%) on the one hand and the decrease of value adjustments to be done on current assets (-32.62%) on the other. It should nevertheless be noted that 32 of the 192 management companies ended the financial year 2009 with a loss (29 in 2008).

5.6. International expansion

5.6.1. Freedom of establishment

Three management companies incorporated under Luxembourg law (*idem* for 2008) introduced an application in 2009 in order to establish a branch abroad:

- AllianceBernstein (Luxembourg) S.A. for Japan,
- Natixis Global Associates for Germany and Italy,
- Universal-Investment-Luxembourg S.A. for Germany.

The Japanese branch of AllianceBernstein (Luxembourg) S.A. will only become operational during 2010.

The management company Dexia Asset Management Luxembourg S.A. however closed its branches in Austria, Poland and Sweden during 2009.

As at 31 December 2009, the following management companies were represented in one or several countries abroad by means of a branch:

- Assenagon Asset Management S.A.	Germany
- Berenberg Lux Invest S.A.	Germany
- Casa 4 Funds Luxembourg European Asset Management	Switzerland
- Dexia Asset Management Luxembourg S.A.	Germany, Italy, Netherlands, Spain, Switzerland
- Eurizon Capital S.A.	Singapore
- Fortis Investment Management S.A.	Greece
- JPMorgan Asset Management (Europe) S.à r.l.	Austria, France, Germany, Greece, Italy, Netherlands, Spain, Sweden
- Natixis Global Associates	France, Germany, Italy
- Universal-Investment-Luxembourg S.A.	Germany

No management company of another EU Member State established a branch in Luxembourg in 2009. On the other hand, the Luxembourg branch of the French management company Société Générale Asset Management Alternative Investments ceased its activities in Luxembourg during 2009.

5.6.2. Free provision of services

Seven management companies incorporated under Luxembourg law introduced a notification to carry on their activities in one or several EU countries by way of free provision of services in 2009. These notifications concerned marketing, discretionary management and other ancillary services.

In 2009, the CSSF received twelve notifications for the free provision of services within the Luxembourg territory from management companies incorporated in another Member State of the EU (*idem* for 2008). The majority of these notifications were submitted by French management companies followed in equal number by German, Belgian and Spanish management companies. The services offered in Luxembourg include collective management, discretionary management and investment advice.

5.6.3. Representative offices

In 2009, the management company Polaris Investment S.A. opened a representative office in Italy. AllianceBernstein (Luxembourg) S.A. on the other hand closed its representative offices in Italy, Spain, Sweden and Switzerland.

5.7. Prudential supervisory practice

5.7.1. Financial stability of direct and indirect shareholders in a management company set up under Chapter 13 of the law of 2002

The CSSF has decided that natural persons taking a qualifying holding, directly or indirectly through another company, in a management company set up under Chapter 13 shall prove, by means they deem appropriate, that they dispose of sufficient capital to guarantee a sound and prudent management of the management company.

The CSSF has also laid down that each company which becomes a direct or indirect shareholder of a management company set up under Chapter 13, shall, in principle, hold at least equivalent capital to that of the management company and, where appropriate, to the other holdings in the management company in question.

5.7.2. Management company and general partner of a SICAR or a SIF

The CSSF may, on the basis of a specific file, allow a management company to act as general partner of an investment company in risk capital or of a specialised investment fund incorporated as a limited partnership.

5.7.3. Management company and independence from the depositary bank

During 2009, the CSSF was asked whether an employee of a Luxembourg bank could also act in parallel as manager, within the meaning of Article 78(1)(b) of the law of 2002, of a management company which appointed the same bank as depositary bank for the UCIs it manages. Taking into account the principle of independence, the CSSF decided that such a set-up was not acceptable even though the employee does not work directly in the “depositary bank” department and that adequate Chinese walls exist between the different departments within the bank.

5.7.4. Management company and management of a UCI which is not subject to supervision considered as equivalent supervision to that prescribed in the EU

The CSSF accepts that a management company, whether it is set up under Chapter 13 or under Chapter 14 of the 2002 law, may manage a UCI which is not subject to supervision considered as equivalent to that prescribed in the EU (the "fund") under the following conditions:

a) Neither the sales prospectus nor the marketing material of the fund may leave the impression that the fund is directly or indirectly subject to the supervision of a Luxembourg authority. As a result, and in order to avoid any misconception by investors, the sales prospectus and the marketing material of the fund as well as, where appropriate, all other documentation relating to the fund shall contain a specific provision highlighting such lack of control.

b) According to Article 76 of the 2002 law, the shares and units of the fund shall not be publicly exposed, offered or sold in or from Luxembourg. Consequently, the sales documents relating to the fund shall expressly mention the fact that the shares/units of the fund shall under no circumstances be publicly exposed, offered or sold in or from Luxembourg.

c) The fact that a management company is party to an essential contract such as a Trust Deed or management regulations, shall not affect the nationality of the fund.

d) If a management company wishes to outsource the functions related to the management of the fund, it shall have all the procedures and means at its disposal allowing it to manage the funds at any time. A description of these procedures and means shall be submitted to the CSSF.

e) Any new management mandate which the management company intends to enter into with another fund requires the CSSF’s prior approval.

f) The management company shall map the operational risks linked to the management of funds and shall give itself the appropriate means to adequately manage these risks.

6. DEVELOPMENTS IN THE REGULATORY FRAMEWORK

6.1. Circular CSSF 09/392 of 4 February 2009 on the joint CEBS, CESR and CEIOPS guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector

Direct and indirect qualifying holdings in management companies are governed by Article 83 of the law of 20 December 2002 which in turn refers to Article 18 of the law of 5 April 1993 on the financial sector.

The above-mentioned Article 18 lays down the detailed procedure which the CSSF has to apply for the purpose of the prudential assessment of acquisitions and increases in participations and sets five assessment criteria, i.e. the reputation of the proposed acquirer, the reputation and experience of any person who will direct the business after the acquisition, the financial soundness of the proposed acquirer, the permanent compliance with the sectoral directives concerned, the risk of money laundering and terrorist financing.

The guidelines of the three committees CEBS, CESR and CEIOPS annexed to Circular CSSF 09/392 provide useful specifications regarding the five different evaluation criteria.

In this context, it should be noted that Circular CSSF 09/392 also applies to management companies governed by Chapter 13 of the 2002 law.

6.2. Circular CSSF 09/423 on electronic transmission to the CSSF of long form reports and management letters

As from 1 January 2010, Luxembourg UCIs have to provide, in addition to the paper form, long form reports and management letters in electronic form using a secured system for electronic transmission which is accepted by the CSSF, as for instance the e-file communication platform.

The files must be transmitted in PDF-text format. The received reports shall be such that they can be used for one-off researches. Consequently, the sent files shall never prevent read access, printing, copy/paste selection and the word search application.

7. PRUDENTIAL SUPERVISORY PRACTICE

7.1. Prudential supervision

7.1.1. Standards to be observed by UCIs

One of the fundamental duties of the CSSF in the supervision of UCIs is to ensure application of the laws and regulations relating to UCIs. The aim of this supervision is to ensure adequate investor protection as well as stability and security in the UCI sector.

7.1.2. Instruments of prudential supervision

The CSSF's permanent supervision aims to ensure that UCIs subject to its supervision observe all legislative, regulatory and contractual provisions relating to the organisation and operation of UCIs, as well as to the distribution, investment or sale of their securities. This supervision is based in particular on:

- the examination of the periodic financial information which UCIs must submit to the CSSF on a monthly and annual basis;
- the analysis of annual and semi-annual reports which UCIs must publish for their investors;
- the analysis of the management letters issued by the external auditor, which must be communicated immediately to the CSSF;
- the analysis of the statements made in accordance with the circular on the protection of investors in case of a NAV (net asset value) calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to UCIs;
- on-site inspections carried out by CSSF agents.

7.1.3. Means of control

- **Review of semi-annual and annual reports**

The review of semi-annual and annual reports carried out by the CSSF shows that these reports are in general drawn up in accordance with the applicable legal rules.

- **Review of financial information for the CSSF and STATEC**

In accordance with Circular IML 97/136 and pursuant to Article 118 of the law of 2002, as amended, the central administrations of Luxembourg UCIs must transmit financial information by electronic means to the CSSF, on a monthly (tables O 1.1.) and yearly (tables O 4.1. and O 4.2.) basis. The deadline to transmit the monthly financial information is twenty days following the reference date, which is in principle the last day of each month. As regards yearly financial information, the reference date is the date of the close of the financial year and the time limit is four months.

As far as monthly financial information is concerned, the CSSF considers that UCIs must, on the one hand, scrupulously observe the allocated deadline to submit table O 1.1. and, on the other hand, pay due attention when drawing up this table so as to ensure that the format and content are correct. For information, the format and content of about 12,000 files, representing nearly 28,500 types of units/shares, are controlled every month.

- **Surveys on Late Trading and Market Timing**

In accordance with Circular CSSF 04/146 concerning the protection of UCIs and their investors against Late Trading and Market Timing practices, one case of potential Market Timing was reported to the CSSF in 2009 and, following examination, it could already be closed during the course of the year.

- **Meetings**

In 2009, 230 meetings were held between representatives of the CSSF and intermediaries of UCIs. These meetings concerned the presentation of new UCI projects, restructurings of UCIs, but also the application of the laws and regulations of UCIs.

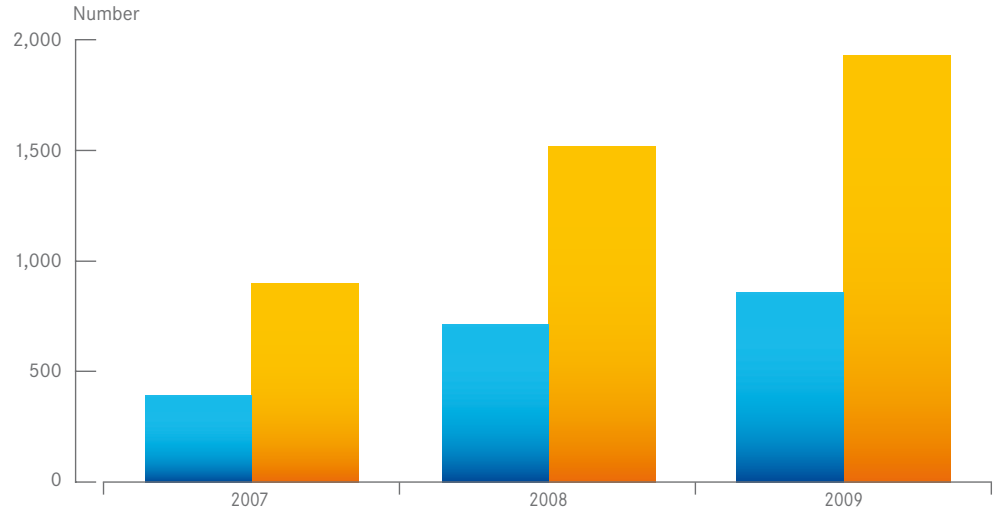
7.2. Circular CSSF 02/77 on the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules

7.2.1. Reports made in 2009 on the basis of Circular CSSF 02/77

In 2009, the CSSF received 2,787 statements on the basis of Circular CSSF 02/77, against 2,233 statements in 2008, representing an important increase of 25%.

Among these reports, 858 cases (714 in 2008) concerned NAV calculation errors and 1,929 cases (1,519 in 2008) non-compliance with investment rules.

Development in the number of NAV calculation errors and cases of non-compliance with investment rules notified to the CSSF over the last three years



	2007	2008	2009
NAV calculation errors	393	714	858
Non-compliance with investment rules	899	1,519	1,929

As far as the number of NAV calculation errors is concerned, the rising trend which began in 2005 was confirmed in 2009. The 20% rise as against 2008 can be explained in part by the turbulence which affected financial markets over the past months. The number of instances of non-compliance with investment rules also increases by 27%.

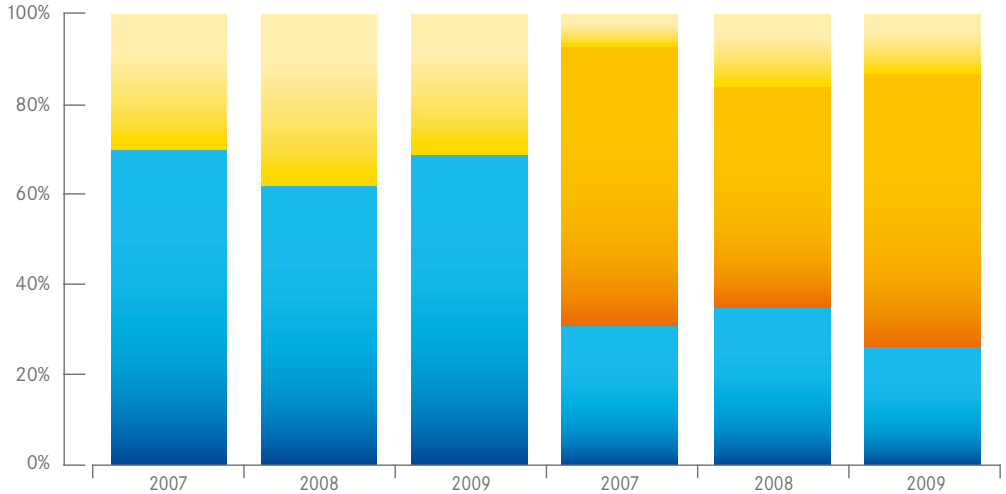
As regards more particularly the statements received in 2009, 290 of the 858 cases of NAV calculation errors and 196 of the 1,929 cases of non-compliance with investment rules could not be closed at 31 December 2009, as the CSSF is still awaiting either further information, the report(s) of the *réviseur d'entreprises* (statutory auditor), the management letter or the report on the UCI's activity following the application of the simplified procedure as provided for by Circular CSSF 02/77.

Indeed, a simplified procedure is applied for cases of NAV calculation errors or non-compliance with investment rules that entail losses for the UCI, where the indemnification amount does not exceed EUR 25,000 and the amount to be reimbursed to an investor does not exceed EUR 2,500.

In 2009, 590 out of 858 cases of NAV calculation errors fall within the scope of the simplified procedure (446 cases out of 714 in 2008). 488 out of 1,929 cases of non-compliance with investment rules also applied this procedure (539 cases out of 1,519 in 2008).

The following graph plots the proportion of the cases of simplified procedure compared to the total number of reports received over the last three years as well as the instances of non-compliance with investment rules that were resolved without harming neither the investors nor the UCI.

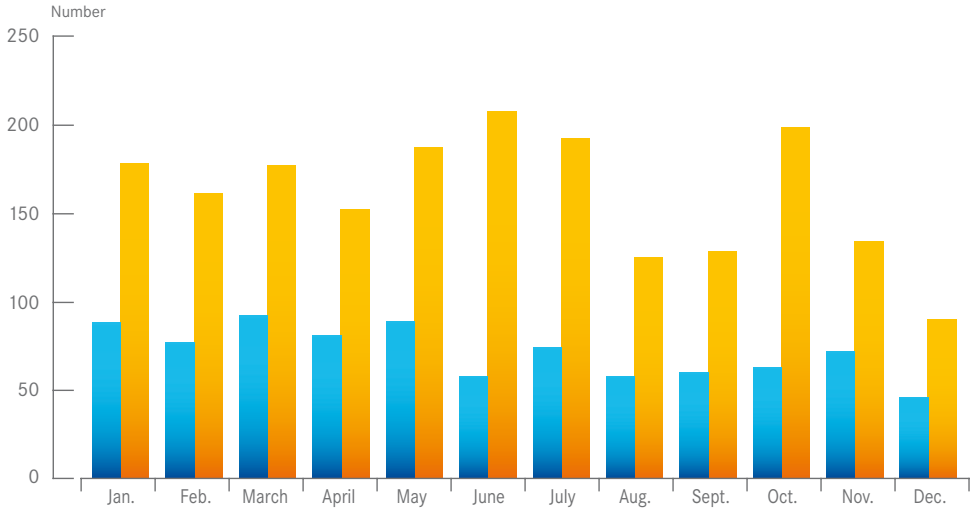
Simplified procedure



	NAV calculation errors			Non-compliance with investment rules		
	2007	2008	2009	2007	2008	2009
Normal procedure	30%	38%	31%	7%	16%	13%
Non-compliance without prejudice	-	-	-	62%	49%	61%
Simplified procedure	70%	62%	69%	31%	35%	25%

The following graph sets out on a monthly basis the number of reports made during 2009.

Development in the errors and instances of non-compliance notified in 2009

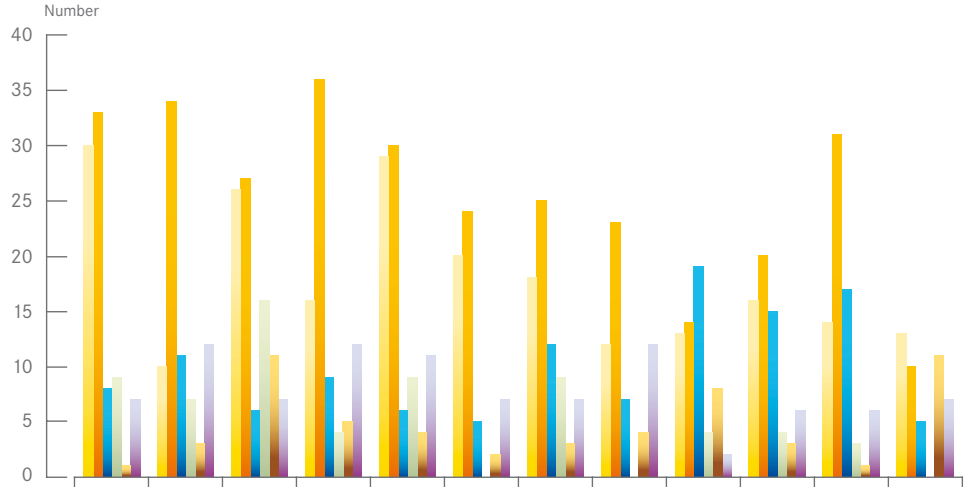


	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
NAV calculation errors	88	77	92	81	89	58	74	58	60	63	72	46
Non-compliance with investment rules	178	161	177	152	187	207	192	125	128	198	134	90

The reason for NAV calculation errors can be divided into five categories: pricing errors, booking errors, errors in the calculation of costs and accruals, errors in the valuation of swaps and futures or other errors.

The following graph plots the different causes of NAV calculation errors recorded in 2009.

Development of the causes of NAV calculation errors in 2009

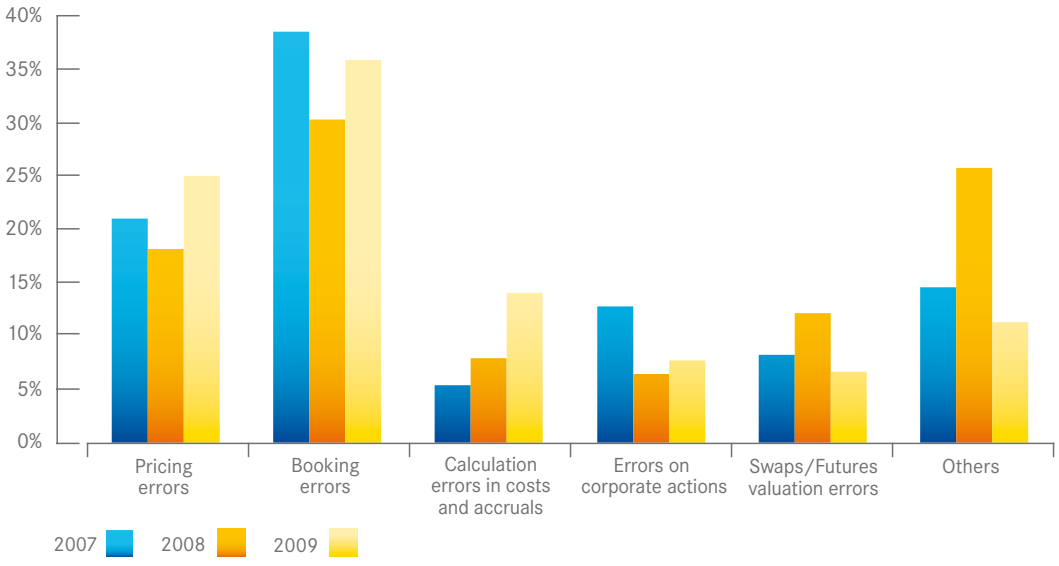


	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Pricing errors	30	10	25	15	29	20	18	12	13	15	14	13
Booking errors	33	34	27	36	30	24	25	23	14	20	31	10
Calculation errors in costs and accruals	8	11	6	9	6	5	12	7	19	15	17	5
Errors on corporate actions	9	7	16	4	9	0	9	0	4	4	3	0
Swaps/Futures valuation errors	1	3	11	5	4	2	3	4	8	3	1	11
Others	7	12	7	12	11	7	7	12	2	6	6	7

During the relevant period, the majority of NAV calculation errors were due to pricing errors (25%) and to booking errors (36%).

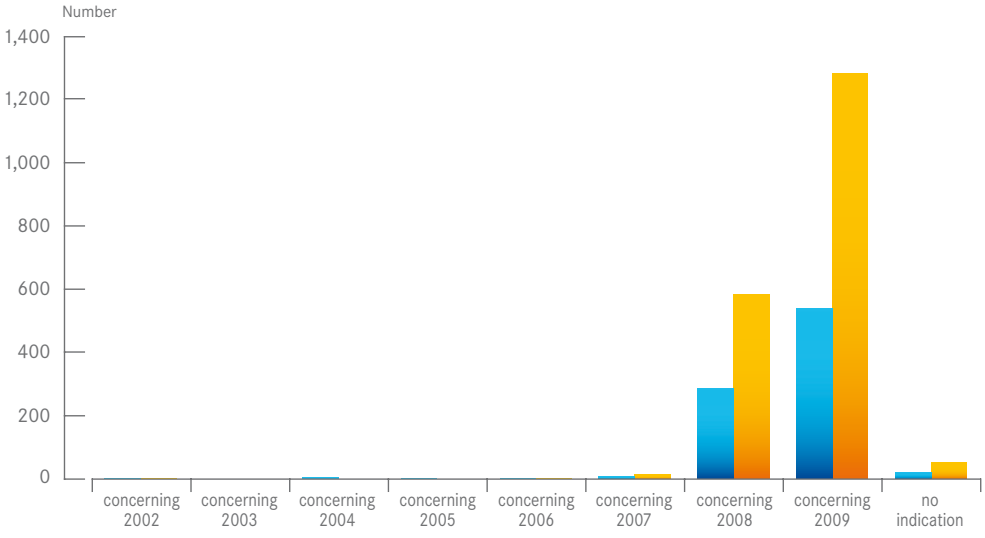
The following table shows the development of NAV calculation errors since 2007 and highlights that over the past three years, booking errors and errors in the valuation of securities held by UCIs were the main causes of NAV calculation errors.

Development of the causes of NAV calculation errors over the last three years



It should be noted that the declarations received during 2009 do not necessarily relate to errors and instances of non-compliance which actually happened in 2009. As a matter of fact, they can also relate to errors or instances of non-compliance detected in 2009, but which relate to errors or instances of non-compliance that occurred previously, as shown in the graph below.

Reports made in 2009



	concerning 2002	concerning 2003	concerning 2004	concerning 2005	concerning 2006	concerning 2007	concerning 2008	concerning 2009	no indication
NAV calculation errors	1	0	3	1	1	7	286	538	21
Non-compliance with investment rules	1	0	0	0	1	15	583	1,278	51

7.2.2. Compensation paid following regularisation of NAV calculation errors or instances of non-compliance with investment rules

The table below sets out the detailed compensation amounts notified in 2008 and 2009. It has to be noted that it is based on data available to the CSSF as at 31 December 2008 and 31 December 2009 respectively, while the compensation amounts had not yet been notified in certain cases.

Compensation paid following NAV calculation errors

	Investors		UCI/Sub-fund	
	2008	**2009**	**2008**	**2009**
EUR	5,400,901.01	11,624,300.72	7,439,544.87	16,375,326.81
USD	5,181,765.38	4,783,387.87	3,244,553.74	4,940,711.72
GBP	4,015.33	449.18	85,202.42	15,127.35
CHF	10,210.10	588,320.40	267,422.78	485,321.56
Other currencies*	29,849.35	187,967.34	66,648.62	210,851.17
Total (in EUR**)	**9,232,525.22**	**15,529,736.66**	**10,173,285.82**	**20,359,956.41**

* converted in EUR at the exchange rate applicable on 31 December 2009 and 31 December 2008 respectively.
** exchange rate as at 31 December 2009 and 31 December 2008 respectively.

Compensation paid following non-compliance with investment rules

	Investors		UCI/Sub-fund	
	2008	2009	2008	2009
EUR	1,381.74	160,228.50	4,671,131.43	4,271,938.94
USD	-	23,217.64	1,490,522.27	3,099,483.32
GBP	-	-	22,648.40	58,378.62
CHF	-	424.00	67,712.00	41,312.62
Other currencies*	-	-	46,769.06	709,706.20
Total (in EUR**)	**1,381.74**	**176,630.94**	**5,908,039.95**	**7,226,748.13**

* converted in EUR at the exchange rate applicable on 31 December 2009 and 31 December 2008 respectively.
** exchange rate as at 31 December 2009 and 31 December 2008 respectively.

As regards the increase of the amounts paid out as compensation following NAV calculation errors, it should be noted that the compensation amounts linked to three NAV calculation errors represented 36% of the total amount paid out to investors and 48% of the total amount paid out to sub-funds.

The increase of the amounts paid out as compensation following non-compliance with investment rules, which has become apparent since 2006, gained in importance in 2009. This increase can be explained through the rise in the number of declarations received over the year, although it should be noted that the compensation amounts linked to only two instances of non-compliance with investment rules represent 53% of the total amount paid out to sub-funds and that one single instance of non-compliance with investment rules represents 61% of the total amount paid out to investors.

7.3. Management letters

Chapter P of Circular IML 91/75 of 21 January 1991 states that UCIs must automatically and immediately communicate to the CSSF the management letters issued by the *réviseur d'entreprises* (statutory auditor) in the context of the audits which the latter are obliged to undertake pursuant to Article 113 of the law of 2002.

The analysis below is based on the data of the year 2008, since these are more pertinent. Indeed, most UCIs close their financial year on 31 December so that the data relating to 2008 are established by the CSSF in 2009.

As in the previous years, many management letters, namely 68%, are management letters that contain no recommendations, i.e. the *réviseur d'entreprises* (statutory auditor) has not detected any irregularities in the management of the UCIs. 23% are management letters with recommendations by which the *réviseur d'entreprises* (statutory auditor) has reported irregularities of various types. 9% of the management letters have not yet been submitted.

The examination of management letters with recommendations shows that the irregularities reported by the *réviseur d'entreprises* (statutory auditor) can be broken down into four large categories: overstepping of statutory or regulatory limits, NAV calculation errors, non-compliance with investment policy and problems in the organisation of UCIs.

7.4. Long form reports

Circular CSSF 02/81 of 6 December 2002 sets out the rules concerning the scope of the audit of the annual accounting documents and the content of the long form reports to be drawn up pursuant to the law on UCIs. The circular, which applies to all Luxembourg UCIs, takes account of the fact that in practice, the role and function of the *réviseur d'entreprises* (statutory auditor) are one of the pillars of the prudential supervision of UCIs.

The purpose of the long form report introduced by Circular CSSF 02/81 is to report on the findings of the auditor in the course of its audit concerning the financial and organisational aspects of the UCI comprising *inter alia* its relationship with the central administration, the depositary bank and other intermediaries (investment managers, transfer agents, distributors, etc.).

The reports enable the CSSF to strengthen the supervision of UCIs as they provide detailed information on the organisation of UCIs and on their relationships with the central administration, the depositary bank or any other intermediary.

7.5. Enforcement of the legislation concerning UCIs

7.5.1. Managers of UCIs governed by Part II of the law of 20 December 2002

The CSSF wishes to stress the guidelines applicable to the authorisation of portfolio managers of UCIs governed by Part II of the 2002 law whose role is to take decisions regarding the investment and disinvestment of the UCI's assets.

The CSSF considers that, in principle, only those professionals of the financial sector authorised by their constitutional documents to take on the role of portfolio manager and holding the necessary authorisations to exercise such activity in their home country and proving sufficient experience regarding fund management as well as sufficient human and technical means to exercise this function, can be authorised as managers of a UCI governed by Part II of the 2002 law.

In this context, the CSSF also requires that these managers be subject in their home country to supervision by a supervisory authority which exercises equivalent supervision or that they be part of a group which is subject to consolidated supervision by a supervisory authority which exercises equivalent supervision, where these managers are situated in a country the supervisory authority of which is not considered to exercise equivalent supervision.

7.5.2. Use of the internet for marketing purposes by Luxembourg UCIs

The CSSF hereby reminds persons and entities under its prudential supervision that they shall comply on an ongoing basis with the rules of conduct of the financial sector both in Luxembourg and abroad and that they shall refrain from issuing misleading advertisement relating to the services offered. They shall also, where appropriate, mention the specific risks inherent to these services and clarify the client's responsibilities.

Investment funds may use the internet for advertising or promotion in Luxembourg provided the following conditions are satisfied:

- The internet site is strictly limited to advertising and information purposes. It shall not be used for the purpose of subscription or transaction in the shares/units of the investment fund.
- The information which is made available to investors shall enable the investor to assess the product (domiciliation of the fund, public offering in Luxembourg or not, restrictions relating to eligible investors, etc.)

