ANNUAL REPORT 2012

COMMISSION
DE SURVEILLANCE
DU SECTEUR
FINANCIER

Commission de Surveillance du Secteur Financier

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Design: metaph

Printed by: Imprimerie Faber

PREFACE

It might seem surprising in these tumultuous times, but 2012 appears to have been a period of relative calm for the financial centre of Luxembourg, which could be a respite in the eye of the storm.

Indeed, the conclusions reached from the detailed data provided in this report can be summarised in a few sentences: the underlying operational result of banks established in the financial centre is satisfactory despite the fall in profitability and the different types of Luxembourg undertakings for collective investment, including specialised investment funds and SICARs, pension funds and securitisation vehicles, managed to increase quite substantially the sum of assets entrusted to their management. This good performance of the financial sector as a whole also influenced the development of the three categories of PFS marked again both by the arrival of numerous new players and the disappearance of entities which did not reach the required size.

The banks took the opportunity this year to strengthen their capital base and to further decrease their risk assets, which led them to reduce substantially their balance sheet total. The CSSF does not content itself with the fact that the banks established in Luxembourg can rely on the parent companies of the big European and international groups to which they belong. It accompanies the dual trends, at the level of the banks' balance sheets, by requiring compliance with solvency standards exceeding the international standards and by keeping a close eye to ensure that the traditionally high liquidity of the institutions in Luxembourg remains assured.

During the year under review, the CSSF focused heavily on the importance of the professionalism, integrity and transparency of the financial players. It urged banks and investment firms to sign the ICMA Charter of Quality on the private portfolio management, so that clients of these institutions as well as their managers and employees realise that a Luxembourg financial professional cannot participate in doubtful matters, on behalf of its clients. Similarly, the CSSF continued its in-depth controls as regards compliance with the rules aiming to prevent money laundering which will shortly also cover tax crimes. The automatic exchange of information to the benefit of tax authorities will complete the progress towards transparency in asset management vis-à-vis tax authorities.

The importance of professionalism was enforced in practice by the publication of the fundamental circular of the CSSF concerning central administration, internal governance and risk management within banks and investment firms. In the same vein, the framework of the investment fund industry was strengthened significantly, in particular as regards the conditions imposed on the management companies of UCIs with regard to the substance and operation. In parallel to the entry into force of the law on alternative investment funds, the CSSF will extend the provisions which apply to the depositary banks of AIFs to the depositary banks of UCITS until the next UCITS Directive follows this trend. The protection of investors in Luxembourg UCIs will thus be taken to a higher level, from the start.

The CSSF intends to ensure that the Luxembourg financial centre, which distinguishes itself through the diversity of its players, the know-how of its numerous financial professionals, legal experts, auditors and other professionals, through the sophistication of its products and services, through the quality of its IT and technical infrastructure, can be compared equally with other international financial centres.

The economic development and growth rely on the specialisation of the economic players as well as on the concentration of these specialists which furthers effective exchanges among them. In order to ensure their competitiveness in a global economy, the European Union with its single market and, in particular, the euro area with its single currency need financial centres with internationally-oriented know-how and mentality. Regrettably, there are trends in the European Union which, by blindness, could jeopardise growth recovery in Europe by attacking precisely those which could still contribute to its financing.

A key element for the reputation of the financial centre consists in the existence of a regulator which is recognised by the markets and its peers. The CSSF is fully aware of that and believes it can affirm that, over the decades, the Luxembourg regulator has shown that it deserves the confidence of the depositors and investors. Moreover, the Luxembourg government has demonstrated its capacity to respond when Luxembourg banks nearly slipped into the turmoil caused by their parent companies.

The Luxembourg regulator has already demonstrated that it is capable to fully assume its responsibilities within the European framework, when the European System of Financial Supervisors was created in 2011. The integration of the bank supervisory authorities will experience an even more fundamental paradigm shift with the creation of the Banking Union, including, first of all, a single supervisory mechanism and the granting to the European Central Bank of the competence for the supervision of all banks in the Member States of the euro area. In Luxembourg, this structural reform of the banking supervision at European level implies the implementation of an enhanced cooperation between the Banque centrale du Luxembourg and the CSSF, without institutional change, given that the CSSF is, since its creation, the competent national authority within the meaning of the European banking directives and that it was confirmed in this role by the Minister of Finance for the purposes of its participation in the future single supervisory mechanism.

The Banking Union, which is expected to enter into force in 2014, already involves the resources of the CSSF, which must, right from the preliminary stage, be able to comply with the various requirements from Frankfurt, while ensuring that the international financial centre of Luxembourg, which differs, in many respects, from the financial industries which are rather focused on their national markets, continues to offer its services to the European economy within the context of a single supervisory system expected to provide for greater stability.

The challenge of setting up the Banking Union, in addition to the relentless pursuit of the national missions of the CSSF, will require sustained efforts from all CSSF agents. Consequently, the Executive Board thanks for their work is far from just being a formality.

Jean GUILL

Director General

SUMMARY

It might seem surprising in these tumultuous times, but 2012 appears to have been a period of relative calm for the financial centre of Luxembourg, which could be a respite in the eye of the storm.

Indeed, the underlying operational result of the banks established in the financial centre is satisfactory despite the fall in profitability and the different types of Luxembourg undertakings for collective investment, including specialised investment funds and SICARs, pension funds and securitisation vehicles, managed to increase quite substantially the sum of assets entrusted to their management. This good performance of the financial sector as a whole also influenced the development of the three categories of PFS marked again both by the arrival of numerous new players and the disappearance of entities which did not reach the required size.

For the future, the focus is on the implementation of the Banking Union at European level and on the importance to establish Luxembourg as diversified European financial centre with internationally-oriented know-how and mentality.

International aspects of supervision

The year 2012 was, on the one hand, characterised by the intensification of the activities of the European supervisory authorities EBA, ESMA and EIOPA for the purpose of harmonising the regulations and implementing the regulatory and implementing technical standards and, on the other hand, by the decision of the European Council to establish a single supervisory mechanism for banks in the euro area (Banking Union). The cooperation between national authorities within supervisory colleges for banking groups operating on a cross-border basis consumed also a significant amount of the CSSF's resources.

141 credit institutions

Balance sheet total: EUR 735.06 billion

Net profit: EUR 3,538 million

The number of banks decreased by two entities and reached 141 entities as at 31 December 2012. Five banks started their activities during the year whereas six banks ceased their activities and one bank merged with another bank of the financial centre.

The aggregated balance sheet total reached EUR 735.1 billion at the end of 2012, i.e. a decrease of 7.3% compared to 2011. This decrease was shared by 53% of the banks of the financial centre, a majority of which belong to the banking groups established in the euro area. The reductions in activities were in line with a less favourable macroeconomic context in Europe and reflected the necessity for European banks to adapt their balance sheet structure to their capacity to manage and support risks. Moreover, an important part of the drop in the aggregated balance sheet was attributable to two Swiss banking groups which invested, via Luxembourg, large amounts of liquidities in EUR with the European System of Central Banks. On the other hand, the increase in the balance sheet total of certain banks resulted, among others, from the takeover of activities or development of new activities. In the latter case, the banks concerned generally originated from non-EU countries.

Net profit of the Luxembourg banking sector reached EUR 3,538 million (+42.1%). However, this increase should be balanced out. Indeed, this rise is explained only by the mixed result that the Luxembourg banking sector recorded in 2011 in the context of the European sovereign debt crisis. Throughout 2012, the operational income remained in decline and the general expenses continued to increase. Consequently, a loss in profitability of the Luxembourg banking sector was recorded.

318 PSF (109 investment firms, 124 specialised PFS, 85 support PFS)

Balance sheet total:

investment firms: EUR 3.62 billion; specialised PFS: EUR 9.46 billion; support PFS: EUR 1.01 billion

Net profit:

investment firms: EUR 319.4 million; specialised PFS: EUR 360.1 million; support PFS: EUR 35.8 million

With 22 new entities authorised in 2012 and 26 withdrawals, the number of all categories of PFS decreased in 2012. The net development in the number thus turned negative for the investment firms (-7 entities) and support PFS (-3 entities) whereas the rising trend of the number of specialised PFS was maintained with +6 entities.

The aggregated total balance sheet of investment firms reached EUR 3.62 billion as at 31 December 2012, as against EUR 2.63 billion at the end of 2011. This 37.5% increase is mainly due to the significant increase of the balance sheet total of one investment firm authorised in 2010. The aggregated total balance sheet of specialised PFS slightly increased from EUR 9.42 billion at the end of 2011 to EUR 9.46 billion at the end of 2012 (+0.4%). The same applies to the aggregated balance sheet of support PFS which reached EUR 1.01 billion as at 31 December 2012, compared with EUR 0.91 billion at the end of previous year (+10.7%).

The net results of the investment firms increased by 7.8% over one year which is, in large part, due to the significant increase of the net result of one player whereas a majority of investment firms showed a stable net result as compared to the previous year. The aggregated net result of specialised PFS recorded a moderate growth of 2.0% as most specialised PFS registered either constant net results or slight increases as compared to 2011. However, for support PFS, the net results dropped by 19.1% from EUR 44.3 million to EUR 35.8 million as at 31 December 2012.

5 payment institutions

5 electronic money institutions

The number of payment institutions and electronic money institutions registered on the official list slightly increased in an emerging market which seeks its cruising speed. The CSSF noticed a certain interest from several players to establish themselves in Luxembourg to benefit from this market opportunity.

3,841 UCIs

13,420 units

Total net assets: EUR 2,383.8 billion

180 management companies

In 2012, the UCI sector registered a 13.7% growth in net assets under management, originating for 42.8% from net subscriptions and for 57.2% from the positive performance of financial markets.

The number of UCIs decreased by 0.1% (-4 entities) during the year. Taken separately, the number of specialised investment funds (SIF) however increased by 8.1% (+111 entities). SIFs now represent 38.7% in terms of number of UCIs; in terms of managed assets, their share totals 11.6%. When taking into account umbrella funds, a total of 13,420 economic entities were active on 31 December 2012, which represents a new record.

With 180 active entities, the number of management companies authorised pursuant to Chapter 15 of the law of 17 December 2010 relating to UCIs increased by one entity following six new authorisations and five withdrawals mainly due to the reorganisation and restructuring of the activities of the relevant parent companies.

276 SICARs

Balance sheet total: EUR 32.91 billion

The number of investment companies in risk capital (SICAR) remained stable as compared to the previous year, the 24 new authorisations granted during the year being counterbalanced by 24 withdrawals. Most initiators of SICARs are from France, followed by Switzerland, Germany and Luxembourg. As regards the investment policy, the SICARs prefer private equity.

32 authorised securitisation undertakings

The slow but ongoing development of the securitisation activity, at least as regards the part subject to authorisation and supervision, continued with seven new securitisation undertakings authorised in 2012. When taking into account two withdrawals, the number of securitisation undertakings thus increased by five entities over the year.

14 pension funds

The pension fund sector stagnated in 2012: following the voluntary liquidation of one pension fund and given that no new pension fund was authorised during the year, the number of authorised pension funds totalled 14 entities on 31 December 2012.

Total employment in the supervised entities: 44,004 people

(of which banks: 26,537 people, investment firms: 2,662 people, specialised PFS: 3,046 people, support PFS: 9,016 people, management companies: 2,743 people)

Total employment in the financial sector improved by 1.3%, i.e. 576 people. However, depending on the category of financial players, the situation diverges.

Employment in the banking sector decreased by 0.6% in 2012. Part of this decrease resulted from the transfer of investment fund management activities to the PFS sector. Similarly to the transfer of activities recorded in 2011, this transfer did not impact the total number of jobs in the financial sector, but only changed the breakdown between the professionals of the financial sector. Another major factor which explains the decrease in banking employment is the ongoing restructuring and consolidation of activities following mergers and acquisitions. Finally, the seven banks which ceased their activities in 2012 also contributed to the decrease in the banking employment. This decrease was not compensated by the creation of jobs in the five banks which started their activities in Luxembourg in 2012.

The number of jobs in investment firms increased by 10.4% whereas employment in specialised PFS decreased by 2.6%. As explained before for the banking sector, these developments mainly resulted from the transfers of activities between the different categories of professionals of the financial sector which had no impact on the total number of jobs in the financial sector.

The support PFS staff increased by 3.9% due to recruitments.

Management company staff increased by 9.2% in 2012, which however does not correspond to a net creation of new jobs. Indeed, even if new jobs were created in order to strengthen the organisational environment within the management companies, the positive employment development is mainly due to staff reallocation between entities of the financial sector following reorganisations and transfers of activities within the respective groups.

1,493 prospectuses, base prospectuses and other approved documents

660 supervised issuers

0.95 million reported transactions in financial instruments

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 slightly rose compared to 2011 (+3.25%).

The CSSF supervises issuers whose securities are admitted to trading on a regulated market and whose home Member State is Luxembourg for the purposes of the Transparency Law. Their number reached 660, of which 238 Luxembourg issuers. The supervision involves a general follow-up of the regulated information to be published by issuers as well as the financial information enforcement, i.e. the assessment of compliance of the financial information with the relevant reporting framework, namely the applicable accounting standards.

As regards the supervision of markets and market operators, the CSSF received about 0.95 million reports on transactions in financial assets in 2012 which allow the observation of market trends and the identification of possible offences. In the framework of the law on market abuse, the CSSF opened two investigations in relation to insider dealing and/or market manipulation and dealt with 61 requests from foreign authorities.

Public oversight of the audit profession

The public oversight of the audit profession covered 68 *cabinets de révision agréés* (approved audit firms) and 219 *réviseurs d'entreprises agréés* (approved statutory auditors) as at 31 December 2012. The oversight also includes 55 third-country auditors and audit firms duly registered in accordance with the law of 18 December 2009 concerning the audit profession.

As regards the missions performed in the framework of statutory audits and other missions exclusively entrusted to them by the law, the *réviseurs d'entreprises agréés* and *cabinets de révision agréés* are subject to a quality assurance review, organised according to the terms laid down by the CSSF in its capacity as supervisory authority.

610 customer complaints

Pursuant to its specific competence as regards consumer complaint handling, the CSSF received 610 complaints last year, a majority (62%) of which concerned payment service issues. Complaints related to private banking, though declining, are in second place with a share of 11% of the total number of complaints dealt with by the CSSF.

448 agents

Operating costs of the CSSF in 2012: EUR 51.2 million

2012 was marked by the ongoing increase in the CSSF's staff (+42 agents) in order to face the growing workload resulting notably from the introduction of new prudential requirements, the cooperation between supervisory authorities, the active participation in international fora and, in general, the increase in volume and complexity of the financial products. This figure is supplemented by numerous on-site inspections, which became an important pillar of the prudential supervision exercised by CSSF.

CHAPTER I

GOVERNANCE AND FUNCTIONING OF THE CSSF

1. PRINCIPLES

The CSSF, established by the law of 23 December 1998, is a public institution with legal personality and financial autonomy. It operates under the authority of the Minister responsible for the financial centre, i.e. the Minister of Finance Mr Luc Frieden.

1.1. CSSF bodies

The CSSF's board of directors is composed of seven members appointed by the Grand Duke on the proposal of the Government in Council for a period of five years. The powers conferred upon the board of directors notably include the annual adoption of the CSSF's budget and the approval of the financial statements and of the report of the CSSF's executive board, which are submitted to the board of directors before their presentation to the Government for approval. It shall also set the general policy as well as the annual and long-term investment programmes which are submitted to it by the executive board before being submitted for approval to the Minister of Finance. Meetings and deliberations of the board of directors take place according to its internal rules. The board of directors is not competent to intervene in the CSSF's prudential supervisory matters.

The senior executive authority of the CSSF is the executive board, composed of a director general and between two and four directors, appointed by the Grand Duke on the proposal of the Government in Council for a period of five years. The executive board works out measures and takes the decisions it deems useful and necessary for the fulfilment of the CSSF's mission and for its organisation. Moreover, it sets up a five-year "targets contract" with the Minister of Finance. The executive board is responsible for the reports and proposals it is obliged to address to the board of directors and the Government.

1.2. Decision-making process

According to its internal rules, the executive board must meet collectively at least once a week to take the decisions required to accomplish the mission of the CSSF. The executive board is responsible collectively even if each individual member runs one or several departments.

The decisions taken in the context of the CSSF's mission may be referred to the Administrative Court, which decides on the merits of the case. These recourses must be instituted, under penalty of foreclosure, within a month from the notification of the decision.

1.3. Drawing-up of regulations

The legislative framework applicable to the financial sector is complemented by circulars issued by the CSSF with a view to specifying how legal provisions should be applied, publishing prudential regulations specific to certain areas of activity and issuing recommendations on conducting business in the financial sector. Furthermore, the CSSF has the power to make regulations within the limits of its competences and missions, in accordance with Article 9(2) of the law of 23 December 1998. These regulations shall be published in the *Mémorial*.

Following the example of international forums and counterpart authorities, the CSSF has established a broad consultation procedure, which involves, during the stage of drawing-up the regulations, the professionals of the financial sector, as well as any other person concerned, notably via expert committees and ad hoc working groups. The draft texts are also submitted to the Consultative committee for prudential regulation or to the Consultative committee for the audit profession.

1.4. Financing of the CSSF and account auditing

The CSSF is authorised to levy taxes on supervised persons and undertakings to cover its staff, financial and operating costs. The Grand-ducal regulation of 29 September 2012 lays down the amounts applicable and guarantees full financing of the operating costs.

The Government appoints a *réviseur d'entreprises agréé* (approved statutory auditor) on the proposal of the CSSF's board of directors for a period of three years. The mission of the *réviseur d'entreprises agréé* is to audit and certify the CSSF's accounts and to submit a detailed report on the CSSF's accounts to the Government at the close of the financial year. The *réviseur d'entreprises agréé* may be charged by the board of directors with making specific checks.

The CSSF is subject to the control of the Court of Auditors (*Cour des Comptes*) as to the appropriate use of the public financial participation it receives.

2. GOVERNING BODIES

Board of directors - until 31 December 2012

Chairman	Etienne REUTER	Premier Conseiller de Gouvernement, Ministry of Finance
Vice-Chairman	Gaston REINESCH	General administrator, Ministry of Finance
Members	Ernst-Wilhelm CONTZEN	Chairman of The Luxembourg Bankers' Association
	Sarah KHABIRPOUR	Premier Conseiller de Gouvernement, Ministry of Finance
	Karin RIEHL	Institut des Réviseurs d'Entreprises
	Marc SALUZZI	Chairman of the Association of the Luxembourg Fund Industry
	Claude WIRION	Member of the Executive Committee of the Commissariat aux Assurances
Secretary	Danielle MANDER	

Board of directors - since 1 January 2013

Chairwoman	Sarah KHABIRPOUR	Premier Conseiller de Gouvernement, Ministry of Finance
Vice-Chairwoman	Isabelle GOUBIN	Conseiller de direction 1ère classe, Ministry of Finance
Members	Rima ADAS	Institut des Réviseurs d'Entreprises
	Ernst-Wilhelm CONTZEN	Chairman of The Luxembourg Bankers' Association
	Marc SALUZZI	Chairman of the Association of the Luxembourg Fund Industry
	Marny SCHMITZ	Attachée d'administration, Ministry of Finances
	Claude WIRION	Member of the Executive Committee of the Commissariat aux Assurances
Secretary	Danielle MANDER	

Executive board

Director General	Jean GUILL
Directors	Simone DELCOURT, Andrée BILLON, Claude SIMON

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

3. COMMITTEES

3.1. Consultative committees

3.1.1. Consultative committee for prudential regulation

The Government may seek advice from 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 the financial sector falling within the competence of the CSSF. The CSSF's executive board shall seek an opinion from this consultative committee on any draft regulation of the CSSF other than related to statutory audits and the audit profession. Members of the committee may also seek its advice concerning the setting-up or application of prudential regulations overall or for specific issues. The external members of the committee are appointed by the Minister of Finance.

Committee composition:

Executive board of the CSSF:	Jean Guill (Chairman), Andrée Billon, Simone Delcourt, Claude Simon
Members:	Nicolas Buck, Alain Feis, Georges Heinrich, Robert Scharfe, Jean-Jacques Rommes, Carlo Thill, Camille Thommes
Secretary:	Danielle Mander

3.1.2. Consultative committee for the audit profession

The Government may seek advice from 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 CSSF's executive board shall seek an opinion from this committee on any draft regulation of the CSSF related to statutory audits and the audit profession. Members of the committee may also seek its advice concerning the setting-up or application of the regulation of public oversight of the audit profession overall or for specific issues. The external committee members are appointed in accordance with Article 15-1 of the law of 23 December 1998 establishing a financial sector supervisory commission (Commission de surveillance du secteur financier).

Committee composition:

Executive board of the CSSF:	Jean Guill (Chairman), Andrée Billon, Simone Delcourt, Claude Simon
Members:	Serge de Cillia, Philippe Meyer, Sophie Mitchell, Jean-Michel Pacaud, Victor Rod, Daniel Ruppert, Marny Schmitz, Anne-Sophie Theissen, Camille Thommes
Secretary:	Danielle Mander

3.2. Permanent and ad hoc expert committees

The expert committees shall assist the CSSF in analysing the development of the different areas of the financial sector, give their advice on any issue relating to their activities and contribute to the drawing-up and interpretation of the regulations relating to areas covered by the respective committees. In addition to the permanent committees listed below, ad hoc committees are formed to examine specific subjects.

The permanent expert committees are the following:

- Anti-Money Laundering Committee;
- Banks Issuing Covered Bonds Committee;
- Banks and Investment Firms Committee;
- Bank and Investment Firm Accounting Committee;
- Depositaries Committee;
- Pension Funds Committee;
- Corporate Governance Committee;
- Undertakings for Collective Investment Committee;
- Financial Consumer Protection Committee;
- SICAR Committee;
- Audit Technical Committee;
- Securitisation Committee.

In 2012, the following people took part in the different expert and ad hoc committees of the CSSF:

ACHILLES Matthias
Hypo Pfandbrief Bank International S.A.

ADAS Rima
Institut des réviseurs d'entreprises

AREND Pascale
Commissariat aux Assurances

BAGUET Yves
Clearstream Services S.A.

BAIS Gérard Jan
Erste Europäische Pfandbrief- und Kommunalkreditbank AG in Luxemburg

BASENACH Karin
European Consumer Centre

BAUER Maurice
Société de la Bourse de Luxembourg S.A.

BECHET Marc-André
Banque Degroof Luxembourg S.A.

BEGUE Guillaume
Association Luxembourgeoise des Compliance Officers du Secteur Financier

BIRASCHI Sonia
State Street Bank Luxembourg S.A.

BIVER Janine
Linklaters LLP

BOON Joël
Association Luxembourgeoise des Professionnels du Patrimoine

BOSI Stéphane
Banque de Patrimoines Privés

BOURIN Catherine
The Luxembourg Bankers' Association

BRAUSCH Freddy
Linklaters LLP

BRUCHER Jean
Brucher Thieltgen & Partners

CESARI Stéphane
Deloitte

CHAN YIN Victor
KPMG Luxembourg

CHEVREMONT Marie-Jeanne
MJC Conseil

CHILLET Patrick
ING Luxembourg S.A.

CHRISTIAENS Evelyne
Association of the Luxembourg Fund Industry

COLBERT Cheryl
Ministry of Higher Education and Research

CONAC Pierre-Henri
University of Luxembourg

CONTER Marie-Jeanne
Ministry of Finance

CONTZEN Ernst Wilhelm
The Luxembourg Bankers' Association

DE CILLIA Serge
The Luxembourg Bankers' Association

DE CROUY-CHANEL Henri
Aurea Finance Company

DELVAUX Jacques
Notary

DIBUS Reinolf
Hypothekenbank Frankfurt International S.A.

DOGNIEZ Nathalie
KPMG Luxembourg

DOLLE Emmanuel
KPMG Luxembourg

DONDELINGER Germain
Ministry of Higher Education and Research

DUPONT Philippe
Arendt & Medernach

DURAND Guillaume
Société Générale Bank & Trust

DUREN Philippe
PricewaterhouseCoopers

DUSEMON Gilles
Arendt & Medernach

ELVINGER Jacques
Elvinger, Hoss & Prussen

EVRARD Amaury
PricewaterhouseCoopers

FANDEL Jean-Marc
Cetrel S.A.

FAYOT Franz
Elvinger, Hoss & Prussen

FEIS Alain
Interinvest S.A.

FELD Thomas
KPMG Luxembourg

FISCHER Rafik
KBL European Private Bankers S.A.

FLAUNET Martin
Deloitte

GEBHARD Gerd
Pecoma International S.A.

GENET Frédéric
Société Générale Bank & Trust

GODFRAIND Michel
KBL European Private Bankers S.A.

GOEDERT Guy
Union Luxembourgeoise des Consommateurs

GOFFIN Fabrice
PricewaterhouseCoopers

GOFFINET Norbert
Banque centrale du Luxembourg

GOOSSENS Jean-Marc
Isiwis S.à r.l.

GOUBIN Isabelle
Ministry of Finance

GOUDEN Patrick
The Luxembourg Bankers' Association

GRAND Samuel
ABN Amro Bank (Luxembourg) S.A.

GRIGNON DUMOULIN Hubert
Société de la Bourse de Luxembourg S.A.

GUAY Michel
Institut des réviseurs d'entreprises

HALMES-COUMONT Claudia
Pecoma International S.A.

HAUSER Joëlle
Clifford Chance

HEINRICH Georges
Ministry of Finance

HENGEN Marc
Association des Compagnies d'Assurances

HENRY Marc
Dexia LdG Banque S.A.

HOFFMANN Gérard
Telindus S.A.

HOFFMANN Guy
Banque Raiffeisen

HOFFMANN Robert
Loyens & Loeff

HOG-JENSEN Isabel
Association of the Luxembourg Fund Industry

HOSS Philippe
Elvinger, Hoss & Prussen

JEANBAPTISTE Yves
Faber Digital Solutions S.A.

JORDANT Olivier
Ernst & Young

JUNG Rüdiger
The Luxembourg Bankers' Association

KAMPHAUS Jean-Luc
Ministry of Finance

KHABIRPOUR Sarah
Ministry of Finance

KIESCH Lou
Deloitte

KINSCH Alain
Ernst & Young

KIRSCH Jean-Claude
Association Luxembourgeoise des Professionnels du Patrimoine

KLEIN Isabelle
Ministry of Family and Integration

KNEIP Bob
Kneip Communication S.A.

KOHLL Aly
Banque et Caisse d'Épargne de l'État

KREMER Claude
Arendt & Medernach

KREMER Katia
Ministry of Justice

KRIEGER Jean-Claude
Intesa Sanpaolo Servitia S.A.

KRIEGER Solange
Commissariat aux Assurances

KRIER Pierre
PricewaterhouseCoopers

LACROIX Yves
Arendt & Medernach

LAGUESSE Sophie
Elvinger, Hoss & Prussen

LAM Benjamin
Deloitte

LAMORLETTE Cyril
PricewaterhouseCoopers

LANNERS Romain
Association des PSF de Support A.s.b.l.

LANSER Pascal
IBM Services Financial Sector Luxembourg S.à r.l.

LANZ Christoph
Banque Privée Edmond de Rothschild Europe

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Association Luxembourgeoise des Compliance Officers du Secteur Financier

LHOEST Bernard
Ernst & Young

LIEBERMANN Daniel
Ministry of Economy and Foreign Trade

LIFRANGE Frédérique
Elvinger, Hoss & Prussen

LOEHR Jean-Michel
RBC Investor Services Bank S.A.

LOESCH Tom
Linklaters LLP

LUSSIE Anne-Christine
BGL BNP Paribas

MAHAUX Jacques
Crédit Agricole Luxembourg

MANDICA Charles
Association des PSF de Support A.s.b.l.

MARGUE Pierre
SES S.A.

MASSARD Hélène
Ministry of Justice

MEYER Philippe
KPMG Luxembourg

MITCHELL Sophie
Institut des réviseurs d'entreprises

MOAYED Vafa
Deloitte

MOUSEL Paul
Arendt & Medernach

NIEDNER Claude
Arendt & Medernach

NOSBUSCH Danièle
Ministry of Finance

OLY Carlo
Société de la Bourse de Luxembourg S.A.

ORIGER Paul-Charles
Association des Compagnies d'Assurances

OSWEILER Michèle
Commissariat aux Assurances

PACAUD Jean-Michel
Institut des réviseurs d'entreprises

PAQUAY Philippe
KBL European Private Bankers S.A.

PAULY François
Banque Internationale à Luxembourg

PEETERS Jean-Marc
Associated Dexia Technology Services

PERARD Frédéric
BNP Paribas Securities Services, succursale de Luxembourg

PRUM André
University of Luxembourg

QUEUDEVILLE Guy
Institute of Internal Auditors

RAUCQ Serge
Luxembourg E-Archiving S.A.

REDING Yves
e-Business & Resilience Centre S.A.

REINESCH Gaston
Ministry of Finance

REUTER Etienne
Ministry of Finance

RIEHL Karin
Institut des réviseurs d'entreprises

RIES Marie-Josée
Ministry of Economy and Foreign Trade

ROD Victor
Commissariat aux Assurances

ROMMES Jean-Jacques
The Luxembourg Bankers' Association

RONKAR Marc
Banque centrale du Luxembourg

ROUSSEL Marie-Elisa
PricewaterhouseCoopers

RUPPERT Daniel
Ministry of Justice

SALUZZI Marc
Association of the Luxembourg Fund Industry

SAUVAGE Benoît
The Luxembourg Bankers' Association

SCHARFE Robert
Société de la Bourse de Luxembourg S.A.

SCHIFFLER Thomas
PricewaterhouseCoopers

SCHILTZ Marc
Financial Intelligence Unit

SCHINTGEN Gilbert
UBS Fund Services (Luxembourg) S.A.

SCHLEIMER Pierre
Allen & Overy

SCHMITT Alex
Bonn & Schmitt

SCHMITZ Hans-Jürgen
Mangrove Capital Partners S.A.

SCHMITZ Marny
Ministry of Finance

SCHUMAN Thierry
BGL BNP Paribas

SCHUMMER Laurent
Linklaters LLP

SEALE Thomas
European Fund Administration S.A.

SERGIEL Philippe
PricewaterhouseCoopers

SIMON Günter
PricewaterhouseCoopers

SIX Jean-Christian
Allen & Overy

SOLBREUX Sylviane
Banque Internationale à Luxembourg

SPEDENER Stéphane
Fiduciaire Probitas

STRAUS Raymond
Ministry of National Education and Professional Training

TANCRÉ Bernard
BNP Paribas Securities Services, succursale de Luxembourg

TERWAGNE Benoît
Esofac Luxembourg S.A.

TESTA Sylvie
Ernst & Young

THEISSEN Anne-Sophie
Chamber of Commerce

THIELTGEN Nicolas
Brucher Thieltgen & Partners

THILL Carlo
BGL BNP Paribas

THIREAU Dominique
CSC Computer Sciences Luxembourg S.A.

THOMA Patrick
Ministry of Family and Integration

THOMMES Camille
Association of the Luxembourg Fund Industry

TIXIER Valérie
PricewaterhouseCoopers

UEBERECKEN Jean-Marc
Arendt & Medernach

VALSCHAERTS Dominique
Société de la Bourse de Luxembourg S.A. / Finesti

VAN DE KERKHOVE Eric
Deloitte

VINCIARELLI Paolo
Banque et Caisse d'Épargne de l'État Luxembourg

VOGEL Klaus-Michael
Deutsche Bank Luxembourg S.A.

VONCKEN Marc
PricewaterhouseCoopers

VOSS Denise
Association of the Luxembourg Fund Industry

WAGNER Henri
Allen & Overy

WATELET Patrick
Citibank International Plc, Luxembourg branch

WEBER Alain
Banque LBLux S.A.

WEBER Romain
Banque centrale du Luxembourg

WILLEM Vincent
Institute of Internal Auditors

WIRION Claude
Commissariat aux Assurances

WOLTZ Doris
Parquet du Tribunal d'Arrondissement de et à Luxembourg

YIP Johnny
Deloitte

ZEEB Christophe
Chamber of Commerce

ZIMMER Julien
DZ PRIVATBANK S.A.

ZURSTRASSEN Patrick
Institut Luxembourgeois des Administrateurs

ZWICK Marco
Association of Luxembourg Risk Management

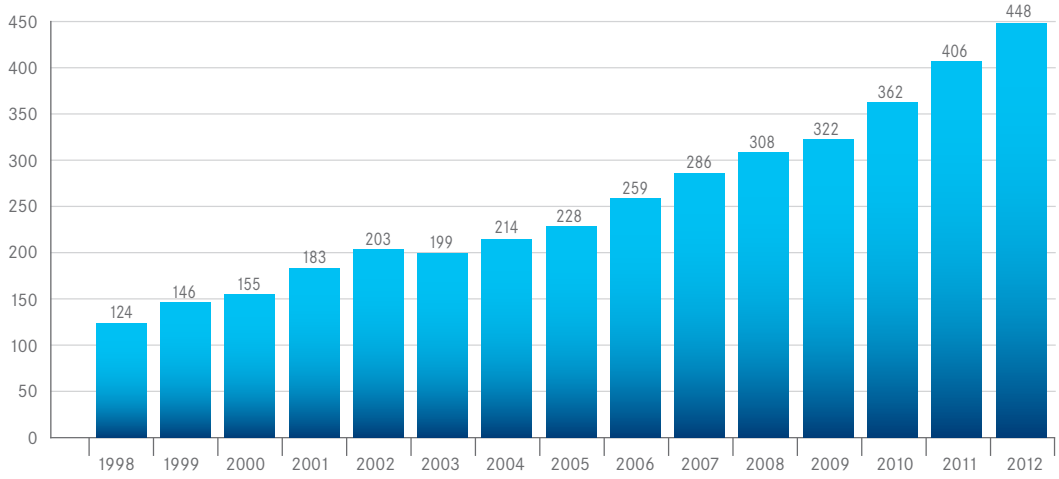
4. HUMAN RESOURCES

4.1. CSSF staff

As far as human resources are concerned, and as in the previous years, 2012 was marked by a significant rise in the number of staff. Thus, 50 agents were recruited. Following the resignation of eight agents over that period, total employment reached 448 units as at 31 December 2012, representing a 10.34% increase compared to 2011. This is the equivalent of 395.30 full-time jobs, i.e. a 6.85 % increase compared to 2011.

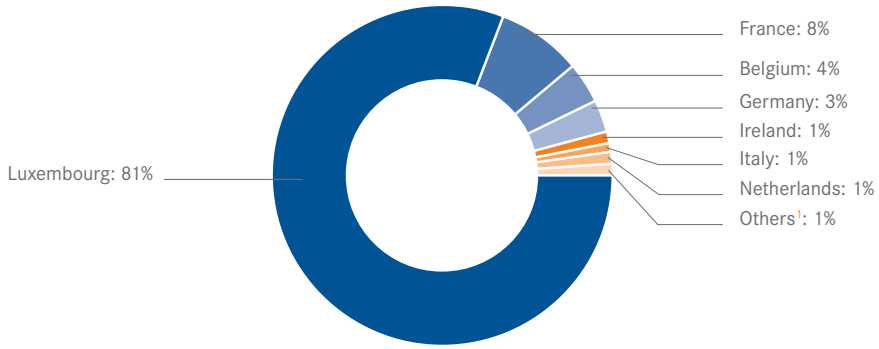
It must be highlighted that in 2012, the CSSF received around 1,160 job applications, including 167 spontaneous applications. As in the previous years, recruitment mainly focused on University degrees and candidates' competence.

Movements in staff number



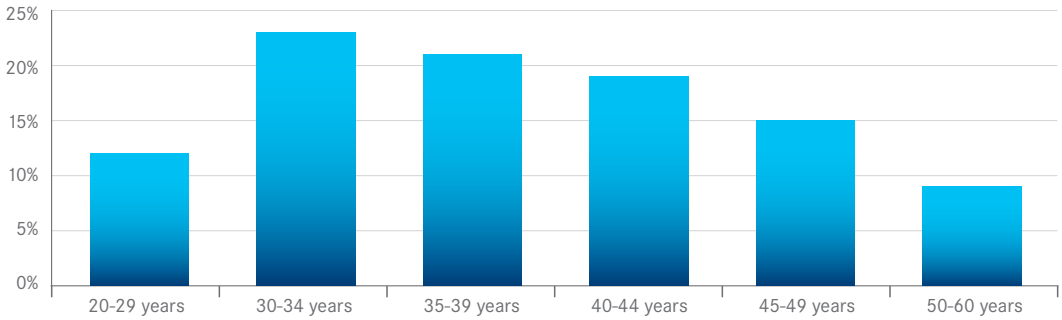
CSSF agents represent 11 nationalities, the Luxembourg nationality being the most represented with 81.47% of the total staff.

Breakdown of staff by nationality



The average age of CSSF staff members was 38.82 years as at 31 December 2012, against 37.74 years at the end of 2011. Women made up 49.55% of total staff and men 50.45%.

Breakdown of staff by age



[1] Austria, Spain, Portugal, Romania.

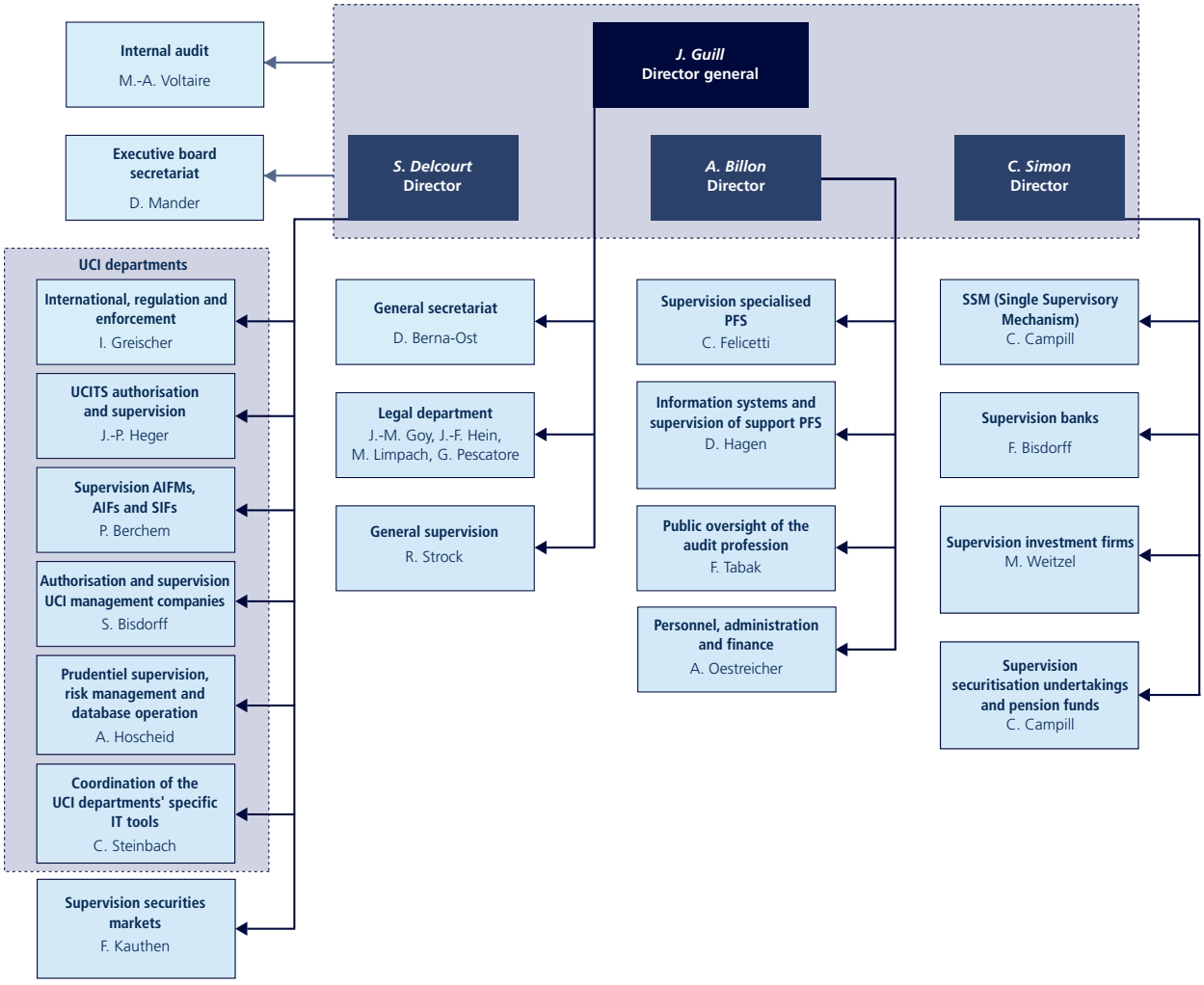
4.2. Staff training

CSSF staff followed 400 training courses in 2012.

Most of these courses were part of the lifelong training possibilities offered to CSSF agents. 54% of the courses were dedicated to finance, accounting and law, 17% to IT/office automation, 11% to management and human resources management and 4% to languages. The remaining 14% covered subjects such as security and professional techniques.

2,958 participations in training sessions were recorded in 2012. The CSSF staff completed a total of 1,602 training days, representing an average of 4.33 training days per agent.

4.3. Organisation chart



Detailed information on the CSSF's organisation is available on the CSSF's website in the section "About the CSSF", sub-section "Structure/Organisation".

5. NEW CSSF HEADQUARTERS

As the number of its agents keeps increasing and the existing infrastructures had not enough room any more for all its resources, the CSSF decided in 2011 to build new headquarters at the intersection of the route d'Arlon and the rue des Aubépines in Luxembourg. This decision was taken with a view to streamlining and efficiency, so as to concentrate on a single site the activities which, at a given time, were spread over on three different sites. This will allow optimising the CSSF's processes, and hence its functioning, for the most efficient execution of its mission.

The new building will provide about 7,000 square meters of office space (i.e. about 620 workstations), a canteen, a public library, many meeting, conference and training rooms, as well as a fitness room.

Outline of the CSSF's new headquarters

One of the highlights of the new headquarters is the functional and flexible interior which allows the building to adapt to different space layouts and envisage many different opportunities for development in the future. The outline of the shape of the building follows directly the contours of the parcel as well as the sloping topography of the field in order to make the best possible use of the area authorised for construction.

Strong emphasis was placed on the energy concept of the building in order to reach a high level of performance combined with a maximum comfort, by minimising the losses and the consumption of energy.

According to the planning, the work in relation to the new headquarters is scheduled to be completed in 2015, so that the CSSF could move into its new premises from that date.

6. INFORMATION SYSTEMS

The CSSF's IT department is a division of the department "IT systems and supervision of support PFS". 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.

6.1. Development of the CSSF's internal IT systems

The Electronic Document Management System (EDMS) initiated in 2010 made good progress in 2012 even if it is behind schedule due to the introduction of new possibilities within the context of the reorganisation in the UCI department, including in particular the processing of document flows in order to improve the follow-up of inbound processing (in particular of the documents submitted to the CSSF for approval, such as UCI prospectuses or prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market). The first results of the EDMS are expected for 2013. The human-machine interface was reviewed and is totally reliant on the generic possibilities of the product which should allow, in the long-term, uniform upgrading to the new versions without requiring new developments. The ergonomic features of the new EDMS complies with that presented in 2011: it offers all the visualisation facilities of the directories and document drag & drop facilities. It is no longer based on a client-tailored development but on the standard product of the EDMS software.

6.2. UCITS IV and notifications

Deposit of KIIDs in the context of the UCITS IV Directive and of the notifications is working properly and, given the volumes involved, the document flow passes mainly via the authorised channels. The annual renewal of deposits by depositors concerns a volume of 56,000 documents exchanged within a very short timeframe.

The redesign of the interface of the channels with the CSSF in an SOA-oriented web services mode continued, but it is not planned, for the time being, to extend it to the legal reporting. The system remains only applicable to the exchange of textual documents such as prospectuses.

6.3. Short selling

ESMA established mechanisms linked to Regulation (EU) No 236/2012 on short selling which entailed developments for the CSSF enabling:

- information collection in electronic form from legal persons and natural persons which hold short positions on an instrument subject to the supervision of the national authority;
- the quarterly generation of a statistics file including for each instrument the number of short positions to be sent to ESMA in accordance with the format and the exchange protocol used within the TREM network.

6.4. Project "Registry"

In the European context, the CSSF prepares to respond to the exchange requirements of ESMA which initiated the project "Registry" (formerly "Omnibus") also covering the needs arising from the AIFM, UCITS and MiFID Directives, i.e. in particular the creation of a register allowing the identification of AIFMs, management companies of UCITS, investment firms under MiFID and the collection of prospectuses approved in accordance with the Prospectus Directive.

6.5. Legal Entity Identifier

In relation to the identification of the persons involved in financial transactions, the Financial Stability Board (FSB) established by the G20 launched an initiative called LEI (Legal Entity Identifier) aimed to assign a unique identifier to each legal entity for the purpose of identifying the systemic risk. Indeed, following the financial crisis, it had become crucial for the private markets as for the public regulatory bodies to identify with precision and accuracy the legal entities involved in financial transactions. The identifier will be first used when an entity will report a derivative transaction (swap) to a list drawn up by the new American Commodity Futures Trading Commission (CFTC). ESMA has already announced that it will base on this LEI within the context of the EMIR, MiFID II, etc. reporting.

The FSB created a LEI Implementation Group in charge of implementing the Global LEI System (GLEIS) federated from a "three thirds" governance architecture:

- a Regulatory Oversight Committee (ROC), ultimately responsible for the governance of the GLEIS;
- a Central Operating Unit (COU), linchpin of the GLEIS, in charge of the operations;
- a Local Operating Unit (LOU), first interface with the entities which have to register a LEI and which will be in charge of the registration, validation and maintenance of the register as well as the data protection.

The FSB also invited the private participants to join the LEI Private Sector Preparatory Group (PSPG).

The CSSF takes part in the work carried out in Luxembourg under the aegis of the Banque centrale du Luxembourg. The impact on the processing chains of the CSSF shall be assessed on the same basis as the development of the BIC (ISO 9362:2009) and MIC (ISO 10383:2003) which are already in use.

6.6. FINREP and COREP

As the definition of the taxonomy is facing a delay and is expected only by the end of 2013, the CSSF anticipated the changes at FINREP and COREP level and assesses the available XBRL processing and validation tool in order to change the processing chain which shall be able to process the new version FINREP2/COREP2. Indeed, the architectural changes of taxonomies are significant and the software currently used by the CSSF will no longer be able to process the new taxonomies. At the end of 2012, the project was successful and the CSSF should therefore not encounter major difficulties when implementing the new taxonomies.

6.7. Calluna Project

The Centre de Recherche Gabriel Lippmann (CRP Lippmann) developed the Calluna application which is a data visualisation software which includes original graphical representations and innovative ways for visual data interrogation.

The CSSF explores with CRP Lippmann the potential of the tool in two areas: the visualisation of the financial data of banks and the representation of the risk profiles arising from the risk analysis reports (RARs) of support PFS. In respect of the financial data visualisation, the potential is substantial but the implementation is more delicate because it has to be part of an operational mode of supervision, which requires fundamental organisational adjustments. Such a project is resources and time-consuming, which is more and more incompatible with the pressure exerted by the developments in the regulatory framework. Consequently, the implementation did not evolve in 2012. As regards the potential of the software in the analysis of the risk reports (RAR), it is necessary to wait for the first reports at the end of the first quarter of 2013 to obtain data and continue the project.

7. ANNUAL ACCOUNTS OF THE CSSF - 2012

BALANCE SHEET AS AT 31 DECEMBER 2012

Assets	*EUR*	*EUR*
Fixed assets		20,794,217
- Intangible assets		
Intangible assets in progress	765,464	
- Tangible assets		
Aubépines land	18,161,560	
Other fixtures and fittings, tools and equipment	514,981	
Assets in progress	1,349,212	
- Financial assets	3,000	
Current assets		15,588,642
- Claims resulting from fees charged and provision of services	1,020,532	
- Other debtors	441,490	
- Cash at bank	14,126,620	
Prepayments and accrued income		2,942,687
Total assets		**39,325,546**
Liabilities		
Capital and reserves		12,216,035
- Profit brought forward	19,656,829	
- Loss for the financial year	(7,440,794)	
Creditors		26,557,404
- Amounts owed to credit institutions	24,559,918	
- Debts on purchases and provision of services/trade creditors	879,087	
- Other creditors	1,118,399	
Accruals and deferred income		552,107
Total liabilities		**39,325,546**

PROFIT AND LOSS ACCOUNT AS AT 31 DECEMBER 2012

Charges	*EUR*
Other external charges	10,133,405
Staff costs	39,761,285
Value adjustments in respect of tangible fixed assets	135,169
Interest payable and similar charges	1,143,657
Extraordinary charges	57,922
Total charges	**51,231,438**
Income	
Fees and fines charged	42,910,450
Other operating income	204
Interest receivable and similar income	218,877
Extraordinary income	661,113
Loss for the financial year	7,440,794
Total income	**51,231,438**

Financial controller Deloitte Audit

CSSF's heads of department

Left to right: Sonny BISDORFF-LETSCH, Carlo FELICETTI, 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

Heads of UCI Department

Left to right: Jean-Paul HEGER, Claude STEINBACH, Sonny BISDORFF-LETSCH, Pascal BERCHEM, Irmine GREISCHER, Alain HOSCHEID

CHAPTER II

THE EUROPEAN AND INTERNATIONAL DIMENSION OF THE CSSF'S MISSION

1. Cooperation within European institutions
2. Multilateral cooperation
3. List of international groups in which the CSSF participates

1. COOPERATION WITHIN EUROPEAN INSTITUTIONS

Article 3 of the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), appoints the CSSF, inter alia, to deal with and take part in the negotiations on the financial sector issues, at both EU and international level. In accordance therewith, the CSSF participates in the work of the fora mentioned below.

With effect from 1 January 2011, Regulations (EU) No 1092 to 1095 established the European Systemic Risk Board (ESRB) and the three European supervisory authorities: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) which together form the new European System for the Financial Supervision (ESFS). The functions and powers of the three authorities, which replace the former level 3 committees, namely CEBS, CESR and CEIOPS, are described in detail under item 2.6. of Chapter I "General supervision and international cooperation" of the CSSF's Annual Report 2010.

The CSSF participates as a non-voting member in the European Systemic Risk Board.

1.1. European Banking Authority – EBA

The EBA was established by Regulation (EU) No 1093/2010 of 24 November 2010 and has been operational since 1 January 2011. The EBA is chaired by Mr Andrea Enria (Italy) and the functions of Executive Director are performed by Mr Adam Farkas (Hungary). Mr Claude Simon, Director, represents the CSSF in the Board of Supervisors.

In 2012, the CSSF participated as a member in the work of the EBA and its four permanent standing committees, including their task forces/working groups (permanent or ad hoc).

The EBA plays a major role in the implementation and application of the new capital adequacy framework established by the future CRD IV and the future CRR[1]. In particular, the EBA is in charge of developing draft binding regulatory and implementing technical standards. Some of these standards have already been drawn up in 2012 even if the directive and the regulation are not finalised yet. Thus, the EBA has held public consultations on some of these binding technical standards, which were drafted by its working groups and sub-working groups and approved by the Board of Supervisors. The CSSF agents who are members of these working groups participate actively in the drafting process.

All EBA publications are available on the website www.eba.europa.eu. For the year 2012, the following topics should be highlighted in relation to the activities of the EBA standing committees and working groups.

1.1.1. Standing Committee on Regulation and Policy (SCRePol)

The SCRePol contributes to the EBA's work in the areas related to the drawing-up of rules regarding the banking sector (including payment services and electronic money) as well as regarding early intervention and bank resolution.

Thus, the tasks of the SCRePol cover the single rule book for banking supervision and the drafting of binding technical standards in the context of the future CRR/CRD IV, as well as the future European regulations relating to early intervention, bank resolution and deposit guarantee schemes.

In 2012, the SCRePol devoted most of its work to the drafting of binding regulatory and implementing technical standards that the EBA must submit to the European Commission within the framework of the CRR/CRD IV. These technical standards, which will be adopted and published by the European Commission in the form of European regulations, will be of direct and mandatory application and will supplement the CRR/CRD IV framework on more technical issues.

[1] Proposal for a directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (CRD IV) and proposal for a regulation on the prudential requirements applicable to credit institutions and investment firms (CRR).

There were exchanges with ESMA concerning the draft technical standards to be drawn up within the framework of the regulation on OTC derivatives, central counterparties and trade repositories (EMIR). Thus, in September 2012, the EBA submitted its first proposal for an implementing technical standard on the capital requirements for central counterparties to the European Commission.

The different SCRePol specific sub-working groups, including the Subgroup on Own Funds (SGOF), the Task Force on Model Validation (TFMV), the Subgroup on Governance and Remuneration (SGGR), the Subgroup on Credit Risk (SGCR) and the Subgroup on Liquidity (SGL) are in charge of drawing up the draft binding technical standards.

• Subgroup on Own Funds (SGOF)

The SGOF has worked on three sets of binding technical standards, each subject to a public consultation in 2012. These technical standards concern technical aspects related to the calculation of an institution's prudential own funds, the information to be disclosed by institutions on their prudential own funds, and the requirements to be fulfilled for an institution to be classified as cooperative society for the purpose of the CRR. All these binding technical standards stem from the concern of strengthening the quality of prudential own funds that the institutions must have to cover their risks.

• Task Force on Model Validation (TFMV)

The TFMV, chaired by the CSSF in 2011 and 2012, developed a regulatory technical standard on the materiality of extensions and changes of internal rating based approaches for credit risk, the advanced measurement approaches for operational risk and the internal models approach for market risk. Moreover, the TFMV contributed to the work of the Task Force on the Consistency of Risk-Weighted Assets (TCOR) in charge of monitoring the outcomes, in particular in terms of capital requirements, produced by the banks' different internal models.

• Subgroup on Governance and Remuneration (SGGR)

On 27 July 2012, the SGGR (the former Task Force on Remuneration) released two sets of guidelines, namely (1) the guidelines on the data collection exercise regarding high earners and (2) the guidelines on the remuneration benchmarking exercise.

The CSSF contributed to the benchmarking of remuneration trends and practices at EU level and to the data collection exercise regarding high earners for 2010 and 2011, carried out by the EBA. Data collected on high earners on an aggregate Member State basis and the EBA's report on the benchmarking exercise will be disclosed in 2013.

In parallel with the drawing-up of these guidelines, the SGGR has worked on two draft regulatory technical standards concerning, on the one hand, qualitative and quantitative criteria allowing identifying the categories of staff whose professional activities have a major incidence on the institution's risk profile and, on the other hand, the criteria for determining the appropriate ratio between the variable and fixed components of total remuneration. While the CRD III (2010/76/EU) had already provided that guidelines be elaborated setting specific criteria to determine the appropriate ratios between the variable and fixed components, the requirement for a regulatory technical standard in relation to the identification of material risk takers is laid down in the future CRD IV.

• Subgroup on Crisis Management (SGCM)

In 2012, the work of the SGCM (the former Subgroup on Intervention, Resolution and Deposit Guarantee Schemes) was driven by the drawing-up and the publication, by the European Commission, of the proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms.

After the publication of a consultation paper on the main elements of a recovery plan in May 2012, the group drew up a proposal for a recommendation released by the EBA at the beginning of 2013. The recommendation addresses the home competent authorities of 40 banking groups requiring these groups to develop and present recovery plans by the end of 2013.

Moreover, the SGCM undertook work in preparation for the regulations that the EBA will draw up by virtue of the proposal for the aforementioned directive. Priority was given to the development of draft regulatory technical standards specifying the information to be included in the recovery plans and the scenarios to apply when testing these recovery plans.

1.1.2. Standing Committee on Oversight and Practices (SCOP)

SCOP's mission is to assist, advise and support the EBA (including in the development of binding technical standards) in the following areas:

- permanent risk assessment in the banking system, including development of instruments in this respect;
- fostering cooperation among authorities, including the strengthening of colleges and common assessments and decisions;
- increased convergence of supervisory practices;
- implementation of recommendations and warnings of the ESRB.

The main topics dealt with by SCOP in 2012 are the following:

- risks and vulnerabilities in the European banking sector;
- discussion of reports on the foreign currency lending supervisory practices, on the harmonisation of practices regarding decision on capital adequacy, analysis of the different risk assessment approaches, functioning of colleges and asset quality;
- monitoring the progress of the work on the following technical standards: common risk assessment framework, joint decision on capital requirement, information exchange on branches, passport notification, operational functioning of colleges;
- discussions on individual problem banks.

As regards supervisory colleges, the work of the Subgroup on Home Host Cooperation (SG HhCo) must be highlighted more particularly. The mission of this subgroup is to draw up binding technical standards concerning the supervisory colleges and the different types of joint decisions to be taken by these colleges (e.g. on capital adequacy, advanced measurement models for the calculation of own funds or liquidity). Other binding technical standards to be drawn up by the subgroup concern the notification procedure for branches and free provision of services and the information to be provided by the home supervisory authority to the host supervisory authority for branches and free provision of services.

These binding technical standards are based on the applicable European directives, on the EBA's guidelines, including in particular the "Guidelines for the Operational Functioning of Supervisory Colleges", the "Guidelines for the Joint Assessment of the Elements covered by the Supervisory Review and Evaluation Process (SREP) and the Joint Decision regarding the Capital Adequacy of Cross-border Groups", the "Guidelines for passport notification", and on the experience gained over the last years.

1.1.3. Standing Committee on Accounting, Reporting and Auditing (SCARA)

SCARA's mission is to assist, advise and support the EBA in completing its working programme with respect to financial information in the following areas:

- accounting: monitor, assess and comment on any accounting development and more specifically international accounting standards;
- reporting: develop and update prudential reporting schemes and develop draft implementing technical standards;
- auditing: monitor, assess and comment on the developments at EU and international level as regards audit;
- transparency: assess the transparency of banks in their information disclosed vis-à-vis financial market participants within the context of Pillar 3 of Basel II.

In respect of the subgroups of SCARA, the following work was achieved in 2012.

• **Accounting**

In accounting, the CSSF contributed to different technical analyses of the EBA in relation to the accounting implications of the CRR/CRD IV project.

• **Reporting**

As regards prudential reporting, the EBA continued its work on the draft implementing technical standard relating to the setting-up of a harmonised framework for prudential reporting for credit institutions and investment firms. This draft will be published after finalisation of discussions on the CRR/CRD IV proposals.

• **Transparency**

The CSSF contributed to the annual follow-up review of the EBA whereby the transparency of banks in the information they disclose vis-à-vis financial market participants within the context of Pillar 3 of Basel II is assessed. The analysis was carried out on a sample of 19 European banks which operate at international level, including one Luxembourg credit institution.

This time, the review focused on the areas for which the previous analyses had revealed potential for improvement and on the new disclosure requirements introduced by the CRD III. These requirements primarily concern securitisation activities and market risk management. The quality of disclosed information has been improved especially for own funds and remuneration policies. In all areas under review, better practices have been identified and the EBA encourages banks to follow them. The EBA also calls for further efforts to be made by the banks for a greater harmonisation of the content of the information and publication deadlines. The annual review ended with the publication of the report "Follow-up review of banks' transparency in their 2011 Pillar 3 reports" on 12 October 2012.

1.1.4. Standing Committee on Consumer Protection and Financial Innovation (SCCONFIN)

In April 2012, the Standing Committee on Financial Innovation (SCFI) changed its name into Standing Committee on Consumer Protection and Financial Innovation (SCCONFIN) in order to reflect the aspect of consumer protection and to foster the public's awareness of this new competence. The CSSF is a member of the SCCONFIN as well as of both subgroups Subgroup on Consumer Protection (SGCP) and Subgroup on Innovative Products (SGIP).

• **Subgroup on Consumer Protection (SGCP)**

The role of the SGCP is to identify the subjects relating to innovative banking activities or products likely to cause damage to consumers and to cooperate in the establishment of a coordinated system of prudential rules aiming to ensure effective consumer protection across Member States. The group worked on mortgage credits and more particularly on responsible mortgage lending and handling of borrowers in payment difficulties (arrears handling). A survey was addressed to the competent authorities in all Member States seeking information on their measures in place, in order to develop best practices and, ultimately, guidelines.

In 2012, the Consumer Trends Workstream was created to draw up the annual Consumer Trends Report. Moreover, the group is reflecting on the best means to implement the requirement, laid down in Article 9 of the EBA regulation, to collect, analyse and report on consumer trends.

The EBA Day on Consumer Protection which was held on 25 October 2012 in London, gathered representatives of the industry, national supervisory authorities, consumer protection organisations and academia, who discussed subjects relating to consumer protection and financial innovation at European level.

• **Subgroup on Innovative Products (SGIP)**

The role of the SGIP is to identify risks for banks and consumers linked to innovative banking products and to cooperate in the setting-up of a coordinated system of prudential rules aiming at warning banks throughout the Member States. The group started its work by drawing up an Opinion on Good Practices for ETF Risk Management, as well as a joint EBA/ESMA warning on contracts for difference (CfD).

