

# COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail.

## CSSF Regulation N° 13-02 relating to the out-of-court resolution of complaints

(Mém. A – No. 187 of 28 October 2013)

The Executive Board of the Commission de Surveillance du Secteur Financier;

Considering Article 108a of the Constitution;

Considering Articles 2(5) and 9(2) of the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier");

Considering Article 58 of the law of 5 April 1993 on the financial sector;

Considering Article L.224-26(1) of the Consumer Code;

Considering Article 106 of the law of 10 November 2009 on payment services;

Considering Article 133(3) of the law of 17 December 2010 relating to undertakings for collective investment;

Considering Article 58(3) of the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs);

Considering the opinion of the Consultative Committee for the prudential regulation;

Decides:

*Article 1.*

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) "CSSF": the Commission de Surveillance du Secteur Financier;
- (2) "request": request for the out-of-court resolution of a complaint submitted to the CSSF in accordance with this regulation;
- (3) "applicant": any natural or legal person having submitted a request to the CSSF;
- (4) "procedure": out-of-court complaint resolution procedure before the CSSF;
- (5) "professional": any natural or legal person falling under the prudential supervision of the CSSF;
- (6) "complainant": any natural or legal person having filed a complaint with a professional;
- (7) "complaint": complaint filed with a professional to recognise a right or to redress a harm.

### Section 1

#### Provisions relating to the procedure before the CSSF

*Article 2.*

#### Object and scope

This section aims at defining the rules applicable to the requests for the out-of-court resolution of complaints filed with the CSSF. It shall apply to the requests filed in accordance with the following legal provisions:

1. any request filed in accordance with Article 58 of the law of 5 April 1993 on the financial sector;
2. any request filed in accordance with the first sub-paragraph of Article L.224-26(1) of the Consumer Code;

# **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

3. any request filed in accordance with the second sub-paragraph of Article L.224-26(1) of the Consumer Code;
4. any request filed in accordance with Article 106(1) of the law of 10 November 2009 on payment services;
5. any request filed in accordance with Article 106(2) of the law of 10 November 2009 on payment services;
6. any request filed in accordance with Article 133(3) of the law of 17 December 2010 relating to undertakings for collective investment;
7. any request in accordance with Article 58(3) of the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs).

## *Article 3.*

### **Purpose and principles of the procedure**

The procedure for handling the requests referred to in Article 2 aims at facilitating the resolution of complaints against professionals without judicial proceedings. The CSSF may end the procedure at any time if it finds that any of the parties uses the procedure for other purposes than the search for an amicable resolution of the complaint.

The procedure is not a mediation procedure within the meaning of the law of 24 February 2012 introducing the mediation in civil and commercial matters.

The CSSF's intervention shall be subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness, referred to in Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

The reasoned conclusions of the CSSF referred to in Article 5(6) are not binding on the parties.

## *Article 4.*

### **Admissibility of the requests**

A request shall be filed with the CSSF under the conditions of Article 5.

A request shall not be admissible in the following cases:

- where the complaint has already been subject to a court order or resolved by arbitration in Luxembourg or abroad;
- where the complaint has been submitted to a Luxembourg or foreign court or arbitrator;
- where the complaint has been submitted to a Luxembourg or foreign alternative dispute resolution body other than the CSSF;
- where the complaint concerns the business policy of the professional;
- where the complaint concerns a product or service of a non-financial nature;
- where the request is frivolous or vexatious.

## *Article 5.*

### **Procedure**

#### **(1) Prior complaint to the professional**

The opening of the procedure is subject to the condition that the complaint has been previously dealt with by the relevant professional in accordance with Section 2.

In this respect, the complaint must have been previously sent in writing to the person responsible for the complaint handling at the level of the management of the professional concerned by the complaint

## **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

and the complainant has not received an answer or a satisfactory answer from that person within one month from the date at which the complaint was sent.

### (2) Referral to the CSSF

Where the complainant did not receive an answer or a satisfactory answer within the period referred to in the preceding paragraph, s/he may file his/her request with the CSSF.

The request must be filed with the CSSF in writing, by post or by fax to the CSSF or by e-mail (to the address/number available on the CSSF website), or online on the CSSF website. In order to facilitate the filing of a request, the CSSF publishes a form on its website.