The CSSF considers that the investment fund or the management company is the owner of the internet site, which in turn shall ensure that investors are able to identify the website as being the official site of the fund or the management company.

The CSSF further recommends that a fund or management company use the URL ending in ".lu", in ".com" or in ".eu". The use of a URL of a different country is not recommended, given the possible incompatibility with the law of that country.

The CSSF wishes to stress that the address of the website must not be confused with the addresses of other legal persons subject to specific regulation.

7.5.3. NAV calculation on partial bank holidays

The CSSF hereby clarifies that where a banking day is a partial bank holiday (such as 24 December), the NAV needs to be calculated unless the prospectus of the UCI explicitly waives the NAV calculation on that day.

7.5.4. Interpretation of Article 48(2) of the law of 20 December 2002

Article 48(2) of the 2002 law provides that a UCITS may acquire no more than 25% of the units of the same UCITS and/or other UCI. The CSSF has decided that the 25% rule applies to the investing UCITS seen in its entirety and not to a specific sub-fund. In other words, an entire umbrella UCITS may not hold more than 25% of the issued units of the entire target UCI.

7.5.5. Analysis of the eligibility of transferable securities linked to the performance of other underlying assets (structured finance instruments)

The analysis of the eligibility of structured finance instruments in the context of a UCITS under Part I of the law of 20 December 2002, i.e. of transferable securities linked to the performance of underlying assets *via* derivative instruments covers several points.

In order to be eligible in terms of Article 41(1)(a)-(d) of the law of 20 December 2002 and to qualify as transferable securities, the securities in question shall first comply with the legal provisions set down in Article 2 of the Grand-ducal regulation dated 8 February 2008, completed by point 17 of the CESR document entitled "CESR's guidelines concerning eligible assets for investment by UCITS – March 2007 (updated September 2008)", ref. : CESR/07-044b, included in Circular CSSF 08/380.

In the context of transferable securities linked to the performance of other underlying assets, one also needs to assess whether these transferable securities contain an embedded derivative within the meaning of Articles 2(3) and 10 of the Grand-ducal regulation dated 8 February 2008 or of point 23 of the above-mentioned document CESR/07-044b. Two scenarios are possible:

(a) Transferable securities which contain an embedded derivative within the meaning of Articles 2(3) and 10 of the Grand-ducal regulation dated 8 February 2008 or of point 23 of the above-mentioned document CESR/07-044b.

In this case, the portfolio manager shall apply the look-through principle and assess the eligibility of the underlying assets in relation to the provisions relating to derivative financial instruments set out in Article 8 of the Grand-ducal regulation dated 8 February 2008.

a.1) If the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41(1) of the law of 20 December 2002 and to Article 8 of the Grand-ducal regulation dated 8 February 2008, then the transferable securities in question are eligible as investments of UCITS governed by Part I of the law of 20 December 2002.

a.2) If the assets underlying the derivative financial instruments do not qualify as eligible assets according to Article 41(1) of the law of 20 December 2002 and to Article 8 of the Grand-ducal regulation dated 8 February 2008, then the transferable securities in question are not eligible as investments of UCITS pursuant to Article 41(1)(a)-(d) of the law of 20 December 2002.

Nevertheless, if the assets underlying the derivative financial instruments qualify as eligible assets according to Article 41(2)(a) of the law of 20 December 2002, the transferable securities in question are eligible as investments of UCITS pursuant to Article 41(2) of this law.

Where a transferable security contains an embedded derivative within the meaning of Articles 2(3) and 10 of the Grand-ducal regulation dated 8 February 2008 or of point 23 of the document CESR/07-044b, the requirements of Article 42 of the law of 20 December 2002 shall apply to this derivative instrument.

(b) Transferable securities which do not contain an embedded derivative within the meaning of Articles 2(3) and 10 of the Grand-ducal regulation dated 8 February 2008 or of point 23 of the document CESR/07-044b.

In principle, the portfolio manager need not apply the look-through principle nor assess the eligibility of the underlying assets in relation to the provisions relating to derivative financial instruments set out in Article 8 of the Grand-ducal regulation dated 8 February 2008.

That said, a UCITS must always be managed in the respect of the principle of risk-spreading. It is therefore not acceptable for a UCITS governed by Part I of the law of 20 December 2002 to invest exclusively in different securities which are all linked to the performance of the same underlying asset.

As a consequence, the principle of risk-spreading applies to each transferable security as well as to its underlying assets, independently of whether the security contains or not an embedded instrument within the meaning of Articles 2(3) and 10 of the Grand-ducal regulation dated 8 February 2008 or of point 23 of the document CESR/07-044b.

It follows that the portfolio manager as well as the persons responsible for the UCITS shall possess the necessary means to comply with the principle of risk-spreading.

7.5.6. Interpretation of Article 50(2) of the law of 20 December 2002

According to Article 50(2) of the law of 20 December 2002, a UCITS may borrow the equivalent of up to 10% of its assets provided that the borrowing is on a temporary basis.

The possibility to borrow may be used to honour redemptions. The CSSF considers that borrowings may also be used under certain conditions for investment purposes. If so, the borrowing must be temporary, which means that it shall mature in a reasonable period of time taking into account the conditions in which it was entered into and, consequently, that such borrowings shall not permanently form part of the UCITS' investment policy, i.e. that the borrowings effected for investment purposes shall not be undertaken on a repetitive basis.

The CSSF further considers that negative and positive positions of currency cash accounts held by the UCITS with the same legal counterpart may be offset in order to prove compliance by the UCITS with the temporary borrowing limit of 10% of their assets, provided they comply with the following conditions:

- the UCITS' current accounts are free of collateral/pledge,
- the contracts signed by the UCITS and the counterpart governing these current accounts foresee this offsetting, and
- the law which governs aforementioned contracts allows such offsetting.

The offsetting of positive and negative positions of current accounts held by UCITS with different counterparts is not permitted.

The CSSF reminds that the persons responsible for the UCITS shall ensure compliance with the limit laid down in Article 50(2) of the aforementioned law and of the condition linked to it, i.e. that the borrowings be of a temporary nature.

7.5.7. Application of the legislation concerning SIFs

- **Interpretation of Article 2 of the law of 13 February 2007 relating to specialised investment funds**

The CSSF considers that where shares or units of a SIF have been subscribed jointly by one or more investors, the EUR 125,000 condition laid down in Article 2 of the law of 13 February 2007 shall be observed by each co-investor. It is not sufficient for the total joint amount of subscription to exceed EUR 125,000.

- **Management letters issued by *réviseurs d'entreprises* (statutory auditor) within their mandate for a SIF subject to the provisions of the law of 13 February 2007**

The CSSF requires SIFs subject to the provisions of the law of 13 February 2007 to provide the CSSF with either a management letter or a no-management letter drawn up by the *réviseur d'entreprises* within the context of the audits carried out in compliance with the aforementioned law, without being specifically requested to do so.

- **Interpretation of Articles 27 and 39 of the law of 13 February 2007**

The CSSF considers that, as regards the legal minimum required by Articles 27 and 39 of the law of 13 February 2007, the notion of "subscribed capital" exclusively refers to securities issued in the form of shares. It follows that securities issued under another form permitted by Article 1(1) of the law cannot be taken into account for the purposes of calculating the minimum threshold set out by the above Articles.

Agents hired in 2009 and 2010 - Departments "Supervision of undertakings for collective investment" and "Supervision of securities markets"
Left to right: Isah SKRIJELJ, Nicolas MULLER, Anne LUTGEN, Tom MULLER, Félix WANTZ,
Christophe FAÉ, Rudi DICKHOFF

SUPERVISION OF PENSION FUNDS

1. Developments in the pension funds sector in 2009
2. Liability managers

04

1. DEVELOPMENTS IN THE PENSION FUNDS SECTOR IN 2009

During 2009, the CSSF authorised the following two pension funds in the form of multiple-compartment ASSEPs subject to the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAV) and pension savings associations (ASSEP):

- Compagnie Luxembourgeoise de Pension,
- GENO-Pensionsfonds.

As at 31 December 2009, fifteen pension funds were subject to the law of 13 July 2005.

Their net assets reached EUR 654 million at the end of 2009 against EUR 286 million as at 31 December 2008.

In general, the pension funds sector experienced a light upturn in 2009 after several years of stagnation. While the pension funds incorporated in 2009 were created by Luxembourg sponsoring undertakings, the cross-border activities of Luxembourg pension funds did not develop much.

The CSSF expects a slow but continuous development of the pension funds activity in the coming year, through the development of the existing pension funds' activities, as well as through the establishment of new entities in Luxembourg.

2. LIABILITY MANAGERS

Following the registration, in 2009, of Pecoma International S.A. on the official list of professionals authorised to act as liability managers for pension funds subject to the law of 13 July 2005, the number of liability managers of pension funds approved by the CSSF amounted to thirteen as at 31 December 2009.

Agents hired in 2009 and 2010 - Departments "Information systems and supervision of support PFS", "Public oversight of the audit profession" and "Supervision of pension funds, SICARs and securitisation undertakings"
Left to right: : Frank BOURGEOIS, Nicolas LEFEUVRE, Isabelle GIL, Michael RADEMACHER, Paul SCHOLTES, Marco FARDELLINI, Hugues WANGEN

PRUDENTIAL SUPERVISION OF SICARS

1. Developments in the SICAR sector in 2009
2. Prudential practice

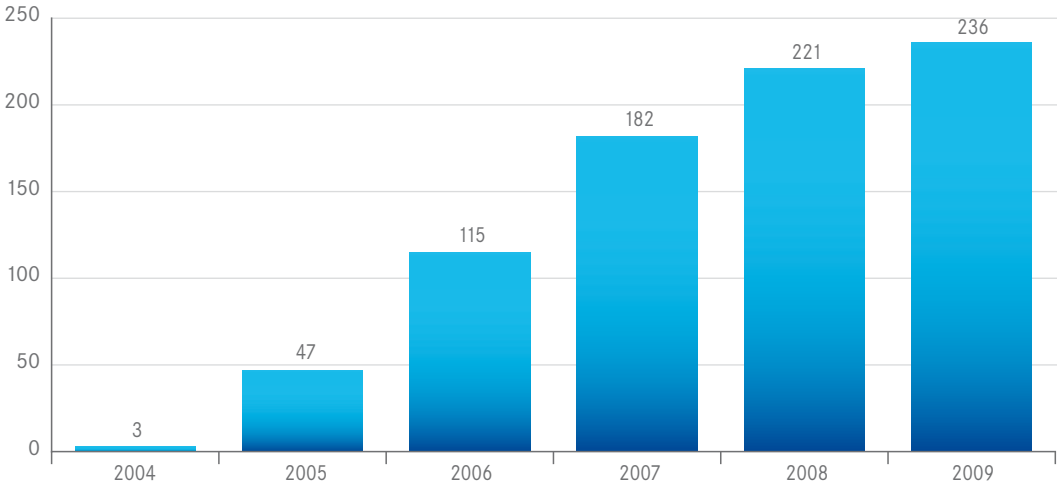
05

1. DEVELOPMENTS IN THE SICAR SECTOR IN 2009

In 2009, the CSSF received 40 files from SICARs applying for registration on the CSSF's official list of SICARs, i.e. a decrease of 32% compared to 2008. Fifteen files have been withdrawn, at the initiators' request, during the scrutiny process.

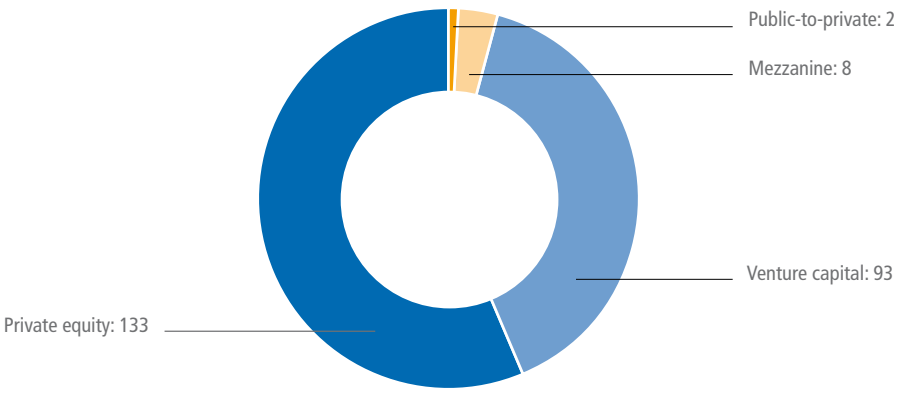
The number of SICARs registered on the official list grew from 221 entities as at 31 December 2008 to 236 entities as at 31 December 2009, among which 10 umbrella SICARs. At that date, about forty files were still being processed.

Development in the number of SICARs



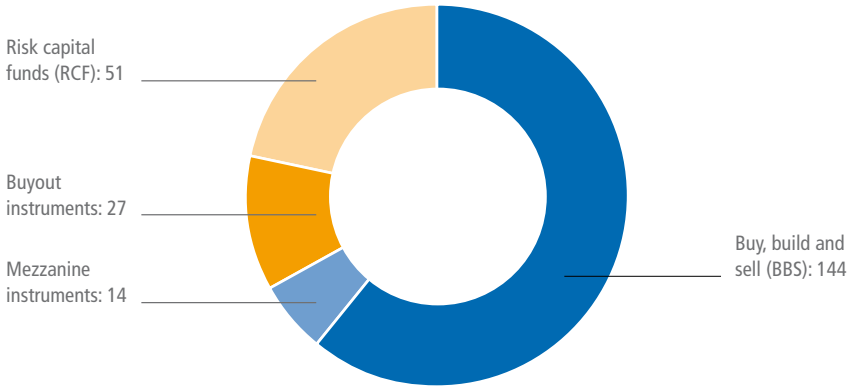
As regards the investment policy of SICARs, the graph highlights a slight preference for private equity, followed by venture capital, without however revealing an actual trend for a specific investment policy.

Investment policy



As regards the investment strategy, the SICARs chose either to limit their policy to a particular strategy (buy, build and sell, buyouts, mezzanine financing, risk capital funds, etc.), or to adopt a combination of strategies generally used in the field of risk capital.

Investment strategy



As regards the sector-based distribution, 116 SICARs would rather not limit their investment policy to a particular investment sector. Among the SICARs having adopted a specialised policy, there is a certain concentration in the real estate and technology sectors.

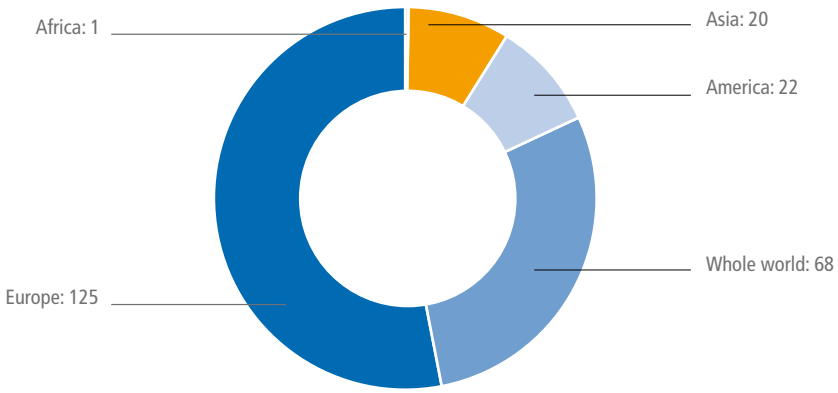
Moreover, the CSSF registered an increase in SICARs investing in the (renewable) energy sector in 2009. The objective of SICARs that take an interest in renewable energy is to invest in entities fighting climate change, *inter alia* the reduction in greenhouse gases, or to foster the use of renewable energy.

Sector-based distribution

Sector	Number
All sectors	116
Real estate	46
Technology	21
Energy	14
Industry	10
Services	8
Science	5
Finance	4
Microfinance	3
PPP	3
Precious metals and gemstones	2
Sports	2
Education	2
Total	**236**

As for the geographical area of the investments, the majority of the 236 SICARs invest in Europe.

Investment region



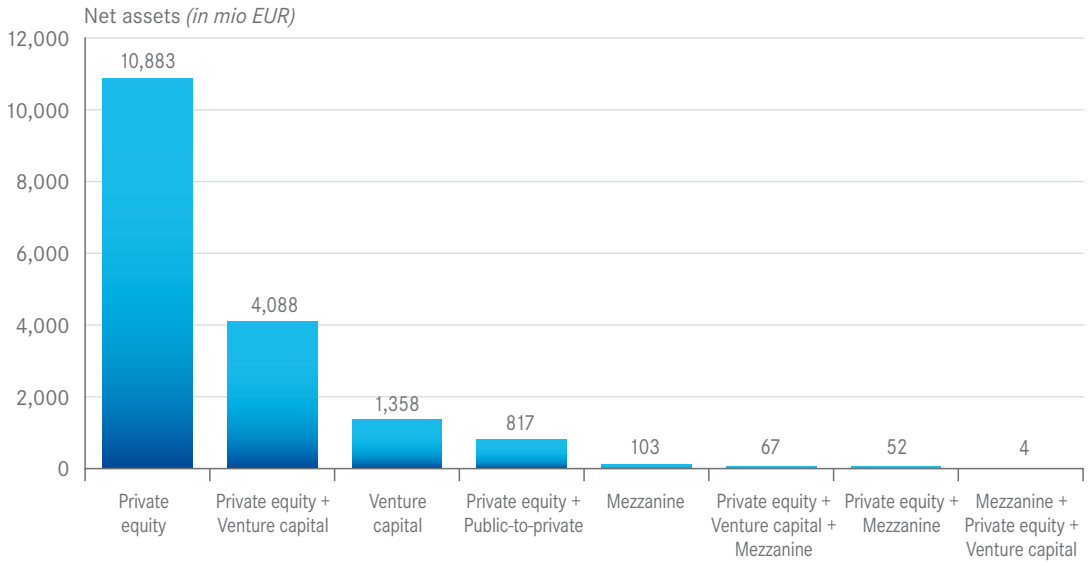
As far as the geographical origin of the initiators is concerned, those from Europe are largely predominant, followed by US initiators.

Geographical origin of the initiators

Country	as % of total
France	17.72%
Germany	13.95%
Switzerland	13.57%
Luxembourg	11.40%
United States	8.67%
Italy	6.79%
Spain	4.90%
United Kingdom	4.90%
Belgium	4.52%
Austria	2.26%
Netherlands	2.00%
Denmark	0.75%
Egypt	0.75%
Finland	0.75%
Iceland	0.75%
Portugal	0.75%
Russia	0.75%
Turkey	0.75%
Australia	0.37%
British Virgin Islands	0.37%
Greece	0.37%
Guernsey	0.37%
Hungary	0.37%
Israel	0.37%
India	0.37%
Jersey	0.37%
Kuwait	0.37%
Lebanon	0.37%
Slovenia	0.37%
Total	**100.00%**

Based on the provisional figures as at 31 December 2009, the capital commitments in SICARs reached EUR 14.71 billion and their balance sheet total (unpaid subscribed capital excepted) amounted to EUR 18.09 billion.

Breakdown of net assets of SICARs according to the investment policy



Investment in risk capital amounted to EUR 15.56 billion, while the funds awaiting investment reached EUR 2.50 billion.

It should be noted that SICARs are mainly financed by their investors. Total financing of SICARs by banks only amounted to EUR 238.01 million, representing 1.26% of the SICARs' balance sheet total.

2. PRUDENTIAL PRACTICE

2.1. Governance rules of SICARs in the form of a limited partnership

The CSSF underlines the importance for SICARs, incorporated in the form of a limited partnership, to monitor the extent of powers that the articles of incorporation and the prospectus confer to the general partner of the company. In this context, it is advised that SICARs adopt specific rules regulating the conditions for the dismissal of the general partner.

In case no specific rules for the replacement of the general partner are provided or in case the powers of the general partner are very extensive, the CSSF reserves the right to require that a risk warning be included in the prospectus of the SICAR which will draw the attention of the investors to the powers conferred to the general partner of the SICAR.

2.2. Conflicts of interest policy

The CSSF requests that the prospectuses of SICARs are transparent regarding the existence of potential conflicts of interest in the structure of the SICAR. At the same time, SICARs are required to adopt clear and precise rules regarding the management of potential conflicts of interest in their constitutive and sale documents.

2.3. Replacement of the SICARs' service providers

Having regard to Article 12(4) of the law of 15 June 2004 relating to the investment company in risk capital which sets out that "the replacement of the depositary or of the director and the amendment of the constitutive documents of the SICAR are subject to the approval by the CSSF", it should be borne in mind that the above-mentioned replacements and amendments must be submitted for prior approval to the CSSF.

As the CSSF also approves the choice of the central administration and of the *réviseur d'entreprises* (statutory auditor) of the SICAR, any replacement of these service providers is also subject to prior approval of the CSSF.

2.4. New SICAR application files

From now on, when a new SICAR file is submitted, the CSSF systematically invites the initiator of the SICAR to a meeting in order to present his project. This practice allows the CSSF to accelerate the scrutiny process, insofar as it may collect at once all the essential information regarding the new file.

SUPERVISION OF SECURITISATION UNDERTAKINGS

1. Developments in the sector of authorised securitisation undertakings
2. Prudential supervisory practice

06

1. DEVELOPMENTS IN THE SECTOR OF AUTHORISED SECURITISATION UNDERTAKINGS

During 2009, the CSSF received five applications for registration on the official list of authorised securitisation undertakings subject to the law of 22 March 2004 on securitisation.

The following four multiple-compartment securitisation undertakings were granted authorisation by the CSSF during 2009:

- PCAM Issuance S.A.
- SecurAsset S.A.
- Flexis S.A.
- Stork Acceptance S.A.

The securitisation undertaking iStructure S.A. was withdrawn from the official list during 2009.

Further to the CSSF's request based on Article 25(2) of the law of 22 March 2004 on securitisation, the 1st vice-president of the Luxembourg district court, sitting in commercial matters, appointed KPMG ADVISORY s.à r.l., represented by Mr. Eric Collard, on 11 February 2010 as provisional administrator (*administrateur provisoire*) of the authorised securitisation undertaking Lifemark S.A. for a period of six months from the delivery of the order. The provisional administrator shall manage and direct Lifemark S.A., put in place mechanisms for the control and monitoring of the activities of Lifemark S.A. and objectively look after the interests of Lifemark S.A., of its creditors and investors while working together with the CSSF. This mandate supersedes and terminates the previous one granted by the court order of 18 November 2009. The CSSF requested this new mandate following the provisional administrator's report on the first mandate, in order to ensure the highest degree of objectivity and transparency in the management of Lifemark S.A., with the aim to protect all investors.

As at 31 December 2009, 23 securitisation undertakings were registered on the official list of securitisation undertakings against 20 entities as at the end of 2008. Two application files of securitisation undertakings were still being processed at the end of 2009. The balance sheet total of authorised securitisation undertakings exceeded EUR 12 billion at the end of 2009, i.e. a decrease of EUR 4.5 billion against 2008.

The submitted application files reveal that securitisation transactions mainly consist in the securitisation of debt, loans and other comparable assets, as well as in repackaging transactions in the form of structured products issues linked to various financial assets.

In general, the securities issued by securitisation undertakings are bonds and subject to foreign law. In the vast majority of cases, the articles of incorporation nevertheless reserve the right for the securitisation undertaking to execute securitisations by issuing shares. Some securitisation undertakings also have the possibility to issue warrants.

To date, the CSSF has not received any application file for the authorisation of a fiduciary-representative under Luxembourg law, even though the law of 22 March 2004 on securitisation has established a specific legal framework for these independent professionals in charge of representing investors' interests. Authorised securitisation undertakings usually appoint a trustee governed by foreign law.

The CSSF expects securitisation activities to continue their slow but ongoing growth in 2010, a trend that is being confirmed by several application files that are currently under review.

2. PRUDENTIAL SUPERVISORY PRACTICE

In 2009, no changes have been made to the legal framework governing securitisation undertakings. However, the CSSF is currently analysing which lessons can be drawn from the financial crisis in terms of its role as the authorising and supervising body of securitisation undertakings, given that the financial crisis highlighted the increasing importance of the securitisation method that is chosen.

2.1. Definition of securitisation and securitisation undertakings

The CSSF is currently reviewing a number of basic principles which were published in its 2007 Annual Report.

As regards the assessment whether a transaction can be considered as a securitisation, the CSSF analyses in particular whether the criteria set out in its 2007 Annual Report (i) on loans granted by the relevant securitisation undertaking itself and (ii) on securitising commodities and other similar assets are still adequate. In this context, the CSSF also considers adopting a global approach for securitisation undertakings acting as issuance platforms for structured products.

The CSSF will publish an update of its guidelines shortly, most probably *via* an "FAQ"-document.

2.2. Authorisation requirements and procedures

2.2.1. Manager and shareholders

As a general rule, the identity of the beneficial owner of the securitisation undertaking must be notified to the CSSF.

The directors of a securitisation company or of the management company of a securitisation fund must meet the honorability requirements and have the adequate experience and means required for the performance of their duties. The CSSF requires that the directors have a robust experience in the securitisation sector.

2.2.2. Representative of the debtholders

Where an authorised securitisation undertaking appoints a foreign law trustee instead of a fiduciary-representative under Luxembourg law to represent investors' interests, this trustee must have an adequate organisation and human, financial and material resources to perform its activity correctly and in a professional manner. Details as to this trustee must be added to the application file.

2.3. On-site inspections

In 2009, the CSSF carried out an on-site inspection at a securitisation undertaking which it supervises so as to analyse *inter alia* the adequacy of its administrative and accounting organisation.

On-site inspections are an efficient tool for gathering a complete and direct overview of authorised securitisation undertakings' situation and how they are run in practice, and this supervisory tool is therefore expected to be used more frequently.

2.4. New application files

As part of its standard procedure when receiving an application file for a new securitisation undertaking, the CSSF will invite the initiator of the undertaking to present its project in a meeting. This will allow the CSSF to speed up its review process as it may collect, in one batch, every key information of this application.

SUPERVISION OF PFS

1. Developments of PFS in 2009
2. Prudential supervisory practice
3. Support PFS

07

1. DEVELOPMENTS OF PFS IN 2009

1.1. Major events in 2009

1.1.1. Reorganisation of the supervision of PFS

In June 2009, the department "Supervision of the other professionals of the financial sector" was divided in two departments: the department "Supervision of investment firms" and the department "Supervision of other PFS". This internal reorganisation of the CSSF is a consequence of the development of the EU legislation and, in particular, the MiFID Directive which introduces further requirements for investment firms. Thus, the three departments involved in the supervision of the PFS (the two above-mentioned departments and the department "Information systems and supervision of support PFS") may ensure a more efficient and focused prudential supervision of all PFS categories.

1.1.2. On-site inspections /on-site visits

In 2009, the CSSF increased the number of on-site inspections at authorised PFS and emphasised specific aspects of the prudential supervision. In addition to on-site inspections, the CSSF carried out during 2009 a certain number of on-site visits in newly authorised PFS. These meetings were usually held on the premises of the concerned PFS within the first months as from the ministerial authorisation.

1.1.3. Statistics

As at 31 December 2009, 286 PFS were subject to the prudential supervision by the CSSF and a total of 13,485 persons were employed by these PFS, which represents a slight decrease as compared to the previous year. The balance sheet total of all PFS amounted to EUR 22,456 million as at 31 December 2009 against EUR 62,676 million at the end of December 2008. The financial players registered an important development of their net results which increased from EUR 890.67 million as at 31 December 2008 to EUR 1,577.04 million as at 31 December 2009.

1.2. Scope of the prudential supervision carried out by the CSSF

The following other professionals of the financial sector fall under the scope of the prudential supervision of the CSSF:

- PFS incorporated under Luxembourg law (the activities performed by these institutions in another EU/EEA Member State, by means of a branch or under the freedom to provide services, are also subject to the prudential supervision of the CSSF; certain aspects of the prudential supervision including compliance with the rules of conduct for the provision of investment services to clients, fall under the competence of the host Member State[1]);
- branches of investment firms from non-EU/EEA countries;
- branches of PFS other than investment firms originating from EU/EEA or from non-EU/EEA countries.

The supervision of branches set up in Luxembourg by investment firms originating from another EU/EEA Member State is based on the principle of the supervision by the home Member State authority. Nevertheless, certain specific aspects of the supervision fall under the competence of the CSSF, supervisory authority of the host Member State[2].

[1] In accordance with the law of 13 July 2007 on markets in financial instruments transposing the MiFID Directive into Luxembourg law.