1.1.5. Review Panel

The Review Panel assists the EBA in its task to ensure consistent and harmonised implementation of EU legislation in the Member States. To this end, peer review exercises are conducted on specific topics based on a self-assessment of compliance with EU legislation or CEBS guidelines. These peer reviews are explicitly laid down in Regulation (EU) No 1093/2010 of 24 November 2010 creating the EBA. They cover some or all of the activities of competent authorities in order to further strengthen consistency in supervisory outcomes. On the basis of peer reviews, the EBA may issue guidelines and recommendations and disclose the best practices highlighted by the outcome of the work.

In 2012, the Review Panel has adopted a new methodology describing how to carry out self-assessments and peer reviews and relevant procedures. This methodology was developed by a working group in which the CSSF has taken part.

1.2. European Securities and Markets Authority - ESMA

ESMA was established by Regulation (EU) No 1095/2010 of 24 November 2010 and has been operational since 1 January 2011. ESMA is chaired by Mr Steven Maijoor (Netherlands) and the functions of Executive Director are performed by Mrs Verena Ross (United Kingdom). Mr Jean Guill, Director General, represents the CSSF in the Board of Supervisors. He was also re-elected as a member of the Management Board of ESMA in February 2012.

The Securities and Markets Stakeholder Group, gathering 30 market players appointed in a personal capacity, including a Luxembourg representative, aims to facilitate the consultation with the stakeholders in areas relevant to ESMA's tasks. The group is also consulted on matters covered by regulatory technical standards and implementing technical standards.

In 2012, the CSSF participated as a member in the work of ESMA and its permanent standing committees with their task forces/working groups (permanent or ad hoc).

All the publications of ESMA are available for consultation on the website www.esma.europa.eu. For the year 2012, the following topics should be noted in relation to the activities of ESMA, its standing committees and its task forces/working groups.

1.2.1. Review Panel

The Review Panel, chaired by Mr Guill, assists ESMA in its task to ensure consistent and harmonised implementation of EU legislation in the Member States. Its role was strengthened by Regulation (EU) No 1095/2010 of 24 November 2010 establishing ESMA.

In 2012, the Review Panel finalised its peer reviews on the effective implementation by the national competent authorities of the good practices adopted by ESMA in the prospectuses' approval process. Luxembourg was found to be fully applying the good practices in question. The peer review report was published on 24 May 2012.

On 26 April 2012, ESMA published its report on the actual use of sanctioning powers by competent authorities for market abuse. The report reveals that investigative proceedings, the existence and scope of administrative and criminal sanctions, the resources available to the competent authorities and the actual use of the sanctioning powers differ greatly among the 29 Member States. The results of the report will provide input for the negotiations on the proposal for a regulation and the proposal for a directive on market abuse within the European institutions. Indeed, a better harmonisation at the European level of investigation and sanctioning powers, as well as more efficient sanctions that will actually be applied are necessary to ensure financial market integrity.

On a proposal of the Securities and Markets Stakeholder Group, the Review Panel has carried out a peer review in 2012 on the application of the "ESMA Guidelines on Money Market Funds". The peer review report describes the level of convergence of supervisory practices and enforcement of the guidelines and identifies good practices in this field. Based on the analysis of the answers and written evidence provided, Luxembourg has been assessed as fully applying the guidelines in question.

ESMA has also performed a "Mapping of supervisory practices under the market abuse directive". Based on the outcome of this work, the Review Panel identified subjects in order to carry out a self-assessment followed by a peer review. The self-assessment and the peer review covered the supervisory practices of the competent authorities with respect to:

- structures set up by the markets and investment firms to detect market abuse;

- insider lists; and

- handling of rumours that could be the source of insider dealing or market manipulation.

Based on the analysis of the answers and written evidence provided, Luxembourg has been assessed as "fully applied". Moreover, the results of the mapping exercise and the peer review allowed the Review Panel to identify some good supervisory practices as regards market abuse.

Finally, ESMA started a mapping exercise on the supervisory practices for conduct of business rules under MiFID, specifically the practices with regard to the rules on fair, clear and not misleading information. This work will help to identify good supervisory practices and will be followed by a peer review in order to assess the effective implementation by the competent authorities of these good practices.

1.2.2. ESMA-PoI

ESMA-PoI's purpose is to strengthen the exchange of information, cooperation and coordination of supervision of ESMA members and to ensure an effective day-to-day implementation of the European legislation on market abuse. In this context, the members of ESMA-PoI continued to exchange views on the practical experience in cooperation, the daily supervision of investment firms and financial markets and unauthorised offers of financial services by persons and investment firms that do not hold adequate authorisation.

Furthermore, ESMA-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.

ESMA-PoI continued its discussions on the improvement and harmonisation of transaction reporting within the context of MiFID. The workstream notably covered the technical aspects of the fields to be filled in. Moreover, discussions were launched concerning the drawing-up of proposals of regulatory technical standards in relation to the proposal for a markets in financial instruments regulation (MiFIR) for which ESMA will receive a formal mandate from the European Commission following the adoption of MiFIR. The technical standards will cover, among other things, the determination of a client identification code to be included in the transaction reporting. The CSSF closely follows this work with a view of complying with the data protection rules.

ESMA-PoI has also continued its work covering short selling and certain aspects of credit default swaps (CDS). In this context, ESMA submitted to the European Commission its draft regulatory technical standards and its proposals on delegated acts.

Following ESMA-PoI's work, ESMA published and updated the Questions and Answers on the practical aspects of short selling and certain aspects of credit default swaps.

ESMA-PoI drew up the "Guidelines on market-making and primary dealer exemptions" provided for by Regulation (EU) No 236/2012 of 14 March 2012. After a public consultation, the document was released on 1 February 2013.

Based on a mandate received from the European Commission within the scope of Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps, ESMA released a call for evidence on the evaluation of this regulation on 12 February 2013.

Finally, a working group has been created to draft regulatory technical standards in relation to the proposed regulation on market abuse (MAR) and for which ESMA will receive a formal mandate from the European Commission following the adoption of the MAR. The CSSF takes part in drawing up texts relating to suspicious transaction reporting, insider lists, transaction reporting by managers and their related persons and whistleblowing.

1.2.3. Corporate Reporting Standing Committee (CRSC)

As high-quality financial statements are important for the smooth operation of the financial markets, ESMA is involved in the process of drawing up financial information standards and cooperates in this respect, inter alia, with the IASB (International Accounting Standards Board) and the EFRAG (European Financial Reporting Advisory Group).

Thus, through its permanent committee CRSC, ESMA drew up comment letters on various discussion papers and exposure drafts of the IASB and the EFRAG.

Moreover, through its subgroup European Enforcers Coordination Sessions (EECS), the CRSC ensures that the financial information standards are consistently applied in the EU.

Thus, ESMA took in particular the following initiatives to ensure a consistent application of the IFRS standards.

- **"Review of Greek Government Bonds accounting practices in the IFRS Financial Statements for the year ended 31 December 2011"**

On 26 July 2012, ESMA published an analysis of the accounting practices of Greek government bonds in the financial statements drawn up in accordance with the IFRS standards for the year ended 31 December 2011. This analysis, performed in cooperation with the competent national authorities, covered a sample of 42 European banks with significant exposures. All of the issuers under review have recorded value adjustments on the Greek government bonds and the level of these provisions is consistent. The situation has thus improved compared to the inconsistencies observed in the intermediary financial statements as at 30 June 2011. However, the analysis revealed that the level of detail of the additional information to be published vary considerably among issuers.

- **Public statement "European common enforcement priorities for 2012 financial statements"**

On 12 November 2012, ESMA published the list of priorities to be taken into account for the review of the financial statements of issuers as at 31 December 2012 by the national competent authorities, in order to promote the consistent application of the IFRS. The priorities are as follows: financial assets, impairment on non-financial assets, defined benefit obligations and provisions under IAS 37.

- **Public statement "Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions"**

On 20 December 2012, ESMA published a document on its expectations in terms of transparency of financial institutions as regards modifications in lending practices due to financial difficulties of the borrowers. The statement covers in particular the impact of these practices on the calculation of impairment of credits granted and specific information to be provided in the financial statements as at 31 December 2012.

1.2.4. Corporate Finance Standing Committee (CFSC)

The CFSC is in charge of the work regarding the Prospectus Directive, some aspects of the Transparency Directive and corporate governance. The following work may be highlighted for the year 2012.

- **Prospectus**

In 2012, the CFSC created temporary Task Forces and a permanent operational working group (OWG). The CSSF has actively participated as a member in all Task Forces and has chaired the OWG.

The Task Forces were in charge of Parts II and III of the mandate conferred to ESMA by the European Commission on 11 January 2011 and the review of the CESR recommendations applicable to mineral companies.

By virtue of Part II of the mandate, the European Commission requested a technical advice from ESMA regarding possible delegated acts revising some existing level 2 measures. ESMA transmitted the relevant

technical advice to the European Commission in February and December 2012. By virtue of Part III of the mandate, the European Commission requested ESMA's help in drawing up a comparative table of the liability regimes applied by the Member States in relation to the Prospectus Directive. This work is still in progress.

As regards the review of CESR's recommendations applicable to mineral companies, ESMA published a consultation paper on 1 October 2012.

The OWG has a very broad mandate allowing it to take on all the work linked to the prospectus regulation and for which no specific Task Force will be created. The OWG is also in charge of ESMA's frequently asked questions which aim at promoting common approaches among national supervisory authorities. The OWG may also draw up draft regulatory and implementing technical standards in the areas specifically referred to in the Prospectus Directive.

Following the work carried out by the OWG, ESMA published:

- a general review of its frequently asked questions taking into account the entry into force of the amendments made in 2012 to the Prospectus Directive and the Prospectus Regulation, and
- the new frequently asked questions concerning (i) issue specific details that may be included in final terms, (ii) format of the summary, (iii) summaries in relation to proportionate disclosure regimes, (iv) total amount in relation to Global Depositary Receipts (GDR) issues and (v) interpretations of the terms "type of underlying" and "index description".

The OWG has also held discussions with a view of drawing up draft technical standards to determine the situations in which a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires the publication of a supplement to the prospectus.

As in the previous years, ESMA released data on the prospectuses approved and passported by the different Member States for the year 2011 and for the period covering January 2012 to June 2012.

• Transparency

In the framework of the review of the Transparency Directive, and more specifically in the context of the review of the obligations in respect of major holdings in companies whose shares are admitted to trading on a regulated market, the CFSC had set up a special working group in 2011 to prepare a consultation paper on empty voting. This document was released in September 2011. Having received the responses, ESMA published a Feedback Statement on 29 June 2012 which concluded that currently there was insufficient evidence to require additional regulatory action at the European level.

• Corporate governance

In the first half of 2012, the Advisory Group on Corporate Governance published a discussion paper on proxy advisors. The Feedback Statement is expected to be released in 2013. EMSA will invite the industry to develop a code of conduct.

• Takeover Bids Network

The CSSF participated in the discussions of this group of representatives of the competent authorities on takeover bids in the different Member States, whether they are members of ESMA or not. Exchanges notably covered the review of the Takeover Directive, the publication of the European Commission's Report on the application of the Takeover Directive and the publication of the relating study by Marccus Partners.

In this context, the European Commission has identified certain areas of concern: acting in concert, national derogations to the rule to launch a mandatory bid, exemption to launch a mandatory bid in situations where control has been acquired following a voluntary bid and protection of the rights of employees in a takeover situation. Subsequently, a subgroup of the Takeover Bids Network was created to draft an explanation or recommendation concerning the concept of "acting in concert".

1.2.5. Investor Protection and Intermediaries Standing Committee (IPISC)

In 2012, IPISC drew up guidelines on the compliance function and suitability assessments. Two public consultations preceded these guidelines.

A guide to investing, translated into all EU official languages, was published in January 2013. The guide invites investors to question the basic principles linked to financial investments. In addition, a warning of retail investors about the pitfalls of online investing was published in September 2012.

Moreover, ESMA launched a public consultation on remuneration policies and practices in relation to the provision of investment services under MiFID.

1.2.6. Standing Committee on Secondary Markets (SMSC)

Task Forces have been created within the SMSC in order to draft consultations on the technical standards provided for in the proposals for a directive and a regulation concerning markets in financial instruments (MiFID/MiFIR).

1.2.7. Post-Trading Standing Committee (PTSC)

Based on the PTSC's work, ESMA carried out two consultations in 2012 on the regulatory and implementing technical standards provided for in the proposal for a regulation on OTC derivatives, central counterparties and trade repositories (EMIR).

Following the responses received, the PTSC finalised its draft technical standards and transmitted them to the European Commission on 27 September 2012. The technical standards that have been adopted by the European Commission in the form of delegated acts were published in the EU Official Journal on 23 February 2013.

1.2.8. Investment Management Standing Committee (IMSC)

In 2012, the IMSC worked in particular on the following topics:

- technical standards and ESMA guidelines that should clarify certain subjects under Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (AIFMD);
- guidelines on ETFs and other UCITS issues;
- monetary UCIs.

• Technical standards and ESMA guidelines under the AIFMD

Following the entry into force of the AIFMD on 1 July 2011 and the adoption by the European Commission of the regulation specifying the implementing measures of the framework principles of the directive on 19 December 2012, ESMA is called upon to draft technical standards and guidelines that clarify, among other things:

- the scope of the directive;
- the conditions of application of the provisions relating to the remuneration policy; and
- the content and scope of the cooperation agreements with third countries.

These technical standards and guidelines enter into force on 22 July 2013, which is the date of application of the AIFMD and of the aforementioned European Commission regulation.

After the publication in February 2012 of a first ESMA discussion paper on the key concepts of the AIFMD, ESMA published, on 19 December 2012, two separate consultation papers aiming to specify the scope of application of the AIFMD:

- the draft regulatory technical standards implementing Article 4(4) of the directive, aiming at defining the

types of alternative investment fund managers (i.e. AIFMs of closed-ended funds/AIFMs of open-ended funds), and

- the draft guidelines on the concept of alternative investment funds (AIFs).

As regards the implementation of the directive's provisions on remuneration, ESMA must publish guidelines on the rules governing the remuneration of AIFMs (Article 13 and Annexe II of the directive).

Finally, the AIFMD requires that cooperation agreements be signed between the 27 national authorities responsible for the regulation of the securities markets in the EU and that of third countries. The cooperation applies to AIFMs outside the EU that manage or market AIFs in the EU, as well as EU AIFMs that manage or market AIFs outside the EU. These agreements cover exchange of information, cross-border visits, mutual assistance in enforcing the supervisory legislation of all parties to the agreement, as well as cooperation of cross-border supervision of depositaries and management delegation of AIFs. European regulators entrusted ESMA with the task to negotiate for their account with every third country on the basis of the guidelines defined by the Board of Supervisors of ESMA.

In 2012, ESMA has reached an agreement with two regulators: FINMA (Switzerland) and the CVM (Brazil).

• Guidelines on ETFs and other UCITS issues

ESMA's guidelines published on 18 December 2012 cover the guidelines on index funds (ETFs) and other UCITS issues, as well as the final guidelines on repurchase agreements and reverse repurchase agreements. They entered into force on 18 February 2013.

Moreover, as regards UCITS, ESMA published in 2012:

- three questions and answers documents, i.e. "Questions and Answers: Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS", "Questions and answers: Notification of UCITS and exchange of information between competent authorities" and "Questions and answers - Key Investor Information Document for UCITS";
- an opinion on Article 50(2)(a) of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to UCITS, which prescribes that UCITS may not invest more than 10% of their assets (the so-called "trash ratio") in transferable securities or money market instruments other than those mentioned in Article 50(1)(e) of the directive.

• Monetary UCIs

On 20 February 2012, ESMA published an update of "Questions and answers: A common definition of European Money Market Funds".

1.2.9. Financial Innovation Standing Committee (FISC)

The FISC's mission is to fulfil the tasks conferred on it by Article 9 of Regulation (EU) No 1095/2010 establishing ESMA and to assist the latter in its tasks and responsibilities regarding consumer protection.

As part of these tasks, it collects, analyses and reports on investor trends. In 2012, the FISC focused its efforts on elaborating a reporting system allowing following the development of these trends throughout the European market. To this end, it developed questionnaires to collect quantitative data on consumer complaints and data on the number and value of financial instruments issued on the primary market in a Member State during the reporting period concerned. Another questionnaire allows Member States to report to ESMA on the thematic research made on issues of interest to ESMA.

The FISC's meetings have become a key information exchange platform as the members are regularly invited to report on the latest financial innovation trends in their country and the possibilities of ESMA's intervention are discussed.

During the year, work was started to analyse the practices of the Member States that have introduced special provisions with respect to complex financial products, in order to be able to elaborate, if needed, good practices in that area.

Finally, the FISC decided in 2012 to set up a Consultative Working Group gathering a certain number of market professionals and academics to assist the FISC in its work.

1.2.10. IT Management and Governance Group (ITMG)

Additional explanations on the work performed in 2012 by the ITMG are provided under item 1.2.2. of Chapter XI "Supervision of information systems".

1.3. European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA, which is composed of representatives of the 29 supervisory authorities of insurance and occupational pensions in the European Economic Area (EU Member States, Norway and Iceland), assists the European Commission in preparing technical measures relating to EU legislation on insurance and occupational pensions and is entrusted with ensuring the harmonised and continuous application of EU legislation in the Member States. One of the main objectives of EIOPA, which is currently chaired by Mr Gabriel Bernadino (ISP, Portugal), is the protection of the policyholders and of the members and beneficiaries of occupational pension schemes.

In 2012, the CSSF participated as a member in the work of EIOPA and of the following permanent working groups.

1.3.1. Occupational Pensions Committee (OPC)

Within the OPC, the CSSF contributed, in 2012, to the finalisation of EIOPA's final response to the European Commission's Call for Advice on how Directive 2003/41/EC on institutions for occupational retirement provision (IORPD) should be revised.

After submitting its final advice to the European Commission on 15 February 2012, EIOPA prepared and started a quantitative impact study in order to sustain its recommendation to introduce a harmonised and risk-based supervision of institutions for occupational retirement provision (IORP), based on the concept of a holistic balance sheet that allows recording and measuring the obligations and resources (including the assets and security mechanisms) of an IORP on a regular basis.

In parallel, the CSSF contributed to the OPC's initiatives to achieve a consistent implementation of various requirements of the IORPD as amended by the Omnibus I Directive (Directive 2010/78/EU). In this context, the OPC has notably worked on draft implementing technical standards in accordance with Article 20(11) of the IORPD, which must, in principle, be submitted to the European Commission by 1 January 2014. Likewise, the OPC has started work that should allow EIOPA to develop and maintain a certain number of registers relating to the IORPs.

In addition, the OPC researched on two major aspects for defined contribution schemes, namely information to members of the pension scheme and the practice of default investment funds.

1.3.2. Review Panel

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

In 2012, the CSSF contributed to the peer review conducted by EIOPA in the IORP area concerning the means and powers of intervention that national supervisory authorities have for the prudential supervision of IORPs. The outcomes of this exercise should be finalised in the first quarter of 2013.

1.4. Joint Committee of the European supervisory authorities EBA, ESMA and EIOPA

1.4.1. Sub-Committee Financial Conglomerates (JCFC)

The CSSF takes part in the meetings of the JCFC but it should be noted that to date, no financial conglomerate has been identified for which the CSSF would need to act as coordinator.

As regards the project of a fundamental review of the Financial Conglomerates Directive, it should be noted that the European Commission concluded in its report to the European Parliament and to the Council of 9 January 2013 that a legislative proposal during the year 2013 would not be appropriate.

1.4.2. Anti-Money Laundering Committee (AMLC)

As regards AML/CFT, the CSSF contributed in 2012 to the work of the Anti-Money Laundering Committee (cf. item 2.1.3. of Chapter XIV "Fight against money laundering and terrorist financing").

1.4.3. Sub-Committee on Consumer Protection and Financial Innovation (SC CPFI)

The primary work of this sub-committee, the mission of which is the trans-sectoral intervention in areas related to consumer protection and financial innovation, consisted in defining the mandates of the three sub-structures, namely Packaged Retail Investment Products (PRIPS), Product oversight and governance by firms and Consumer Protection, in determining their practical functioning and in preparing a work programme for 2013.

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

In 2012, the CSSF took part in the works of the European Group of Auditors' Oversight Bodies (EGAOB) and its sub-working group, the EGAOB Preparatory.

In 2012, the subgroup EGAOB Preparatory continued analysing the equivalence of public oversight systems for third-country auditors and audit entities of companies established outside the EU and whose securities are admitted to trading on European regulated markets. This analysis 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 requirements on the basis of reciprocity.

Through Decision 2011/30/EU of 19 January 2011, the European Commission extended the transitional period until 31 July 2013 for 20 countries. This decision allows audit entities of these countries to pursue their activities by means of a simplified registration until the end of the transitional period. A decision concerning the recognition of equivalence of some of these 20 countries and the extension of the transitional period for others will be taken in the first half of 2013.

1.6. Other groups attached to the European Commission

1.6.1. Accounting Regulatory Committee

The CSSF participates as a member in the work of the Accounting Regulatory Committee of the European Commission.

1.6.2. Committee for the prevention of Money Laundering and Terrorist Financing (CPMLTF)

As regards AML/CFT, the CSSF contributed, in 2012, to the work of the CPMLTF of the European Commission (cf. item 2.1.2. of Chapter XIV "Fight against money laundering and terrorist financing").

2. MULTILATERAL COOPERATION

2.1. Basel Committee on banking supervision

The Basel Committee is chaired by Mr Stefan Ingves (Sweden). Mr Claude Simon, Director, represents the CSSF in the Basel Committee.

All publications by the Basel Committee and information on its organisational structure are available on the website www.bis.org.

The CSSF participates in the work of the Basel Committee and some of its sub-committees and sub-working groups. The following topics have been dealt with in 2012.

2.1.1. Review of the "Core Principles for effective banking supervision"

In September 2012, the Basel Committee published the new version of the "Core Principles for effective banking supervision". These Principles, the initial version of which dates back to 1997 and of which a revised version had been published in 2006, are the de facto minimum standard for banking prudential regulation and supervision. The Principles are notably used by the IMF in its financial sector assessment programme to assess the efficiency of the systems and machines as regards banking supervision in the different countries.

Launched in 2011, the review of the Principles is the result of the lessons learned from the financial crisis. Its aim is to strengthen risk management and supervisory practices. Its objective is also to take into account emerging factors such as the need for a more intense supervision for systemically important banks, the taking into account of the macroprudential view and the importance of effective crisis management, recovery and resolution measures.

2.1.2. Liquidity ratios

On 6 January 2013, the Basel Committee published a revised version of the Liquidity Coverage Ratio (LCR), a short-term liquidity ratio the purpose of which is to guarantee that a bank has sufficient liquid assets to face short-term liquidity bottlenecks, including in times of stress. This ratio thus improves the ability of the banking sector to absorb consecutive liquidity shocks by reducing at the same time the risk of spillover to the real economy.

Amendments to the LCR have an impact both on the liquid assets buffer and on the expected inflow and outflow rates. Subject to higher haircuts and limits, the new asset classes are corporate debt securities rated A+ to BBB-, certain unencumbered equities and certain residential mortgage-backed securities (RMBS) rated AA or higher. As regards the review of the expected inflow and outflow rates, the major adaptations are the following:

- reduction of the outflow rate on non-financial corporate deposits from 75% to 40%;
- reduction of the outflow rate on committed inter-financial liquidity and credit facilities from 100% to 40%;
- reduction of the outflow rate on maturing secured funding transactions with central banks from 25% to 0%.

The Basel Committee has also reviewed the timetable to phase in this liquidity standard. The banks must be able to apply the LCR at a minimum of 60% in 2015. Following that deadline, the ratio will be raised by 10 percentage points every year to reach 100% in 2019.

The implementation of the liquidity ratio in Luxembourg will take place via the review of Directive 2006/48/EC (CRR/CRD IV).

2.1.3. Self-assessments and peer reviews

In 2012, the work methodology of the Standards Implementation Group (SIG) was subject to important changes. Before these changes, the Basel Committee member countries used to communicate within the SIG on how they implement the common agreements at the national level. This exchange aimed at preventing distortions of

competition that could result from a non-coordinated implementation at international level. Henceforth, the SIG examines formally, through self-assessments and peer reviews, if Member States implement the Basel Committee agreements in a comprehensive and consistent way. This shift in approach follows the G20's decision to require an enhanced monitoring of effective implementation of international regulatory agreements.

The assessment is conducted on three levels: level 1 aims at ensuring the timely adoption of Basel III, level 2 aims at ensuring consistency of national regulations with Basel III and level 3 aims at ensuring consistency of outcomes. In October 2012, the Basel Committee released its fifth update of the level 1 report and a first set of level 2 assessment reports relating to the EU, Japan and the United States. These reports are available on the website of the Bank for International Settlements (www.bis.org) under the heading "Implementation" in the section dedicated to the Basel Committee.

2.1.4. Supervisory colleges

In 2012, the SIG Task Force on Colleges (SIG TFC) studied the functioning of supervisory colleges. The starting point of this study were the "Good practice principles on supervisory colleges" published by the Basel Committee in October 2010. Such a survey had already been carried out in 2011 in order to find out to what extent these principles had been implemented. The 2012 survey aims at identifying, based on the level of implementation, the areas where improvements and adaptations are necessary. In 2013, the mission will consist in reviewing the principles thoroughly based on these observations.

2.1.5. Large exposures

The Large Exposures Group (LEG) created in 2011 continued its work on the setting-up of a large exposures regime. The group's work will lead to the publication by the Basel Committee of a consultation paper in 2013. The CSSF plays an active role in this group considering the potential impact of the new rules in this area on Luxembourg banks.

2.1.6. Securitisation

On 18 December 2012, the Basel Committee has published a consultation paper on the revision of the existing rules on securitisation. This review is motivated by the role securitisation exposures have played during the financial crisis. The proposals include, among others, a revised hierarchy of approaches as well as modified versions of the ratings-based method and of the supervisory formula method, for the calculation of prudential capital requirements.

2.1.7. Accounting

In December 2012, the Basel Committee contacted the IASB (International Accounting Standards Board) and the US FASB (Financial Accounting Standards Board) regarding the draft "IFRS 9: Financial Instruments, Phase 2 Impairment" via a document that includes the "Minimum principles for the recognition of credit-risk related impairment". Indeed, banking regulators closely follow the ongoing work on the new rules that should prescribe adequate, sufficient and timely provisions.

2.1.8. Risk Measurement Group (RMG)

The Risk Measurement Group (RMG) continued to focus on the review of the regime relating to counterparty credit risk. The group's work thus led to the publication of a set of questions and answers concerning counterparty credit risk.

The RMG was further in charge of drawing up a capital requirements regime for exposures of banks to central counterparties. It has also received a mandate to draw up a harmonised regime for the treatment of banks' investments in UCI units, a mandate for which the CSSF is the coordinator within the RMG.

2.2. International Organisation of Securities Commissions (IOSCO)

• 37th IOSCO Annual Conference

The securities and futures regulators, including the CSSF, and other members of the international financial community met in Beijing from 13 to 17 May 2012, on the occasion of the 37th Annual Conference of IOSCO.

IOSCO continued to work on a number of workstreams intended to support its core objectives, namely the promotion of investor confidence in securities markets, ensuring that markets are fair, efficient and transparent, and supporting financial stability through the reduction of systemic risk. In particular, IOSCO confirmed its interest in addressing the G20 and FSB (Financial Stability Board) agenda, notably with respect to regulatory reforms, money market funds and systemically important financial institutions (including systemically important market intermediaries).

The 37th Annual Conference marked the 10th anniversary of IOSCO's Multilateral Memorandum of Understanding (MMoU), whose importance has been highlighted. Four members signed the MMoU during the 2012 Annual Conference, bringing to 86 the total number of signatories in accordance with its Appendix A. As IOSCO's goal was that all ordinary members and associate members with financial markets responsibilities be signatories to the MMoU by 1 January 2013, it was announced that a list of all members that have not yet signed the MMoU will be published on IOSCO's website.

At the 2012 Annual Conference, a new IOSCO Board was constituted which takes over the functions of the Executive Committee, Technical Committee and Emerging Markets Committee Advisory Board. By commissioning a single integrated structure, IOSCO will be more effective and efficient in conveying its messages in one voice. The new Board is composed of 32 members who will serve a two-year term. The Emerging Markets Committee will remain in place alongside the Board.

To enhance IOSCO's effectiveness, the creation of a IOSCO foundation as a vehicle to raise funding from a range of sources was proposed. New funding will go towards expanding the services offered to members, including technical assistance, education and training and research. IOSCO's Members voiced support for the proposal.

IOSCO's 38th Annual Conference will be held, for the first time since IOSCO's creation in 1983, in Luxembourg from 15 to 19 September 2013.

• Committee 5 on Investment Management

The Committee 5, successor of Standing Committee SC5, met three times in 2012. It focused on the following topics:

- Policy Recommendations for Money Market Funds,
- Principles for the Valuation of Collective Investment Schemes (CIS),
- Liquidity Risk Management of CIS,
- Methodology for Assessing Systemically Important CIS other than Hedge Funds,
- Principles for the Regulation of Exchange Traded Funds (ETFs).

Within the Committee 5, the CSSF participated notably in the working group on ETFs and in the working group on monetary UCIs.

2.3. Enlarged Contact Group "Undertakings for Collective Investment"

The CSSF attended the annual meeting of the Enlarged Contact Group "Undertakings for Collective Investment" which was held from 19 to 21 September 2012 in Luxembourg. The following subjects have been discussed: questions relating to supervision, conflicts of interest/conduct of business, legal topics, financial issues, reporting and disclosure, management and administration of investment funds.

2.4. Others

The CSSF participated, in 2012, in the work of the Institut francophone de la régulation financière (IFREFI), the Groupe des Superviseurs Bancaires Francophones (GSBF, Group of francophone banking supervisors), the FSB Regional Consultative Group for Europe and the International Forum of Independent Audit Regulators (IFIAR).

Furthermore, within the context of the fight against money laundering and terrorist financing, the CSSF contributed, in 2012, to the work of the Financial Action Task Force (FATF) of the OECD and its subgroups and to those of the Wolfsberg Group (cf. Chapter XIV "Fight against money laundering and terrorist financing").

3. LIST OF INTERNATIONAL GROUPS IN WHICH THE CSSF PARTICIPATES

At international level, the CSSF participates as a member in the works of the following committees, working groups and subgroups.

European Systemic Risk Board (ESRB)

- **Advisory Technical Committee and the subgroup**
  - Expert Group on Money Market Funds

European Banking Authority (EBA)

- **Board of Supervisors**
- **Standing Committee on Regulation and Policy (SCRePol) and the subgroups**
  - Subgroup on Own Funds
  - Subgroup on Credit Risk
  - Subgroup on Crisis Management
  - Subgroup on Governance and Remuneration
  - Subgroup on Operational Risk
  - Subgroup on Liquidity
  - Subgroup on Securitisation and Covered Bonds
  - Network on ECAIs (External Credit Assessment Institutions)
  - Network on Supervisory Disclosure and the subgroups
    - Task Force on Options and National Discretions
  - Task Force on Market Risk
  - Task Force on Leverage Ratio
  - Task Force on Model Validations
  - Task Force on the Consistency of outcome in Risk-Weighted Assets
  - Network on Third Country Equivalence
- **Standing Committee on Oversight and Practices (SCOP) and the subgroups**
  - Subgroup on Vulnerabilities and ongoing assessment of risk
  - Subgroup on Micro-prudential analysis tools and data
  - Subgroup on Home-host and colleges
  - Subgroup on Risk assessment systems under Pillar 2
  - Subgroup on Implementation and supervisory practices

- **Standing Committee on Accounting, Reporting and Auditing (SCARA) and the subgroups**
  - Subgroup on Accounting
  - Subgroup on Reporting
  - Subgroup on Auditing
  - Subgroup on Transparency
  - Network on COREP
  - Network on FINREP
- **Standing Committee on Consumer Protection and Financial Innovation (SCCONFIN) and the subgroups**
  - Subgroup on Consumer Protection
  - Subgroup on Innovative Products
- **Standing Committee on IT / IT Sounding Board and the subgroups**
  - Subgroup on XBRL
  - Eurofiling Initiative
- **Review Panel and the subgroup**
  - Methodology Drafting Subgroup
- **Impact Study Group (ISG)**
- **Expert Group on EU-wide stress-testing**
- **Network on CRR/CRD**
- **Credit Institutions Register**
- **Asset Quality Review**
- **Human Resources Network**
- **Press officers**

European Securities and Markets Authority (ESMA)

- **Board of Supervisors**
- **Board of Directors**
- **Review Panel and the subgroups**
  - Subgroup on Money Market Funds
  - Review Panel DG Peer Review Market Abuse Directive
- **ESMA-PoI and the subgroups**
  - Task Force on MMOU
  - Joint Subgroup ESMA-PoI - ITMG on Transaction Reporting Systems
  - TRS Drafting Group on upcoming MiFIR
  - Working Group on Market Abuse Regulation
- **Corporate Reporting Standing Committee (CRSC) and the subgroups**
  - Project Group on IFRS
  - European Enforcers Coordination Sessions
  - Audit Task Force
  - Task Force on Storage of Regulated Information
  - Task Force on Periodic Information
  - Task Force on ESMA guidelines on enforcement of financial information

- **Corporate Finance Standing Committee (CFSC) and the subgroups**
  - Task Force on the review of the provisions of the Prospectus Regulation
  - Task Force on Mineral Companies
  - Task Force on Liability Regimes
  - Task Force on Transparency Issues
  - Task Force on Convertible Debt Securities
  - Task Force on Retail Cascades
  - Takeover Bids Network
  - Advisory Group on Corporate Governance
  - Consultative Working Group
  - Prospectus Operational Working Group and the subgroup
    - Subgroup concerning drafting of an RTS on specific situations that require publication of a supplement
- **Investor Protection and Intermediaries Standing Committee (IPISC) and the subgroup**
  - IPISC Task Force
- **Secondary Markets Standing Committee (SMSC)**
- **Post-Trading Standing Committee (PTSC) and the subgroups**
  - Task Force on Trade Repositories
  - Task Force on CSD
- **Investment Management Standing Committee (IMSC) and the subgroups**
  - Operational Working Group on Supervisory Convergence
  - Task Force on AIFMD Reporting
- **Financial Innovation Standing Committee (FISC)**
- **Committee for Economic and Markets Analysis (CEMA) and the subgroup**
  - Working Group on high frequency trading
- **IT Management and Governance Group and the subgroup**
  - Task Force for the Omnibus Registers Project
- **Credit Rating Agencies Technical Committee**
- **Human Resources Network**
- **ESMA Consumer Network**
- **Press Officers**

European Insurance and Occupational Pensions Authority - EIOPA

- **Board of Supervisors**
- **Occupational Pensions Committee (OPC) and the subgroup**
  Workstreams recast IORP Directive
- **Financial Stability Committee**
- **Review Panel**
- **Press Officers**

Joint Committee of the three European Supervisory Authorities EBA, ESMA, EIOPA

- **Subcommittee on Financial Conglomerates**
- **Anti-Money Laundering Committee (AMLC) and the subgroups**
  Risk Based Supervision Working Group
  E-Money Working Group
- **Subcommittee on Consumer Protection and Financial Innovation**

European Central Bank

- **High Level Group on Supervisory Issues**
- **Task Force on SSM and the subgroups**
  SSM Workstream 2
  SSM Workstream 3
  SSM Workstream 4
- **Human Resources Conference in SSM Composition**
- **The European Forum on the Security of Retail Payments (SecuRe Pay Forum)**

Council of the EU

- **European Market Infrastructure Regulation (EMIR)**
- **Regulation on Short-Selling and certain aspects of Credit Default Swaps**
- **Investor Compensation Schemes**
- **CRD IV**
- **MiFID II**
- **Venture Capital and Social Entrepreneurship Funds**
- **Market Abuse Regulation (MAR)**
- **PRIPS**
- **Directive on banking resolution and recovery**
- **Ad hoc Working Party on the Banking Supervision Mechanism**
- **Deposit Guarantee Schemes**

European Commission

- **Capital Requirements Directive Working Group (CRDWG)**
- **Capital Requirements Directive Transposition Group**
- **Accounting Regulatory Committee (ARC)**
- **Audit Regulatory Committee**
- **European Group of Auditors' Oversight Bodies (EGAOB) and the subgroups**
  - Preparatory Subgroup
  - European Audit Inspection Group (EAIG)
- **Committee for the prevention of Money Laundering and Terrorist Financing (CPMLTF)**
- **Working Party on Close-Out Netting**
- **Working Party on Financial Services-SEPA**

European Financial Reporting Advisory Group (EFRAG)

- **Consultative Forum of Standard Setters**

Basel Committee on Banking Supervision

- **Policy Development Group (PDG) and the subgroups**
  - Leverage Ratio Subgroup
  - Risk Measurement Group
  - Working Group on Large Exposures
    - WS 4 – Intragroup Exposures
  - Working Group on Liquidity
  - Definition of Capital Subgroup
  - Capital Monitoring Group
  - Corporate Governance Group
  - Cross-Border Bank Resolution Group
  - Working Group on Disclosure
  - QIS Working Group
- **Standards Implementation Group (SIG) and the subgroups**
  - Operational Risk Subgroup
  - Network on Pillar 2
  - Task Force on Colleges
- **Accounting Task Force (ATF) and the subgroup**
  - Audit Subgroup
- **AML/CFT Expert Group (AMLEG)**

Financial Stability Board

- **European Regional Consultative Group**

International Organisation of Securities Commissions (IOSCO)

- **IOSCO Annual Conference**
- **IOSCO European Regional Conference**
- **Committee 1 on Issuer Accounting, Audit and Disclosure and the subgroups**
  - Accounting Subcommittee
  - Auditing Subcommittee
  - IOSCO IFRS Database
- **Committee 5 on Investment Management**
- **Assessment Committee and the subgroup**
  - Implementation Task Force Subcommittee

Financial Action Task Force (FATF)

- **International Cooperation Review Group**
- **Working Group on Evaluations and Implementation and the subgroup**
  - Subgroup on Effectiveness
- **Working Group on Terrorist Financing and Money Laundering and the subgroup**
  - Subgroup on new payment methods
- **Working Group on Typologies and the subgroup**
  - Subgroup on risk and threat assessment
- **Plenary Meeting**

Organisation for Economic Cooperation and Development (OECD)

- **Working Group on Private Pensions**
- **Task Force on Financial Consumer Protection and the subgroups**
  - Subgroup on Principle 6 : Responsible Business Conduct of Financial Service Providers and Authorised Agents
  - Subgroup on Principle 9 : Complaints Handling and Redress
- **International Network on Financial Education (INFE)**

Others

- **Enlarged Contact Group "Undertakings for Collective Investment"**
- **IT Supervisory Board**
- **European Committee for Standardization Workshop XBRL**
- **Passport Experts Network**
- **PSD Passport Liaison Group**
- **International Forum of Independent Audit Regulators (IFIAR)**
- **Institut francophone de la régulation financière (IFREFI)**
- **Groupe des Superviseurs Bancaires Francophones (GSBF - Group of francophone banking supervisors)**
- **FIN-NET**
- **Financial Consumer Protection Network (FinCoNet) and the subgroup**
  Working Group 2 – Strengthen supervisory tools by identifying gaps and weaknesses
- **Child and Youth Finance**

Agents hired in 2012 and 2013: Departments "Supervision of securities markets" and "Supervision of banks"

Left to right: Gaston COLBACH, Miriam DEISS, Pierrot EDLINGER, Lindsay ZAK, Daniel HÜBER, Philippe PONCIN, Gernot ZOTTER, Claude KESSELER, Eva KÖSZEGHY

Absent: Sergi VILÀ

CHAPTER III

SUPERVISION OF THE BANKING SECTOR

1. Developments in the banking sector in 2012
2. Prudential supervisory practice

1. DEVELOPMENTS IN THE BANKING SECTOR IN 2012

1.1. Major events in 2012

1.1.1. Single Supervisory Mechanism

On 29 June 2012, the European Council decided to create a single supervisory mechanism for banks in the euro area in exchange for the possibility to directly recapitalise banks in distress via the ESM (European Stability Mechanism).

A proposal for a European regulation conferring specific tasks on the European Central Bank (ECB) as regards the prudential supervision of credit institutions was published on 14 December 2012. This proposal provides for the transfer of an important number of the national authorities' competences in prudential supervision to the ECB including the authorisation and withdrawal of authorisation of banks, the authorisation of qualified shareholders, the control of the legal provisions with respect to own funds, large exposures and liquidity, the control of governance, the internal control and risk management, the authorisation of managers (*dirigeants*) and the prudential review process.

The ECB will be assisted by the national authorities for the performance of prudential supervision.

For smaller banks, the national authorities will continue to directly carry out, in a framework to be defined by the ECB, the tasks attributed to the ECB, except the authorisation, the withdrawal of authorisation, the authorisation of qualified shareholders and the performance of the supplementary supervision for financial conglomerates. These tasks will be carried out directly by the ECB even for smaller banks.

The criteria retained to define the importance of a bank are the following:

- the overall size: a balance sheet exceeding EUR 30 billion;
- the relative size: a balance sheet exceeding 20% of the gross domestic product (GDP);
- the importance of the cross-border activities (in principle, the presence of a consolidating bank which has at least two subsidiaries in the euro area).

The size is determined, where applicable, on a consolidated basis at the highest level in the euro area.

1.1.2. Single rulebook for banks

On 20 July 2011, the European Commission presented proposals for a directive and for a regulation[1] aiming to create a single rulebook for banks which includes, among others, the current provisions applicable in this matter (i.e. CRD, CRD II, CRD III) and transposes the "Basel III" standards at European level.

In 2012, discussions between the European Commission, the European Parliament and the Presidency of the European Council took place in the framework of a "trilogue" of these institutions in order to agree on the final legal texts in this matter.

The forthcoming directive, to be transposed into national law, will cover some areas regarding capital adequacy and will also include new elements like the strengthening of governance, provisions relating to sanctions and capital buffers.

The forthcoming European regulation will cover, among others, the definition of own funds and regulatory capital requirements, the ratios applicable to liquidity risk as well as the leverage ratio. This regulation, the purpose of which is maximum harmonisation, will be directly applicable to banks in the EU Member States; no national transposition will be needed so that discrepancies in national transpositions will be limited. It will therefore replace part of the provisions of CSSF circulars, among which Circular CSSF 06/273 which will be at least partially repealed in due time.

[1] Proposal for a directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (CRD IV) and proposal for a regulation on the prudential requirements applicable to credit institutions and investment firms (CRR).

The forthcoming European regulation will also include the obligation for the EBA to develop binding technical standards aiming to define the manner in which some aspects (e.g. in the area of prudential reporting) will be implemented. After approval by the European Commission, these implementing technical standards will be directly applicable to banks and will not need to be transposed by the EU Member States.

The date of the entry into force of the new rules, first set on 1 January 2013, will be postponed and it is likely that the texts will be applicable as from 1 January 2014 at the earliest.

1.1.3. Risks in the Luxembourg banking sector

The notion of risk designates in this case banking commitments or activities the nature of which may jeopardise the financial stability of some individual credit institutions or of the entire banking sector in case these commitments or activities develop in an extremely adverse manner. Whereas such an adversity cannot be excluded, its imminence is generally difficult to predict. Hence, the CSSF does not venture to make predictions but ensures that the banks duly take into account the inherent risks in their commitments.

There are no risk-free banking activities. The analysis of the risk structure in the Luxembourg banking sector mainly reveals three risk concentrations which require a particular management and monitoring by the Luxembourg credit institutions concerned, namely: sovereign risks, risks linked to the financing of residential real estate in Luxembourg and intra-group risks. The nature and the level of these “systemic” risks vary greatly among banks and according to the activities performed.

• Sovereign risks

Sovereign risks are credit exposures to the public sector which include central, regional and local administrations.

Under the combined effect of the CSSF interventions as from 2008 and the market developments, excessive exposures, built up in a context where sovereign risks were considered as insignificant, gave way to moderate exposures which generally represent an acceptable ratio between own funds and sovereign (risk) exposures. Certain significant concentrations remain at the level of banks issuing covered bonds whose business model - issue of public covered bonds linked to sovereign exposures - includes, by definition, a sovereign risk concentration. Additionally, in 2012, there were individual cases of banks which used long-term refinancing transactions of the ECB in February 2012 to increase their sovereign exposures, particularly to Italy and, to a lesser extent, to Spain. The CSSF reminds the banks that this type of commitment must remain compliant with their business model. Thus, a private bank is usually not aimed at becoming a centre of excellence in investment banking. Moreover, pursuant to ICAAP[2], banks must keep an amount of own funds adapted to the risks for these exposures. This requirement is essential where the exposures exceed the amount of own funds and attract a risk weight of 0% in the standardised approach to credit risk pursuant to Part VII, point 15 of Circular CSSF 06/273.

At the end of 2012, the aggregate exposure of Luxembourg banks to the public sector decreased to EUR 54.5 billion. The allotment of this amount between the different sovereign debtors is carried out by increasingly favouring the public sector of big European countries less affected by the sovereign debt crisis. As at 31 December 2012, the main debtors of Luxembourg banks were as follows.

[2] Internal Capital Adequacy Assessment Process.

Exposures of Luxembourg banks to the public sector

Public sector	Exposures *(in million EUR)*
Italy	8,511
France	7,651
Germany	6,282
United States	5,212
Luxembourg	3,497
United Kingdom	3,491
Belgium	3,330
Spain	3,064
Canada	2,426
Netherlands	1,290

• Risk linked to residential real estate in Luxembourg

The local market of real estate mortgage financing is assured only by a limited number of the financial centre's banks. The activity on this market remains sustained as shown by the increase of 8% over a year of the mortgage credits that these banks granted to their retail customers. Since end of 2008, the volume of these credits has increased by about 45%.

In the past, granting credits generally presupposed a contribution by the future buyer amounting to about 20% of the value of the real estate. This prudential practice, which is not explicitly laid down in Luxembourg law, gave way to full financing models today. This trend to loosen the criteria for credit granting seems now difficult to reverse in the short term without prejudicial effects with respect to the access to real estate property in Luxembourg. This problem expands beyond the national borders as shown by the discussions within the Financial Stability Board (FSB) and by the absence of political consensus for the implementation of strict limits as regards quota of own financing at international level.

In Luxembourg, the CSSF introduced via a circular published in 2012 new prudential rules governing the risk-taking linked to the residential real estate sector. First, the own funds that the banks must hold to cover their residential real estate credits to private individuals were revised upwards. These new rules are in line with the requirements laid down in the forthcoming CRR[3]. Second, the circular requires that each real estate development project funding provides for a reasonable start date for repayment of the principal. Until now, some real estate projects were financed by renewable annual credits. Where the project did not start before the maturity of the credit, the credit was simply rolled over. Hence, where the credits are not repaid at maturity, they will be treated as restructured credits and unpaid interest must be fully provisioned.

Moreover, the CSSF maintains the additional capital requirements which have been imposed since 2009 on credit institutions that are highly exposed to the local real estate sector. These banks must observe a regulatory solvency ratio set at 10%, i.e. 2% more than the regulatory minimum.

• Risks linked to intra-group exposures

The Luxembourg banking centre has many subsidiaries of large international banking groups. Generally, these subsidiaries do not have competences in investment banking in Luxembourg and the deposits they collect in the context of the portfolio management services they provide are lent to the group. In this context, the CSSF normally accepts, in accordance with the intra-group exemption laid down in the European regulatory framework governing large exposures, that a portion of these deposits be invested by a Luxembourg banking subsidiary with its parent company up to an amount exceeding the 25% limit of own funds usually applicable under the regulations on large exposures. This intra-group exemption is subject to conditions: it does not allow the banks to carry out a risky business of maturity transformation which occurs when short-term customer deposits are invested as long-term loans, or when they are used to finance peripheral group entities in which the Luxembourg banks have no direct interest. In addition, Circular CSSF 06/273 subjects all the intra-group exposures to regulatory capital requirements and, at the level of the solvency ratio of Luxembourg subsidiaries,

[3] See item 1.1.2. of this chapter.

the CSSF continues to reflect any capital surcharge imposed on the parent company of the Luxembourg bank where the latter has significant exposures to the parent company.

Besides the above-mentioned risks, the following risks are also worth mentioning.

• Economic risks

When the economy deteriorates, the number of borrowers experiencing difficulties in fulfilling their commitments grows. Sometimes banks can be accommodating and allow such debtors to adjust their repayment plans. This practice may be beneficial both for the borrower and the bank if it allows continuing the underlying transaction and realising mutual inherent benefits. However, the practice is not acceptable when it leads to considering non performing loans as performing well, to making impenetrable the assessment of the assets' quality and to not making the necessary provisions or depreciations.

Banks which practise this type of compromise experience difficulties to assess accurately the quality of their exposures. This is because the exposure is not subject to a contractual restructuring, fully reflected in the bank's IT system, but only to an amendment to the agreement which is often not reflected entirely in all the management data of the bank. In this context, the CSSF requires such accommodating banks to have an IT management system that allows them to monitor the impact of this practice on the quality of their assets, to assess regularly the quality of their assets based on the arrangements made and to assess the need or opportunity to make provisions or depreciations. With the publication of Circular CSSF 12/552 in December 2012, the above-mentioned requirements are henceforth laid down in Luxembourg legislation (cf. points 224 to 227 of the circular).

• Risks related to the activity of depositary bank

The activity of depositary bank carried out by Luxembourg banks in the framework of their services related to wealth management concerns global assets amounting to around EUR 2,990 billion. By adding the assets deposited in connection with payment and securities settlement transactions to the previous figure, the total amounts to EUR 13,800 billion.

In view of the high amount of assets deposited with the Luxembourg banks, an interruption of the service provision by the depositary bank might jeopardise the orderly functioning of the global financial markets. Unlike the aforementioned risks, the risk linked to business continuity of a depositary bank is, therefore, mainly a risk that the financial centre implies for the global financial system.

In accordance with Article 5(3) of the Grand-ducal regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector, the CSSF requires that the Luxembourg banks take appropriate measures to limit the adverse effects of business discontinuity.

• Other risks

Following the two recommendations adopted by the General Board of the European Systemic Risk Board (ESRB) in 2011 and concerning the risks linked to lending in foreign currencies and US dollar denominated funding, the CSSF, in collaboration with the BCL, published Circular CSSF 12/537 on US dollar denominated funding of credit institutions and Circular CSSF 12/538 on lending in foreign currencies which implement the ESRB recommendations in Luxembourg. In Luxembourg, these risks are however lower. In 2012, the General Board of the ESRB did not publish new recommendations on banking risks.

1.2. Characteristics of the Luxembourg banking sector

The Luxembourg banking legislation provides for two types of banking licences, namely: universal banks (135 institutions had this status on 31 December 2012) and banks issuing covered bonds (six institutions had this status on 31 December 2012). The main features of the banks issuing covered bonds are: prohibition to collect deposits from the public and monopoly of covered bonds issue (cf. item 1.9. below).

Depending on their legal status and geographical origin, banks in Luxembourg belong to one of the following three groups:

- banks incorporated under Luxembourg law (106 on 31 December 2012);
- branches of banks incorporated in an EU Member State or assimilated (29 on 31 December 2012);
- branches of banks incorporated in a non-EU Member State (6 on 31 December 2012).

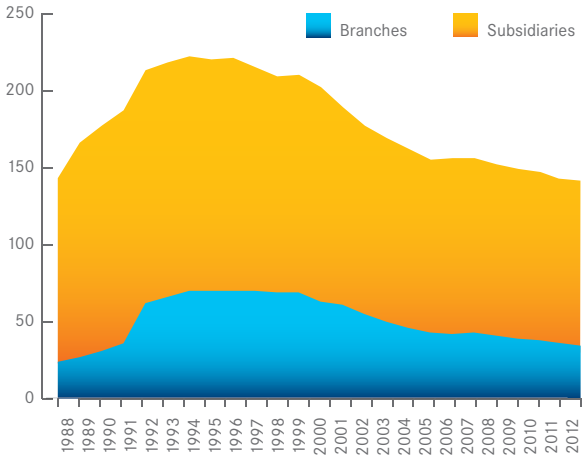
Furthermore, there is one special case: the *caisses rurales* (13 on 31 December 2012) and their central establishment, Banque Raiffeisen, are to be considered as a single credit institution, according to the law on the financial sector.

1.3. Development in the number of credit institutions

With 141 entities authorised at the end of the year 2012, the number of banks decreased by two entities as compared to 31 December 2011 (143). Among those 141 entities, 106 were banks incorporated under Luxembourg law (107 in 2011) and 35 were branches (36 in 2011).

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
2010	38	109	147
2011	36	107	143
2012	35	106	141



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

• Landesbank Saar Girozentrale, Niederlassung Luxemburg	Cessation of activities as at 1 January 2012
• Swedbank S.A.	Change of business purpose as from 23 April 2012
• HSH Nordbank Private Banking S.A.	Merger with HSH Nordbank Securities S.A. on 15 May 2012
• VM Bank International S.A.	Voluntary liquidation as at 1 July 2012
• Lombard Odier Darier Hentsch & Cie (Belgique) S.A., succursale de Luxembourg	Cessation of activities as at 1 December 2012
• Sal. Oppenheim jr. & Cie. AG & Co. KGaA, succursale de Luxembourg	Cessation of activities as at 7 December 2012
• Alpha Credit S.A., succursale de Luxembourg	Cessation of activities as at 31 December 2012

Five new banks started their activities in 2012:

• Banco Espirito Santo, S.A., succursale de Luxembourg	1 January 2012; the bank incorporated under Portuguese law mainly aims at the Portuguese community and offers retail banking services.
• Swedbank AB (publ), Luxembourg Branch	17 April 2012; the branch took over the activity of depositary bank of UCIs from Swedbank S.A. which became a PFS.
• Banca March, S.A., Luxembourg Branch	31 May 2012; the bank incorporated under Spanish law is active in private banking.
• ABLV Bank Luxembourg S.A.	1 October 2012; the bank of Latvian origin is active in private banking.
• Lombard Odier (Europe) S.A.	1 December 2012; the bank of Swiss origin took over the activities of the group's Luxembourg branch; it intends to head the European network of the group.

Geographical origin of banks

Country	Number
Germany	37
France	14
Switzerland	11
Italy	9
Sweden	8
United Kingdom	8
Belgium	6
United States	6
Japan	5
Luxembourg	5
China	4
Netherlands	4
Israel	3
Portugal	3
Qatar	3
Andorra	2
Brazil	2
Canada	2
Norway	2
Denmark	1
Greece	1
Latvia	1
Liechtenstein	1
Russia	1
Spain	1
Turkey	1
Total	**141**

1.4. Developments in banking employment

As at 31 December 2012, the Luxembourg credit institutions employed 26,537 people. Compared to the situation as at 31 December 2011 when banking employment registered 26,695 people, employment in the banking sector decreased by 158 people over a year.

After the decreases in 2009 and 2010 (-785 people in 2009, -166 people in 2010) and a slight increase in 2011 (+441 people following the transfer of a certain number of jobs from the PFS sector to the banking sector; thus, this transfer did not impact the total number of employment in the financial sector but only changed the breakdown between the professionals of the financial sector), banking employment registered a new decline year-on-year which was partially due to exceptional circumstances.

Part of the decrease in banking employment resulted from the transfer of activities of investment fund management to the PFS sector. Similarly to the transfer of activities recorded in 2011, this transfer did not impact the total number of jobs in the financial sector, but only changed the breakdown between the professionals of

the financial sector. Another major factor which explains the decrease in banking employment is the ongoing restructuring and consolidation of the activities following mergers and acquisitions. Finally, the seven banks which ceased their activities in 2012 also contributed to the decrease in banking employment. This decrease was not compensated by the creation of jobs in the five credit institutions which started their activities in Luxembourg in 2012.

In non-aggregate terms, the banks developed heterogeneously in terms of employment. Thus, 40% of the credit institutions increased their staff over a year. This proportion is comparable to the figure recorded in 2011 (39%). Even though the percentage of institutions which maintained or increased their staff remained steady at 59%, it compares nonetheless unfavourably to the pre-crisis period when it exceeded 70%. In 2012, almost 41% of institutions reduced their staff.

The breakdown of aggregate employment shows that the female employment rate remained steady, down from 45.9% to 45.8%. The share of executives in total employment also remained almost unchanged at 26.7% (against 26.5% in 2011).

Breakdown of the number of employees per bank

	Number of banks							
Number of employees	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
> 1,000	4	5	5	5	5	6	6	5
500 to 1,000	6	7	9	8	9	8	9	10
400 to 500	4	3	2	4	3	1	3	3
300 to 400	7	8	10	11	9	9	7	6
200 to 300	7	10	9	8	8	7	5	7
100 to 200	20	18	18	16	18	16	15	17
50 to 100	18	18	21	20	20	21	21	16
< 50	89	87	82	80	77	79	77	77
Total	**155**	**156**	**156**	**152**	**149**	**147**	**143**	**141**

Situation of employment in credit institutions

	Total		Management			Employees			Total staff			Variation	
	Luxembourg	Foreigners	Men	Women	Total	Men	Women	Total	Men	Women	Total	in number	in %
1997	8,003	11,086	2,765	547	3,312	7,675	8,102	15,777	10,440	8,649	19,089	507	2.7%
1998	7,829	12,005	2,900	577	3,477	7,893	8,464	16,357	10,793	9,041	19,834	745	3.9%
1999	7,797	13,400	3,119	670	3,789	8,396	9,012	17,408	11,515	9,682	21,197	1,363	6.9%
2000	7,836	15,232	3,371	783	4,154	9,065	9,849	18,914	12,436	10,632	23,068	1,871	8.8%
2001	7,713	16,148	3,581	917	4,498	9,255	10,108	19,363	12,836	11,025	23,861	793	3.4%
2002	7,402	15,898	3,654	977	4,631	8,966	9,703	18,669	12,620	10,680	23,300	-561	-2.4%
2003	7,117	15,412	3,720	1,049	4,769	8,509	9,251	17,754	12,229	10,300	22,529	-771	-3.3%
2004	7,001	15,553	3,801	1,111	4,912	8,470	9,172	17,642	12,271	10,283	22,554	25	0.1%
2005	6,822	16,405	3,948	1,183	5,131	8,661	9,435	18,096	12,609	10,618	23,227	673	3.0%
2006	6,840	17,912	4,280	1,294	5,574	9,172	10,006	19,178	13,452	11,300	24,752	1,525	6.6%
2007	6,962	19,177	4,669	1,475	6,144	9,557	10,438	19,995	14,226	11,913	26,139	1,387	5.6%
2008	6,898	20,307	5,101	1,672	6,773	9,673	10,759	20,432	14,774	12,431	27,205	1,066	4.1%
2009	6,599	19,821	5,221	1,781	7,002	9,199	10,219	19,418	14,420	12,000	26,420	-785	-2.9%
2010	6,623	19,631	5,048	1,875	6,923	9,033	10,298	19,331	14,081	12,173	26,254	-166	-0.6%
2011	6,270	20,425	5,175	1,905	7,080	9,265	10,350	19,615	14,440	12,255	26,695	441	1.7%
2012	6,220	20,317	5,122	1,966	7,088	9,258	10,191	19,449	14,380	12,157	26,537	-158	-0.6%

1.5. Evolution of balance sheet and off-balance sheet accounts

1.5.1. Balance sheet total of credit institutions

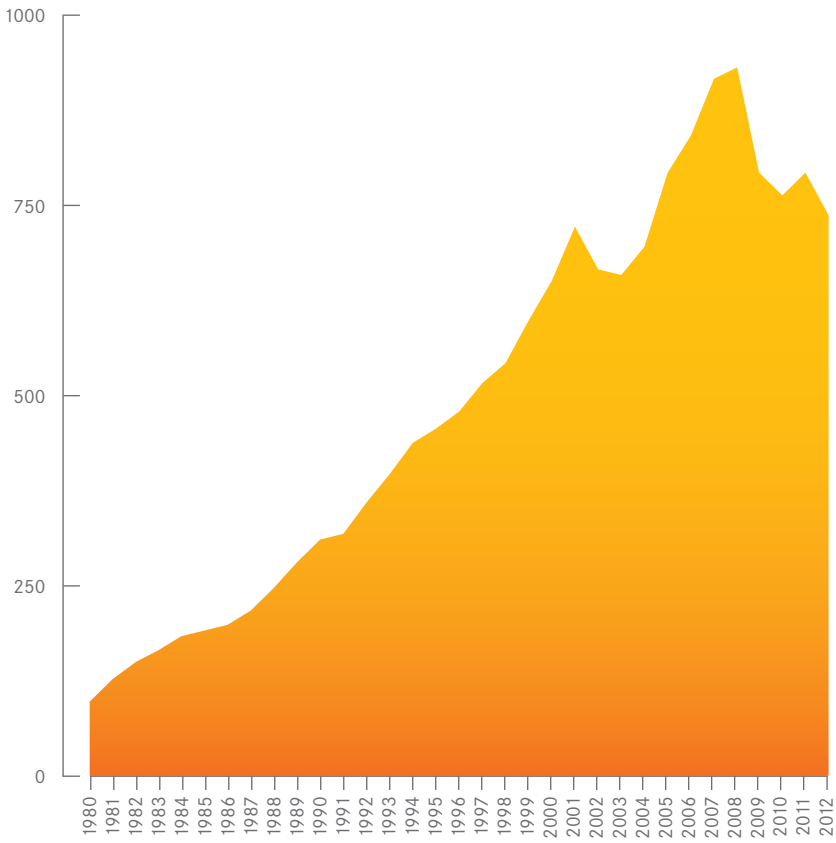
As at 31 December 2012, the balance sheet total of credit institutions amounted to EUR 735.1 billion against EUR 792.9 billion as at 31 December 2011. This annual decrease by 7.3% came after one year of increase in the total balance sheet of banks (+4.0% in 2011). Thus, the banking sector resumed the downward trend recorded in 2010 (-3.8%) and 2009 (-14.7%).

