



Regulation CSSF N° 16-06 on *ex ante* contributions to be paid to the Fonds de résolution Luxembourg

(Mémorial A – No 208 of 10 October 2016)

Having regard to Article 108a of the Constitution;

Having regard to the amended Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de Surveillance du Secteur Financier”) and, in particular, Article 12-1(2) thereof;

Having regard to the amended Law of 18 December 2015 on the failure of credit institutions and certain investment firms and, in particular, Articles 107 and 108 thereof;

Having regard to the opinion of the Consultative Committee for Resolution on 28 September 2016;

The Resolution Board of the Commission de Surveillance du Secteur Financier

Decides:

Article 1 Definitions

For the purposes of this regulation, the definitions included in the law of 18 December 2015, as amended, on the failure of credit institutions and certain investment firms (hereinafter the "Law") shall apply unless this regulation further specifies them.

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

- 1) "investment firm" shall mean an investment firm as defined in point 47 of Article 1 of the Law but which does not fall within the scope of application of Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements;
- 2) "EU branch" shall mean a branch established in Luxembourg within the meaning of point 106 of Article 1 of the Law;
- 3) "capital equity" shall mean the total equity within the meaning of row 300 of table F 01.03 of Annex III and in accordance with the instructions of Annex V of Commission Implementing Regulation (EU) No 680/2014 as amended for EU branches and item 1

entitled "Capital and reserves" of section "Liabilities" increased by item 6 entitled "Profit for the financial year" of section "Liabilities" or decreased by item 7 entitled "Loss for the financial year" of section "Assets" in table I of Circular CSSF 05/187 for investment firms, respectively;

- 4) "total liabilities" shall mean the total liabilities within the meaning of row 310 of table F 01.03 of Annex III and in accordance with the instructions of Annex V of Commission Implementing Regulation (EU) No 680/2014 as amended for EU branches and the overall total in the last row of section "Liabilities" of table I of Circular CSSF 05/187 for investment firms, respectively;
- 5) "total assets" shall mean the total equity within the meaning of row 380 of table F 01.01 of Annex III and in accordance with the instructions of Annex V of Commission Implementing Regulation (EU) No 680/2014 as amended for EU branches and the overall total in the last row of section "Assets" of table I of Circular CSSF 05/187 for investment firms, respectively;
- 6) "annual target level" shall mean the total annual contributions calculated for each contribution period in order to reach the target level referred to in Article 107(1) of the Law;
- 7) "annual contribution" shall mean the amount referred to in the third subparagraph of Article 107(2) set by the Resolution Board for the contribution period for each institution referred to in point 10 of this article;
- 8) "contribution period" shall mean a calendar year;
- 9) "guaranteed deposits" shall mean the deposits referred to in the first subparagraph of Article 171(1) of the Law, with the exception of temporarily high balances within the meaning of Article 171(2) of this Law;
- 10) "institutions" shall mean the entities referred to in points 1 and 2 of this article.

Article 2

Annual target level

1. The Resolution Board sets the annual target level by taking into consideration the target level to be reached at the latest by 31 December 2024 pursuant to Article 107(1) of the Law and based, for each contribution period, on the average amount of the guaranteed deposits of all institutions for the preceding year, calculated quarterly.

2. By way of derogation from paragraph 1, for the calculation of contributions for 2015 and 2016, the average amount of the guaranteed deposits as at 31 July 2015 and 31 December 2015 shall be used.

Article 3
Annual contributions

1. The institutions whose total liabilities, excluding equity and guaranteed deposits, are not greater than EUR 100,000,000, shall pay a lump sum of EUR 150 as annual contribution for each contribution period.

2. The institutions whose total liabilities, excluding equity and guaranteed deposits, are higher than EUR 100,000,000 but not greater than EUR 150,000,000, shall pay a lump sum of EUR 200 as annual contribution for each contribution period.

3. The institutions whose total liabilities, excluding equity and guaranteed deposits, are higher than EUR 150,000,000 but not greater than EUR 200,000,000, shall pay a lump sum of EUR 300 as annual contribution for each contribution period.

4. The institutions whose total liabilities, excluding equity and guaranteed deposits, are higher than EUR 200,000,000 but not greater than EUR 250,000,000, shall pay a lump sum of EUR 500 as annual contribution for each contribution period.

5. The institutions whose total liabilities, excluding equity and guaranteed deposits, are higher than EUR 250,000,000 but not greater than EUR 300,00,000, shall pay a lump sum of EUR 650 as annual contribution for each contribution period.