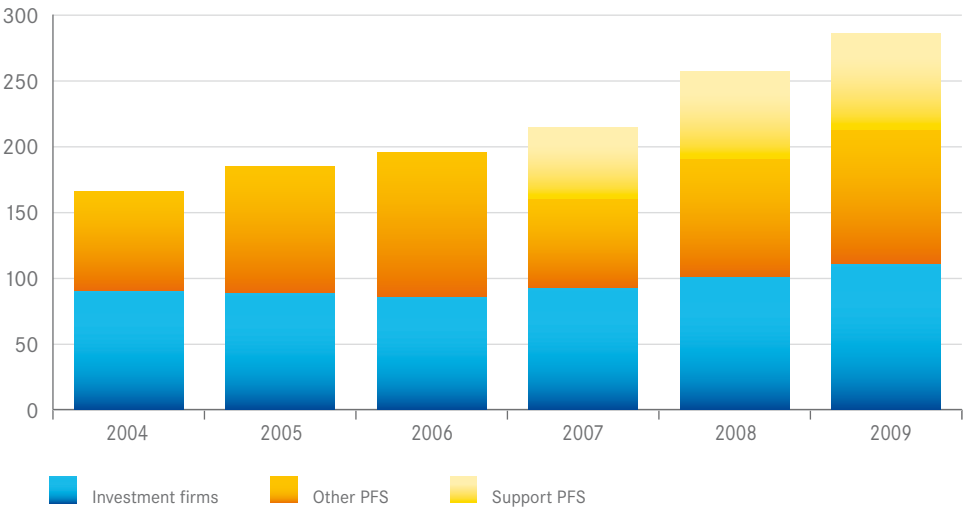
[2] Cf. footnote No. 1 above.

1.3. Development in the number of PFS

The positive development of the last years was confirmed in 2009, although it was less pronounced. Thus, the number of PFS rose from 257 as at the end of 2008 to 286 entities as at 31 December 2009[3]. Although the number of entities which received authorisation the previous year was greater, the number of entities which received authorisation in 2009 was fairly important (42 entities in 2009 against 57 in 2008). Twenty-two entities gave up their status as PFS in 2009 against fifteen in 2008. The less strong increase of the total number of PFS and the greater number of withdrawals during 2009 mainly resulted from the effects of the international economic crisis on the Luxembourg financial sector.

Development in the number of PFS

Year	Investment firms	Other PFS	Support PFS	Total
2004	90	76	/	**166**
2005	88	97	/	**185**
2006	85	111	/	**196**
2007	92	68	55	**215**
2008	100	90	67	**257**
2009	110	102	74	**286**



The breakdown of PFS into investment firms, other PFS and support PFS shows that the positive development of the total number of PFS is mainly due to other PFS and, to a lesser extent, to support PFS.

The increase of the number of investment firms between 2008 and 2009 can be explained by the fact that the branches established in Luxembourg by investment firms from EU/EEA Member States (10 entities as at 31 December 2009) are now added to the total number of investment firms. Thus, the number of investment firms incorporated under Luxembourg law (except branches established in Luxembourg) remained stable during 2009; the authorisation of eleven new investment firms compensated for the eleven withdrawals from the official list.

The investment firms carrying out activities of private portfolio managers are the most widespread with 72 entities as at 31 December 2009.

[3] As from 2009, the branches established in Luxembourg by investment firms from EU/EEA Member States are included in the total number of PFS (10 branches as at 31 December 2009).

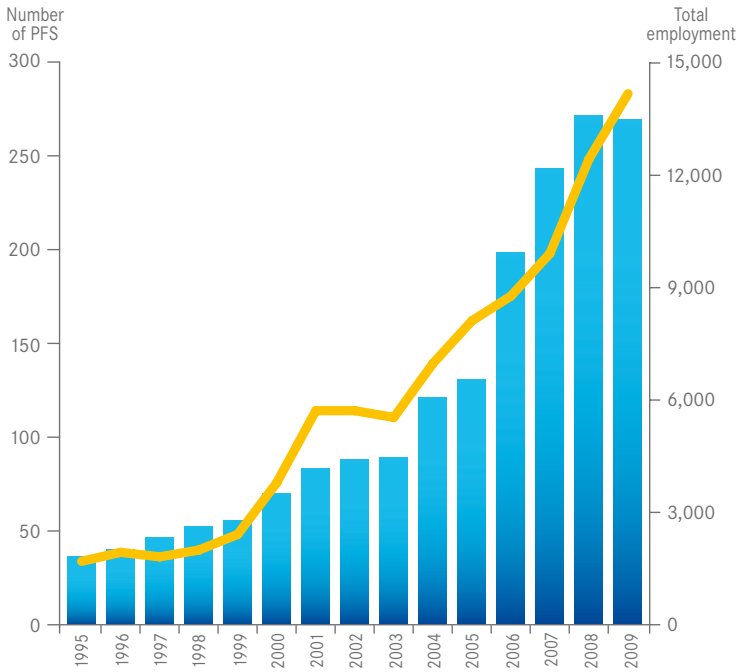
1.4. Development in employment for PFS

The upward trend of employment registered during the last years did not continue in 2009. Employment slightly decreased as a result of the international economic crisis which occurred in the last months of 2008.

Total staff fell from 13,605 persons as at 31 December 2008 to 13,485 persons at the end of December 2009 representing an annual decrease of 120 persons, i.e. -0.88%. The increase of staff resulting from newly authorised entities during this period could not compensate for the decrease of staff in several PFS (mainly support PFS) already active before 2009.

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

Year	Number of PFS	Total staff
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
2004	166	6,059
2005	185	6,547
2006	196	9,928
2007	215	12,174
2008	257	13,605
2009	286	13,485[4]



Details of the employment development in 2009 show a continuous decline during the first nine months of the year with total staff falling from 13,605 persons at the end of 2008 to 13,362 persons as at 30 September 2009, i.e. a decrease of 243 persons. The last quarter registered a slight upward trend of the PFS' staff number which rose from 13,362 persons as at 30 September 2009 to 13,485 persons at the end of 2009, representing an increase of 123 persons. Given the weak drop in the number of PFS during the last quarter (286 entities as at 31 December 2009 against 288 at the end of September 2009), this positive development can be explained by the increase of employment in a reduced number of PFS, the majority of PFS only registering slight variations during this period.

[4] Preliminary figures.

1.5. Changes in 2009 in the official list of PFS

1.5.1. Luxembourg PFS having started their activities in 2009

Investment firms

Pursuant to Chapter 2, section 2 of Part I of the law of 5 April 1993 on the financial sector, the following categories are defined as investment firms:

- investment advisers (Article 24);
- brokers in financial instruments (Article 24-1);
- commission agents (Article 24-2);
- private portfolio managers (Article 24-3);
- professionals acting for their own account (Article 24-4);
- market makers (Article 24-5);
- underwriters of financial instruments (Article 24-6);
- distributors of units/shares of UCIs (Article 24-7);
- financial intermediation firms (Article 24-8);
- investment firms operating an MTF in Luxembourg (Article 24-9).

Entities cumulating one or more investment firm statuses with one or more other PFS and/or support PFS statuses are included in the table of investment firms below.

During 2009, the following investment firms started their activities.

Name of the PFS	Start of business
Arena Wealth Management S.A.	January 2009
Belvall Capital S.A.	July 2009
CapitalatWork Foyer Group S.A.	December 2009
Crédit Agricole Family Office Iberia S.A.	January 2009
Finimmo Wealth Management S.A.	November 2009
Fransad Gestion S.A.	May 2009
IG Markets Limited, Luxembourg branch	January 2009
II PM Luxembourg S.A.	February 2009
KR Trust S.A.	February 2009
Lux Capital Management S.A.	May 2009
OES Europe S.à r.l.	July 2009
Origo S.A.	April 2009

Other PFS

The following categories are considered as other PFS:

- registrar agents (Article 25);
- professional custodians of financial instruments (Article 26);
- operators of a regulated market authorised in Luxembourg (Article 27);
- currency exchange dealers (Article 28-2);

- debt recovery (Article 28-3);
- professionals performing credit offering (Article 28-4);
- professionals performing securities lending (Article 28-5);
- administrators of collective savings funds (Article 28-7);
- management companies of non-coordinated UCIs (Article 28-8);
- domiciliation agents of companies (Article 29);
- professionals performing services of setting-up and of management of companies (Article 29-5);
- professionals of the financial sector authorised to exercise any activity referred to in section 1 of Chapter 2 of Part I of the law of 5 April 1993 on the financial sector, with the exception of the categories of PFS also referred to in section 2 of the same chapter;
- establishments authorised to exercise all the PFS activities permitted by Article 28 of the law of 15 December 2000 on postal services and financial postal services.

It should be noted that entities cumulating one or more other PFS statuses with one or more support PFS statuses are included in the table of "other PFS" below.

The following entities started their activities in 2009.

Name of the PFS	Start of business
Abax Investment Services S.A.	September 2009
Adomex S.à r.l.	December 2009
Arendt Services S.A.	April 2009
Arminius Funds Management S.à r.l.	December 2009
Capita Fiduciary S.A.	July 2009
Fortis Prime Fund Solutions (Luxembourg) S.à r.l.	August 2009
Golding Capital Partners (Luxembourg) S.à r.l.	July 2009
Hauck & Aufhaeuser Alternative Investment Services S.A.	September 2009
HSBC Fund Services (Luxembourg) S.A.	September 2009
Northstar Europe S.A.	June 2009
Novator (Luxembourg) S.à r.l.	February 2009
Paddock Fund Administration S.A., in abbreviated form "PFA"	September 2009
Paribus Investment & Management S.à r.l.	February 2009
Praxis Luxembourg S.A.	December 2009
Reluxco International S.A.	May 2009
Mr Alain Rome	January 2009
Shaftesbury Corporate Management Services (Luxembourg) S.A.	November 2009
Six Pay S.A.	June 2009
Triaxiom Investment S.à r.l.	March 2009
United International Management S.A.	January 2009

Support PFS

Support PFS are PFS authorised only as client communication agents (Article 29-1 of the law of 5 April 1993 on the financial sector), administrative agents of the financial sector (Article 29-2), primary IT systems operators of the financial sector (Article 29-3) or secondary IT systems and communication networks operators of the financial sector (Article 29-4), excluding any other PFS status. Entities cumulating one or several of those four statuses are also considered as support PFS.

The following support PFS started their activities in 2009.

Name of the PFS	Start of business
Ausy Luxembourg PSF S.A.	January 2009
Auxilium Fund Services S.A.	September 2009
BT Global Services Luxembourg S.à r.l.	March 2009
Dealis Fund Operations S.A.	May 2009
Elgon S.A.	March 2009
Fujitsu Technology Solutions (Luxembourg) S.A.	October 2009
LAB Datavault PSF S.A.	July 2009
Quilvest Luxembourg Services S.A.	February 2009
Sun Microsystems Luxembourg S.à r.l.	April 2009
Tech-IT PSF S.A.	August 2009

1.5.2. PFS having abandoned their status in 2009

Twenty-two entities, including eleven investment firms, abandoned their PFS status in 2009 for the following reasons:

- change or cessation of activities no longer requiring an authorisation as PFS as not falling under the scope of the law of 5 April 1993 on the financial sector any more (8 entities)

  Atag Asset Management (Luxembourg) S.A.
  DAM Capital Management S.à r.l.
  Figed S.A.
  LFS Multi-Family Office S.A.
  Mutualité d'Assistance aux Commerçants S.C.
  Mr Alain Rome
  SWAM (Luxembourg) S.A.
  Triaxiom Investment S.à r.l.

- voluntary winding-up (6 entities)

  Access Partners S.A.
  Catella Financial Office (Luxembourg) S.A.
  Intertrust Financial Engineering S.A.
  Family Trust Management Europe S.A.
  Fundamentum Asset Management S.A.
  Standard Chartered Financial Services (Luxembourg) S.A.

- judicial winding-up (1 entity)

  Lehman Brothers (Luxembourg) S.A.

- merger (6 entities)

  Capital at Work Int'l S.A. (merger by takeover by the PFS CapitalatWork Foyer Group S.A.)

  Degroof Conseil (Luxembourg) S.A. (merger by takeover by Banque Degroof Luxembourg S.A.)

  EDS Professionnel Secteur Financier (PSF) Luxembourg S.à r.l. (merger with Hewlett-Packard PSF Luxembourg S.à r.l.)

  Foyer Patrimonium S.A. (merger by takeover by the PFS CapitalatWork Foyer Group S.A.)

  Intesa Distribution International Services S.A. (merger by takeover by Eurizon Capital S.A., management company authorised under Chapter 13)

  Sun Microsystems Financial Sector S.à r.l. (merger by takeover by the support PFS Sun Microsystems Luxembourg S.à r.l.)

- change into a management company authorised under Chapter 13 (1 entity)

  Aberdeen Global Services S.A.

1.6. Development of balance sheets and profit and loss accounts

The provisional balance sheet total of all PFS established in Luxembourg reached EUR 22,456 million[5] as at 31 December 2009 against EUR 62,676 million as at 31 December 2008, i.e. an annual decrease of 64.17%. This important fall mainly results from the withdrawal from the official list of PFS in 2009 of a professional performing securities lending which had a significant balance sheet total. Moreover, several large-sized PFS of all categories and already active before 2009 registered a decline in the balance sheet total compared to the financial year 2008. These decreases are only partially compensated by the PFS newly authorised in 2009. It should also be pointed out that a high percentage of the balance sheet total of all PFS is attributable to one single financial player authorised in 2008 as a professional performing credit offering.

However, the financial players recorded a substantial upward development of their net profits over a year. Indeed, provisional net results amounted to EUR 1,577.04 million as at 31 December 2009[6] against EUR 890.67 million as at 31 December 2008, representing an increase of 77.07% in a year. Besides variable results which are either increasing or decreasing for one or the other PFS, this particularly positive global development in the context of the financial crisis is mainly attributable to the substantial growth of the result of one entity active as a professional performing credit offering.

When taking into account the sub-groups "investment firms", "other PFS" and "support PFS", only support PFS registered a decrease in their net results compared to the figures of the previous year. The economic development and the positive effect of the financial markets in 2009 allowed investment firms to register an overall increase in net results. However, it should be noted that the fact that an entity which registered an important loss in 2008 was not included any more on the official list of PFS at the end of 2009 also contributed to this development.

[5] The figures of the ten branches included since 2009 in the total number of PFS are not included in these data.

[6] Cf. footnote No. 5 above.

Development of the balance sheet total and of the net results of PFS

(in mn EUR)	Balance sheet total				Net results			
	2008		2009		2008		2009	
	Volume	Relative share	Volume	Relative share	Volume	Relative share	Volume	Relative share
Investment firms	2,023.8	3.2%	1,131.7	5.1%	83.4	9.4%	170.6	10.8%
Other PFS	60,013.4	95.8%	20,147.1	89.7%	768.4	86.3%	1,376.7	87.3%
Support PFS	638.5	1.0%	1,177.4	5.2%	38.8	4.3%	29.8	1.9%
Total	**62,675.7**	**100.0%**	**22,456.2**	**100.0%**	**890.7**	**100.0%**	**1,577.0**	**100.0%**

1.7. International expansion of PFS

1.7.1. Subsidiaries created and acquired abroad during 2009

In 2009, the investment firm Fund Channel S.A. opened a subsidiary in Switzerland and the investment firm FIL (Luxembourg) S.A. acquired a bank subsidiary in Germany.

1.7.2. Freedom of establishment

In 2009, the following three investment firms incorporated under Luxembourg law established a branch in another EU/EEA country based on the freedom of establishment: Belvall Capital S.A. in the United Kingdom, MZ Finance S.A. in Belgium and WH Selfinvest S.A. in Germany.

As at 31 December 2009, the following Luxembourg investment firms were represented in one or several EU/EEA countries by means of a branch:

Name of the PFS	Country of branch location
Belvall Capital S.A.	United Kingdom
Compagnie Financière et Boursière Luxembourgeoise S.A., in abbreviated form "Cofibol"	Belgium
Createrra S.A.	Belgium
European Fund Services S.A.	Germany Ireland
Farad Investment Advisor S.A.	Italy
Fuchs & Associés Finance S.A.	Belgium
HSH Asset Management S.A.	Germany
HSH Investment Management S.A.	Germany
Luxembourg Financial Group A.G.	United Kingdom
Moventum S.C.A.	Austria Germany
MZ Finance S.A.	Belgium
Orbit Private Asset Management S.à r.l.	Belgium
Rhein Asset Management (Lux) S.A.	Germany
Skandia Invest S.A.	France Spain
SZL S.A.	Belgium
UBS Fund Services (Luxembourg) S.A.	Poland

Name of the PFS	Country of branch location
Valbay International S.A.	Sweden
Vontobel Europe S.A.	Austria Germany Italy Spain United Kingdom
WH Selfinvest S.A.	Belgium France Germany

In 2009, DAM Capital Management S.à r.l. gave up the PFS status and is not included any more on the list of Luxembourg investment firms having established a branch in one or more EU/EEA countries at the end of 2009. The branches established by BISA S.A. in Germany, by Fidessa S.A. in the Netherlands and by Foyer Patrimonium S.A. in Belgium closed in 2009.

As regards non-EU/EEA countries, one investment firm incorporated under Luxembourg law, namely Privalux Management S.A., is represented through a branch in Switzerland.

It should be further added that three PFS which do not have the status of investment firm were registered by means of a branch in an EU/EEA country as at 31 December 2009. One PFS, which is not an investment firm, is established in Switzerland *via* a branch.

The number of branches established in Luxembourg by investment firms from other EU/EEA Member States increased to reach ten units as at 31 December 2009 against nine units at the end of 2008. Indeed, IG Markets Limited, a branch from the United Kingdom, started its activities in Luxembourg during 2009.

It should also be noted that the British branch AIG Investments Europe Ltd became PineBridge Investments Europe Ltd in 2009.

EU/EEA branches established in Luxembourg as at 31 December 2009

Name of the branch	Country of origin
Eiger Securities LLP	United Kingdom
IG Markets Limited	United Kingdom
Morgan Stanley Investment Management Limited	United Kingdom
Nevsky Capital LLP	United Kingdom
PineBridge Investments Europe Ltd	United Kingdom
PNC Global Investment Servicing (Europe) Limited	Ireland
Superfund Asset Management GMBH	Austria
T. Rowe Price Global Investment Services Limited, in abbreviated form "TRPGIS"	United Kingdom
Thames River Capital LLP	United Kingdom
Tullett Prebon (Europe) Ltd	United Kingdom

1.7.3. Free provision of services

In 2009, 19 investment firms incorporated under Luxembourg law applied to pursue business in one or several EU/EEA Member States by way of free provision of services. The total number of investment firms which are active in one or more EU/EEA countries following a notification amounted to 53 entities as at 31 December 2009. The majority of the investment firms concerned carry out their activities in several EU/EEA countries by way of free provision of services.

The total number of investment firms established in the EU/EEA and authorised to perform activities under the freedom to provide services within the Luxembourg territory amounted to 1,807 entities at the end of 2009 (against 1,689 entities as at 31 December 2008).

As at 31 December 2009, the global situation relating to free provision of services in or from the EU/EEA was as follows:

Country	Luxembourg investment firms providing services in the EU/EEA	EU/EEA investment firms providing services in Luxembourg
Austria	16	26
Belgium	33	15
Bulgaria	1	1
Cyprus	2	16
Czech Republic	3	-
Denmark	12	16
Estonia	2	1
Finland	9	5
France	26	62
Germany	27	81
Gibraltar	-	5
Greece	3	7
Hungary	5	2
Iceland	2	-
Ireland	6	49
Italy	21	6
Latvia	2	-
Liechtenstein	1	6
Lithuania	3	-
Malta	3	1
Netherlands	18	79
Norway	8	22
Poland	5	-
Portugal	6	4
Romania	2	-
Slovakia	2	1
Slovenia	2	2
Spain	16	12
Sweden	14	7
United Kingdom	18	1,381
Total number of notifications	**268**	**1,807**
Total number of investment firms concerned	**53**	**1,807**

The geographical breakdown of EU/EEA investment firms active in Luxembourg by way of free provision of services reveals that UK investment firms are by far the most important in number.

Similarly, among the 267 new notifications for free provision of services on the Luxembourg territory received in 2009 (decreasing number as compared to the 352 notifications in 2008), those originating from the United Kingdom represented a large majority. Apart from the United Kingdom, mainly entities from countries close to Luxembourg, like the Netherlands, France and Germany, show considerable and ongoing interest in exercising their activities in Luxembourg by way of free provision of services. An upward trend is confirmed for Ireland which registered a growth by eight units in 2009.

The target countries of investment firms incorporated under Luxembourg law, whose total number of notifications amounted to 268 units as at 31 December 2009, are above all Luxembourg's neighbouring countries (Belgium, Germany and France). Luxembourg investment firms also show major interest in Italy, the United Kingdom and the Netherlands.

2. PRUDENTIAL SUPERVISORY PRACTICE

The specific aspects of the prudential supervisory practice concerning support PFS, i.e. PFS authorised only as client communication agent (Article 29-1 of the law of 5 April 1993 on the financial sector), administrative agent of the financial sector (Article 29-2), primary IT systems operator of the financial sector (Article 29-3) or secondary IT systems and communication networks operator of the financial sector (Article 29-4), excluding any other PFS status, are described under point 3. below.

2.1. Instruments of prudential supervision

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

- financial information submitted periodically to the CSSF enabling it to continuously monitor the activities of PFS and the inherent risks, and, as regards investment firms, to perform a periodic supervision of the capital adequacy ratio and large exposure limits as laid down in Article 56 of the law of 5 April 1993 on the financial sector;
- the annual report drawn up by the *réviseur d'entreprises* (statutory auditor) (including a certificate relating to the fight against money laundering; as regards investment firms, the auditor's report shall moreover include a certificate concerning compliance with the rules of conduct in the financial sector as well as a description and an assessment of the Compliance function in accordance with Circular CSSF 04/155);
- the internal audit reports relating to audits carried out during the year and the management's report on the state of the internal audit of the PFS;
- on-site inspections carried out by the CSSF.

2.2. On-site inspections

The CSSF attaches particular importance to this instrument of ongoing supervision, as it allows a global and direct view of the situation and functioning of the PFS in practice. On-site inspections which increased in 2009 also allow to better control and monitor one or more specific aspects of the prudential supervision.

Since 2009, the CSSF has increased the number of inspections by carrying out on-site visits at newly authorised PFS. These visits generally take place on the premises of PFS within the first months following the authorisation and allow to immediately verify the data and information received in the application files. The compliance with the regulatory requirements and the implementation of acceptable procedures for, *inter alia,* the fight against money laundering and of rules of conduct concerning the financial sector are further elements discussed during on-site visits.

2.2.1. Investment firms

During the year under review, the CSSF carried out on-site inspections at seventeen investment firms incorporated under Luxembourg law. This figure includes six on-site visits which took place at newly authorised investment firms in the second semester of 2009.

On-site inspections which took place at three investment firms were carried out in cooperation with the department "General supervision" and their purpose was to receive further information on MiFID provisions regarding inducements.

The control of specific aspects of the prudential supervision like the compliance with Article 17 of the law on the financial sector relating to central administration and infrastructure, the compliance with Article 23 relating to the withdrawal of authorisation if no use is made of the authorisation within twelve months as well as the compliance with the requirements relating to rules of conduct in the financial sector were checked on site.

Other on-site inspections were carried out by the CSSF following the observation of specific problems in relation to, among others, the activity exercised or the shareholders of the PFS.

The on-site inspection carried out at an EU/EEA branch established in Luxembourg was linked to the activities of central administration of investment funds.

2.2.2. Other PFS

The CSSF carried out on-site inspections at ten "other PFS". This figure includes six on-site visits carried out between August and December 2009 at firms newly registered on the official list of PFS. Following these on-site visits, one PFS decided to opt out of exercising the contemplated activities and, consequently, to willingly abandon the ministerial authorisation. One on-site visit resulted in an on-site inspection of the entity in order to perform a follow-up of the issues detected.

In addition to on-site visits, two on-site inspections were carried out regarding specific aspects relating, among others, to internal administrative organisation and procedures in place. Following these inspections, one PFS decided to opt out of its PFS activities and willingly abandoned its authorisation to exercise activities in the financial sector. The purpose of two other inspections carried out in cooperation with the department "Supervision of pension funds, SICARs and securitisation undertakings" was to check the interventions and the organisation quality of the PFS as a provider of services of supervised investment structures.

2.3. Meetings

During the year under review, a total of 117 meetings in relation to PFS activities took place on the CSSF premises. 73 of these meetings concerned the department «Supervision of investment firms» and 44 meetings the department «Supervision of other PFS». Since the financial year 2009, the CSSF has been used to meet the persons responsible for newly authorised PFS on the CSSF premises within a few weeks following the reception of the ministerial authorisation in order to discuss the practical aspect of the permanent supervision.

Meetings were also held for the following reasons:

- information requests on the qualification of the activities performed (scope of the law of 5 April 1993 on the financial sector);
- new authorisation requests as PFS;
- changes in the authorisation of PFS which are already active (activity, acquisition of subsidiaries, legal form, etc.);
- planned changes notably relating to shareholders, daily management and internal control;
- discussion about problems or specific points noticed in the framework of the prudential supervision exercised by the CSSF;
- information request in the context of the prudential supervision;

- presentation of the general context and activities of the companies concerned;
- courtesy visits.

2.4. Specific controls

Article 54(2) of the law of 5 April 1993 on the financial sector entitles the CSSF to request external auditors to carry out a specific audit at a financial professional, covering one or several specific aspects of the business or operation of the entity concerned. The ensuing costs are to be borne by the professional concerned. The CSSF has not made formally use of this right in 2009.

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 and in particular by Chapter 3a 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 therein.

The CSSF carries out supervision on a consolidated basis for investment firms falling under the scope of application of the above-mentioned law. In practice, an in-depth study of the financial groups to which most investment firms belong is necessary 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 carried out by the CSSF specifies the practical aspects of the rules as regards supervision on a consolidated basis.

The following eleven PFS were subject to supervision by the CSSF on a consolidated basis as at 31 December 2009:

- Brianfid-Lux S.A.
- CapitalatWork Foyer Group S.A.
- Crédit Agricole Luxembourg Conseil S.A., in abbreviated form “CAL Conseil”
- Farad Investment Advisor S.A.
- FIL (Luxembourg) S.A.
- Fuchs & Associés Finance S.A.
- Fund Channel S.A.
- Hottinger & Cie
- HSH Investment Management S.A.
- Petercam (Luxembourg) S.A.
- Valbay International S.A.

2.6. Representation of lawyers within the boards of directors

The CSSF confirmed its previous decision that a lawyer cannot be involved in the daily management of a financial professional. Thus, a lawyer who sits in the board of directors of a financial professional will by no means be able to interfere in the daily management which *in fine* shall be delegated to other persons formally authorised by the CSSF as the persons in charge of the daily management.

This decision is entirely in line with the rules of procedure of the Bar Council of the Luxembourg Bar. Indeed, the rules lay down in Article 2.2. regarding the involvement of lawyers in the activities of commercial companies that a lawyer may be member of the board of directors or management board of commercial companies but cannot be in charge of the daily management of commercial companies, partner of a limited partnership or partner of a general partnership.

The CSSF decided to adopt the same stance as for public limited companies for the representation of a lawyer in a management board of a limited liability company. Thus, the CSSF accepts, looking at the practice and the development of the legislation (draft law No. 5730 updating the law of 10 August 1915 concerning commercial companies, as amended), that a lawyer may sit in the management board of a limited liability company provided that the daily management of this company is expressly delegated by the management board to one or more persons other than the lawyer and that these persons are formally authorised by the CSSF. Draft law No. 5730 shall allow, *inter alia*, to delegate the daily management of limited liability companies to one or more managers and shall introduce the institutionalisation of executive committees of public limited companies and limited liability companies.

3. SUPPORT PFS

Support PFS include financial professionals which have been authorised only under Articles 29-1, 29-2, 29-3 or 29-4 of the law of 5 April 1993 on the financial sector. The term “support” has been defined by the market in agreement with the CSSF. The characteristic of support PFS is that they do not receive deposits from the public and act mainly as subcontractors of operational functions on behalf of other financial professionals.

3.1. Development in the number of support PFS

The number of support PFS increased from 67 entities at the end of 2008 to 74 entities as at 31 December 2009, i.e. a net growth of seven entities.

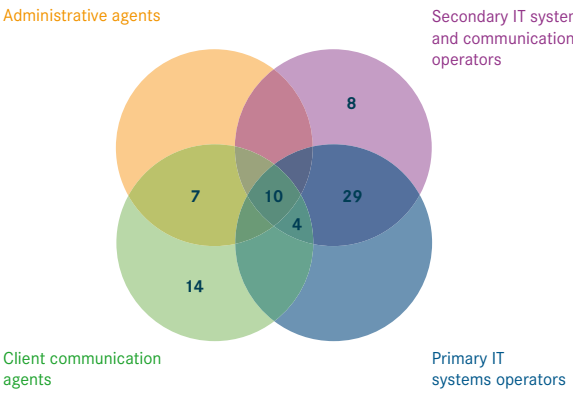
The following ten new support PFS received authorisation in 2009[7] :

- three client communication agents;
- two primary IT systems operators of the financial sector;
- four secondary IT systems and communication networks operators of the financial sector;
- one entity cumulating the statuses of client communication agent, primary IT systems operator of the financial sector and secondary IT systems and communication networks operator of the financial sector.

Three support PFS abandoned their status in 2009: two of these entities opted out following mergers and one entity opted out following the dissolution after having transferred all its activities abroad.

[7] Cf. point 1.5.1. above.

As at 31 December 2009, the 74 support PFS fell under the following categories:



Client communication agents + secondary IT systems and communication networks operators : 2 entities

It should be noted that administrative agents are *ipso jure* authorised to exercise the activities of client communication agents. As a result, no entity has only the status of administrative agent. The same is true for primary IT systems operators which are authorised *ipso jure* to carry out activities of secondary IT systems and communication networks operators of the financial sector.