The request shall be supported by a statement of the reasons on which it is based together with, *inter alia*, the following documents:

- a detailed and chronological statement of the facts underlying the complaint and the steps already taken by the applicant;
- a copy of the prior complaint referred to in paragraph (1);
- a copy of the answer to the prior complaint or the confirmation by the applicant that s/he did not receive an answer within one month from the date at which s/he sent his/her prior complaint;
- the statement of the applicant that s/he did not refer the matter to a Court, an arbitrator or another alternative dispute resolution body in Luxembourg or abroad;
- the agreement of the applicant with the request handling conditions of the CSSF as body responsible for the out-of-court resolution of his/her complaint;
- the express authorisation of the applicant so that the CSSF can transmit its request (including the attachments) as well as any future correspondence or information to the professional concerned by the request;
- in the case where a person acts on behalf of an applicant in accordance with paragraph (8) or on behalf of a legal person, a document showing that the person is legally entitled to act so;
- a copy of a valid ID document of the applicant (natural person) or, where the applicant is a legal person, of the natural person representing this legal person.

The CSSF may request the production of any other document or information it deems necessary for handling the request.

Where the request reaches the CSSF, it acknowledges receipt thereof. The acknowledgement of receipt does not take a position on the admissibility of the request.

When the request is not admissible, the CSSF sends in writing a detailed explanation of the reasons for which it did not accept to deal with the complaint to the applicant and to the professional concerned within three weeks of receipt of the request.

Where necessary documents or information are missing, the applicant is informed thereof and s/he is requested to provide these documents or this information in the required form within the period set by the CSSF. If the applicant does not submit the documents or information in question within the indicated period, the CSSF informs him/her that it will not further handle his/her request.

The CSSF sends a written confirmation to the applicant when his/her file is considered to be admissible and complete.

### (3) Languages

The request shall be filed in the Luxembourgish, German, English or French language.

### (4) Transmission by the CSSF of the request to the professional.

Where the CSSF receives a request which meets all the conditions referred to in Article 4 and in paragraphs (1) to (3), the CSSF transmits a copy thereof to the professional, with the request to take

# **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

position within a period up to one month from the date at which the file was sent. The CSSF informs the applicant of such transmission.

## **(5) Analysis by the CSSF of the file relating to the request**

The analysis of the file relating to the request starts when the CSSF receives the position of the professional that the CSSF requested from the latter.

While analysing the file relating to the request, the CSSF may, in accordance with paragraph (2), request the professional and the applicant to provide it with additional information, documents or explanations and to take position on the facts or opinions as presented by the other party.

## **(6) Reasoned conclusion of the CSSF**

Where the analysis of the file relating to the request is completed, the CSSF addresses a conclusion letter to the parties, including the statement of reasons for the position taken. Where it concludes that the request is totally or partly justified, it asks the parties to contact each other to settle their dispute in view of the reasoned conclusion and to inform it of the follow-up.

Where the CSSF comes to the conclusion that the positions of the parties are irreconcilable or unverifiable, it informs the parties thereof in writing.

The parties are informed that the conclusions reached by the CSSF after the analysis of the request may be different from the order of a court applying legal provisions.

The parties are also informed that given that the reasoned conclusions of the CSSF are not binding on the parties, they are free to accept or refuse to follow them. In the conclusion letter, the parties' attention is also drawn to the possibility to refer the matter before the courts, in particular if the parties fail to reach an agreement after the CSSF issued its reasoned conclusion.

## **(7) Duration of the procedure**

As regards the requests referred to in Article 2, points 1, 2, 4, 6 and 7, the CSSF issues a reasoned conclusion within 90 days.

The 90-day period starts running where the CSSF receives a request that meets the conditions of paragraph (2) and in particular when the CSSF has received from the applicant all the documents referred to therein, which are necessary to the initiation of the procedure. The written confirmation referred to in paragraph (2) informs the applicant of the date of the beginning of the 90-day period.

The 90-day period may be extended in the case of complex files. In this event, the CSSF informs the parties of the approximate necessary extension, as soon as possible and at the latest before the end of the 90-day period.

## **(8) Representation and assistance**

The parties to the procedure may be represented or assisted by a third party at all stages of the procedure.