The decline of the balance sheet total in 2012 concerned 53% of the financial centre's banks. The majority of the banks whose balance sheet total decreased year-on-year were part of banking groups established in the euro area. The reductions in the activities were in line with the less favourable macroeconomic context in Europe and reflected the necessity for European banks to adapt their risks and balance sheet structure to their capacity to manage and support risks. Moreover, an important part of the drop in the aggregate balance sheet was attributable to two Swiss banking groups which invested, via Luxembourg, large amounts of liquidities in euro with the European System of Central Banks.

However, the increase in the balance sheet total of certain banks resulted, among others, from the takeover of activities or development of new activities. In the latter case, the banks concerned generally originated from non-EU countries.

Evolution 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	792.54
2010	762.32
2011	792.89
2012	735.06[4]



1.5.2. Evolution of the structure of the aggregate balance sheet

On the **asset** side, the decline of the activity was reflected in all the items, except for variable-yield transferable securities. The fall in the total balance sheet (-7.3% year-on-year) was dependent on the decreases by 7.0% and 8.1% recorded in loans and advances to credit institutions and loans to customers which were among the most important counterparties in the balance sheet assets.

Loans and advances to credit institutions fell by 7.0% over a year to EUR 326.6 billion at the end of December 2012. Dominated by intra-group commitments, interbank loans and advances remained predominant on the asset side with 44.4%.

Loans and advances to customers, which include companies and retail customers, declined by 8.1% to EUR 163.4 billion at the end of 2012 (against EUR 177.8 billion in 2011). Among those loans and advances, the exposures to retail customers, which were mainly from Luxembourg, rose by 2.9% over a year. These exposures, which had grown by almost 3.4% in 2011, were worth EUR 40.8 billion. On the other hand, loans and advances to companies decreased by 11.4% over a year. This decrease occurred predominantly in Luxembourg banks belonging to foreign banking groups forced to reduce their financial intermediation business. As regards the balance sheet structure, the proportion of loans and advances to customers remained stable with 22.2% of the balance sheet total as at 31 December 2012.

At the end of 2012, **loans and advances to central banks and central governments** reached EUR 53.9 billion against EUR 64.6 billion at the end of 2011. Among these loans and advances, deposits with central banks represented 83.3%, i.e. EUR 45.0 billion. The partial easing of the European sovereign debt crisis explains why some banks, that invested liquidity surplus with the BCL at the peak of the crisis, decreased these investments. This was particularly the case for Swiss banking groups that used Luxembourg as entry point into the European

[4] Preliminary figure.

System of Central Banks. The trend was not the same for all the banks in the financial centre, one third of which continued to increase their deposits with the BCL in 2012. It should also be noted that exposures in the form of loans and advances to central governments decreased by 7.6% to EUR 9.0 billion at the end of 2012.

Fixed-income securities, which represented over 90% of the total of transferable securities, dropped by 0.9% during 2012. However, the positions in sovereign bonds rose by 12.3% compared to 2011, when the depreciation of the Greek debt and the active reduction of certain positions in sovereign debt securities considered incompatible with the risk profile of Luxembourg banks induced a 19.2% decrease of positions in sovereign bonds. For Luxembourg bank positions in bonds issued by banks or companies, the downward trend remained with -4.9% for banking counterparties and -3.3% for companies. However, these decreases were less marked than in 2011 (-19.1% and -31.9%, respectively).

Since the decline in the fixed-income transferable securities portfolio was less than the fall in the aggregate balance sheet, the portion of fixed-income transferable securities in the balance sheet total rose to 20.1% (against 18.8% at the end of 2011). The sector-based composition of this portfolio continued to show mainly bank (48.1%) and government (30.6%) securities.

Due to the reduction of their assets, the banks in the financial centre requested less external refinancing than in 2011. The reduction of the external **refinancing sources** concerned of course amounts owed to related credit institutions and amounts owed to central banks.

Amounts owed to credit institutions, mainly in the form of intra-group operations, dropped by 13.3% to EUR 306.0 billion at the end of December 2012. These amounts represented 41.6% of the Luxembourg banks' balance sheet total against 44.5% at the end of 2011.

Amounts owed to customers, mainly consisting of corporate deposits, wealth management structures and retail customers, remained almost unchanged compared to the previous year (-0.9%). These amounts reached EUR 260.8 billion as at 31 December 2012. As in the past, the volume of the amounts owed to customers, with 35.5%, played a prominent role among the refinancing means of the banking activities of the financial centre and allowed the Luxembourg banking sector to refinance easily its loans and advances to customers.

Amounts owed to central banks reached EUR 13.4 billion as at 31 December 2012. Even if there was a drop by 25.8% over a year, these amounts represented only 1.8% of the aggregate liabilities. The refinancing possibilities offered by the central banks, mainly by the European System of Central Banks, were used substantially only by 15 or so banks of the financial sector.

After an 8.4% decrease in **amounts owed represented by securities** in 2011, the banks continued to use these refinancing instruments to a lesser extent in 2012. Nevertheless, with -1.8%, the decrease was less important than in 2011. The decline was part of a market context characterised, on the one hand, by weak demand for banks' debt securities and, on the other hand, by slower credit activity, reducing thus the banks' refinancing needs. Compared to other liability items, amounts owed represented by securities gained, however, in importance. With a total of EUR 65.2 billion, they represented 8.9% of the aggregate liabilities as at 31 December 2012 (against 8.4% in 2011).

At the end of 2012, **own funds** accounted for EUR 49.0 billion of the aggregate liabilities of the financial centre's banks. Equity increased by 6.8% under the effect of hoarding transactions and represented 6.7% of the balance sheet total as at 31 December 2012.

Aggregate balance sheet total – in million EUR

ASSETS	2011	2012 (*)	Variation	LIABILITIES	2011	2012 (*)	Variation
Loans and advances to central banks and central governments	64,578	53,989	-16.40%	Amounts owed to central banks	18,058	13,400	-25.80%
Loans and advances to credit institutions	351,057	326,633	-6.96%	Amounts owed to credit institutions	352,931	305,996	-13.30%
Loans and advances to customers	177,839	163,405	-8.12%	Amounts owed to customers	263,262	260,854	-0.91%
Financial assets held for trading	17,434	14,960	-14.19%	Amounts owed represented by securities	66,359	65,175	-1.79%
Fixed-income transferable securities	148,735	147,448	-0.87%	Liabilities (other than deposits) held for trading	18,815	14,098	-25.07%
Variable-yield transferable securities	13,435	13,762	2.43%	Provisions	4,854	4,669	-3.82%
Fixed assets and other assets	19,810	14,862	-24.98%	Subordinated debts	7,819	6,796	-13.09%
				Other liabilities	14,935	15,122	1.25%
				Capital and reserves	45,854	48,951	6.75%
Total	**792,888**	**735,060**	**-7.29%**	**Total**	**792,888**	**735,060**	**-7.29%**

(*) Preliminary figures

Structure of the aggregate balance sheet

ASSETS	2011	2012 (*)	LIABILITIES	2011	2012 (*)
Loans and advances to central banks and central governments	8.14%	7.34%	Amounts owed to central banks	2.28%	1.82%
Loans and advances to credit institutions	44.28%	44.44%	Amounts owed to credit institutions	44.51%	41.63%
Loans and advances to customers	22.43%	22.23%	Amounts owed to customers	33.20%	35.49%
Financial assets held for trading	2.20%	2.04%	Amounts owed represented by securities	8.37%	8.87%
Fixed-income transferable securities	18.76%	20.06%	Liabilities (other than deposits) held for trading	2.37%	1.92%
Variable-yield transferable securities	1.69%	1.87%	Provisions	0.61%	0.64%
Fixed assets and other assets	2.50%	2.02%	Subordinated debts	0.99%	0.92%
			Other liabilities	1.88%	2.06%
			Capital and reserves	5.78%	6.66%
Total	**100.00%**	**100.00%**	**Total**	**100.00%**	**100.00%**

(*) Preliminary figures

1.5.3. Use of derivative financial instruments by credit institutions

Banks in the financial centre used derivative financial instruments for a total nominal amount of EUR 660.1 billion in 2012, representing a fall of EUR 108 billion over a year, i.e. -14.1%. The use of derivative instruments by credit institutions mainly takes place in the context of hedging of existing positions. The use of derivative financial instruments recorded a drop for all categories of instruments, except for cross-currency exchange rate instruments.

Use of derivative financial instruments by credit institutions

Notional amounts *(in billion EUR)*	2011	2012 (*)	Variation		Structure	
			in volume	in %	2011	2012 (*)
Transactions related to interest rate	**240.6**	**170.1**	**-71**	**-29.3%**	**31.3%**	**25.8%**
of which: options	*10.4*	*3.9*	*-7*	*-62.7%*	*4.3%*	*2.3%*
of which: interest rate swaps	*219.7*	*157.6*	*-62*	*-28.2%*	*91.3%*	*92.7%*
of which: future or forward rate agreements (FRA)	*1.5*	*0.7*	*-1*	*-55.4%*	*0.6%*	*0.4%*
of which: interest rate futures	*9.0*	*7.9*	*-1*	*-12.9%*	*3.7%*	*4.6%*
Transactions related to title deeds	**20.9**	**14.8**	**-6**	**-29.1%**	**2.7%**	**2.2%**
of which: futures	*8.5*	*6.4*	*-2*	*-24.8%*	*40.4%*	*42.9%*
of which: options	*12.5*	*8.5*	*-4*	*-32.1%*	*59.6%*	*57.1%*
Transactions related to exchange rates	**465.9**	**445.2**	**-21**	**-4.5%**	**60.6%**	**67.4%**
of which: forward foreign exchange transactions	*391.0*	*363.3*	*-28*	*-7.1%*	*83.9%*	*81.6%*
of which: cross-currency IRS	*60.8*	*72.6*	*12*	*19.4%*	*13.1%*	*16.3%*
of which: options	*14.1*	*9.3*	*-5*	*-34.4%*	*3.0%*	*2.1%*
Transactions related to credit quality	**40.8**	**30.0**	**-11**	**-26.4%**	**5.3%**	**4.5%**
Total	**768.3**	**660.1**	**-108**	**-14.1%**	**100%**	**100%**

(*) Preliminary figures

1.5.4. Off-balance sheet

As at 31 December 2012, the incidental exposure of the Luxembourg banking sector through loan commitments and financial guarantees given amounted to EUR 120.1 billion, against EUR 142.1 billion at the end of 2011, which represented a 15.5% fall over a year.

Following the 7.4% and 7.7% fall in 2011, the assets deposited by UCIs and the assets deposited by other professionals acting in the financial markets increased by 18.2% and 8.4%, respectively, in the course of 2012. These rises reflected the development of stock prices of certain assets under custody as well as the development of activities by some depositary banks.

Assets deposited by customers as in the off-balance sheet - in billion EUR

	2011	2012 (*)	Variation	
			in volume	in %
Assets deposited by UCIs	2,061.7	2,437.8	376.1	18.2%
Assets deposited by clearing or settlement institutions	1,225.4	1,579.4	354.0	28.9%
Assets deposited by other professionals acting in the financial markets	6,419.9	6,958.2	538.4	8.4%
Other deposited assets	318.3	334.5	16.2	5.1%

(*) Preliminary figures

1.6. Development in the profit and loss account

The profit and loss account of the Luxembourg banking sector showed a net result of EUR 3,538 million as at 31 December 2012, i.e. an increase of EUR 1,048 million (+42.1%) compared to 2011.

The rise of the net result is explained only by the mixed result that the Luxembourg banking sector recorded in 2011 in the context of the European sovereign debt crisis. During 2012, the operational income - interest-rate margin and net commissions received - remained in decline. At the same time, general expenses continued their upward trend. Consequently, a loss in profitability of the Luxembourg banking sector was recorded.

Development in the profit and loss account – in million EUR

	2011	Relative share	2012 (*)	Relative share	Variation 2011/2012	
					in volume	in %
Interest-rate margin	5,865	66%	5,552	57%	-313	-5.3%
Net commissions received	3,832	43%	3,727	38%	-105	-2.7%
Other net income	-830	-9%	520	5%	1,350	-162.7%
Banking income	**8,868**	**100%**	**9,800**	**100%**	**931**	**10.5%**
General expenses	-4,789	-54%	-4,994	-51%	-205	4.3%
of which: staff costs	*-2,535*	*-29%*	*-2,622*	*-27%*	*-87*	*3.4%*
of which: general administrative expenses	*-2,253*	*-25%*	*-2,372*	*-24%*	*-119*	*5.3%*
Result before provisions	**4,080**	**46%**	**4,806**	**49%**	**726**	**17.8%**
Net depreciation	-1,572	-18%	-765	-8%	808	-51.4%
Taxes[5]	-18	0%	-503	-5%	-486	2,767.8%
Net result for the financial year	**2,490**	**28%**	**3,538**	**36%**	**1,048**	**42.1%**

(*) Preliminary figures

The **interest-rate margin**, which amounted to EUR 5,552 million, dropped by 5.3% over a year. This development was due both to the market conditions where the margins of intermediation continued to be low and to the decrease of the aggregate balance sheet during the second half of 2012. However, the extent of the downturn was linked to a German bank that closed its activities in Luxembourg and whose intermediation profits represented 3.3% of the interest-rate margin for the financial year 2011. Consequently, in 2012, the interest-rate margin decreased to the same extent compared to 2011.

Net commissions received mainly result from asset management activities on behalf of private and institutional clients, including the services provided to investment funds. Whereas assets under management developed positively during 2012, net commissions received decreased. They fell by EUR 105 million (-2.7%) in an investment climate that continued to be dominated by strong macroeconomic uncertainties.

The item "**other net income**" recorded an extraordinary turnaround. First, it should be noted that other net income has been substantially revised downward compared to the preliminary figures published in 2011. Indeed, after the figures were drawn up for the CSSF Annual Report 2011, a bank reported substantial losses for the financial year 2011. Consequently, other net income dropped from EUR -331 million (preliminary figure) to EUR -830 million (final figure) as at 31 December 2011. Second, the positive development of the financial markets due to the political measures taken to secure and strengthen the euro area allowed the banks in the financial centre to reverse the unrealised losses recorded in the securities portfolio in 2011. As a result, other net income rose by EUR 1,350 million over a year.

The total operating income, as measured by the banking income amounted to EUR 9,800 million as at 31 December 2012. It should be noted that the rise of the banking income only results from the increase in other net income, which is a non-recurrent volatile component of the profit and loss account.

[5] Due to income from deferred taxes, the taxes recorded in 2011 and 2012 did not represent the real tax burden relating to these financial years. The real tax burden may be valued at EUR 503 million in 2011 and EUR 534 million in 2012.

Gross profit before provisions and taxes rose by 17.8% over a year, given the 4.3% increase in general expenses.

As at 31 December 2012, **net depreciation** reached EUR 765 million, i.e. a drop by half compared to 2011. It should be borne in mind that in 2011, Luxembourg banks registered gross depreciations of EUR 1,355 million in relation to their exposures to the Greek State. In 2012, no major default event affecting the Luxembourg banking sector as a whole took place. Net depreciation that could be observed with a limited number of banks is attributable to reasons specific to each individual bank rather than to an overall deterioration in the portfolio quality.

Tax charges recorded in the 2012 profit and loss accounts amounted to EUR 503 million which represented accounting tax charges as a whole: they corresponded to the sum of taxes due in Luxembourg and abroad and included current and deferred taxes. Current taxes in Luxembourg on which the accounting calculation of the taxes due for the financial year 2012 was based, reached EUR 534 million, i.e. an increase of 6.1% over a year.

Overall, the above indicated factors taken as a whole resulted in a net income increase by EUR 1,048 million (+42.1%) in 2012. As in the previous years, the development of the aggregate net result hid significant disparities in the performance of banks of the financial centre. Thus, half of Luxembourg banks recorded net results which, as at 31 December 2012, declined compared to the end of 2011.

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

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012 (*)
Interest-rate margin	4,383	4,141	4,080	3,913	3,905	4,830	6,002	7,298	6,571	5,479	5,865	5,552
Net commissions received	2,793	2,615	2,533	2,771	3,209	3,674	4,010	3,644	3,132	3,587	3,832	3,727
Other net income	672	1,258	942	734	1,140	2,296	964	-505	850	483	-830	520
Banking income	**7,848**	**8,014**	**7,554**	**7,418**	**8,255**	**10,800**	**10,976**	**10,437**	**10,553**	**9,549**	**8,868**	**9,800**
General expenses	-3,624	-3,490	-3,385	-3,461	-3,693	-3,981	-4,420	-4,560	-4,451	-4,609	-4,789	-4,994
of which: staff costs	*-1,759*	*-1,809*	*-1,752*	*-1,798*	*-1,945*	*-2,160*	*-2,372*	*-2,461*	*-2,449*	*-2,497*	*-2,535*	*-2,622*
of which: general administrative expenses	*-1,866*	*-1,681*	*-1,632*	*-1,663*	*-1,748*	*-1,821*	*-2,048*	*-2,099*	*-2,002*	*-2,112*	*-2,253*	*-2,372*
Result before depreciation	**4,224**	**4,524**	**4,170**	**3,957**	**4,562**	**6,819**	**6,556**	**5,877**	**6,102**	**4,939**	**4,080**	**4,806**
Net depreciation	-536	-1,166	-637	-344	-296	-305	-1,038	-5,399	-3,242	-498	-1,572	-765
Taxes	-826	-638	-658	-746	-768	-843	-780	-259[6]	-804	-625	-18[6]	-503[6]
Net result for the financial year	**2,862**	**2,720**	**2,874**	**2,866**	**3,498**	**5,671**	**4,739**	**218**	**2,056**	**3,817**	**2,490**	**3,538**

(*) Preliminary figures

[6] Due to substantial income from deferred tax, the taxes recorded for the financial years 2008 and 2011 were not representative of the real tax burden relating to these financial years. The real tax burden can be estimated at EUR 654 million for 2008, at EUR 503 million for 2011 and at EUR 534 million for 2012.

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 2012, the number of banks required to meet a non-consolidated solvency ratio stood at 107 (111 in 2011). Among these banks, 84 carried out limited trading activities (compliance with *de minimis* conditions) and were therefore authorised to calculate a simplified ratio. Actual trading activities remained confined to 23 banks, i.e. three entities less than in 2011. However, these activities are of lesser significance for the Luxembourg banking centre. Among the 26 banks that also calculate a consolidated solvency ratio, 12 were required to calculate an integrated ratio.

Number of banks required to meet a non-consolidated and/or consolidated solvency ratio

	Integrated ratio		Simplified ratio		Total	
	2011	2012	2011	2012	2011	2012
Non-consolidated	26	23	85	84	111	107
Consolidated	13	12	15	14	28	26

1.7.2. Development of the solvency ratio

The figures below are based on consolidated figures for those banks required to calculate their solvency ratio on a consolidated basis. The periodic information is to be provided to the CSSF within a time limit that should allow banks to gather and validate the requested information. As these deadlines are longer for consolidated figures, the consolidated figures as at 31 December 2012 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 2012 except for banks required to calculate their solvency ratio on a consolidated basis. The data of the latter relate to 30 June 2012, which is the last available reporting.

• Aggregate solvency ratio

The aggregate solvency ratio, which measures the volume of own funds compared to the total minimum own funds requirements according to Circular CSSF 06/273, reached 17.7% as at 31 December 2012 and thus largely exceeded the minimum of 8% as required under the existing prudential regulations. This ratio remained overall stable over a year after a sharp increase between 2008 and 2009.

With 15.5% as at 31 December 2012, the Tier 1 ratio, the numerator of which includes only own funds which absorb losses in going-concern situations, also remained stable compared to 31 December 2011 (15.3%). As the original own funds (Tier 1) are only marginally constituted of hybrid instruments, which are no longer eligible as original own funds under the future Basel III framework, the average Core Tier 1 ratio was 15.1% as at 31 December 2012 (cf. also item 2.3. of this chapter).

• Own funds

Aggregate own funds, eligible for the purpose of complying with prudential standards in terms of solvency, amounted to EUR 45,664 million as at 31 December 2012. The 6.6% growth compared to 31 December 2011 was mainly due to the increase of the paid-up capital (+EUR 2,236 million) mainly in a subsidiary of a large European banking group.

As regards the quality of aggregate own funds, this rise of the paid-up capital increased the total amount of own funds by 5.8% as compared to the end of 2011. In terms of distribution of own funds, the portion of original own funds has consequently slightly risen to almost 87% of own funds before deductions at the end of the financial year 2012 (86% in 2011). Additional own funds (Tier 2) and sub-additional own funds (Tier 3) only represented 13.06% and 0.02% of own funds before deductions.

Own funds - in million EUR

Numerator	2011	2012
Original own funds	*43,029.2*	*44,956.6*
Paid-up capital	14,744.6	16,980.7
Silent participation (*Stille Beteiligungen*)	547.6	330.6
Share premium account	8,090.8	8,090.8
Reserves (including funds for general banking risks)	20,498.6	18,672.8
Prudential filters	-773.5	-274.9
Gains and losses brought forward for the financial year	-210.1	-56.1
Minority interests	131.2	1,212.7
Items to be deducted from original own funds	*-5,413.8*	*-5,145.9*
Own shares	-1.6	-1.6
Intangible assets	-3,487.4	-3,095.2
Other deductions from original own funds	-1,924.8	-2,049.1
ORIGINAL OWN FUNDS (Tier 1)	**37,615.4**	**39,810.7**
Additional own funds before capping	*7,050.8*	*6,846.1*
Upper Tier 2	5,021.0	5,134.4
Lower Tier 2: Lower Tier 2 subordinated debt instruments and cumulative preference shares with fixed maturity	2,029.7	1,711.6
Additional own funds after capping	*6,920.8*	*6,588.9*
Deductions from additional own funds	-750.4	-624.3
ADDITIONAL OWN FUNDS after capping and after deductions (Tier 2)	**6,170.4**	**5,964.6**
Sub-additional own funds before capping	129.9	297.4
SUB-ADDITIONAL OWN FUNDS after capping (Tier 3)	**3.0**	**7.8**
Own funds before deductions (T1 + T2 + T3)	*43,788.8*	*45,783.1*
Deductions from the total of own funds	-981.6	-119.6
ELIGIBLE OWN FUNDS (numerator of integrated ratio/simplified ratio)	**42,807.2**	**45,663.5**

• Capital requirements

The minimum prudential own funds requirements increased by 4.7% between the end of 2011 and the end of 2012 and reached EUR 20,602 million. This growth was mainly due to a balance sheet restructuring of a holding in a large European banking group which increased, in this way, the local exposures to credit risk.

As regards the components of capital requirements, the credit risk exposures still triggered the most important capital requirements. Their proportion in total requirement amounted to 88% as at 31 December 2012. Owing to the activities carried on in the financial centre, the other minimum capital requirements remained marginal, except for the requirements to cover operational risk that represented 8% of total minimum capital requirement. The minimum own funds requirements to cover market risk represented less than 1% of the total amount of capital requirements.

Basel II standards were accompanied by transitional measures that provided in particular for the application of capital floors calculated based on capital requirements under Basel I. These levels limit the prudential recognition of the reducing effects of minimum capital requirements that could result from the implementation

of advanced measurement methods such as the internal ratings-based (IRB) approach for credit risks or the advanced measurement (AMA) approach for operational risk. These thresholds were abandoned as from 1 January 2012. Thus, the "other capital requirements" which included additional capital requirements under the capital floors decreased by more than 80% in 2012 and now represent only 3% of the total capital requirements.

Capital requirements - in million EUR

Denominator	2011	2012
TOTAL CAPITAL ADEQUACY REQUIREMENT	**19,680.1**	**20,602.3**
Requirement to cover credit risk	16,354.4	18,214.8
Requirement to cover foreign exchange risk	61.0	72.6
Requirement to cover interest rate risk	35.4	27.5
Requirement to cover the risk in relation to equities	1.7	6.3
Requirement to cover the risk in relation to commodities	0.0	0.5
Requirement according to internal models	32.7	37.8
Requirement to cover settlement/delivery risk	0.5	1.9
Requirement to cover operational risk	1,648.7	1,600.4
Other capital adequacy requirements (among others exceeding large exposures, floor level, etc.)	1,545.7	640.6

RATIO	2011	2012
Solvency ratio (base 8%)	17.4%	17.7%
Tier 1 Ratio (base 8%)	15.3%	15.5%
Core Tier 1 Ratio (base 8%)	15.1%	15.3%

As at 31 December 2012, 20 banks had obtained the authorisation to use an internal ratings-based approach regarding credit risk according to Basel II, 12 of which have used advanced methods allowing not only own estimates of probabilities of default but also of the loss given default and/or of the conversion factors. These 20 banks represented 38.3% of the balance sheet total of the financial centre as at 31 December 2012.

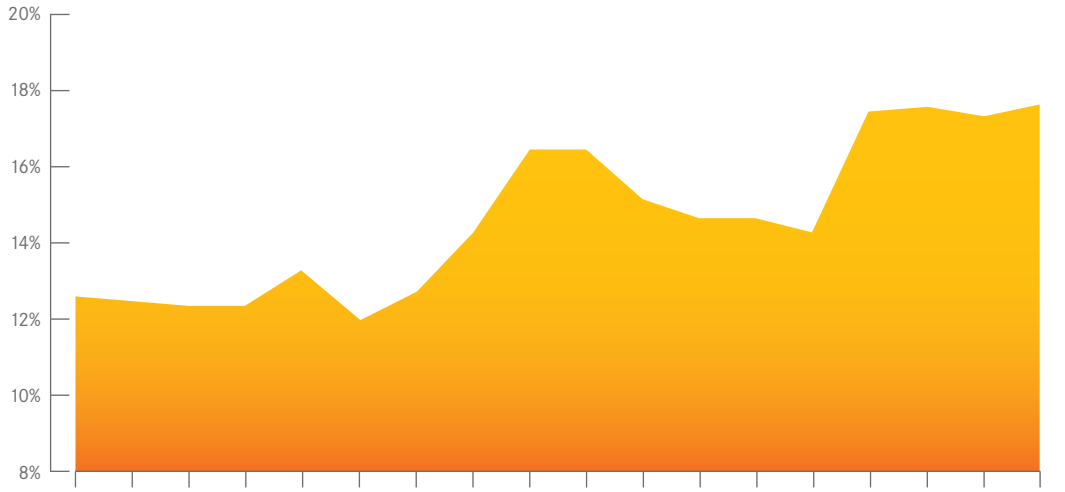
As regards operational risk, 10 banks were authorised to use the advanced measurement approach (AMA). The other banks used the basic indicator approach (61 banks) and the standardised approach (36 banks) to determine the capital requirements.

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

	Number of banks
Credit risk	
Standardised approach	87
Internal ratings-based approach	20
of which: foundation approach (F-IRB)	*8*
of which: advanced approach (ADV-IRB)	*12*
Operational risk	
Basic indicator approach	61
Standardised approach	36
Advanced measurement approaches	10

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 over total risk weighted exposure amounts. This average takes into account credit institutions according to the volume and risk level of their business.

Development in the solvency ratio (base 8%)



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Weighted average	12.6%	12.5%	12.4%	12.4%	13.3%	12.0%	12.7%	14.3%	16.5%	16.5%	15.2%	14.7%	14.7%	14.3%	17.5%	17.6%	17.4%	17.7%

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

The high level of capitalisation, as shown by the aggregate solvency ratio, is also reflected at disaggregated level. Thus, only seven banks had a solvency ratio within the weak capitalisation bands, i.e. below 10% but not below 8%. This number has decreased by four entities since the financial year 2011. At the other extreme, i.e. in the high capitalisation end, 68% of the banks had a ratio above 15%.

Distribution of the solvency ratio (base 8%)

	2011		2012	
Ratio	Number of banks	as % of total	Number of banks	as % of total
<8%	1	1%	0	0%
8%-9%	1	1%	2	1%
9%-10%	8	7%	5	5%
10%-11%	0	0%	2	2%
11%-12%	4	4%	5	5%
12%-13%	9	8%	7	7%
13%-14%	11	10%	6	6%
14%-15%	5	5%	7	7%
15%-20%	16	15%	21	20%
>20%	52	49%	51	48%
Total	**107**	**100%**	**106**[7]	**100%**

[7] The data of one credit institution were not available yet at the the cut-off date for the CSSF's annual report.

1.8. International presence of Luxembourg banks

Freedom to provide services within the EU/EEA as at 31 December 2012

Country	Luxembourg banks providing services in the EU/EEA	EU/EEA banks providing services in Luxembourg
Austria	42	29
Belgium	58	24
Bulgaria	21	-
Cyprus	25	3
Czech Republic	24	-
Denmark	44	7
Estonia	23	1
Finland	42	8
France	62	76
Germany	64	56
Gibraltar	1	5
Greece	39	2
Hungary	24	7
Iceland	7	3
Ireland	37	30
Italy	47	13
Latvia	23	1
Liechtenstein	9	7
Lithuania	25	1
Malta	24	7
Netherlands	50	31
Norway	23	1
Poland	27	1
Portugal	41	7
Romania	25	-
Slovakia	23	1
Slovenia	23	-
Spain	50	8
Sweden	39	6
United Kingdom	49	77
Total number of notifications	**991**	**412**
Total number of banks concerned	**79**	**412**

Branches established in the EU/EEA as at 31 December 2012

Country	Branches of Luxembourg banks established in the EU/EEA	Branches of EU/EEA banks established in Luxembourg
Austria	2	-
Belgium	8	1
France	2	4
Germany	4	14
Ireland	4	-
Italy	6	-
Netherlands	3	1
Poland	3	-
Portugal	1	2
Spain	9	1
Sweden	2	2
United Kingdom	1	4
Total	**45**	**29**

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

The crisis of the sovereign States and of the euro area continued to affect the banks issuing covered bonds and the market of banks issuing covered bonds developed only moderately during the last 12 months. At the end of 2012, the Luxembourg market counted six banks issuing covered bonds which were divided into two types, namely banks only managing their existing cover assets or reducing their portfolios (controlled run-off) and those wishing to take advantage of the possibilities offered by the Luxembourg legislator and to further develop their activities during the next year. In this context, Société Générale LDG launched its first issue of public sector covered bonds totalling EUR 900 million at the end of 2012.

As at 31 December 2012, the aggregate balance sheet total of the six banks issuing covered bonds amounted to EUR 42.8 billion. The volume of public sector covered bonds issued by these banks slightly dropped to reach EUR 24.2 billion at the end of 2012 against EUR 26.7 billion at the end of 2011.

Issues of covered bonds were guaranteed by total cover assets amounting to EUR 27.1 billion; consequently, covered bonds benefited on average from an over-collateralisation of 11.8% according to nominal value and from an over-collateralisation of 16.4% according to net present value as at 31 December 2012.

Having regard to banks issuing covered bonds which are limited to financing the public sector at the moment, it should be noted that the crisis affecting certain central, regional and local governments within and outside the euro area triggered a significant increase in risks, notably credit risk and concentration risk, incurred by this type of banks. This increase in risks also involved a dip of the rating of certain issues. Indeed, in 2012, the rating of several covered bonds was downgraded from AAA to A. The two banks which are not in run-off managed, nevertheless, to keep the AAA rating, partly by compensating their risks within the cover assets by a considerable level of over-collateralisation.

All the Luxembourg covered bonds comply with Article 52(4) of 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 compliant"). In order to comply with the provisions, securities must be issued by a credit institution which has its registered office in a Member State and is subject to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds must be invested in accordance with the law into assets which, during the whole period of validity of the bonds, are capable of covering claims attached to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest. It impacts positively certain categories of institutional investors as regards their investment limit (UCITS may invest, for example, 25% instead of 10% in these assets) and banks which may apply a weighting of 10% for the calculation of the capital adequacy ratio.

However, in its current form, the law does not fulfil the conditions listed in Annex VI, Part 1, Article 68 of Directive 2006/48/EC of 14 June 2006, so that Luxembourg covered bonds are not automatically "CRD compliant". For reasons of diversification of collateral, the representatives of Luxembourg banks issuing covered bonds did not want to change this provision in the different amendments made in the last years. Each bank is currently free to limit its collateral so that its issued covered bonds are "CRD compliant". In this context, it should be noted that the "CRD compliance" criterion may become an eligibility criterion of Luxembourg covered bonds reinvested within the group of the Luxembourg issuer (own-use) in order to refinance through the European System of Central Banks.

In order to develop the "covered bond" product, the CSSF has prepared, in cooperation with industry representatives, a draft bill aimed at strengthening the law on banks issuing covered bonds. This reform notably covers the dissolution and liquidation regime for banks issuing covered bonds and aims to align it with the German framework which consists in maintaining the banking status for the part constituted by collateral and covered bonds issued in case of liquidation of the bank issuing covered bonds. The draft law which was submitted in the meantime also proposes to introduce a new category of covered bonds, namely mutual covered 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 objective is an obligation of means, not of results. Prudential supervision is not an absolute guarantee against bank failures 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:

- minimum equity capital;
- capital ratio;
- limitation of risk concentration to a single debtor or a group of associated debtors;
- liquidity ratio;
- limitation of qualifying holdings;
- a reference limit set at 20% of own funds for non-trading book interest rate risk (cf. item 2.5. below).

The CSSF monitors compliance with these standards and follows the banks' activities by means of a 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 2012, the CSSF intervened four times regarding 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 21 times in writing in 2012 (12 times in 2011), 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 to bring the commitments back within the regulatory limits.

The sanctions imposed by the CSSF on Luxembourg banks for non-compliance with the regulatory provisions are described in Chapter XIII "Instruments of supervision".

2.3. Supervisory review process

The "Supervisory Review Process" (SRP) 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.

In 2012, pursuant to the requirements of the ESRB's recommendations on risks linked to lending in foreign currencies (ESRB/2011/1) and on funding in USD (ESRB/2011/2), the CSSF amended its SRP so as to adapt the risk monitoring to the ESRB's recommendations. This amendment is mainly a formal alignment, insofar as the risks concerned are of lesser significance for the Luxembourg banking centre.

The SRP is marked by an annual review of the capital adequacy framework under which the financial centre's banks evolve. On this occasion, the CSSF sets possible capital surcharges which complete the regulatory capital requirements framework according to Part V of Circular CSSF 06/273. In 2012, the CSSF's policy regarding capital surcharges did not undergo major changes. Thus, the CSSF confirmed the capital surcharges imposed on banks which have concentrated exposures related to residential mortgage in Luxembourg. These banks are required to comply permanently with a regulatory solvency ratio of 10% instead of the regulatory minimum of 8%. The CSSF also decided to impose a capital surcharge on 48 other banks of the financial

centre. These surcharges were generally in the form of a Core Tier 1 ratio of 9%. These surcharges are often decided due to the important exposure of the Luxembourg subsidiaries to their group and due to the risk assessment which led the EBA to request these European banking groups to maintain a Core Tier 1 ratio of 9% (Recommendation EBA/REC/2011/1).

In accordance with the EBA recommendation, the CSSF recommends that Luxembourg banks maintain a Core Tier 1 capital adequacy ratio of at least 9%.

Given the sound capitalisation of Luxembourg banks, compliance with these strengthened standards does not require additional own funds, in general. In Luxembourg, this measure is essentially aimed at maintaining the level of existing own funds necessary to sustain the risks incurred and to establish investors' confidence in a banking centre such as Luxembourg which is strongly centred on wealth management and thus dependent on the depositors' and investors' confidence.

2.4. Developments regarding liquidity supervision

The Luxembourg financial centre is predominantly composed of banks carrying out wealth management and providing services to investment funds. The deposits linked to these activities allow the banks to ensure their own refinancing, the surplus being invested in securities portfolios or deposited with the group. A minority of banks has a net need for liquidity due to their credit activities; this need is refinanced either autonomously or by using group resources.

The liquidity situation of the Luxembourg credit institutions did not fundamentally change in 2012. Overall, the banks enjoyed a comfortable liquidity situation. This explains, among others, the weak participation of the centre's banks in the ECB's long-term refinancing transactions in December 2011 and February 2012. In this context, the CSSF reminds the banks that, unless it is naturally re-used, this type of financing increases unnecessarily the leverage and generally leads to weakly managed risk-takings. Consequently, the banks which are not actually competent in investment banking should avoid performing such transactions.

The regulatory framework which is the basis for the CSSF supervision of liquidity is defined in three circulars: Circular CSSF 07/301 which lays down the main guiding principles regarding the sound risk management, Circular CSSF 09/403 which provides the qualitative requirements as regards the sound liquidity risk management and Circular IML 93/104 which limits the structural liquidity risk by imposing a liquidity ratio (table B1.5).

The CSSF supervises and controls the liquidity situation and the compliance with the above-mentioned circulars by combining two complementary approaches. The first approach consists in analysing the liquidity situation based on legal reporting tables, information about bank management and self-assessments to be provided in the framework of ICAAP reports. The second approach complements the first with on-site inspections related to liquidity in order to comprehend in detail the situation and management of the credit institutions' liquidity risk. In 2012, the CSSF carried out seven on-site inspections together with the BCL to which the legislator conferred a complementary liquidity control role in 2008 since the function of the BCL is the provision of liquidity to the banking sector. The observations and interventions resulting from these inspections concern the necessity for banks to review the composition of their liquidity reserves and enhance their stress tests and their capacity to manage liquidity risk.

This regulatory framework will be deeply amended through the fourth review of Directive 2006/48/EC (CRR/CRD IV). The quantitative regime relating to liquidity as laid down in Circular IML 93/104 will be repealed and two new prudential ratios called Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) implemented. The purpose of the LCR, which measures short-term liquidity risk, is to guarantee that a bank has sufficient liquid assets to face short-term liquidity deficits, even in adverse situations. The LCR will be introduced progressively as from 1 January 2015. The NSFR, which requires a minimum amount of stable financing for assets whose maturity exceeds a year, disqualifies risky business models which need a flawless renewal of short-term interbank deposits (of markets) in order to finance the less liquid assets in the long run. The entry into force of the NSFR is scheduled for 1 January 2018.

Considering the importance of the two new liquidity ratios, the CSSF, together with the BCL, continues to request that a sample of Luxembourg banks performs regular simulations of these two ratios. The latest local impact assessments did not show significant developments. Indeed, only one-fourth of the centre's banks currently comply with the two ratios. The other banks are waiting for the finalisation of the rules governing the two ratios or to be able to use the group exemptions laid down in the CRR.

As from the first quarter of 2014, the impact assessments will be performed based on the reporting tables prepared by the EBA. To this end, the EBA started the consultation EBA/CP/2012/05 on the new harmonised reporting relating to the above-mentioned liquidity ratios on 7 June 2012. The EBA presents the new formats, frequencies and deadlines for the transmission of the LCR and the NSFR reporting in this consultation document.

2.5. Supervision of 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 fund services, entails that the interest rate risk is overall less marked. Moreover, the wide range of available interest rate risk hedging instruments allows reducing this risk efficiently. 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 an interest rate 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 CSSF analyses the results of these stress tests 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 require measures when this ratio falls below -20%. Such measures aim to ensure that own funds of an institution remain adequate with respect to its overall 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 a capital requirement according to Circular CSSF 06/273, as opposed to interest rate risk inherent in the trading book portfolio.

The analysis of the stress test results according to Circular CSSF 08/338 as at 31 December 2011 and 30 June 2012 confirmed that the Luxembourg banking sector as a whole is exposed only moderately to structural interest rate risk. Indeed, average assessment ratios amounted to -3.75% on a stand-alone basis and -3.44% on a consolidated basis as at 30 June 2012. The impact of an immediate 2% rise in overall interest rates would cut the intrinsic value of the financial centre's banks only by about 3.75% of own funds.

On a stand-alone basis, the results showed a slight increase of structural interest rate risk compared to the results of 31 December 2011 where the average ratio was -3.16%. As far as the dispersion of the results is concerned, 71% of the banks of the financial centre had a ratio higher than or equal to -5% and only 3% of the banks had a ratio of less than -15% as at 30 June 2012. As regards the consolidated level, the average assessment ratios amounted to -2.41% as at 31 December 2011. Moreover, the dispersion showed that 83% of the banks had a ratio above -5% and that no bank had a ratio below -15%.

In 2012, the CSSF carried out an on-site inspection as regards structural interest rate risk. The control concerned a credit institution whose economic value increased irrespective of the interest rate variation. It turned out that the bank carried out calculation methods which were not compliant. The CSSF required that the bank adapts the calculation method so as to be in line with the requirements of Circular CSSF 08/338.

2.6. Developments regarding operational risk supervision

For the Luxembourg financial centre, strongly implicated in wealth management activities, the management of operational risks and compliance risks is imperative. Given this importance, the CSSF carried out, in 2012, a certain number of on-site inspections mainly covering specific aspects of operational risk management, besides the regular controls. Thus, six in-depth controls of the application of the advanced measurement approach (AMA) and two specific controls of the application of the standardised approach (TSA) were carried out.

These on-site inspections were carried out, among others, in order to determine to what extent the local entity was taken into account for the group models which were then applied to the local entity. It is important for the CSSF to assess the role of the Luxembourg entity in the procedures defining the models and escalating local specificities to the parent company in order to acquire a good understanding of the contribution of the local entity to the identification and determination procedure of operational risks at group level as well as the compliance with an adequate granularity when applying locally the models set up by the parent company. The main purpose is to avoid that the local entity be reduced exclusively to providing data without its specificities being taken sufficiently into account for the local application of the policy of capital allocation to operational risks.

The AMA method should help to better assess the worst-case scenarios in a stressful environment. When compared with historic losses and expected losses, these scenarios must lead to a realistic assessment of the risks incurred. The risk profile of the Luxembourg entity, which is described by these scenarios and which integrates all the intrinsic risks, must show a risk management adapted to its specifically local risk profile, away from the group's application of the standards and approaches of standardised estimates.

Moreover, the CSSF notes an increasing number of banks aiming to integrate the AMA approach. Although the AMA method generally reduces regulatory capital, it also allows the local entities to develop their own empirical models when quantifying the required capital for operational risks and promotes a better identification and management of operational risks through an approach based on the actual risk profile. Moreover, the capital, allocated locally to operational risks which results from ICAAP, should exceed the regulatory capital requirements.

2.7. 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 by CSSF agents;
- reports prepared by the banks' internal auditors;
- compliance reports;
- ICAAP reports.

All these reports are analysed according to a methodology laid down in the CSSF's internal procedures. The CSSF's response depends on the seriousness of the problem raised and whether it is repetitive in nature. It varies from simple monitoring of the problem based on 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, suspension and sanction.

During 2012, the CSSF sent 293 deficiency letters to banks based on shortcomings in terms of organisation or due to the exercise of the activities.

The CSSF intervened thrice with respect to quality deficiencies of internal reports (16 times in 2011).

The sanctions imposed by the CSSF on Luxembourg banks for non-compliance with the regulatory provisions are described in Chapter XIII "Instruments of supervision".

2.8. Cooperation with other authorities

Besides the cooperation that has been institutionalised in the colleges (cf. item 2.21. below), the CSSF works closely with the foreign supervisory authorities for consultations provided for by the European directives and in all circumstances in which cooperation is needed. Cooperation generally takes place in the form of requests for advice, information or assistance initiated or received by the CSSF. In this context, the CSSF has sent 130 letters to supervisory authorities in 2012.

The CSSF also cooperates with the national judicial and law enforcement authorities in accordance with Article 2 of the law of 23 December 1998 establishing a financial sector supervisory commission (Commission de surveillance du secteur financier) and Article 9-1 of the law of 12 November 2004 on the fight against money laundering and terrorist financing. In the context of banking supervision, the CSSF has sent 13 letters to the State Prosecutor's office of the Luxembourg District Court and six to the Grand-ducal police. They are mainly requests for information relating to candidates for a stakeholding within a bank.

2.9. Intervention in commercial policies

One of the important lessons to be learnt from the financial crisis of 2008 is that prudential supervision must not be limited to verifying compliance with regulations. Some banks had to be supported by their respective State or have their payments suspended despite their 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 bear these risks.

During 2012, the CSSF intervened 17 times (eight times in 2011) in order to require that actions be taken such as restricting the payment of dividends, reducing risks, setting up a maximum framework for risks, covering risks through dedicated own funds or increasing the level of own funds.

2.10. Analytical reports

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

The CSSF examines the individual and consolidated analytical reports drawn up by the *réviseurs d'entreprises agréés* (approved statutory auditors) as well as the analytical reports of the subsidiaries of Luxembourg banks. It takes into account these conclusions for the overall assessment of the supervised institution's situation. Where appropriate, the CSSF intervenes within the institution.

2.11. Cooperation with *réviseurs d'entreprises*

Article 54 of the law of 5 April 1993 on the financial sector governs the relationship between the CSSF and the *réviseurs d'entreprises*. The supervised professionals are required to communicate all the reports in relation to the audit of the accounting documents issued by the *réviseur d'entreprises* to the CSSF.

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

The CSSF holds annual meetings with the main *cabinets d'audit* (audit firms) in order to exchange opinions on specific issues encountered within the supervised institutions. The discussions may also address the quality of the reports made.

2.12. On-site inspections

At the beginning of the year, the programme of inspections to be carried out by CSSF agents in the course of that year is drawn up. This programme 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, the assessment of procedures and the verification of files and systems.

Detailed explanations on on-site inspections are provided in Chapter XIII "Instruments of supervision".

2.13. Combating money laundering

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

The CSSF uses on-site inspections made by its agents to monitor compliance with AML/CFT rules. By the same token, the CSSF relies on reports of the *réviseurs d'entreprises* and reports prepared by internal auditors.

In 2012, the CSSF made 18 on-site inspections within banks with respect to compliance with professional obligations concerning AML/CFT (19 in 2011). Detailed explanations on these on-site inspections are provided in Chapter XIII "Instruments of supervision".

The CSSF sent 33 deficiency letters to banks in relation with shortcomings concerning AML/CFT. 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.

2.14. Renunciation of the bank secrecy

Article 41 of the law of 5 April 1993 on the financial sector enshrines the bank secrecy pursuant to which Luxembourg banks which collect personal data from their customers "shall be required to keep secret any information confided to them in the context of their professional activities". However, this confidentiality right, which is of public nature since it is subject to penal sanction through Article 458 of the Penal Code, is mainly based on the own interest of the customer controlling the secret. Hence, the bank secrecy right is not absolute and the customer concerned may give it up. The bank secrecy is not a privilege but the banker's obligation and the customer, beneficiary of this obligation, has the power to authorise the banker to reveal certain confidential information about him/her. The banker does not have any own right towards its customer and consequently, the former is subject to the latter's orders. Thus, the banker may not put forward the interest of the profession or of the public, which do not represent the primary interests concerned by the bank secrecy, in order to avoid the consequences of this renunciation (e.g. the testimony or production of evidence).

In order to produce its effects, the act of will of the customer to lift the secrecy must come from the customer himself/herself and must be free and informed. The renunciation must also take into account all the circumstances which might prejudice the customer's interest. Finally, the customer must be able to reconsider it so that any final or unlimited renunciation is null. Consequently, it is necessary to specify the consent which is assessed according to the content of the information to be disclosed, the recipient of the information, the purpose and duration of the renunciation.

However, the renunciation must not be in a specific form and any formalism must be assessed pursuant to the specific situation of the customer. Generally, even if a customer can orally lift the bank secrecy, it is preferable that the bank gets a written confirmation from him/her since, in case of a problem, the banker must prove that its customer agreed to exclude some information from the protection of bank secrecy. This written confirmation may, for example, take the form of an express declaration or disclosure agreement.

In addition, the express character of the act of will must be preferred to a tacit consent which must only be accepted if its interpretation is doubtless, i.e. results from acts precisely implying a will for renunciation.

Thus, it seems uncertain that the customer is aware that his/her banker may disclose certain confidential information when requesting that the banker carries out a cross-border transaction. However, the situation is different if proven that the customer knew it.

Consequently, the banks may transmit on a one-off or ongoing basis all the data relating to their customer, notably to the operational or IT processing centres located in Luxembourg or abroad provided that they have the customer's consent.

2.15. Management letters

Management letters drawn up by the *réviseurs d'entreprises* for the attention of the banks' management are an important source of information as regards the quality of the credit institutions' organisation. The CSSF analysed these management letters in which the *réviseurs d'entreprises* notably state the weaknesses of the internal control system that they identify during their engagement.

2.16. Meetings

The CSSF attaches particular importance to meetings with bank managers in order to discuss the course of business as well as any issues. It also requires prompt notification by the banks if a serious problem arises. These meetings include "structured dialogues" through which the CSSF presents the results and prudential measures stemming from its assessment of the financial soundness and the risks of the different banks to the authorised managers of the banks.

In 2012, 168 meetings were held between CSSF representatives and bank executives (217 in 2011). Moreover, 75 meetings with, among others, *réviseurs d'entreprises*, foreign authorities, the BCL, applicants for the establishment of a bank, rating agencies or supranational organisations took place on the CSSF's premises in 2012.

2.17. Specific audits

Article 54(2) of the law of 5 April 1993 on the financial sector allows the CSSF to require a *réviseur d'entreprises* to conduct an audit on a specific subject in a given institution. In 2012, the CSSF made use of this right twice against five times in 2011.

2.18. 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. It requested, where applicable, specific reports from the internal audit in order to have more detailed information on certain subjects.

2.19. Supervision on a consolidated basis

As at 31 December 2012, 26 banks under Luxembourg law (idem in 2011), three financial holding companies under Luxembourg law (two in 2011), as well as one financial holding company incorporated under foreign law (idem in 2011) 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.

The CSSF pays particular attention to the "group head" function set up at the Luxembourg establishment falling under its consolidated supervision and takes a particular interest in 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 provides 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 external auditors are another source of information. Circular CSSF 01/27 on practical rules regarding the mission of the *réviseur d'entreprises* 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 of 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 also extended 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 as defined in Circular CSSF 04/155 (now replaced by Circular CSSF 12/552) must 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 monitors 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 establishes 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 analyses, in accordance with the terms of Circular IML 96/125, application files for indirect participations to be taken by banks under its consolidated supervision.

2.20. Supplementary supervision of financial conglomerates

Chapter 3b of Part III of the law of 5 April 1993 on the financial sector requires the CSSF to carry out a supplementary supervision of financial conglomerates. A financial conglomerate is defined as 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 that the CSSF perform a supplementary supervision of those 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 have any incidence on the sectoral prudential supervision, both on the individual and consolidated level, by the relevant competent authorities.

As the CSSF has not at this stage identified any financial conglomerate for which it has to exercise the role of coordinator of this supplementary supervision, the practical consequences of these provisions for Luxembourg credit institutions and investment firms are limited.

2.21. International cooperation in matters of banking supervision: colleges of supervisors

Articles 128 to 132 of Directive 2006/48/EC govern the cooperation between European competent authorities, which may also extend to non-European authorities. These articles require an intensive cooperation between the competent authorities of cross-border banking groups and strive towards a more centralised and harmonised supervision of these large cross-border groups at EU level via, among others, the establishment of colleges of supervisors for these cross-border groups. Article 131a, as amended by Directive 2009/111/EC, now provides that "the consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1), ...". These amendments to Directive 2006/48/EC were transposed into Luxembourg law by the law of 28 April 2011 which amended the law of 5 April 1993 on the financial sector.

In 2012, the CSSF organised four colleges of supervisors for the supervision of banking groups for which it exercises an ultimate consolidated supervision at European level (RBC Investor Services Ltd, State Street Bank Luxembourg S.A., KBL European Private Bankers S.A., Quilvest Wealth Management S.A.).

As a very large number of banking groups are present in the Luxembourg financial centre via subsidiaries which, on the one hand, are subject to the supervision of the CSSF on an individual basis, and, on the other hand, belong to the perimeter of consolidated supervision carried out by their home authorities, the CSSF participates, as host supervisor, in many colleges of supervisory authorities set up for these banking groups. In 2012, the CSSF participated in 54 meetings of colleges of supervisors (62 in 2011), among which two colleges of supervisors organised by the supervisory authorities from non-EEA countries, which concerned 40 banking groups.

The establishment and functioning of the colleges are based on written agreements (Memorandum of Understanding, MoU) signed between the different authorities participating in the colleges. In 2012, the CSSF was a signatory to 45 MoUs (33 in 2011). It should be noted that not all colleges of supervisors necessarily meet physically or hold conference calls. In these cases, the tasks of the colleges of supervisors are exercised through letters or emails.

Since 2011, the EBA has contributed to promoting the establishment of colleges of supervisors and controlled their effective, efficient and consistent functioning. To this end, it is also part of the colleges.

Among the objectives of the colleges of supervisory authorities are mainly the Joint Risk Assessment and the Joint Capital Decision. The college must achieve a joint assessment of the financial situation, the organisation and the risks of a banking group with cross-border activities and its individual banking subsidiaries. To that end, the different authorities, members of the colleges, provide the authority in charge of the consolidated supervision (home supervisor) with their risk assessment. The latter aggregates the information received by taking into account the entities established in its own country. Based on this Joint Risk Assessment, the college assesses the capital adequacy of the banking group and of its subsidiaries with the incurred risks. The college must reach a Joint Capital Decision which either states the capital adequacy of a banking group and its components, or imposes capital surcharges that the banking group and/or its subsidiaries must comply with at a consolidated and/or individual level. This Joint Capital Decision, which states the underlying motivations of the decision, is formally transmitted to the banking group and its subsidiaries.

Furthermore, the colleges are responsible for promoting joint missions carried out by the authorities from different countries participating in the colleges, as well as the delegation of work between authorities.

2.22. Review of risk management models

In 2012, the CSSF continued its review of the risk management models[8]. In this context, a distinction should be made between the risk management models eligible for the calculation of regulatory capital requirements ("Pillar 1 models") and the models which may be used for the calculation of internal capital requirements ("economic capital models" or "Pillar 2 models").

The risk management models used for Pillar 1 purposes cover three categories of risks[9], namely:

- credit risk with models relating to internal rating systems (internal ratings-based approach - IRB) as well as the internal model method (IMM) for the calculation of the risk value with respect to counterparty credit risk[10];
- market risk, with "internal models" to cover general and specific market risk, including stress VaR as well as incremental default and migration risks for the trading book positions of the credit institution (incremental risk charge - IRC); and
- operational risk with the advanced measurement approach (AMA).

As banks established in Luxembourg are often subsidiaries of European banking groups, the review of risk management models takes place in close coordination between the CSSF and the home supervisory authorities of these groups in the framework of colleges of supervisors pursuant Article 129 of Directive 2006/48/EC.

As regards the division of tasks between authorities, three different cases may arise:

a) A local subsidiary uses a risk management model developed by the group.

In this case, the parent's home authority reviews the model's theoretical bases while the CSSF's role is limited to verifying its local use. In order to be permitted to use the models for the calculation of regulatory capital requirements, credit institutions must prove that they are indeed used for internal governance and daily risk management.

The review of the local application for models relating to internal ratings-based systems mainly covers the following points: the internal governance, the representativeness of the model compared to the local population, the use of the models for risk management and the experience acquired during their use before their regulatory use (use test and experience test), a sufficient overall coverage of exposures by the models, allocation of exposures to the relevant grades and pools, stress tests and the internal model governance.

As regards the operational risk management models, the CSSF's mission mainly concerns the use of the model on a day-to-day basis, the process of stocktaking and of reporting of operational losses, and the methodology regarding the allocation of capital requirements[11].

The observations as regards these missions are then communicated to the home authority and to the bank.

b) A local subsidiary uses a risk management model developed locally.

In this case, the CSSF's mission, besides the use test described in point a) above, consists in reviewing the model's theoretical foundations. Thus, this mission mainly concerns the review, by the CSSF, of the bank's internal development and validation process, of the internal governance (role of the management, risk management functions and internal audit) and of the conception and methodologies. The observations made are then communicated to the home authority and to the bank.

c) The CSSF is the home authority of a bank that develops a risk management model.

In this case, the review process is the same as that described in points a) and b) except, of course, for the communication process with the home authority.

As regards the review of internal models for market risk, credit institutions must calculate, in accordance with Part XIV of Circular CSSF 06/273, capital requirements for a stress value-at-risk in addition to the "current"

[8] See also to Chapter XIII "Instruments of supervision" for on-site inspections.

[9] See also item 1.7. of this chapter.

[10] No bank established in Luxembourg has so far submitted an application file to the CSSF in order to use the internal model method (IMM).

[11] See also item 2.6. of this chapter.

value-at-risk and, as far as specific interest rate risk is concerned, an incremental risk charge (IRC) for default and migration risk inherent in the trading book positions.

Monitoring the compliance with the qualitative and organisational requirements of credit institutions which already received authorisation to use the models for the calculation of the regulatory capital requirements is an integral part of the supervisory review process (SRP) carried out by the CSSF. In this context, the CSSF is currently fine-tuning its analysing tools based on the existing periodic reporting (notably COREP and FINREP) in order to identify important developments of the risk parameters, in particular between credit institutions (comparative analysis) as well as between different reporting dates. Outliers and anomalies which are identified may lead the CSSF to request further information or to conduct specific and targeted on-site missions. On-site missions are thus planned for 2013.

In addition to risk management models used within the context of Pillar 1, the CSSF regularly monitors the results of the models for the calculation of internal capital. These figures form an integral part of the reporting on risk management and capital (ICAAP report) such as described in points 17 and 26 of Circular CSSF 07/301.

It is important to note that, unlike the risk management models used in the framework of Pillar 1, the models used in the framework of Pillar 2 are not subject to an explicit authorisation procedure of the authorities. The purpose of the review of these models lies with the more general and less prescriptive assessment of the internal governance and the sound risk management. Thus, the review of the methodology is performed by the home authority in most cases. In the particular case of joint missions between authorities, the participation by the CSSF is usually limited to local aspects and to risk models which have a particular importance for the activities of the Luxembourg subsidiaries[12].

[12] In most cases, those aspects deal with the definition of internal capital and with the operational, reputational and liquidity risks.

CHAPTER IV

SUPERVISION OF PFS

1. Investment firms
2. Specialised PFS
3. Support PFS

1. INVESTMENT FIRMS

Pursuant to Part I, Chapter 2, Section 2, Sub-section 1 of the law of 5 April 1993 on the financial sector, the professionals of the financial sector falling within 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).

The scope of the CSSF's prudential supervision of investment firms governed by Luxembourg law includes activities performed by these institutions in another EU/EEA Member State, both by means of a branch or under the freedom to provide services. Certain aspects of the prudential supervision, in particular compliance with the rules of conduct for the provision of investment services to clients, fall however within the jurisdiction of the supervisory authority of the host Member State[1]. Furthermore, the prudential supervision carried out by the CSSF also extends to branches of investment firms originating 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 within the jurisdiction of the CSSF, the supervisory authority of the host Member State[2].

1.1. Development of investment firms in 2012

1.1.1. 2012 key figures

As at 31 December 2012, the 109 investment firms subject to the prudential supervision of the CSSF employed 2,662 persons in total. This figure slightly increased compared to the previous year, but it does not necessarily mean a net creation of as many new jobs, as explained in item 1.1.3. hereafter.

Investment firms experienced a significant increase of their balance sheet total rising from EUR 2,629 million as at 31 December 2011 to EUR 3,616 million as at 31 December 2012. The net results of all investment firms amounted to EUR 319.4 million as at 31 December 2012 as against EUR 296.3 at the end of December 2011.