3.2. Development in employment for support PFS

The staffing of support PFS fell from 7,707 units as at 31 December 2008 (67 active entities) to 7,481[8] units as at 31 December 2009 (74 active entities), representing an annual decrease of 226 units. This decline in employment results from support PFS whose main business is the provision of services such as facility management or security and, amongst which, the three major professionals alone cumulate a loss of 271 units.

Situation of employment in support PFS

	2008			2009			Variation
	Luxembourg	Foreign	**Total**	Luxembourg	Foreign	**Total**	
Executives	133	333	**466**	117	345	**462**	-4
Office staff	1,421	4,941	**6,362**	919	5,183	**6,102**	-260
Technical staff	144	735	**879**	127	790	**917**	+38
of which part-time	*97*	*533*	*630*	*69*	*593*	*662*	*+32*
Total	**1,698**	**6,009**	**7,707**	**1,163**	**6,318**	**7,481**	**-226**
of which men	1,420	4,641	**6,061**	944	4,898	**5,842**	-219
of which women	278	1,368	**1,646**	219	1,420	**1,639**	-7

[8] Preliminary figures.

3.3. Prudential supervisory practice of support PFS

The prudential supervision of support PFS is ensured by the department "Information systems and supervision of support PFS" which covers all technological aspects, i.e. both, information systems of the CSSF itself which includes the coordination of the users' needs and the supervision of information systems supporting other supervisory departments, security of information systems, and the supervision of support PFS which encompass system operators providing services to the financial sector.

3.3.1. On-site inspections

On-site inspections were carried out at entities showing serious breaches of the applicable law or circulars. At the end of 2009, the decision was made that more systematic on-site inspections will be carried out in order to check that the compliance as presented in the documents of the internal audit or statutory auditor corresponds to the physical and operational reality.

3.3.2. On-site visits

During 2009, the CSSF decided to carry out in a systematic manner on-site visits of support PFS newly authorised to exercise their activities. These on-site visits which usually take place within the first six months as of the reception of the authorisation have two purposes. On the one hand, a meeting shall be organised between the persons in charge of the daily management of the PFS and the persons in charge of the supervision of support PFS in order to encourage a constructive and efficient dialogue. On the other hand, these visits shall ensure that the information transmitted in the application file are in accordance with the practical application within the PFS. The CSSF has, in particular, monitored the implementation of the central administration and internal control, two key elements for an efficient corporate governance.

On-site visits also allow to take into account and to correct possible mistakes at the start of the PFS.

Thus, in 2009, the division in charge of the prudential supervision of support PFS carried out six on-site visits at PFS newly created during that year.

3.3.3. The group exception as opposed to the authorisation as support PFS

- **Reminder of the notion of "group exception"**

"Group exception" means that an entity of a group may carry out activities without being subject to the scope of the law of 5 April 1993 on the financial sector as long as the service provisions concern only the group to which it belongs. This notion used to appear in Article 13 of the law of 5 April 1993 on the financial sector. Article 13 was recently revised and moved to Article 1-1(2)(c) of this law.

Due to Article 41 on professional secrecy, the Luxembourg financial institutions subject to the law of 5 April 1993 and which belong to a group cannot transmit confidential data to their provider benefiting from "group exception" because the provider of the group, which is excluded from the scope of the law, does not benefit from the professional secrecy exemption provided for in Article 41(5) of this law.

- **Possibility to opt for the support PFS authorisation in the framework of "group exception"**

The financial professional who provides services exclusively for the group may, if he wishes, opt for an authorisation as support PFS on condition, of course, that he carries out an activity requiring authorisation. This position complies with the substantiation of the law of 2 August 2003 creating support PFS and amending the law of 5 April 1993 on the financial sector.

Thus, the entity providing services exclusively to its group may nevertheless choose to be subject to the prudential supervision of the CSSF by opting for an authorisation as support PFS. However, in that case it must comply with the provisions of the law concerning, *inter alia*, the central administration, the multiplicity of the managers in charge of the daily management, the reporting, the governance and the capital base. By submitting himself voluntarily to the law in order to receive the support PFS status, the provider will be

exempted from the professional secrecy requirement laid down in Article 41(5) of the law and Luxembourg financial institutions will, thus, be able to entrust confidential data without violating the professional secrecy. In addition, the provider will also be able to offer services outside the group.

3.3.4. Mergers

Following the law of 13 July 2007 which repealed the exclusivity clause for the service provision to the financial sector by IT systems operators, a certain number of market players decided to merge their entities in order to streamline costs. However, some players decided to keep their "double" presence on the market in order to ensure a better visibility for their clients and to segregate their activities more clearly.

During 2009, the following support PFS merged:

- EDS Professionnel Secteur Financier (PSF) Luxembourg S.à r.l. was absorbed by Hewlett-Packard PSF Luxembourg S.à r.l.;
- Sun Microsystems Financial Sector S.à r.l. was absorbed by Sun Microsystems Luxembourg S.à r.l. (non PFS entity);
- Telindus PSF S.A. was absorbed by Telindus S.A. (non PFS entity).

It should be noted that the absorption of a PFS by an entity which is not a PFS leads to the loss of the authorisation.

3.3.5. Central administration

In view of the on-site inspections carried out in 2009 by the agents of the department in charge of the prudential supervision of support PFS, the CSSF deems it useful to specify the notion of central administration.

First, it should be borne in mind that Article 17 of the law of 5 April 1993 sets out that the authorisation for PFS is subject to the production of evidence of the existence in Luxembourg of the central administration of the PFS. The notion of central administration implies not only the presence of a decision-making centre but also of an administrative centre as defined in points 3.1 and 3.2 of Circular IML 95/120. Thus, it is important to understand that the central administration must have two elements, namely an administration which includes in the broad sense the executive and management functions as well as functions of delivery and control and also a centre represented by an appropriate and sufficient infrastructure, i.e. a place where the different elements of an undertaking concentrate and spread from.

Therefore, the notion of central administration imposes on support PFS not only to have a realistic size, but also to establish sufficient materiality and, thus, to have their own infrastructure in order to ensure the "company life" of the undertaking. Consequently, it is necessary to draw up a business plan which will allow the support PFS to have a medium-term overview on their growth perspectives and which will also allow the CSSF to ensure the feasibility of this plan by taking into account, where appropriate, possible actions to undertake in order to mitigate certain weaknesses noticed during on-site inspections.

The CSSF would like to point out that entities submitting an authorisation request as support PFS although they may benefit from the "group exception" as defined in Article 1-1(2)(c) (former Article 13) of the law of 5 April 1993 are also required to have a real and sufficient central administration as laid down in the law. Thus, the CSSF recommends to these entities to reflect on the opportunity to request an authorisation as support PFS due to many requirements imposed by this legal framework, particularly, as regards the central administration.

Agents hired in 2009 and 2010 - Legal Department, Departments "General supervision", "Personnel, administration and finance" and "Supervision of investment firms"
Left to right: Nicolas HINTERSCHEID, François GOERGEN, Sally HABSCHEID, Anouk DUMONT, Laurent GOERGEN, Michèle MULLER, Alain OESTREICHER, Valérie ALEZINE

Absent : Vanessa GABRIEL

SUPERVISION OF SECURITIES MARKETS

1. Reporting of transactions in financial instruments
2. Supervisory practice
3. Developments in the regulatory framework

1. REPORTING OF TRANSACTIONS IN FINANCIAL INSTRUMENTS

1.1. Obligation to report transactions in financial instruments

The reporting regime in respect of transactions in financial instruments applicable since 1 November 2007 is mainly set down in Article 28 of the law of 13 July 2007 on markets in financial instruments (MiFID law) which transposes Article 25 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MiFID Directive). This article specifies the obligation for credit institutions and investment firms to report to the CSSF the transactions in financial instruments admitted to trading on a regulated market of the European Economic Area. These arrangements are completed by the more detailed implementing measures of Regulation (EC) No 1287/2006 of 10 August 2006 implementing the MiFID Directive which clarify in particular the notion "transaction" and specify the content and form of the reports.

CESR continued to work on the revision of the definition of execution of a transaction (to be reported). The purpose is to clarify and standardise some key aspects such as the difference between clients and counterparties in the reporting of transactions and the way to report transactions carried out by an entity in its capacity as principal on behalf of clients. CESR also analysed the option to include the identification of clients on behalf of whom the transactions were executed in the reporting of transactions and considered in this context a standardisation of the codes for this identification. Moreover, CESR was working on the possibility to exchange between its members reporting of transactions in OTC derivatives. Proposals concerning some of the above-mentioned topics shall be submitted to the European Commission for the contemplated revision of the MiFID Directive.

1.2. Credit institutions and investment firms concerned by the obligation to report transactions in financial instruments

As at 31 December 2009, 253 entities (credit institutions and investment firms incorporated under Luxembourg law and Luxembourg branches of credit institutions and investment firms incorporated under foreign law) are falling under the scope of Article 28 of the MiFID law and are potentially concerned by the transaction reporting regime (250 entities in 2008), including 149 banks (152 in 2008) and 104 investment firms (98 in 2008). It should be noted that only investment firms which are authorised to carry out transactions in financial instruments, i.e. commission agents, private portfolio managers, professionals acting for their own account, market makers, underwriters of financial instruments and distributors of units/shares of investment funds, are subject to the reporting obligation.

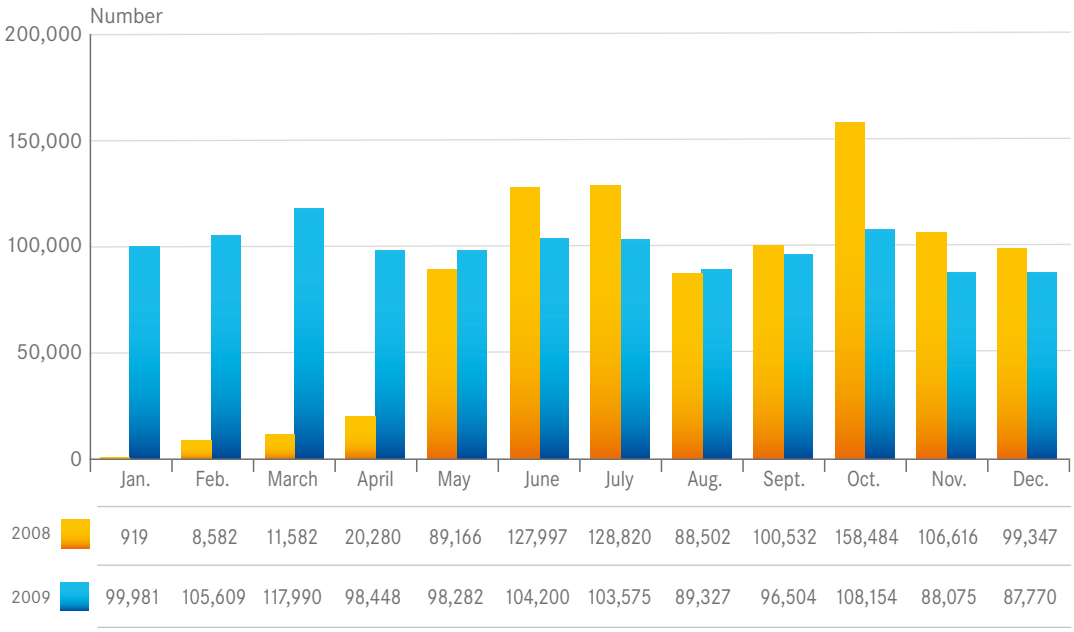
As at 31 December 2009, 108 entities (106 in 2008), of which 94 banks (92 in 2008) and 14 investment firms (*idem* in 2008), are being required to send their transaction reports to the CSSF as their interventions have to be considered as "executions of transaction" within the meaning of the MiFID law, as specified by Circular CSSF 07/302. The difference in numbers as compared to the number of entities that are potentially concerned by the reporting regime results from the fact that, in practice, a certain number of entities, mainly investment firms, are not subject to the obligation to report transactions in financial instruments because they do not conclude immediate market facing transactions and do not execute transactions on own account.

In 2009, the focus was on the analysis and assessment of the quality of the data submitted by the entities subject to the obligation to report transactions in financial instruments. Systematic controls of the content of reports on executed transactions sent to the CSSF by credit institutions and investment firms lead to the detection of quite a few non-compliant elements on information relating to the transactions such as the buy/sell indicator of the transaction, the trading capacity and the trading time. The entities concerned received a letter and one on-site inspection was carried out in order to clarify certain irregularities.

1.3. Development in the number of reports of transactions in financial instruments

In 2009, the number of transaction reports sent by the entities and accepted by the CSSF reached 1,197,915 (+27.33% compared to 2008).

Monthly volume of MiFID reports accepted in 2008 and in 2009



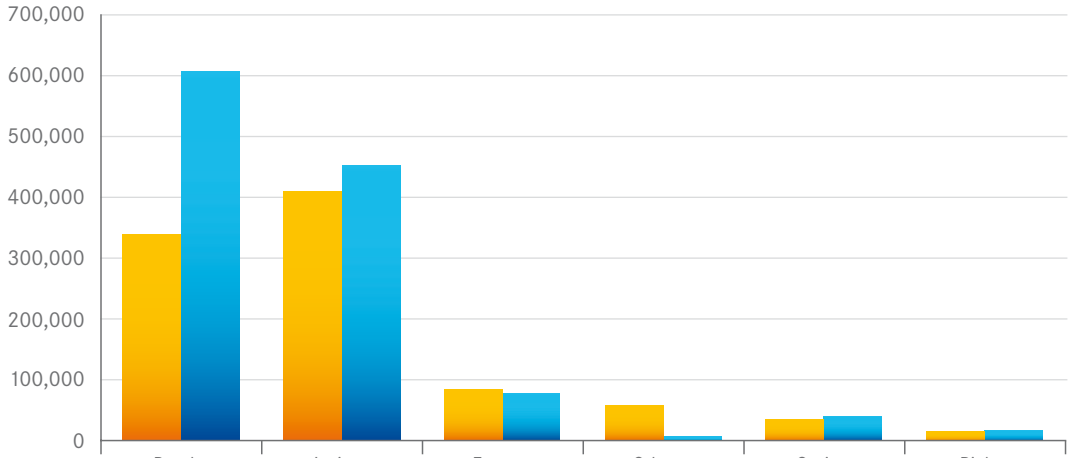
	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008	919	8,582	11,582	20,280	89,166	127,997	128,820	88,502	100,532	158,484	106,616	99,347
2009	99,981	105,609	117,990	98,448	98,282	104,200	103,575	89,327	96,504	108,154	88,075	87,770

Breakdown of transactions by month and by type of instrument in 2009

	Bonds	Shares	Futures	Others	Options	Rights	Monthly total
CFi Code	(Dxxxxx)	(Exxxxx)	(Fxxxxx)	(Mxxxxx)	(Oxxxxx)	(Rxxxxx)	
January	48,783	37,372	8,016	1,617	3,357	836	99,981
February	51,468	43,184	6,802	655	2,765	735	105,609
March	61,117	42,436	8,142	342	4,220	1,733	117,990
April	49,159	36,495	6,858	423	3,901	1,612	98,448
May	50,587	37,559	5,750	445	2,692	1,249	98,282
June	55,979	36,132	7,409	721	2,926	1,033	104,200
July	56,002	35,674	6,681	234	3,694	1,290	103,575
August	42,472	37,116	5,455	197	2,700	1,387	89,327
September	50,427	35,509	6,077	405	2,989	1,097	96,504
October	55,531	40,728	5,901	408	3,658	1,928	108,154
November	41,244	35,616	5,335	251	4,126	1,503	88,075
December	43,479	34,196	4,932	194	3,107	1,862	87,770
Annual total	**606,248**	**452,017**	**77,358**	**5,892**	**40,135**	**16,265**	**1,197,915**

In relative terms, the majority of reports of 2009 concerned transactions in bonds (50.7%), followed by transactions in shares (37.7%). Transactions in other types of instruments represented only a small part (futures: 6.4%, options: 3.3%, rights: 1.4%, others: 0.5%).

Annual comparison of transactions by type of instruments



	Bonds	Actions	Futures	Others	Options	Rights
2008	339,013	410,089	84,094	57,527	35,010	15,094
2009	606,248	452,017	77,358	5,892	40,135	16,265
Variation in %	78.8%	10.2%	-8.0%	-89.8%	14.6%	7.8%

This data, as well as the evaluation of the information received *via* TREM (Transaction Reporting Exchange Mechanism), set up between competent authorities for their respective supervisory missions, reveals the trends on European markets and, particularly, on the Luxembourg market. The main purpose of the supervision of the markets is to prevent and detect infringements of financial and stock market laws and regulations. In this context, monthly internal reports, as well as specific internal reports, based on the received reports, are drawn up. These *ex post* analyses of transactions in financial instruments can be used as a starting point for the CSSF's inquiries.

2. SUPERVISORY PRACTICE

2.1. Supervision of stock exchanges

The establishment of a regulated market in Luxembourg is subject to a written authorisation of the Minister responsible for the CSSF. Chapter 1 of Title 1 of the MiFID law sets out the authorisation conditions and requirements applicable to regulated markets. Where the operator of such regulated market is established in Luxembourg, he must also obtain an authorisation as "PFS other than an investment firm" in accordance with the law of 5 April 1993 on the financial sector. The acts relating to the organisation and operation of the regulated market are supervised by the CSSF.

Pursuant to the provisions of the MiFID law, the operation of a multilateral trading facility (MTF) is part of the investment services and activities defined in that law. MTFs may be operated either by a market operator or by a credit institution or an investment firm.

There are currently two markets operated in Luxembourg by the same operator, namely Société de la Bourse de Luxembourg S.A. (SBL): a first market, named *Bourse de Luxembourg* (Luxembourg Stock Exchange), which is a regulated market within the meaning of the European directives and a second market called "Euro MTF", the operating rules of which are defined in the Rules and Regulations of SBL.

SBL is also the only company holding an authorisation as operator of a regulated market authorised in Luxembourg as defined in Article 27 of the law of 5 April 1993. As such, SBL is registered on the official list of the other professionals of the financial sector as "PFS other than an investment firm".

As far as its supervisory mission is concerned, the CSSF has had several meetings and exchanged mail with SBL notably with regard to the follow-up of implications of the amendments in the regulatory framework governing SBL and its markets, the amendment of its Rules and Regulations, the organisation of market supervision and the amendment of its articles of incorporation. On the basis of the reports transmitted by SBL and the electronic access to the information on stock market transactions, the CSSF also monitors the market activities and the problems encountered in relation to these activities. The development of SBL's financial situation is observed, in particular, *via* the monthly reporting sent by SBL.

On 9 March 2009, SBL migrated all securities admitted on its two markets to the trading platform Universal Trading Platform (UTP) which is the shared trading platform used by NYSE Euronext markets. This migration forms part of the partnership signed between Euronext N.V. and SBL. Moreover, since 1 September 2009, SBL has also adopted tick sizes that are standardised at European level.

As at 31 December 2009, SBL counted 61 members, of which 49 credit institutions and 12 investment firms.

As far as market activities are concerned, the trading turnover on both markets operated by SBL reached EUR 272.05 million in 2009 against EUR 1,114.24 million in 2008. It should be specified that, in 2008, the activity was exceptional due to the important trading volumes of the shares of a Luxembourg company newly admitted to trading. Considering the importance of this stock, the company's shares were even added to the basket of shares making up the LuxX index in the beginning of January 2009.

2009 was characterised by a decrease of the admissions to the markets operated by SBL with 7,738 new admissions (11,651 in 2008). As at 31 December 2009, the two markets operated by SBL totalled 45,660 listings (against 49,097 in 2008), i.e. 30,805 bonds, 293 shares, 7,277 warrants and rights and 7,285 Luxembourg and foreign undertakings for collective investment and sub-funds. The regulated market accounted for 39,745 out of the 45,660 listings, and the Euro MTF for 5,915.

In 2009, SBL has launched two new indexes for GDRs (Global Depositary Receipts) named Lux GDRs India and Lux GDRs Taiwan. It also carried out the first update of its Ten Principles of Corporate Governance applicable to Luxembourg companies the shares of which are listed on the Luxembourg Stock Exchange.

2.2. Investigations conducted by the CSSF at national and international level

The CSSF is the administrative authority competent to ensure that the provisions of the law of 9 May 2006 on market abuse are applied. The purpose of this law is to combat insider dealing and market manipulation ("market abuse") in order to ensure the integrity of financial markets, to enhance investor confidence in those markets and thereby to ensure a level playing field for all market participants.

In the context of its supervision of securities markets, the CSSF either initiates inquiries itself or conducts them following a request for assistance from a foreign administrative authority within the framework of international cooperation. The decisions to open an investigation or to intervene against a professional of the financial sector are first based on analytical reports of daily trading activities at the Luxembourg Stock Exchange, as well as on the analysis of transactions reported to the CSSF. After its assessment of all the available information, the CSSF decides on the appropriateness of an intervention.

In the context of the collection of information regarding an investigation, the CSSF is empowered to summon interested parties to a hearing. Such hearings allow affected persons to present arguments in fact and in law, to explain the reasons to initiate the executed transactions and to provide the CSSF with elements in order to better assess the case.

2.2.1. Investigations initiated by the CSSF

In 2009, the CSSF opened four investigations into insider dealing and/or price manipulation. As part of one investigation, the CSSF carried out an on-site inspection at an establishment subject to its prudential supervision. All these national investigations resulted in a total of thirteen hearings, organised by the CSSF with the interested parties.

The information received in relation to one investigation already opened in 2008 allowed the CSSF to close this file without taking any further action. The examinations made in the context of investigations opened in 2009 and before continue in 2010.

2.2.2. Investigations conducted by the CSSF at the request of a foreign authority

- **Inquiries into insider dealing**

In 2009, the CSSF processed 29 inquiries into insider dealing (against 36 in 2008). It handled all these requests with the necessary diligence befitting cooperation between authorities and within that scope organised in Luxembourg five hearings of affected persons in which agents from the foreign competent authorities could participate.

- **Inquiries into price manipulation, fraudulent public offers, breaches of the requirement to report major shareholdings and other breaches of the law**

The CSSF received nine inquiries into price manipulation (*idem* in 2008), five inquiries into breaches of requirements to report major shareholdings (*idem* in 2008), five other inquiries relating to Luxembourg-incorporated companies (against nine in 2008), one inquiry into short selling, two inquiries regarding an illegal offer of securities, three inquiries into fraudulent behaviour and one inquiry in relation to UCI management. The CSSF responded to all these requests within the scope of its legal competence. Five of the above-mentioned requests were received from administrative authorities of countries outside the European Economic Area.

2.2.3. Notifications of suspicious transactions under the law on market abuse

In accordance with Article 12 of the law on market abuse, any credit institution or other professional of the financial sector established in Luxembourg shall notify the CSSF if it reasonably suspects that a transaction might constitute insider dealing or market manipulation. In this context, Circular CSSF 07/280, as amended, specifies the application of this article.

Based on this provision, the CSSF received eight suspicious transaction reports in 2009 (against 25 in 2008). For underlying financial instruments admitted to one or several foreign markets, the notified information was transmitted to the competent authorities of the market(s) concerned, thereby observing the cooperation obligation referred to in the law on market abuse. This information can, where necessary, lead these authorities to open investigations.

In 2009, the CSSF received eleven notifications of suspicious transactions transmitted by foreign authorities (against three in 2008) and analysed them with the necessary diligence.

2.3. Approval of prospectuses relating to offers to the public or admissions to trading on a regulated market

2.3.1. Application of the Prospectus law of 10 July 2005

In 2009, financial transactions were strongly affected by the financial crisis which reached all lines of business at the end of 2008. Similarly to most of the other EU Member States, the number of files submitted in Luxembourg for the approval of the prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market decreased. However, due to the increasing complexity of the transaction structures and of the relevant deposited documents and due to the increasing number of files relating to structured products, the amount of work linked to the approval activity did not lessen.

The department "Supervision of securities markets" competent for the enforcement of the Prospectus regulations was sought 156 times in 2009. Although these requests concerned diverse subjects of the regulation, two recurring subjects may be highlighted:

- the financial statements to be submitted for the approval of a prospectus; and
- the exemptions from the publication of a prospectus as laid down in Articles 5 and 6 of the Prospectus law.

Some positions of the CSSF in this respect are detailed in point 2.3.3. of this Chapter.

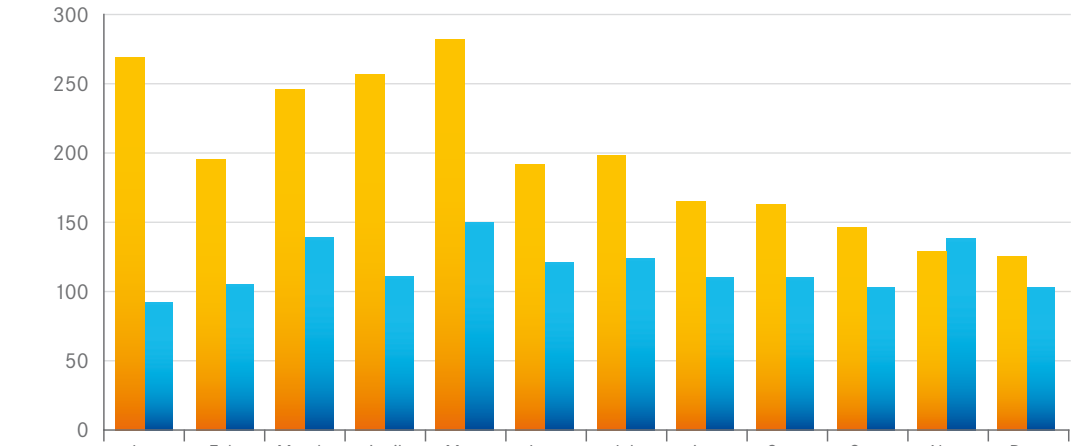
In 2009, the CSSF received 26 requests for the omission of information pursuant to Article 10 of the Prospectus law. After analysing them, the CSSF granted 20 requests. It should be noted that, like the previous year, the majority of the requests (17) relate to certain points regarding the description of State guarantors supporting credit institutions. Moreover, the CSSF approved five prospectuses subject to information omission due to non-pertinence, amongst which the pertinence of the tables of cash flows for certain specific companies, in accordance with Article 23(4) of Regulation (EC) No 809/2004.

2.3.2. Approvals and notifications in 2009

- **Documents approved by the CSSF in 2009**

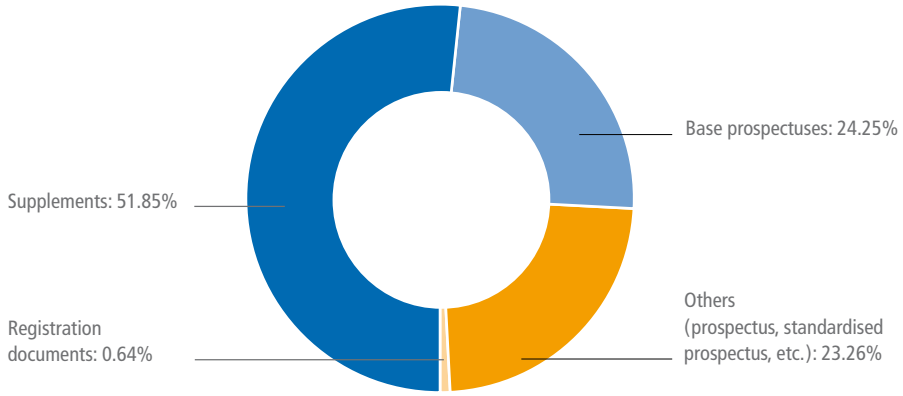
The number of documents approved by the CSSF significantly decreased compared to 2008 reaching a total of 1,406 approved documents in 2009 (of which 327 prospectuses, 341 base prospectuses, 9 registration documents and 729 supplements) against 2,367 the previous year. This important fall of 40.60% is due to the financial crisis which affected the markets.

Development in the number of documents approved by the CSSF



	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008	269	195	246	257	282	192	198	165	163	146	129	125
2009	92	105	139	111	150	121	124	110	110	103	138	103
Variation in %	-65.8%	-46.2%	-43.5%	-56.8%	-46.8%	-37.0%	-37.4%	-33.3%	-32.5%	-29.5%	7.0%	-17.6%

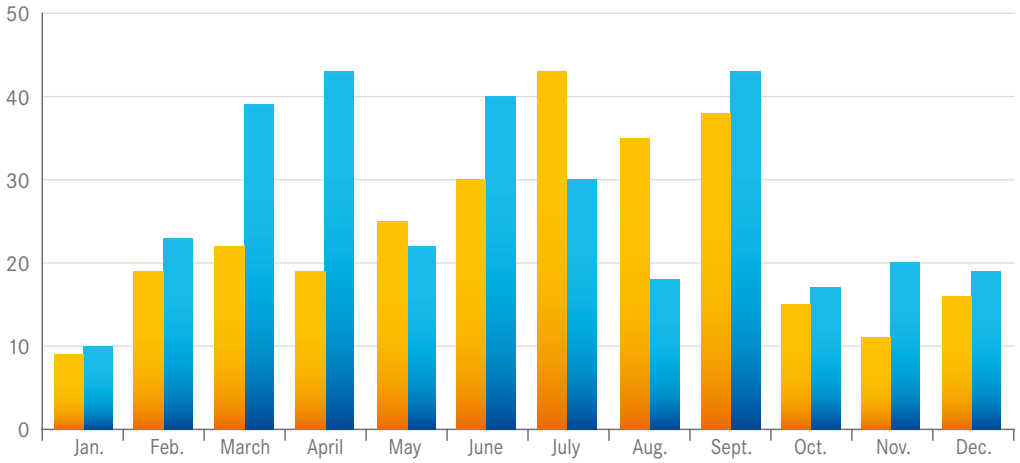
Distribution of documents approved in 2009



- **Documents drawn up under the European passport regime in 2009**

In 2009, the CSSF received 1,292 notifications (relating to 324 prospectuses and base prospectuses and 968 supplements) from the competent authorities of several EU Member States, against 1,144 notifications (relating to 282 prospectuses and base prospectuses and 962 supplements) in 2008, representing a 12.94% growth. The number of notifications relating to prospectuses and base prospectuses alone increased by 14.89%.