## **(9) Written procedure and retention of documents**

The procedure shall be in writing. If the CSSF deems it necessary for the examination of the file, it may convene a meeting with the parties.

The parties shall join copies of the documents which are useful for the examination of their request and keep the original versions of these documents.

## **(10) Closing of the procedure**

# COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

The procedure ends:

- by the sending of a reasoned conclusion letter within the meaning of the first sub-paragraph of paragraph (6), or by the sending of a letter within the meaning of the second sub-paragraph of paragraph (6);
- by the reaching of an amicable settlement between the professional and the applicant during the procedure of which the CSSF is informed;
- in case of an applicant's written withdrawal which may occur at any time during the procedure;
- where the right on which the complaint is based is time-barred and where the professional claims that the time period for exercising that right has expired;
- where a Luxembourg or foreign court or arbitrator has the complaint submitted to it;
- where an out-of-court complaint settlement body other than the CSSF from Luxembourg or abroad has the complaint submitted to it;
- where the applicant does not provide the additional documents, information, explanations or positions requested by the CSSF within the period set by the CSSF or, where no period has been set by the CSSF, within 45 days.

(11) Specific provisions as regards the requests referred to in points (3) and (5) of Article 2 (requests submitted by any other interested party, including consumer associations and users of payment services)

Paragraphs (1) (prior complaint to the person responsible for the complaint handling at the level of the management of the professional concerned by the complaint) and (7) (handling of the requests by the CSSF within 90 days) above are not applicable to the requests referred to in points 3 and 5 of Article 2.

*Article 6.*

## **Data protection**

The CSSF takes the necessary measures to ensure that the processing of personal data complies with the applicable rules on the personal data protection.

*Article 7.*

## **Confidentiality**

The parties to the procedure before the CSSF undertake to maintain the confidentiality of the communications and documents exchanged during the procedure.

The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF are bound by the professional secrecy referred to in Article 16 of the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier").

*Article 8.*

## **Agents in charge of handling the requests**

(1) The agents in charge of handling requests for the out-of-court resolution of complaints within the CSSF have the knowledge, skills and experience required in this respect.

(2) The agent who has or might have a conflict of interest with one or more of the parties to a request shall immediately inform its superior who will inform the management of the CSSF. The same applies when the agent considers that his/her independence or his/her impartiality can or could be challenged at any time during the procedure.

(3) In the case where, within the context of the examination of a request, the agents notice that a question of a prudential nature exceeding the framework of the request arises, they transmit the

# **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

required information internally for that purpose and the CSSF may follow up as part of its prudential supervision.

The follow-up by the CSSF as part of its prudential supervision cannot be disclosed to the parties due to professional secrecy.

The procedure continues regardless of the evolution of any possible case concerning prudential supervision.

*Article 9.*

## **Cost of the procedure**

The out-of-court complaint resolution before the CSSF is free of charge. Moreover, no charges will be reimbursed to the parties.

*Article 10.*

## **Time-bar limitation**

Unless otherwise provided for, the recourse to the procedure does not suspend any time-bar delay of the judicial actions in connection with the subject matter of the request.

*Article 11.*

## **Referral to the courts**

The parties keep, at any time, the right to refer the subject matter of the complaint to the courts.

*Article 12.*

## **International co-operation**

Within the context of the out-of-court resolution of cross-border complaints, the CSSF co-operates with the competent foreign bodies, in accordance with the laws and regulations governing this co-operation.

The CSSF co-operates in particular with FIN-NET, the European network of which the CSSF is a member in order to facilitate the access of consumers to out-of-court procedures for complaints and the settlement of cross-border cases.

*Article 13.*

## **Annual report**

The CSSF's annual report describes its activities as regards the out-of-court resolution of complaints.

# COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

## Section 2

### Provisions applicable to professionals

#### *Article 14.*

##### **Purpose**

The purpose of this section is to specify certain obligations incumbent on professionals in relation to the handling of complaints.

#### *Article 15.*

### **Complaint handling by professionals and disclosure requirements**

(1) Each professional shall have a complaint management policy that is defined, endorsed and implemented by the management of the professional.

The complaint management policy shall be set out in a written document and shall be formalised in an internal complaint settlement procedure made available to all relevant staff.

This procedure shall be efficient and transparent, in view of the reasonable and prompt complaint handling in full compliance with the provisions of this regulation. It shall reflect the concern for objectivity and search for truth.