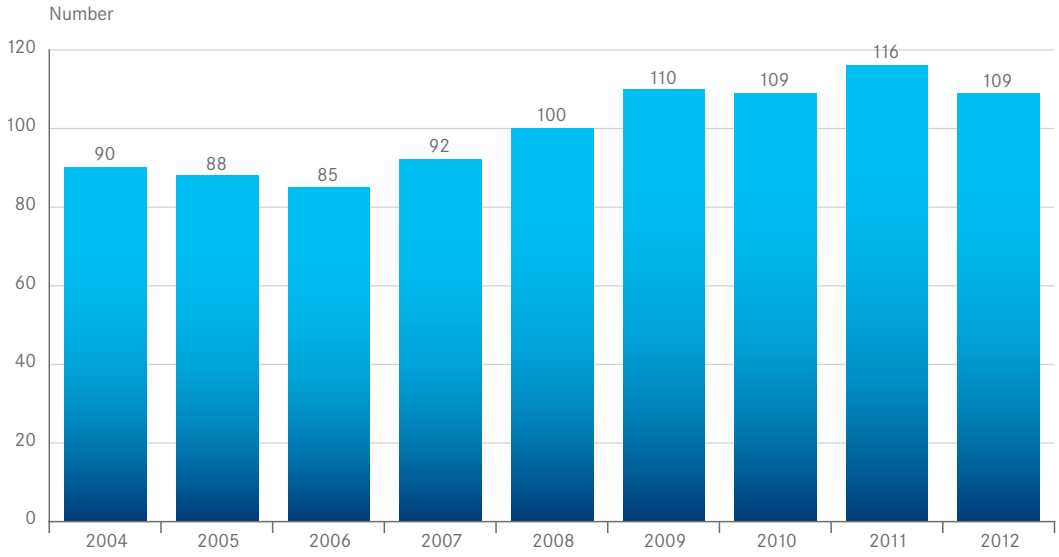
[1] In accordance with the law of 13 July 2007 on markets in financial instruments transposing the MiFID into Luxembourg law.

[2] Cf. footnote No. 1 above.

1.1.2. Development in the number of investment firms

The upward trend of the number of investment firms which has been observed since 2006 experienced a turnaround in 2012. Indeed, the number of investment firms subject to the supervision of the CSSF decreased from 116 entities as at 31 December 2011 to 109 entities at the end of 2012. The number of entities which received an authorisation as investment firm in 2012 slightly decreased compared to the previous year (eight entities in 2012 as against 13 in 2011). 15 entities abandoned their status as investment firm during the year under review compared to only six status withdrawals in 2011.

Development in the number of investment firms



Among the investment firms, the activity of private portfolio manager was found most widely with 82 entities authorised in this respect as at 31 December 2012. It should be noted that entities newly registered on the official list showed also ongoing interest in the activity of private portfolio manager, as most of them actually opted for this status.

The following eight investment firms were registered on the official list in 2012:

- Albert & Partner S.A.
- Augemus S.A.
- Belador Advisors UK Limited, Luxembourg Branch
- Espirito Santo Wealth Management (Europe) S.A.
- European Fund Administration S.A., in abbreviated form “EFA”[3]
- Genève Invest (Europe) S.à r.l.
- Merit Capital Luxembourg
- Swedbank Asset Management S.A.

[3] As it extended the activities it performs and in accordance with the change to its ministerial authorisation, the company European Fund Administration S.A. is no longer included in the list of specialised PFS and is now considered as investment firm.

The following 15 entities abandoned their status of investment firm in 2012.

a) change or cessation of activities, so that the entity no longer required an authorisation as investment firm, because it no longer fell within the scope of the law of 5 April 1993 on the financial sector (nine entities)

- Alpiq Eurotrade S.à r.l.
- Alternative Advisers S.A.
- Andreas Capital S.A.
- Investor Luxembourg S.A.
- Lehner Investments Advice S.A.
- Maitland Asset Management (Luxembourg) S.A.
- OES Europe S.à r.l.
- Value-Call S.A.
- VRS Financial Partners S.A.

b) voluntary winding-up (two entities)

- Brianfid-Lux S.A.
- BISA S.A.

c) change into specialised PFS (two entities)

- UBS Fund Services (Luxembourg) S.A.
- Finimmo Luxembourg S.A.

d) closing of the branches PineBridge Investments Europe Limited and Turner International Limited, originating from the United Kingdom.

1.1.3. Development in employment

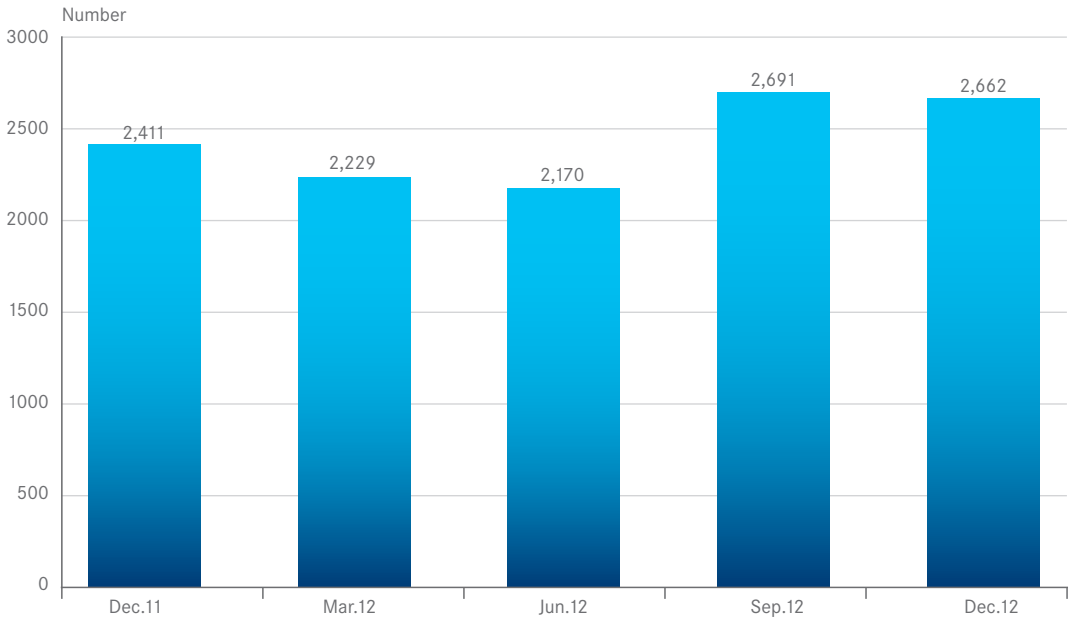
Employment in investment firms increased in 2012, whereas the number of investment firms decreased (-7 entities). Indeed, employment in all investment firms rose from 2,411 persons as at the end of December 2011 to 2,662 persons as at 31 December 2012, which corresponded to an increase of 10.4% over a year. This increase reflected, in part, transfers of activities which, however, had no impact on the aggregate number of jobs in the financial sector, but only changed the breakdown among professionals of the financial sector, as set forth below.

Employment in investment firms

Year	Number of investment firms	Total staff
2010	109	2,358
2011	116	2,411
2012	109	2,662[4]

[4] Preliminary figures.

Quarterly development in employment



Considering the development in employment per quarter, over the two first quarters of 2012, employment in investment firms decreased significantly from 2,411 persons as at 31 December 2011 to 2,170 persons as at 30 June 2012. This downward trend was, in particular, attributable to the cessation of the investment firm activities of the company UBS Fund Services (Luxembourg) S.A. which changed into a specialised PFS. The transfer, for organisational reasons, of part of the staff of the company FIL (Luxembourg) S.A. to two other entities of the group to which it belongs also contributed to the decrease in staff. The change of the specialised PFS European Fund Administration S.A., in abbreviated form "EFA", into an investment firm explained the significant increase in employment during the third quarter of the year under review. Minor variations of employment related to new authorisations as investment firm and status withdrawals during 2012 must be added to the previous figure.

It should also be noted that, as at 31 December 2012, about half the investment firms had seven or less employees.

1.1.4. Development of balance sheets and profit and loss accounts

The provisional balance sheet total of all investment firms established in Luxembourg reached EUR 3,616 million[5] as at 31 December 2012, against EUR 2,629 million as at 31 December 2011, i.e. an increase of 37.5%. This significant increase mainly resulted from the considerable growth in the balance sheet total of a player which was authorised in 2010. A rather positive development was observed for a very restricted number of financial players, whereas the decrease in the balance sheet total due to withdrawals of status of investment firm was offset by the business volumes developed by the investment firms newly registered on the official list in 2012.

The investment firms showed an increase in their net results over a year. Indeed, provisional net results amounted to EUR 319.4 million[6] as at 31 December 2012 against EUR 296.3 million as at 31 December 2011, representing an increase of 7.8% in one year. This positive development was largely explained by a significant increase in the net result of an important player among investment firms. Most investment firms showed a stable net result compared to the previous year. It should be pointed out that approximately one-third of the investment firms recorded a negative result as at 31 December 2012.

[5] The figures of the branches established in Luxembourg by investment firms originating from another EU/EEA Member State and included since 2009 in the total number of investment firms are not included in these figures.

[6] Cf. footnote No. 5 above.

Development of the balance sheet total and of the net results of investment firms

(in million EUR)	2011	2012	Variation in %
Balance sheet total	2,629	3,616	37.5%
Net results	296.3	319.4	7.8%

1.1.5. International expansion of investment firms

• Subsidiaries created and acquired abroad during 2012

In 2012, three subsidiaries were created (in Germany, Italy and the Netherlands) by Luxembourg investment firms.

• Freedom of establishment

During 2012, four branches were established in other EU/EEA Member States by Luxembourg investment firms and three branches were closed, which brought the total number of branches of Luxembourg investment firms established in other EU/EEA Member States to 33 entities at year-end.

The number of branches established in Luxembourg by investment firms originating from another EU/EEA Member State decreased by one entity over the course of the year, amounting to 10 entities as at 31 December 2012.

Branches established in the EU/EEA as at 31 December 2012

Country	Branches of Luxembourg investment firms established in the EU/EEA	Branches of EU/EEA investment firms established in Luxembourg
Austria	3	1
Belgium	11	-
France	3	-
Germany	4	-
Italy	2	-
Netherlands	1	-
Spain	3	-
Sweden	4	1
United Kingdom	2	8
Total	**33**[7]	**10**

As regards non-EU/EEA countries, one investment firm incorporated under Luxembourg law was represented by a branch in Switzerland.

• Free provision of services

In 2012, 22 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 operating in one or more EU/EEA countries following a notification amounted to 71 entities as at 31 December 2012 (against 67 as at 31 December 2011). The majority of the investment firms concerned carried out their activities in several EU/EEA countries by way of free provision of services.

[7] It should be noted that a branch established in Ireland is no longer to be considered as a branch within the meaning of Article 32 of Directive 2004/39/EC on markets in financial instruments (MiFID) given the activities carried out and the services offered and is thus no longer on the list of branches of Luxembourg investment firms established in the EU/EEA.

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 2,447 entities at the end of 2012 (against 2,251 entities as at 31 December 2011).

As at 31 December 2012, 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	20	23
Belgium	50	15
Bulgaria	5	5
Cyprus	9	82
Czech Republic	8	2
Denmark	16	25
Estonia	6	1
Finland	13	7
France	44	88
Germany	41	122
Gibraltar	-	7
Greece	9	7
Hungary	10	2
Iceland	4	-
Ireland	10	53
Italy	25	7
Latvia	6	1
Liechtenstein	4	16
Lithuania	6	1
Malta	9	5
Netherlands	30	107
Norway	12	27
Poland	11	2
Portugal	15	4
Romania	6	-
Slovakia	7	2
Slovenia	8	2
Spain	25	20
Sweden	19	9
United Kingdom	26	1,805
Total number of notifications	**454**	**2,447**
Total number of investment firms concerned	**71**	**2,447**

The geographical breakdown of EU/EEA investment firms operating by way of free provision of services in Luxembourg reveals that UK investment firms are by far the most important in number.

Similarly, among the 292 new notifications for free provision of services on the Luxembourg territory received in 2012 (a stable figure compared to the 294 new notifications in 2011), those originating from the United Kingdom represented a large majority. Apart from the United Kingdom, the significant upward trend observed for Cyprus since 2010 was once again confirmed in 2012 with 33 new entities. Moreover, entities of countries close to Luxembourg like France or Germany showed ongoing interest in exercising their activities in Luxembourg by way of free provision of services.

The target countries of investment firms incorporated under Luxembourg law, whose total number of notifications amounted to 454 units as at 31 December 2012, were mainly Luxembourg's neighbouring countries (Belgium, France and Germany). Luxembourg investment firms also showed major interest in the Netherlands, the United Kingdom, Italy and Spain.

1.2. Prudential supervisory practice

1.2.1. 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 monitor continuously the activities of investment firms and the inherent risks, and the periodic control 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 documents established yearly by the *réviseur d'entreprises agréé*: the audit report and audited annual accounts, the long form report and, where applicable, the management letter;
- 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 investment firm, the compliance report as well as the authorised management's report on the implementation of the internal capital adequacy assessment process (ICAAP)[8] ;
- the introductory visits and on-site inspections carried out by the CSSF.

1.2.2. Compliance with the quantitative standards by investment firms

• Capital base

In accordance with Articles 24 to 24-9 of the law of 5 April 1993 on the financial sector, the authorisation of investment firms is subject to the production of evidence showing the existence of minimum capital base. This capital base consisting of a subscribed and fully paid-up capital, share premiums, legally formed reserves and profits brought forward, for the current financial year, must be permanently available to the investment firm after deduction of possible losses and invested in its own interest.

Based on the financial data that the investment firms must provide to the CSSF on a monthly basis in accordance with Circular CSSF 05/187, the CSSF verifies particularly compliance with the minimum capital base conditions by investment firms. In 2012, the CSSF intervened at 10 investment firms for non-compliance with the legal provisions relating to capital base.

In this context, the CSSF reminds that subordinated loans or the profits for the current financial year shall not be taken into account for the determination of the minimum capital base of a professional of the financial sector[9].

• Capital adequacy ratio

Investment firms falling within the scope of Circular CSSF 07/290 (as amended by Circulars CSSF 10/451, 10/483 and 10/497) defining the capital ratios pursuant to Article 56 of the law of 5 April 1993 on the financial sector must permanently have eligible own funds at least equal to the global capital requirement.

During 2012, the CSSF recorded six cases of non-compliance with the capital adequacy ratio. Most investment firms concerned already regularised the situation of non-compliance or are in the process of being regularised shortly. The CSSF attaches particular importance to compliance with the structural ratios that investment firms are required to observe in compliance with Article 56 of the law on the financial sector and monitors closely the regularisation processes undertaken by investment firms in case of solvency ratio deficiency.

[8] This ICAAP report must be established by the investment firms falling within the scope of Circular CSSF 07/290 defining capital ratios pursuant to Article 56 of the law of 5 April 1993 on the financial sector.

[9] Pursuant to Article 20(5) of the law of 5 April 1993 on the financial sector.

• **Large exposures limits**

Concerning the supervision of compliance with the large exposures limits[10], one investment firm was granted an exemption by the CSSF in 2012. Indeed, for the purposes of the calculation, on an individual basis, of the 25%-ratio defined in point 7 of Part XVI of Circular CSSF 10/483, the CSSF elected to ignore the exposures incurred by the investment firm towards the entities of the group to which it belongs, provided that those undertakings are covered by the supervision on a consolidated basis to which the investment firm itself is subject, in accordance with Directive 2006/49/EC or with equivalent standards in force in a third country.

1.2.3. Meetings

During the year under review, a total of 62 meetings in relation to investment firm activities took place on the CSSF's premises. In the context of a closer dialogue, the CSSF attaches particular importance to these meetings with the financial players subject to its supervision.

During 2012, meetings with investment firm representatives covered the following areas:

- information requests on the qualification of the activities performed (scope of the law of 5 April 1993 on the financial sector);
- new requests for authorisation;
- initial meetings with the persons in charge of the newly authorised investment firms in order to deal with the practical aspect of ongoing supervision;
- changes in the authorisation of active investment firms (activity, acquisition of subsidiaries, legal form, etc.);
- planned changes notably relating to the shareholding structure, day-to-day management and internal control;
- discussions concerning problems or specific points noticed in the framework of the prudential supervision exercised by the CSSF;
- information requests in the context of prudential supervision;
- presentation of the general context and activities of the companies concerned;
- courtesy visits.

1.2.4. Specific controls

Article 54(2) of the law of 5 April 1993 on the financial sector entitles the CSSF to require a *réviseur d'entreprises agréé* 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 did not use this right formally in 2012.

1.2.5. 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 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 within the scope of application of the above-mentioned law. An in-depth study of the financial groups to which most investment firms belong is required in order to determine whether or not, 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 this type of supervision.

[10] Pursuant to Circular CSSF 07/290 as amended by Circular CSSF 10/483, investment firms whose authorisation does not allow either the dealing on own account or the underwriting of financial instruments and/or the placing of financial instruments on a firm commitment no longer fall within the scope of the regulations governing large exposures since 31 December 2010.

As at 31 December 2012, the following 10 investment firms were submitted to the supervision on a consolidated basis by the CSSF:

- CapitalatWork Foyer Group S.A.
- CBRE Global Investors Luxembourg S.à r.l.
- Crédit Agricole Luxembourg Conseil S.A., in abbreviated form "CAL Conseil"
- European Value Partners Advisors S.à r.l.
- FIL (Luxembourg) S.A.
- Fuchs & Associés Finance S.A.
- Fund Channel S.A.
- Hottinger & Cie Groupe Financière Hottinguer Société Anonyme
- Petercam (Luxembourg) S.A.
- Ycap Asset Management (Europe)[11]

2. SPECIALISED PFS

Pursuant to Part I, Chapter 2, Section 2, Sub-section 2 of the law of 5 April 1933 on the financial sector, the professionals of the financial sector falling within the following categories are defined as specialised 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);
- Family Offices (Article 28-6);
- administrators of collective savings funds (Article 28-7);
- management companies of non-coordinated UCIs (Article 28-8);
- domiciliation agents of companies (Article 28-9);
- professionals performing services of setting-up and of management of companies (Article 28-10);
- professionals of the financial sector authorised to exercise any activity referred to in Part I, Chapter 2, Section 1 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 1 of the law of 15 December 2000 on financial postal services.

The prudential supervision of the CSSF extends to specialised PFS incorporated under Luxembourg law, including the activities which they carry out by means of a branch, and Luxembourg branches of foreign entities.

[11] Consolidated supervision by the CSSF on the parent financial holding company in Luxembourg.

2.1. Development of specialised PFS in 2012

2.1.1. Major events in 2012

• Development in the legal framework

Two laws voted in December 2012 had an impact, inter alia, on the activity of specialised PFS.

Thus, the law of 21 December 2012 relating to the Family Office activity creates a legal framework for the Family Office activity in Luxembourg and reserves the provision of these services to certain regulated professions. Persons established in Luxembourg and carrying out a Family Office activity without belonging to one of these regulated professions shall now submit a request to be authorised as Family Office which is a new status of specialised PFS governed by Article 28-6 of the law of 5 April 1993 on the financial sector.

Moreover, the entry into force of the law of 21 December 2012 transposing Directive 2010/78/EU of 24 November 2010 in respect of the powers of the European supervisory authorities (Omnibus law) amends, in particular regarding specialised PFS, the definition and the calculation of the minimum capital base to be complied with (Article 20 of the law of 5 April 1993 on the financial sector) as well as the definition of corporate domiciliation activities (Article 28-9) and factoring operations (Article 28-4(2)).

As regards the activity of professionals performing securities lending, the CSSF amended, in May 2012, its document "Questions/Answers (Part II) on the statuses of PFS" including in particular Question/Answer 51 on the interpretation given by the CSSF on the concept of "public" referred to in Article 28-4(1) of the law of 5 April 1993 on the financial sector.

• 2012 key figures

The sector of specialised PFS experienced an overall positive year 2012.

Thus, as at 31 December 2012, 124 specialised PFS were subject to the prudential supervision of the CSSF. They employed a total of 3,046 persons, which was slightly less than the previous year, but this decrease did not correspond to a loss in employment in the PFS sector, as explained in item 2.1.3. below.

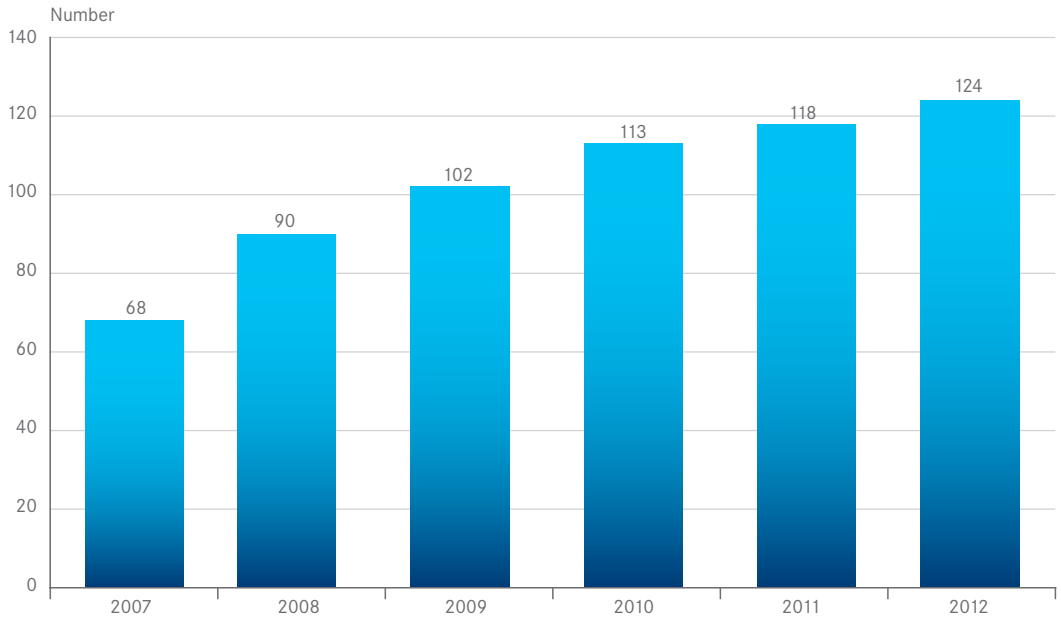
The balance sheet total of all specialised PFS amounted to EUR 9,457 million as at 31 December 2012 against EUR 9,419 million at the end of 2011. The aggregate net results increased from EUR 353.1 million as at 31 December 2011 to EUR 360.1 million as at 31 December 2012.

2.1.2. Development in the number of specialised PFS

The upward trend of the number of specialised PFS subject to the prudential supervision of the CSSF observed in recent years was confirmed in 2012. Thus, the number of specialised PFS rose from 118 entities as at the end of 2011 to 124 entities as at 31 December 2012.

Nonetheless, the number of entities which received an authorisation as specialised PFS in 2012 slightly decreased compared to the previous year (10 authorised entities in 2012 against 14 in 2011). However, only four entities abandoned their status of specialised PFS during the year under review against nine status withdrawals in 2011.

Development in the number of specialised PFS



Among the specialised PFS, the activity of domiciliation agent of companies was most widely found with 91 authorised entities as at 31 December 2012 followed by the activity of registrar agent.

The following 10 specialised PFS were registered on the official list in 2012:

- Alcyon S.A.
- Arcari Fund Solutions (Luxembourg) S.à r.l.
- Facts Services S.A.
- Fidugia S.A.
- Finimmo Luxembourg S.A.[12]
- Georges & Associés S.à r.l.
- Hines Luxembourg S.à r.l.
- Internos S.à r.l.
- Trust Alliance Luxembourg S.A.
- UBS Fund Services (Luxembourg) S.A.[13]

The following four entities abandoned their status of specialised PFS in 2012:

• Partners Group (Luxembourg) S.à r.l.	Change of activities, so that the entity no longer required an authorisation as PFS as it no longer fell within the scope of the law of 5 April 1993 on the financial sector
• Capita Administrative Services (Luxembourg) S.A.	Merger by takeover by the specialised PFS Capita Fiduciary S.A.
• TMF Management Luxembourg S.A.	Merger by takeover by the specialised PFS Equity Trust Co (Luxembourg) S.A. which changed subsequently its name to TMF Luxembourg S.A.
• European Fund Administration S.A., in abbreviated form “EFA”	Change into investment firm

[12] Investment firm which changed into specialised PFS in 2012.

[13] Investment firm which changed into specialised PFS in 2012.

2.1.3. Development in employment

Total specialised PFS employment decreased by 81 persons in 2012, i.e. a less important decrease than in 2011 where the employment decreased by 425 persons.

Employment in specialised PFS

Year	Number of specialised PFS	Total staff
2010	113	3,552
2011	118	3,127
2012	124	3,046[14]

It should be borne in mind that the decrease in employment recorded in 2011 was mainly attributable to the company Fund Administration Services & Technology Network Luxembourg S.A., in abbreviated form "Fastnet". Indeed, within the context of the merger by takeover by CACEIS Bank Luxembourg, most of Fastnet's personnel (more than 500 persons) was taken over by the bank. As the personnel of the PFS "being acquired" is henceforth included in the banking employment statistics, there was no loss in employment in the financial sector as a whole.

Similarly, the decline in employment during 2012 was mainly due to developments concerning one single entity, i.e. European Fund Administration S.A., in abbreviated form "EFA". Indeed, as EFA was authorised as investment firm in July 2012, its personnel (about 530 persons at the date of this change) is henceforth included in the statistics relating to the employment of investment firms. Thus, the change of status of the company EFA had no negative impact on the PFS personnel as a whole.

The aforementioned loss in employment could, however, be almost entirely offset by the staff increase related to the specialised PFS which were newly authorised during the year and by the personnel growth in around 50 entities already operating.

2.1.4. Development of balance sheets and profit and loss accounts

The provisional balance sheet total of all specialised PFS established in Luxembourg reached EUR 9,457 million as at 31 December 2012, against EUR 9,419 million as at 31 December 2011, i.e. an increase of EUR 38 million (+0.40%). This positive development may be mainly explained by a slight increase of the business volume developed by several entities authorised as professionals performing securities lending.

The specialised PFS also recorded a slight increase in their net results over a year. Indeed, the provisional net results amounted to EUR 360.1 million as at 31 December 2012, against EUR 353.1 million as at 31 December 2011, representing an increase of EUR 7 million (+1.98%). This small positive development confirmed the trend observed in 2011, i.e. that a majority of specialised PFS recorded net results which were either consistent or slightly higher compared to the previous financial year.

2.1.5. International expansion of specialised PFS

As at 31 December 2012, two specialised PFS (idem in 2011) were represented by means of branches abroad, one in the United Kingdom and the other one in Switzerland. Moreover, over the course of the year, one specialised PFS opened a subsidiary in Ireland.

[14] Preliminary figures.

2.2. Prudential supervisory practice

2.2.1. Instruments of prudential supervision

Prudential supervision is exercised by the CSSF on specialised PFS by means of four types of instruments:

- financial information submitted periodically to the CSSF enabling it to monitor continuously the activities of the relevant entities and the inherent risk, together with the monthly control of compliance with the minimum own funds legally required;
- the documents established yearly by the *réviseur d'entreprises agréé*, including the audit report and audited annual accounts, control report relating to the fight against money laundering and terrorist financing and, where applicable, the management letter;
- 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 specialised PFS;
- the introductory visits and on-site inspections carried out by the CSSF.

2.2.2. Compliance with the quantitative and qualitative standards by specialised PFS

• Capital base

In accordance with Article 20 and Articles 25 to 28-10 of the law of 5 April 1993 on the financial sector, the authorisation of specialised PFS is subject to the evidence showing the existence of minimum capital base.

Thus, the own assets of a specialised PFS authorised as a natural person cannot be less than the amount of own assets legally required. The own funds of a specialised PFS authorised as a legal person cannot be less than the subscribed and paid-up share capital required by law. Own funds shall mean within the meaning of the law of 5 April 1993 on the financial sector: the subscribed and fully paid-up share capital, share premiums, legally formed reserves and profits brought forward after deduction of possible losses for the current financial year. The funds in question must be available to the PFS permanently and invested in its own interest.

In this context, the CSSF reminds that subordinated loans and the profits for the current financial year shall not be taken into account for the determination of the own funds of a PFS.

If the own funds (legal person) or the own assets (natural person) become less than the minimum legal requirement, the CSSF may, where the circumstances so warrant, grant a time limit within which the PFS must regularise its situation or cease its business.

Based on the financial data that the specialised PFS must provide to the CSSF on a monthly basis in accordance with Circular CSSF 05/187, the CSSF verifies in particular compliance with the minimum capital base conditions by the specialised PFS. In 2012, the CSSF intervened at 11 specialised PFS for non-compliance with the legal provisions relating to own funds. The CSSF had to urge three of these entities several times to obtain a satisfactory regularisation of the situation.

• Compliance as regards the internal organisation and day-to-day management

For the purpose of assessing the quality of the internal organisation of specialised PFS, the CSSF bases its opinion on the reports and documents that it receives within the context of the year-end closing documents, including, among others, the management letters and similar reports issued by the *réviseurs d'entreprises agréés* and the reports drawn up by the internal auditors, as well as on the introductory visits and on-site inspections carried out by the CSSF.

Following the analysis of these reports and in view of the seriousness of the problem raised as well as its repetitive nature, the CSSF's reaction may vary from the mere follow-up of the problem based on the reports over the drawing-up of deficiency letters up to the convening of the management or specific on-site inspections.

Thus, during 2012, the CSSF intervened several times by way of deficiency letters relating to the weaknesses observed in the internal organisation of the entity, in particular as regards shortcomings in the procedures. In three cases, a specific on-site inspection was carried out by agents of the CSSF due to non-compliance as regards the day-to-day management of the specialised PFS.

- **Follow-up of the recommendations issued by the CSSF during the on-site inspections**

Within the context of the follow-up on the problems identified during the on-site inspections carried out in 2011, the CSSF intervened in 2012 at three specialised PFS, either by way of an injunction pursuant to Article 59 of the law of 5 April 1993 on the financial sector or by issuing a warning against the managers of the entity. The sanctions imposed by the CSSF on specialised PFS are described in Chapter XIII "Instruments of supervision".

- **Regularisation of the authorisations of certain specialised PFS following the entry into force of the law of 28 April 2011**

Since the entry into force of the law of 28 April 2011 amending the law of 5 April 1993 on the financial sector, the authorisation as client communication agent or administrative agent is required where activities under this status are provided for specialised investment funds (SIFs), investment companies in risk capital (SICARs) or authorised securitisation undertakings. In practice, this means that a PFS which is authorised as domiciliation agent of companies and providing services other than domiciliation services to SIFs, SICARs or authorised securitisation undertakings, must request an extension of its authorisation by adding the two aforementioned statuses.

Following the analysis of the reports and financial information transmitted periodically by the specialised PFS and in view of the information obtained during on-site inspections, the CSSF intervened at four entities to ensure that they update their authorisation.

In this context, the CSSF wishes to stress that the entities providing accounting services or NAV calculation services to SIFs, SICARs or authorised securitisation undertakings must have the status of administrative agent in this respect. Entities which do not have this status and willing to continue carrying out these activities are required to submit an applicable file to the CSSF for extension of their authorisation.

2.2.3. Meetings

The CSSF attaches particular importance to meetings with the specialised PFS managers in order to discuss the state of business, new ongoing projects as well as any serious issues which arose.

During the year under review, 40 meetings were held (34 in 2011) with representatives of specialised PFS. They covered the following areas:

- information requests on the qualification of the activities performed (scope of the law of 5 April 1993 on the financial sector);
- new requests for authorisation as PFS;
- initial meetings with the persons in charge of the newly authorised specialised PFS in order to deal with the practical aspect of ongoing supervision;
- changes in the authorisation of active PFS (activity, acquisition of subsidiaries, legal form, etc.);
- planned changes notably relating to the shareholding structure, day-to-day management and internal control;
- discussions concerning problems or specific points noticed in the framework of the prudential supervision exercised by the CSSF;
- information requests in the context of prudential supervision;
- presentation of the general context and activities of the entities concerned;
- courtesy visits.

2.2.4. Specific controls

Article 54(2) of the law of 5 April 1993 on the financial sector entitles the CSSF to require a *réviseur d'entreprises agréé* 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.

In 2012, the CSSF used formally this right in one specific case in order to verify whether the recurring infringements identified at the level of the specialised PFS were remedied.

3. SUPPORT PFS

Pursuant to Part I, Chapter 2, Section 2, Sub-section 3 of the law of 5 April 1993 on the financial sector, the professionals of the financial sector falling within the following categories are defined as support PFS:

- client communication agents - ACC (Article 29-1);
- administrative agents of the financial sector - AA (Article 29-2);
- primary IT systems operators of the financial sector - OSIP (Article 29-3);
- secondary IT systems and communication networks operators of the financial sector - OSIS (Article 29-4).

One characteristic of support PFS is that they do not as such exercise a financial activity themselves, but act as subcontractors of operational functions on behalf of other financial professionals.

3.1. Development in the number of support PFS

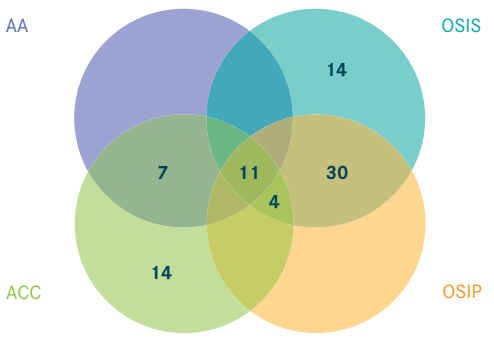
In 2012, the total number of support PFS, for the first time since the creation of the status, has slightly decreased from 88 entities as at 31 December 2011 to 85 as at 31 December 2012.

Four new support PFS received authorisation in 2012:

- one client communication agent (ACC);
- two primary IT systems operators of the financial sector and secondary IT systems and communication networks operators of the financial sector (OSIP - OSIS);
- one secondary IT systems and communication networks operator of the financial sector (OSIS).

Seven support PFS were withdrawn from the official list in 2012, five of which after ceasing their activities over the year and two due to mergers within the group.

As at 31 December 2012, the 85 support PFS broke down as follows:



ACC + OSIS four entities
ACC + AA + OSIP + OSIS + DOM + PCG one entity

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 applies to primary IT systems operators which are *ipso jure* authorised to carry out the activities of secondary IT systems and communication networks operators of the financial sector.

3.2. Development in support PFS employment

The personnel of support PFS rose from 8,679 persons as at 31 December 2011 (88 active entities) to 9,016 persons as at 31 December 2012 (85 active entities), representing an annual rise of 337 positions (+3.88%).

Leaving aside the support PFS which received authorisation in 2012 and those which abandoned or waived their authorisation over the year, the recorded growth reached only 206 positions which equalled on average to a recruitment of 2.4 persons per support PFS in 2012.

The total number of executives decreased by 4.88% but was offset by an increase of 4.55% of the number of employees.

Employment in support PFS

	2011			2012			Variation
	Luxembourg	Foreigners	**Total**	Luxembourg	Foreigners	**Total**	
Executives	132	483	**615**	123	462	**585**	-4.88%
Employees	1,116	6,948	**8,064**	1,038	7,393	**8,431**	4.55%
of which part-time	*77*	*802*	***879***	*80*	*769*	***849***	*-3.41%*
TOTAL	**1,248**	**7,431**	**8,679**	**1,161**	**7,855**	**9,016**	**3.88%**
of whom men	*1,011*	*5,729*	***6,740***	*951*	*6,107*	***7,058***	*4.72%*
of whom women	*237*	*1,702*	***1,939***	*210*	*1,748*	***1,958***	*0.98%*

3.3. Development of balance sheets and profit and loss accounts

The balance sheet total of all support PFS established in Luxembourg reached EUR 1,007.2 million as at 31 December 2012, against EUR 909.8 million as at 31 December 2011, i.e. an increase of 10.7%.

However, the net results of the support PFS decreased from EUR 44.3 million as at 31 December 2011 to EUR 35.8 million as at 31 December 2012 (-19.1%).

3.4. Prudential supervisory practice for support PFS

3.4.1. Entry into force of Circular CSSF 12/544

- **Anticipated benefits of Circular CSSF 12/544 for the prudential supervision of support PFS and the financial sector**

By issuing Circular CSSF 12/544, the CSSF carried out the initial stage of the refocusing of its prudential supervision on support PFS. Indeed, the circular sets the framework for a more efficient and innovative supervisory method which is better suited to the activities performed by support PFS. The second stage will be achieved through the entry into force of a specific circular introducing a long form audit report for support PFS.

The new supervisory method aims to address certain weaknesses identified since the creation of the support PFS statuses in 2003, insofar as the risks they put the financial sector at are more of an operational and technical rather than financial nature as they do not receive public funds. It appears, in particular, necessary to redirect the prudential supervision and to emphasise the operational part of the activities of support PFS. This approach aims therefore to identify, inter alia, the importance of the risks which the support PFS put the entities of the financial sector at.

Circular CSSF 12/544 also introduces three important concepts.

The first concept is the principle of proportionality which is defined according to the importance relating to the activities provided to the financial sector by the support PFS. The importance of the activities is assessed according to the impact on the financial sector, on the one hand, and on the PFS itself, on the other hand. For example, the failure of a support PFS providing services which are necessary for a significant proportion of clients of the financial sector may have a significant impact on the financial sector even if the relative "weight" of the clients of the financial sector may be insignificant for this support PFS. Conversely, the failure of a support PFS providing uncritical services which a sufficient number of other support PFS could provide is much less crucial for the financial sector provided that these services may be transferred quickly to another support PFS. Thus, support PFS should identify to what degree each business sector or type of client rely upon them. They shall take into account this principle of proportionality when analysing the risks.

The second concept is the self-assessment of direct and indirect risks which enables support PFS to have the costs incurred by such an assessment under control insofar as it may carry out the work itself, especially since it is best placed to assess the risks and reduce them.

The third concept is the specific feature of this approach insofar as the risk analysis shall be dealt with from the support PFS clients' viewpoint: the direct risks are assessed against their impact on the client and not on the support PFS itself. In this respect, the support PFS requires, inter alia, an extremely high capacity to be self-critical and a good knowledge of its clients' activities.

This results in several consequences:

- This prudential framework places the client at the centre of the analysis and fits within a context of stability of the financial sector. As regards support PFS, this approach could prove decisive, in particular by differentiating itself from foreign competition, because it puts the interest of the client ahead that of the provider, all of this within a regulatory framework of supervision. It should be stressed that the existence of specific regulations and a prudential supervision by an authority remains a unique differentiator which should be welcomed by the clients, in particular in the financial sector and abroad.
- As the circular enables to disclose the risk analysis report or a faithful summary of the risk situation, it is very likely that clients and potential clients of support PFS request these documents. This possible transparency should create a virtuous circle within which the provider is in charge of reducing its risks before they appear in the analysis for the regulator and client. However, to gain the best possible understanding of these risks, the providers should obtain information from their clients on their perception of any possible impact. This collaboration should entail an improvement of the mutual knowledge of the client and the provider and an alignment of the respective expectations, beyond a service level agreement which only covers the contractual aspects and anticipates the settlement of any disputes or shortcomings.
- The use of a support PFS by a financial institution may also give a false sense of security which could lead to an underestimation of risks. The financial professional underestimates its risk by assuming that the support PFS will cover the entire risk. If the support PFS asks its client about the possible impacts of a risk which it puts him/her at, it draws his/her attention to the fact that the risk does not disappear because the provision is assigned to a support PFS, but because the support PFS must be aware of the stakes to manage adequately the risks. The CSSF specifies once again that the professional of the financial sector can only outsource an activity, but not the responsibility related thereto.

Most supervised entities and third parties concerned welcomed this new approach of prudential supervision because it offers many advantages and suits better the support PFS's expectations.

Support PFS will most likely have to make greater differentiation as regards their outsourcing policy insofar as the risks and needs of the clients are not always identical. As an example, a support PFS having the status of primary IT systems operator should also have knowledge of the financial and accounting aspects of the solutions it offers to understand the potential risks incurred by its client in case of problems.

The implementation of the new supervisory method should have an impact on the quality and performance of the services provided by ensuring a greater and earlier risk identification which leads to better continuity of services.

- **Risk management outsourcing**

The risk management outsourcing which is allowed under certain conditions in accordance with Circular CSSF 12/544 and, more specifically, the use of a risk manager of the group are considered as outsourcing as this person is not an exclusive and permanent employee of the support PFS. This configuration is then only allowed for small-sized institutions which carry out low-risk activities, subject to prior authorisation of this outsourcing by the CSSF.

For the other institutions, the risk manager must be fully independent and there shall be no possible conflict of interest. The manager cannot, for instance, be involved in the project management of the support PFS.

Furthermore, the CSSF specifies that the risk manager acts under the mandate of the management which retains liability for the implementation of the risk management.

The CSSF reminds that the function of risk manager cannot be entrusted with the internal auditor or with the *réviseur d'entreprises agréé* due to any possible conflicts of interest, and the position must be filled in accordance with the aforementioned provisions. Non-compliance with these provisions will be considered to present a major direct risk for the supervised entity.

It should also be noted that the market players and third parties started working, on the basis of a collaborative platform, to find a common approach for the risk analysis as required by Circular CSSF 12/544. This work should enable to harmonize the circular's implementation both for supervised entities and for the regulator. The CSSF was thus invited in its capacity as observer to these works.

3.4.2. Voluntary, partial or full waiver of authorisation

During the second quarter 2012, the CSSF received requests from certain support PFS in order to partially or fully waive their authorisations. Indeed, certain support PFS wanted to waive all their authorisations as they no longer carried out any activity requiring the status of support PFS and other support PFS decided to voluntarily waive certain authorisations granted as they no longer carried out services requiring the relevant authorisation.

In this context, the CSSF recalls the prevailing principles in respect of the granting, withdrawal or amendment of authorisation.

First, distinction should be made between the jurisdictions of the Minister of Finance and those of the CSSF.

Pursuant to Article 14(1) of the law of 5 April 1993 on the financial sector, the Minister of Finance is the sole competent authority, after the CSSF has delivered its opinion, as regards the granting, withdrawal or amendment of authorisation, including the addition of statuses or the partial waiver of authorisation. Consequently, these steps must be subject to an official request with the Minister of Finance who, following the examination of the request, grants a new authorisation or proceeds with the exchange upon delivery of the original granted in the first instance in case of amendment of the initial authorisation. These amendments also result in an amendment to the official list drawn up by the CSSF which acts on the basis of a decision taken by the Minister of Finance in accordance with Article 52 of the law of 5 April 1993.

The CSSF remains competent, pursuant to Article 15(6) of the law of 5 April 1993 on the financial sector for any change of the corporate purpose, name or legal form as well as for the creation or acquisition of subsidiaries in Luxembourg and subsidiaries and branches abroad.

It should be recalled that the corporate purpose of a support PFS cannot include an activity of the financial sector which would not be covered by its authorisation. As an example, a support PFS which would have to provide services requiring the status of specialised PFS and which wants to adapt its corporate purpose accordingly, must also have the adequate status prior to the service provision. The adaptation of its corporate purpose can only become effective upon the granting of the authorisation's extension.

3.4.3. Correspondence with the CSSF

The CSSF, as part of its missions, verifies compliance with the legal and regulatory framework and issues opinions on the applications subject to authorisation. Consequently, it receives various kinds of correspondence relating to the supervised entities, from mere information to applications for approval of a complex project or authorisation requests.

A review of the correspondence dealt with by the CSSF highlighted a number of inconsistencies, in particular as regards the persons signing the documents, which revealed the frequent non-compliance with certain key rules of good governance practices.

The CSSF thus noticed that many documents were not signed by persons in charge of the day-to-day management or authorised to commit the company. The peak was reached with a request for appointment within the board of directors signed only by the requesting person.

This problem led the CSSF to now require systematically that any correspondence in relation to the closing documents (annual accounts, internal audit reports, etc.) be duly signed by all the managers in charge of the day-to-day management.

Moreover, insofar as the authorised management is responsible collectively for the day-to-day management of the company and given the experience acquired by the CSSF as regards conflict situations or situations of subordination among authorised managers, the CSSF stresses that any correspondence (requesting an authorisation relating to major changes as compared to the initial application file or relating to a major change in the organisation or activities of the support PFS, etc.) be signed by each authorised manager or at least by a majority of the authorised management when it is composed by more than two managers. It remains possible that, within an authorised management, each manager has different competences and manages separate business units, but all of them should know what each others do, which is the principle of collective responsibility of the management. Consequently, it is by appending their signatures that the authorised managers commit themselves to the CSSF on the content and the truthfulness of the documents sent.

3.4.4. Capital base

In 2012, the CSSF intervened many times with support PFS for non-compliance with the minimum capital base conditions as provided for in Articles 20 and 29-1 to 29-4 of the law of 5 April 1993 on the financial sector. The relevant support PFS were reminded each time that the capital base cannot be less than the threshold required by law and that it must be available to them permanently and invested in their own interest. Non-compliance with these provisions exposes support PFS to a possible authorisation withdrawal.

It transpired that the main reason for cases of non-compliance with the minimum amount of the capital base is at the level of the accumulation of losses over the year and the losses brought forward from the previous financial years. Consequently, the CSSF recommends that future support PFS take into consideration this element and provide increased amounts of own funds in order to anticipate the first possible losses expected during the launch of their business.

Agents hired in 2012 and 2013: Departments "Information systems and supervision of support PFS", "Supervision of investment firms" and "Personnel, administration and finance"

Left to right: Christian BLASCHETTE, Pol SCHILTZ, Fabrice BAILLY, Yannick PACE, Siyuan HAO, Frédéric GIRARD, Kathrin MOULES, Richard ROSENFELDER

Absent: Magali ALVES

CHAPTER V

SUPERVISION OF PAYMENT INSTITUTIONS AND ELECTRONIC MONEY INSTITUTIONS

1. PAYMENT INSTITUTIONS

1.1. Regulatory framework

The law of 10 November 2009 on payment services transposed into national law Directive 2007/64/EC of 13 November 2007 on payment services in the internal market. This directive aims to set up a coherent legal framework in order to establish a single European market for payment services and to ensure its proper functioning.

The law of 10 November 2009 introduced a new financial institution status, i.e. the payment institutions authorised to carry out payment services activities, and imposes authorisation, exercise and supervisory conditions on them. The payment services concerned are specifically listed in the annexe to the law.

Article 31(1) of the law designates the CSSF as the competent authority for the supervision of payment institutions.

The main prudential provisions applicable to payment institutions may be summarised as follows:

- quantitative prudential standards, i.e. a minimum capital and capital requirements calculated according to one of the three methods provided by the law; the CSSF monitors the proper application and compliance with these quantitative standards based on a specific reporting pursuant to Circular CSSF 11/511;
- rules for the protection of funds received for the execution of payment transactions;
- rules related to the fight against money laundering and terrorist financing;
- guarantee of a sound and prudent management and the existence of a strong internal governance system.

As regards the last indent, the rules are, in principle, those applicable to credit institutions and investment firms but they are applied to payment institutions according to a proportionality principle based, among others, on the type of payment services provided and the risks incurred.

The activities exercised by the Luxembourg payment institutions in another EU/EEA Member State through the establishment of a branch, through the intermediary of an agent or by way of free provision of services, are also subject to the prudential supervision of the CSSF.

By way of compensation for the simplified rules to access the profession and the lighter prudential supervision compared to those applicable to credit institutions, the payment institutions are subject to activity restrictions and prohibitions:

- strict control of credit granting according to the provisions of Article 10(3) of the law of 10 November 2009;
- prohibition to conduct the business of taking deposits or other repayable funds within the meaning of Article 2(3) of the law of 5 April 1993 on the financial sector;
- exclusive use of payment accounts opened by payment institutions for payment transactions;
- rules for protection of funds for the execution of activities other than the provision of payment services in accordance with Articles 10 and 14 of the law of 10 November 2009.

On 7 December 2012, the CSSF published Circular CSSF 12/550 relating to the practical rules concerning the mission of the *réviseurs d'entreprises agréés* (approved statutory auditors) of payment institutions, the purpose of which is to specify the scope of the mandate for the audit of annual accounting documents and to set the rules relating to the content of the long form report that payment institutions have to communicate to the CSSF pursuant to Article 37 of the law of 10 November 2009.

1.2. Payment institutions authorised in Luxembourg

As at 31 December 2012, four payment institutions incorporated under Luxembourg law, i.e. SIX Payment Services (Europe) S.A., FIA-NET Europe S.A., Diners Club Beneflux S.A. and Digicash Payments S.A., as well as a branch of a payment institution incorporated under German law, Deutsche Post Zahlungsdienste

GmbH, Niederlassung Luxemburg, were recorded in the public register of payment institutions established in Luxembourg. It should be noted that the company Cetrel S.A. acts as an agent on behalf of SIX Payment Services (Europe) S.A..

2. ELECTRONIC MONEY INSTITUTIONS

2.1. Regulatory framework

Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions repealing the first Directive 2006/46/EC on electronic money, was transposed into national law by a law of 20 May 2011 amending the law of 10 November 2009 on payment services.

The major purpose of this new directive is to provide electronic money with a sustainable and attractive regime and, in particular, to make the prudential supervisory regime of electronic money institutions (EMIs) consistent with that applicable to the payment institutions governed by Directive 2007/64/EC (i.e. simplified rules to access the profession and lighter prudential supervision compared to those applicable to credit institutions).

These new provisions create an autonomous regime for EMIs which are no longer considered as credit institutions. At national level, the CSSF has been designated as the competent authority to supervise EMIs.

Following the entry into force of Directive 2009/110/EC, electronic money is viewed from a wider perspective insofar as the definition given by the directive covers, in principle, all the situations where an issuer of electronic money issues a pre-paid stored value in exchange for funds. Electronic money is defined as a monetary value represented by a claim on the issuer, which is:

- stored electronically, including magnetically;
- issued upon receipt of funds for the purpose of making payment transactions; and
- accepted by a natural or legal person other than an electronic money institution.

Pursuant to Article 24-6 of the law of 10 November 2009, EMIs are entitled to carry out, in addition to the issuance of electronic money, each of the following activities:

- the provision of payment services listed in the annexe to the law;
- the granting of credit subject to compliance with the provisions of Article 24-6(1)(b) of the law;
- the provision of operational services and ancillary services closely related to the issuance of electronic money or to the provision of payment services;
- the management of payment systems;
- other commercial activities.

The law imposes authorisation, exercise and supervisory conditions on EMIs. The main prudential provisions applicable to EMIs may be summarised as follows:

- quantitative prudential standards, i.e. a minimum capital and capital requirements in accordance with Articles 24-11 and 24-12; the CSSF monitors the proper application and compliance with these quantitative standards based on a specific reporting pursuant to Circular CSSF 11/522;
- rules for the protection of funds received in exchange for electronic money in accordance with the provisions of Article 24-10;
- rules related to the fight against money laundering and terrorist financing;
- guarantee of a sound and prudent management and the existence of a robust internal governance system.

As regards the last indent, the rules are in principle those applicable to credit institutions and to investment firms but they will be applied to EMIs according to a proportionality principle which is based, among others, on the type of risks incurred.

The protection of funds as mentioned in the second indent above is a key element of the regime of electronic money. The purpose of this regime is to guarantee electronic money holders the redemption of their funds in case of insolvency of the EMI.

In accordance with this requirement, the funds received by the EMI in exchange for electronic money may either be deposited in a separate account, in order not to be commingled with the funds of persons other than electronic money holders or invested in certain assets according to the criteria defined in Article 24-10(1) of the law or covered by an insurance policy. Consequently, the funds thus segregated shall not form part of the EMI's own assets and shall be deducted, in the sole interests of the electronic money holders, against the claims of other creditors of the institution. Investments of these funds are legally limited to investments in "secure and low-risk assets".

The activities exercised by Luxembourg EMIs in another EU/EEA Member State through the establishment of a branch, through intermediaries or agents or by way of free provision of services, are also subject to the prudential supervision of the CSSF.

Similarly to payment institutions, EMIs are subject to activity restrictions:

- prohibition to conduct the business of taking deposits or other repayable funds within the meaning of Article 2(3) of the law of 5 April 1993 on the financial sector;
- strict control of credit granting according to the provisions of Article 24-6(1) of the law of 10 November 2009.

EMIs shall comply with the provisions of Article 48-2 of the law of 10 November 2009 relating to the issuance and redeemability of electronic money. Moreover, they are not allowed to grant interest or any other benefit related to the length of time during which an electronic money holder holds electronic money.

2.2. Electronic money institutions authorised in Luxembourg

As at 31 December 2012, five EMIs, i.e. Amazon Payments Europe S.C.A., MOBEY S.A., PayCash Europe S.A., Yapital Financial AG and Leetchi Corp S.A. were recorded in the public register of EMIs authorised in Luxembourg. It should be noted that the main activity of the company PayPal (Europe) S.à r.l. et Cie, S.C.A. authorised as a credit institution in Luxembourg is the issuance of electronic money.

All EMIs authorised in Luxembourg issue electronic money in accordance with point 29) of Article 1 of the law of 10 November 2009. The methods of use of electronic money may nevertheless vary according to the corporate model of each EMI. Thus, according to the EMI's business model which they have chosen, electronic money holders may:

- carry out money transfers from one electronic money account to another electronic money account (transfers between individuals);
- make payments related to online shopping;
- make payments via a mobile phone, for instance via QR code reading (Quick Response Code);
- make payments via a prepaid card which may be linked to the electronic money account.

CHAPTER VI

SUPERVISION OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT

1. EVOLUTION OF THE UCI SECTOR IN 2012

1.1. Major events in 2012

In Luxembourg, the undertakings for collective investment (UCIs) sector recorded a 13.7% growth in net assets in 2012, whereas the number of UCIs remained almost unchanged (-0.1%).

In 2012, the political agreements reached in Europe in the context of sovereign debt crisis management, together with the monetary policy actions taken by the European Central Bank (ECB) and the decision to create a "banking union", were welcomed by the financial markets as the measures taken should contribute to maintaining long-term financial stability in Europe.

In the United States, the solutions found at the end of the year to avoid the fiscal cliff also had a positive impact on global financial markets.

Through the inflow of new capital and positive developments in the financial markets, the total assets of Luxembourg UCIs grew by EUR 287.3 billion to EUR 2,383.8 billion as at 31 December 2012. Net capital investment of EUR 123.1 billion and a positive impact of financial markets of EUR 164.2 billion were responsible for this increase.

In 2012, bond UCIs recorded the most significant inflow of capital, but mixed and equity UCIs also recorded positive net capital investment. However, given very low, and even negative, yields on money markets owing notably to the ECB lowering the deposit rate to zero in July 2012, money market UCIs recorded a net disinvestment.

As regards the overall development of financial markets in 2012, the global equity index "MSCI WORLD Standard (Large + Mid Cap)" grew by 14.1% and the global bond index "JPMorgan GBI Global Traded Index Hedged Index Level Euro" by 4.1%.

At the end of 2012, the number of UCIs and specialised investment funds (SIFs) totalled 3,841 compared to 3,845 at the end of 2011. Taken separately, the number of SIFs grew by 111 entities.

46.9% of the 3,841 UCIs registered on the official list as at 31 December 2012 were UCITS governed by Part I of the law of 17 December 2010 relating to undertakings for collective investment ("2010 law").

Six management companies newly authorised pursuant to Chapter 15 of the aforementioned law were set up in Luxembourg, whereas five management companies ceased their activities in Luxembourg.

On the regulatory front, on 19 December 2012, the European Commission adopted the delegated regulation supplementing Directive 2011/61/EU on alternative investment fund managers with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

1.2. Evolution of the UCI sector

1.2.1. Evolution of the number of UCIs

As at 31 December 2012, 3,841 UCIs were registered on the official list against 3,845 UCIs at the end of the previous year, representing a decrease of four entities (-0.1%). During the year, 381 new UCIs were registered and 385 entities were withdrawn from the official list.

Evolution of the number of UCIs

	Number of UCIs	Registrations on the official list	Deregistrations from the list	Net variation	in %
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%
2010	3,667	471	267	204	5.9%
2011	3,845	469	291	178	4.9%
2012	3,841	381	385	-4	-0.1%

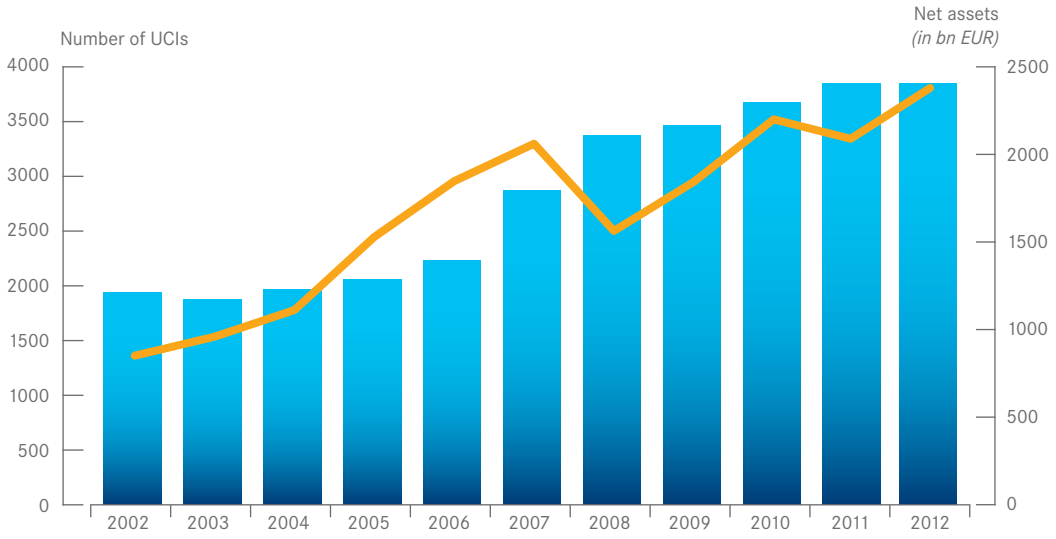
1.2.2. Evolution of the net assets of UCIs

Through the inflow of new capital and the positive developments in the financial markets, the total assets of Luxembourg UCIs grew by EUR 287.3 billion over one year to EUR 2,383.8 billion as at 31 December 2012 (+13.7%). This growth originated from net issues (42.8%) and from a positive impact of financial markets (57.2%). Net capital investment in Luxembourg UCIs, amounting to EUR 123.1 billion in 2012, demonstrates investors' confidence in financial markets.

Evolution of UCI net assets - in billion EUR

	Net assets	Net subscriptions	Net asset variation	in %	Average net assets per UCI
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
2010	2,199.0	161.6	358.0	19.4%	0.600
2011	2,096.5	5.3	-102.5	-4.7%	0.545
2012	2,383.8	123.1	287.3	13.7%	0.621

Evolution of the number and net assets of UCIs



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
UCIs	1,941	1,870	1,968	2,060	2,238	2,868	3,371	3,463	3,667	3,845	3,841
Net assets	844.5	953.3	1,106.2	1,525.2	1,844.8	2,059.4	1,559.7	1,841.0	2,199.0	2,096.5	2,383.8

1.2.3. Evolution of the number of UCI entities[1]

As at 31 December 2012, 2,462 out of 3,841 UCIs adopted an umbrella structure. As the number of operating sub-funds rose from 11,876 to 12,041 (+1.4%), the total number of economic entities grew from 13,294 as at 31 December 2011 to 13,420 as at 31 December 2012 (+0.9%), despite the fall in the number of traditionally structured UCIs from 1,418 to 1,379 entities.

Evolution of the number 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 %
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%*	1,381	*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%
2010	3,667	1,365	*37.2%*	2,302	*62.8%*	11,572	*5.03*	12,937	5.8%
2011	3,845	1,418	*36.9%*	2,427	*63.1%*	11,876	*4.89*	13,294	2.8%
2012	3,841	1,379	*35.9%*	2,462	*64.1%*	12,041	*4.89*	13,420	0.9%

[1] The term "entity" refers to both traditional UCIs and 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. Evolution of UCIs and of their net assets according to legal form and applicable law

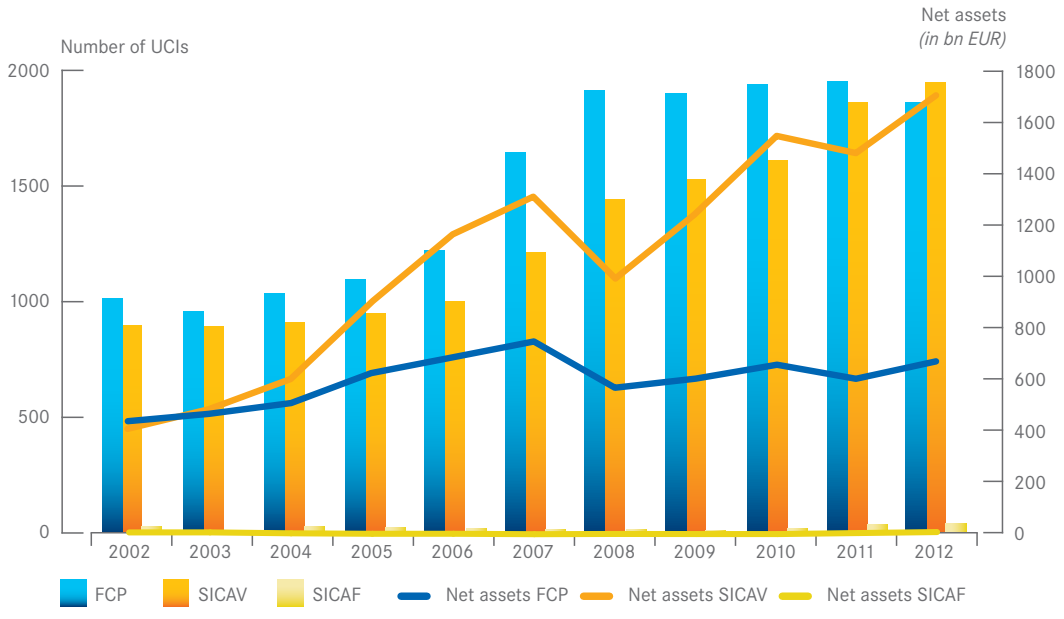
The breakdown of UCIs between *fonds communs de placement* (FCP), *sociétés d'investissement à capital variable* (SICAV) and *sociétés d'investissement à capital fixe* (SICAF) reveals that on 31 December 2012, SICAVs became the prevailing legal form with 1,946 entities out of a total of 3,841 active UCIs, against 1,859 entities operating as FCPs and 36 as SICAFs.