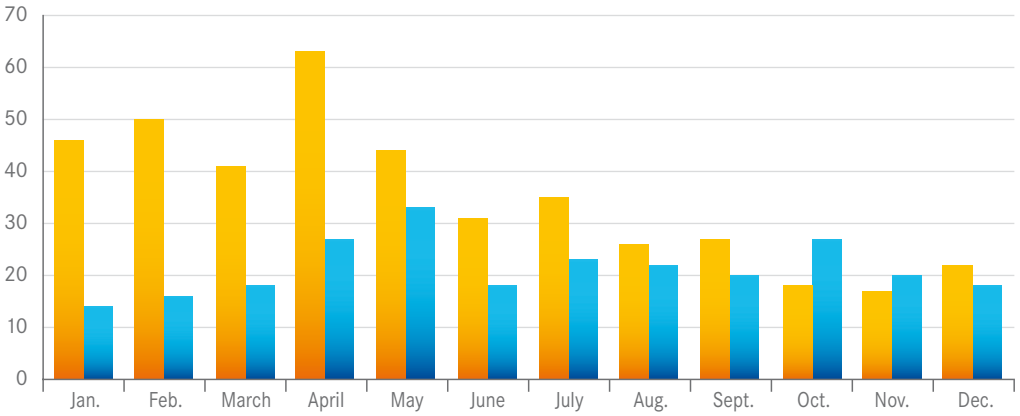
Development in the number of notifications (prospectuses and base prospectuses) received by the CSSF



	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008	9	19	22	19	25	30	43	35	38	15	11	16
2009	10	23	39	43	22	40	30	18	43	17	20	19
Variation in %	11.1%	21.1%	77.3%	126.3%	-12.0%	33.3%	-30.2%	-48.6%	13.2%	13.3%	81.8%	18.8%

In 2009, the CSSF sent notifications for 691 CSSF-approved documents[1] (256 prospectuses and base prospectuses and 435 supplements) to the competent authorities of the EU Member States, against 1,070 documents (420 prospectuses and base prospectuses and 650 supplements) in 2008, which is a 35.42% decrease. The number of notifications relating to prospectuses and base prospectuses alone decreased by 39.05%.

Development in the number of notifications (prospectuses and base prospectuses) sent by the CSSF



	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008	46	50	41	63	44	31	35	26	27	18	17	22
2009	14	16	18	27	33	18	23	22	20	27	20	18
Variation in %	-69.6%	-68.0%	-56.1%	-57.1%	-25.0%	-42.0%	-34.3%	-15.4%	-25.9%	50.0%	17.7%	-18.2%

[1] This figure is the number of documents for which the CSSF sent one or several notifications. Where notifications have been sent at different dates and/or in several Member States, only the first notification is included in the statistical calculations. Each document notified in one or several Member States is thus only counted once.

- **Approval of prospectuses relating to Luxembourg issuers**

Among the 89 prospectuses relating to issues carried out by Luxembourg issuers that the CSSF approved in 2009, it should be noted that two prospectuses related to issues of securities from two closed-end type UCIs and around fifty prospectuses covered issues of securitisation vehicles.

Among the transactions linked to capital increases, the capital increase performed *via* a convertible loan and/or a loan which may be exchanged by ArcelorMittal may be pointed out.

Finally, in January 2010, the CSSF approved one prospectus related to a public offer and an admission on a regulated market of Units issued by a SPAC (Special Purpose Acquisition Company) established in the form of a European company in Luxembourg. The purpose of the sum of Units, each composed of a share and a warrant, is to allow an issuer to invest in activities mainly based in Germany either by purchasing shares, exchanging shares or any other financial transaction.

- ***A posteriori* control of the Final Terms**

In accordance with the Prospectus regulation, the Final Terms are not subject to the approval by the CSSF but only to a filing. As regards the content, the CSSF's approach allows the issuers to decide on the level of information to include in the base prospectus or in the Final Terms within the applicable regulatory limits and by taking into account some general principles laid down in FAQ No. 11 published on the CSSF website. As for the requirement to file the Final Terms, FAQ No. 12 specifies that the issuer shall perform such filing with the competent authority of the home Member State and recommends to the issuers to also send a copy of the Final Terms to the competent authority of all host Member States. Please refer to Article 14 of the Prospectus law for the modalities concerning the publication of the Final Terms in Luxembourg.

In this context, the CSSF deemed it useful to perform controls on samples from the filed Final Terms in 2009. During the inspections, the CSSF noted irregularities not only in the filing and the publication of the Final Terms but also in their form and content. Indeed, some issuers do not file all the Final Terms for issues subject to public offer and/or admission to trading on a regulated market as it is required by the applicable regulations, while others file even the documents which do not fall within the scope of the Prospectus regulations. In addition, the control showed that, often, the Final Terms are not filed within the applicable time limits. In some cases, versions which are not final, which are incomplete, which contain mistakes or contradictions compared to the models of the Final Terms from the related base prospectuses were filed. In accordance with the competences and powers to intervene conferred by the Prospectus law, the CSSF intervened against the issuers concerned and intends to continue its action in 2010.

The issuers, offerors and persons asking for the admission to trading on the regulated market of securities shall bear in mind that they must file the Final Terms within the applicable time limits and in due form pursuant to the regulation into force and by observing the modalities described in the relevant base prospectus. In this context, the responsibilities the issuers have in relation to the base prospectus also apply for the content of the Final Terms concerned which are an integral part of the documentation set out in the Prospectus regulations. This documentation must contain all the information which allows the investors to make an informed assessment of the proposed investment.

2.3.3. Questions regarding prospectuses raised in 2009

- **Approval of issues that benefit from State guarantees**

Question No. 70 from CESR's seventh updated FAQ of December 2008 regarding the disclosure requirements in relation to the States supporting financial institutions raised many interpretation issues for the filing entities during the 1st quarter of 2009. The CSSF confirmed its policy regarding the treatment of these issues which consists in analysing on a case-by-case basis pursuant to Article 10(2) of the Prospectus law and Article 23(4) of Regulation (EC) No 809/2004.

- **Description of the risk factors in the framework of a base prospectus**

In accordance with Article 22(2) of Regulation (EC) No 809/2004, information which is not known at the time of the approval of the base prospectus or which cannot be determined at the time of the issue may be omitted during the approval of the base prospectus and set out in the Final Terms. In accordance with Article 22(4) of the same regulation, the Final Terms may only contain information included in the different notes on securities and thus specific to the outstanding issue. Consequently, it is not possible to add general risk factors which are inherent to the issuer or which relate to the securities described and summarised in the base prospectus *via* the Final Terms. Indeed, these general risk factors trigger, in principle, a supplement to the base prospectus.

- **Application of Article 13 of the Prospectus law**

In 2009, several requests for opinion were related to information which could or, where applicable, had to be included in the supplement to the base prospectus. Pursuant to Article 13 of the Prospectus law, every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, must be mentioned in a supplement to the prospectus. The addition of a new issuer or a new category of securities is not part of the criteria set out in Article 13 and, in these cases, a new base prospectus shall be drawn up. However, the addition of a guarantor may amend the existing terms and may therefore fulfil the criteria of Article 13. This amendment may, thus, take place *via* a supplement.

2.4. Takeover bids

2.4.1. Offer documents approved by the CSSF

In 2009, the CSSF approved one offer document in relation with a takeover bid under the law of 19 May 2006 implementing Directive 2004/25/EC of 21 April 2004 on takeover bids (law on takeover bids).

On 23 January 2009, following the contribution of CEGEDEL S.A. (Cegedel) shares by some former shareholders, the Luxembourg company SOTEG S.A. (Soteg) announced that it holds 82.8% of the shares and voting rights in Cegedel. As a consequence, in accordance with Article 5(1) of the law on takeover bids, Soteg had to launch a mandatory takeover bid for the remaining Cegedel shares not yet held by Soteg.

The offer document was approved by the CSSF and recognised by the Belgian *Commission bancaire, financière et des assurances* (CBFA) on 3 April 2009. Soteg's offer was finally launched on 6 April 2009. A positive reasoned opinion was also published by the Board of Directors of the target company, in compliance with the law on takeover bids.

On 13 May 2009, a supplement to the offer document was approved by the CSSF and recognised by the CBFA.

After an extension of the offer until 15 May 2009, Soteg holding 97.89% of the capital and voting rights in Cegedel announced, on 23 May 2009, the exercise of its squeeze-out right in the Cegedel shares which were not presented to the offer pursuant to Article 15 of the law on takeover bids. It was specified in the same notice that the ownership of the remaining Cegedel shares was transferred *ipso jure* to Soteg in accordance with the law on takeover bids.

Following the realisation of the offer and the exercise of Soteg's squeeze-out right in the shares not presented to the offer, the Cegedel shares were removed from the official list and from trading on the Luxembourg regulated market with effect as of 2 June 2009.

2.4.2. Questions regarding the law on takeover bids raised in 2009

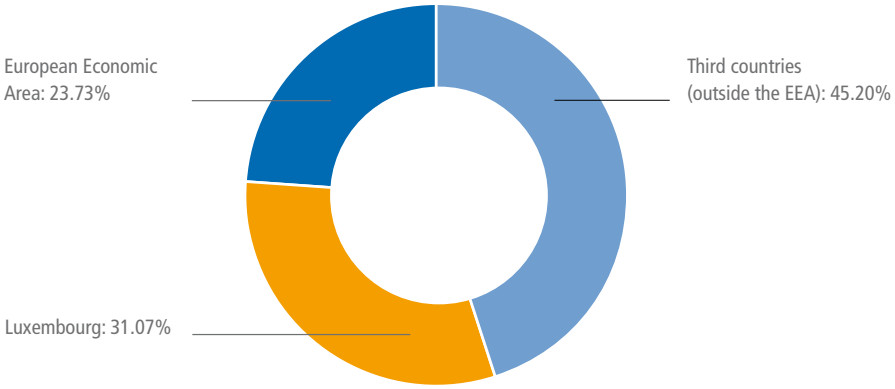
In 2009, several requests for opinion on transactions likely to fall under the scope of the law on takeover bids related to transactions included in the initial issues of securities. In its answers, the CSSF took into account the general principles set out in Article 3 of the law on takeover bids by paying special attention to the information made available for investors as of their decision to invest into the company, more specifically the risk related to possible acquisition of control of the company, as well as to the practical arrangements of the protection put in place with regards to an acquisition of control.

2.5. Supervision of issuers whose securities are admitted to trading on a regulated market and for which the CSSF is the competent authority pursuant to the law of 11 January 2008 on transparency requirements for issuers of securities (Transparency law)

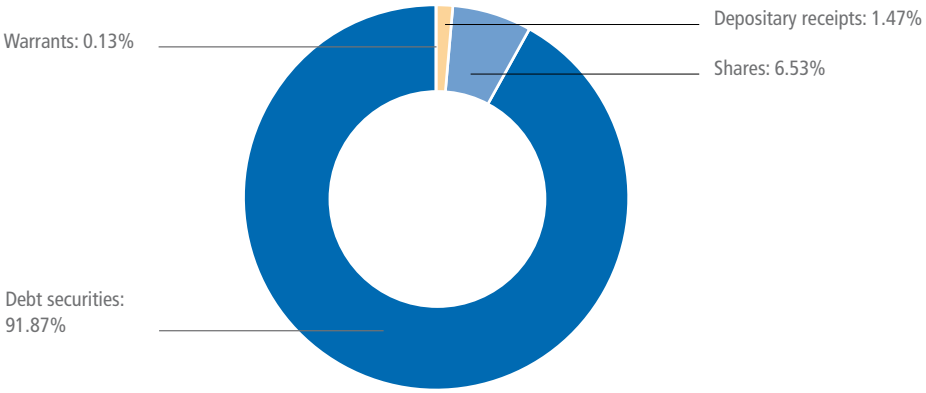
Pursuant to the Transparency law, the CSSF supervises the issuers which fall within the scope of this law. As at 8 March 2010, 750 issuers had chosen Luxembourg as home Member State for the purposes of the Transparency law and were, thus, supervised by the CSSF in accordance with this law. As from November 2009, a list of these issuers is available on the CSSF website (section “Supervised entities”).

Among these 750 issuers, 233 are Luxembourg issuers, of which 45 are issuers of shares, three are investment companies the shares of which are admitted to trading on a regulated market and one is an issuer the shares of which are represented by Fiduciary Depository Receipts admitted to trading on a regulated market. Among the other issuers, 178 have their registered office in a Member State of the European Economic Area (EEA) and 339 are incorporated in third countries (outside the EEA).

Breakdown of issuers according to countries



Breakdown of issuers according to type of securities admitted to trading



2.5.1. Determination of the home Member State

The task of identifying the entities to be supervised under the Transparency law, described in detail in the CSSF's 2008 Annual Report, continued in 2009. Currently, there are still issuers which have not yet notified their choice of home Member State (HMS) to the CSSF. Among these, there are certainly issuers which chose another EEA Member State as HMS and which, thus, only omitted to inform the CSSF thereof. Nevertheless, it is presumed that many of the above-mentioned issuers, mainly those from third countries, have not yet elected a HMS for the purposes of the Transparency Directive. Thus, these issuers do not comply with all the European regulations applicable to entities the securities of which are admitted to trading on a regulated market situated or operating in an EEA Member State. In order to establish contact with these issuers and to receive information about the choice of their HMS, the CSSF got in touch, in November 2009, with the competent authorities of the third countries mostly concerned and, thus, sent several reminders in cooperation with these authorities.

Another difficulty observed in 2009, in relation to the determination of the HMS, concerns the legislation on prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market. Indeed, some issuers assume that they have fulfilled the requirement to notify their choice of HMS when having made a choice for the purposes of a prospectus. However, this is not the case; a distinct choice has to be made for the purpose of the Transparency Directive. Besides, it is important to note that the choices made for the approval of a prospectus are done in most cases per issue whereas they are usually done per issuer for the purposes of the Transparency Directive.

Moreover, the CSSF noticed that some securities which still appeared as admitted to trading on the regulated market *Bourse de Luxembourg* were in the meantime repurchased or redeemed. In these cases, the issuers (often companies which have been dissolved) omitted to inform SBL of the withdrawal of the securities concerned.

As stated in 2008, many issuers who have not issued new securities since several years are not aware of the fact that their securities are admitted to trading on a regulated market as defined in the MiFID Directive and of the legal consequences thereof.

In the context of the cooperation between competent authorities and based on the answers received by the various issuers whose securities are admitted to trading on the regulated market in Luxembourg, the CSSF informed, in February 2009, the European competent authorities of the issuers that have chosen other Member States as HMS for the purposes of the Transparency Directive. Moreover, it informed them of the choice of HMS of Luxembourg issuers whose securities are admitted to trading on regulated markets in other EEA Member States.

Finally, it should be pointed out that the date of the notification of the choice does not determine the moment as from which the requirements deriving from the Transparency Directive start to apply. Indeed, many issuers that have chosen Luxembourg as HMS for the purposes of the Transparency Directive after 30 April 2009 (deadline for the filing of the annual financial report for the year 2008) were of the opinion that they were exempted from the requirements laid down in the Transparency law regarding the annual reports for the year 2008. However, since the Transparency law entered into force on 19 January 2008 and pursuant to an FAQ published by the CSSF at the beginning of 2008 (cf. CSSF's 2007 Annual Report), all the issuers for which Luxembourg is the home Member State must draw up annual financial reports, concerning the financial years starting 1 January 2008 or after this date in accordance with the provisions of the Transparency law, which must be disseminated, stored with the OAM (Officially Appointed Mechanism) and filed with the CSSF like any other regulated information.

2.5.2. Review of annual and semi-annual reports

As regards the review of the 2008 annual reports and 2009 semi-annual reports, it was noticed that at the beginning of 2009 many issuers were not yet well informed about the procedures concerning the content and the disclosure of their annual financial reports. Indeed, the notion of effective dissemination to the public of the EEA Member States was not always well applied; many issuers had not yet registered with the OAM for the storage of their regulated information and the statement made by the persons responsible within the issuer, laid down in Articles 3(2)c) and 4(2)c) of the Transparency law, was not included in the reports or did not include the information required by the law.

In the context of these statements made by the persons responsible, it is important to point out that the purpose of the Transparency Directive is to make the managers personally responsible, meaning that a declaration indicating that the financial statements and the management report are drawn up in accordance with the applicable laws is not sufficient any more. Until now, several injunctions were ordered in this matter. Even though an improvement has been noted with regard to the drawing-up of the semi-annual report for the period from 1 January until 30 June 2009 compared to the financial year 2008, there are still issuers who assume that they are not able to comply. The CSSF will therefore have to continue its interventions in this matter in the future.

2.5.3. Dissemination and storage of regulated information with the OAM

Since 1 January 2009, regulated information to be drawn up pursuant to the Transparency law shall be filed with SBL which was designated as the officially appointed mechanism for the central storage of regulated information regarding issuers for which Luxembourg is the HMS (cf. CSSF's 2008 Annual Report) by the Grand-ducal regulation of 3 July 2008. The transitional provision allowing the storage of regulated information on the website of the issuers ended on 31 December 2008. All the regulated information issued as from 1 January 2009 must be filed with SBL which makes it available to the public on its website in a dedicated section. The information stored before this date on the issuers' website is not required to be transferred to the OAM.

As regards the storage of information, the CSSF observed that a lot of information was not filed in the appropriate categories or was not correctly referenced. The security measures indicated in the recommendation of the European Commission of 11 October 2007 (cf. CSSF's 2007 Annual Report) set out that, once filed and made available to the public, the regulated information cannot be withdrawn from the OAM systems. In order to improve the procedures laid down in this context and, thus, to enhance the readability of the filed information and the transparency towards the investors, the CSSF will continue its efforts to improve the quality of the filings in cooperation with SBL.

In the context of the storage of regulated information, it is important to note that the availability of the information in section REGULATED INFORMATION (OAM) on SBL's website does not exempt issuers from the requirement of effective dissemination of this information as laid down in the Transparency law.

The CSSF has in the meantime recognised the following five entities as companies specialised in the dissemination of regulated information: SBL, Business Wire, Tensid S.A., PR Newswire and Hugin AS. Based on the information filed with the CSSF until now, it has been noticed that most issuers choose SBL in order to comply with the dissemination requirements laid down in the Transparency law.

Generally, many issuers have not yet informed themselves about the legal requirements regarding the storage and dissemination set forth in the Transparency law for the 2008 annual report. However, following the reminders sent by the CSSF to all issuers which did not fulfil the requirements in this context during 2009, a clear improvement in the disclosure modalities of the 2009 semi-annual reports could be noted.

2.5.4. Questions regarding the Transparency law raised in 2009

- **Publication of new loan issues**

In accordance with Article 15(3) of the Transparency law, issuers are required to make public without delay their new loan issues and any guarantee or security in respect thereof. Given the important number of questions raised in relation to this article, the CSSF published in 2008 an FAQ specifying that this article only applies to securities admitted to trading on a regulated market as defined in Article 1(11) of the Transparency law. During 2009, many issuers were worried about the wording "without delay". In the absence of a standardised point of view at European level, the following approach is accepted by the CSSF: if the issuers publish the information about new issues immediately on the regulated markets concerned and if the amount of the new loans is not significant compared to the existing indebtedness, it is sufficient to file this information once a week with the CSSF and with SBL acting as OAM for the purposes of the Transparency law.

It is important to bear in mind that the questions mainly concerned the Final Terms relating to admission to trading on a regulated market. The distribution of these Final Terms in accordance with the provisions of the Transparency law is, however, not sufficient for the fulfilment of the requirements to publish and file with the CSSF as laid down in the laws relating to prospectuses to be published in case of an offer to the public or admission to trading on a regulated market (cf. point 2.3.2. of this chapter).

- **Third-country issuers**

Having regard to the large number of third-country issuers which have Luxembourg as HMS, many questions regarding the equivalence of laws in third countries were raised during the year.

Thus, as regards accounting standards, several third-country issuers still had questions regarding the standards to be used for the establishment of their individual annual accounts. In this context, the CSSF informs that it provided clarifications thereof in its 2008 Annual Report.

It should be noted that, contrary to the opinion of certain issuers, the second chapter of the Grand-ducal regulation of 11 January 2008 regarding the equivalence for third countries sets out criteria allowing the competent authorities to determine whether the laws of a third country have equivalent requirements to those of the laws of Member States. Thus, it is not up to the issuer to individually assess, based on these criteria, whether the regulated information it draws up is acceptable for the purposes of the Transparency law.

- **Netting of long and short positions**

Besides the decisions taken by the CSSF, it should be pointed out that CESR published FAQ documents in April and October 2009 following questions raised by different competent authorities of Member States. These documents are available on the CSSF website (section "Issuers / Prospectuses", sub-section "Transparency requirements for issuers of securities", "FAQ").

In the context of requirements concerning notification of major holdings, question No. 13 determines that the netting of long and short positions is not authorised and that the long position must, thus, always be notified if it entitles to acquire, on the holder's own initiative, shares already issued and to which voting rights are attached.

3. DEVELOPMENTS IN THE REGULATORY FRAMEWORK

3.1. Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies

The impact of this regulation on the information to be included in the prospectuses is subject to a more detailed description in point 2.5. of Chapter XIV "Banking and financial legislation and regulations".

3.2. Law of 18 December 2009 concerning the audit profession

The law, which transposes Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts into Luxembourg law, impacts the approval of the prospectuses containing financial information of companies whose transferable securities are admitted to trading on the regulated market of Luxembourg and which were subject to an audit report as well as the review of the periodical financial information of such companies under the Transparency law.

Indeed, Chapter XI of the law lays down certain provisions applying to third-country companies issuing securities. Thus, Article 79(1) (which implements Article 45(1) of Directive 2006/43/EC) sets out that the CSSF shall register every third-country auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outside a Member State whose transferable securities are admitted to trading on the regulated market of Luxembourg. The companies which issue exclusively debt securities the denomination per unit of which is at least EUR 50,000 or, in case of debt securities denominated in a currency other than Euro, the value of such denomination per unit being, at the date of issue, equivalent to at least EUR 50,000 are exempted from this provision.

In accordance with the fourth paragraph of this article, the audit reports relating to individual or consolidated accounts of the above-mentioned companies issued by third-country auditors or audit entities which are not registered in Luxembourg have no legal effect in Luxembourg.

However, having regard to difficulties regarding equivalence in relation to third countries and the direct consequences linked to the non-registration of the auditors of these countries, the European Commission published on 29 July 2008 a decision concerning a transitional period for the audit activities performed by auditors from certain third countries. Article 1 of this decision lays down that Article 45 of Directive 2006/43/EC shall not apply to audit reports concerning annual accounts or consolidated accounts, as referred to in Article 45(1), for the financial years starting during the period from 29 June 2008 to 1 July 2010, which are issued by auditors from the third countries referred to in the Annexe to this decision, where the third-country auditor or audit entity concerned provides certain information listed in paragraph 1 of Article 1 of the decision.

In short, Article 79(4) of the law concerning the audit profession does not currently apply to audit reports issued by auditors from one of the third countries listed in the Annexe to the decision which provided the CSSF with all the information required by this decision.

SUPERVISION OF INFORMATION SYSTEMS

1. Activities in 2009
2. Supervisory practice

09

1. ACTIVITIES IN 2009

1.1. Participation in national groups

In 2009, the department "Information systems and supervision of support PFS" represented the CSSF within the following committees, commissions, associations or working groups:

- ABBL - Payments Committee. The Committee in which the CSSF participates as observer deals with topics relating to payment and clearing systems, bank cards and direct debit. In 2009, it especially dealt with the transposition of the Payment Services Directive (PSD) into national law and its operational application.
- CRP Henri Tudor. In 2009, the CRP continued its works on the research programme INNOFinance which identifies projects related to innovation and promotion of financial sector services. The CSSF is involved in the strategic orientation of the INNOFinance projects and it also takes part in the strategic sub-committees in the fields of IT systems security and service quality.
- Luxembourg Institute for Standardisation, Accreditation, Safety and quality of products and services (*Institut Luxembourgeois de la Normalisation, de l'Accréditation, de la Sécurité et qualité des produits et services*, ILNAS). This authority, under the responsibility of the Minister for Economic Affairs and Foreign Trade, has been created by the law of 20 May 2008 and started its activities on 1 June 2008. ILNAS comprises, among others, the Luxembourg office of Accreditation and Surveillance (*Office luxembourgeois d'accréditation et de surveillance*, OLAS) and the State energy service (*Service de l'Energie de l'Etat*, SEE) and consolidates the works in standardisation of IT quality and systems security previously initiated by the *Association de Normalisation pour la Société de l'Information Luxembourg* (ANSIL). In the context of the financial sector, the CSSF participates in the standardisation of IT systems security (ISO/IEC Standards 270xx).
- Operational Crisis Prevention Group for the financial sector (OCPG) under the aegis of the Luxembourg Central Bank. The mission of OCPG consists in identifying the risks supported by the financial sector in relation to critical infrastructures, in order to suggest measures enabling to prevent a possible operational crisis which would disrupt the functioning of the financial professionals and jeopardise the proper settlement of monetary policy operations.

1.2. International cooperation

The department took part in the international conferences of the IT Supervisory Group (ITSG), which gathers the persons responsible for the prudential supervision of the IT systems within the different authorities every year.

The aim of this group is to foster the exchange of information on the current technological challenges. The group also covers aspects such as business continuity plans, electronic banking, countermeasures against the phishing phenomenon and, in general, the specific weaknesses of banking IT, as well as the supervision of cross-border IT outsourcing. Throughout the year, the members of the group exchange information on subjects related to the use of IT and of the Internet by financial sector players, mainly in the banking sector. The information exchanged in 2009 concerned IT system attacks and identity or bank card thefts.

New countries wish to join the ITSG every year, indicating that its popularity is constantly growing. The subjects discussed are carefully prepared and the conferences are very structured in order to cover in the most efficient way the subjects considered to be the most important. The members have taken the necessary measures in order to keep the number of countries represented under control and have also discussed the possibility to introduce a mandatory sponsorship by a member country. In 2009, Mexico and China joined the ITSG. These new members valuably contributed to the discussions and allowed the group to understand the challenges peculiar to the newcomers. As the group is becoming larger and in order to cover the European specificities, an exclusively European ITSG conference has been organised for the second time in 2009.

1.3. Developments in the regulatory framework

The department "Information systems and supervision of support PFS" continued its works aiming at improving the efficiency of supervision for the supervised entities, the *réviseurs d'entreprises* (statutory auditors) and the CSSF.

The risk-based approach as announced in Circular CSSF 08/350, which will be applicable to support PFS, has been analysed and the results of this study will be submitted for comments in 2010. The publication is planned in 2010 in order to provide a concrete basis for supervision as from 2011. This will give support PFS enough time to adapt their internal governance.

2. SUPERVISORY PRACTICE

Supervision includes the verification that supervised entities comply with the legal and regulatory framework, with the direct or indirect purpose to maintain or improve the professionalism of their activities. It focusses, in particular, on the technologies implemented for the information systems and takes into account the specificities of the outsourcing of these services with support PFS or third parties, outside or within the group.

2.1. Implementation of multi-tenant financial software

The objective of a financial institution offering IT services to other entities within or outside the group is obviously to mutualise some of the IT systems in order to optimise costs. Using equipment mutualising is not a new concept. The CSSF has always put forward the risks of a possible loss of confidentiality or integrity of data if the different functional environments of mutualised IT systems are not correctly segregated. Where a banking institution intends to mutualise its banking software in order to make it also available to its subsidiaries or other companies of the group, the CSSF always recommends to duplicate the applications, in order to preserve in the best possible way the segregation of data and to ensure that an instance user (for example a subsidiary) may not have access to data and processing of other instances (another subsidiary or the bank itself).

The risks mainly depend from the technical soundness of the hardware partitioning to resist a "loss of protection" between systems.

For each instance running on a separate computer, protection is managed at connectivity level between these machines and at the level of the access rights set up on each machine. A vulnerability in the software or in the operating system of a computer does not imply a loss of protection if these computers do not interact or if communications are under control. If each instance runs on the same computer, the protection of the operating system between the logical partitions that have to be managed shall be investigated. The CSSF is not aware of any cases reported which would jeopardize the reliability of operating systems allowing partitioning, whether on virtual machines or proprietary operating systems. Segregation only works if a sound, documented, regularly reviewed implementation, a follow-up of vulnerabilities and regular corrective updates are performed. Partitioning or virtualisation technology is more and more widespread and seems, so far, sufficiently robust to be considered for a professional use for mutualising technical financial platforms and in particular for banking platforms. In a partitioned or virtual environment, several instances of the single-institution software, each instance being affected to an institution, allow the implementation of additional security and environment segregation mechanisms as, for example, cryptography of partitions at operating system level, hindering another instance from reading the data, even in case of protection loss.