It shall also enable the identification and mitigation of any possible conflicts of interests.

(2) Where the complainant did not obtain an answer or a satisfactory answer at the level at which s/he submitted his/her complaint in the first instance, the internal procedure shall give him/her the opportunity to rise the complaint up to the level of the management of the professional. In this respect, the professional shall provide the contact details of a person responsible at this level.

(3) The person responsible at the level of the management is in charge of the implementation and the efficient operation of a structure as well as the internal procedure for complaint handling referred to in paragraph (1). Subject to prior information of the CSSF on the arrangements to ensure that the full application of the provisions of this section remains assured, the person responsible at the level of the management may delegate the management of the complaints internally.

The professional shall ensure that each complaint as well as each measure taken to handle it are properly registered.

Moreover, s/he shall ensure that each complainant is informed of the name and contact details of the person in charge of his/her file.

(4) Professionals shall provide clear, precise and up-to-date information on their complaint handling process, including:

- (i) details of how to complain (type of information to be provided by the complainant, identity and contact details of the person or of the department to whom the complaint should be directed, etc.);
- (ii) the procedure that will be followed to handle the complaint (moment where the professional acknowledges receipt thereof, indicative timetable for handling the complaint, existence of the procedure for out-of-court resolution of complaints before the CSSF, etc.)

Professionals shall publish the details of their complaint settlement procedure in an easily accessible manner, for example in brochures, leaflets, contractual documents or via their website.

## **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

The written acknowledgement of receipt will be provided to the complainant within a period which shall not exceed 10 business days after receipt of the complaint, unless the answer itself is provided to the complainant within this period.

The professionals shall inform the complainants of the follow-up of their complaint.

The professionals shall:

- (i) seek to gather and to investigate all relevant evidence and information on each complaint;
- (ii) seek to communicate in a plain and easily comprehensible language;
- (iii) provide an answer without undue delay and in any case, within a period which cannot exceed one month between the date of receipt of the complaint and the date at which the answer to the complainant was sent. Where an answer cannot be provided within this period, the professional shall inform the complainant of the causes of the delay and indicate the date at which its examination is likely to be achieved.

(5) Where the complaint handling at the level of the responsible person referred to in paragraph (2) did not result in a satisfactory answer for the complainant, the professional shall provide him/her with a full explanation of his/her position as regards the complaint and inform him/her in writing of the existence of the out-of-court complaint resolution procedure at the CSSF and send him/her a copy of this regulation or the reference to the CSSF website, as well as the different means to contact the CSSF to file a request.

(6) The professionals shall analyse the data relating to the complaint handling, on a permanent basis, in order to enable the identification and treatment of any recurring or systemic problem, as well as any potential legal and operational risks, for example:

- (i) by analysing the causes of the individual complaints in order to identify the root causes common to certain types of complaints;
- (ii) by considering whether these root causes may also affect other processes or products, including those to which the complaints do not relate directly; and
- (iii) by correcting these root causes, when it is reasonable to do so.

### *Article 16.*

#### **Communication of information to the CSSF**

(1) The internal procedure for complaint handling at each professional shall also cover the communication with the CSSF within this general framework as well as within the framework of the procedure at the CSSF, as described in particular in the first section.

(2) The professionals are required to provide the CSSF with an as comprehensive as possible answer and co-operation within the context of the handling of complaints and requests.

(3) The responsible person referred to in Article 15(3) is required to communicate to the CSSF, on an annual basis, a table including the number of complaints registered by the professional, classified by type of complaints, as well as a summary report of the complaints and of the measures taken to handle them.

To this end, the internal procedure of the professional shall organise the communication to the responsible person referred to in the preceding sub-paragraph of all necessary data in respect of the complaints received.



# **COMMISSION de SURVEILLANCE du SECTEUR FINANCIER**

## **Section 3**

### **General provisions**

*Article 17.*

### **Entry into force**

Sections 1 and 3 of this regulation shall enter into force on 1<sup>st</sup> January 2014.

Section 2 of this regulation shall enter into force on 1<sup>st</sup> July 2014.

*Article 18.*

### **Publication**

This regulation shall be published in the Mémorial and on the CSSF website.

Luxembourg, 15 October 2013

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