Breakdown of UCIs by legal form

	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)*
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
2010	1,944	652.2	1,701	1,540.1	22	6.7	3,667	2,199.0
2011	1,948	609.6	1,864	1,476.5	33	10.4	3,845	2,096.5
2012	1,859	669.1	1,946	1,702.7	36	12.0	3,841	2,383.8

At the end of 2012, FCPs' net assets represented 28.1% of the total net assets of UCIs and SICAVs' net assets represented 71.4% of the total net assets of UCIs. SICAFs' net assets remained marginal with a 0.5% share of the total net assets of UCIs.

Breakdown of UCIs and their net assets according to legal form



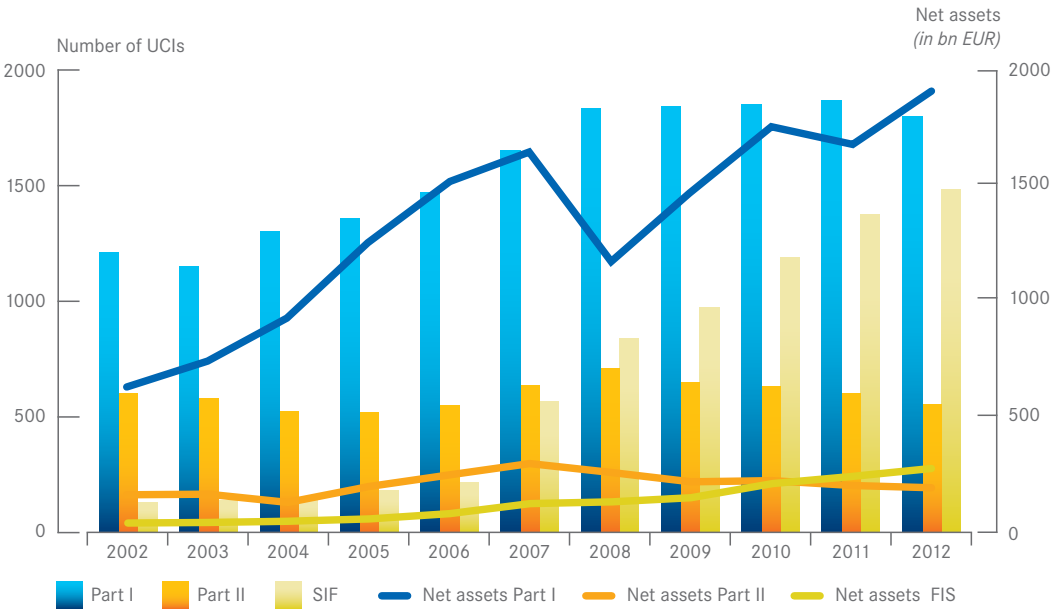
The following table illustrates the distribution of UCIs depending on whether they fall within the scope of Part I or II of the law of 17 December 2010 or the law of 13 February 2007 relating to specialised investment funds (SIFs).

Breakdown of UCIs according to Parts I and II of the 2010 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)*
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
2010	1,846	1,762.7	629	222.2	1,192	214.1
2011	1,870	1,655.5	601	201.7	1,374	239.3
2012	1,801	1,913.1	555	193.8	1,485	276.9

UCIs falling under Part I of the law of 17 December 2010 are those which comply with the provisions of the Community Directive on UCITS 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 SIFs are UCIs whose securities are reserved for 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 2010 law and specialised investment funds



As at 31 December 2012, 46.9% of UCIs registered on the official list were UCITS governed by Part I of the 2010 law and 14.4% were other UCIs governed by Part II (non-coordinated UCIs). SIFs represented 38.7% of the 3,841 Luxembourg UCIs. Net assets were distributed at the same date as follows: 80.3% for UCIs under Part I, 8.1% for UCIs under Part II and 11.6% for SIFs.

The following table compares the evolution of the number of UCIs and net assets in 2012 according to both the legal form and applicable law.

Evolution of the number of UCIs and their net assets according to legal form and applicable law

	2011				2012				Variation 2011/2012			
Number of UCIs	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total
Part I	1,142	728	0	1,870	1,061	740	0	1,801	-7.09%	1.65%	0.00%	-3.69%
Part II	290	305	6	601	273	278	4	555	-5.86%	-8.85%	-33.33%	-7.65%
SIFs	516	831	27	1,374	525	928	32	1,485	1.74%	11.67%	18.52%	8.08%
Total	**1,948**	**1,864**	**33**	**3,845**	**1,859**	**1,946**	**36**	**3,841**	**-4.57%**	**4.40%**	**9.09%**	**-0.10%**
Net assets *(in bn EUR)*	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total	FCPs	SICAVs	SICAFs	Total
Part I	427.52	1,227.99	0.00	1,655.51	473.69	1,439.40	0.00	1,913.09	10.80%	17.22%	0.00%	15.56%
Part II	79.39	121.37	0.92	201.67	77.05	115.75	0.97	193.77	-2.95%	-4.63%	5.88%	-3.92%
SIFs	102.70	127.17	9.46	239.33	118.35	147.58	11.04	276.97	15.24%	16.05%	16.66%	15.73%
Total	**609.61**	**1,476.52**	**10.38**	**2,096.51**	**669.10**	**1,702.72**	**12.01**	**2,383.83**	**9.76%**	**15.32%**	**15.71%**	**13.70%**

As regards Part I, the number of UCIs decreased by 3.69% compared to 2011 and net assets increased by 15.56%, whereas the number of UCIs under Part II decreased by 7.65% and their net assets by 3.92%. The fall in the number of Part I and Part II UCIs was notably due to the consolidation of the product lines of certain initiators.

However, the number of SIFs increased by 8.08% as did their net assets by 15.73%.

1.2.5. Net subscriptions

In 2012, UCIs under Part I of the 2010 law recorded net subscriptions totalling EUR 109.028 billion. However, UCIs under Part II showed net redemptions totalling EUR 12.271 billion. Net subscriptions for SIFs amounted to EUR 26.333 billion.

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

(in million EUR)	FCPs	SICAVs	SICAFs	Total	in %
Part I	17,821	91,207	0	109,028	88.58%
Part II	-3,291	-9,118	138	-12,271	-9.97%
SIFs	12,515	12,884	934	26,333	21.39%
Total	**27,045**	**94,973**	**1,072**	**123,090**	**100.00%**

1.3. Valuation currencies used

As regards the valuation currencies used, most entities (8,940 out of a total of 13,420) were denominated in Euro, followed by those in US dollars (3,213) and those in Swiss francs (316). In terms of net assets, the entities denominated in Euro accounted for EUR 1,232.2 billion of a total of EUR 2,383.8 billion, ahead of entities expressed in US dollars (EUR 950.5 billion) and Swiss francs (EUR 48.5 billion).

1.4. UCIs' investment policy

The table below describes the evolution of the number of UCIs and net assets according to their investment policy. It should be noted that UCIs investing in other assets include 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

	2011		2012		Variation in %	
	Number of entities	Net assets *(in bn EUR)*	Number of entities	Net assets *(in bn EUR)*	Number of entities	Net assets
Fixed-income transferable securities	2,876	622.482	2,994	808.775	4.10%	29.93%
Variable-yield transferable securities	3,552	575.203	3,543	657.128	-0.25%	14.24%
Mixed transferable securities	3,901	391.168	3,918	443.970	0.44%	13.50%
Fund of funds	2,034	145.500	2,037	153.655	-0.34%	5.60%
Money market instruments and other short-term securities	326	296.049	308	257.617	-5.52%	-12.98%
Cash	96	8.236	81	5.896	-15.63%	-28.41%
Real estate	210	24.064	244	25.925	16.19%	7.73%
Futures, options, warrants	180	20.312	174	17.315	-3.33%	-14.75%
Other assets	119	13.498	131	13.545	10.08%	0.35%
Total	**13,294**	**2,096.512**	**13,420**	**2,383.826**	**0.95%**	**13.70%**

Most UCI categories, and in particular those investing in variable-yield transferable securities, benefited from the positive development of financial markets in 2012.

On the other hand, some UCI categories, including particularly those investing in money market instruments and in other short-term securities or derivatives, suffered withdrawals of capital while the inflow of new capital benefited other categories, including those investing in fixed-income transferable securities.

In May 2010, ESMA published "CESR's Guidelines on a common definition of European money market funds" which entered into force on 1 July 2011. Money market funds existing at the date of entry into force were granted a transitional period until 31 December 2011 to comply with the different provisions. As at 31 December 2012, the financial centre counted 91 short-term money market funds for a total of EUR 176.421 billion and 107 money-market funds for a total of EUR 44.794 billion, which complied with the criteria of the European label.

Investment policy of UCIs according to Parts I and II of the 2010 law and SIFs

Situation as at 31 December 2012	Number of entities	Net assets *(in bn EUR)*	Net assets *(in %)*
UCITS subject to Part I			
Fixed-income transferable securities	2,146	711.435	29.8%
Variable-yield transferable securities	3,005	591.301	24.8%
Mixed transferable securities	2,482	319.500	13.4%
Fund of funds	735	57.329	2.4%
Money market instruments and other short-term securities	207	223.583	9.4%
Cash	30	2.362	0.1%
Futures and/or options	59	6.410	0.3%
Other assets	6	1.169	0.0%
UCITS subject to Part II[2]			
Fixed-income transferable securities	294	34.072	1.4%
Variable-yield transferable securities	129	17.862	0.7%
Mixed transferable securities	423	39.839	1.7%
Fund of funds	639	55.735	2.3%
Money market instruments and other short-term securities	87	30.303	1.3%
Cash	39	3.271	0.1%
UCITS subject to Part II[3]			
Non-listed transferable securities	19	2.673	0.1%
Venture capital	5	0.130	0.0%
Other UCIs subject to Part II			
Real estate	26	1.843	0.1%
Futures and/or options	54	7.049	0.3%
Other assets	12	0.992	0.0%
SIFs			
Fixed-income transferable securities	554	63.268	2.7%
Variable-yield transferable securities	338	40.650	1.7%
Mixed transferable securities	969	80.457	3.4%
Non-listed transferable securities	86	8.488	0.4%
Fund of funds	640	40.064	1.7%
Money market instruments and other short-term securities	14	3.731	0.2%
Cash	12	0.263	0.0%
Venture capital	19	0.872	0.0%
Real estate	218	24.082	1.0%
Futures and/or options	61	3.856	0.2%
Other assets	112	11.237	0.5%
Total	**13,420**	**2,383.826**	**100.0%**

[2] UCITS excluded from Part I of the law of 17 December 2010, pursuant to Article 3, indents 1 to 3, i.e. UCITS closed for redemptions, not promoted in the EU or only sold to individuals in countries outside the EU.

[3] UCITS excluded from Part I of the law of 17 December 2010 pursuant to Article 3, indent 4, i.e. UCITS under one of the categories laid down by Circular CSSF 03/88 owing to their investment and loan policy.

The following table illustrates, per quarter, the flow of subscriptions and redemptions during 2012 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 assets

in million EUR

	1st quarter 2012			2nd quarter 2012			3rd quarter 2012			4th quarter 2012			Totals		
Pol.	subscr.	red.	n. iss.	subscr.	red.	n. iss.	subscr.	red.	n. iss.	subscr.	red.	n. iss.	subscr.	red.	n. iss.
1	76,009	69,704	6,305	52,814	64,148	-11,334	62,216	61,899	317	75,853	68,350	7,503	266,892	264,101	2,791
2	103,405	76,282	27,123	93,602	71,459	22,143	109,227	78,803	30,424	121,581	84,540	37,041	427,815	311,084	116,731
3	42,347	36,709	5,638	33,976	38,206	-4,230	41,364	34,946	6,418	47,319	35,809	11,510	165,006	145,670	19,336
4	298,780	309,536	-10,756	324,223	330,222	-5,999	260,846	272,492	-11,646	270,551	280,843	-10,292	1,154,400	1,193,093	-38,693
5	37,792	29,733	8,059	29,704	23,334	6,370	26,721	25,613	1,108	44,646	37,258	7,388	138,863	115,938	22,925
Total	**558,333**	**521,964**	**36,369**	**534,319**	**527,369**	**6,950**	**500,374**	**473,753**	**26,621**	**559,950**	**506,800**	**53,150**	**2,152,976**	**2,029,886**	**123,090**

1.5. Evolution of several specific categories of UCIs

1.5.1. Guarantee-type UCIs

The purpose of guarantee-type UCIs is to offer investors some security in light of the fluctuations inherent in financial markets. According to the investment policy pursued by the funds concerned, the guarantee ensures that the investor is reimbursed a proportion of the invested capital or is fully reimbursed the initial investment or even receives a return on the investment at the end of one or several pre-determined periods.

In 2012, the number of guarantee-type UCIs fell from 190 to 168 and the total number of entities from 360 to 297. The fall in entities can be explained by the launch of 26 new entities whereas the guarantees either expired or were not extended for 89 entities.

As at 31 December 2012, the 297 entities broke down into 34 entities guaranteeing unitholders only a proportion of the capital commitment, 151 entities guaranteeing repayment in full of the capital commitment (money-back guarantee) and 112 entities offering their investors a return in addition to the initial subscription price.

As at 31 December 2012, net assets of guarantee-type UCIs decreased by EUR 2.7 billion to EUR 37.5 billion, i.e. by 6.8%. It is also worth noting that guarantee-type UCIs set up by German promoters alone accounted for 92.1% of the total net assets of all guarantee-type UCIs.

Evolution of guarantee-type UCIs

Year	Number of UCIs	Number of economic entities	Net assets *(in bn EUR)*
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
2010	192	400	41.99
2011	190	360	40.27
2012	168	297	37.54

1.5.2. Real estate UCIs

In 2012, net assets of UCIs investing mainly in real estate increased by 7.7%. It should be noted that SIFs remain the preferred vehicles for real estate investments.

Evolution of real estate UCIs

Year	Number of entities	of which active entities	of which Part II	of which SIFs	Net issues *(in bn EUR)*	Net assets *(in bn EUR)*
2005	52	41	16	36	1.591	5.287
2006	76	64	22	54	2.653	8.057
2007	104	80	21	83	6.497	15.446
2008	137	111	16	121	7.126	20.926
2009	150	125	15	135	1.977	18.965
2010	179	149	13	166	0.042	21.426
2011	210	192	27	183	2.923	24.064
2012	244	220	26	218	2.000	25.925

1.5.3. Sharia UCIs

The number of Sharia UCIs and entities grew slightly in 2012 (+4 entities) and their net assets rose by 143.0%.

Evolution of Sharia-compliant UCIs

Year	Number of Sharia entities	Net assets *(in bn EUR)*
2005	7	74.5
2006	8	93.6
2007	9	202.2
2008	22	212.8
2009	23	308.3
2010	24	472.8
2011	24	525.3
2012	28	1,276.7

1.5.4. Microfinance UCIs

Both the number and the net assets of UCIs investing in microfinance rose in 2012.

Evolution of UCIs in the microfinance sector

Year	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
2010	32	1,937.8
2011	30	2,429.7
2012	36	3,130.0

1.6. Initiators of Luxembourg UCIs

The breakdown of Luxembourg UCIs according to the geographic origin of their initiators highlights the multitude of countries represented in the financial centre. Initiators of Luxembourg UCIs spread over 61 countries.

Initiators of UCIs in Luxembourg are mostly from the United States, Germany, Switzerland, United Kingdom, Italy, France and Belgium.

Origin of the initiators of Luxembourg UCIs

Situation as at 31 December 2012	Net assets *(in bn EUR)*	in %	Number of UCIs	in %	Number of entities	in %
United States	557.650	23.4%	149	3.9%	925	6.9%
Germany	376.349	15.8%	1,550	40.4%	2,967	22.1%
Switzerland	352.764	14.8%	516	13.4%	2,452	18.3%
United Kingdom	335.833	14.1%	261	6.8%	1.378	10.3%
Italy	186.143	7.8%	143	3.7%	1,155	8.6%
France	171.624	7.2%	263	6.8%	1,113	8.3%
Belgium	119.781	5.0%	172	4.5%	1,274	9.5%
Netherlands	48.350	2.0%	51	1.3%	201	1.5%
Luxembourg	47.850	2.0%	188	4.9%	441	3.3%
Sweden	43.745	1.9%	103	2.7%	284	2.1%
Others	143.737	6.0%	445	11.6%	1.230	9.1%
Total	**2,383.826**	**100.0%**	**3,841**	**100.0%**	**13,420**	**100.0%**

1.7. Notification procedure of Luxembourg UCITS

Since 1 July 2011, Luxembourg UCITS wishing to market their units in another EU Member State must comply with the notification procedure provided for in Directive 2009/65/EC of 13 July 2009. Notifications are made directly between the supervisory authorities of the Member States by means of a file that the UCITS must submit to the supervisory authority of the home Member State.

In 2012, the CSSF received a total of 4,956 notification requests. 2,648 requests were transmitted to the host Member State authority. The other applications had to be rejected as they were either incomplete or incorrect with respect to the required format and/or content. Indeed, one of the aims of the UCITS IV regulation is to speed up the registration procedure for UCITS in another Member State. Thus, the CSSF has five days to process a notification request. In practice, it has set itself a deadline of 24 hours (one working day) to process a request. Given the deadlines imposed by the regulation, a notification request that has been submitted cannot be left pending, be corrected or completed over time or after comments. The submitted documentation is either compliant with the requirements and transmitted to the host authority or it is non-compliant and rejected, the application being thereby closed. The reasons of refusal are communicated to the intermediary which submitted the request. Where a notification request has been refused, a new request may be submitted afterwards, by means of a completed/corrected documentation, and the legal deadline starts to run afresh. Among the 4,956 notification requests received, many files have been submitted several times before they finally fulfilled the legal requirements. 2,497 of the 2,648 transmitted requests have been accepted by the relevant host Member State authorities.

Breakdown of the notifications accepted per EU/EEA Member State

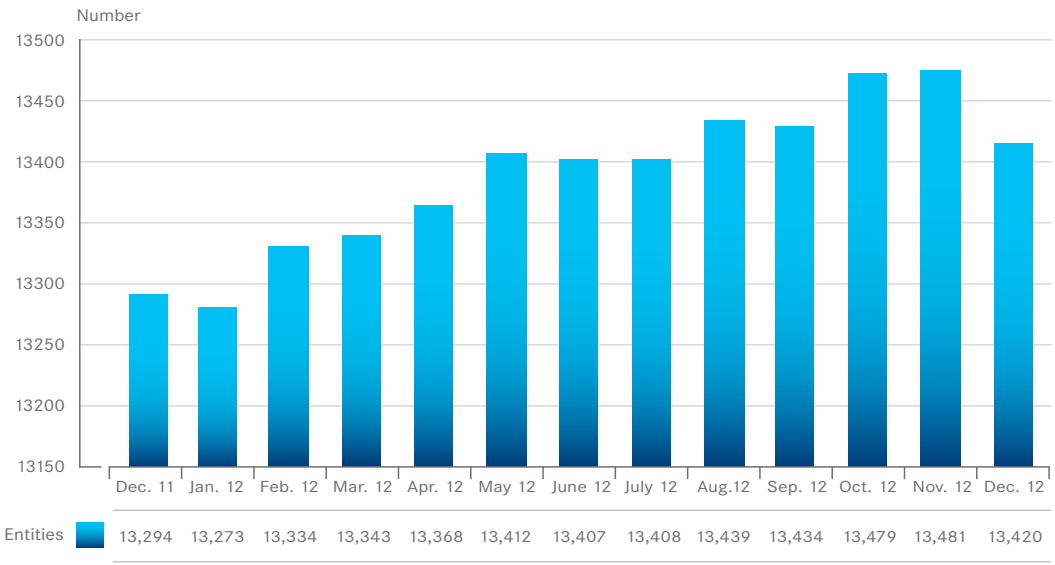
Member State	Number
Germany	338
Italy	260
Austria	218
France	215
United Kingdom	201
Spain	195
Sweden	165
Belgium	141
Finland	134
Netherlands	121
Norway	103
Denmark	72
Portugal	49
Bulgaria	39
Ireland	39
Greece	37
Liechtenstein	33
Poland	31
Hungary	18
Cyprus	17
Czech Republic	16
Estonia	14
Latvia	11
Lithuania	11
Slovakia	8
Iceland	6
Malta	3
Romania	2
Slovenia	1
Total	**2,497**

1.8. Evolution of UCI entities in 2012

1.8.1. General situation

In 2012, the number of entities grew by 126 to 13,420 entities at the end of the year.

Monthly evolution of the number of entities



1.8.2. Entities approved in 2012

In 2012, 2,097 new entities were authorised. In absolute terms, this figure represents a decrease of 61 entities compared to 2011, i.e. a decline of 2.83%. 1,144 out of the 2,097 entities approved in 2012, i.e. 54.6%, were launched in the same year.

	2007	2008	2009	2010	2011	2012
Newly approved entities	2,878	3,361	1,999	2,362	2,158	2,097
of which launched in the same year	*1,916*	*2,008*	*1,068*	*1,343*	*1,292*	*1,144*
In %	66.6%	59.7%	53.4%	56.9%	59.9%	54.6%

The breakdown by investment policy shows that the proportion of entities investing in fixed-income transferable securities increased significantly compared to 2011. The proportion of entities investing in variable-yield transferable securities and that of entities investing in mixed transferable securities decreased compared to 2011.

Investment policy of entities approved in 2012

Investment policy	2011		2012	
	Number of entities	As a % of total	Number of entities	As a % of total
Fixed-income transferable securities (excluding money market instruments and other short-term securities)	472	21.87%	576	27.47%
Variable-yield transferable securities	483	22.38%	401	19.12%
Mixed transferable securities	686	31.79%	581	27.71%
Fund of funds	338	15.66%	345	16.45%
Cash, money market instruments and other short-term securities	35	1.62%	39	1.86%
Real estate	56	2.60%	69	3.29%
Futures, options, warrants (derivative instruments)	46	2.13%	43	2.05%
Other assets	42	1.95%	43	2.05%
Total	**2,158**	**100.00%**	**2,097**	**100.00%**

1.8.3. Entities closed in 2012

In 2012, 1,477 entities were closed, which was 5.42% more (+76 entities) than in the previous year.

	2006	2007	2008	2009	2010	2011	2012
Liquidated entities	412	424	752	968	633	747	919
Matured entities	45	83	84	92	111	143	157
Merged entities	223	282	485	482	380	511	401
Total	**680**	**789**	**1,321**	**1,542**	**1,124**	**1,401**	**1,477**

The breakdown by investment policy shows that most of the entities closed in 2012 had invested in mixed transferable securities.

Investment policy of entities closed in 2012

Investment policy	2011		2012	
	Number of entities	As a % of total	Number of entities	As a % of total
Fixed-income transferable securities (excluding money market instruments and other short-term securities)	379	27.05%	310	20.99%
Variable-yield transferable securities	348	24.84%	327	22.14%
Mixed transferable securities	308	21.98%	465	31.48%
Fund of funds	223	15.92%	262	17.74%
Cash, money market instruments and other short-term securities	78	5.57%	45	3.05%
Real estate	11	0.78%	9	0.61%
Futures, options, warrants (derivative instruments)	19	1.36%	38	2.57%
Other assets	35	2.50%	21	1.42%
Total	**1,401**	**100.00%**	**1,477**	**100.00%**

2. MANAGEMENT COMPANIES SET UP UNDER CHAPTER 15 OF THE LAW OF 17 DECEMBER 2010

2.1. Evolution in number

In 2012, 16 applications for authorisation as a management company in accordance with the provisions of Chapter 15 of the law of 17 December 2010 (against five in 2011) were submitted to the CSSF, consisting of:

- 12 projects for the creation of a new management company;
- three projects for the transformation of a management company authorised under Chapter 16 of the 2010 law into a management company authorised under Chapter 15 of the same law;
- one project to transform a company authorised as specialised PFS into a management company.

In 2012, six new entities were registered on the official list of management companies authorised under Chapter 15 of the 2010 law. Four of the six new authorisations were granted to entities which established in Luxembourg for the first time. Moreover, all the new authorisations concerned entities whose corporate purpose is limited exclusively to collective management within the meaning of Article 101(2) of the 2010 law.

The five deregistrations of management companies in 2012 were mainly the result of a shift or reorganisation of the activities of their respective parent companies.

As at 31 December 2012, the number of management companies approved in accordance with Chapter 15 of the 2010 law thus totalled 180 entities.

Evolution of the number of management companies set up under Chapter 15 of the 2010 law

	2005	2006	2007	2008	2009	2010	2011	2012
Registrations	47	80	31	13	9	7	11	6
Deregistrations	1	3	/	4	6	20	11	5
Total	**72**	**149**	**180**	**189**	**192**	**179**	**179**	**180**

In 2012, two management companies extended their corporate purpose. One of them extended it to discretionary management and investment advice and the other one to discretionary management, investment advice and safekeeping and administration of UCI units. However, no management company ceased an activity relating to its extended corporate purpose during the year.

Evolution of the number of management companies whose authorisation covers, in addition to the activity of collective management, one or several services referred to in Article 101(3) of the 2010 law

	2005	2006	2007	2008	2009	2010	2011	2012
Registrations	5	10	4	1	/	3	3	2
Cessation of extended activities	/	/	3	4	2	4	/	/
Total	**13**	**23**	**24**	**21**	**19**	**18**	**21**	**23**

2.2. Geographical origin

The year 2012 saw no major change in the geographic origin of management companies. As in the past, management companies of German and Swiss origin remain predominant on the Luxembourg market, followed by entities from France and Italy.

Country	2006	2007	2008	2009	2010	2011	2012
Andorra	/	/	/	1	1	1	1
Austria	/	/	/	1	1	1	1
Belgium	5	7	8	6	8	8	8
Bermuda	/	/	/	/	/	1	1
Canada	/	1	1	1	1	2	2
Denmark	3	3	3	3	4	4	4
Finland	/	/	/	1	1	1	1
France	14	20	21	22	19	18	20
Germany	39	42	46	46	44	41	40
Greece	1	2	2	3	3	3	3
Iceland	1	1	1	1	1	1	1
Italy	17	19	20	21	22	21	19
Japan	1	1	1	1	1	1	1
Jersey	/	/	/	/	/	/	1
Liechtenstein	1	1	1	1	1	1	2
Luxembourg	8	9	8	8	5	8	8
Netherlands	3	4	3	4	4	3	3
Norway	/	/	/	/	/	/	1
Portugal	/	2	2	2	2	2	2
Republic of Mauritius	/	/	/	/	/	1	1
Russia	/	/	/	/	1	1	1
Spain	2	3	3	3	3	3	3
Sweden	5	6	6	6	6	6	4
Switzerland	35	44	45	42	32	31	30
United Arab Emirates	/	/	/	1	1	1	1
United Kingdom	7	8	10	11	11	12	12
United States	7	7	8	7	7	7	9
Total	**149**	**180**	**189**	**192**	**179**	**179**	**180**

2.3. Assets under management

As at 31 December 2012, total net assets managed by management companies set up under Chapter 15 of the 2010 law amounted to EUR 1,717.1 billion, against EUR 1,472.3 billion in 2011, i.e. an increase of 16.63% which was attributable to a rise in stock markets and positive net subscriptions. Management companies set up under Chapter 15 of the 2010 law managed 72% of the total net assets of EUR 2,383.8 billion invested as at 31 December 2012 in Luxembourg UCIs.

Evolution of net assets under management in management companies - in billion EUR

	2008	2009	2010	2011	2012	Variation 2011/2012
Total net assets	1,107.1	1,293.3	1,526.0	1,472.3	1,717.1	16.63%
of which:						
in fonds communs de placement	*479.4*	*515.1*	*554.0*	*508.6*	*552.7*	*8.67%*
in investment companies	*627.7*	*778.2*	*972.0*	*963.7*	*1,164.4*	*20.83%*

Breakdown of management companies in terms of assets under management as at 31 December 2012

Assets under management	Number of management companies				
	2008	2009	2010	2011	2012
< 100 million EUR	41	37	31	34	31
100 to 500 million EUR	33	34	36	30	32
500 to 1,000 million EUR	21	21	20	19	14
1 to 5 billion EUR	49	51	41	48	52
5 to 10 billion EUR	17	18	15	10	10
10 to 20 billion EUR	13	14	12	14	15
> 20 billion EUR	15	17	24	24	26
Total	**189**	**192**	**179**	**179**	**180**

2.4. Evolution of employment

As at 31 December 2012, the total number of management company employees was 2,743 compared with 2,516 as at 31 December 2011, representing an increase of 227 employees over the year (+9.2%). This development, however, was not equivalent to a net creation of new jobs. Indeed, even though new jobs were created in order to strengthen the organisational environment within management companies, the positive evolution was mainly due to reallocations of staff among financial sector entities following reorganisations and the transfer of activities within the relevant groups.

2.5. Aggregate balance sheet and profit and loss account

The provisional total balance sheet of management companies reached EUR 7.420 billion as at 31 December 2012, compared with EUR 7.171 billion as at 31 December 2011.

The provisional aggregate net profits amounted to EUR 1.794 billion as at 31 December 2012, against EUR 1.616 billion as at 31 December 2011. This growth resulted from the rise in net assets under management by the management companies, boosting current operating income.

2.6. International expansion

2.6.1. Freedom of establishment

In 2012, seven new branches were established abroad by four Luxembourg management companies. Two branches were closed during the year.

As at 31 December 2012, 18 management companies had a branch in one or several foreign countries, totalling 41 branches.

Country	Number of branches
Austria	1
Belgium	2
Denmark	2
France	2
Germany	9
Greece	1
Italy	5
Japan	1
Netherlands	4
Spain	4
Sweden	3
Switzerland	4
United Kingdom	3
Total	**41**

No management company of another EU Member State established a branch in Luxembourg in 2012.

2.6.2. Freedom to provide services

In 2012, 10 management companies incorporated under Luxembourg law notified their intention to carry out activities in other EU/EEA Member States under the freedom to provide services. The notifications of three of these companies related to all functions included in the activity of collective portfolio management. The activities and services notified by the seven other companies related mainly to marketing, as well as to portfolio management, discretionary management and investment advice.

In 2012, the CSSF received 28 notifications for the free provision of services within Luxembourg from management companies incorporated in another EU Member State. Most of these notifications came from France, followed by two from German companies, one from a Spanish company and one from an Italian company.

2.6.3. Representative offices

In 2012, three Luxembourg management companies opened representative offices in Germany, Italy and South Korea, respectively.

3. DEVELOPMENTS IN THE REGULATORY FRAMEWORK

3.1. CSSF Regulation N° 12-01 laying down detailed rules for the application of Article 42a of the law of 13 February 2007 relating to specialised investment funds concerning the requirements regarding risk management and conflicts of interest

CSSF Regulation N° 12-01 of 13 August 2012 lays down detailed rules for the application of Article 42a of the law of 13 February 2007 relating to specialised investment funds, introduced by the law of 26 March 2012, concerning the requirements for these funds to implement appropriate risk management systems and to curb conflicts of interest.

3.2. Circular CSSF 12/540

Circular CSSF 12/540 of 9 July 2012 provides details regarding, on the one hand, the sub-funds of UCIs that have been authorised by the CSSF but not yet been launched after their authorisation, that became inactive after their launch, or that are in liquidation and, on the other hand, the information to be transmitted to the CSSF relating to such sub-funds.

3.3. Circular CSSF 12/546

Circular CSSF 12/546 of 24 October 2012 replaces Circulars CSSF 03/108 and CSSF 05/185 applicable to all Luxembourg management companies subject to Chapter 15 of the 2010 law and to all investment companies that have not designated a management company within the meaning of Article 27 of that law (SIAG). It follows on from the amendments introduced by the law of 17 December 2010 relating to undertakings for collective investment and CSSF Regulation N° 10-04 transposing Directive 2010/43/EU.

Moreover, it incorporates Circular CSSF 11/508 so that the conditions for obtaining and maintaining authorisation as a management company and SIAG are gathered together in a single text. In addition, it specifies certain conditions for authorisation, including in particular the re-use of own funds, the administrative bodies, the arrangements concerning the central administration and the delegation rules.

In its press release dated 31 October 2012, the CSSF specified that it considers that the concept of promoter is no longer necessary for UCITS that have taken the form of a SIAG or that have designated a management company, where these fulfil the requirements of Circular CSSF 12/546.

4. PRUDENTIAL SUPERVISORY PRACTICE

4.1. Prudential supervision

4.1.1. Standards to be observed by UCIs

One of the fundamental duties of the CSSF with respect to the supervision of UCIs is to ensure the 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.

4.1.2. Instruments of prudential supervision

The CSSF's permanent supervision aims to ensure that UCIs subject to its supervision observe all legal, 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 yearly basis;
- the analysis of annual and semi-annual reports which UCIs must publish for their investors;
- the analysis of management letters issued by the *réviseur d'entreprises* (statutory auditor), which are to be communicated to the CSSF immediately;
- the analysis of statements made in accordance with the circular on the protection of investors in the case of a NAV (net asset value) calculation error and correction of the impacts of non-compliance with the investment rules applicable to UCIs;
- on-site inspections carried out by CSSF agents.

4.1.3. 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 generally drawn up in compliance 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 147 of the law of 17 December 2010 and Article 58 of the law of 13 February 2007, the central administrations of Luxembourg UCIs must transmit financial information to the CSSF by electronic means, on a monthly (tables O1.1.) and a yearly (tables O4.1. and O4.2.) basis. The deadline to transmit the monthly financial information is 10 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 closing date of the financial year and the communication time limit is four months for UCIs governed by the law of 17 December 2010 and six months for SIFs.

As far as monthly financial information is concerned, the CSSF considers that UCIs must, on the one hand, strictly observe the pre-defined deadline to submit table O1.1. and, on the other hand, pay due attention when preparing this table so as to ensure that the format and content are correct. For information, the format and content of about 15,800 files, representing nearly 42,000 types of units/shares, are controlled every month.

• Meetings

In 2012, 234 meetings were held between representatives of the CSSF and UCI intermediaries. These meetings concerned the presentation of new UCI projects, restructurings of UCIs and the application of the laws and regulations pertaining to UCIs.

4.2. Review of the risk management processes required by Circular CSSF 11/512

4.2.1. Context

Circular CSSF 11/512 dated 30 May 2011 presents the main regulatory changes in risk management following the publication of CSSF Regulation N° 10-4 and the issue by ESMA of various documents providing guidelines on risk management. It requires, in particular, that Luxembourg management companies subject to Chapter 15 of the 2010 law (the "management companies") and investment companies that have not designated a management company within the meaning of Article 27 of the 2010 law ("SIAG") transmit their risk management processes to the CSSF by 31 December 2011. Updates of this risk management process must then be submitted to the CSSF at least once a year (at the latest one month after the end of the financial year of the management company or of the SIAG). The Annexe to the circular specifies the content and format of the risk management process to be communicated to the CSSF.

By defining the content and the format of the risk management process via Circular CSSF 11/512, the main goal of the CSSF was to standardise the information that management companies and SIAGs must transmit to the CSSF as regards their risk management methods/processes (pursuant to Article 42(1) of the 2010 law). The requirements in this area are thereby clearly defined and allow the CSSF to review more efficiently and to better compare (peer review) the risk management methods/processes used.

4.2.2. Review of the risk management processes by the CSSF

In 2012, the CSSF reviewed the risk management processes submitted by management companies and SIAGs. Any subsequent comments were transmitted by mail or by telephone to the relevant entities.

Whilst the submitted risk management processes were overall satisfactory, some shortcomings with respect to the requirements have nevertheless been observed. The following shortcomings are notably at issue.

- **Insufficient accuracy as regards the organisation of the risk management function**

Since the outline of the risk management process has been set down in the Annexe to the circular, the CSSF expects that Section 1.1. of the procedure includes a detailed description of the organisation of the risk management function of the management company or of the SIAG. The CSSF deems it essential that the allocation of responsibilities and the relationships between the different parties be clearly explained, notably by means of an organisation chart that sets out the reporting lines between the parties, and in particular where risk management activities are delegated. Indeed, the CSSF has observed that there was regularly a lack of clarity and reiterates that intra-group delegations must appear in the organisation chart in the same way as for external delegations.

- **Lack of detail on due diligences as well as ongoing review of the delegatees in case of risk management delegation and a lack of confirmation regarding the existence of contracts**

In accordance with Article 26 of CSSF Regulation N° 10-04, before entering into arrangements with specialised third parties for the performance of risk management activities, management companies and SIAGs must take the necessary steps in order to verify that the third parties have the ability and capacity to perform the risk management activities reliably, professionally and effectively. After these arrangements have been made, the management companies and SIAGs must establish methods for the ongoing assessment of the standard of performance of the third parties, whether or not they are companies belonging to the same group as the management companies or SIAGs. All these elements must be described in Section 1.9. of the risk management procedure.

Moreover, in accordance with the regulations in force, the CSSF expects that an agreement be signed between the management company or the SIAG and the different specialised third parties involved in risk management, whether or not the latter belong to the same group as the management company or the SIAG.

- **Issues related to the statement and submission of the regular reports on risk management**

As stated in Section 1.7. of the Annexe to Circular CSSF 11/512, the risk management process must describe the regular reports on risk management and a copy of every such report must be transmitted to the CSSF in the framework of the annual update of the risk management process.

This means that the CSSF wishes to know which reports are actually used by the permanent risk management function, senior management, board of directors, and supervisory function (where applicable) to monitor the risk levels of UCITS and to ensure that limits are respected. All the reports contributing to these objectives should therefore be included in that section. However, in the course of its review, the CSSF has observed a lack of completeness in this respect.

Moreover, it was noted that copies of these reports were sometimes not sent to the CSSF.

4.3. Ad hoc surveys

In 2012, the CSSF carried out various ad hoc surveys, on the one hand within the context of the macroprudential supervision of UCIs, and on the other hand, in order to reply to a specific information request from the International Organisation of Securities Commissions (IOSCO).

In August and September 2012, the CSSF requested UCITS subject to Part I of the 2010 law to fill out a questionnaire in order to gather information on the calculation method of global exposure (including the internal Value-At-Risk (VaR) limits), leverage and the synthetic risk and reward indicators (SRRI). This survey showed notably that 33% of the sub-funds (38% in terms of net assets) use the VaR approach to calculate global exposure under Article 42(3) of the 2010 law.

In October 2012, the CSSF also requested certain Luxembourg UCIs to fill out a questionnaire for IOSCO. This questionnaire concerned UCIs that follow so-called alternative strategies and whose net assets exceeded USD 500 million as at 30 September 2012.

4.4. CSSF's approach concerning leveraged UCITS

Increased transparency requirements for risk laid down under UCITS IV (pursuant to box 24 of "CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS" (CESR/10-788, July 2010)) require UCITS that measure global exposure under Article 42(3) of the 2010 law through a VaR approach to disclose the expected level of leverage as well as the possibility of higher leverage in the prospectus. The guidelines, however, are clear as they indicate that it is not an additional investment restriction.

As laid down in Circular CSSF 11/512, the UCITS concerned are required, since 31 December 2011, to disclose this information in the prospectus, either by calculating the leverage based on the sum of the notionals of the derivatives used, or based on the commitment approach. In line with the European convergence process, the CSSF requires, in accordance with its press release 12/29 of 31 July 2012, that new Luxembourg UCITS disclose the expected level of leverage in the prospectus using at least the approach based on the sum of the notionals of the derivatives used. UCITS existing at the end of July 2012 were required to update their prospectus accordingly by the end of 2012 at the latest.

Since the end of 2011, the CSSF observed that the use of certain special strategies or derivatives by Luxembourg UCITS could entail high levels of leverage.

In view of this observation, the CSSF defined and set up a global approach to analyse and monitor the UCITS with high levels of leverage centred on the following.

Firstly, the CSSF analyses systematically the investment strategies followed, notably in order to assess the exposure of these UCITS to risk and the proportionality of the leverage to risk exposure. For these analyses, the CSSF requested from the industry a set of indicators reflecting the level of risk exposure such as the historical levels of leverage and VaR, the breakdown of levels of leverage by derivatives and by risk factor or even the results of stress testing.

Then the CSSF pays particular attention to ensuring that UCITS with leverage, and even more so with high leverage levels (independently of the risk level incurred by these UCITS) comply with the transparency requirements laid down in Article 47 of the 2010 law. Thus, information that UCITS disclose in their prospectus on the use of derivatives, such as the different types of derivatives used, their underlying assets, their objective (investment, coverage, arbitrage, etc.), the underlying investment strategies as well as the impact of their use on the level of leverage and risk profile of the UCITS, must be sufficiently granular. This information must be all the more detailed when the use of derivatives is significant.

Moreover, based on the risk management process communicated to the CSSF in accordance with Section V of Circular CSSF 11/512, the CSSF monitors the adequacy of the risk management method set up by the UCITS in accordance with Article 42(1) of the 2010 law, and notably the adequate coverage of the investment strategies of the UCITS by the method in question.

In addition, the CSSF wants to be informed about the share ownership structure (e.g. target investors) of these UCITS.

Depending on the results of these analyses, the CSSF decides if a given UCITS that uses high levels of leverage needs to be closely monitored by means of a quarterly ad hoc report on performance and risks (e.g. leverage, VaR, stress tests).

The CSSF's approach as described above is standardised and aims at harmonising the analysis and decisions relating to issues resulting from high levels of leverage. However, the scope of the analyses is determined by the specificities of every UCITS.

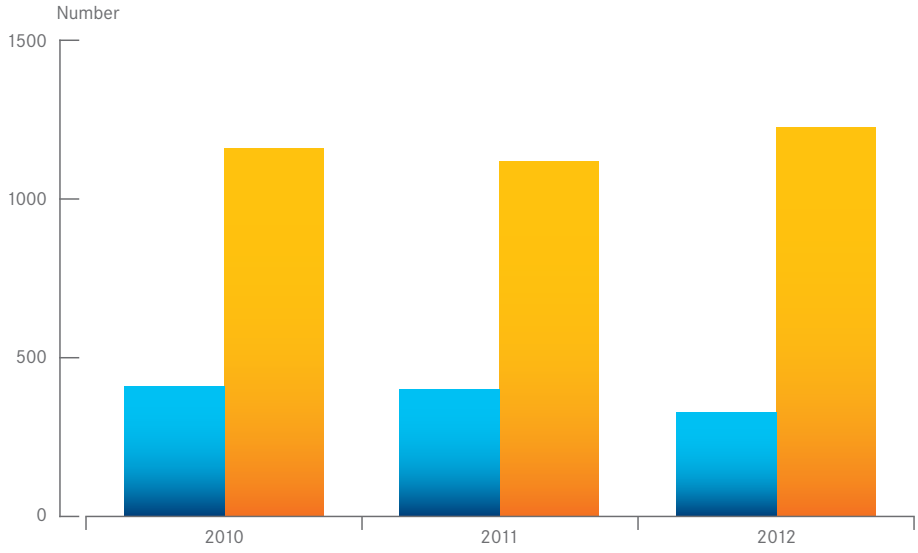
4.5. Circular CSSF 02/77 on the protection of investors in case of NAV calculation error and correction of the impacts of non-compliance with investment rules

4.5.1. Declarations made in 2012 on the basis of Circular CSSF 02/77

In 2012, the CSSF received 1,551 declarations on the basis of Circular CSSF 02/77, against 1,519 declarations in 2011, representing a slight increase of 2.1%.

Among these declarations, 327 cases (401 in 2011) concerned NAV calculation errors and 1,224 cases (1,118 in 2011) concerned non-compliance with investment rules.

Evolution of the number of NAV calculation errors and cases of non-compliance with investment rules reported to the CSSF over the last three years



	2010	2011	2012
NAV calculation errors	411	401	327
Non-compliance with investment rules	1,159	1,118	1,224

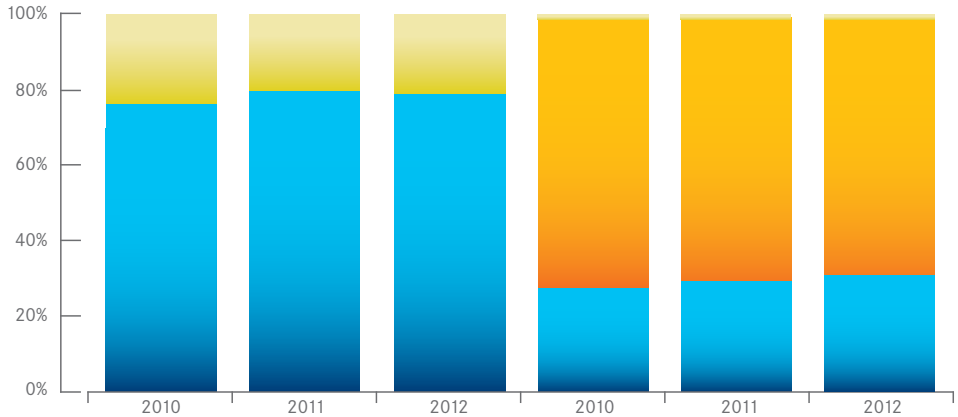
In 2012, the number of cases of non-compliance with investment rules increased slightly (+9%) compared to 2011, mostly due to non-compliance with the 10% NAV limit for temporary borrowing. Most of these cases were of a technical nature and were rectified within a few days. NAV calculation errors decreased by 23% compared to the previous year.

More particularly, as regards the reports of NAV calculation errors received in 2012, 11 cases among the reports for which the normal procedure is applicable could not be closed on 31 December 2012. This is mainly due to the fact that the CSSF is still awaiting either further information or confirmations from the *réviseur d'entreprises* (as provided for in Circular CSSF 02/77).

In 2012, 256 cases out of 327 NAV calculation errors (322 cases out of 401 cases in 2011) applied the simplified procedure, in that the compensation amounts did not exceed EUR 25,000 and the amounts to be reimbursed to an investor did not exceed EUR 2,500. Out of the 1,224 cases of non-compliance with investment rules, the simplified procedure was also applied in 1,205 cases, of which 829 cases (69%) did not cause any prejudice to the investor or UCI.

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 the investors and the UCIs.

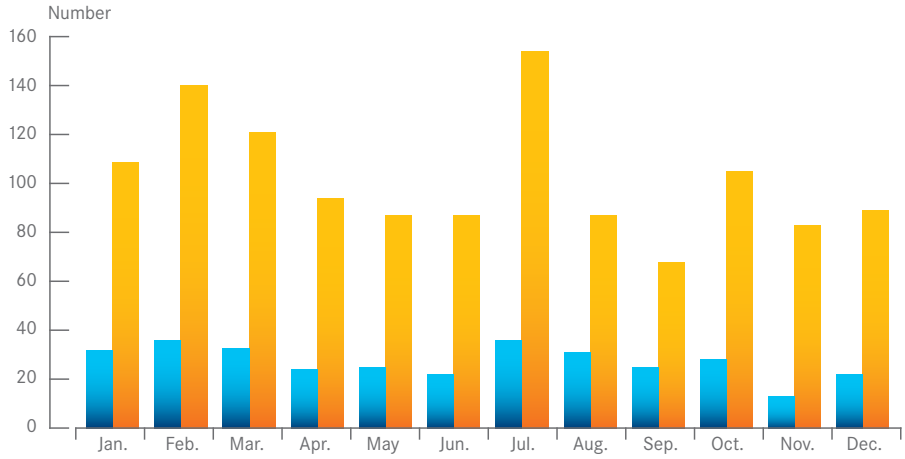
Simplified procedure



	2010	2011	2012	2010	2011	2012
Normal procedure	23.6%	19.7%	21.7%	1.6%	1.6%	1.6%
Non-compliance without prejudice	-	-	-	70.8%	69.3%	67.7%
Simplified procedure	76.4%	80.3%	78.3%	27.6%	29.1%	30.7%

The following graph sets out in detail the declarations made during 2012.

Monthly evolution of the errors and instances of non-compliance reported in 2012

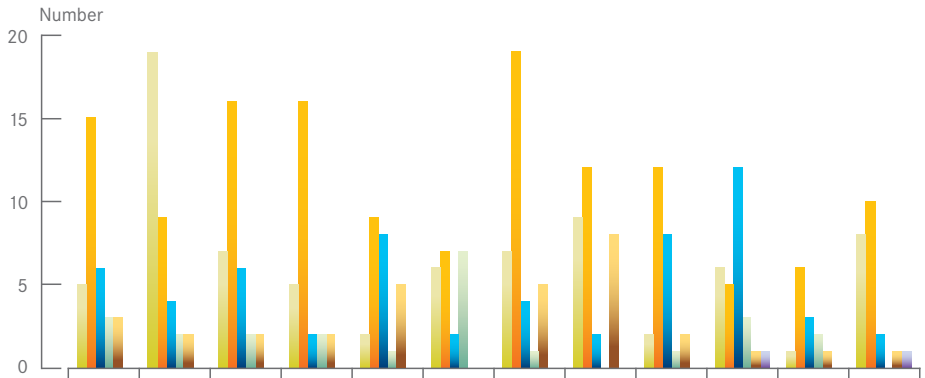


	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
NAV calculation errors	32	36	33	24	25	22	36	31	25	28	13	22
Non-compliance with investment rules	109	140	121	94	87	87	154	87	68	105	83	89

The origin of NAV calculation errors can be divided into five categories: pricing errors, accounting errors, errors in the calculation of costs and accruals, errors in the valuation of swaps or futures and other errors.

The following graph plots the different causes of NAV calculation errors recorded in 2012.

Evolution of the origin of NAV calculation errors in 2012

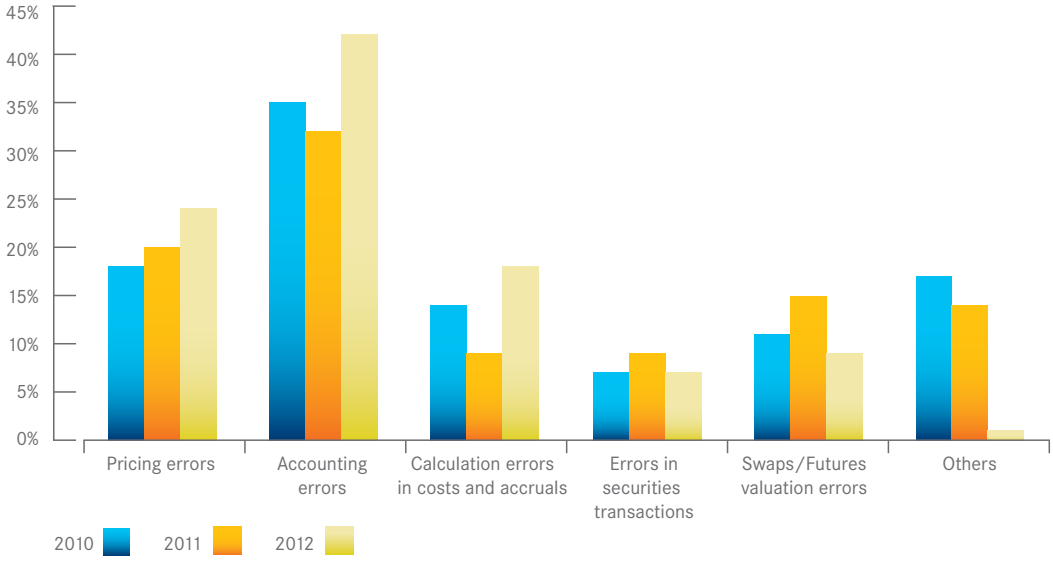


	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
Pricing errors	5	19	7	5	2	6	7	9	2	6	1	8
Accounting errors	15	9	16	16	9	7	19	12	12	5	6	10
Calculation errors in costs and accruals	6	4	6	1	8	2	4	2	8	12	3	2
Errors in securities transactions	3	2	2	1	1	7	1	0	1	3	2	0
Swaps/Futures valuation errors	3	2	2	1	5	0	5	8	2	1	1	1
Others	0	0	0	0	0	0	0	0	0	1	0	1

During the relevant period, NAV calculation errors were mainly due to accounting errors (42%), pricing errors (24%) and errors in the calculation of costs and accruals (18%).

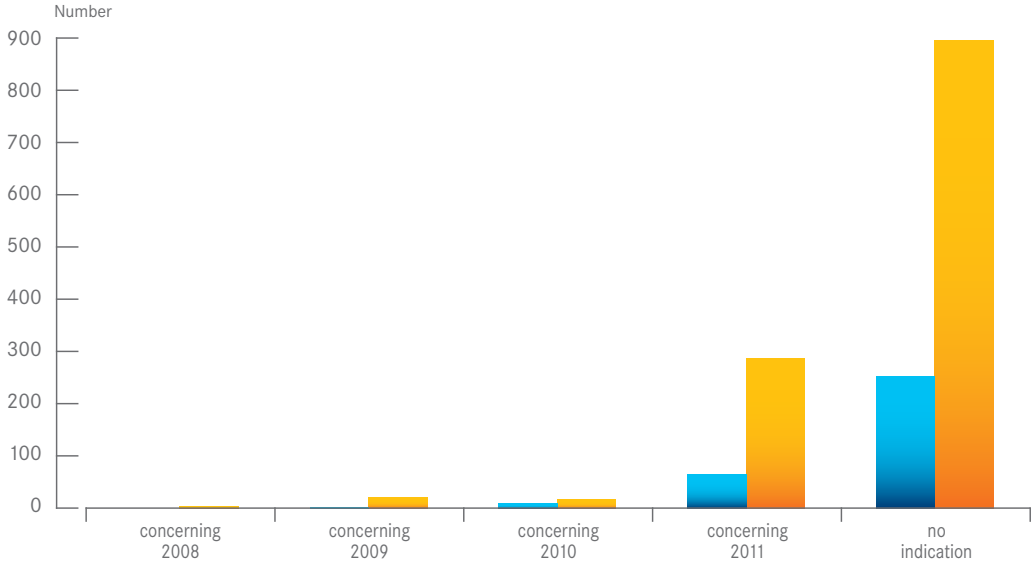
The following table shows the development of the origin of NAV calculation errors from 2010 and highlights that over the past three years, accounting errors and errors in the valuation of securities held by UCIs were the main causes of NAV calculation errors.

Evolution of the origin of NAV calculation errors over the last three years



It should be noted that the declarations received in 2012 not only related to errors and instances of non-compliance which actually occurred in 2012. They can also relate to errors or instances of non-compliance detected in 2012, but which occurred in a previous period. The following graph highlights this effect of timing difference.

Declarations submitted in 2012



	concerning 2008	concerning 2009	concerning 2010	concerning 2011	no indication
NAV calculation errors	0	1	8	65	253
Non-compliance with investment rules	3	20	16	287	898

4.5.2. Compensation paid following correction of NAV calculation errors or instances of non-compliance with investment rules

The table below sets out the detailed compensation amounts notified in 2011 and 2012. It should be stressed that the CSSF data as at 31 December 2011 and 31 December 2012 is not complete as the final compensation amounts had not been finalised for a certain number of files.

Compensation paid following NAV calculation errors

	Investors		UCI/Sub-fund	
	2011	2012	2011	2012
EUR	1,917,412.78	2,255,723.22	2,222,576.33	1,732,274.68
USD	4,024,282.23	2,186,589.66	3,543,844.82	2,263,379.31
GBP	1,888,702.41	83,234.34	237,222.53	97,482.69
CHF	32,453.64	990.95	28,822.17	3,282.62
Other currencies (in EUR) *	52,684.11	102,825.39	54,967.68	7,512.83
Total (in EUR)**	**7,368,096.91**	**4,118,620.48**	**5,324,137.21**	**3,647,417.21**

* converted in EUR at the exchange rate applicable on 31 December 2011 and 31 December 2012, respectively.

** exchange rate as at 31 December 2011 and 31 December 2012, respectively.

Compensation paid following non-compliance with investment rules

	Investors		UCI/Sub-fund	
	2011	2012	2011	2012
EUR	177,382.19	453,101.81	748,017.57	2,065,924.59
USD	154,276.13	167,314.23	1,930,429.27	984,110.27
GBP	0.00	9,892.27	76,534.61	4,673.68
CHF	0.00	0.00	293.77	172,329.42
Other currencies (in EUR) *	0.00	0.00	19,640.53	26,946.20
Total (in EUR)**	**296,615.62**	**592,034.05**	**2,351,471.32**	**2,987,118.47**

* converted in EUR at the exchange rate applicable on 31 December 2011 and 31 December 2012, respectively.

**exchange rate as at 31 December 2011 and 31 December 2012, respectively.

As regards the NAV calculation errors, the compensation amounts paid out in the context of the declarations made in 2012 fell significantly compared to those paid for declarations made in 2011.

As regards non-compliance with investment rules, there has however been a significant rise in the compensation amounts paid out in the context of the 2012 declarations compared to the 2011 declarations. This growth was mainly due to two UCIs impacted by a non-compliance with investment limits that required major compensation to be paid out for the consequences of non-compliance with the rules.

4.6. Results of specific supervision carried out in 2012 based on the long form reports and management letters

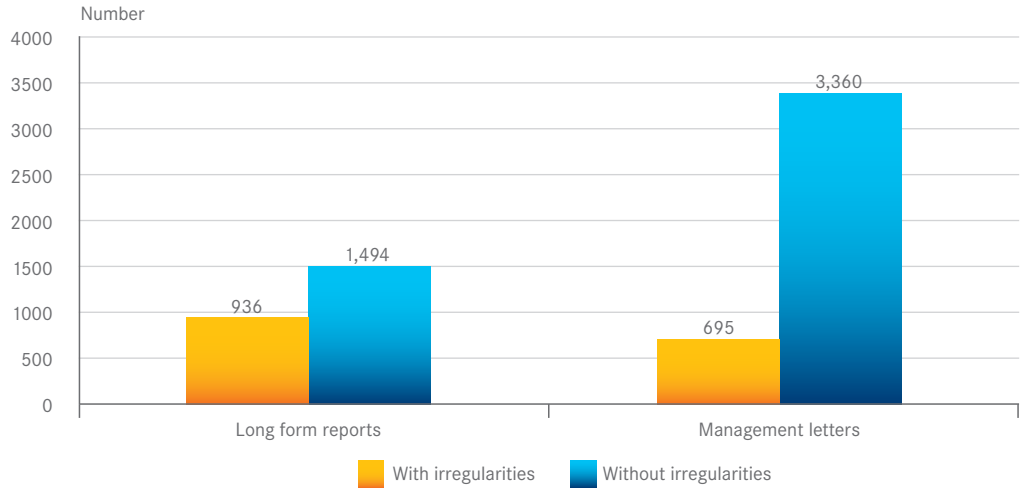
Introduced by Circular CSSF 02/81 of 6 December 2002 which lays down guidelines concerning the task of *réviseurs d'entreprises* of UCIs, the purpose of the long form report is to state the findings of the *réviseur d'entreprises agréé* in the course of his/her audit concerning the financial and organisational aspects of the UCI including, inter alia, its relations with the central administration, depositary bank and other intermediaries (investment managers, transfer agents, distributors, etc.).

Moreover, UCIs and SIFs must transmit to the CSSF, forthwith and spontaneously, the management letters issued by the *réviseur d'entreprises agréé* in the context of the audits that the latter performs in accordance with the regulatory requirements.

Within the context of the reviews of the long form reports and management letters of UCIs and SIFs, the CSSF had to take decisions in the form of orders, formal requests and recommendations vis-à-vis managers of certain UCIs and SIFs. The aim of these decisions was to remedy the organisational deficiencies identified by the *réviseurs d'entreprises agréés* in their reports or management letters. In 2012, 183 letters were sent by the CSSF requiring changes in order to remedy the situation described by the *réviseur d'entreprises agréé*.

The graph below illustrates the number of long form reports and the number of management letters in which one or several deficiencies were mentioned by the *réviseur d'entreprises agréé* and which have been reviewed by the CSSF. It should be noted that the reports and management letters received in 2012 mainly concern the year 2011.

Long form reports and management letters received in 2012



In 2012, the proportion of long form reports in which the *réviseur d'entreprises agréé* observed a deficiency or a point to improve was 39% of all the reports received. 17% of the management letters received included a comment by the *réviseur d'entreprises agréé*, of which a large proportion in relation to the simplified procedures within the scope of Circular CSSF 02/77.