6. In the case where the annual target level is not reached after adding all the lump sums determined in accordance with the five preceding paragraphs, the following steps shall be taken:

a) For each institution whose total liabilities, excluding equity and guaranteed deposits, are higher than EUR 300,000,000, a tranche of EUR 300,000,000 shall be deducted from the total liabilities, excluding equity and guaranteed deposits. This balance shall be split into equal tranches of EUR 100,000,000. Exceeding this amount by one euro entitles the institution to a new tranche. A defined number of unit tranches is thus applicable to each relevant institution.

b) Subsequently, the annual target level, excluding the aggregate amount of all the lump sums determined in accordance with paragraphs 1 to 5 of this article, is divided by the sum of the number of unit tranches of all institutions concerned by the calculation provided for in point a. The result of this division represents the unit cost by tranche in EUR (rounded up to the nearest whole number). Finally, for each relevant institution concerned by the calculation in point a, the unit cost is multiplied by the number of tranches applicable to the institution pursuant to point a. The result determines the amount in EUR that the institution in question shall pay as an annual contribution for the contribution period in addition to the lump sum of EUR 650.

7. For the calculation of the contributions provided for in paragraphs 1 to 6, the information under the supervisory reporting requirements applicable to the institutions as at 31 December of the preceding year is to be used.

Article 4

Newly supervised institutions or change of status

1. Where an institution has been supervised for only part of the contribution period, the partial contribution is calculated by applying the method set out in Article 3 to the amount of the annual contribution calculated for the following contribution period, in proportion to the number of complete months of the first contribution period for which the institution has been supervised.

2. A change of status of an institution or abandonment/withdrawal of status of an institution during the contribution period shall have no impact on the annual contribution due for the year in question.

Article 5

Procedure for annual contributions collection

1. No later than 1 July of each year, the Resolution department of the CSSF shall notify each institution of the amount of the annual contribution payable.

2. By way of derogation from paragraph 1, the Resolution department of the CSSF shall notify each institution of the amounts of the annual contributions due for the two first contribution periods relating to 2015 and 2016 as from the entry into force of this regulation.

3. The amounts due in accordance with paragraphs 1 and 2 shall be transferred to the Fonds de Résolution Luxembourg within 10 days following the date at which the information on the terms of payment was sent.

4. The Resolution department of the CSSF shall notify the above-mentioned decisions in any of the following ways:

- a) electronically or by any other similar communication means with acknowledgement of receipt;
- b) by way of registered letter with acknowledgement of receipt.

5. Without prejudice to any other remedy the Resolution Board may have, in case of partial payment, non-payment or non-compliance with the requirements laid down in the decision, a daily penalty on the outstanding amount may be imposed on the relevant institution. The daily penalty is determined by the daily calculation of interests on the amount due according to the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union,

applicable on the first working day of the month in which the amount falls due, increased by 8 percentage points, as from the date at which the amount was due.

6. Where an institution has been authorised for only part of the contribution period, its partial annual contribution shall be paid at the same time as the annual contribution due for the following contribution period.

Article 6

Administrative penalties and other administrative measures

The Resolution Board may impose administrative penalties and other administrative measures in accordance with Article 114 of the Law on the persons or entities responsible for infringements to this regulation.

Article 7

Transitional provision

As regards EU branches, the following definitions shall apply instead of the definitions in points 3, 4 and 5 of Article 1 until the date at which the financial reporting (FINREP; ITS) is applicable on an individual basis in accordance with Circular CSSF 14/593, as amended by Circulars CSSF 15/613, CSSF 15/621 and CSSF 16/640¹ :

- "equity" shall mean the total equity within the meaning of item 3.10 entitled "Total equity" of table B 1.1 Balance sheet statement: Equity introduced by Circulars CSSF 07/316, CSSF 07/319, 07/324 and CSSF 07/331;
- "total liabilities" shall mean the total liabilities within the meaning of item 3.11 entitled "Total liabilities and equity" of table B 1.1 Balance sheet statement: Equity introduced by Circulars CSSF 07/316, CSSF 07/319, CSSF 07/324 and CSSF 07/331;
- "total assets" shall mean the total assets within the meaning of item 1.15 entitled "Total assets" of table B 1.1 Balance sheet statement: Assets introduced by Circulars CSSF 07/316, CSSF 07/319, CSSF 07/324 and CSSF 07/331.

¹ This circular provides that the application date of tables F 01.01 to F 01.03 shall be 31 December 2016.

Article 8
Entry into force

The provisions of this regulation shall apply within four clear days of their publication in the Mémorial.

Article 9
Publication

This regulation shall be published in the Mémorial and on the website of the Commission de Surveillance du Secteur Financier.

Luxembourg, 28 September 2016

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

For the Resolution Board

Romain STROCK
Director Resolution