If mutualising is done at application level, i.e. if the software has been created to manage different institutions, one shall be prudent to assess the risks based on the activity performed, the qualification of the managed information (confidential or not) and the permanent specific controls that are executed to ensure that errors (or frauds) are detected on time. An investment fund management software should thus allow the management of multiple UCIs, as it has already been developed, from conception, for multiple compartments. Confidentiality is not necessarily a decisive criteria in the calculation of the NAV and the daily accounting and financial controls performed allow detecting a possible bug.

However, banking software with full functionality coverage, which would separate the management of each individual bank only based on a selection at user connection level, represents *a priori* an important risk which would be hard to evaluate if data would be mixed up. The complexity of the software may generate unpredictable bugs, similarly to some operating systems which are now so complex that they create unexpected errors which are difficult to reproduce. Systematic financial controls within a credit institution are also more widespread due to the diversity of available functions and, as a consequence, the probability of an error not being detected on time increases. It is much more difficult to guarantee confidentiality in a multi-institution software than in a single-institution software.

Depending on the application architecture used by the software designer (two-tiers or three-tiers), the implementation of the database system used by the application should also be checked. It is important to have a detailed knowledge of the architecture chosen to mutualise the resources. Even if each institution has a dedicated instance of the software, the supervisor of this mutualisation must ensure that each application instance has its own database instance. If there is a single global database for all mutualised financial institutions, the risk is the same as, or even greater than having a multi-institution software. This type of architecture is generally offered to entities within a group which mutualises its IT infrastructure with a single operator. As each financial institution is responsible for its own controls as a distinct legal entity, mostly located in different jurisdictions, it is more likely that no global mechanism will be considered at group level to ensure that no manipulation is done in the database. A database administrator or an intruder (IT hacker), who has sufficient functional knowledge, may thus manipulate the accounts and transactions between different group subsidiaries, guaranteeing at the same time a balanced accounting for each of them.

As a consequence, a mutualisation of several financial institutions, based on a single database only, even if each institution has an application instance of the financial software, is not acceptable without formal evidence of in-depth controls and of a complete traceability of transactions made on the database, as well as a global governance proving the possibility to detect potential errors or frauds based on a manipulation of data of each mutualised institution at the lowest technical level.

2.2. Cloud computing and virtualization

It is not easy to provide a unique definition for “cloud computing”. This concept has however been used for several years now by different organisations active in the Internet world.

Cloud computing may be considered from two aspects: economic/financial and technical.

From an economic and financial point of view, cloud computing consists in switching from a capital expenditure (CapEx) model to an operating expenses (OpEx) model. Cloud computing is usually used to provide IT resources on demand and at a price which is proportional to the requested resource. Forrester Research defines cloud computing as the ability to provide standardised IT services through Internet technologies (services, software or infrastructure) which are pay-per-use in self-service mode. Switching from a CapEx model to an OpEx model allows the provider to distribute the investment among many users, so that those users only participate in the investment based on their effective needs. Consequently, switching from one model to the other is only feasible for a company if the service is outsourced to a provider having a very large number of clients or if the own IT infrastructure is sufficiently important to provide the service to these multiple clients *via*, for example, the group. Cloud computing represents in some aspects the ultimate step of equipment and IT services mutualisation.

From a technical point of view, this mutualisation implies a standardisation and, consequently, a homogenisation of technical infrastructures and applications. Cloud computing consists in activating on demand resources, often virtual machines, allowing one or several software to run simultaneously in order to meet users' requests. The cloud may concern archiving, CPU for the execution of programmes or a more sophisticated service consisting of a complete system. The term "cloud" suggests that the service is offered as a consistent set to the user, without the user knowing the place where and the detailed manner in which this service is offered.

The search engines on the Internet and the major virtual stores use a cloud technology to meet the volume of the end users. A search or purchase will be processed in the cloud according to a complex mechanism which makes the predictability of the location difficult. The first available server, regardless of its location, will provide the service.

In cybercrime, hackers who corrupt private or public PCs to use them without their owners being aware in order to perform a cyberattack create a BotNet, which is merely a cloud executing distinct actions, without the criminal knowing exactly which of the hacked computers is active. The criminal spreads his programme which will operate autonomously on hundreds of thousands of computers.

As a consequence, the concept of cloud computing is based on the ability to duplicate an IT processing, similar to cloning, within a vast and relocated technical resources environment. This environment is often called farming and means that the IT system has many physical machines which make those clones work. This means that the user has a huge virtual computer and a virtual storage space, whose physical component is based on computers and storage equipment which are interconnected and geographically distributed (within a room, country or one or more regions around the world).

Cloud computing is also mainly based on virtualisation, not only of the service, but also of the operating system. A physical computer may encompass several virtual machines. Due to the reduced number of virtual machines, it may not be defined as cloud, but the base principle is the same.

Cloud computing has the advantage of being resilient, as losing one equipment for whatever reason does not imply that the service stops as there is always, *a priori*, a cloud equipment which remains active to meet users requests.

Questions on the extent to which a financial institution may use cloud computing are more and more frequently asked to the CSSF.

The answer cannot be exhaustive, mainly because the concept is new and requires a more precise definition. Part of the answer may however be given by splitting the specific concepts of cloud computing and confronting them to the prudential and regulatory concepts.

In the concept of cloud, the concepts of replication, distribution and opaqueness can be identified. Indeed, the cloud can only work because the processes are replicated. Distribution is inherent to the cloud, but the term "cloud" also suggests the idea of opaqueness and lack of visibility.

- Replication: Replication of a processing is not a problem as such, except for the reliability of the processing in relation to equipment and operating system. A processing is considered as being "stable" when its performance is known and its results stable in time. Hence, the quality of the processing depends on the quality of the tests performed. In a traditional environment, tests are performed in a well-known environment. The equipment is well defined, the operating system as well and the tests are performed for every update of a component. Despite a series of tests, the processing may generate an error or stop. The more complex the processing, the less predictable the error is. This is due to the interaction of the complex processing with the equipment and operating system, which are both just as complex. This unexpected error risk must be multiplied by the number of instances operating in the cloud, with a multiplier effect if the cloud is not homogeneous, i.e. established on heterogeneous equipment or working with different versions of an operating system. A processing error by only one instance of the cloud may pass unnoticed. If identified, the instance which caused the problem must still be determined. The instance's specific traceability must hence be considered when the system is developed. The reliability of the processing necessarily implies its integrity. Replication must hence include a verification of the integrity of the processing at each step of

the cloning. This can be done through electronic signature and code hashing mechanisms. The potential actions of a hacker who breaks into the cloud and modifies the processing during its cloning can easily be imagined. From a prudential point of view, replication must occur together with a guarantee of integrity and a traceability of the functioning of each clone. The processing must therefore be specifically realised in a cloning perspective in order to take into account these control mechanisms.

- Distribution: This section covers at least two aspects which have to be considered for the financial sector, i.e. the physical location of the processing and of the data, that is to say the geographical distribution, and the timing for the distribution of the updates. The Luxembourg legal and regulatory framework imposes certain restrictions to the distribution of processing and storage abroad, in particular as regards the provisions relating to professional secrecy (law of 5 April 1993 on the financial sector, Circular CSSF 05/178 on the IT support function and its outsourcing with a third party). The distribution timing may also be a problem when an update is required for the fixing of an error or the amendment of a functionality. Indeed, the larger and the more geographically extended a cloud, the longer the distribution time. This is all the more true if the distribution is geographically extended as a poor quality of network communication may slow down this distribution. As a comparison, the update of a domain name in the DNS (Domain Name Server which allows resolving the IP address of a machine through its URL) may take up to 72 hours. During all this time, some DNS still contain the old link leading to an old server. A slower distribution for a programme or financial function would result in certain functionalities running on the old version of the software. Due to this uncertainty, the instance's version used that realises an operation must be traceable if used in the financial sector, as is the case for replication.

As a conclusion, cloud computing is a concept which is based on complex technical possibilities, which may not be suited for all financial services in the financial sector. The need for controls required by the legal, regulatory and prudential framework is only compatible with cloud computing if these complex mechanisms include a traceability of each transaction and if automatic detection mechanisms are implemented to identify any anomaly. A financial software must be specifically developed to be used in a cloud in order to be considered as potentially compliant with the prudential requirements of the financial sector. The concept of cloud computing is *a priori* in contradiction with the prudential principle of a financial institution always remaining responsible for its decisions, in particular as regards the choice of technical infrastructures and outsourcing, and hence always required to have control over its functioning. This inconsistency may be lifted if the cloud becomes transparent in its functioning and operation.

2.3. Dematerialisation and archiving of documents

In its 2008 Annual Report, the CSSF pointed out the legal uncertainty of a proof if a paper document is dematerialised, in particular if the original paper is destroyed.

Considering the volume of archived documents that must be kept by the supervised entities, the Minister for Economic Affairs and Foreign Trade associated the CSSF with its works aiming at improving this situation by drawing up a more appropriate legal and regulatory framework.

Currently and as long as these works are not accomplished, and considering Article 1333 of the Civil Code on private deeds which provides that: "Where the original deed or a deed valid as an original within the meaning of Article 1322-2 exists, the copies are only valid for the content of the deed, whose presentation may always be required.", the CSSF maintains its position of last year and recommends institutions under its supervision to be extremely cautious before considering the destruction of original documents in paper form.

2.4. Pandemic

2009 was marked by the fears of a pandemic linked to the new flu virus A H1N1. In its 2006 Annual Report, the CSSF had already discussed the pandemic issue within the financial sector, recommending a sufficient preparation allowing to minimise the consequences of such catastrophe on the Luxembourg and international financial centres.

The CSSF reminds that a pandemic does not modify the legal and regulatory framework and that financial institutions are still required to comply with it.

Telework, often presented as an essential element to ensure business continuity, is only possible if the four-eyes principle remains applicable. A certain number of financial institutions however use IT systems that have not been planned to ensure a four-eyes principle without having to use paper documents. In practice, a document is validated by the initials or handwritten signature of at least two persons. Telework is however mostly based on an exclusive usage of IT and does not involve "paper" flow, which entails that this control principle is departed from. Moreover, telework from abroad is not compliant if the person can visualise information falling under professional secrecy within the meaning of Article 41 of the law of 5 April 1993 on the financial sector.

2.5. State of the vulnerabilities reported in Internet-based financial services

The situation has remained stable since 2008. The attacks registered are always linked to a vulnerability of the client's computer or to a vulnerability of the provider's website.

In addition to the remarks and comments made in 2008, the CSSF observes that the vulnerabilities allowing a criminal to enter a banking infrastructure thanks to the weakness of a website indirectly connected to that infrastructure result from a lack of global security governance in the outsourcing.

Indeed, where a financial institution develops and operates itself its IT system, the whole process is often much better controlled by the department in charge of systems security than it would be if it was outsourced. In case of outsourcing, security is mostly considered from a unitary point of view by each party concerned. There is hence no precise global view on security and vulnerabilities appear because each party is only concerned by the domain under its responsibility. As an example, the provider which operates the IT system of its financial sector client will consider that the responsibility of the applications rests with the developer, i.e. the client. There may however be security weaknesses due to the way the development is implemented by the provider. Moreover, the client may have contacted a third party for its developments and the chain of responsibilities for security is again weakened.

A global security governance grouping all the persons responsible for security of the parties concerned, allows reviewing the production chain in more detail and hence highlighting potential vulnerabilities which might come up during the implementation process.

PUBLIC OVERSIGHT OF THE AUDIT PROFESSION

1. Legal and regulatory aspects
2. Quality assurance
3. Human and financial means
4. International standards on auditing
5. Ethics and independence
6. Third-country auditors and audit entities

10

1. LEGAL AND REGULATORY ASPECTS

The law of 18 December 2009 relating to the audit profession which entered into force on 23 February 2010 transposes Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts into Luxembourg law and replaces the law of 28 June 1984 on the organisation of the profession of *réviseur d'entreprises* (statutory auditor). The law confers to the CSSF the mission of public oversight of the audit profession.

The following three Grand-ducal regulations were made pursuant to the above-mentioned law:

- the Grand-ducal regulation establishing the qualification requirements of *réviseurs d'entreprises* (statutory auditors);
- the Grand-ducal regulation determining the conditions of recognition of providers from other Member States under the regime of free provision of services; and
- the Grand-ducal regulation organising continuing education of *réviseurs d'entreprises* (statutory auditors).

Circular CSSF 10/439 lays down the practical framework deriving from the law of 18 December 2009 and the Grand-ducal regulations concerned.

A consultative committee for the audit profession was created within the CSSF with the mission to rule on any draft law or Grand-ducal regulation regarding the statutory audit of accounts and the audit profession. Its composition is set by the law of 18 December 2009.

2. QUALITY ASSURANCE

Another task conferred to the CSSF by the law of 18 December 2009 is the implementation of a quality assurance system. This system shall apply to all *réviseurs d'entreprises agréés* (approved statutory auditors) and *cabinets de révision* (approved audit firms) for the statutory audit of accounts and for all other assignments which are exclusively conferred to them by the law.

The adopted approach consists, first, in ensuring *inter alia* that the internal organisation of the audit firm complies with the provisions of International Standard on Quality Control (ISQC) and, second, in selecting and checking the mandates by taking into account the risks inherent to the files as well as the efficiency of the firms' internal organisation.

3. HUMAN AND FINANCIAL MEANS

3.1. Human resources

The department "Public oversight of the audit profession", implemented within the CSSF, worked with reduced staff during 2009, since the relevant law has only entered into force in 2010. During this period, the team participated in the drawing-up of the above-mentioned Grand-ducal regulations, in the creation of an Internet portal so as to count the population under the supervision of the CSSF and in the development of a standardised approach of the quality assurance activity. The CSSF also defined the permanent staff needed for the fulfilment of all its assignments in a long-term plan. A recruitment procedure has started in order to meet this objective.

3.2. Financing the activities

The CSSF levies fees equivalent to staff costs, financial costs and operating costs for carrying out the mission of public oversight of the audit profession from persons subject to its supervision. The fees' amounts were drawn up and adopted *via* the Grand-ducal regulation of 18 December 2009.

4. INTERNATIONAL STANDARDS ON AUDITING

In order to maintain continuity in the standards applicable to the activity of statutory audit of accounts in Luxembourg, the CSSF adopted *via* a CSSF regulation the professional standards and recommendations of the *Institut des Réviseurs d'Entreprises* (IRE) applicable at the time of the entry into force of the law of 18 December 2009 until the European Commission adopts international audit standards *via* an EU regulation.

After analysing the potential impact on the audit profession, the CSSF contemplates adopting, in 2010, the international audit standards revised or replaced by the International Federation of Accountants (IFAC). In this context, the CSSF draws the attention to project Clarity set by the International Auditing and Assurance Standard Board (IAASB). The purpose of this project is to facilitate the reading and enhance the understanding of international audit standards. Thus, 36 standards were updated. The IFAC recommends that these standards apply for the financial years starting after 15 December 2009.

The standards specify the objectives and the due diligence with which the statutory auditor, which uses these standard references, has to comply during his audit. These standards also specify their application for audits of small- or medium-sized companies by emphasising a certain proportionality of the standards. Considerations for a proportional application of the standards are mainly located at the level of the application modalities and other explanatory information. Further explanations are also provided for in "Questions and Answers" published by IAASB in August 2009.

The CSSF invites in particular the *réviseurs d'entreprises agréés* (approved statutory auditors) to review the provisions of the new ISA 600 standard which deals with particular aspects of a group's financial statements audit. The major changes which took place concern the definition of a significant component in the context of a group's audit and the recommendation of a strong implication of the group's auditor in the audit of these entities either by carrying out the audit himself or by actively participating in the process of the entity's audit.

Project Clarity also provided clarification on ISQC. Thus, IFAC published in March 2009 a handbook on quality control for small- and medium-sized firms whose purpose is to adapt the requirements of the quality control standard to smaller firms.

5. ETHICS AND INDEPENDENCE

The CSSF which is responsible for the adoption of standards on ethics uses the code of ethics initially adopted by IRE on 12 June 2007. The CSSF also contemplates adopting *via* a CSSF regulation the revised version of the code of ethics published by IFAC in July 2009. This adoption is necessary because it extends the provisions in relation to independence, applicable to listed entities, to public interest entities. The consequence is restrictions regarding the services, other than those of audit, that a firm may provide to one of its clients for which it is responsible for the audit.

The *réviseurs d'entreprises agréés* (approved statutory auditors) and *cabinets de révision agréés* (approved audit firms) which audit public interest entities are also required to:

- publish a transparency report as defined in the law of 18 December 2009;
- carry out an additional independent review for mandates of public interest entities;
- perform a rotation of the responsible associate every seven years.

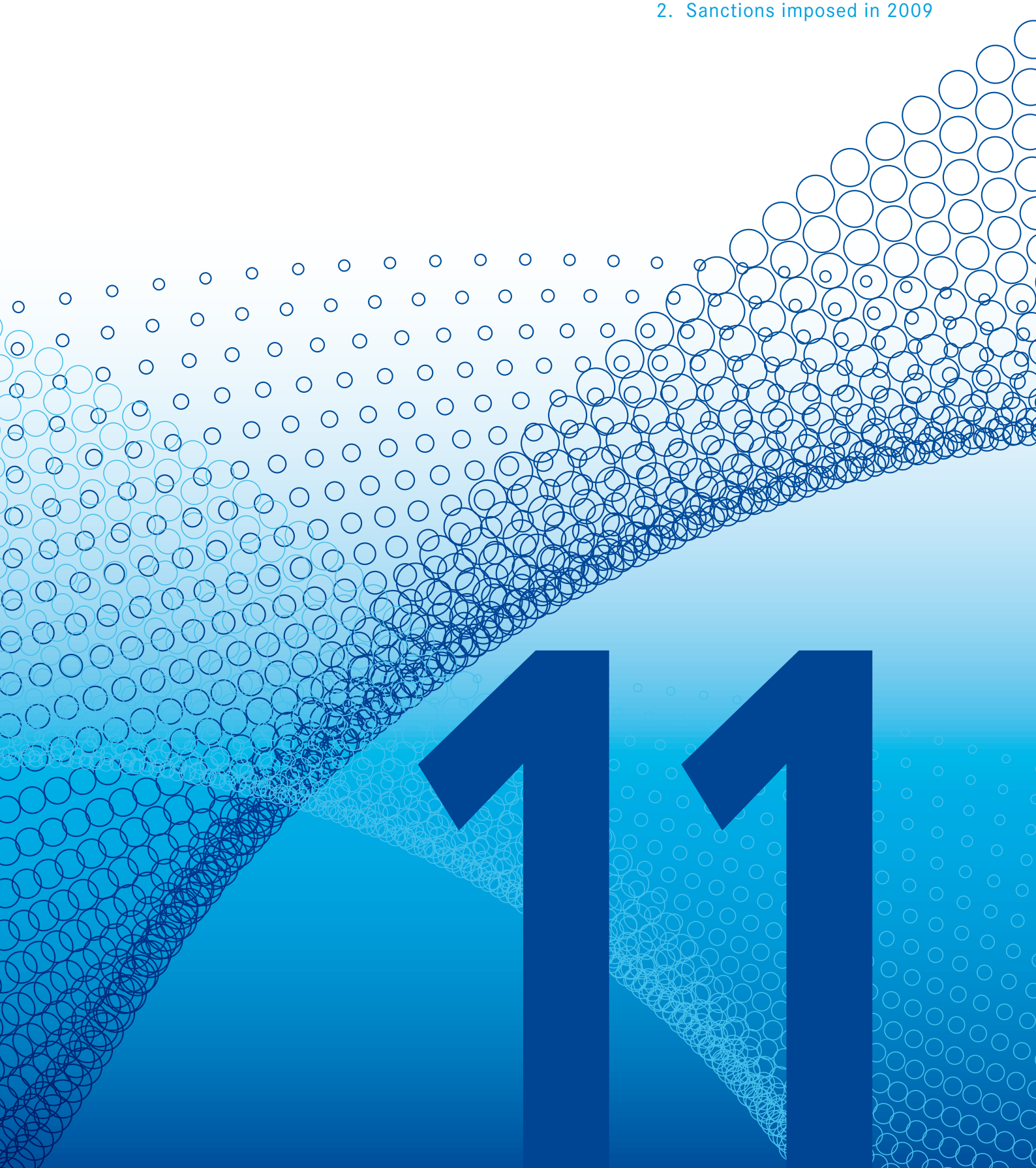
6. THIRD-COUNTRY AUDITORS AND AUDIT ENTITIES

The CSSF registers third-country auditors and audit entities which draw up an audit report of annual accounts or consolidated accounts of a company incorporated outside the EU whose transferable securities are admitted to trading on the Luxembourg regulated market. Nevertheless, some exceptions are provided for.

These third-country auditors and audit entities are also subject to the public oversight by the CSSF and must observe the same provisions regarding quality control and investigation and sanction system as the national population. Nevertheless, in case of equivalence, exemptions for the registration and the public oversight of these third-country auditors and audit entities are set. Thus, an exemption is possible when the auditor is subject, in the third country where it is established, to equivalent requirements concerning systems of public oversight, quality assurance, investigation and sanctions as the requirements laid down in Articles 29, 30 and 32 of the Directive 2006/43/EC.

MEANS OF SANCTION AVAILABLE TO THE CSSF

1. Means of intervention available to the CSSF
2. Sanctions imposed in 2009



1. MEANS OF INTERVENTION AVAILABLE TO THE CSSF

1.1. Laws and regulations into force

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 Finance to impose disciplinary fines on the persons in charge of the administration or management of the establishments concerned;
- under certain conditions, apply to the District Court sitting in commercial matters for suspension of payments of an establishment;
- ask the Minister of Finance to refuse registration on or to 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 registration on 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), 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;
- under precise conditions laid down by law, request the District Court sitting in commercial matters to order the dissolution and the winding-up of an establishment.

Moreover, the CSSF informs the State 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 the required authorisation;
- persons active in the field of domiciliation of companies without belonging to any of the professions entitled to carry on this activity pursuant to the law of 31 May 1999 governing the domiciliation of companies;
- 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, 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.

1.2. Non-compliance with reporting deadlines

In order to carry out its prudential supervisory mission and to follow up with due diligence the development of the supervised entities' activities, the CSSF requires that all entities, which must transmit reportings, observe this obligation within the time limits laid down for each type of reporting.

After noticing an increase in the reminders to be sent in order to receive the required information and documents, the CSSF decided to systematically impose henceforth disciplinary fines based on Article 63 of the law of 5 April 1993 on the financial sector in case of repeated non-compliance with the reporting deadlines without valid reasons.

2. SANCTIONS IMPOSED IN 2009

In 2009, the CSSF imposed the disciplinary fines and sanctions listed below.

In accordance with Article 59 of the law of 5 April 1993 on the financial sector and pursuant to Circular IML 91/75 of 21 January 1991 concerning the revision and recasting of rules governing UCIs covered by the law of 30 March 1988 on undertakings for collective investment, as amended by Circular CSSF 05/177, as well as pursuant to the law of 20 December 2002 relating to undertakings for collective investment, the CSSF used its right of injunction against two Luxembourg credit institutions concerning the implementation of the necessary infrastructure, i.e. sufficient human and technical means and the necessary internal rules, in order to fulfil the tasks relating to the function of a depositary bank of Luxembourg UCIs in accordance with the law of 20 December 2002 and Circular IML 91/75.

Moreover, the CSSF imposed disciplinary fines based on Article 63 of the law of 5 April 1993 on the financial sector to the persons in charge of the daily management of two PFS for refusing to communicate the documents and reports of the year-end closing.

The CSSF also imposed disciplinary fines to the persons in charge of the daily management of two support PFS for non-compliance with the deadlines laid down for the transmission of year-end closing documents and of the prudential reporting tables.

Furthermore, the CSSF filed three complaints with the State Prosecutor's office regarding entities which provided investment services without authorisation.

CUSTOMER PROTECTION

1. Consumer protection
2. Customer complaints

12

1. CONSUMER PROTECTION

The CSSF is the competent authority to ensure that the persons subject to its supervision comply with the laws protecting consumer interests.

This role of the CSSF as well as its competences in this field were confirmed and enhanced during the last years, notably following the enforcement of Regulation (EC) No 2006/2004 of 27 October 2004 on consumer protection cooperation (the "Regulation"). According to the recitals of the Regulation, the lack of laws concerning consumer protection combined with the absence of cooperation between the authorities of Member States enables some professionals to evade their obligations in this field, notably by relocating within the EU. Consequently, the consumers' confidence in cross-border commercial offers is undermined.

In order to remedy to this situation, the Regulation sets out the implementation of a network of competent authorities for monitoring the enforcement of the regulation concerning consumers and the setting-up of a framework of mutual assistance between these authorities. This framework lays down, *inter alia*, that the authorities which know about an intra-Community infringement notify the European Commission and the other authorities of the network. In this framework, the CSSF participates in the CPCS network (Consumer Protection Cooperation System) of the European Commission. This network created between European authorities was implemented in December 2006 in relation with the entry into force of the Regulation.

At national level, the Regulation triggered the adoption of the law of 23 April 2008 on the detection and sanction of infringements of consumer rights which appoints the CSSF as the special competent authority, laid down in the Regulation, responsible to ensure the enforcement of the laws regarding consumer protection. Article 2 of the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") was amended in order to stress this expansion of the CSSF's competences[1].

These new legal provisions enhance the rights of consumers in their capacity as clients of professionals of the financial sector and confirm the role of the CSSF in the protection of these rights.

- **FIN-NET, the cross-border network for out-of-court resolution of financial conflicts**

FIN-NET is a financial dispute resolution network launched by the European Commission in 2001. It is composed of bodies for the out-of-court settlement of disputes which are established in the countries of the European Economic Area, namely the EU Member States, Iceland, Liechtenstein and Norway and which are responsible for the settlement of disputes between consumers and providers of financial services such as banks, insurance companies, investment companies or other financial institutions.

In case of a dispute between a consumer living in a Member State and a provider of financial services established in another Member State, the FIN-NET members put in relation the consumer with the body competent for the out-of-court settlement of disputes and communicate to the former all useful information relating to this matter.

In Luxembourg, the CSSF and the *Commissariat aux Assurances* are part of FIN-NET which met twice in 2009.

2. CUSTOMER COMPLAINTS

The CSSF acts as an intermediary in the settlement of conflicts between the professionals subject to its supervision and their customers. This mission is conferred on the CSSF by Article 58 of the law of 5 April 1993 on the financial sector which provides that the CSSF "shall be competent to receive complaints from clients of persons subject to its supervision and to mediate with those persons with a view to achieving an amicable settlement of such complaints".

[1] This new competence was added to the law of 23 December 1998 establishing the CSSF through Article 123 of the law of 10 November 2009 on payment services.

In order to put holders of units in UCIs on an equal footing with the customers of the professionals subject to the law of 5 April 1993, a similar clause was introduced into the law of 20 December 2002 relating to undertakings for collective investment. Article 97(3) thus provides that "the CSSF is competent to receive complaints from holders of units of UCIs and to intercede with such UCIs in order to resolve such complaints amicably".

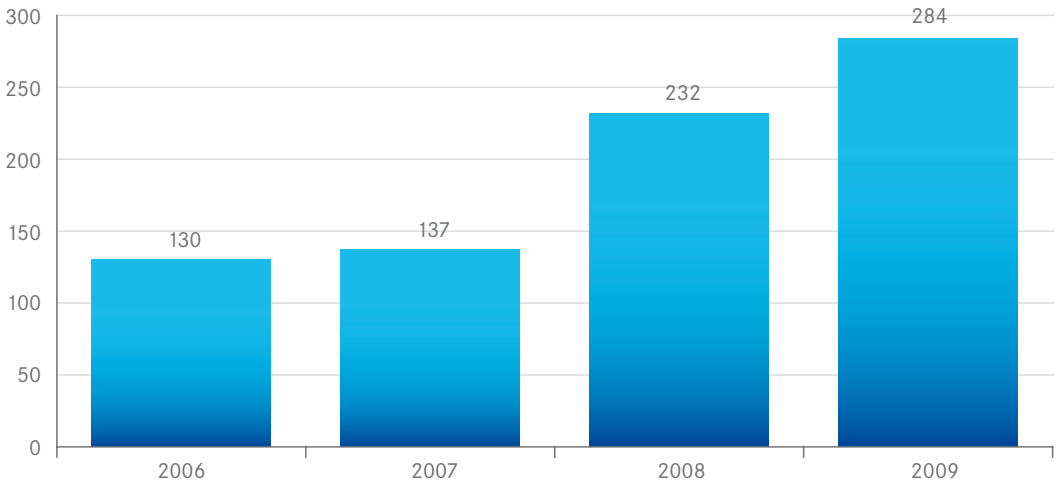
Since the entry into force of the law of 10 November 2009 on payment services, the CSSF is also competent for the amicable resolution of complaints regarding payment services (including electronic payment services) provided by credit institutions, post office giro institutions, electronic money institutions as well as payment institutions. It should be pointed out that, in addition to the persons using payment services as payers or beneficiaries (or both), the above-mentioned law also includes consumer associations among the entities which can submit a complaint to the CSSF.

In order to improve the efficiency of the handling of complaints, it is important that these complaints are subject to a prior diligent handling by the establishment concerned, which directly involves the authorised management in charge of customer complaints, before being submitted to the Legal Department of the CSSF. The purpose of this approach is to objectify the handling within the establishment and also to facilitate the pursuit of a settlement with the client.