In relation to the data in the table below, it should be noted that each intervention could cover several recommendations or formal requests.

Breakdown of interventions according to themes

Theme	Relative share
Circular CSSF 02/77	25.3%
AML/CFT	13.4%
Reconciliation	10.6%
Valuation	10.6%
Investments	7.4%
Legal	7.4%
Annual reports	7.0%
Fees and commissions	6.7%
Risk management	3.5%
Prospectus	2.8%
Information long form report / management letter	1.8%
Transmission of documents	1.8%
Accounting	0.7%
Portfolio turnover	0.7%
Late trading / Market timing	0.3%
Total	**100.0%**

In 2012, 25% of the interventions concerned the correction process in accordance with Circular CSSF 02/77 and 13% concerned deficiencies observed in relation to the fight against money laundering and terrorist financing (AML/CFT). 11% of the interventions related to lack of reconciliations and 11% concerned the valuation process.

Agents hired in 2012 and 2013: Departments UCI and "Supervision of specialised PFS"

Left to right: Ali ZERKTOUNI, Christine MULLER, Christian GOTTAL, Attilio FEMIANO-CHILLÉ, Brice MALLET, Cindy REUTER, Evelyn McHALE

Absent: Jérémie OGÉ, Valérie KERGER

CHAPTER VII

SUPERVISION OF SICARS

1. Developments of SICARs in 2012
2. Prudential practice

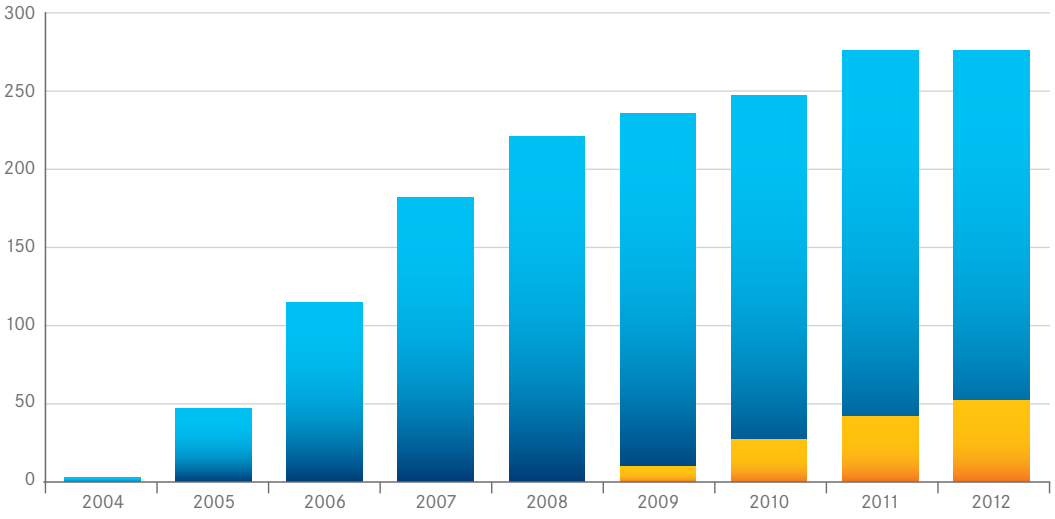
1. DEVELOPMENTS OF SICARS IN 2012

EIn 2012, the CSSF received 29 files from SICARs applying for registration on the CSSF's official list of SICARs, i.e. a decrease compared to 2011 (46 files). Seven out of the 29 applications for registration related to umbrella SICARs, compared to 19 applications out of 46 in 2011. 10 files were withdrawn, at the initiators' request, during the scrutiny process.

In 2012, 24 SICARs were authorised, including 10 umbrella SICARs. 24 SICARs were withdrawn from the official list for the following reasons: one was in judicial liquidation, six abandoned their SICAR status and 17 opted for voluntary liquidation.

The number of SICARs registered on the CSSF's official list thus remained constant with 276 SICARs as at 31 December 2012 (idem as at 31 December 2011). These 276 SICARs broke down into 224 traditional SICARs and 52 umbrella SICARs. The latter totalled 113 compartments (+ 46 compared to the end of 2011).

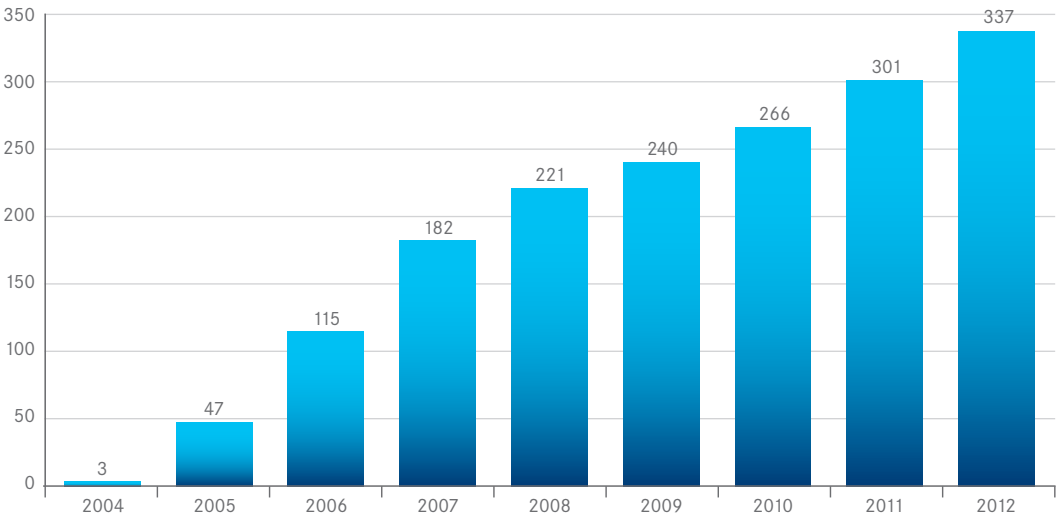
Development in the number of SICARs



	2004	2005	2006	2007	2008	2009	2010	2011	2012
Traditional SICARs	3	47	115	182	221	226	220	234	224
Umbrella SICARs	0	0	0	0	0	10	27	42	52
Total	**3**	**47**	**115**	**182**	**221**	**236**	**247**	**276**	**276**

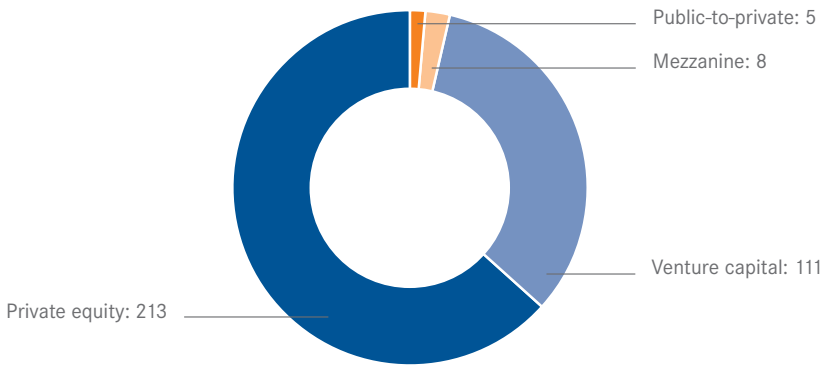
The following statistical information is based on data available from the 224 traditional SICARs and 113 compartments which makes a total of 337 "entities".

Development in terms of entities



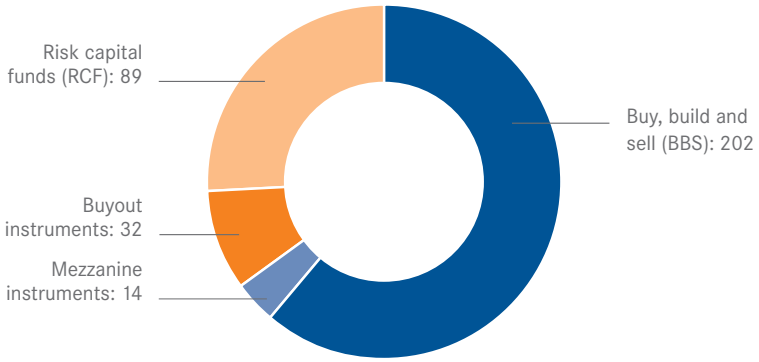
As far as the entities' investment policy is concerned, the following graph reveals a preference - in terms of entities - for private equity, even though the net assets of these entities decreased by 1.74% compared to 2011. Venture capital ranks second, with net assets which rose by 5.31%. Reference should also be made to the interest in the PPP where the assets increased by 54.89% and in the mezzanine which increased by 34.12%.

Investment policy - by entities



Investment strategies inherent in the entities may be broken down into four main types: buy, build and sell; buyout instruments; mezzanine instruments and risk capital funds. In practice, combined strategies are generally used for risk capital. In terms of assets, buy, build and sell recorded an increase by 8.08% in 2012, whereas risk capital funds decreased by 17.21%. The two other sectors also decreased, i.e. by 8.79% for buyout instruments and by 4.04% for mezzanine instruments.

Investment strategy - by entities



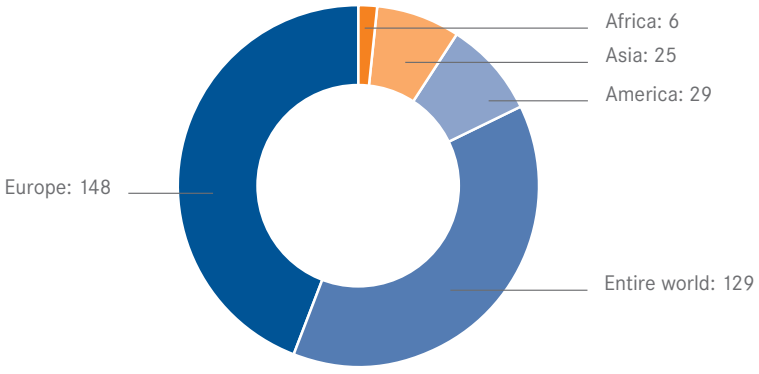
As regards the sector-based distribution, 184 entities preferred not to limit their investment policy to a particular investment sector. Among the entities having adopted a specialised policy, there was a certain concentration in the "Real estate", "Technology", "Services" and "Energy" sectors.

Sector-based distribution - by entities

Sector	Number
All sectors	192
Real estate	46
Technology	24
Energy	19
PPP	16
Services	14
Industry	6
Sciences	6
Microfinance	5
Finance	3
Education and sports	2
Precious metals and gemstones	2
Security	1
Sharia	1
Total	**337**

As for the geographical area of investments, 43.92% of the 337 entities invested in Europe, whereas 56.08% of entities chose to have the possibility to invest worldwide.

Investment region - by entities



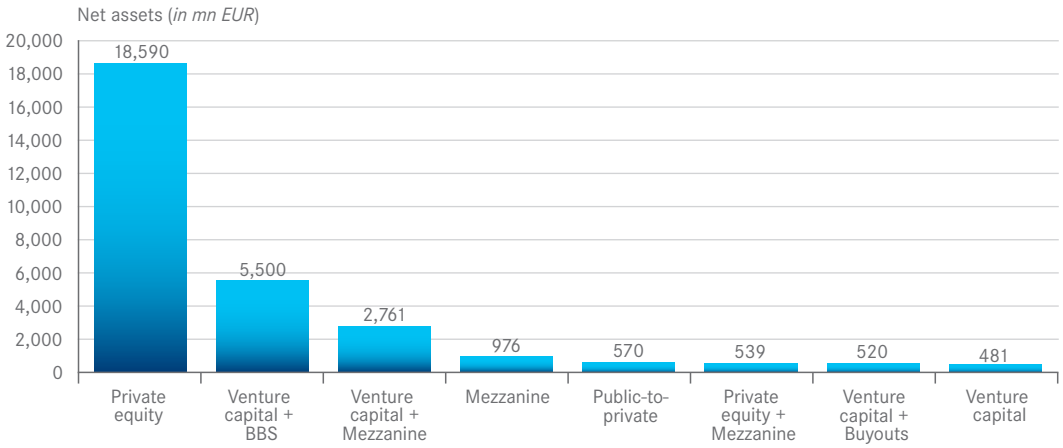
As far as the geographical origin of the initiators is concerned, those from Europe were largely predominant with 86.02%, followed by US initiators with 9.94%, which confirmed the 2011 trend.

Geographical origin of the initiators

Country	as % of total
France	19.57%
Switzerland	18.32%
Germany	10.87%
Luxembourg	8.70%
United States	8.39%
Spain	4.97%
United Kingdom	4.97%
Italy	4.35%
Belgium	4.04%
Austria	1.86%
Finland	1.24%
Portugal	1.24%
Denmark	0.93%
Netherlands	0.93%
Russia	0.93%
British Virgin Islands	0.62%
Greece	0.62%
Hong Kong	0.62%
Iceland	0.62%
Jersey	0.62%
Singapore	0.62%
Argentina	0.31%
Australia	0.31%
Brazil	0.31%
Bulgaria	0.31%
Egypt	0.31%
Guernsey	0.31%
Hungary	0.31%
India	0.31%
Isle of Man	0.31%
Israel	0.31%
Kuwait	0.31%
Lebanon	0.31%
Norway	0.31%
Slovenia	0.31%
Turkey	0.31%
Uruguay	0.31%
Total	**100.00%**

Based on the figures available as at 31 December 2012, the capital commitments in entities reached EUR 21.04 billion and their balance sheet total amounted to EUR 32.91 billion.

Breakdown of net assets of entities according to the investment policy



2. PRUDENTIAL PRACTICE

2.1. FAQ on SICARs

On 31 August 2012, the CSSF published the document "FAQ on SICARs" that is available on the CSSF's website under the section "SICARs" (http://www.cssf.lu/en/sicar/faq-on-sicars/). This document pursues the aim of transparency vis-à-vis initiators of SICARs and other professionals of the financial sector. Thus, it specifies some cases, draws the attention of those interested to certain requirements of the CSSF in the area of SICARs and shares certain practical aspects.

The FAQ emphasises, in particular, the following points:

- the steps to be taken in order to submit an authorisation request for a SICAR by providing a list of the minimum documents and information to be transmitted.
- requirements regarding SICARs' central administration and depositary bank. In this respect, it should be noted that the status of registrar agent within the meaning of Article 25 of the law of 5 April 1993 on the financial sector is required in order to exercise professionally the maintaining of a SICAR's register. Furthermore, entities carrying out the functions of administrative agent within the meaning of Article 29-2 of the law of 5 April 1993 on the financial sector on behalf of SICARs must have a PFS authorisation. SICARs may also perform the tasks linked to their own central administration themselves. In that case, the SICARs must prove that they have the necessary human and technical resources to fulfil properly this mission. Within the context of a SICAR's depositary bank, it should be noted that the custody regime applicable to the assets of a SICAR may be considered as equivalent to the concept of custody applicable to UCIs. It should however be stressed that the law of 15 June 2004 does not provide for specific supervisory duties as those existing for UCIs subject to the law of 17 December 2010.
- financial reporting requirements. The half-yearly financial information relating to SICARs must be drawn up, if applicable, per compartment, in accordance with table K 3.1, which is available on the CSSF's website. The half-yearly financial information to be provided by SICARs may be drawn up, if necessary, based on provisional figures regarding the valuation of investments in risk capital. The CSSF requires that a reporting with the final financial data (reflecting the figures of the annual report) be submitted at year-end once the SICAR's audit is completed. In accordance with Article 28 of the law of 15 June 2004, any SICAR must also provide the CSSF with a copy of its audited annual report as soon as it is available and in any event within six months from the end of the period to which the report relates. In this context, the following documents must also be sent to the CSSF: the management letter from the *réviseur d'entreprises* (supervisory auditor) relating to the audit of the annual accounts of the SICAR or, failing that, a written declaration by the *réviseur d'entreprises* stating that no such letter was issued.

- clarifications on the eligibility of certain investments and, where applicable, the acceptability conditions. In this context, reference should be made to investments in infrastructure projects, real estate investments, master-feeder structures, investments in listed securities, derivatives, commodities, instruments such as ABS/CDO or distressed securities.
- SICARs' obligations with respect to risk management, due diligence on investments and with respect to conflicts of interest.

2.2. Measures taken by the CSSF in order to facilitate the handling of SICARs' application files

Certain internal measures were taken in order to enhance the process and minimise the deadlines for handling SICARs' authorisation applications.

Thus, within the context of a new SICAR authorisation application, the CSSF verifies whether the submitted file is complete on the basis of the (non-exhaustive) list of documents and information mentioned in the FAQ document published on the CSSF's website.

Following this review, an acknowledgement of receipt is sent by electronic mail to the intermediary who submitted the file. The name and contact details of the CSSF's agent in charge of the application file are also included in this correspondence, as well as the list of the missing documents/information and the invitation to the intermediary to enter into contact with the CSSF to organise a meeting with the managers and the initiator to present the project.

Moreover, the frequency of the internal meetings which aim to discuss in particular the acceptability of the investment policy and any other possible specificities of each new SICAR application was increased in order to comment on this policy as soon as possible. The same applies for each new authorisation application of a compartment of an existing SICAR.

In respect of authorisation applications for managers of SICARs, the CSSF indicates, without delay, which documents and information are missing.

A system of continuous follow-up of the handling of deadlines with respect to the replacement of managers and service providers was implemented.

Agents hired in 2012 and 2013: Legal Department, Departments "General supervision", "Public oversight of the audit profession" and "Supervision of pension funds, SICARs and securitisation undertakings"

Left to right: Roger LETHAL, Fanny BORSCHETTE, Suzanne WEBER, Anna SZYMCZAK, Marie WIRTZ, Marc BIEVER, Alessandra BELLARDI RICCI, Michel REITER, Karen O'SULLIVAN

Absent: Laurent SCHLETZER

CHAPTER VIII

SUPERVISION OF SECURITISATION UNDERTAKINGS

1. Developments of authorised securitisation undertakings
2. Prudential supervisory practice

1. DEVELOPMENTS OF AUTHORISED SECURITISATION UNDERTAKINGS

During 2012, the CSSF received four applications for registration on the official list of authorised securitisation undertakings subject to the law of 22 March 2004 on securitisation.

Seven multi-compartment securitisation undertakings were granted authorisation by the CSSF in 2012, compared to two new authorisations in 2011, namely:

- Agate Assets S.A.
- Vis Finance S.A.
- Willow N° 1 (Luxembourg) S.A.
- Market Vectors SA
- Serenade Investment Corporation SA
- Ensemble Investment Corporation SCA
- Morgan Stanley (Luxembourg) S.A.

The securitisation undertakings BlueOrchard Loans for Development S.A. and Lifemark S.A. have been withdrawn from the official list of authorised securitisation undertakings in 2012.

On 10 February 2012, the CSSF withdrew Lifemark S.A. from the official list, as the provisional administrator (*administrateur provisoire*) of the company, whose mandate had been extended six times, came to the conclusion that a restructuring of Lifemark S.A. was not possible. The Luxembourg district court (*Tribunal d'Arrondissement*), sitting in commercial matters, upon the request of the State Prosecutor acting upon the CSSF's request, pronounced the dissolution and ordered the liquidation of Lifemark S.A. on 11 May 2012.

As at 31 December 2012, 32 securitisation undertakings were registered on the official list of authorised securitisation undertakings, against 27 entities at the end of 2011. The balance sheet total of authorised securitisation undertakings exceeded EUR 15.9 billion at the end of 2012, representing an increase of EUR 1.5 billion compared to 2011.

The submitted application files reveal that securitisation transactions mainly consist in repackaging transactions in the form of structured products issues linked to various financial assets, notably equity indices, baskets of shares or units of undertakings for collective investment, as well as in securitisation of debt, loans and other comparable assets. Repackaging transactions are predominantly synthetic securitisation transactions as far as the risk transfer technique is concerned.

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. As at 31 December 2012, ten out of 32 authorised securitisation undertakings issued securities admitted to trading on a regulated market.

To date, no application file for a securitisation fund has been submitted to the CSSF. The CSSF has neither received any application file for 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.

For 2013, the CSSF expects a moderate upturn in the development of securitisation activities.

• New developments following the decision to refuse to register ARM Asset Backed Securities S.A. on the official list

On 29 August 2011, the CSSF decided to refuse to register the securitisation undertaking ARM Asset Backed Securities S.A. (ARM) on the official list of authorised securitisation undertakings and ARM brought a petition (*recours administratif*) before the Luxembourg administrative tribunal (*Tribunal administratif*) against this decision on 29 November 2011.

On 6 December 2012, the Luxembourg administrative tribunal declared the petition lodged by ARM before the Luxembourg administrative first instance court to be unfounded and that the expenses of this judgment are to be borne by ARM. On 16 January 2013, ARM lodged an appeal with the administrative court of appeal (*Cour administrative*) against the judgment of the Luxembourg administrative tribunal.

The Luxembourg administrative tribunal's judgment dated 6 December 2012 as well as ARM's appeal against this judgment do not have an impact neither on Ernst & Young's role as court appointed supervisory commissioner (*commissaire de surveillance*), nor on the appeal ARM has lodged with the court of appeal (*Cour d'appel*) sitting in commercial matters against the district court's judgment of 10 November 2011, which confirmed that the protective measures listed in Article 28 of the law of 22 March 2004 on securitisation are applicable to the Luxembourg *société anonyme* ARM and which accepted the request of the CSSF to be replaced as supervisory commissioner. The regime of suspension of payments by ARM and prohibition for ARM, under penalty of voidance, to take any measures other than protective measures, unless otherwise authorised by Ernst & Young acting as supervisory commissioner, remain in place.

Please refer to the CSSF's website, section "Publications", sub-section "Press releases" for any news relating to ARM.

2. PRUDENTIAL SUPERVISORY PRACTICE

2.1. Regulatory aspects

In 2012, no changes have been made to the legal framework governing securitisation undertakings. However, in July 2012, the CSSF published the document "Frequently Asked Questions on Securitisation", which replaces the explanations on the practice of prudential supervision provided by the CSSF in its previous annual reports.

In these FAQs, intended for securitisation undertakings subject to the CSSF's authorisation and supervision, the CSSF points out that the securitisation undertakings and the contemplated transactions should comply with both the legal definition of "securitisation" and the spirit of the law of 22 March 2004 on securitisation and should not be used as a means to abuse the law. In particular, the implementation of a Luxembourg securitisation should not be aimed to circumvent the application of more binding prudential provisions or to bypass restrictions which may exist as to the investment in underlying risks or as to their distribution. The CSSF reserves the right to request a legal opinion to establish compliance with these conditions. In light of this, the CSSF analyses, for the securitisation undertakings subject to its supervision, in particular the structure of the transaction as well as the origin and nature of the risk being securitised. In this respect, the application file must include all the relevant elements relating to the contemplated transactions and the applicants must be completely transparent vis-à-vis the CSSF.

In this context, the CSSF recalls that the requirement to be subject to the prudential supervision of the CSSF is incumbent upon securitisation undertakings whose securities are issued to the public on a continuous basis (Article 19 of the law of 22 March 2004 on securitisation). For the purpose of assessing whether an authorisation is required, the securitisation undertaking shall refer to the following presumptions drawn from the prudential practice of the CSSF.

• Issuance of securities on a continuous basis

The issuance of securities is deemed to be carried out on a continuous basis when the securitisation undertaking undertakes more than three issues to the public per year. The number of issues to be taken into consideration is the total number of issues of all compartments of the securitisation undertaking.

Moreover, an issuance programme as such is not equal to one issue.

In order to determine the number of annual issues of a securitisation undertaking issuing securities under a programme, each series must a priori be regarded as a distinct issue, unless an examination of the nature of the programme and of the different series of issues reveals that the characteristics of these issues suggest that they constitute one single issue and not several separate issues.

• Issuance of securities to the public

Concerning the issuance of securities to the public, the CSSF set down the following assessment criteria:

- issues to professional clients within the meaning of Annexe II to Directive 2004/39/EC (MiFID) are not issues to the public;
- issues whose denominations equal or exceed EUR 125,000 are assumed not to be issues to the public;
- the listing of an issue on a regulated or alternative market does not *ipso facto* mean that the issue is deemed to be an issue to the public;
- issues distributed as private placements, whatever their denomination, are not considered as issues to the public. Whether the issue can be regarded as a private placement must be assessed on a case-by-case basis according to the communication means and the technique used to distribute the securities. However, the subscription of securities by an institutional investor or financial intermediary for a subsequent placement of these securities with the public constitutes a public offering. Moreover, where the issue of securities by the securitisation undertaking is structured for the purposes of marketing by means of a "wrapper" aimed at the public, then this issue is deemed to be placed with the public.

The "public" nature of the issues will be assessed in particular in connection with the target public to which the issued securities are offered and/or distributed. It goes without saying that the securitisation undertaking offering its securities or, where appropriate, the entities which distribute them to or place them with investors must ensure that they comply with all the legal provisions applicable in the different jurisdictions, and in particular with those in respect of "offers to the public".

The assessment of the authorisation requirement must, where appropriate, reflect the distribution systems implemented for the issued securities (look-through approach). Indeed, certain securities may be offered to the general public on a continuous basis through distribution channels specifically aimed at retail investors.

2.2. Purpose of prudential supervision

The prudential supervision exercised by the CSSF aims at ensuring that the authorised securitisation undertakings comply with the legal requirements pursuant to the law of 22 March 2004 on securitisation and with their contractual obligations. Any change to the constitutional documents of the securitisation undertaking, to its management body or the *réviseur d'entreprises* (statutory auditor) must be notified forthwith to the CSSF and is subject to the CSSF's prior approval. Any change in control of the securitisation company or management company is also subject to the CSSF's prior approval.

2.3. Instruments of prudential supervision

Securitisation undertakings must provide the CSSF with the following documents/information as soon as available:

- a copy of the final issue documents for each issue of securities, irrespective of a possible prior notification of those documents to the CSSF as competent supervisory authority of the financial markets for approval of the prospectus within the scope of an offer to the public or an admission to trading;
- a copy of the financial reports drawn up by the securitisation undertaking for its investors and for the rating agencies, where applicable;
- a copy of the annual reports and documents issued by the *réviseur d'entreprises* (statutory auditor) in the context of the audit of the annual accounts irrespective of a possible communication of these documents to the CSSF in its quality as competent authority in relation to transparency requirements. The CSSF requests to receive the management letter issued by the *réviseur d'entreprises* (statutory auditor) in the context of its audit or, where no such management letter has not been issued, a written statement by the *réviseur d'entreprises* (statutory auditor) confirming that fact;
- information on any change of service provider and on any change in substantial provisions of a contract, including the conditions applicable to securities issued; and

- information on any change relating to fees and commissions.

In addition, securitisation undertakings must provide the CSSF with the following documents on a half-yearly basis, within a time limit of 30 days:

- a listing of new issues of securities, of other outstanding issues and issues which matured during the period under review. This listing must indicate for every issue the nominal amount issued and the nature of the securitisation transaction, the investor profile and, where applicable, the compartment concerned. In connection with every issue, information should be included regarding the initial issue price and the current market price (if available) of each outstanding issue, or on the redemption price of each matured issue, as well as information on any issues (or certain tranches of an issue) having been restructured or for which the securitisation undertaking was not able to realise the projected yield rate or to guarantee the final redemption price that were initially scheduled. In these cases, details on the effective yield or redemption value are to be indicated; and
- a summary of the financial situation of the securitisation undertaking including notably a breakdown of its assets and liabilities, where applicable, per compartment.

At the closing date of the financial year, a draft balance sheet and profit and loss account of the securitisation undertaking, where applicable per compartment, shall be provided within 30 days.

The analysis of the periodic financial information and of the annual accounts audited by the *réviseur d'entreprises agréé* (approved statutory auditor) enables the CSSF to monitor on an ongoing basis the activities of authorised securitisation undertakings and the inherent risks. The analysis of the management letters issued by the *réviseur d'entreprises agréé* (approved statutory auditor) in the context of the audit of annual accounts constitutes an important source of information on the quality of the securitisation undertakings' organisation and, in particular, on the weaknesses identified by the *réviseur d'entreprises agréé* (approved statutory auditor) during his/her engagement.

The CSSF may also require communication of any other information, carry out on-site inspections and inspect all the documents of a securitisation undertaking, a management company or a credit institution entrusted with the custody of the liquid assets and securities of an authorised securitisation undertaking, in order to verify compliance with the provisions of the law of 22 March 2004 on securitisation and the provisions set out in the articles of incorporation or management regulations and in the agreements relating to the issuance of securities, as well as the accuracy of the information it has been provided with.

On-site inspections carried out by the CSSF are an efficient means to have a general and direct overview of the situation and practical functioning of authorised securitisation undertakings. On-site inspections also allow a better control and monitoring of one or more specific aspects of prudential supervision.

CHAPTER IX

SUPERVISION OF PENSION FUNDS

1. Developments of pension funds in 2012
2. Developments of liability managers in 2012

1. DEVELOPMENTS OF PENSION FUNDS IN 2012

As at 31 December 2012, 14 pension funds 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) were registered on the official list of pension funds. In 2012, one pension fund was deregistered from the official list upon its request, namely the pension savings company with variable capital THE PAULIG GROUP SEPCAV.

The year 2012 was mainly marked by the development in the activities of existing pension funds, while the setting-up of new pension funds stagnated. The CSSF expects a continuous but slow development of the pension funds sector in the coming year, through the development of the existing pension funds' activities as well as through the establishment of new entities in Luxembourg.

Total assets of pension funds governed by the law of 13 July 2005 reached EUR 796 million at the end of 2012 against EUR 730 million as at 31 December 2011.

As regards the pension funds asset allocation, assets have been mostly invested in bonds in 2012, representing a total of EUR 472.5 million. The total amount of pension fund investments in investment funds amounted to about EUR 271 million as at 31 December 2012.

The funds contributed in 2012 to the 14 pension funds amounted to EUR 44 million while the pension funds' payments, including outgoing transfers, amounted to EUR 40 million during the same period.

As far as the number of pension fund members is concerned, a slight decrease as compared to the previous year should be noted. At the end of 2012, the pension funds had 11,965 members against 12,110 at the end of 2011.

Following the voluntary liquidation of the pension fund THE PAULIG GROUP SEPCAV, the number of pension funds that manage cross-border pension schemes amounted to two as at 31 December 2012. These pension funds provide their services to sponsoring undertakings established in Ireland and in the Netherlands.

2. DEVELOPMENTS OF LIABILITY MANAGERS IN 2012

Following the registration in 2012 of Aon Hewitt 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 15 as at 31 December 2012.

CHAPTER X

SUPERVISION OF SECURITIES MARKETS

1. Approval of prospectuses for securities relating to offers to the public or admissions to trading on a regulated market
2. Takeover bids
3. Mandatory squeeze-out and sell-out of securities
4. Supervision of issuers of securities of which the CSSF is the competent authority
5. Enforcement of financial information
6. Supervision of markets and market operators
7. Investigations and cooperation

1. APPROVAL OF PROSPECTUSES FOR SECURITIES RELATING TO OFFERS TO THE PUBLIC OR ADMISSIONS TO TRADING ON A REGULATED MARKET

1.1. Application of the Prospectus Law

2012 was marked by the entry into force of the law of 3 July 2012 transposing Directive 2010/73/EU and amending the law of 10 July 2005 on prospectuses for securities (Prospectus Law). Moreover, several European regulations (Delegated Regulation (EU) No 486/2012 as well as Delegated Regulation (EU) No 862/2012) amending European Regulation (EC) No 809/2004 (Prospectus Regulation) implementing the Prospectus Directive were adopted. However, this regulatory development was not accompanied by a significant change in the number of files introduced in 2012 for the approval of the documents to be published when securities are offered to the public or admitted to trading on a regulated market. Indeed, this number only increased slightly compared to 2011. This increase was particularly due to the almost 10% increase in the number of filed supplements to be published pursuant to Article 13 of the Prospectus Law which indicates that issuers still attach importance to providing investors with complete and up-to-date information.

As regards the impact of the implementation of the new regulation, it should nevertheless be noted that over half of the annual updates of base prospectuses were made during April, May and June 2012. This phenomenon resulted from the fact that many issuers preferred to receive the approval of their base prospectus before the entry into force of the new provisions on prospectuses in order to be able to take advantage of the grandfathering clause allowing them to get more time to adapt to the new requirements. This extraordinary concentration of the number of updates of base prospectuses during those months was a real challenge for the agents in charge of reviewing the prospectuses and those who ensure the administrative follow-up. The agents concerned managed to bring this exceptional situation under control thanks to their professional know-how and personal commitment.

As the new regulatory provisions on prospectuses are much stricter regarding the presentation of the information relating to the issuer and the securities as from 1 July 2012, issuers often have difficulties in taking into account the new requirements. Indeed, these changes and, in particular the introduction of categories for information to be included in the base prospectus and in the relevant final terms affect significantly the presentation of these documents. In this context, it is important not to lose sight that some issuers decided to group all the products likely to be issued by them in one base prospectus which increased considerably in size, thus creating an increase in the number of comments and a significant extension of the processing time of the relevant files. Moreover, many base prospectuses are still not compliant with the new regulation when they are submitted for approval to the CSSF. Thus, the workload with which the agents concerned are confronted remains important.

Anticipating the additional workload which resulted from the regulatory changes, the department “Supervision of Securities Markets” recruited six new agents to strengthen its teams in 2012. An additional increase of staff is also foreseen in 2013. Moreover, internal training of all agents in charge of the review of the prospectuses for securities was focused on the verification of compliance with the new regulation and, in this context, a particular emphasis was placed on the necessity of a good communication with market participants. Thus, the CSSF supported and guided the issuers with the intention of ensuring that the implementation of this regime which is much more stringent and complex regarding prospectuses takes place under best possible conditions for the players concerned. The CSSF is convinced that all these measures, together with the ongoing efforts to optimise the existing structures, will also allow the teams involved to control the workload deriving from the 2013 annual update of base prospectuses which benefited from the grandfathering clause in April, May and June 2012 and which may concentrate around the same months in 2013.

As in the previous years, 2012 was also marked by the submission of a large number of requests for advice (166 against 147 in 2011, which represents a 12.93% increase); as in 2011, most of them covered the provision of financial information concerning issuers or guarantors and concerning the circumstances in which a supplement is required pursuant to Article 13 of the Prospectus Law. Many questions relating to the new regulations, in particular on the manner to present the summaries and final terms in the base prospectuses, were also submitted to the CSSF. Some positions adopted by the CSSF within the context of these requests for advice are detailed under item 1.3. of this chapter.

In 2012, the CSSF received seven requests for the omission of information pursuant to Article 10 of the Prospectus Law. Detailed justifications in relation to these requests allowed the CSSF to grant them.

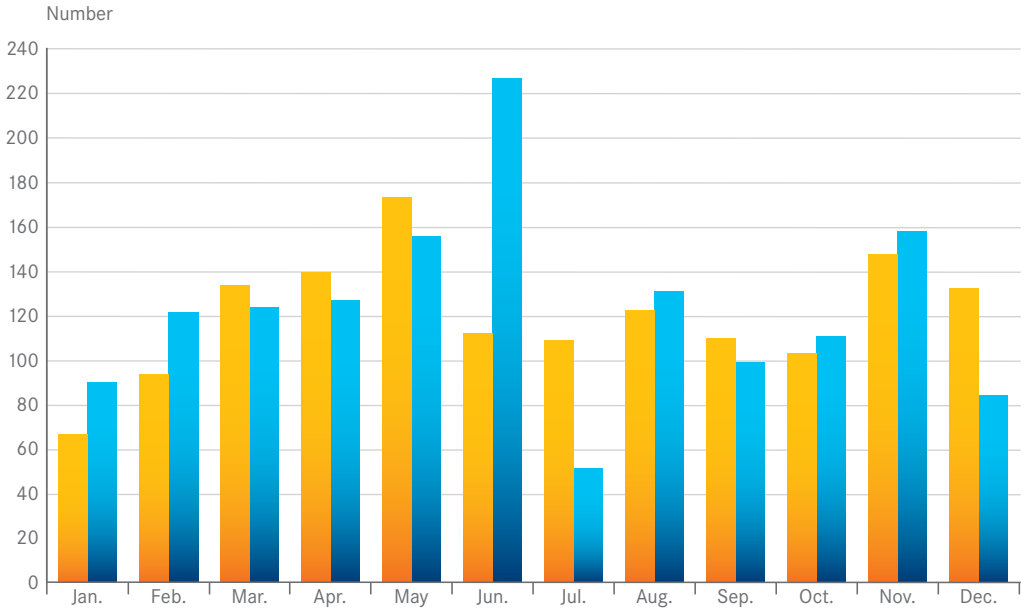
In accordance with Article 23(4) of the Prospectus Regulation, the CSSF also approved two prospectuses, each including an omission of information due to non-pertinence.

1.2. Approvals and notifications in 2012

1.2.1. Documents approved by the CSSF in 2012

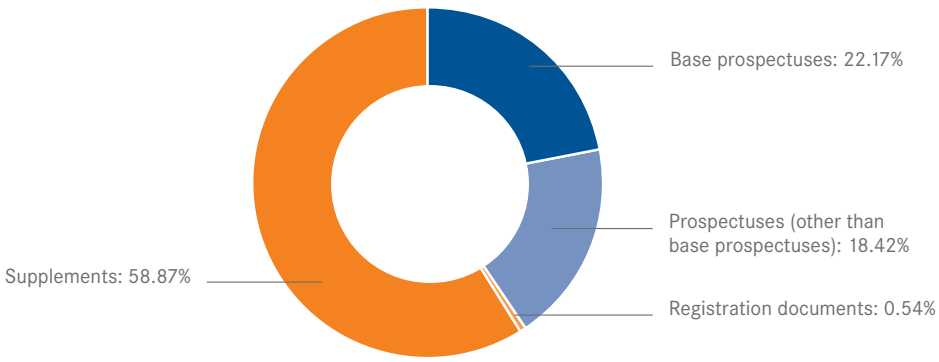
The number of documents approved by the CSSF increased slightly compared to 2011, amounting to a total of 1,493 approved documents in 2012 (of which 275 prospectuses, 331 base prospectuses, 8 registration documents and 879 supplements) against 1,446 the previous year (+3.25%).

Development in the number of documents approved by the CSSF



	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2011	66	94	134	140	174	112	109	123	110	103	148	133
2012	90	122	124	127	156	227	64	131	99	111	158	84
Variation	36.36%	29.79%	-7.46%	-9.29%	-10.34%	102.68%	-41.28%	6.50%	-10.00%	7.77%	6.76%	-36.84%

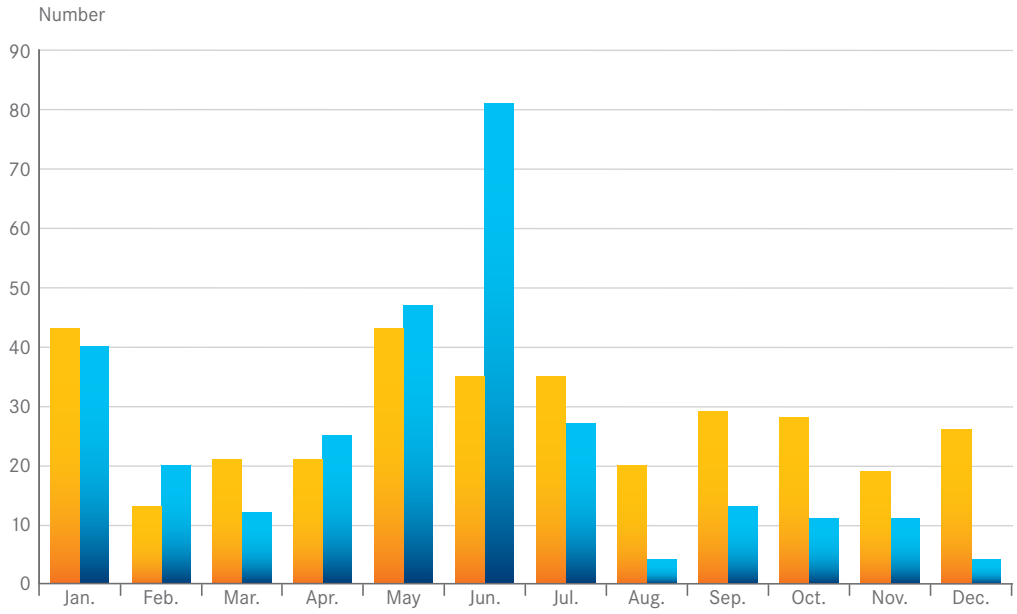
Distribution of documents approved in 2012



1.2.2. Documents drawn up under the European passport regime in 2012

In 2012, the CSSF received 1,913 notifications (relating to 295 prospectuses and base prospectuses and 1,618 supplements) from the competent authorities of several EEA Member States against 1,904 notifications (relating to 333 prospectuses and base prospectuses and 1,571 supplements) in 2011, representing a slight increase of 0.47%.

Development in the number of notifications (prospectuses and base prospectuses) received by the CSSF

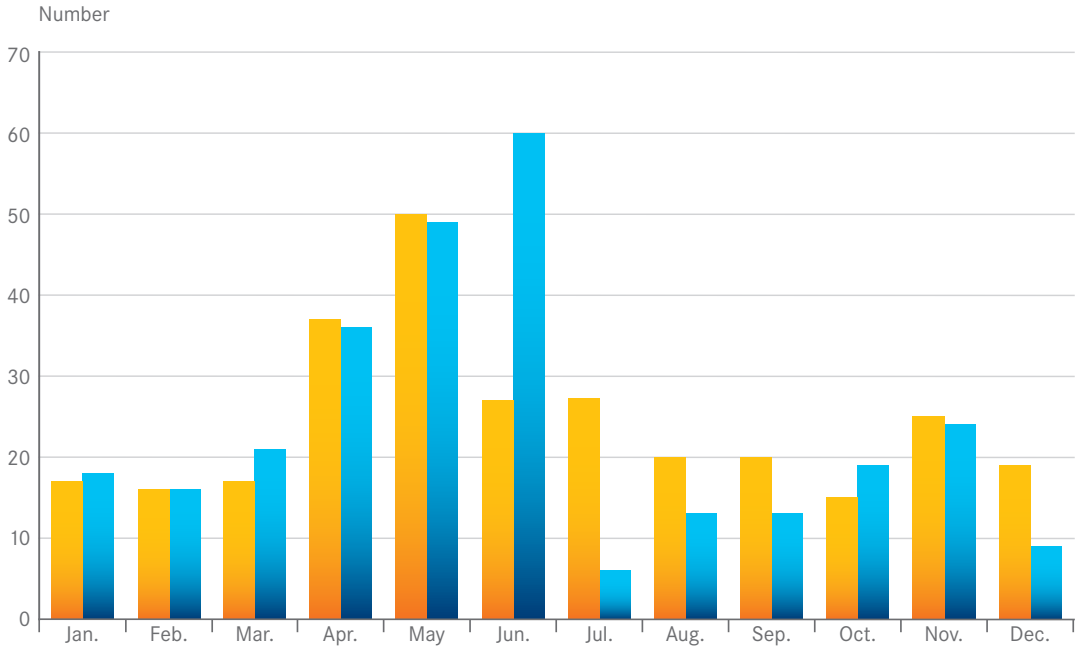


	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2011	43	13	21	21	43	35	35	20	29	28	19	26
2012	40	20	12	25	47	81	27	4	13	11	11	4
Variation	-6.98%	53.85%	-42.86%	19.05%	9.30%	131.43%	-22.86%	-80.00%	-55.17%	-60.71%	-42.11%	-84.62%

In 2012, the CSSF sent notifications for 799 CSSF-approved documents[1] (284 prospectuses and base prospectuses and 515 supplements) to the competent authorities of the EEA Member States, against 758 documents[1] (284 prospectuses and base prospectuses and 474 supplements) in 2011, representing a 5.41% increase.

[1] This figure is the number of documents for which the CSSF sent one or several notifications. Where notifications were sent at different dates and/or in several Member States, only the first notification is included in the statistical calculation. Each document notified in one or several Member States is thus counted only once.

Development in the number of notifications (prospectuses and base prospectuses) sent by the CSSF



	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2011	17	16	17	37	50	27	21	20	20	15	25	19
2012	18	16	21	36	49	60	6	13	13	19	24	9
Variation	5.88%	0.00%	23.53%	-2.70%	-2.00%	122.22%	-71.43%	-35.00%	-35.00%	26.67%	-4.00%	-52.63%

1.2.3. Approvals

In 2012, most of the approvals concerned the review of files relating to derivatives and securitisation transactions. Moreover, the CSSF approved 219 files relating to Luxembourg issuers, among which 42 prospectuses, 59 base prospectuses, 1 registration document and 117 supplements. Among these files, 12 were submitted for an offer to the public or an admission to trading on a regulated market of shares.

Among the files which got the most media attention was the approval of the prospectus relating to the offer to the public in Luxembourg, France, Belgium and Germany of bonds from the energy supplier ENOVOS, a company resulting from the merger of Cegedel S.A., Saar Ferngas AG and Soteg S.A. in 2009. The prospectus was approved by the CSSF on 14 May 2012.

1.3. Questions regarding base prospectuses raised in 2012

Following the entry into force of Regulation (EU) No 486/2012 amending the Prospectus Regulation, some issuers of securities issued under programmes contacted the CSSF in order to enquire how to comply with the new regulation when drawing up the base prospectus and keep, at the same time, maximum flexibility. Indeed, several new regulatory provisions directly impacted the drawing-up of the base prospectuses:

- the standardisation of the format and content of the summary so as to allow the comparison of similar products;
- the requirement to include in the base prospectus all the options relating to information items to be provided by information schedules and building blocks of the securities note which might be used at the level of final terms; and
- the requirement that the final terms must neither amend nor replace the information included in the base prospectus.

It results from these requirements that some issuers have problems during the drawing-up of their own base prospectus relating to programmes of structured or complex products or to programmes grouping different types of products.

The CSSF considers that it is always possible that structured or complex products be offered to the public or admitted to trading on a regulated market via a base prospectus completed with final terms. Indeed, even if base prospectuses relating to this type of products become more voluminous, there is a way, in most cases, to structure the information so as to fulfil the readability and understanding conditions set by the applicable regulation. In this context, it should be noted that the short period of practice in this matter dating from July 2012 showed that this structuring can nevertheless be a more or less important challenge during the drawing-up of the draft base prospectus by intermediaries, depending on the structuring in place before the regulatory changes in 2012, other regulatory restrictions not linked to the prospectus, as well as different modalities of the products concerned. For some products, the drawing-up of a stand alone prospectus remains sometimes the easiest and most suitable way to provide investors with all the necessary information to assess correctly the issuer and/or guarantor and the securities. More particularly, as regards the programmes covering a whole range of types of products, the CSSF often recommends to divide the base prospectus per type of product so as to facilitate the reading and understanding for investors.

1.4. Publications

In order to take the regulatory developments into account, some circulars were adapted and updated.

Thus, Circular CSSF 05/226 was replaced by Circular CSSF 12/539 dated 6 July 2012 on technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities and general overview of the aforementioned law.

Circular CSSF 12/549 on technical specifications regarding the submission to the CSSF of documents under the law on prospectuses for securities for offers to the public of units or shares of Luxembourg closed-end undertakings for collective investment and/or admissions of units or shares of Luxembourg closed-end undertakings for collective investment to trading on a regulated market repeals Circular CSSF 06/272 and replaces Circular CSSF 06/267.

The document “Frequently Asked Questions” on the prospectus regime was also updated in order to take the legal, regulatory and other developments relating to prospectuses into account. During this update, some questions of the previous version have been left out as they were of minor importance or outdated, whereas other questions and answers have been clarified. In addition, the structure of this document has been changed in order to group the questions by topic.

2. TAKEOVER BIDS

2.1. Offer documents approved by the CSSF

In 2012, the CSSF did not have to approve or recognise any offer document in relation with takeover bids under the law of 19 May 2006 implementing Directive 2004/25/EC of 21 April 2004 on takeover bids (Law on Takeover Bids).

2.2. Files for which the CSSF was competent as authority of the Member State in which the target company has its registered office

In 2012, the CSSF was competent as authority of the Member State in which the target company has its registered office in the context of two takeover bids, namely (1) the takeover bid by Geo 3 & Co. S.C.A. on the shares of the Luxembourg company Globeop Financial Services S.A. (Globeop) admitted to trading on the London stock exchange for which the offer document was published on 15 February 2012 and (2) the competing takeover bid by SS&C Technologies Holdings Europe S.à r.l. (SS&C) on Globeop for which the offer

document was published on 26 March 2012. In these files, the CSSF cooperated with the UK Takeover Panel and intervened, particularly, in the determination of the fair price for the exercise of the right of squeeze-out by SS&C pursuant to the Law on Takeover Bids. In the context of a voluntary takeover bid for 3W Power S.A., the CSSF cooperated with the German competent authority until the announcement that the project would not be carried out.

2.3. Offer file outside the scope of the Law on Takeover Bids

One offer has been made outside the scope of the Law on Takeover Bids, namely the cash purchase offer of Guineo Inversio S.A. (Guineo) for the shares of Ventos S.A. (Ventos) not yet held by Guineo and the shareholders acting in concert with Guineo.

Upon preliminary discussions on the content of the document to be used, the offer document was submitted on 12 April 2012 to the CSSF in its capacity as competent authority under Luxembourg law, in accordance with, in particular, the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") and the law of 13 July 2007 on markets in financial instruments.

The offer period started on 16 April 2012 and, after the completion of the offer on 16 May 2012, Guineo and the shareholders acting in concert with Guineo held 99.38% of the capital and the voting rights. Ventos' shares were withdrawn from the official stock exchange listing and from trading on the Luxembourg regulated market on 6 June 2012.

2.4. Questions regarding the Law on Takeover Bids raised in 2012

In the context of the acquisition of IVS Group Holding S.p.A. (IVS) by Italy 1 Investment S.A. (Italy 1), the CSSF, on 10 April 2012, granted a derogation regarding the requirement of Article 5(1) of the Law on Takeover Bids to launch a takeover bid for the shares of Italy 1. This derogation was granted to the sole shareholder of IVS. Taking into account the transparency of the acquisition operation, the provisions regarding the related voting procedure and the possibility of an unlimited *de facto* exit for the shareholders, the CSSF considered that the interests of the minority shareholders were sufficiently protected without the application of the provisions of Article 5(1) of the Law on Takeover Bids.

In the context of the acquisition of Electrawinds NV (Electrawinds) by European CleanTech I SE (ECT I), the CSSF, on 9 October 2012, granted a derogation regarding the requirement of Article 5(1) of the Law on Takeover Bids to launch a takeover bid for the shares of ECT I. This derogation was granted for the acquisition of control of ECT I by some of the current shareholders of Electrawinds acting alone or in concert. Taking into account the transparency of the acquisition operation and the relating arrangements, the ensuing possibility for shareholders to act knowingly, the provisions regarding the related voting procedures and the possibility of an unlimited *de facto* exit for the shareholders, the CSSF considered that the interests of the minority shareholders were sufficiently protected without the application of the provisions of Article 5(1) of the Law on Takeover Bids.

The CSSF also dealt with several requests for advice relating to transactions likely to fall under the scope of the Law on Takeover Bids and which concerned the notions "acting in concert", "acquisition of control" and "change of control". The CSSF took the nature and specific structure of the transaction concerned into account for its answers. In this context, the CSSF would like to remind in general that, without prejudice to the other conditions of the Law on Takeover Bids, the obligation referred to in Article 5(1) of this law to make a mandatory bid is only triggered in the following two cumulative situations: acquiring securities and obtaining control.

3. MANDATORY SQUEEZE-OUT AND SELL-OUT OF SECURITIES

3.1. Results related to the application of the law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public (Squeeze-Out/Sell-Out Law)

Pursuant to Article 6 of the Squeeze-Out/Sell-Out Law, the CSSF is the competent authority to ensure that the provisions of this law are applied. Among the competences conferred to the CSSF under this legislation is the reception of notifications to be made by any majority shareholder in accordance with the provisions of Article 3(1), completed by Article 10(1) as regards the transitional regime of the Squeeze-Out/Sell-Out Law. These notifications are part of the pre-requisites of information which must be complied with prior to any exercise of the mandatory squeeze-out right or sell-out right of securities and aim to ensure the possibility for the different parties concerned by this legislation to exercise their respective rights. As at 1 March 2013, the CSSF received 14 notifications from eight different majority shareholders made pursuant to Articles 3(1) and 10(1) of the Squeeze-Out/Sell-Out Law.

The CSSF must also be informed of the exercise of any right of mandatory squeeze-out right or sell-out right pursuant to the provisions of Article 4(3) of the Squeeze-Out/Sell-Out Law as regards any exercise of the mandatory squeeze-out right by a majority shareholder and Article 5(2) as regards the exercise of the mandatory sell-out right by a holder of securities. Since the entry into force of the Squeeze-Out/Sell-Out Law, the CSSF has dealt with a certain number of questions relating to potential mandatory squeeze-out or sell-out procedures. However, as at 1 March 2013, no mandatory squeeze-out or sell-out procedure was formally launched.

3.2. Question regarding the independent expert under the Squeeze-Out/Sell-Out Law

As regards the expert to be designated pursuant to Articles 4 and 5 of the Squeeze-Out/Sell-Out Law, the CSSF considers that a *réviseur d'entreprises agréé* (approved statutory auditor) and/or a *cabinet de révision agréé* (approved audit firm) in charge of auditing the accounts of a company which is the object of a mandatory squeeze-out of its securities should not be able to be designated as expert as there may be doubts regarding compliance with the independence conditions and the absence of conflicts of interest requirements provided for by the Squeeze-Out/Sell-Out Law. Moreover, the CSSF confirms that the independent expert need not necessarily be established in Luxembourg provided that s/he can comply with his/her obligations as set out in the Squeeze-Out/Sell-Out Law and, in particular those relating to his/her experience in the field of securities valuation.

3.3. Disclosure of information relating to the Squeeze-Out/Sell-Out Law

The Squeeze-Out/Sell-Out Law, Circular CSSF 12/545 as well as other information in relation to this regulation are available on the CSSF's website under the section "Takeover bids/squeeze-out and sell-out". The list of companies for which the information was validly notified to the CSSF pursuant to Articles 3(1) and 10(1) of the Squeeze-Out/Sell-Out Law is also available under this section. Similarly to the practices set up in other areas, any person concerned by the Squeeze-Out/Sell-Out Law may send requests and questions related to this law to the CSSF via email at: retrait.rachat@cssf.lu.

4. SUPERVISION OF ISSUERS OF SECURITIES OF WHICH THE CSSF IS THE COMPETENT AUTHORITY

4.1. Issuers subject to supervision

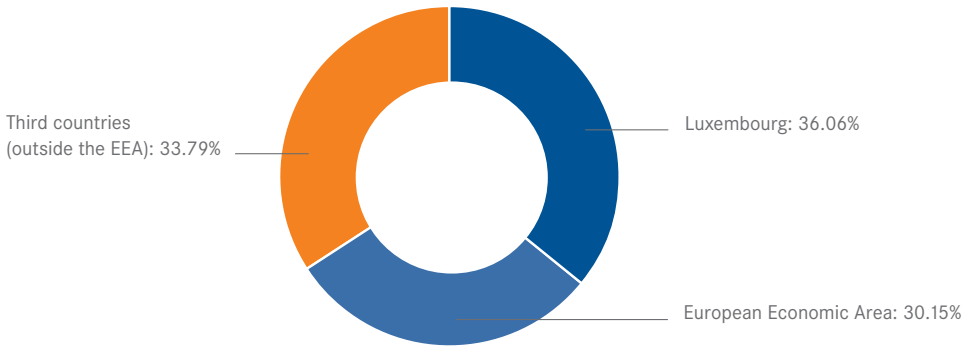
Pursuant to the Transparency Law, the CSSF supervises the issuers which fall within the scope of this law. As at 6 February 2013, 660 issuers were subject to the supervision of the CSSF as Luxembourg was their home Member State within the meaning of this law. In 2012, Luxembourg was confirmed as the home Member State

for 53 issuers, whereas 76 issuers no longer fell within the scope of the Transparency Law, mainly because the securities issued by these entities matured or were redeemed early. The list of issuers supervised by the CSSF is published on the CSSF's website (section "Supervised entities").

Out of the 660 issuers supervised by the CSSF, 238 are Luxembourg issuers, of which 52 issuers of shares and one issuer whose shares are represented by Fiduciary Depositary Receipts admitted to trading on a regulated market. Among these Luxembourg issuers, 16 are banks, 11 are securitisation undertakings authorised pursuant to Article 19 of the law of 22 March 2004 on securitisation, 53 are unauthorised securitisation undertakings and 6 are UCIs.

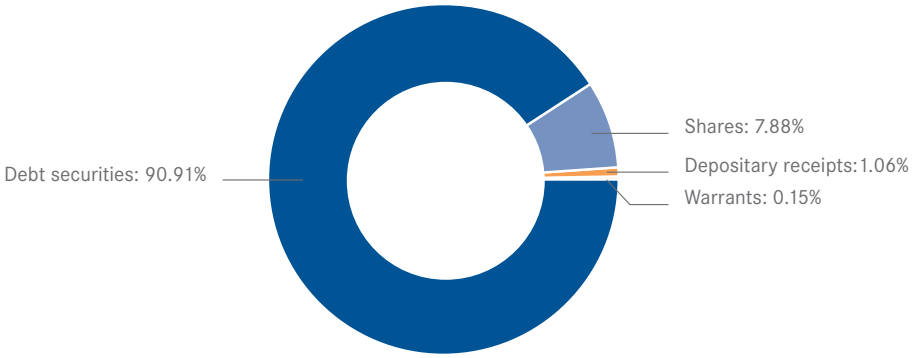
199 issuers have their registered office in another EEA Member State and 223 issuers are established in a third country (outside the EEA).

Breakdown of issuers according to country



As regards the breakdown according to the type of listed securities, most issuers subject to the supervision of the CSSF, i.e. 600 entities, issue debt securities.

Breakdown of issuers according to the type of securities admitted to trading



In 2012, five Luxembourg issuers of shares were excluded from the scope of the Transparency Law, either because the issuer decided to delist or because the issuing company was liquidated or because the company transferred its securities from the regulated market to the Euro-MTF market.

However, two issuers of shares have been added to the list of issuers subject to the supervision of the CSSF since the beginning of 2012. These issuers have their shares admitted to trading on a regulated market other than the Luxembourg Stock Exchange and adopted the legal form of *societas europaea*. Following the transfer of their registered office to Luxembourg in 2012, these entities now fall under the scope of the Transparency Law.

4.2. Review of regulated information

The review of the periodic information to be drawn up by issuers of securities of which Luxembourg is the home Member State pursuant to the Transparency Law continued during the 2012 review campaign. The content of the management reports relating to the annual financial reports of issuers of shares or depositary receipts representing shares was subject to thorough reviews.

The CSSF sent 75 reminders, issued 38 injunctions and imposed 12 administrative fines pursuant to Article 25 of the Transparency Law related to annual and half-yearly financial reports. These figures have declined compared to 2011, whereas the number of issuers subject to the supervision of the CSSF remained approximately the same. This shows that the issuers are overall more aware of their obligations in relation to transparency requirements and have improved their compliance in this regard.

In 2012, the CSSF published two press releases pursuant to Article 9(2) of the law of 13 July 2007 on markets in financial instruments in order to disclose the names of two issuers for which the CSSF required the withdrawal respectively the suspension of the securities from trading on the regulated market of the Luxembourg Stock Exchange. Indeed, it was important to draw the attention of the public to the situation of these two issuers because they omitted to publish several consecutive financial reports pursuant to Articles 3 and 4 of the Transparency Law.

The notifications relating to the acquisition or disposal of major holdings and, more generally, the requirements of the Transparency Law relating to information on major holdings, were subject to more thorough reviews and to a certain number of exchanges with the issuers and holders of shares. These reviews are going to be further intensified in 2013. In this context, the CSSF would like to remind the issuers concerned that, pursuant to Article 14 of the Transparency Law and in order to allow for the calculation of the thresholds provided for in Article 8, they have to disclose to the public the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred. For further details, please refer to FAQ No 8 relating to transparency matters.

4.3. Specific questions relating to the Transparency Law

4.3.1. Content of management reports

As announced in the press release published by the CSSF on 6 January 2012, the 2011 management reports of the issuers concerned have been specifically monitored during the 2012 review campaign. The CSSF reminds that FAQ No 43 relating to transparency matters provides information as to which legislation needs to be relied on in order to determine the content of the management report required by Article 3(5) of the Transparency Law.

The CSSF sent a questionnaire to the issuers concerned regarding information published in the 2011 management report pursuant to the requirements of Article 11 of the Law on Takeover Bids. Indeed, in accordance with Article 11(1) of the Law on Takeover Bids, the companies mentioned in Article 1(1) of this law must publish detailed information on points (a) to (k) of the above-mentioned Article 11(1). The second paragraph of this article requires that this information be published in the management report of the company.

Following the review of the content of these reports, the CSSF made several remarks to the issuers concerned and published these in a press release dated 5 February 2013. The issuers concerned must ensure to take these remarks into account when preparing their next annual financial reports. A follow-up review in this regard will be carried out as part of the forthcoming 2013 review campaign by the CSSF on the 2012 management reports.

4.3.2. Findings and recommendations

The CSSF noted that some issuers who chose Luxembourg as their home Member State did not comply with the disclosure procedure applicable in such case. Article 2 of the Grand-ducal regulation of 11 January 2008 relating to the transparency requirements for issuers of securities specifies that where the issuer chooses Luxembourg as home Member State, that choice must be disseminated in accordance with the same procedure as regulated information, filed with the CSSF and made available to the OAM (Officially Appointed Mechanism), system for the central storage of regulated information. The CSSF reminds that the issuers must comply with said requirements as from the moment the choice is made.

Pursuant to Article 1(10) of the Transparency Law, the notion “regulated information” also includes inside information that all issuers are required to disclose in accordance with Article 6 of Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse Directive). In this context, the CSSF would like to recall

that the responsibility to publish certain information in accordance with the above-mentioned article lies with the issuer concerned as well as when it comes to determining if the information fulfils the conditions of inside information as laid down in the Market Abuse Directive. In case of doubt, the CSSF recommends to consider the information as inside information.

The issuers which are not or only partially subject to the periodic information requirements laid down in Articles 3, 4 and 5 of the Transparency Law but which nevertheless publish financial reports (on their own initiative or in order to comply with another legal or regulatory requirement) must, where these reports are to be considered as inside information, disseminate effectively this information, store it on the OAM and file it with the CSSF like any regulated information within the meaning of Article 1(10) of the Transparency Law. It should be noted that it is highly inconceivable that a financial report which includes figures that have not yet been published, could without doubt be considered as not constituting inside information. However, the provisions of the Transparency Law on the content and deadlines do not apply for these reports, as opposed to the reports established pursuant to Articles 3, 4 and 5 of the Transparency Law. This matter will also be subject to more detailed reviews during the 2013 review campaign.

The CSSF would like to specify that the documents made available particularly in the context of the preparation of a general meeting and which fulfil the criteria of regulated information must be filed with the CSSF, stored on the OAM and disseminated in accordance with the Transparency Law like any other regulated information. Thus, for example, the mere fact of making the annual and consolidated accounts, the management report and the report of the *réviseur d'entreprises* (statutory auditor) available on the issuer's website is not sufficient if these documents have not yet been disclosed in accordance with the Transparency Law.

In the context of general meetings, the CSSF emphasises that questions relating to corporate law are governed by the Member States' national law. Moreover, FAQ No 20 specifies that the financial statements as included in the annual financial report that must be published according to the Transparency Law must not necessarily be approved by a general meeting beforehand.

Furthermore, the reviews showed that the time span between the effective dissemination, the storage on the OAM and the filing with the CSSF of regulated information can be quite significant. In the light of Articles 18 and 20 of the Transparency Law, the CSSF considers that these three requirements must be carried out simultaneously.

Finally, the issuers subject to an administrative fine[2] must bear in mind that the imposition of such a sanction does not exempt them from complying with their legal requirements. In case the situation is not remedied, the issuers at fault will be ordered to fulfil their requirements within a new allotted time limit, failing which, new measures such as a higher administrative fine or the suspension of their securities from trading on a regulated market may be imposed.

[2] The total amount of these fines can be found in item 2.2.7. of Chapter XIII "Instruments of supervision".

5. ENFORCEMENT OF FINANCIAL INFORMATION

5.1. Consistent enforcement of accounting standards

5.1.1. General framework

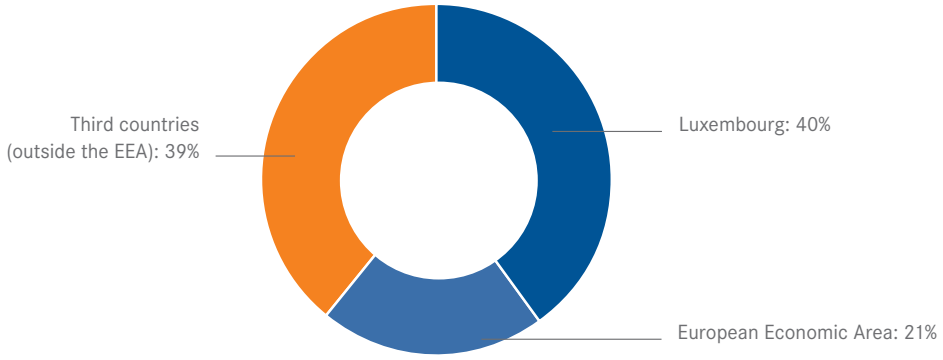
• Legal and regulatory framework and pursued objectives

Within the context of its mission of supervising securities markets, the CSSF is in charge of examining the financial information published by issuers of securities. For a detailed description of the context and objectives of this activity, generally known as "enforcement", please refer to item 4.1.1. of Chapter IX of the CSSF's Annual Report 2011.

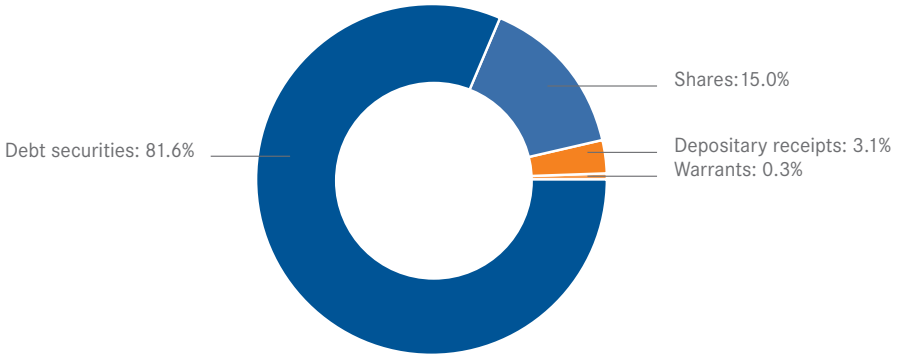
• Population subject to enforcement

Under the Transparency Law, and by taking into account the exemptions provided for in Article 7 of this law, the population of issuers falling within the scope of enforcement as at 1 January 2012 amounted to 321 entities with the following characteristics.

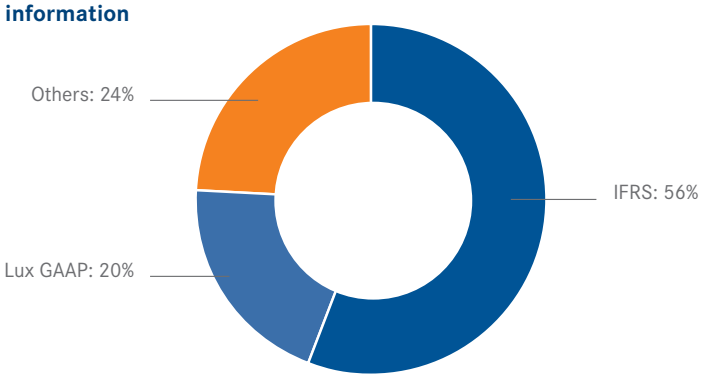
Breakdown of the 321 issuers according to country of registered office



Breakdown of the 321 issuers according to the type of securities admitted to trading



Breakdown of the 321 issuers according to the accounting framework used for the preparation of financial information



5.1.2. Remit of the CSSF and appropriate measures

• Powers and penalties

The powers and penalties available to the CSSF as regards enforcement are set out in Articles 22, 25 and 26 of the Transparency Law.

For a detailed description of the principles applied by the CSSF in this context, please refer to item 4.1.2. of Chapter IX of the CSSF's Annual Report 2011.

• Types of reviews

For the selected issuers within the context of the Transparency Law, the actual reviews follow a risk-oriented approach as the degree of intensity of the controls carried out is correlated with the acknowledged risky and sensitive nature of the issuer.

The review programme, formally defined and revised every year for the selected issuers, includes:

- global reviews of the proper application of the accounting standards applicable to the issuer (hereafter "general reviews");
- reviews of one or several specific aspects of the issuer's financial information predefined according to their importance, their potential impact, etc. (hereafter "specific reviews");
- thematic reviews during which the CSSF reviews the practices followed by a sample of issuers concerning specific problems (hereafter "thematic reviews"); and
- follow-up reviews during which the CSSF ensures that the issues identified during the previous reviews were dealt with appropriately and taken into account by the issuers concerned.

Depending on the intensity of work or the cases analysed, these reviews will include on-site inspections, meetings and direct contacts with representatives of the issuer and/or its external auditor in order to analyse the most sensitive problems and issues and obtain information, documents and other objective evidence required to perform the review.

5.1.3. Enforcement process

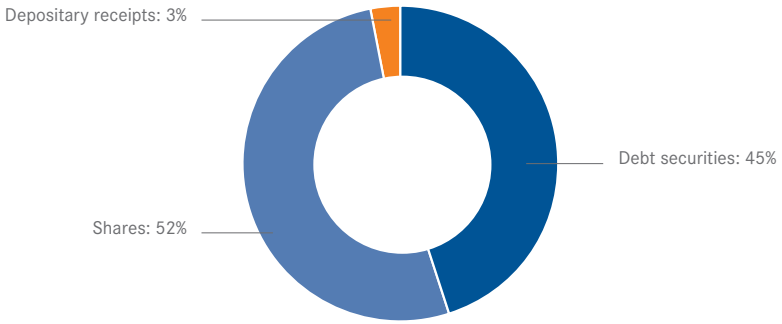
• Selection mode

The selection mode for issuers subject to enforcement within the context of the Transparency Law follows a risk-oriented approach, completed by a rotation and a random sampling method.

• Reviews performed in 2012

In 2012, general reviews were performed on more than one-third of the issuers which the CSSF considers, on the basis of its risk-oriented approach, as the riskiest. These general reviews were supplemented by specific reviews covering the issuers considered less risky within the meaning of the enforcement approach. The reviews mainly focused on the 2011 annual financial statements as well as the half-yearly financial statements for the financial years 2011 and 2012, if these were available at the date the reviews were performed. It should also be noted that all issuers concerned by these reviews published their consolidated financial information according to IFRS standards.

Breakdown of general and specific reviews carried out in 2012 by issuer type (according to the type of securities admitted to trading)



Two thematic reviews were also performed in 2012:

- Review of the presentation of the annual financial statements prepared in accordance with the IFRS standards: based on a sample of 143 issuers whose financial statements for the year 2011 were prepared in accordance with the IFRS standards, the CSSF reviewed compliance with certain minimum disclosure requirements regarding the following IFRS standards: IAS 1 “Presentation of Financial Statements”, IAS 10 “Events after the Reporting Period” and IFRS 8 “Operating Segments”.
- Review of the presentation of the half-yearly financial statements prepared in accordance with the IFRS standards: based on a sample of 132 issuers whose financial statements for the year 2012 were prepared in accordance with IFRS standards, the CSSF reviewed compliance with certain minimum disclosure requirements regarding IAS 34 “Interim financial reporting”.

5.2. Findings and prospects

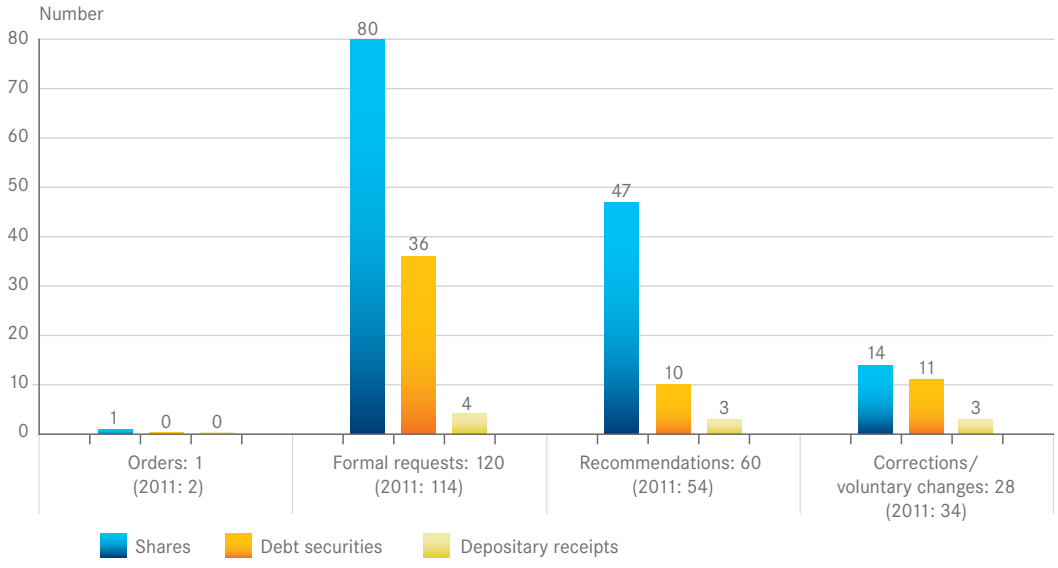
5.2.1. Result of works carried out in 2012

• General and specific reviews

Within the context of these reviews, the CSSF had to take decisions in the form of injunction orders, formal requests and recommendations vis-à-vis certain issuers, aiming to either correct the identified errors or amend and improve the subsequent published financial statements.

In respect of the figures detailed in the graphs below, it should be noted that each issuer having been reviewed may have received several formal requests, recommendations or may have undertaken to amend or correct by itself several identified infringements.

Breakdown of decisions taken by the CSSF after general reviews and specific reviews carried out in 2012 by issuer type (according to the type of securities admitted to trading)



The following graphs break down the formal requests and recommendations issued in 2012 according to the relevant accounting standards.

Breakdown of the formal requests issued in 2012 according to the relevant accounting standards

Norms	Number
IFRS 7	24
IAS 1	20
IAS 36	11
IAS 34	6
IAS 10	5
IAS 19	5
Lux GAAP	5
IAS 16	4
IAS 39	4
IAS 40	4
Others	32
Total	**120**

Breakdown of the recommendations issued in 2012 according to the relevant accounting standards

Norms	Number
IAS 1	16
IAS 7	9
IAS 34	6
Lux GAAP	3
IAS 40	2
IAS 24	2
IAS 17	2
IAS 10	2
IAS 7	2
Others	16
Total	**60**

• Thematic reviews

Review of the presentation of the annual financial statements prepared in accordance with IFRS standards

The results of this review led the CSSF to remind around 50 issuers of certain minimum requirements regarding information to be included in the financial statements prepared according to the IFRS standards, including, in particular, compliance with IAS 1 "Presentation of the Financial Statements", IAS 10 "Events after the Reporting Period" and IFRS 8 "Operating Segments".

Review of the presentation of the half-yearly financial statements prepared in accordance with IFRS standards

The results of this review led the CSSF to require from 13 issuers that they issue the amended half-yearly

financial statements as at 30 June 2012 in accordance with the requirements of IAS 34 "Interim Financial Reporting".

In the framework of the review of the half-yearly financial statements as at 30 June 2012, an administrative fine was imposed on an issuer that did not observe some formal requests made by the CSSF as regards the improvement of the financial information.

• Reviews within the context of the issue of prospectuses

During 2012, enforcement reviews were performed within the context of the prospectus approval process, and in particular in the event of an application for the admission to trading on a regulated market. The subjects and the issues dealt with mainly covered:

- preparation of pro forma data;
- treatment of business combinations under common control;
- consolidation, and
- equivalence to IFRS standards.

5.2.2. Main findings and recommendations

• General recommendations

IAS 1 "Presentation of the Financial Statements" specifies that the objective of the financial statements is to provide information about the financial situation and performance of an entity which is useful to a wide range of users in making economic decisions. It also introduces the notion of materiality by indicating that the omissions or inaccuracies of elements in the financial statements are significant if they can influence individually or collectively taking these economic decisions.

In addition, considering the requirements of the IFRS standards, the CSSF recommends to issuers to take into account the materiality of the information provided in the notes to the financial statements in order to favour the relevance of the information disclosed rather than an essentially exhaustive approach aiming at including all the requirements and descriptions presented in the standards. Indeed, such an approach does not allow the identification of serious issues and topics which are specific to the issuer.

For instance, the CSSF noted that a certain number of issuers presented accounting and assessment methods which were not sufficiently specific or which were not directly applicable in the notes to the financial statements. The CSSF recommends issuers to ensure that the information presented in their financial statements is relevant to their understanding and that it is not likely to distract the users' attention from the more significant issues.

• Recommendations following enforcement reviews

In 2012, in the context of a deteriorated economic outlook, the CSSF focused, among others, on questions about valuation and depreciation of assets during its enforcement reviews.

Valuation methods and assumptions made

The CSSF noted, thus, that some issuers did not disclose systematically enough information about the main assumptions and the underlying sources of uncertainty of the valuation models used and depreciation tests carried out. The CSSF therefore reminds that, according to paragraph 125 of IAS 1, the entities must disclose information about the assumptions they make about the future and other major sources of estimation uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year.

Furthermore, paragraph 129 of IAS 1 specifies that the detailed information in the financial statements must help users to understand the judgements that management makes about the future and about other sources

of estimation uncertainty. The nature and extent of the information provided vary according to the nature of the assumption and other circumstances. Examples of the types of information to be disclosed are:

- the nature of the assumption or other estimation uncertainty;
- the sensitivity of carrying amounts to the methods, assumptions and estimates underlying their calculation, including the reasons for the sensitivity;
- the expected resolution of an uncertainty and the range of reasonably possible outcomes within the next financial year in respect of the carrying amounts of the assets and liabilities affected; and
- an explanation of changes made to past assumptions concerning those assets and liabilities, if the uncertainty remains unresolved.

As far as sensitivity analyses are concerned, the CSSF noted that they were often not sufficiently detailed in the financial statements of issuers subject to an enforcement review. However, the sensitivity analysis is a key element for the users' assessment of the financial statements of risks deriving from financial instruments or other assets valued according to assessment techniques or internal models. Consequently, the CSSF recommends that the issuers include in their financial statements a sensitivity analysis of carrying amounts to methods, assumptions and estimates for the significant positions concerned.

Impairment tests

In the specific context of impairment tests carried out by issuers subject to enforcement reviews, among which in particular the impairment tests of cash-generating units with goodwill, the CSSF noted that the description of the key assumptions, used to calculate fair value or value in use of the cash-generating units, was sometimes insufficient. The CSSF reminds the issuers of the requirements of paragraph 134 of IAS 36 "Impairment of Assets" which requires, among others, a description of the management's approach and key assumptions in order to determine the recoverable amount of these cash-generating units and a sensitivity analysis of this amount to a possible assumption change.

Evaluation of financial instruments

During the reviews carried out, the CSSF noted that the information disclosed for financial assets and financial liabilities at fair value were often too general. Thus, the CSSF would like to remind the issuers that IFRS 7 "Financial instruments: Disclosure" requires the disclosure of specific information on the methods and valuation techniques used as well as on the assumptions applied in determining fair values of financial instruments. The CSSF requires that the issuers disclose the methods and assumptions made for determining the fair values, specifically for each important class of financial assets or financial liabilities.

5.2.3. Prospects for the 2013 campaign

The enforcement campaign for the financial year 2013 follows an approach similar to the one of the preceding financial years. The population of issuers falling within the scope of enforcement according to the Transparency Law is stable compared to the preceding financial year. For the selected issuers subject to the enforcement reviews, an alternation of general and more targeted specific reviews is planned. Finally, within the framework of thematic reviews, the CSSF has decided to examine the cash flows statements provided by issuers in their financial statements and to continue to review, in 2012, the compliance of the issued interim financial statements with the requirements of the IAS 34 "Interim Financial Reporting".

In addition, within the context of the 2012 closing of accounts, the CSSF decided to alert, through a press release published on 9 January 2013, the issuers preparing their financial statements in accordance with IFRS standards, to a certain number of topics and issues which will be specifically monitored during the 2013 enforcement review campaign.

Moreover, some priority issues were identified by ESMA for the assessments carried out by the national competent authorities and were described in detail in ESMA's press release of 12 November 2012.

In that respect, the CSSF will review, among others, the following issues:

- financial instruments: in a 2012 complex market environment, the CSSF will continue to focus on the qualitative and quantitative information provided regarding the exposure to risks related to financial instruments as well as on valuation and impairment issues related to these instruments; the CSSF emphasises the importance of a high level of transparency with regard to the information provided on financial instruments held, in particular for government debts, and regarding the underlying methods and assumptions made, as required by the applicable standards;
- non-financial assets, with a specific focus on the accounting treatment of the impairment of tangible and intangible assets, including goodwill and other intangible assets with an indefinite useful life;
- valuation of pension obligations related to defined benefit plans, in particular regarding the discount factors to be applied; and
- the information to be provided within the framework of IAS 37 "Provisions, Contingent Liabilities and Contingent Assets" for each type of provision, contingent asset and contingent liability.

Furthermore, regarding the valuation of investment property, the CSSF will also review in detail the methods and assumptions made by the issuers when calculating the fair value of these assets. In that respect, the CSSF will also ensure that the issuers comply with the disclosure requirements of IAS 40 "Investment property".

Regarding the newly issued or modified standards and interpretations that are not yet effective, the CSSF will verify that the entities have provided an assessment of the potential impact of their application on their financial statements for the first application period, as required by paragraphs 30 and 31 of IAS 8 "Accounting Policies, Changes in Accounting Estimates and Errors".

5.3. European cooperation: the works of the CRSC (Corporate Reporting Standing Committee) on the financial and accounting information

ESMA's work in the field of accounting, auditing, periodic information and storage of the regulated information is led by the CRSC (cf. item 1.2.3. of Chapter II "The European and international dimension of the CSSF's mission"). Enforcement-specific topics are discussed within the EECS forum (European Enforcers Coordination Sessions).

The EECS forum is composed of 37 members representing the different national competent authorities in the enforcement field, including the CSSF. Its purpose is to list and share the main decisions on the application of the IFRS standards to guarantee a convergent approach of the supervision, by the national competent authorities, of the application of the IFRS standards by companies listed on a regulated market.

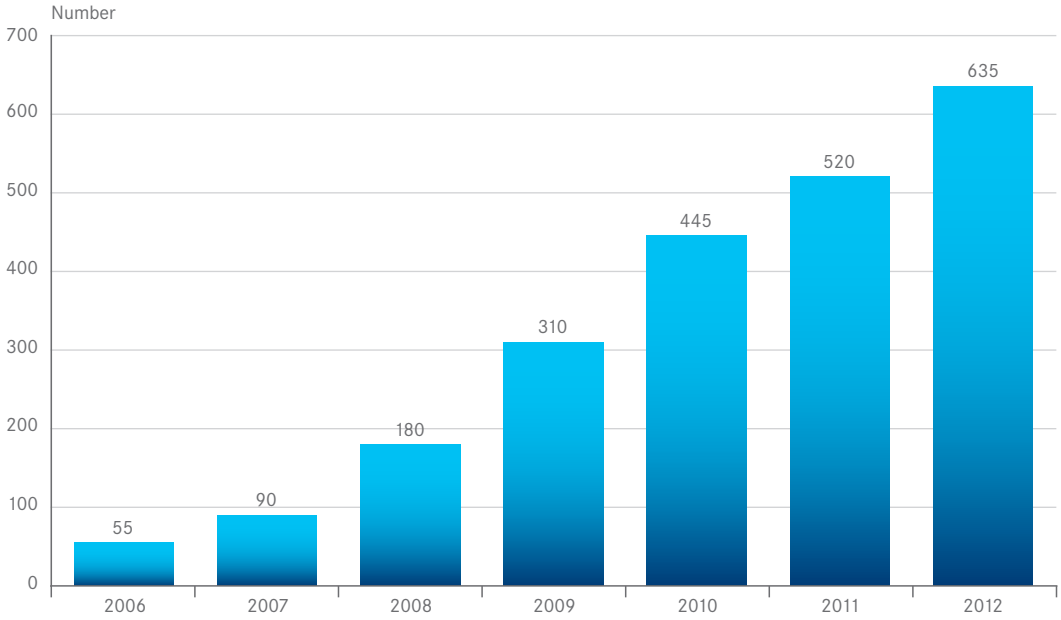
Even if the group does not make decisions directly, the EECS forum allows the national competent authorities to discuss the decisions taken by the other members in their respective jurisdictions and to share their experience and knowledge.

In 2012, the main activities of the EECS forum covered the following topics:

- discussion of decisions taken and specific issues encountered by the national competent authorities during their enforcement reviews;
- two meetings with the representatives of the IFRS Interpretation Committee to discuss about complex practical cases identified by the members of the forum during their work;
- publication of documents on specific questions such as the materiality approach in the financial statements, information on sovereign debts to be disclosed in IFRS in the financial statements, etc.;
- studies on the practical application of some IFRS standards.

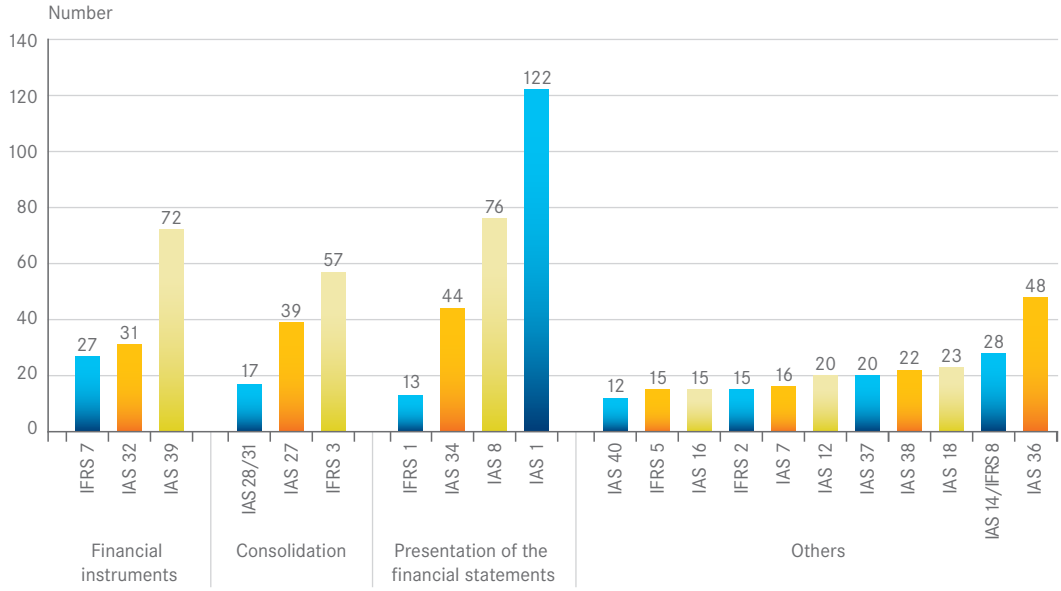
The decisions presented and discussed during the EECS forum meetings are entered into a dedicated database which comprises 635 decisions as at 31 December 2012.

Developments in the number of decisions since the establishment of the EECS database



These decisions break down according to the main relevant standards as follows (it should be noted that the same decision may be related to several standards).

Main standards concerned by the decisions in the database as at 31 December 2012



Since 2007, the EECS has been publishing extracts of its database on a regular basis. Thus, nine decisions were published in 2012, bringing the number of decisions published to 137.

It should be pointed out that the CSSF participates in the Task Force specifically dedicated to the revision of the standards on enforcement. This Task Force reviews the existing standards in order to enhance the common review methodology and their practical application so as to reinforce convergence of the enforcement of the financial information in Europe.

6. SUPERVISION OF MARKETS AND MARKET OPERATORS

6.1. Reporting of transactions in financial instruments

6.1.1. Obligation to report transactions in financial instruments

The reporting regime in respect of transactions in financial instruments 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). This article lays down 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. The details set out in Article 28 were completed by the implementing measures of Regulation (EC) No 1287/2006 of 10 August 2006 implementing MiFID and clarified by the instructions set out in Circular CSSF 07/302.

Within the context of the review of MiFID, the European Commission published a proposal for a regulation (MiFIR) on 20 October 2011, which includes new obligations regarding the reporting of transactions in financial instruments to the competent authorities. These new obligations were discussed in detail in the CSSF's Annual Report 2011.

6.1.2. Credit institutions and investment firms concerned by the obligation to report transactions in financial instruments

As at 31 December 2012, 238 entities (credit institutions and investment firms incorporated under Luxembourg law and Luxembourg branches of credit institutions and investment firms incorporated under foreign law) fell within the scope of Article 28 of the MiFID Law and were potentially concerned by the transaction reporting regime (239 entities in 2011), including 141 credit institutions (142 in 2011) and 97 investment firms (idem in 2011). It should be noted that among investment firms, only those 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 2012, 101 entities (102 in 2011), of which 89 credit institutions (88 in 2011) and 12 investment firms (14 in 2011), were required to send their transaction reports to the CSSF as their interventions are to be considered as "executions of transactions" within the meaning of the MiFID Law, as specified by Circular CSSF 07/302. The difference 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 2012, the CSSF continued to control the quality of the data submitted by the entities subject to the obligation to report transactions in financial instruments. The CSSF particularly controlled the compliance with the legal reporting deadlines by all of the reporting entities and noted thus that 19 reporting entities submitted transaction reports late. Furthermore, in the context of these controls, the CSSF noticed that some entities reported transactions relating to subscriptions, redemptions or conversions of units of UCIs that they carried out directly or indirectly at the net asset value with a central administration and that are not considered as reportable transactions according to Circular CSSF 07/302. In addition, the CSSF noticed transaction reports on financial instruments that are not admitted to trading on a regulated market of a Member State and that, therefore, do not fall within the scope of the Luxembourg reporting obligation. In 2012, 25 reporting entities received deficiency letters in the framework of controls related to MiFID reporting.

In the second quarter of 2012, the CSSF implemented a series of consistency tests which were designed by ESMA and which will be carried out by the CSSF on a regular basis. The purpose of these tests, which cover all of the entities subject to the obligation to report transactions in financial instruments, is to check and improve the quality of the data on transactions in financial instruments. They aim, in particular, at detecting the following shortcomings: missed reporting deadlines, irregular dispatch of transaction reports files, rejected transaction reports not corrected, improbable price and/or quantities in the transaction reports,

erroneous counterparties in the case of internalisation of transactions, incorrect time of the transactions, missing reports on transactions executed with a counterparty in Luxembourg, missing reports on transactions executed by a member of the market *Bourse de Luxembourg*.

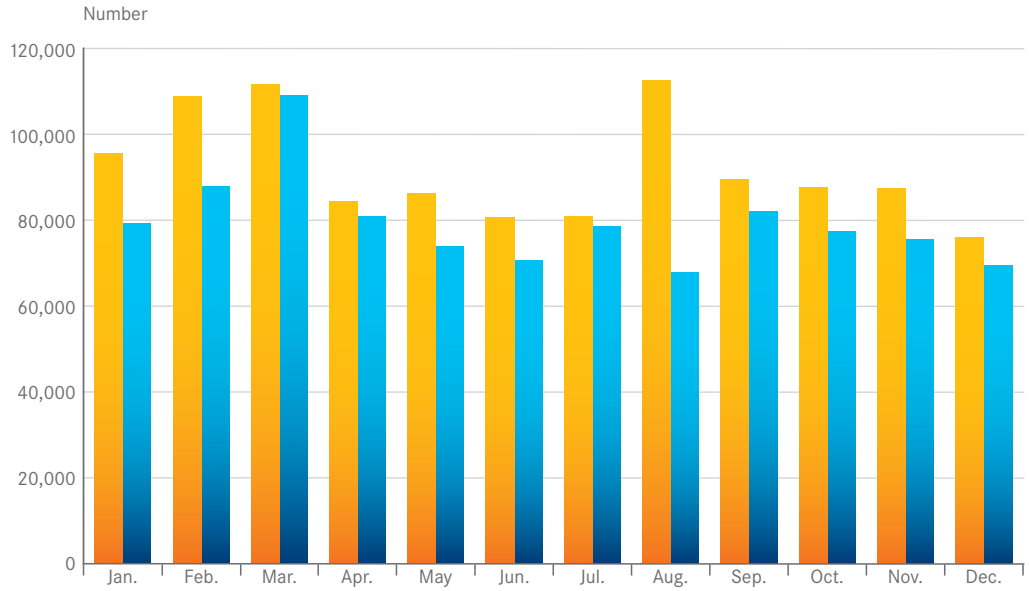
The first consistency tests were carried out at the end of 2012. Depending on the test results and the detected shortcomings, the CSSF will intervene with the reporting entities where shortcomings were detected.

Moreover, on-site inspections relating to MiFID reporting are planned in 2013.

6.1.3. Development in the number of transaction reports in financial instruments

In 2012, the number of transaction reports sent by the entities and accepted by the CSSF reached 952,559 (-13.48% compared to 2011).

Monthly volume of MiFID reports accepted in 2011 and in 2012



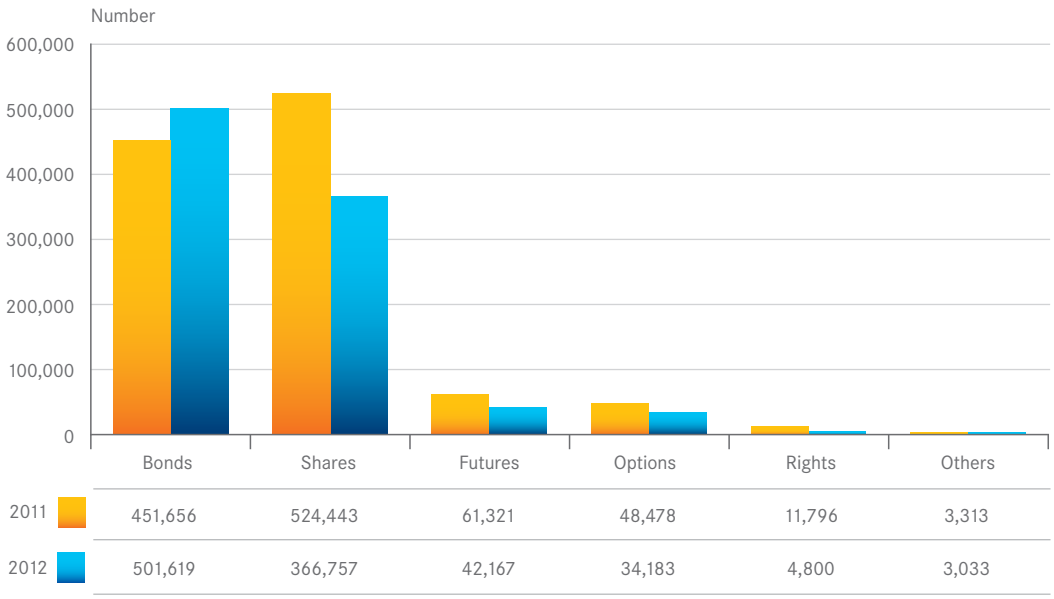
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
2011	95,539	108,881	111,586	84,466	86,123	80,573	80,976	112,635	89,505	87,510	87,319	75,894
2012	79,153	87,889	109,044	80,944	73,971	70,623	78,552	67,855	82,005	77,381	75,559	69,583

Breakdown of transactions by month and by type of instrument in 2012

	Bonds	Shares	Futures	Options	Rights	Others	Monthly total
CFi Code	**(Dxxxxx)**	**(Exxxxx)**	**(Fxxxxx)**	**(Oxxxxx)**	**(Rxxxxx)**	**(Mxxxxx)**	
January	39,272	33,310	3,516	2,350	498	207	79,153
February	45,808	35,786	3,097	2,411	501	286	87,889
March	50,532	51,251	4,080	2,364	513	304	109,044
April	38,535	35,493	3,434	2,924	372	186	80,944
May	38,281	28,932	3,295	2,740	449	274	73,971
June	37,306	23,834	4,892	3,577	819	195	70,623
July	41,403	28,460	4,393	3,630	433	233	78,552
August	38,679	21,876	3,294	3,672	135	199	67,855
September	47,742	26,866	3,767	3,110	260	260	82,005
October	43,908	27,637	2,958	2,221	304	353	77,381
November	41,169	27,854	3,273	2,700	267	296	75,559
December	38,984	25,458	2,168	2,484	249	240	69,583
Annual total	**501,619**	**366,757**	**42,167**	**34,183**	**4,800**	**3,033**	**952,559**

In relative terms, the majority of 2012 reports concerned transactions in bonds (52.66%), followed by transactions in shares (38.50%). Transactions in other types of instruments represented only a small part (futures: 4.43%; options: 3.59%; rights: 0.50%; others: 0.32%).

Annual comparison of transactions by type of instruments



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, reveal 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 are drawn up on the basis of the received reports. These ex post analyses of transactions in financial instruments can be used as a starting point for the CSSF's inquiries.

6.2. Supervision of stock exchanges

The establishment of a regulated market in Luxembourg is subject to a written authorisation of the Minister of Finance. 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 a regulated market is established in Luxembourg, he must also obtain an authorisation as specialised PFS 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 investment firm.

There are currently two markets operated in Luxembourg by the same operator, namely Société de la Bourse de Luxembourg S.A. (the 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 the SBL.

The 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 on the financial sector. In this capacity, it is registered on the official list of specialised PFS.

As far as its supervisory mission is concerned, the CSSF has had several meetings and exchanged mails with the SBL on, inter alia:

- the proposal for a directive on markets in financial instruments repealing MiFID;
- the proposal for a regulation on markets in financial instruments and amending the regulation on OTC derivatives, central counterparties and trade repositories (EMIR);
- the procedure for the notification to the CSSF regarding the suspension of financial instruments from trading on the regulated market of the SBL;
- the amendments to the Rules and Regulations of the SBL.

Furthermore, in 2012, the CSSF carried out an on-site inspection at the SBL's "Markets and Surveillance" department. The purpose of the inspection was to ensure that the procedures and structural provisions set up by the SBL for the market supervision comply with the regulations into force.

On the basis of the analytical reports transmitted by the SBL and the electronic access to the information on market transactions, the CSSF monitors the market activities and the problems encountered in relation to these activities. The development of the SBL's financial situation is monitored, in particular, via the monthly reporting sent by the SBL.

As at 31 December 2012, the SBL had 61 members (among which eight market makers) authorised to trade on the SBL's markets. As far as market activities are concerned, the trading turnover on both markets operated by the SBL reached EUR 451.73 million in 2012 against EUR 262.44 million in 2011. This development was mainly due to a rise in the trades in respect of fixed-income securities which represented almost 75% of the total volume in terms of amounts traded in 2012.

As at 31 December 2012, both markets operated by the SBL totalled 42,061 listings, against 44,369 in 2011, divided into 27,839 bonds, 7,544 warrants and rights, 6,342 UCIs and 336 shares, units and certificates.

In 2012, 8,121 new issues were admitted to official listing against 9,045 in 2011. Among the new issues, 6,954 issues were admitted on the regulated market *Bourse de Luxembourg* and 1,167 on the Euro-MTF market. Instruments admitted in 2012 can be broken down as follows: 5,274 bonds, 2,191 warrants and rights, 640 UCIs and 16 shares, units and certificates.

Moreover, in December 2012, the SBL admitted to trading on its regulated market three issues launched by the European Stability Mechanism (ESM).

The LuxX index closed the financial year 2012 with 1,248 points, i.e. a 9.95% rise over a year.

6.3. Short selling

Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps came into force on 1 November 2012.

The purpose of this regulation is to implement a harmonised regulatory framework in relation to short selling and credit default swaps so as to improve transparency vis-à-vis the market and the competent authorities and to allow the latter to detect risks related to shares and sovereign debt securities. It also confers on ESMA and national competent authorities clear competences to limit or even prohibit short selling in exceptional circumstances. In addition, ESMA coordinates the measures taken by the national competent authorities. The permanent transparency regime set up by Regulation (EU) No 236/2012 applies regardless of where the natural or legal person is located, be it in the EU or in a third country, where that person has a significant net short position relating to the issued share capital of a company that has shares admitted to trading on an EU trading venue or a significant net short position in relation to the sovereign debt issued by a Member State or by the EU, including the European Investment Bank, a Member State's government department, agency, special purpose vehicle or international financial institution established by two or more Member States that issues debt on behalf of one or several Member States, such as the European Financial Stability Facility or the European Stability Mechanism. In relation to sovereign issuers whose financial instruments are referred to in Regulation (EU) No 236/2012, the CSSF is the relevant competent authority within the meaning of the regulation for notifications relating to the debt issued by the Grand Duchy of Luxembourg, as well as for notifications relating to the debt issued by the European Investment Bank, the European Financial Stability Facility and the European Stability Mechanism which are all established in Luxembourg.

The regulatory framework on short selling and certain aspects of credit default swaps is supplemented by the following texts:

- Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps;
- Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares;
- Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events;
- Commission Delegated Regulation (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.

On 31 October 2012, the CSSF published Circular CSSF 12/548 on the entry into force of Regulation (EU) No 236/2012 providing details on the notification, the disclosure of net short positions or uncovered positions in accordance with Articles 5 to 9 of Regulation (EU) No 236/2012 and on the exemption procedures for market making activities and primary market operations in accordance with Article 17 of Regulation (EU) No 236/2012.

The circular also refers to documents and information published by ESMA on the application of the regulations on short selling and certain aspects of credit default swaps. In particular, ESMA published "Questions and Answers" on the implementation of Regulation (EU) No 236/2012 (Ref.: ESMA/2013/159 - January 2013) as

well as guidelines on the exemption for market making activities and primary market operations in accordance with Article 17 of Regulation (EU) 236/2012 (Ref.: ESMA/2013/74 - February 2013). Moreover, ESMA publishes the relevant notification thresholds applicable to every sovereign issuer on its website.

On 31 October 2012, the CSSF also published a press release on the entry into force of Regulation (EU) No 236/2012 and on the repeal of the decision of 19 September 2008 to prohibit naked short sales in relation to publicly quoted credit institutions and insurance companies.

The CSSF publishes on its website under "Short Selling" the relevant documentation and information relating to short selling and certain aspects of credit default swaps in Luxembourg as well as all the decisions to impose or renew the measures that the CSSF takes in accordance with the provisions of Regulation (EU) No 236/2012, including the notification, disclosure and restriction measures adopted in exceptional circumstances. Under this section, the CSSF also publishes a list of issuers of shares and issuers of sovereign debt for which the CSSF is the relevant competent authority under Regulation (EU) No 236/2012.

Since 5 November 2012, the CSSF has opened its Short Selling Platform to the persons concerned for the notification of net short positions or uncovered positions or for the publication of net short positions in accordance with Regulation (EU) No 236/2012. The platform can be accessed via http://shortselling.cssf.lu. Technical details on the registration, notification and disclosure procedures for the Short Selling Platform are provided in the relating User Manual published on 31 October 2012.

As at 31 December 2012, 44 position holders were validly registered on the Short Selling Platform to notify or disclose net short positions or uncovered positions. In 2012, the CSSF received five notifications of net short positions in accordance with Articles 5 to 9 of Regulation (EU) No 236/2012. In 2012, there was no disclosure of net short positions in accordance with Article 6 of Regulation (EU) No 236/2012 on the CSSF's Short Selling Platform. Moreover, the CSSF did not adopt notification, disclosure or restriction measures laid down in the provisions of Regulation (EU) No 236/2012 in exceptional circumstances. As at 31 December 2012, nine authorised primary dealers which validly notified the CSSF that they intend to use the exemption under Article 17(3) of Regulation (EU) No 236/2012 in relation to the issued sovereign debt of the European Financial Stability Facility and/or of the European Stability Mechanism fulfilled the conditions for this exemption.

Information requests and questions relating to the regulations on short selling and certain aspects of credit default swaps may be sent to the CSSF at the following email address: shortselling@cssf.lu.

7. INVESTIGATIONS AND COOPERATION

The mission of the CSSF is to combat insider dealing and market manipulation 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.

Based on Article 23(2) of the Code of Criminal Procedure, some facts which may constitute a breach of the Luxembourg criminal provisions and which were noted during the aforementioned investigations are also brought to the attention of the State Prosecutor.

7.1. Investigations initiated by the CSSF

In 2012, the CSSF opened two investigations into insider dealing and/or price manipulation. The various items of information and documents obtained during the investigations enabled the CSSF to close these files. An investigation initiated in 2011 was also terminated. Verifications in relation to an investigation initiated in 2010 will continue.

Moreover, the CSSF decided to give up a file related to market abuse so that the competent authority which is the best suited for the enforcement of the case can take over.

The CSSF continued to control the compliance with the so-called notification of manager's transactions, obligation arising from Article 17 of the Market Abuse Law, and issued two injunctions vis-à-vis the managers concerned (five in 2011).

7.2. Investigations conducted by the CSSF upon request of a foreign authority

In 2012, the CSSF received the following requests: 39 inquiries into insider dealing (34 in 2011), 16 inquiries into price manipulation (7 in 2011), 4 inquiries into breaches of the requirement to report major holdings (5 in 2011), 1 inquiry into financial fraud and 1 inquiry into MiFID reporting issues. Seven of these requests came from administrative authorities of non-EEA States.

The CSSF handled all these requests with the necessary diligence befitting cooperation between authorities and, within that scope, organised in Luxembourg two hearings of affected persons in which agents from the foreign competent authorities could partly participate.

The CSSF received two inquiries relating to a Luxembourg company and/or nationals which were outside its legal competences and, therefore, the requested information was not transmitted to the requesting authority.

7.3. Suspicious transaction notifications

Based on Article 12 of the Market Abuse Law, the CSSF received 19 suspicious transaction reports in 2012 (17 in 2011). For underlying financial instruments admitted to trading on one or several foreign markets, i.e. a regulated market within the meaning of MiFID or another foreign market for which the provisions and prohibitions related to market abuse are similar to those of the Market Abuse Law, the CSSF transmitted the notified information to the competent authorities of the market(s) concerned, thereby observing the cooperation obligation referred to in the Market Abuse Law and the relevant multilateral cooperation agreements. This information can lead these authorities to open investigations.

In 2012, the CSSF also received 13 notifications of suspicious transactions transmitted by foreign authorities (eight in 2011) and analysed them with the necessary diligence.

Furthermore, the CSSF continued its control of the compliance with the obligation arising from Article 12 of the Market Abuse Law and issued two injunctions vis-à-vis entities subject to prudential supervision.

Finally, in 2013, the CSSF will pay special attention to the internal procedures set up to comply with the professional obligations arising from the Market Abuse Law. The purpose of these controls will be to ensure that the form and content of the internal procedures comply with the applicable legislation. On-site inspections are also contemplated to this end.

CHAPTER XI

SUPERVISION OF INFORMATION SYSTEMS

1. Activities in 2012
2. Supervisory practice of information systems

1. ACTIVITIES IN 2012

This chapter deals with the supervision of information systems of financial professionals, including mainly credit institutions, investment firms and specialised PFS. As regards the specific supervision of support PFS, please refer to item 3. of Chapter IV "Supervision of PFS".

1.1. Participation in national groups

In 2012, the department "Information systems and supervision of support PFS" represented the CSSF within the following committees, commissions, associations or working groups:

- the ABBL - Payments, ICT & Standardisation Committee. The committee, in which the CSSF participates as an observer, dealt with topics relating to payment and clearing systems, bank cards, direct debits and especially the European project SEPA (Single European Payment Area) coordinated by the EPC (European Payment Council). It also addressed the topic of vulnerabilities specific to the use of financial services via the Internet and worked on projects relating to electronic archiving, e-invoicing and mobile payments.

- the Operational Crisis Prevention Group for the financial sector (OCPG) under the aegis of the Banque centrale du Luxembourg (BCL). The mission of the 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 operations.

  In 2012, the OCPG worked mainly on defining communication procedures among its members in the event of a crisis. The OCPG also participated in the CYBER EUROPE 2012 (CE2012) exercise which took place on 4 October 2012. The CE2012, organised by ENISA (European Network and Information Security Agency) with the assistance of a national *moderator* (the HCPN) and a national *monitor* (CIRCL, the national CERT), is a crisis situation exercise at European level. Its main purpose is to test the crisis communication procedures both at European level among the public authorities of the countries hit by a crisis and at national level among and within the public/State sector and the private sector. A total of 26 countries, including Luxembourg, and the European institutions participated in this exercise. The general scenario was a large scale cyber attack on the public and private infrastructures of all countries participating in the exercise in Europe. The CE2012 offered the OCPG a unique opportunity to test the communication procedures among its members. The CSSF participated in this exercise in a dual role: on the one hand, as supervisory authority of the financial sector and, on the other hand, as permanent member, together with the BCL, of the OCPG. Due to the CSSF's dual role in the simulation, some financial institutions being members of the OCPG and acting as "victims" in the simulation, informed the permanent members of the OCPG (including the CSSF), omitting however to notify the CSSF directly and in parallel of the (simulated) crisis situation they were facing. In its role as authority in charge of the supervision of the financial sector and independently from its membership in the OCPG, the CSSF reminds the entities under its supervision that it must be informed, without delay, of any crisis situation an entity under its supervision may face and which could have a major impact on its activities in the short term and/or on those of other players of the Luxembourg financial sector.

- ALMUS (Association Luxembourgeoise des Membres et Utilisateurs SWIFT), which is the national association representing the interests of Luxembourg SWIFT users. The CSSF joined the Board of Directors of ALMUS as an observer in September 2012. Luxembourg is represented within the Board of Directors of SWIFT due to the substantial volumes exchanged by the country's players.

1.2. International cooperation

1.2.1. IT Sounding board

The IT Sounding Board (ITSB) is in charge of coordinating pan-European projects that require the development of homogeneous IT solutions for regulators. The EBA implemented in 2012 an IT system to collect the reference data of the 7,377 European credit institutions. This register is regularly updated by the national authorities and is available on the EBA's website.

By participating in the ITSB's XBRL subgroup, the CSSF also contributed to updating the taxonomy of the Financial reporting (FINREP) and the Common reporting (COREP). The publication of the new XBRL taxonomy is scheduled for the last quarter of 2013.

1.2.2. IT Management and Governance Group (ITMG)

The IT Management and Governance Group (ITMG) is in charge of the information technology governance of ESMA and ensures, as its main task, the coordination and follow-up of pan-European projects, in particular the exchange of transaction reports on financial assets.

2012 was mainly dedicated to the detailed specification of information systems to allow the exchange of information with ESMA. In 2012, the ITMG put in place a statistics collection platform on important net short positions in accordance with Regulation (EU) No 236/2012. This system is fed by the national authorities based on the short-sale transaction reports received.

Applying requirements set out in the Omnibus Directive (2010/78/EU), ESMA launched the "Register" project in 2012. This system enables the collection of reference data of investment firms, management companies and of the list of European prospectuses and prospectus passports from the members of ESMA. Upon completion of an important test phase, the system will be operational towards the end of 2013.

1.2.3. IT Supervisors Group (ITSG)

The CSSF has been participating in the international working group IT Supervisors Group (ITSG) for several years. At the annual international meeting, which was held under the aegis of the Singapore authorities, regulators took stock of and exchanged information on topics related to methodological supervisory and audit tools based on the risk analysis, to hacking, to the availability of IT systems and applications, to payment card frauds, to outsourcing, particularly in the framework of cloud computing for the financial sector and to other recurring or current topics that impact the prudential supervision regarding IT.

It should be noted that most supervisory authorities are opposed to the use of cloud computing by banks, mainly due to the opaque nature of the service and the rigid contractual conditions imposed by the major providers, considering that these conditions do not allow institutions to have sufficient control over the service provision.

1.2.4. European Forum on the Security of Retail Payments (Forum SecuRe Pay)

Set up in 2011 upon the initiative of the Payment and Settlement Systems Committee (PSSC) of the European Central Bank (ECB), the Forum is chaired by the ECB. Luxembourg is represented by the CSSF and the BCL as active members. The Forum is a voluntary cooperation among authorities in order to facilitate common knowledge and understanding, in particular among the national central banks and the supervisory authorities of payment service providers, of the risks and challenges related to the security of retail payments. The Forum deals with the challenges on electronic payment instruments and services available within the EU/EEA Member States or provided by service providers located in an EU/EEA Member State. The Forum's work focuses on the whole processing chain of electronic retail payment services (excluding cheques and cash), irrespective of the payment channel. The Forum aims to address in particular areas where major

weaknesses and vulnerabilities are detected and, where appropriate, issues recommendations in order to remedy these weaknesses and vulnerabilities. The ultimate aim is to foster the establishment of a harmonised EU-wide minimum level of security among the authorities concerned. The members of the Forum commit to support the implementation of the recommendations issued by the Forum in their respective jurisdictions.

In 2012, the Forum finalised its work on the security of Internet payments. Taking into account the feedback obtained in a public consultation on the basis of a draft report, the Forum issued the final report "Recommendations for the Security of Internet Payments", published on the ECB's website at the end of January 2013.

In addition, the Forum initiated the following other works:

- Security of payment account access services by persons (service providers) other than the account holder in the context of services offered by these service providers. These services consist in: (i) providing a consolidated view on all the assets held by a person owning several accounts with several institutions (account information services), and/or (ii) initiating payment transactions via Internet on behalf of the account holder (payment initiation services). The Forum finalised its draft report which presents a set of recommendations in order to improve the security of these services within the EU. The report, published on the ECB's website at the end of January 2013, has now been submitted to public consultation ending on 12 April 2013.
- The security of mobile payments, including proximity contactless payments based for example on the NFC technology and remote payments using specific payment applications previously downloaded on a mobile device (for example QR code solutions). Works are ongoing and might be extended to other mobile payment solutions in a second phase.

1.3. Developments in the regulatory framework

1.3.1. Circular CSSF 12/552

Circular CSSF 12/552, published on 11 December 2012, concerning central administration, internal governance and risk management, applies to all credit institutions, investment firms and professionals carrying on lending operations.

This circular notably repeals Circular CSSF 05/178 on the administrative and accounting organisation and on the outsourcing of IT services for credit institutions and investment firms. Moreover, and exclusively for these institutions, the new text incorporates elements of Circular CSSF 05/178 and integrates them in an enhanced structure. Circular CSSF 05/178 remains applicable to all institutions other than those referred to in Circular CSSF 12/552, in particular to specialised PFS, support PFS, payment institutions and electronic money institutions.

As far as IT is concerned, Circular CSSF 12/552 specifies the following points:

- Section 5.2.3.: Introduction of the ISO (Information Security Officer)

  This section introduces explicitly a staff member in charge of the security of information systems within the institutions. This person is referred to as the "Information Security Officer (ISO)" or, in French, the *Responsable de la Sécurité des Systèmes d'Informations* (RSSI). The ISO shall be the person in charge of the organisation and management of the information security, i.e. the protection of the information. S/he shall be independent from the operational functions and, depending on his/her position and the size of the entity, released from the operational implementation of security actions. An escalation mechanism shall enable him/her to report any exceptional problem to the highest level of the hierarchy, including the board of directors. His/her key missions are the management of the analysis of the risks related to information, the definition of the required organisational, technical, legal and human resources, the monitoring of their implementation and effectiveness as well as the development of the action plan(s) aimed to improve the risk coverage (point 5.2.3.86).

  All entities are concerned, with arrangements that vary notably in relation to the size and volume of activity of each entity.

It should also be noted that the CSSF initiated works to establish the professional qualifications required for ISOs. These works regarding the definition of the professional qualifications are performed in cooperation with representative bodies of the financial centre, such as the CPSI (Collège des Professionnels de la Sécurité de l'Information, College of information security professionals), and will continue in 2013.

- Sub-chapter 7.4: Outsourcing

  The important and transversal point of this sub-chapter is that "the institution which intends to outsource a material activity must obtain prior authorisation from the CSSF" (point 7.4.1.182).

- Section 7.4.2.: Specific IT outsourcing requirements

  In general, the consistency of the services outsourced between the institution and its sub-contractor must be ensured in order not to have borderline aspects that are not taken into consideration and to maintain a consistency between the measures taken by both partners. This must in particular be the case for the security of information and business continuity plans.

  As far as IT system management/operation services are concerned, institutions may contractually use these services::

  (i) in Luxembourg, solely from a credit institution or financial professional holding a support PFS authorisation in accordance with Articles 29-3 and 29-4 of the law of 5 April 1993 on the financial sector or from an entity of the group to which the institution belongs, under certain conditions (point 7.4.2.193);

  (ii) abroad, from an entity of the group to which the institution belongs, under certain conditions (point 7.4.2.193).

  Contracts with clients other than institutional clients must clearly state the specific outsourcing characteristics and the consequences for the client data concerned (point 7.4.2.1).

  Consulting, development and maintenance services may be performed by any IT service provider. Confidential data must not be accessible to the service provider, except for support PFS. Changes to the IT system must be submitted for approval to the entity prior to their implementation. There must be no legal obstacles to obtain access to operating systems in case the editor goes bankrupt (point 7.4.2.2).

  As far as hosting services and infrastructure ownership are concerned, the consulting, development and maintenance services rules apply. A processing centre may be hosted at a provider other than a credit institution or support PFS, provided the service provider has no access to the institution's systems. Where the processing centre is located abroad, confidential data must be inaccessible. Confidential data may be stored abroad in encrypted form, but the whole encryption/decryption process must comply with the conditions set out above (point 7.4.2.3).

1.3.2. Circular CSSF 13/554

The intention to consolidate the IT systems of Luxembourg subsidiaries of foreign financial institutions with their parent company or specialised companies belonging to the group continued in 2012.

In this context, on 7 January 2013, the CSSF published Circular CSSF 13/554 on the evolution of the usage and control of tools for managing information technology resources and the management of access to these resources. This circular concerns the tools allowing the management of access rights to IT resources connected to a network and/or the centralised registration and administration of most of these resources (user accounts, printers, computers, services, etc.). Indeed, some international groups of financial professionals tend to centralise these tools at group level so as to achieve a uniform and sovereign management of these IT resources.

The CSSF would like to remind that the professionals of the financial sector must always have full control over the resources under their responsibility and the corresponding access to these resources, both for compliance and governance reasons and in order to protect confidential data subject to professional secrecy.

A technical note is included in the circular ("Evolution of the usage and control of the resources access tool") which describes the issue and possible solutions, and which provides the technical rules which the professionals of the financial sector must comply with.

The CSSF requests all the institutions concerned to ensure their compliance with this note, particularly when faced with demands from their group in this area. In case of non-compliance, the entities must inform the CSSF and provide a detailed description.

Following the information requests received from the institutions concerned in relation to this circular, the CSSF is currently preparing an FAQ document which will be published on its website during 2013.

2. SUPERVISORY PRACTICE OF INFORMATION SYSTEMS

The 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 focuses, 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. Using the Swift Gateway outside of Luxembourg

In 2012, on several occasions, the CSSF was requested to give its opinion on projects relating to the outsourcing of the access to the Swift Gateway outside of Luxembourg.

In its Annual Report 2007, the CSSF indicated that, as the European legislation imposes the traceability of a fund transfer, the disclosure of the payer's identity in the context of the fight against money laundering and terrorist financing may be requested for a fund transfer transaction and that the professionals concerned, and in particular banks, must inform their clients of this situation. Indeed, informing the client is necessary in order to ensure that s/he receives a detailed explanation on the consequences of a transfer of funds, namely that the transfers will be considered as including an implicit mandate to provide the client identity information with the aim to allow the transaction's finality, i.e. the transfer of funds or of other values, although this information is subject to professional secrecy.

Even though confidential data may be transferred through it, the outsourcing of the access to the Swift Gateway outside of Luxembourg is possible as the payer has already been made aware of the fact that such transfer includes the above implicit mandate. However, the CSSF imposes certain conditions in order to limit the impact on the client data confidentiality, as the name of the payer can likely be read in unencrypted format on Swift Gateway. These conditions will be further detailed in a technical document titled "Use of the Swift Gateway outside of Luxembourg", which will be published in 2013 on the CSSF's website.

2.2. IT services provided by a bank to other entities (IT insourcing)

Even though support PFS (primary IT systems operators of the financial sector and secondary IT systems and communication networks operators of the financial sector pursuant to Articles 29-3 and 29-4 of the law of 5 April 1993 on the financial sector) remain the main service providers for IT system operation within the financial sector, Luxembourg credit institutions are also authorised to offer this type of service to other professionals of the financial sector governed by Luxembourg or foreign law. Indeed, the law of 5 April 1993 on the financial sector authorises them - and only them - to perform any activity included in that law and thus also the activity of IT systems operator. It should however be noted that a credit institution that intends to provide such services to another professional of the financial sector governed by Luxembourg or foreign law (IT insourcing) must inform the CSSF thereof. The notification must be sent to the department "Supervision of Banks", which will ensure that:

- the banking activity remains the main activity of the credit institution providing the IT service: the main purpose of an entity authorised as credit institution must indeed not be the provision of IT services;
- the credit institution must have the necessary resources to provide such service (size and competence of the IT teams);

- the financial risk (penalties) taken on by the credit institution in case of failure to provide a quality service or in case of a major incident must be adequately covered (insurance, cash);
- the proposed architecture and organisation must ensure an isolation of the IT environment of the service providing credit institution and the IT environment(s) of the client entity(ies).