2.1. Statistical data

In 2009, the number of complaints substantially increased as compared to the previous year, rising from 232 in 2008 to 284 in 2009.

Development in the number of complaints



Besides the complaints which are formally submitted to the CSSF, the Legal Department receives a great number of phone calls from clients of professionals of the financial sector who, on the one hand, are not always informed of the existence of a mediation procedure at the CSSF, and, on the other hand, seek advice from the CSSF concerning a specific problem encountered with a professional. Many requests made by phone concerned the regulations in force, the conformity of the applied fees or the consequences of the enhancement of certain anti-money laundering and terrorist financing measures (monitoring of accounts, ID check, etc.).

By adding the 96 pending files from 2008 to the 284 complaints received in 2009, a total of 380 files were dealt with in 2009, 229 of which were closed during the year.

213 out of the 229 complaints closed in 2009 were lodged by natural persons and sixteen by legal persons. Eleven complainants contacted the CSSF through a lawyer. 201 out of the 229 complaints involved credit institutions, thirteen concerned PFS, thirteen concerned UCIs and two concerned management companies.

Outcome of the CSSF's intervention / reasons for closing the files

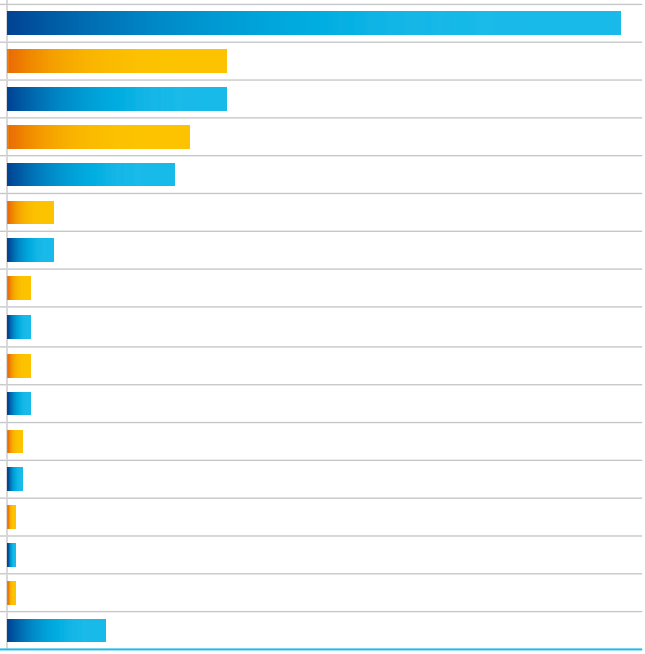
Files closed in 2009	**229**
Unjustified complaints[2]	129
Amicable settlement[3]	72
Amicable settlement following the CSSF's opinion	7
Contradictory positions	14
Withdrawal by client	7
Open files carried forward into 2010	**151**
Total files handled in 2009	**380**

Generally, the CSSF's intervention contributes to working out an acceptable solution for the parties concerned. Even if its positions are not binding on the professionals, the CSSF's advice is nevertheless largely followed.

It should be stressed that the CSSF's intervention only covers complaints in relation to financial activities of the supervised entities. For example, the CSSF considers that problems with the conformity of the goods compared to the order, with faulty goods or with the delivery of paid goods do not fall within its remit.

Breakdown of the complaints closed in 2009 according to the complainants' country of residence

Country	**Number**
Germany	81
Belgium	29
Luxembourg	29
France	24
United Kingdom	22
Italy	6
Netherlands	6
Denmark	3
Ireland	3
Spain	3
Sweden	3
Greece	2
Hungary	2
Austria	1
Cyprus	1
Iceland	1
Others (non EU)	13



[2] Unjustified complaints are those for which the CSSF did not conclude to misconduct of the professional.

[3] Spontaneous proposal for an amicable settlement by the professional, before a reasoned opinion issued by the CSSF.

Breakdown of complaints closed in 2009 according to their object

Transferable securities	**108**
Discretionary management	7
Advisory management	10
UCIs	34
Various securities transactions	57
Banking accounts and investments	**9**
Current account	4
Savings account	5
Various banking transactions	**44**
Account blocking	24
Counter transactions	8
Unauthorised transactions	7
Inheritance	5
Payments	**56**
Transfers	49
Bank cards	7
Credits	**12**
Mortgage loans	5
Consumer credits	3
Collateral	4
Total	**229**

2.2. Analysis of the complaints handled in 2009

During the year, the CSSF dealt with a great number of complaints which allowed a direct overview on the relationship between the professionals of the financial sector and their clients. Therefore, it could be interesting to present a few particular cases which the CSSF encountered in 2009.

2.2.1. Portfolio management

- **Discretionary management contract**

In principle, a discretionary management contract is legally comparable to a mandate that a client gives to the portfolio manager in order to manage in his name and on his behalf all or part of his assets by using a predefined investment strategy, without the manager having to receive prior approval of the client for the transactions he executes. The portfolio manager may, thus, infer that the client will not intervene in the asset management performed on his behalf.

But in practice, the client sometimes wishes to intervene in the portfolio management, in particular when he considers that the management of his assets does not have the desired results.

In one case, a client under discretionary management ordered the bank to perform a sale. When the client noticed that his order has not been immediately executed and that, due to the subsequent development in the price of the asset concerned, he suffered a loss, he complained to the bank. As he did not receive satisfaction, he addressed the CSSF to handle the complaint.

The bank justified itself by underlining that, in case a discretionary management contract is signed with a client, the manager decides himself on the transactions to be executed according to his assessment of the markets, unless expressly stipulated otherwise. In this case, the discretionary management contract did not include such one-off exceptions. The bank, therefore, considered that it did not have any obligation to execute the client's orders.

In light of these explanations, the CSSF closed the complaint file without concluding to misconduct by the bank.

It should be noted in this matter that, insofar as it cannot be avoided that clients wish at some point to instruct their manager despite the existence of a discretionary management contract, it is important that the handling of such situations be expressly laid down in the contractual documents.

- **Advisory management**

During the financial year 2009, the CSSF noted several times that clients did not feel responsible for the investment choices they made following information gathered from a professional, although no management contract had been signed.

Thus, the CSSF dealt with complaints of customers who blamed the bank for insufficient or bad advice. In many cases, the clients had taken excessive risks and underestimated the ups and downs of the stock exchanges in order to improve their return.

In one case, the complainant had a close relationship with his bank but did not sign any discretionary management contract. The client's son had some knowledge in finance and an excellent contact with the account manager of the bank. He regularly consulted the account manager in order to get advice on possible transactions to be executed and on the financial markets in general.

In the context of this close relationship with the bank, the client decided to invest part of his assets in the securities of a major US investment bank. Shortly before the collapse of this investment bank in mid-September 2008, the client's son phoned the customer relations officer and asked the latter, in vain, to contact him in order to examine the portfolio investments. When the client discovered the disastrous consequences of the collapse of the investment bank on his securities account, he complained about the bank's behaviour to the CSSF. The client mainly blamed the bank that it did not return his call to analyse his portfolio and that it did not give any advice in relation to the securities of the investment bank.

According to the bank, the client's son requested the customer relations officer to review his investments without, however, expressly specifying the litigious securities. Another point raised by the bank was the absence of an agreement concerning phone communications and that for this reason the bank had no obligation towards this client. The bank also considered that having answered the client's phone calls within a short period of time in the past does not constitute an obligation in this respect. The bank also highlighted that it never received any particular fee for the information given to the client and his son.

In this file, the CSSF did not retain any misconduct of the bank.

- **Well-informed investor**

One case concerned a client who complained that his bank did not provide him with sufficient information when he subscribed for bonds of a major US investment bank.

According to the bank, the client called his advisor and ordered to buy the litigious bonds. The bank explained that it did not give any advice to the client on that occasion because it deemed the client sufficiently educated in finance due to his profession as lawyer and in light of his website which indicates his specialisation in business law. The bank also observed that the litigious bonds were not included on the list of securities it recommended at that time.

The CSSF verified the bank's statement concerning the client's professional qualification. The CSSF also noticed that the client offered services to investors who considered themselves wronged by their bankers

and especially by those who advised the acquisition of bonds which were subject to the dispute submitted to the CSSF. The complainant also published his CV on his website in which reference was made to his great experience in finance.

In light of the bank's explanations and of its own verifications, the CSSF concluded that the complaint was not justified.

2.2.2. Risk of misuse of power

- **Unilateral amendment of a loan contract**

The CSSF dealt with a case in which a bank, which had granted a revolving credit line, seemed to have suddenly decided to change this contract for a new loan contract with a new interest rate and without any revolving possibility. The bank stated that this change took place upon express request by the client. Since the client refused to accept the conditions of this new contract, the bank withdrew the lending interests from his account. The client protested against this manner of proceeding by sending four registered letters with acknowledgement of receipt in which he argued that the bank's unilateral decision endangered his undertaking. The client asserted that the bank had not answered to his mails and informed him that it would, if necessary, get back the outstanding balance of the loan and the lending interests *via* enforcement.

The client sent a complaint to the CSSF which had to remind the bank insistently that it did not have the right to impose new loan conditions in a unilateral manner. The bank finally admitted that the client did not request the signature of a new loan contract and was willing to find an arrangement with the client.

- **Foreign-exchange transaction**

The CSSF intervened in a case in which a client wished to execute a foreign-exchange transaction at his bank. According to the bank, the client accepted to sign a forward exchange contract involving the currency subject to the foreign-exchange transaction in order to protect himself against a decrease in the currency's value. However, the client stated that the bank executed this forward transaction against his will.

The client complained to the CSSF in order that the *statu quo ante* be established in view of the circumstances. During the investigation of the file, the CSSF noted that the forward exchange contract bore the signatures of the bank's employees but not that of the client. Questioned on this subject, the bank reasoned that the client's signature was not necessary for the validity of the transaction insofar as the client approved of it orally. As the bank was not able to provide proof of this approval, the CSSF decided in favour of the client and requested the bank to restore the client's rights.

It should be pointed out that the forward transaction carried out by the bank was not in itself reprehensible, but the CSSF did not approve of the fact that this transaction had been executed based on a contract which had not been countersigned by the client.

2.2.3. Subscription of units/shares

In another case, a client maintained not to have given any orders to the bank to subscribe units/parts of an investment fund. The bank, however, presented its register of visits according to which the client spent an hour with his advisor. The client asserted that he went out from the bank with his advisor in order to get his identity documents which he had left in his car parked nearby.

The CSSF requested the bank to transmit a copy of the client's orders to invest in the fund. Without any other comments, the bank replied that it was willing to pay for the damages that the client suffered due to the litigious investment. After having received confirmation of the whole compensation of the client, the CSSF closed the file.

2.2.4. Failure to record phone conversations: impartiality obligation of the CSSF

Sometimes the CSSF encounters incompatible and unverifiable versions of the facts from the parties to the dispute and, thus, it cannot objectively believe one version and not the other.

The following two cases illustrate such situations where the version of the facts from the bank is as defensible as that from the client and where neither the client nor the bank were able to prove their claims and arguments.

- **Investor's profile**

A client complained to the CSSF that his bank had advised him the acquisition of a structured product following his investment in another structured product without indicating, however, that this new structured product was not capital guaranteed unlike the first one. The client asserted that, at the start of the relationship with the bank, he clearly said that he only wanted to invest in capital guaranteed products.

Nevertheless, the bank maintained that its advisor had explained the characteristics of this structured product to the client during a phone conversation of which there are notes. During this conversation, the advisor made sure that the client understood the characteristics and the risks of the product.

The CSSF concluded that, due to the absence of a recording of the phone conversation and due to a lack of tangible proof and having regard to the parties' divergence in relation to the compliance with the obligation to inform the client of the risks of this product, the CSSF could not determine the truth with certainty and did, therefore, not come to a decision.

- **Investment order**

In another case, the client blamed his bank to have executed investments without any order from him.

The bank claimed that the client had given the orders by phone and that he could not pretend not to have been informed of the execution of the disputed transactions, since an employee of the bank had visited him in order to review the situation of his accounts. The bank also asserted that the characteristics of the products acquired by the client had been explained to him during a phone conversation and that the bank drew his attention especially to the fact that the repayment of this product might not be in cash, but in transferable securities.

In order to back its statements, the bank transmitted to the CSSF a document called "Counter-letter for the use of unsecured media (for example, telephone, facsimile)" signed by the client. According to the bank, this document, signed by the client, authorised it to execute orders given, for example, by phone.

As purchase or sale orders of securities given by phone are a common practice in the financial centre and as an oral order may in principle be validly given without written confirmation, the CSSF did not note any misconduct by the bank.

It should be borne in mind that the CSSF's Annual Reports of 1999 and 2000 already pointed out the risks inherent to giving orders by phone.

Thus, page 83 of the 1999 Annual Report states: "Generally, it should be pointed out that the disputes in relation to phone orders cannot be settled if there is no written evidence or record, insofar as the CSSF has no element at its disposal allowing to decide in favour of one or the other party. Any agreement concluded between the client and his manager shall be subject to a written document duly signed by the client. Similarly, any change in the modalities of the agreement shall be documented.".

As these guidelines remain topical, attention shall be paid to the contractual terms regarding orders given by phone.

It shall also be emphasised that, even if the professionals of the financial sector are not expressly required to record the phone conversations with their clients, Circular IML 93/101 on rules concerning the organisation and internal control of the market activity of credit institutions lays down in point e) of Part III, paragraph 6.2. "Rules concerning the organisation and the operation of the front office" that: "Any transaction executed by a counterparty shall be registered in a document (or under a reference in computer folders) numbered and stamped with date and time (transaction notice, telex, electronic transmission,...). These documents, even if they concern cancelled transactions, shall be kept long enough and shall be stored separately. They shall be accessible without any restrictions for control purposes.

Since the transactions are executed by phone in most cases, it is strongly recommended to record the phone communications on a magnetic tape in order to prevent and resolve misunderstandings and errors.".

2.2.5. Erroneous information on the price of securities

A client complained that his bank had communicated him erroneous prices of one of the structured products of his securities portfolio for four consecutive months. In addition, he had invested a substantial amount in these securities. The complainant also stated that when the mistake was finally discovered and the real value of these securities known, the bank expressed its regret for this mistake without, however, taking responsibility.

The complainant explained to the CSSF that the information on the inaccuracy of the prices were provided to him by an internationally renowned information agency which has a good reputation for being accurate and reliable. The bank referred to a clause of the terms and conditions which lays down that the valuation of the assets is only informative. According to the bank, the client knew the terms and conditions as the complainant's letter proves it. Thus, these terms and conditions were opposable to him. In addition, the bank reasoned that the erroneous information on the price could only be considered as a material mistake which could be easily corrected *via* an accounting entry, pursuant to the terms and conditions. According to the bank, the inaccurate data did not cause any damage to the client.

The CSSF considered that the bank could rightfully rely on its terms and conditions. However, since the difference between the inaccurate price communicated to the client and the real price amounted to 37%, the CSSF decided that the price reported to the client could not be qualified as merely informative any more. Consequently, the CSSF concluded that the bank could not rely on the terms and conditions in order to waive its liability and encouraged the bank to amicably settle the dispute with the complainant.

FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

1. Amendments to the legislation regarding the fight against money laundering and terrorist financing
2. Participation of the CSSF in meetings regarding the fight against money laundering and terrorist financing
3. Reports regarding the fight against money laundering and terrorist financing

1. AMENDMENTS TO THE LEGISLATION REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the law of 12 November 2004 on the fight against money laundering and terrorist financing completed the Luxembourg regulatory framework in this area. The new Grand-ducal regulation has an extended scope as it addresses all professionals subject to the requirements in this matter, including those not related to the financial sector.

While integrating the existing legal framework, comprising *inter alia* the law of 12 November 2004, the Grand-ducal regulation shall follow and faithfully transpose the various requirements set by the Financial Action Task Force (FATF), notably those from the recommendations of the FATF and from its methodology for the assessment of compliance with the 40 recommendations and 9 special recommendations.

Generally, the purpose of the Grand-ducal regulation is to confirm some interpretations which could have been subject to uncertainty in relation, among others, to the cooperation requirement with the Financial Intelligence Unit (FIU) of the Luxembourg State Prosecutor's office and to some requirements already included in Circular CSSF 08/387.

Thus, the Luxembourg anti-money laundering and anti-terrorist financing framework is completed with details on standard, simplified and enhanced due diligence requirements. Among the cases which require the application of enhanced due diligence, a new case has been added to the existing framework which concerns the business relationship or transaction with a customer from a country which does not apply or insufficiently applies measures for the fight against money laundering and terrorist financing.

Other specifications relate to adequate internal organisation requirements and to the application of due diligence measures by third parties.

The sanctions in respect of the non-compliance with the professional obligations as set out in the Grand-ducal regulation are the same as those laid down in Article 9 of the law of 12 November 2004.

It should also be noted that Grand-ducal Regulation of 1 December 2009 repealed Grand-ducal regulation of 29 July 2008 establishing the list of "third countries which impose equivalent requirements" within the meaning of the law of 12 November 2004 on the fight against money laundering and terrorist financing.

In 2009-2010, the Luxembourg regime for the fight against money laundering and terrorist financing was subject to a mutual evaluation process by FATF in the framework of the third round of mutual evaluation of its members. As a result of this mutual evaluation, Luxembourg will take legislative and regulatory measures in order to respond to the criticisms raised by this international authority recognised as the main international body for the fight against money laundering and terrorist financing. Grand-ducal regulation of 1 February 2010 already allowed putting right certain deficiencies identified by the FATF.

2. PARTICIPATION OF THE CSSF IN MEETINGS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

On international and national level, the CSSF took part in 2009 in the meetings and works of the following groups.

2.1. International working groups

2.1.1. Financial Action Task Force (FATF) and its working groups

The CSSF participated, *inter alia*, in the working group relating to the study of risks in the securities sector. This group published a typology report the purpose of which is to draw the attention of all actors (including the supervisory and prosecution authorities) to the ML/TF[1] risks and the vulnerabilities existing in the securities sector. The identified risks differ according to the product type, intermediary, market and payment/distribution channel. The report also includes several case studies and some indicators likely to constitute suspicions of money laundering.

2.1.2. Committee for the prevention of Money Laundering and Terrorist Financing (CPMLTF)

The committee, established at the European Commission, met five times in 2009 and the discussions related, among others, to works done at FATF.

2.1.3. Anti-Money Laundering Task Force (AMLTF)

This cross-sectoral working group was set up by CESR, CEBS and CEIOPS. In 2009, the AMLTF submitted for approval to the above-mentioned European committees two studies regarding due diligence and know your customer measures drawn up by the Member States in a national and cross-border context for the transposition of the third anti-money laundering Directive (2005/60/EC). The three committees adopted the documents drawn up by AMLTF and published, on 15 October 2009, a compendium paper on the supervisory implementation practices across the different European supervisory authorities of the third Directive.

It should be pointed out that one table annexed to the compendium indicates, for every Member State, the legal and regulatory due diligence requirements as regards identification and verification measures of customers who are natural persons in the framework of a business relationship which does not present a high risk.

Another annexed document provides for useful information concerning the legal and regulatory framework on AML/TF applicable in each Member State as well as information about the national authorities competent in this matter.

2.1.4. AML/CFT Expert Group (AMLEG)

This working group of the Basel Committee on banking supervision finalised, in 2009, a document which includes instructions for due diligence and transparency measures regarding cover payment messages related to cross-border wire transfers. The document adopted by the Basel Committee on 12 May 2009 describes the expectations of the supervisory authorities as regards information which must be indicated in a cover payment message and specifies the requirements of the different participants during the process of wire transfers in order to achieve greater transparency and to fight money laundering and terrorist financing.

2.1.5. The Wolfsberg Group

During its annual meeting in May 2009, the group discussed new and topical subjects such as Islamic finance and the effect of the financial crisis on the fight against money laundering and terrorist financing.

[1] ML/TF: money laundering and terrorist financing

2.2. National working groups

At national level, the Ministerial regulation of 9 July 2009 established the Committee for the prevention of money laundering and terrorist financing (*Comité de prévention du blanchiment et du financement du terrorisme*) which has the following missions:

- creating a multidisciplinary round table for the exchange of information on money laundering and terrorist financing phenomena;
- contributing to the drawing-up, coordination and evaluation of national policies and strategies for the prevention of money laundering and terrorist financing;
- ensuring an appropriate spread of knowledge relating to the prevention of money laundering and terrorist financing.

The committee includes representatives of all public and private sector actors concerned by the fight against money laundering and terrorist financing. It met for the first time on 11 September 2009.

The Anti-Money Laundering Consultative Committee of the CSSF met once in 2009. Moreover, the CSSF also participated in the meeting of the Anti-Money Laundering Committee of the *Commissariat aux Assurances*.

3. REPORTS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

In 2009, the CSSF received 729 reports regarding the fight against money laundering and terrorist financing. This figure also includes reports made in relation to financial restrictive measures and which were transmitted to the CSSF. In order to allow useful comparisons with the previous years, the total number of reports does not include the reports made by one particular professional who transmitted over 1,000 reports in 2009.

The total number of reports continuously increased compared to the previous years (765 reports in 2008 (of which 277 reports from the particular professional mentioned above) and 546 in 2007 (of which 107 from this professional)). This increase results, among others, from the introduction of new money laundering and terrorist financing predicate offences by the law of 17 July 2008 and, in particular, from the number of reports on suspicions made by professionals in relation to the reception of counterfeit and, particularly, forged bank notes.

Overall, 103 professionals of the financial sector transmitted a report to the CSSF in 2009 (*idem* in 2008 and 89 in 2007), namely:

- 68 credit institutions out of 149 credit institutions registered on the official list as at 31 December 2009;
- 29 PFS out of 276 PFS registered on the official list as at 31 December 2009 (excluding the European branches), among which 12 investment firms, 16 other PFS and one support PFS;
- 6 management companies governed by Chapter 13 of the law of 20 December 2002 out of 194 management companies registered on the official list as at 31 December 2009.

Without taking into account the reports made by the above-mentioned particular professional, twelve banks and one PFS each made over ten reports in 2009. Their reports represent 82% of the total number of reports received that year.

These figures reveal that the proportion of professionals who make reports on suspicions remains low. Therefore, it is necessary that every professional, subject to the fight against money laundering and terrorist financing framework, examines his specific situation in relation to cooperation requirements with the authorities based on Article 5 of the law of 12 November 2004. This examination shall be carried out together with a detailed analysis of the risks to be used for the purpose of money laundering or terrorist financing to which every professional is exposed.

BANKING AND FINANCIAL LAWS AND REGULATIONS

1. Directives and regulations under discussion at EU Council level
2. Directives and regulations adopted by the Council and the European Parliament but not yet implemented under national law
3. Luxembourg laws and regulations adopted in 2009

14

1. DIRECTIVES AND REGULATIONS UNDER DISCUSSION AT EU COUNCIL LEVEL

The CSSF participates in the groups examining the following proposals for directives or regulations.

1.1. Proposals for regulations establishing the European Systemic Risk Board, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

On 23 September 2009, the European Commission presented legislative proposals to create a new architecture for the supervision of the financial system in Europe aiming to strengthen supervision and reinforce thereby financial stability throughout the EU.

The proposed regulations are based on the "de Larosière" report published on 29 February 2009, named after the Chairman of the group of high level experts mandated by the European Commission to reflect on the future of European regulation and supervision of the financial sector, in order, among other things, to mitigate weaknesses and deficiencies that contributed to the financial crisis.

The balance between macro-prudential oversight and micro-prudential oversight, as well as monitoring macro-prudential risk in the financial system are some of the explicit goals of the new proposals.

The report thus proposes the creation of an European Systemic Risk Board (ESRB) responsible for macro-prudential oversight, as well as an European System of Financial Supervisors responsible for micro-prudential oversight and consisting of the national financial supervisors working in tandem with the three new European supervisory authorities, namely the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

The ESRB may issue recommendations with which the Member States, the European Supervisory Authorities and the national supervisory authorities will have to comply.

The members of the ESRB's decision making body, the General Board, are the President of the European Central Bank (ECB), the Chairmen of the three new European Supervisory Authorities, the Governors of national central banks, and the representatives of national supervisory authorities, the latter having no voting rights however.

The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority will result from the transformation of the existing Level 3 committees in the area of banks (CEBS), insurance and occupational pensions (CEIOPS) and financial markets (CESR). The new Authorities will take over the functions of those committees and have some additional competences. Thus, they are notably responsible for:

- developing proposals for technical standards;
- resolving cases of disagreement between national supervisors;
- contributing to ensuring consistent application of technical Community rules (including through peer reviews);
- acting as coordinators in stress situations.

Moreover, the new European Securities and Markets Authority will exercise supervisory powers on credit rating agencies.

1.2. Proposal for a directive amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus Directive)

In order to ensure en efficient functioning of the future European System of Financial Supervisors (ESFS) consisting of the network of national financial supervisory authorities working in tandem with the new European Supervisory Authorities, the European Commission presented, on 26 October 2009, a proposal for a directive aiming to amend different sectoral legislation.

The goal of this proposal is to specify for every sectoral directive the areas in which the three European Supervisory Authorities can develop binding technical standards. In order to make the future supervisory architecture operational, the Omnibus Directive also provides for the necessary changes to ensure that appropriate gateways for the exchange of information between the national and European authorities are present.

1.3. Proposal for a directive amending Directives 2006/48/EC and 2006/49/EC (CRD III Directive)

In the second half of 2009, the EU Council started discussions on a proposal for a directive to further amend the CRD Directives. This proposal, commonly referred to as CRD III, addresses two major issues that contributed to the financial crisis: remuneration policies applied by credit institutions and risks associated with securitisations and re-securitisations.

According to the proposed directive, institutions must cover the risks inherent in re-securitisations through higher capital requirements and by enhancing transparency towards the markets by means of adequate disclosure of securitisation risks. Capital requirements for the trading book will also be changed in order to better take into account the potential losses resulting from adverse market movements. Finally, the proposed directive will require banks to have remuneration policies that do not encourage excessive risk-taking.

1.4. Proposal for a directive amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive)

At the close of a consultation process with the interested parties, the European Commission put forward a proposal for the review of the Prospectus Directive on 24 September 2009.

The proposal is part of a simplification exercise within the Action Program of the European Commission for the reduction of administrative burdens in the EU. It should increase legal clarity and efficiency in the existing regime for prospectuses to be drawn up when securities are offered to the public or admitted to trading on a regulated market and reduce administrative burdens for issuers and intermediaries. At the same time, notably in the light of the financial crisis, reviewing certain provisions of this directive in order to enhance its efficiency and the level of investor protection seemed appropriate. Moreover, the Prospectus Directive provided for a review clause of five years following its entry into force on 31 December 2003.

The main changes agreed upon by Member States at the Council are:

- the simplification of certain prospectus categories (issues of small firms, offers to existing shareholders, State-guaranteed issues);
- the simplification of issuers' employees access to securities proposed by their employer;
- the alignment of the definition of qualified investors on that of professional client as defined in the Directive on markets in financial instruments;
- the format and content of the summary and the link between summary and Final Terms; the compromise reached introduces the notion of key information in the summary;
- the responsibility attached to the summary in order to guarantee that the summary is a useful and efficient document for investors;
- the conditions to use the prospectus in case of retail cascades of intermediaries that offer securities with or without the consent of the issuer;
- the revision of thresholds ("retail/wholesale issues") that trigger certain transparency requirements under the Prospectus Directive and the Transparency Directive. The compromise reached proposes to increase the threshold to EUR 100,000.

The proposal to introduce more flexibility to determine the home Member State of the competent authority for the prospectus approval has not been maintained; the compromise proposes to keep the current situation.

2. DIRECTIVES AND REGULATIONS ADOPTED BY THE COUNCIL AND THE EUROPEAN PARLIAMENT BUT NOT YET IMPLEMENTED UNDER NATIONAL LAW

2.1. Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV Directive)

The UCITS IV Directive was published in the Official Journal of the EU on 17 November 2009. This proposed directive was discussed in detail in the CSSF's Annual Report 2008. It must be transposed into national law by 1 July 2011.

2.2. Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC as regards technical provisions concerning risk management

The directive was discussed in detail in the CSSF's Annual Report 2008. It should be transposed into national law by 31 October 2010.

2.3. Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

The directive was discussed in detail in the CSSF's Annual Report 2008. It should be transposed into national law by 30 April 2011.

2.4. Directive 2009/111/EC of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management (CRD II Directive)

The CRD II package is composed of three directives that Member States must transpose until 31 October 2010 and implement as from 31 December 2010.

Directive 2009/111/EC, subject to the co-decision procedure, amends several provisions of the CRD Directives (2006/48/EC and 2006/49/EC) as a reaction to the lessons learned from the subprime crisis and updates other provisions according to the needs of the financial system as a whole. The main amendments arising from the directive are:

- enhanced cooperation between authorities regarding crisis management and formalisation of colleges of supervisors;
- complete recasting of the large exposure regulation with, in particular, stricter limits regarding inter-bank market;
- amendment of the own funds regime: the directive seeks to determine clear criteria, at Community level, which allow assessing to what extent "hybrid" instruments, which have both equity and debt characteristics, are eligible as original own funds;
- setting-up of stricter rules regarding risk management of securitised instruments: institutions which securitise or re-securitise loans in order to offer them as tradable instruments (the "originators") must retain part of the risk resulting from the exposure to such instruments.

Directive 2009/111/EC is complemented by two directives drawn up according to the comitology procedure, i.e. Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC as regards technical provisions concerning risk management (please refer to point 2.2. above) and Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC as regards technical provisions concerning risk management. The amendments introduced by both directives cover a series of technical provisions of the CRD Directives.

2.5. Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies

According to this regulation, credit rating agencies shall:

- register with the competent authorities of the Member States and be supervised by these authorities;
- adapt their internal governance models to the provisions of the regulation in order to better manage and to avoid conflicts of interest as far as possible; and
- disclose their risk assessment methods in order to allow banks and other sophisticated investors to assess the soundness of the methods used by the rating agencies and to thus strengthen market discipline; keep the methods used up-to-date and review them regularly.

The regulation, which is directly applicable in EU Member States, entered into force on 7 December 2009. The provisions of Article 4(1) apply as from 7 December 2010.

Article 4(1) contains provisions which apply to certain entities subject to the prudential supervision of the CSSF or the *Commissariat aux Assurances*. It specifies that credit institutions within the meaning of Directive 2006/48/EC, investment firms within the meaning of Directive 2004/39/EC, non-life insurance undertakings governed by the first Directive 73/239/EEC, insurance undertakings within the meaning of Directive 2002/83/EC, re-insurance undertakings within the meaning of Directive 2005/68/EC, undertakings for collective investment in transferable securities (UCITS) within the meaning of Directive 85/611/EEC and institutions for occupational retirement provision within the meaning of Directive 2003/41/EC, may only use those credit ratings issued by credit rating agencies established in the EU and registered in accordance with Regulation (EC) No 1060/2009 for regulatory purposes.

The regulation lays down two mechanisms which allow taking into account certain credit ratings issued by credit rating agencies in third countries: an endorsement regime addressed to credit rating agencies with physical presence in the EU (Article 4) and a certification system based on equivalence decisions addressed to non-systemic credit rating agencies with no physical presence in the EU (Article 5).

Article 4(1) also provides that, where a prospectus published under Directive 2003/71/EC and Regulation (EC) No 809/2004 contains a reference to a credit rating or credit ratings, the issuer, offeror or person asking for admission to trading on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established in the EU and registered under Regulation (EC) No 1060/2009.

3. LUXEMBOURG LAWS AND REGULATIONS ADOPTED IN 2009

3.1. Law of 29 May 2009 transposing, for credit institutions, Directive 2006/46/EC of 14 June 2006 amending Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, and amending the law of 17 June 1992 relating to the accounts of credit institutions, as amended

The law incorporates four proposed key revisions of the European Accounting Directives that are part of the European Commission's Company Law Action Plan published on 21 May 2003. It reinforces the collective responsibility of the members of the administrative, management and supervisory bodies of banks as regards the drawing-up and publication of annual accounts and management report, as well as the drawing-up of consolidated accounts and key non-financial information. The main objective consists in enhancing public confidence in these publications.

Moreover, the law aims to make transactions with related parties more transparent by imposing the disclosure requirement not only on transactions between a parent company and its subsidiaries, but also on other types of related parties, such as key management members and spouses of members of administrative, management and supervisory bodies. This requirement only applies to material transactions not carried out at arm's length. It also requires all companies to disclose all off-balance sheet arrangements. Appropriate information concerning material risks and advantages must be provided in the annexe to the annual accounts and consolidated accounts for transactions related to the use of specific, potentially offshore, financial structures.

Finally, the law ensures better information on corporate governance practices by requiring all listed Luxembourg credit institutions to publish a corporate governance statement in a specific and clearly identifiable section of the management report. This statement must include information on existing risk management systems and internal controls of the group.

3.2. Law of 10 November 2009 on payment services

The main purpose of the law is to transpose into national law Directive 2007/64/EC of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, as well as 2006/48/EC and repealing Directive 97/5/EC.

The law gathers all the legal provisions transposing Community texts relating to payments in a single legal act. In principle, the law applies to all means of payment, including electronic payments but excluding payments by bank notes or coins. Furthermore, the law applies to all payment services providers. These include credit institutions, electronic money institutions, payment institutions, post office giro institutions, central banks, EU Member States, their regional and local authorities. It lays down information requirements and defines the rights and obligations of users and providers of payment services.

The law also introduces a new status of financial institution, i.e. that of payment institution, and defines its authorisation and operating requirements. Payment institutions include among others firms that provide payment services only on an incidental basis and that are called "hybrid payment institutions".

3.3. Law of 18 December 2009 on the audit profession

Grand-ducal regulation of 18 December 2009 determining the conditions of recognition of providers from other Member States under the freedom to provide services

Grand-ducal regulation of 15 February 2010 establishing the qualification requirements of *réviseurs d'entreprises* (statutory auditor)

Grand-ducal regulation of 15 February 2010 organising continuing education of *réviseurs d'entreprises* (statutory auditors) and *réviseurs d'entreprises agréés* (approved statutory auditors)

The law, which transposes into Luxembourg law Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, as well as the three Grand-ducal regulations made pursuant to the law, are described in further detail in point 1. of Chapter X "Public oversight of the audit profession".

3.4. Grand-ducal regulation of 18 December 2009 relating to the fees to be levied by the CSSF

The purpose of the Grand-ducal regulation is to lay down the amount of taxes to be paid for the oversight of the audit profession, which has been entrusted to the CSSF pursuant to the law of 18 December 2009 on the audit profession.

It also lays down the amount of taxes to be levied on payment institutions referred to in the law of 10 November 2009 on payment services.

Finally, the regulation introduces application fees for certain categories of entities and adapts the amount of some taxes to the levied in order to comply with the general principle according to which taxes are meant to cover, as far as possible, the costs of supervision generated by the category of supervised entities on which the taxes are levied.

INTERNAL ORGANISATION OF THE CSSF

1. Functioning of the CSSF
2. Human resources
3. IT systems
4. Staff members
5. Committees

15

1. FUNCTIONING OF THE CSSF

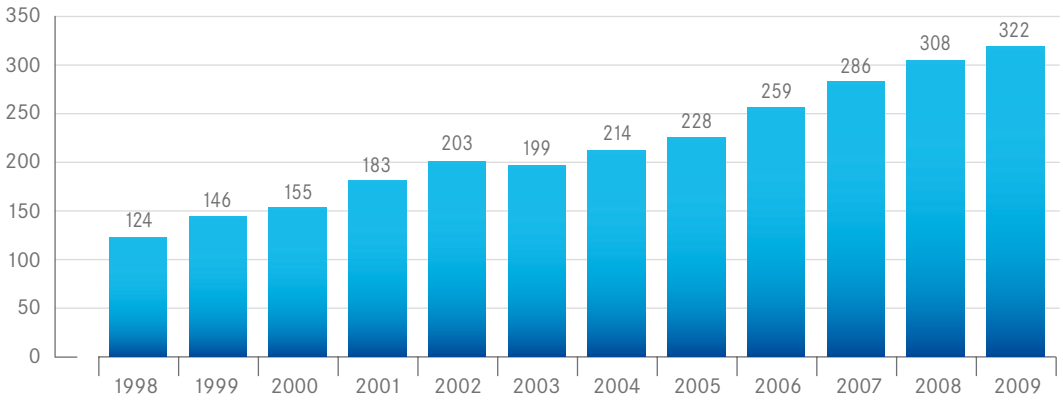
The CSSF's administrative and management organisation is described in detail in the sub-section "Corporate governance and functioning" of the CSSF website (www.cssf.lu, section "About the CSSF").

2. HUMAN RESOURCES

Since 1 May 2009, the management is composed of the Director General, Jean Guill, and of the three Directors, Simone Delcourt, Andrée Billon and Claude Simon. Jean-Nicolas Schaus, Director General, and Arthur Philippe, Director, have retired on 30 April 2009, respectively 31 March 2009.

As regards human resources, 2009 was characterised by the recruitment of an important number of agents. Following the competitive examination of 25 October 2008, five agents were hired as from 1 February 2009. Two other recruitment campaigns resulted in the hiring of thirteen agents as *employé de l'Etat* in 2009 and fourteen agents in 2010. Following the departure of four agents in 2009, the CSSF had 322 staff members as at 31 December 2009, representing 290.9 full-time positions.

Movements in staff numbers (at the end of the year)



In addition to the training programme offered to the new trainee agents, the CSSF staff attended 200 different seminars for continuing education. 54% of these training sessions focused on economic and financial matters, 15.5% on IT and office automation, 7.5% on law and 5.5% concerned management. The other 17.5% concerned subjects such as personal development, security, accounting, languages and human resources management.

889 participations in training sessions were recorded in 2009. The CSSF staff counted a total of 1,057 training days, representing an average of slightly over three days of training per agent.

3. IT SYSTEMS

The CSSF's IT department was included in the department "Information systems and supervision of support PFS" in form of a division. This division is in charge of installing, maintaining and developing the CSSF's internal IT infrastructure as well as managing the electronic reporting of supervised entities.

3.1. COREP and FINREP reporting

The experiences with the European COREP/FINREP reporting framework, implemented on 1 January 2008, showed that efforts still have to be made in order to get a real standardised reporting framework in Europe. Indeed, the XBRL taxonomies which were published by different countries in 2008 diverged so much that the international banks had to create XBRL folders ("instance") per country to which they have to report.

The XBRL working team of CEBS, supported by different authorities, including the CSSF, worked thus on a new standardised FINREP taxonomy which should include the reporting amendments as from 1 January 2012. A first version was finalised at the end of December 2009 and is now in the process of being validated by the different authorities.

Furthermore, a new COREP taxonomy which includes the amendments to the CRD 4 and CRD 5 Directives is currently being elaborated and should be applicable as from 31 December 2012.

Additional information on this subject are available on the websites www.c-ebs.org and www.eurofiling.info.

3.2. Development in information systems

Due to the important increase in the number of managed documents, resulting, *inter alia*, from the management of the UCI prospectuses and other prospectuses submitted for approval, the CSSF decided to replace the current document management system which reached the limits in volume and performance.

For the purposes of optimisation, simplification and efficiency, more virtual techniques will be used for applications and for storage. The contemplated architecture should, if possible, rely on a coherent farming of machines and storage which allow improving the energy bill. At the same time, the applications shall make available, upon request, an optimal set of resources for calculations.

Consequently, the new applications, whether custom-built or in the form of software packages, shall be construed in order to operate in this CSSF-specific coherent environment or even in a private cloud.

4. STAFF MEMBERS

Executive Board

Director General	Jean Guill
Directors	Andrée Billon, Simone Delcourt, Claude Simon

Internal audit

Marie-Anne Voltaire

Executive Secretariat

Head of department	Danielle Mander
	Iwona Mastalska, Francis Fridrici
Executive secretaries	Joëlle Deloos, Karin Frantz, Carole Hessler, Marcelle Michels, Monique Reisdorffer

General Secretariat

Head of department	Danièle Berna-Ost
	Carmela Anobile, Carine Conté, Patrick Hommel, Catherine Phillips, Danijela Stojkovic

Legal Department

Heads of department	Jean-Marc Goy, Jean-François Hein, Marc Limpach, Geneviève Pescatore
	Anouk Dumont, Vanessa Gabriel, Simone Gloesener, François Goergen, Nadine Holtzmer, Stéphanie Jamotte, Benoît Juncker, Michèle Muller, Anne Wagener

General Supervision

Head of department	Romain Strock
Deputy heads of department	Danièle Goedert, Nadia Manzari, Joëlle Martiny, Patrick Wagner

Division 1 - International matters

Head of division	Joëlle Martiny
	Laurent Goergen, Ngoc Dinh Luu, Vincent Thurmes, Karin Weirich

Division 2 - Accounting, reporting and audit

Head of division	Danièle Goedert
	Nicolas Hinterscheid, Marguy Mehling, Christina Pinto, Diane Seil, Pierre van de Berg, Martine Wagner

Division 3 - Rules of conduct and crisis management

Head of division	Nadia Manzari
	Gilles Jank, Ronald Kirsch, Nicole Lahire

Division 4 – On-site inspections

Head of division	Patrick Wagner
	Valérie Alezine, Magali De Dijcker, Joan De Ron, Sonja Kinn

Secretary	Micheline de Oliveira

Department Supervision of undertakings for collective investment

Head of department	Irmine Greischer
Deputy heads of department	Jean-Paul Heger, André Schroeder, Claude Steinbach

Coordination and development of IT systems	Nico Barthels

Management and operation of databases

Head of division	Jolanda Bos
	Marie-Louise Baritussio, Christiane Cazzaro, Nicole Grosbusch, Claude Krier, Danielle Neumann, Evelyne Pierrard-Holzem, Marc Schwalen, Claudine Thielen, Nadja Trausch, Suzanne Wagner

Desk "Visa and notification"

Head of division	Danièle Christophory
	Adrienne André-Zimmer, Patrick Bariviera

Macro-prudential supervision of UCIs

Head of division	Mireille Reisen
	Martin Mannes

Inspection and management of particular situations

Head of division	Alain Bressaglia
	Serge Eicher, Laurent Mayer, Christiane Streef, Tom Ungeheuer

Specific economic aspects	Jacqueline Arend, Angela De Cillia, Géraldine Olivera, Fabio Ontano

International regulation regarding UCIs and legal issues	
	Rudi Dickhoff, Anica Giel-Markovinovic, François Hentgen, Christian Schaack, Laurent Van Burik, Félix Wantz
Coordination in relation to the instruction and the supervision of UCIs	Nicolas Muller
Risk management techniques of UCIs	Alain Hoscheid, François Petit
Supervision of UCIs activity	
Head of division	Francis Gasché
	Stéphanie Bonifas, Nicole Gengler, Sophie Leboulanger, Diane Reuter, Sabine Schiavo, Rudy Stranen, Alain Strock, Claude Wagner
Instruction of UCIs - Division 1	
Head of division	Charles Thilges
	Yolanda Alonso, Nathalie de Brabandere, Gilles Oth, Thierry Quaring, Nathalie Reisdorff, Christel Tana, Daniel Wadlé
Supervision of UCIs - Division 1	
Head of division	Francis Lippert
	Leonardo Brachtenbach, Marie-Rose Colombo, Jean-Claude Fraiture, Joël Goffinet, Dominique Herr, Martine Kerger
Instruction of UCIs - Division 2	
Head of division	Ralph Gillen
	Isabelle Dosbourg, Yves Fischbach, Paul Hansen, Tom Muller, Carine Peller, Pierre Reding, Roberta Tumiotto, Florence Winandy
Supervision of UCIs - Division 2	
Head of division	Daniel Schmitz
	Géraldine Appenzeller, Patricia Jost, David Phillips, Marc Racké, Marc Siebenaler, Michèle Wilhelm
Instruction of UCIs - Division 3	
Head of division	Michel Friob
	Claude Detampel, Anne Diederich, Christophe Faé, Joëlle Hertges, Robert Köller, Laurent Reuter, Pascale Schmit, Isah Skrijelj

Supervision of UCIs - Division 3

Head of division	Guy Morlak
	Nathalie Cubric, Marc Decker, Damien Houel, Jean-Marc Lehnert
Secretaries	Sandy Bettinelli, Sandra Ghirelli, Simone Kuehler, Sandra Preis

Department Supervision of management companies

Head of department	Sonny Bisdorff-Letsch
Deputy head of department	Pascal Berchem
	Anne Conrath, Pascale Felten-Enders, Anne-Marie Hoffeld, Roberto Montebrusco, Eric Tanson
Secretary	Sandra Preis

Department Supervision of securities markets

Head of department	Françoise Kauthen
Deputy head of department	Annick Zimmer

Division 1 – Approval of prospectuses

Head of division	Jean-Christian Meyer
Group 1	Frédéric Dehalu, Patrick Fricke, Yves Hansen, Paul Lepage, Jim Neven, Jerry Oswald
Group 2	Carine Merkes, Joëlle Paulus, David Schmitz

Division 2 – Approval of prospectuses

Head of division	Gilles Hauben
Group 1	Olivier Ferry, Daniel Jeitz, Julien May, Marc Reuter, Cyrille Uwukuli, Olivier Weins
Group 2	Michèle Debouché, Estelle Gütlein-Bottemer

Supervision of listed companies

Head of division	Maureen Wiwinius
Enforcement	Jérôme Tourscher
Group 1	David Deltgen, Manuel Roda, Stéphanie Weber
Group 2	Christine Jung, Giang Dang

Supervision of markets and market operators

Head of division	Maggy Wampach
	Eric Fritz, Mylène Hengen, Sylvie Nicolay-Hoffmann

Enquiries and legal issues

Head of division	Mendaly Ries
	Laurent Charnaut, Anne Lutgen
Secretaries	Sarah Morosi, Marie-Josée Pulcini

Department Personnel, administration and finance

Head of department	Alain Oestreicher
Deputy head of department	Georges Bechtold

Division 1 – Human resources

Head of division	Georges Bechtold
	Alain Kirsch, Vic Marbach

Division 2 – Financial management

Head of division	Jean-Paul Weber
	Tom Ewen, Carlo Pletschette

Division 3 – Administration and supplies

	Paul Clement, Sergio De Almeida, Raul Domingues, Patrick Klein, Ricardo Oliveira, Marco Valente
Secretary	Milena Calzettoni
Switchboard	Yves Bartringer, Nicole Thinnes

Department Information systems and supervision of support PFS

Head of department	David Hagen
Strategic advisor	Jean-Luc Franck
Person in charge of databases	Sandra Wagner

Division 1 – Information systems

Production branch	Marco Fardellini
	Joao Almeida, Cédric Brandenbourger, Frank Brickler, Jean-François Burnotte, Jean-Jacques Duhr, Nadine Eschette, Guy Frantzen, Christelle Hutmacher, Steve Kettmann, Edouard Lauer, Carine Schiltz, Thierry Stoffel
Development branch	Marc Kohl
	Romain De Bortoli, Nicolas Lefeuvre, Luc Prommenschenkel, Guy Wagener

Division 2 – Coordination and user relations

Head of division	Emile Bartolé

Division 3 – Supervision of information systems

Head of division	Paul Herling

Division 4 – Supervision of support PFS

Head of division	Pascal Ducarn
	Marc Bordet, Laurent Dohn, Isabelle Gil, Martine Simon

Division 5 – Security of information systems

Head of division	Constant Backes
	Claude Bernard

Administration

Head of division	Elisabeth Demuth
	Paul Angel

Department Public oversight of the audit profession

Head of department	Frédéric Tabak
	Frank Bourgeois, Ana Bela Ferreira, Isabelle Michalak, François Mousel, Agathe Pignon, Hugues Wangen
Secretary	Claude Fridrici

Department Supervision of the other professionals of the financial sector

Head of department	Carlo Felicetti
Deputy head of department	Denise Losch
	Gérard Brimeyer, Isabelle Lahr, Sylvie Mamer, Claudia Miotto, Christian Schroeder
Secretary	Emilie Lauterbour

Department Supervision of banks

Head of department	Frank Bisdorff
Deputy heads of department	Ed. Englaro, Nico Gaspard, Davy Reinard, Jean-Paul Steffen, Claude Wampach

Division 1 - Supervision of credit institutions 1

Head of division	Ed. Englaro
	Blandine Caeiro Antunes, Anouk Dondelinger, Françoise Jaminet, Jean Ley

Division 2 - Supervision of credit institutions 2

Head of division	Jean-Paul Steffen
	Alain Clemens, Jean-Louis Duarte, Marina Sarmento, Michèle Trierweiler

Division 3 - Supervision of credit institutions 3

Head of division	Nico Gaspard
	Marco Bausch, Françoise Daleiden, Claude Ley, Jacques Streweler

Division 4 - Supervision of credit institutions 4

Head of division	Jean-Louis Beckers
	Monica Ceccarelli, Stéphanie Nothum, Yves Simon, Claudine Tock, Thomas Weber

Division 5 - Supervision of credit institutions 5

Head of division	Claude Moes
	Carlos Azevedo Pereira, Gilles Karels, Jean Mersch, Alain Weis

Division 6 – Risk management

Heads of division	Davy Reinard, Claude Wampach
	Didier Bergamo, Alain Hoscheid, Paul-Marie Majerus, Pierrot Rasqué, Joé Schumacher

Statistics and IT issues	Claude Reiser
Legal issues	Gabrielle Fatone
Studies and general issues	Marc Wilhelmus
Secretaries	Michèle Delagardelle, Steve Humbert, Claudine Wanderscheid

Department Supervision of investment firms

Head of department	Marc Weitzel
Deputy head of department	Luc Pletschette

Division 1

Head of division	Luc Pletschette
	Natasha Deloge, Michel Kohn, Anne Marson, Carole Ney, Christiane Trausch

Division 2

Head of division	Steve Polfer
	Céline Gamot, Andrea Haris, Mariette Thilges
Secretary	Sally Habscheid

Department Supervision of pension funds, SICARs and securitisation undertakings

Head of department	Christiane Campill
Deputy head of department	Marc Pauly

Authorisation and supervision of pension funds and securitisation undertakings

Arthur Backes, Tom Becker, Cliff Buchholtz, Marc Pauly, Nathalie Wald

Authorisation and supervision of SICARs

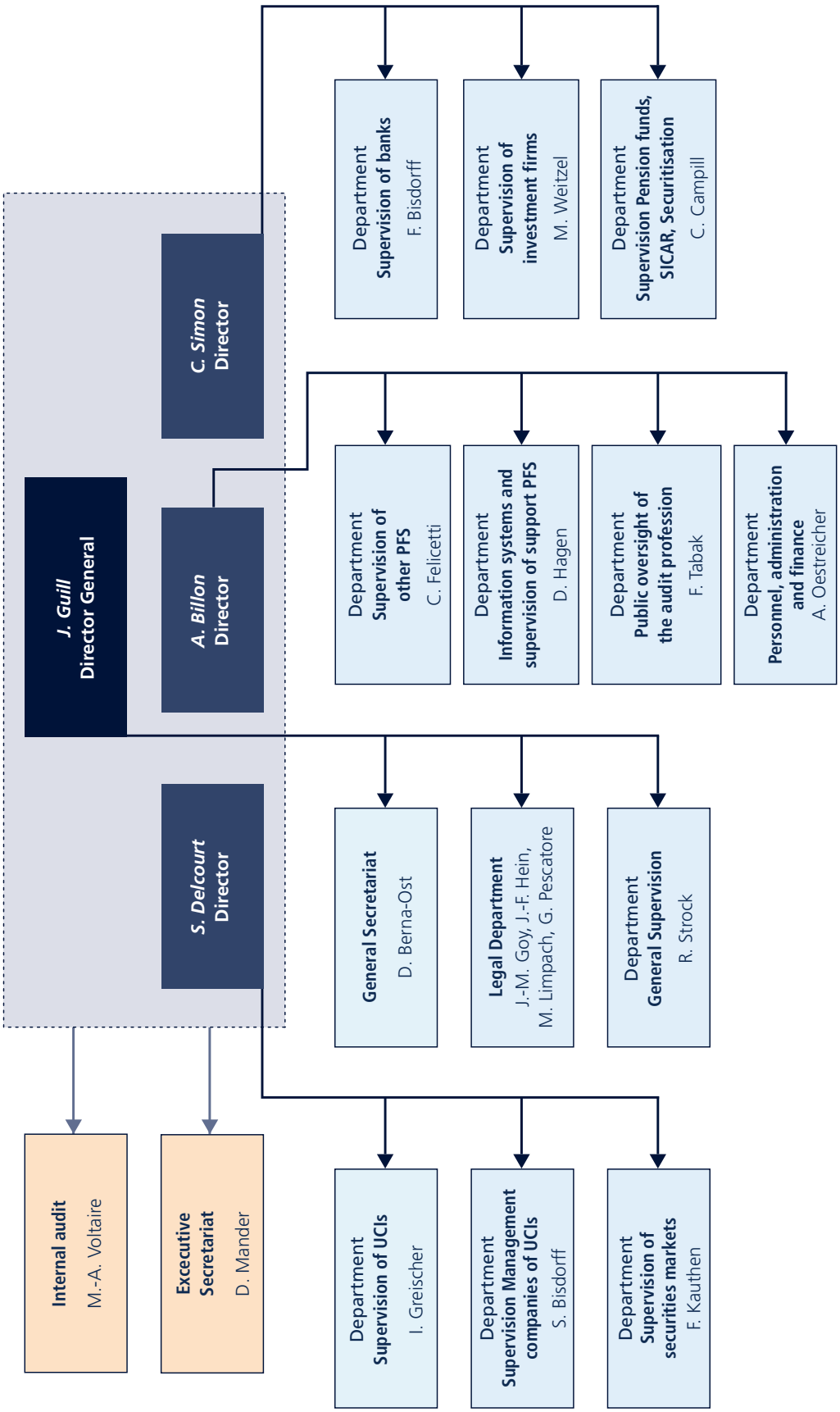
Daniel Ciccarelli, Josiane Laux, Carole Lis, Michael Rademacher, Isabelle Maryline Schmit, Paul Scholtes, René Schott, Alex Weber, Martine Weber

Secretary Carla Dos Santos

Financial controller

KPMG

Organisation chart



5. COMMITTEES

5.1. Consultative committees

5.1.1. Consultative committee for prudential regulation

The Government may seek the advice of the committee, constituted by the law of 23 December 1998 establishing a financial sector supervisory commission (Commission de surveillance du secteur financier), on any draft law or Grand-ducal regulation in the field of supervision of the financial sector falling within the remit of the CSSF. The committee shall be consulted for any draft CSSF regulation. The members of the committee are appointed by the Minister of Finance.

This committee comprises:

Executive board of the CSSF: Jean Guill (Chairman), Andrée Billon, Simone Delcourt, Claude Simon

Members: Alain Feis, Rafik Fischer, Georges Heinrich, Michel Maquil, Jean Meyer, Jean-Jacques Rommes, Camille Thommes

Secretary: Danielle Mander

5.1.2. Consultative committee for the audit profession

The Government may seek the advice of the committee, established by the law of 18 December 2009 concerning the audit profession, on any draft law or Grand-ducal regulation related to statutory audits and the audit profession subject to the oversight of the CSSF. The members of the consultative committee for the audit profession may also seek its advice concerning the implementation or the application of the legislation regarding the oversight of the audit profession in its whole or for specific issues.

This committee comprises:

Executive board of the CSSF: Jean Guill (Chairman), Andrée Billon, Simone Delcourt, Claude Simon

Members: Serge de Cillia, Sarah Khabirpour, Pierre Krier, Philippe Meyer, Victor Rod, Daniel Ruppert, Anne-Sophie Theissen, Camille Thommes, Eric van de Kerkhove

Secretary: Danielle Mander

5.2. Committees of experts

The committees of experts assist the CSSF in the analysis of the development of the different financial sector segments, give their advice on any question relating to these activities and participate in the drawing-up and the interpretation of regulations relating to their specific field. In addition to the following permanent committees, *ad hoc* committees may be set up to discuss specific issues.

The permanent committees of experts are the following:

- Anti-Money Laundering Committee;
- Banks and Investment Firms Committee;
- Bank and Investment Firm Accounting Committee;
- Pension Funds Committee;
- Laws and Regulations Committee;
- Securities Markets Committee;
- Undertakings for Collective Investment Committee;
- Professionals of the Financial Sector Committee;
- SICAR Committee;
- Securitisation Committee.

List of abbreviations

ABBL	Association des Banques et Banquiers, Luxembourg - The Luxembourg Bankers' Association
AGDL	Association pour la garantie des dépôts, Luxembourg - Deposit Guarantee Association Luxembourg
BCL	Banque centrale du Luxembourg - Luxembourg Central Bank
BIS	Bank for International Settlements
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
COREP	Common Reporting
CRD	Capital Requirements Directives
CSSF	Commission de Surveillance du Secteur Financier
ECB	European Central Bank
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EGAOB	European Group of Auditors' Oversight Bodies
ESFS	European System of Financial Supervisors
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
EUR	Euro
FATF	Financial Action Task Force on Money Laundering
FCP	Fonds commun de placement - common fund
FINREP	Financial Reporting
IAASB	International Auditing and Assurance Standard Board
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IASCF	International Accounting Standards Committee Foundation
ICAAP	Internal Capital Adequacy Assessment Process
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IML	Institut Monétaire Luxembourgeois - Luxembourg Monetary Institute (1983-1998)
IORP	Institution for occupational retirement provision
IOSCO	International Organization of Securities Commissions
IRE	Institut des Réviseurs d'Entreprises - Luxembourg Institute of registered auditors
ISA	International Standards on Audit
ISQC	International Standard on Quality Control

MiFID	Markets in Financial Instruments Directive
MTF	Multilateral Trading Facility
NAV	Net asset value
OAM	Officially Appointed Mechanism
OECD	Organisation for Economic Cooperation and Development
PFS	Professional of the financial sector
SBL	Société de la Bourse de Luxembourg S.A.
SICAF	Société d'investissement à capital fixe - Investment company with fixed capital
SICAR	Société d'investissement en capital à risque - Investment company in risk capital
SICAV	Société d'investissement à capital variable - Investment company with variable capital
SRP	Supervisory Review Process
TREM	Transaction Reporting Exchange Mechanism
UCI	Undertaking for collective investment
UCITS	Undertaking for collective investment in transferable securities
XBRL	eXtensible Business Reporting Language

COMMISSION DE SURVEILLANCE
DU SECTEUR FINANCIER

110, route d'Arlon L-2991 LUXEMBOURG