2.3. Remote management of a Virtual Desktop Infrastructure

The Virtual Desktop Infrastructure, also known as VDI, is a system that separates, on the one hand, the user's machine and, on the other hand, the physical device from the user's work environment, the desktop. It refers thus to a desktop virtualisation principle operating in a client/server mode, for which the desktop only requires few resources from the processor on the user's PC; the user will be visualising a desktop actually operating on a VDI server.

Information confidentiality, control and security must thus be ensured at client level, server level and at the level of their connection. This is especially the case where the server infrastructure is hosted and managed outside of Luxembourg by another entity, as for example the parent company of the group to which the entity belongs. The client side will be operated on a physical device by an employee of the Luxembourg entity.

In 2012, the supervised entities asked the CSSF a series of questions relating to this type of infrastructure and configuration. The CSSF would therefore like to draw attention to the following recommendations.

• Security of the desktop configuration

Disabling links on the desktop is insufficient to prevent the indirect launch of applications. Non-useful applications which are accessible on the virtual desktop must also be disabled to ensure total security (cmd.exe for example), i.e. a correct hardening of the desktop should be performed. Not only must the link to the programme be deleted; the launching of the programme on the VDI server must not be possible for the user.

• Data confidentiality on the desktop

The configuration of the desktop must not allow any transfer of information from the Luxembourg environment to the virtual desktop launched abroad, for example copying of files. Otherwise, this information could be stored in a group environment, violating the information confidentiality applicable to the Luxembourg entity. In such cases, the desktop would be considered as a non-confidential space of the group and used as such.

This is also true outside the VDI context, where a user is in a global environment (roaming) which allows him/her to have the same layout on his/her screen with icons positioned on the same place, independently from the workspace to which the user is connected. Where a user saves a document on his/her desktop, this document is accessible from any other machine, provided the user connects to it, and thus potentially from abroad if roaming is allowed. The desktop can thus be potentially considered as a shared working environment which is often forgotten during security and confidentiality analyses.

• Client/server connection security

In certain VDI implementations, configuration information may be transferred to the client. This information is critical as it may be intercepted, modified and replayed to extend the rights and violate the system's policy, creating an exploitable security breach.

A good configuration must ensure the protection of the connection between the physical machine hosting the client and the information circulating through it.

• Confidentiality of content filters

In the case of centralised content filtering applications, as for example antiviruses, care must be taken in the way the application manages attached files or other information likely to include data which is considered as confidential under Luxembourg law.

Indeed, a bad configuration of the antivirus console located outside the Luxembourg entity can lead for example to consider all files with a certain extension as infected (e.g. all ".doc", ".pdf", etc.). This would result in an important volume of documents, potentially confidential, that are quarantined at the level of the antivirus manager, even if the latter is abroad. This situation must not occur, as only the Luxembourg institution must possess the technical rights to manage and read these files.

2.4. Bring your own Device (BYOD)

"Bring your own Device" (BYOD) is a new trend consisting in the use of personal devices (smartphones, tablets or laptops) in a professional context to access, for example, professional emails, or the internal network of the company and its resources (storage of professional files, use of word processing, spreadsheet, presentation, etc.).

The concept as such, i.e. the access to the professional resources from any type of device, as for example when the user is away from the office, is not new.

BYOD offers advantages both for the employer and the employee. The employer does not have to bear the acquisition and maintenance costs of the device, as s/he is not the owner. The employee may use the same device for his/her private and professional needs. By choosing his/her own device, the employee may thus have at his/her disposal a better performance than offered by the standard devices provided by the employer.

The technical risks linked to this practice first arise directly from the device itself. Where the employee is directly in charge of the security policy of his/her equipment or has, in theory, full access to his/her device, the employee is in a position to perform a jailbreak or to install weaker security elements on the device than the ones prescribed by the entity. This increases the risk of non authorised access by a third party - directly or through malware - not only to the device and implicitly to the data stored on it, but also, where applicable, to the resources of the network which the employee can access with his/her personal device.

In addition, the management of the mobile devices is more complex for entities as:

- the IT teams have no access to the devices as they are the property of the employees;
- the IT teams do not have the capacity to manage the diversity of devices and threats linked to these tools;
- in case the device is stolen or lost, the data responsibility must be clarified in the security policy.

According to the prudential principles applicable to them, financial professionals must always have their activities under control from a technical and operational perspective. These principles also apply to the BYOD concept.

In this context, it should be noted that teleworking on a permanent basis is not allowed using BYOD tools or other devices provided by the entity.

Moreover, the CSSF reminds that the requirements relating to remote email access, indicated in the CSSF's Annual Report 2005 (cf. Chapter VIII, item 2.2.1), and the requirements on mobility and remote access, detailed in the CSSF's Annual Report 2007 (cf. Chapter VIII, item 2.2.1.), also apply to the BYOD concept.

Despite the fact that the entity is not the owner of the device, it must be in a position to monitor the professional data and applications that will be used on it. In other words, the entity must install a controlled professional environment inside the private environment, offered by the BYOD tool. This professional environment (container) must be remotely controlled by the entity on an ongoing basis.

To achieve this, the entity must ensure that technical and organisational measures are implemented for the BYOD devices. Among these measures, the aspect of the right of intervention by the entity on the BYOD must solve the issues linked to private property.

If a financial institution wishes to implement a strategy using the BYOD concept, a BYOD risk analysis and security policy must be put in place. Moreover, a specific risk analysis for each type of BYOD devices and their context is required. Risks must be correctly assessed, reduced or accepted. The residual risk must be known and accepted.

The BYOD risk analysis and security policy will allow defining the proportionality between the means the entity chooses to put in the container and the context offered by the device. The entity remains responsible for the adequacy between a market product and the security needs.

The BYOD security policy may, among others, detail the following points:

- an access to all applications for all the staff is not acceptable;
- a list of the authorised BYOD devices must be set up;
- a data classification allowing the BYOD users to have adequate access to data and to the professional applications in relation to the BYOD risks; the container on the BYOD device must be secured in accordance with the results of this risk analysis; it must have its own security policy imposing for example an authentication by means of a complex password, or dynamic factor (e.g. a token) for the access to the container, a secured link (encryption) or an additional authentication for the access to the applications;
- the container on the tool containing the data (email or other) must be encrypted and remotely wipeable in case of theft or loss;
- the BYOD solution must be continuously monitored;
- a BYOD security mentality is necessary for the employer and the employee; it includes the specific contractual aspects and the BYOD conditions must be undersigned by the users.

The financial professional remains thus responsible of the security and the control of its environment.

2.5. Data management where financial professionals left Luxembourg and closed the Luxembourg entity

Where a financial professional decides to cease its activities in Luxembourg and to move abroad, special attention needs to be paid to the handling of client data subject to professional secrecy within the meaning of Article 41 of the law of 5 April 1993 on the financial sector.

Existing clients that wish to become clients of the new entity set up abroad will have to sign a new contract with this new entity and clearly state that they authorise the transfer of their data (including the history of the activities with the Luxembourg entity) from the Luxembourg jurisdiction to the target jurisdiction.

Where existing clients prefer to close the business relationship, all data that concerns them (historical data included) must mandatorily remain in Luxembourg for the entire legal period during which the information must be kept.

For former clients that can no longer sign any contract authorising the transfer of their data, the data must also mandatorily remain in Luxembourg for the entire legal period during which the information must be kept.

2.6. Office tools in the cloud

The CSSF noted an increase of office tools offered in the cloud, sometimes at substantially lower prices than traditional office tools offers. In this context, the CSSF reminds that the prudential principles concerning the use of cloud computing, detailed in its Annual Report 2011, remain applicable. One of the three principles of cloud-based outsourcing is that financial institutions must always have their activities under control from a technical and operational perspective. Moreover, the probability that office tools contain data subject to professional secrecy is high.

The CSSF therefore considers that the use of office tools in the cloud is not acceptable for a financial institution, unless the service is offered by a support PFS, the latter being subject to the same prudential principles and the same legal framework as its client of the financial sector.

2.7. Backup solutions

New technology backup solutions, exclusively incremental as compared to mixed technologies (differential and complete), have recently appeared. These solutions, which seem to be more efficient and less expensive,

however based on a more opaque technology, often meet only part of a company's needs.

Data protection loss is the outcome of this discrepancy between the need and the solution chosen, whereas data protection remains mandatory. This loss may occur without a sufficiently prudent organisation noticing it, and the chosen solution may in addition also give a false sense of security, comfort and economies of scale.

• Reminder on obligations

The professionals of the financial sector are required to cover the risks which their activities are exposed to and must have in place control and security mechanisms on their IT systems (law of 5 April 1993 on the financial sector). Business continuity and the obligation to keep records of historical data are essential functions that a professional must ensure.

More specifically, the financial professional must be in a position to operate as usual in case of an IT system breakdown. This necessarily includes the availability of data, notably through a backup solution, aligned with a business continuity plan.

A compliant running mode thus implies the existence of a reliable, consistent and sustainable backup. Backup data includes all business data, historical business data and financial statements, as well as any IT data required to restore an operational IT system. The backup solution must provide such a safekeeping functionality.

• Reminder on concepts

The concept of backup includes two different purposes: continuity (recovering the activity following an incident) and archiving (providing data for a specific date). Continuity incidents are mainly due to human, software or hardware errors.

Continuity and archiving have very similar, but different in scale, characteristics. These characteristics are the duration of time and the effort for recovery, the granularity of recoverable data, the type of incident covered, the complexity of recovery procedures, the business context, etc.. Today, new elements may be taken into account according to the company's type of activity (specific data type, for example for a specific business type) or the technology available (type of support infrastructure, advanced backup technologies). The backup functionality is thus more complex than it used to be. For this reason, it is much more appropriate to refer nowadays to a "backup solution" and a "backup policy" to reflect the level of complexity and requirements that the backup function must be able to meet.

There are two important notions whenever an event requires the company to use its backup: the RTO or Recovery Time Objective and the RPO or Recovery Point Objective, i.e. the duration of time within which normal conditions are restored with data recovery (a stepstone on the timescale) and the last consistent status from which a data recovery is possible (a stepstone in the historical archiving). The RTO indicates thus a loss of working time for the company and the RPO indicates a loss of data for the business. The company will have to reduce these two values as much as possible through its backup solution and in accordance with the needs identified.

The last consistent and usable backup data is an additional concept that the RPO brings about. This concept is essential as it guarantees that data may be used again or that a system may be restarted. Current software has become very sensitive and requires consistent data for its restart conditions. This consistent data backup is strongly linked to the type of restart planned. Thus, a consistent data backup, e.g. at file level, may turn out inadequate for restoring a running software. This is obvious for a simple infrastructure, but it will not be for a complex infrastructure. This also means that the backup function is not as flexible as it may seem. In practice, a full backup defines a consistent state that allows with certainty a flawless restart of the system or recovery of data. This concept is an essential principle, which must be complied with by any infrastructure.

• New backup technologies

New backup technologies, exclusively incremental as compared to mixed technologies (differential and complete), have recently appeared. They are the result of the efforts made to reduce RTOs, RPOs and storage spaces. These technologies, as for example snapshot or deduplication, are based on the recording of changes

detected in the logical blocks and/or on a mutualisation of identical block storage. This logical partitioning is created by the backup software and is saved on the physical disk. Blocks are managed in a specific folder, stored on the disk itself (snapshot) with a copy of the modified blocks. These technologies use production disks which are already in place.

At a first glance, through the improvement of the RTOs and RPOs and the reduction of the storage space, these technologies allow decreasing directly the production and data losses, and, consequently, costs. Moreover, the use of production disks which are already in place might allow savings on traditional backup solutions (differential systems, tape). This reasoning continues by considering that the backup function may simply be absorbed by the production environment already in place, especially if there is a mirroring. Therefore there would be no impact on the infrastructure and no additional costs.

Moreover, the solution seems to have become technically simpler as it appears to be limited to a disk issue and to use only a technology already in place and known, i.e. the production environment. The unit cost of a disk does not raise any particular comments.

Organisational simplification would follow the same path. Backup and restore procedures seem to be integrated in the tools and in the system. They are supposed to be automated and correspond to the needs. There would thus be no time lost to analyse the needs to implement the backup solution.

These solutions seem therefore attractive and seem to respond to the financial pressure that companies meet, but they focus on local gains disconnected from global needs.

• Gap between the result expected and the result obtained

Exclusively cost-related considerations are driven by a financial reasoning; however, the backup solution must also be studied in its entirety, integrating the new parameters previously listed.

If a solution such as described above is put in place, it provides the specialised services for which it has been set up, but it will not allow taking into account the whole backup issue. Moreover, due to the capabilities of the solution and the way it functions, certain side effects (new risks, hidden costs) occur, which may only be identified through a prior impact analysis. The benefits of these types of solutions may thus rapidly become zero or even negative.

Finally, the change also rests in the fact that the backup solution is more and more linked to the type of activity of the company and to the respective behaviour of the support infrastructures. This means that the solution must now be adapted to its environment and that the out-of-the-box solutions are to be reconsidered.

There is thus a high risk that an entity puts in place a backup solution which does not correspond to its needs or which is insufficiently adapted or even incomplete. The main reason seems to be an incomplete knowledge by the market of the new concepts and technologies in this field, of their new implications, the real needs in terms of backup and of the combined architectures of such solutions.

As described above, the snapshot technology groups on the same disk the original data, the copy of modified blocks and their directory. This allows a virtually immediate and transparent RTO for operational data, as for files or non-persistent data for example, with a minimum storage space. However, this does not solve the issue of the loss of a disk or sectors of the disk. This purely incremental system no longer contains a full backup, which represents a problem in case of total loss or need to recover a particular point of a historical report.

It should also be noted that the solution becomes more complex and thus more risky. An error on the block directory may for example result in the loss of the whole backup.

The main problem is that the backup data are on the same disk that is to be kept safely. This can be justified for a data backup with a short RTO. For the backup of a whole system, this is no longer appropriate. The question is thus to know exactly which backup sub-function has to be implemented and the type of data concerned. Different types of backup also become incompatible with a single technology. Combined technologies are thus required.

The presence of a mirrored system is not an alternative to the backup and must not be considered as such. On the one hand, in case data is corrupted on a disk, the error is immediately transferred on the mirrored disk. On the other hand, the idea of using the mirror to rebuild a system is rendered invalid by the fact that this mirror is probably not consistent and the fact that the company is left without backup in case an incident occurs on the mirror itself. Thus there is a need for a third backup environment.

Deduplication also has its own characteristics: it may be possible that competing accesses are not supported by the application. The restore time is not accelerated by this mechanism. It is actually a rather slow backup mechanism which is not advisable for an aggressive RTO environment. Moreover, deduplication applications may represent a weak element of the backup chain.

The mirror, as well as the snapshot or the deduplication methods do not solve the need for an archiving history (intermediary full backup) and long to very-long term archiving (legal constraints).

Saving disk space, which seems to be the feature of snapshot and deduplication concepts, relies a lot on the type of data and their dynamic. Frequent changes on the whole data base may require in practice duplication of disk space implying inducted slowness. It is about being aware of the target data bases in order to avoid an inadequacy between its development and the backup system.

For these new technologies, the reconstruction time of mass data (whole disks) do not change considerably as compared to the traditional solutions. Indeed, the delay is rather linked to the reconstruction process and the data writing process by the restore application than to the feed of data from the backup source. The advantage of a disk as compared to a tape becomes thus less evident.

As regards the disks on which these technologies are exclusively based, their multiplication in an environment has delayed side effects. Indeed, although the lifecycle of disks is difficult to determine, their end of life occurs in a short timeframe, requiring an unusual reactivity, even critical (simultaneous breakdowns during the reconstruction period of a RAID bay, massive replacements). Moreover, incremental backups may increase their disk space little by little over time, bringing along an increase in the number of disks and so on.

These technical details are not exhaustive, but they illustrate the need for an adapted consideration of the backup solutions. The technologies mentioned have been designed for specific use and environments with more and more constraints. They operate properly and provide services in the environment for which they are intended. Thus, they must be used knowingly and be combined inside solutions aligned with the needs which take into account the business use and the real technical behaviour of the applications.

• Recommendations

Based on the preceding elements, the CSSF issues the following recommendations.

The backup function must allow remaining compliant with the regulation and be subject to serious thought by the entities. This thought shall include at least a study of the new technologies, their side effects, real needs, the TCO (Total Cost of Ownership), activities and performance of the databases. The entity can then develop its backup strategy and optimise the new technologies according to their particular properties. Such an approach contributes to risk hedging of mismatch between the solution and result as well as to budget control.

The backup function must enable to restore business following a human, software or hardware incident. The solution must manage the different levels of granularity of information, time, data. The backup function must allow tracking the history in the short, medium and long term (legal archiving).

The original data and the corresponding backup data must be stored on different physical media. The storage of the backup on a disk must include a secondary backup in case of corruption of the primary backup during reconstruction operations. It must also envisage the end of life of the respective disks.

The incremental backup is not a replacement for the full backup which is still necessary. The snapshot allows having a quick restore for the aggressive RTO environments. It must not be drifted away from its primary goal in order to perform inappropriate disk backup solutions. These solutions may be advantageously supplemented by a backup tape which is still relevant, particularly for small systems or small entities.

The mirror infrastructure must not be considered as backup solution.

The new backup technologies must be considered as complementary technologies and not as a new layer of technology aiming to replace the previous ones that are still relevant.

Only a restore and regular tests can completely validate a backup function. An annual test seems to be a minimum requirement in this area. It should be noted that some institutions set up automatic restore tests with integrated test scenarios. Thus, they loop completely the whole validation chain of the backup functionality.

2.8. Internet threats

Hacking activities have been ongoing both in the financial sector (European and American) and outside the financial sector, but no major attack has been recorded in the Luxembourg financial sector.

Hacking is now mostly focusing on weaknesses of widespread applications, from which intrusions are never expected. For example, some PDF-files allow specific intrusions to certain versions of reading programmes. The editors of these applications react quickly, however the update of the versions is sometimes slower, implying an exposure of the financial professional who has not updated its versions. Nowadays, not only the antivirus, but also any other applications, such as the browser, Java, Acrobat Reader, etc. must be kept up-to-date. Professionals agree on the fact that malware detection power by antivirus tools has drastically decreased; some of them observed that 40% of malware are no longer detected (average observed based on a range of selected Trojan horses and on the main antivirus tools).

As a consequence, the probability to infect a company's internal network increased strongly since certain types of documents, such as PDF-files, exploit the vulnerabilities of reading software. The best way to prevent such risks is to update the software and antivirus tools, to analyse the network traffic and, above all, the outgoing traffic to the Internet to identify the accesses that do not fall within the security policy, and, lastly, to raise the awareness of the users to only open attachments to emails of which they may reasonably think that the issuer is reliable and potentially not infected.

CHAPTER XII

PUBLIC OVERSIGHT OF THE AUDIT PROFESSION

1. Regulatory framework of the audit profession
2. Quality assurance review
3. Overview of the population of *réviseurs d'entreprises* (statutory auditors) in Luxembourg

1. REGULATORY FRAMEWORK OF THE AUDIT PROFESSION

1.1. European Commission proposal for the audit reform

The proposal for a European directive amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and the proposal for a European regulation on statutory audits of Public Interest Entities are still under discussion within the European bodies.

Significant progress has been made in analysing these documents within the European Council, in particular under the Cypriot presidency which had aimed at proposing a compromise text by the end of 2012. However, to date, no consensus could be reached on several key questions and the main measures of these projects remain unresolved, namely:

- broadening of the definition of Public Interest Entities (PIEs);
- prohibition of the provision of non-audit services to PIEs;
- provision of related audit services limited to no more than 10% of the fees paid by the audited entity for the statutory audit;
- mandatory rotation of audit firms after a maximum period of six years with a cooling-off period of four years.

The positions of the Member States and the compromise proposals on the points above are however without prejudice to the final provisions.

1.2. Contribution to the regulatory framework

In 2012, the CSSF took part in major projects by addressing, together with its European counterparts, comments on a certain number of clarified international standards on auditing to the International Auditing and Assurance Standards Board (IAASB).

In this context, the observations made by the CSSF during its quality assurance reviews were similar to those made by European counterparts as regards audits of accounting estimates and the fair value measurements, the engagement quality control review, the group audits and the use of the work of an expert.

All these points have been communicated to the IAASB stressing the need to perfect audit diligences to be carried out in relation to:

- the fair value measurement of financial assets in accordance with the provisions of ISA 540 taking inspiration from the measures recommended by IAPN 1000;
- the involvement of the group auditor in the audit of significant components, including communication, supervision and review of the work performed by the component auditor;
- the sufficiency of the work of the experts with respect to the ISA standards and the importance of addressing the observations of these experts.

The CSSF also participated in drawing up comment letters for the IAASB as regards the project to improve the auditor's report (ISA 700) and ISA 610 "Using the work of internal auditors".

Indeed, the auditor's report should provide for more transparency with respect to the audit process and the manner in which risks of material misstatement, including risks of fraud, are identified and addressed. Nevertheless, it should be borne in mind that the management is responsible for the drawing-up of the financial statements and, contrary to what is recommended in the project, it is not for the auditor to make up for the management's omissions and errors, but to assess their impact on the auditor's report.

Moreover, as regards the use of the work of internal auditors for the purpose of external auditing, the CSSF expresses reservations as regards the option under this project to allow the internal auditor to directly assist the external auditor. This measure infringes the principle of independence as internal auditors are employed by the entity that is being audited. Besides, making use of this option exposes the external auditor to an undue pressure from the management of the audited entity to reduce his/her fees.

2. QUALITY ASSURANCE REVIEW

2.1. Scope

2.1.1. General framework

By virtue of the law of 18 December 2009 on the audit profession (Audit Law), *réviseurs d'entreprises agréés* (approved statutory auditors) and *cabinets de révision agréés* (approved audit firms) are subject to a quality assurance review organised according to the terms laid down by the CSSF in its capacity as supervisory authority of the audit profession, for engagements concerning statutory audits as well as for any other tasks which are conferred exclusively on them by the law.

The quality assurance review takes place at least every six years. This cycle of review is brought down to three years for *réviseurs d'entreprises agréés* and *cabinets de révision agréés* that audit PIEs.

- **Population of *cabinets de révision agréés* and *réviseurs d'entreprises agréés* concerned by the quality assurance review**

The population of *cabinets de révision agréés* and *réviseurs d'entreprises agréés* that carry out statutory audits and other tasks conferred exclusively on them by the law is as follows (as at 31 December 2012):

- Number of audit firms: 69, including 13 that audit PIEs;
- Number of independent auditors: 7, none of which audits PIEs.

Based on the data collected through the "Annual Annexes" for the year 2012, the statutory audit engagements break down as follows between *cabinets de révision agréés* and independent *réviseurs d'entreprises agréés*:

- 79% of the engagements are carried out by the "BIG 4"[1];
- 11% of the engagements are carried out by medium-sized audit firms[2], and
- 10% of the engagements are carried out by the other audit firms and independent *réviseurs d'entreprises agréés*.

2.1.2. Scope of the quality assurance review

The CSSF follows a global approach of control in which the audit firm is the entry point for the periodical quality assurance reviews.

The global control of the audit firm consists in:

- appraising the existence and the effectiveness within the firm, of an organisation, policies and procedures aimed to ensure the quality of the statutory audit engagements, and the independence of the *réviseur d'entreprises agréé/cabinet de révision agréé* in accordance with the International Standard on Quality Control ISQC 1;
- verifying, based on a sample of engagements, the proper execution of certain engagements by the audit partners (*réviseurs d'entreprises agréés*) to ensure, on the basis of this selection, the existence and effectiveness of the procedures and internal quality control system, and
- assessing the content of the transparency report for the *cabinets de révision agréés* concerned, based on the review work performed.

[1] Deloitte, Ernst & Young, KPMG and PwC .

[2] Firms that carry out more than 100 engagements reserved by the law to *réviseurs d'entreprises agréés* and *cabinets de révision agréés*. As at 31 December 2012, five firms are concerned.

2.1.3. Organisation of the quality assurance review

A quality assurance review of an audit firm includes several stages:

- collection of preliminary information from audit firms;
- elaboration of a control plan;
- on-site inspections;
- presentation of the observations made;
- gathering the audit firm's responses to the CSSF's observations, and
- writing and issuing the report.

2.1.4. Conclusion of a quality assurance review

After the quality assurance review, the CSSF issues, on the one hand, conclusions for the reviewed *réviseurs d'entreprises agréés* that are subject to observations and, on the other hand, a summary for the audit firm.

Conclusions for the *réviseur d'entreprises agréé* may impose different types of safeguards according to the deficiencies identified in the course of the engagements. Without being exhaustive, these safeguards may be training plans, internal reviews of files by another partner before issuing an opinion, a double signature of audit reports; they may be complemented, where applicable, by a specific follow-up in accordance with the provisions of Article 60 of the law of 18 December 2009 on the audit profession.

The summary for the audit firm includes:

- the main deficiencies of the firm's internal organisation identified during the quality assurance review and for which the CSSF requires that corrective measures be taken;
- the list, where applicable, of the *réviseurs d'entreprises agréés* for which a specific conclusion has been issued, requiring an action plan from the firm to remedy the situation.

2.1.5. Follow-up on quality assurance reviews

A follow-up is set up to verify that the firms concerned have taken appropriate corrective measures and that the professionals for which deficiencies have been identified in the course of their legal engagements address these shortcomings.

Where weaknesses are not considered as being material, the corrective measures taken by the audit firms will be followed up during the next periodic quality assurance review scheduled within the legal deadlines. In case of material weaknesses, a specific follow-up will be programmed within twelve months from the date of issue of the report.

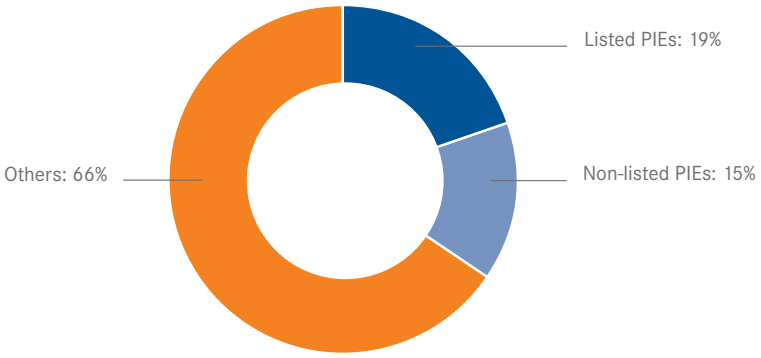
In 2012, one firm was the object of such a specific follow-up; the CSSF could make sure that corrective measures are in place.

2.2. Activity programme for 2012

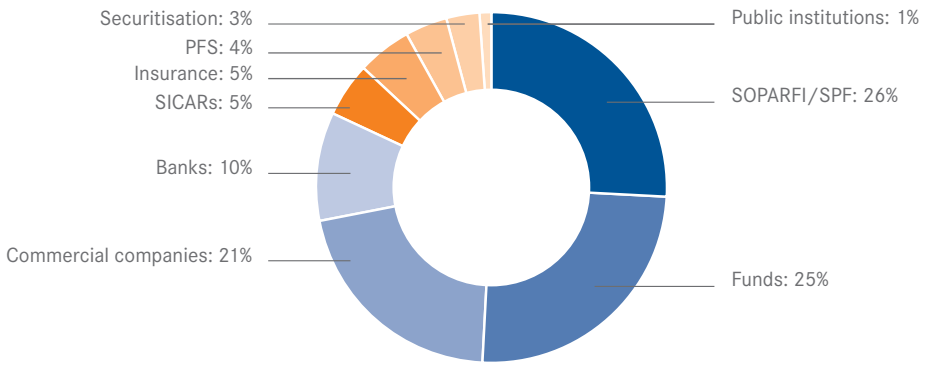
The CSSF set down a multiannual programme for the control of *cabinets de révision agréés/réviseurs d'entreprises agréés* which aims at observing the legal quality assurance review cycle, this cycle being three years for firms that audit PIEs and six years for the other ones. This programme is based on the information transmitted by audit firms and *réviseurs* through the "Annual Annexes" relating to their activity.

Activity programme for 2012	Key data
The quality assurance reviews according to the 2012 programme covered: - the understanding and documentation of the organisation, policies and procedures established by the reviewed firms in order to assess compliance with the International Standard on Quality Control (ISQC 1); - a sample of engagements relating to the statutory audit of the financial year 2011 (or 2010 where applicable); and - the follow-up on observations made in 2011 for *cabinets de révision agréés* subject to an annual quality assurance review due to the substantial volume of managed files.	26 reviewed firms, 9 of which audit PIEs and 11 are members of an international network
The 26 reviewed audit firms have[3] a total of 8,488 mandates falling within the scope of public oversight of the CSSF, including 460 in relation to PIEs. These mandates include 7,640 statutory audits, of which 392 concern PIEs.	196 controlled mandates, including 66 PIEs and 130 other entities
The quality assurance reviews started in February 2012 and were carried out by seven CSSF inspectors with professional audit experience and expert knowledge in the business areas of the financial centre.	5,094 hours

Breakdown of audit files reviewed by the CSSF in 2012 per entity type



Breakdown of audit files reviewed by the CSSF in 2012 per sector



2.3. Campaign themes

2.3.1. Audit diligences for the measurement of specific financial instruments

Within the scope of its activity programme, the CSSF carried out a thematic review of audit diligences for the measurement of specific financial instruments. This campaign theme has been decided upon following the observations made during the quality assurance reviews in 2010 and 2011 and is particularly justified

[3] Based on the statements of the *cabinets de révision agréés* (Annual Annexes) as at 31 December 2011.

in Luxembourg where a large number of entities[4] audited by *réviseurs d'entreprises agréés* hold significant investments having regard to the materiality thresholds laid down in accordance with ISA 320.

The important audit assertion to be covered by the auditors in such cases is that of assessing these investments, knowing that the situation may have different levels of complexity according to a certain number of parameters (accounting measurement method, nature of investments and valuation sources, date of available valuations, reliability of the valuation sources and time constraints for drawing up the auditor's report).

The main shortcomings in the current practice of auditors with respect to ISA 540 "Auditing accounting estimates, including fair values accounting estimates, and related disclosures" which has been completed by IAPN 1000 "Special considerations in Auditing Financial Instruments" are as follows:

- lack of preliminary risk analysis and development of a clear and detailed risked-based audit plan;
- lack of sufficient analysis and questioning of used estimates, as regards both their relevance and reliability;
- audit documentation leaving much room for improvement.

Based on these observations, the CSSF:

- raised these points at the meetings with its counterparts within the European Audit Inspection Group (EAIG) in order to determine if similar issues existed in other Member States. Within this group, the reasons for these observations were identified and presented to the representatives of the IAASB during the meeting of the EAIG on 14 and 15 November 2012: deficiencies in ISA 540 or its interpretation, deficiencies in the internal organisation of firms (procedures and resources) or deficiencies in the implementation of the standard itself (professional scepticism, commercial pressure, comprehension of client environment and activities);
- started discussions with the profession within the *Comité Technique d'Audit* (Audit Technical Committee) with a view that the IRE draws up a technical note for didactic purposes in order to homogenise practices and obtain a consistent approach within the profession concerning certain specific financial instruments. This note should be finalised in 2013.

2.3.2. Audits of groups whose group head is established in Luxembourg but whose decision-making and administrative centre is abroad

Another campaign theme emerged following the entry into force of Regulation CSSF N° 11/01 relating to the adoption of clarified ISA standards concerning the standard ISA 600 "Special Considerations - Audits of Group Financial Statements (Including the Work of Component Auditors)", namely the issue of audits of groups whose group head is established in Luxembourg but whose decision-making and administrative centre is abroad. In such a situation, the *réviseur d'entreprises agréé* may express an audit opinion on the group's consolidated accounts based, for a substantial part, on the audit work carried out on the consolidated accounts of the Luxembourg entity by a foreign auditor situated in the country from where the group manages and steers its operations.

In 2012, the CSSF reviewed the engagements concerned by this particular issue and observed the following:

- when accepting the engagement, the auditor responsible for the group audit does not systematically assess nor does s/he specifically document his/her ability to be adequately involved in the work of the auditor of the foreign country from where the group steers its operations and in the work of the auditors of material components, in order to collect sufficient and appropriate evidence;
- the diligences of the auditor responsible for the group audit for obtaining understanding of the other auditors the work of which s/he intends to use, and notably their compliance with the independence rules and their professional competence, are often superficial and insufficiently documented;
- the involvement of the auditor responsible for the group audit in the work of the other auditor established in the country from where the group steers its operations is sometimes insufficient, notably as regards risk assessment procedures and the determination of audit responses addressing material risks. This usually results in a lack of efficient supervision and review in due time of the group audit strategy and the engagement plan by the auditor responsible for the group audit; and

[4] Examples: UCIs under Part II of the law of 17 December 2010, SIFs, SICARs, banks, insurance undertakings or commercial companies.

- the review of the work of other auditors, and notably the communications of the other auditor based in the country where the group steers its operations, those of component auditors or the procedures carried out and the evidence obtained concerning the consolidation process and material risks, is often not thorough enough and insufficiently documented.

This issue also arises in other Member States and is currently being analysed within the EAIG.

At national level, this issue has already been discussed by the profession within the *Comité Technique d'Audit* and the debate is likely to continue in 2013 in order to achieve an acceptable and consistent practice for this type of engagements in Luxembourg.

2.4. Results of the 2012 reviews

The major issues identified during these quality assurance reviews are detailed below.

2.4.1. International Standard on Quality Control (ISQC 1)

The *cabinets de révision agréés* are required to apply to the letter the rules for the acceptance and continuance of client relationships and specific engagements.

The CSSF insists on the need to take into account all the requirements set down in paragraph 26 of the standard, and in particular the assessment of competence and skills (including the time needed and the resources) of the *cabinet de révision agréé*.

Moreover, diligences concerning the acceptance and continuance of client relationships and specific engagements must be finalised prior to any engagement, even if it is recurring.

The CSSF has again noted deficiencies in procedures regarding the final assembly and archiving of audit files, as well as in their application.

Shortcomings as regards the application of paragraphs 35 to 44 of the standard relating to the engagement quality control review (determination of the need of a quality assurance review, appointment of the person in charge, diligences to carry out) also continue to give rise to a significant number of observations.

2.4.2. Audit files

As already pointed out in 2011, the CSSF reiterates the importance for *réviseurs d'entreprises agréés* to show professional scepticism and judgement when planning and performing an audit of financial statements.

The CSSF would like to stress in particular the importance to remain critical in the objective assessment of evidence obtained and in the assessment whether these elements are sufficient and appropriate given the circumstances. As regards professional judgement, the CSSF reiterates that performing appropriate consultations throughout the audit on difficult or contentious issues helps the auditor in making justified and reasonable judgements.

Where substantive procedures alone cannot provide sufficient and appropriate evidence at the assertion level, the auditor must set up and carry out tests of controls in order to gather sufficient and appropriate evidence on the efficiency of the internal controls' functioning. The CSSF reiterates that the purpose of these tests is to assess the efficient functioning of the controls set up to prevent, detect and correct material misstatements at the assertion level and must not be confused with tests of detail.

Understanding the entity's internal control allows the auditor identifying the risks of material misstatements and defining the nature, timing and extent of additional audit procedures. The CSSF reiterates that when obtaining understanding of the relevant audit controls, the auditor must assess the design of these controls and determine if they have been implemented via procedures in addition to information requests with the entity's staff.

Within the scope of risk assessment, the auditor must determine if the identified risk constitutes a significant risk in his/her opinion. The CSSF insists on the fact that the auditor, when exercising his/her judgement, must

exclude the effects of identified controls related to this risk. In addition, as regards significant risks:

- the auditor must obtain an understanding of the controls exercised by the entity, including control measures, in relation to this risk;
- if the auditor intends to rely on these controls in an area s/he considers a significant risk, s/he must test these controls in the course of the audit of the current period; and
- the auditor must carry out substantive procedures that specifically address significant risks assessed at the assertion level. Where the audit approach concerning a significant risk consists only in substantive procedures, procedures must also include tests of detail.

When identifying and assessing risks of material misstatements due to fraud, the auditor must assess, based on the presumption that there are risks of fraud in the revenue recognition, which nature of revenue, operations or assertions relating to revenue may cause such risks. Where fraud in the revenue recognition is not considered as a risk of significant misstatement, the CSSF reiterates that appropriate evidence must be documented in the audit file.

Substantive analytical procedures must be implemented in compliance with the objectives and rules described in ISA 520. Indeed, the auditor must, in particular:

- assess the reliability of data from which the auditor's expectation of recorded amounts or ratios is developed;
- develop an expectation of recorded amounts or ratios and evaluate whether the expectation is sufficiently precise to identify a misstatement that, individually or when aggregated with other misstatements, may cause the financial statements to be materially misstated; and
- determine the amount of any difference of recorded amounts from expected values that is acceptable without further investigation.

The audit of events subsequent to the date of the financial statements must result in extensive actions in accordance with the requirements of ISA 560. Among the procedures to be implemented, the CSSF insists on the need to obtain understanding of all the procedures that the management has set up to ensure that all the subsequent events have been identified. Moreover, these actions must be performed and adequately documented until the date of signature of the auditor's report.

The CSSF also reiterates that the auditor must implement audit procedures to assess whether the notes to the annual accounts include all required disclosures provided for in the applicable accounting framework and the legal texts.

Finally, the CSSF would like to remind that the audit documentation must provide elements sustaining the auditor's conclusion on the achievement of overall objectives of the audit (ISA 200 § 11) and demonstrate that the audit was planned and carried out in accordance with the ISA standards and in compliance with the applicable legal and regulatory requirements. The form, content and extent of the audit documentation must also comply with the requirements of paragraph 8 of ISA 230 and all the procedures, evidence or conclusions that are not documented in the auditor's file must be considered as not performed, not obtained or unfounded.

The CSSF specifies that the points referred to above have been observed in large as well as in small-sized firms.

3. OVERVIEW OF THE POPULATION OF *RÉVISEURS D'ENTREPRISES* (STATUTORY AUDITORS) IN LUXEMBOURG

Within the scope of its public oversight of the audit profession, the CSSF assumes the following responsibilities:

- access to the profession and organisation of the examination of professional competence;
- granting the professional title of *réviseur d'entreprises* and *cabinet de révision*;
- granting the approval and registration of *réviseurs d'entreprises agréés* and *cabinets de révision agréés*;

- registration of third-country auditors and third-country audit entities; and
- maintaining the public register.

In this regard, the following statistics have been extracted for the year 2012.

3.1. Access to the profession

3.1.1. Activities of the Consultative Commission for the access to the audit profession

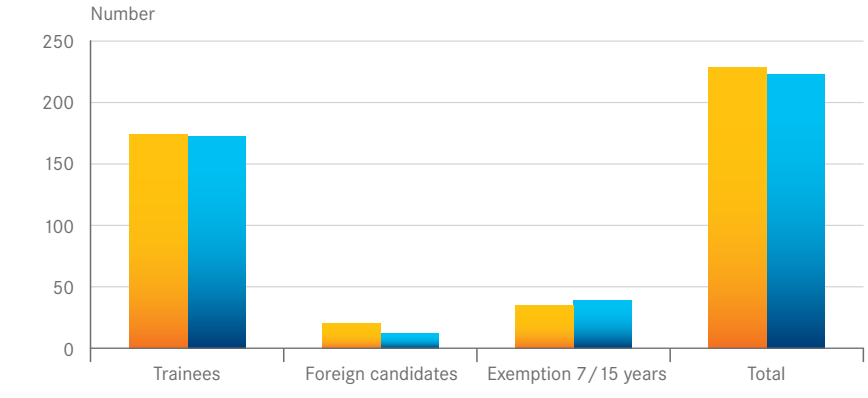
The Consultative Commission was established through CSSF Regulation N° 10-02 of 6 April 2010. Its task is notably to verify the theoretical and professional qualification of candidates to the access to the profession in Luxembourg, as well as that of service providers from other Member States wishing to exercise by way of free provision of services.

The commission met seven times in 2012 and analysed the files of 224 candidates, against 230 in 2011, representing a decrease of 2.6%.

There are four categories of candidates:

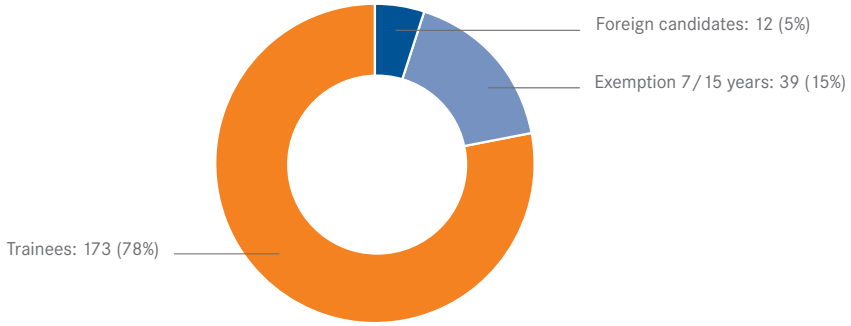
- trainee *réviseurs d'entreprises*;
- foreign candidates;
- candidates applying for exemptions based on their professional experience of either seven or fifteen years; and
- candidates requesting to exercise engagements reserved by the law to *réviseurs d'entreprises agréés* and *cabinets de révision agréés*, by way of free provision of services.

Development in the number of candidates presented to the Consultative Commission

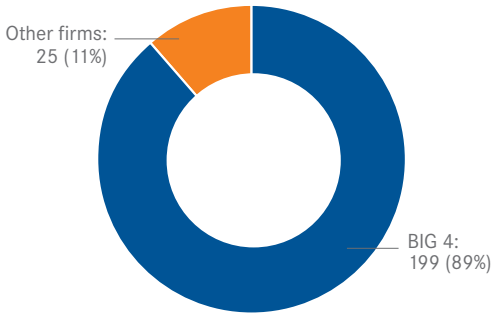


	Trainees	Foreign candidates	Exemption 7/15 years	Total
2011	175	20	35	230
2012	173	12	39	224

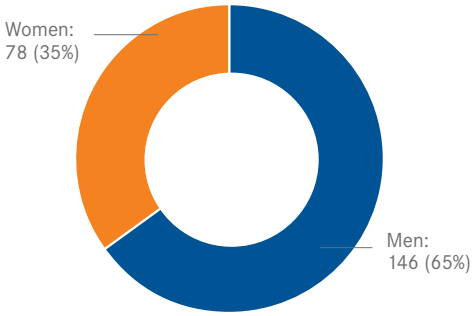
Breakdown of candidates per category



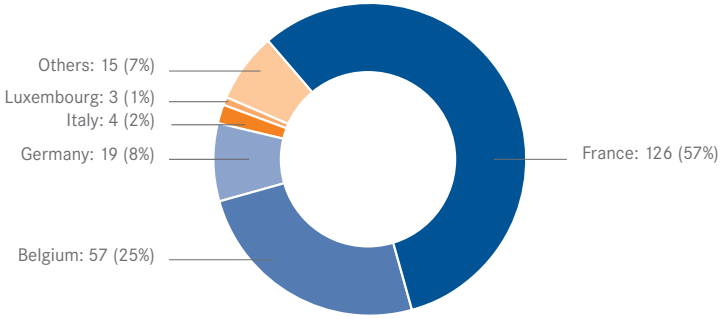
Breakdown of applications per firms



Breakdown of applications per gender



Breakdown of candidates per nationality



3.1.2. Examination of professional competence 2012

The CSSF administrates the examination of professional competence in accordance with Articles 5 and 6 of the Grand-ducal regulation of 15 February 2010 establishing the professional qualification requirements of *réviseurs d'entreprises*.

In this context, the examination jury communicated the following results with respect to the 2012 examination of professional competence to the CSSF:

- Out of the 46 registered candidates, one candidate, excused, withdrew his candidature at the beginning of the procedure; a second candidate, excused, did not take the exam.
- Ordinary session: 44 candidates took the written exam, 23 of whom have been admitted to the oral exam. In total, 19 candidates passed the exam, four failed partially (possibility to take the extraordinary session).
- Extraordinary session: three candidates took the written exam, one of whom was admitted to the oral exam. In total, one passed the exam and two failed completely.

Thus, all sessions included, 20 candidates passed the examination of professional competence in 2012 successfully.

Having passed this examination, the candidates may request the CSSF to be granted the title *réviseur d'entreprises*.

The graduation ceremony was held in February 2013 in the presence of the Minister of Finance, Mr Luc Frieden.

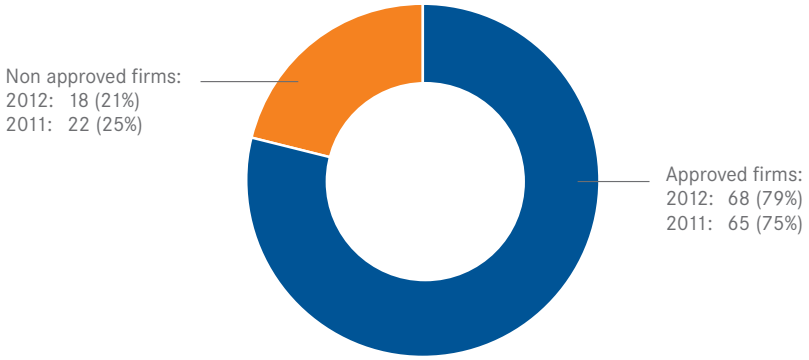
3.2. Public register

The public register of *réviseurs d'entreprises agréés, cabinets de révision agréés* and third-country auditors and third-country audit entities is available on the CSSF's website in the section "Public oversight of the audit profession", sub-section "Public register".

3.2.1. National population as at 31 December 2012

• Development in the number of *cabinets de révision* and *cabinets de révision agréés*

The total number of *cabinets de révision* and *cabinets de révision agréés* amounted to 86 as at 31 December 2012 against 87 as at 31 December 2011, i.e. a 1.1% decrease.



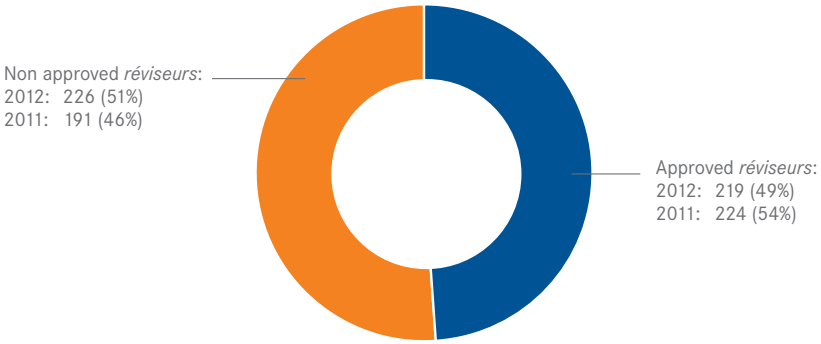
The following firms requested their approval in 2012:

- AUDITEURS ASSOCIÉS
- ARTEMIS AUDIT & ADVISORY
- BAKER TILLY LUXEMBOURG AUDIT S.à r.l.
- SOCIÉTÉ FIDUCIAIRE NATIONALE DE RÉVISION COMPTABLE S.A., FIDAUDIT, succursale de Luxembourg
- ATWELL S.à r.l.
- AUDIT CENTRAL S.à r.l
- BJ AUDIT S.à r.l.
- PKF RISK & ASSURANCE

In 2012, five firms gave up their approval, two of which have also abandoned the title of *cabinet de révision*.

• Development in the number of *réviseurs d'entreprises* and *réviseurs d'entreprises agréés*

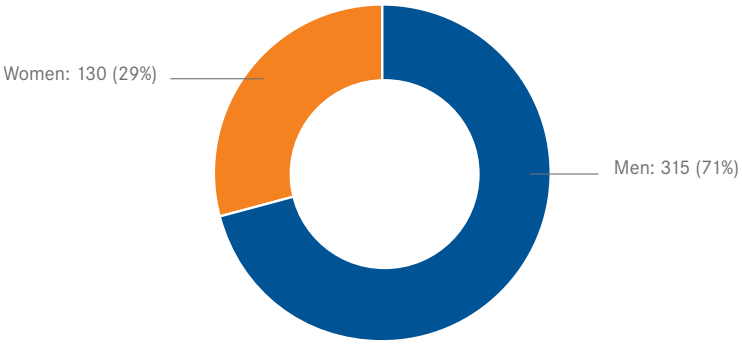
The total number of *réviseurs d'entreprises* and *réviseurs d'entreprises agréés* amounted to 445 as at 31 December 2012 against 415 as at 31 December 2011, which is a 7.2% increase.



In 2012, the CSSF granted the title *réviseur d'entreprises* to 40 persons and an approval to 20 *réviseurs d'entreprises*.

During the year under review, 25 *réviseurs d'entreprises* gave up their approval, including 10 that gave up their title.

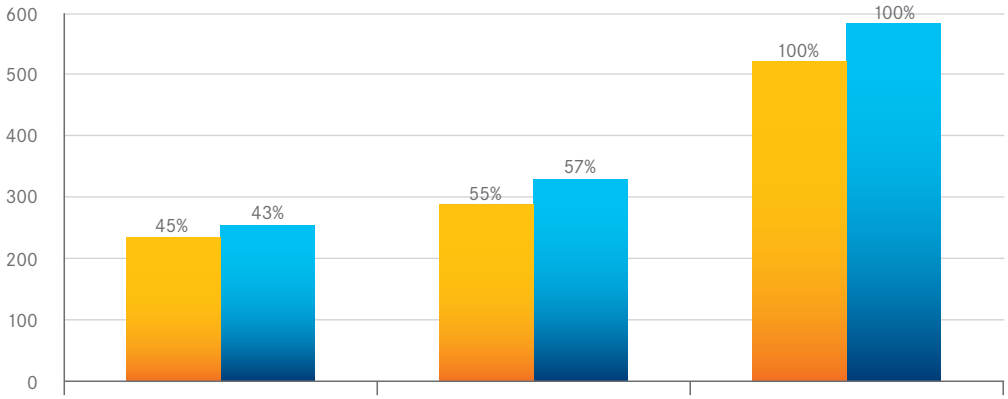
Breakdown of *réviseurs* according to gender



The average age of *réviseurs* is 39.5 years for women and 45.0 for men.

• Development in the number of trainee *réviseurs d'entreprises*

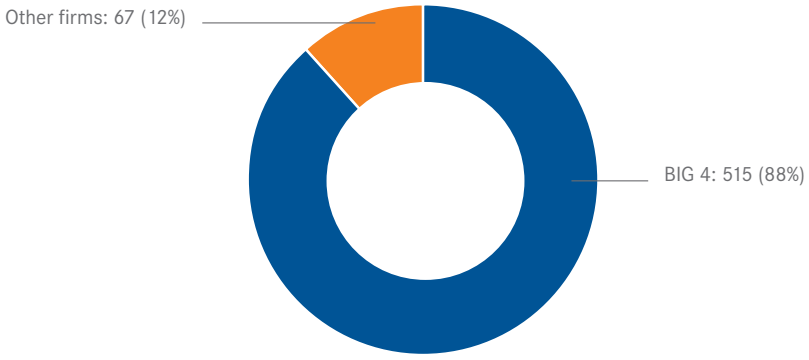
The total number of trainee *réviseurs d'entreprises* amounted to 582 as at 31 December 2012, against 521 as at 31 December 2011, which is a 11.7% increase.



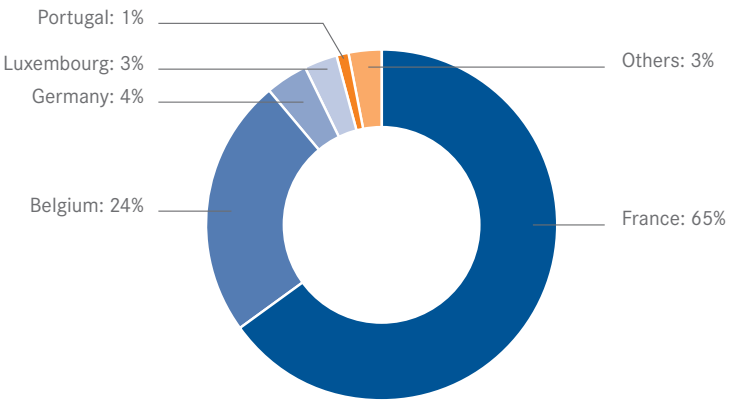
	Women	Men	Total
2011	234	287	521
2012	253	329	582

The average age of trainees is 28.9 years for women and 29.1 years for men.

Breakdown of trainees per firms



Breakdown of trainees per nationality



3.2.2. Third-country auditors and audit entities

The registration procedure for third-country auditors and audit entities that provide an auditor's report on the annual or consolidated accounts of a company incorporated outside EU Member States, whose securities are admitted to trading on the regulated market of the Luxembourg Stock Exchange ("third-country auditors") continued in 2012.

Thus, the CSSF received six new applications for registration, including:

- one from an auditor located in an equivalent third country,
- one from an auditor located in a transitional third country within the meaning of Commission Decision 2011/30/EU of 19 January 2011 which extended the transitional period initially granted from 1 July 2010 to 31 July 2013 for 20 countries, and
- four from auditors located in other third countries.

These six files resulted in a registration.

Moreover, except for seven third-country auditors whose activities did not fall any more within the scope of Directive 2006/43/EC, all the third-country auditors previously registered renewed their registration for 2012.

The public register of all the third-country auditors registered by the CSSF (55 as at 31 December 2012, including 24 from equivalent third countries, 21 from transitional third countries and 10 from other third countries) is available on the CSSF's website.

Following the European Commission's decisions on adequacy of 5 February 2010 and 1 September 2010, the CSSF started negotiations with its US, Japanese and Swiss counterparts with a view of concluding bilateral cooperation agreements.

CHAPTER XIII

INSTRUMENTS OF SUPERVISION

1. On-site inspections
2. Means of administrative police

1. ON-SITE INSPECTIONS

In 2012, the CSSF furthered its emphasis on on-site inspections in the financial centre. The number of people involved in on-site inspection missions has increased, which allowed the CSSF to carry out 158 on-site inspections at the premises of financial players in 2012.

The teams responsible for on-site inspections are formed according to the nature, scale and scope of the missions and involve the participation of agents from one or more supervisory departments[1] or from the department dedicated to on-site inspections[2].

Following an on-site inspection, the team in charge of the mission always draws up an internal report indicating potential flaws and weaknesses identified during the mission. Generally, all on-site inspections are followed by observation letters[3] sent to the controlled professional. In the event of more serious flaws, the CSSF analyses whether there is a need for an injunction procedure or a non-litigious administrative procedure in order to impose an administrative sanction pursuant to Article 63 of the law of 5 April 1993 on the financial sector.

In 2012, on-site visits and inspections concerned, in particular, the following topics.

1.1. Introductory visits

Introductory visits are aimed at new players of the financial centre that received their authorisation recently. Usually carried out within the first six months following the professional's authorisation, the purpose of these missions is to follow the newly set-up professionals in the start-up phase of their activities.

Introductory visits usually take the form of management interviews and allow for an assessment of the professional's compliance with the provisions laid down in the law of 5 April 1993 on the financial sector and in other sectoral laws, as well as with professional obligations, particularly in terms of organisation. They also allow the CSSF to understand the professional's organisation and activities and to check whether the development of the activities and the strategies correspond to the forecasts set out in the application file.

In 2012, the CSSF undertook 28 introductory visits of banks, investment firms, specialised PFS and support PFS.

Breakdown of the introductory visits by type of entity

Type of entity controlled	Introductory visits
Banks	2
Investment firms	5
Specialised PFS	12
Support PFS	9
Total	**28**

Regarding the nine introductory visits realized within support PFS, the main weaknesses concerned, firstly, the non-compliance with the minimum capital base requirements as set out by the law of 5 April 1993 on the financial sector, and secondly, the absence of contracts that would justify a licence as support PFS.

One mission conducted with a support PFS led the latter to waive its PFS licence. This confirms, if need be, that any support PFS should, before submitting its application file, analyse all applicable legal and regulatory obligations, ensure that the capital base requirements can be fulfilled at all times and make sure that a contract justifying the support PFS licence can be set up within the deadlines set out in the law.

[1] I.e. the departments for the supervision of banks, UCIs, investment firms, specialised PFS, support PFS, SICARs/pension funds/securitisation undertakings, markets in financial instruments.

[2] I.e. Division 4 of the Department "General Supervision".

[3] There are some rare cases of non-observation letters.

1.2. Ad hoc control missions

Ad hoc control missions are on-site inspections intended to investigate a specific or even worrying situation/problem related to the professional itself. The particular situation/problem has, in principle, already been observed during the off-site prudential supervision. Such missions may either be planned in advance or occur unexpectedly. The nature and scale of ad hoc missions may vary significantly and determine subsequently the composition of the on-site teams.

In 2012, the CSSF carried out 35 ad hoc missions.

Breakdown of the ad hoc control missions by type of entity

Type of entity controlled	Ad hoc on-site inspections
Banks	15[4]
Investment firms	1
Specialised PFS	3
Support PFS	1
SICARs	10
Pension funds	1
Securitisation undertakings	3
Supervision of financial markets	1
Total	**35**

As regards banks, three missions were organised under the lead of foreign authorities and two missions were related to aspects of UCIs. The other missions concerned specific risk analyses (e.g. market rate risk or interest rate risk). With regard to one of the missions, the file is currently being analysed in order to determine whether a non-litigious administrative procedure should be initiated so as to impose an administrative sanction.

As concerns investment firms, the purpose of the on-site inspection was to follow up on the professional's organisation following the introductory visit.

With regard to specialised PFS, the aim of the missions was to look into certain specific aspects related to the entities' activities and to investigate whether the day-to-day management of the organisation was compliant with legal provisions.

The on-site inspection of one support PFS was organised as a result of some shortcomings such as the absence of a contract justifying the entity's licence or the lack of stability at the management level and following the recommendations of the *réviseur d'entreprises agréé* (approved statutory auditor) on the absence of the PFS' own IT infrastructure in Luxembourg. After the on-site inspection, the support PFS decided to waive its PFS licence.

Concerning SICARs, the CSSF carried out 10 on-site inspections of four self-managed SICARs and six service providers, thus covering 22 SICARs in total. For 21 of those, the purpose of the missions was to assess their administrative organisation with a particular focus on record-keeping and compliance with anti-money laundering provisions. Within one SICAR, two missions were carried out with respect to the administrative organisation.

With regard to pension funds, the CSSF carried out an on-site inspection of one liability manager authorised by the CSSF and engaging in central administration activities for three pension funds. The purpose was to receive additional information on the liability manager's administrative organisation and to assess the work carried out for the pension funds under its central administration.

As regards authorised securitisation undertakings, the three missions aimed at examining the adequacy of their administrative and accounting organisation.

The mission regarding the supervision of financial markets concerned the analysis of procedures.

[4] Of which two missions relating to aspects of UCIs.

1.3. "Validation of credit risk management and operational risk management models" on-site inspections

All 13 on-site inspections carried out in this area in 2012 took place in local banks.

Investigations concerning credit risk were carried out in the context of the reviews of the models relating to internal ratings systems (internal ratings-based approach or IRB). In 2012, the CSSF carried out five missions in this matter, partially in the form of management interviews. These were complemented by off-site monitoring of the models' performances that was based on comparative analyses of regulatory reportings[5].

Inspections regarding operational risk covered specific aspects of risk management of credit institutions that apply the advanced measurement approach (AMA) or the standardised approach (TSA). In 2012, the CSSF carried out eight on-site inspections in this matter, six of which concerned the advanced approach and two of which the standardised approach[6].

1.4. "Liquidity" on-site inspections

The purpose of the "Liquidity" missions which were carried out together with the Banque centrale du Luxembourg (BCL), was to assess the situation and management of liquidity risk in credit institutions.

In 2012, seven such missions were jointly carried out by the BCL and the CSSF[7] in different banks.

1.5. "Credits" on-site inspections

The purpose of "Credits" on-site inspections is, among others, to determine the professional's organisation with respect to granting and monitoring loans. They may also help the CSSF to get an in-depth understanding of the credit risk incurred by the professional.

In 2012, the CSSF carried out seven "Credits" missions[8] in different banks. Apart from one mission during which more important organisational flaws were noted, these on-site inspections did not reveal any recurrent or significant flaws.

1.6. "Corporate Governance" on-site inspections

During "Corporate Governance" on-site inspections, the CSSF may analyse different aspects of corporate governance within supervised professionals for their compliance with the laws and regulations. An on-site inspection may be realized in a Luxembourg subsidiary to analyse the nature of corporate governance structures within the group. Other "Corporate Governance" on-site inspections deal with the group head function if exercised by a Luxembourg subsidiary or the organisation of cross-company functions such as internal audit, compliance or risk management.

In 2012, the CSSF carried out 14 "Corporate Governance" missions.

Recurrent flaws were noted especially in the internal audit area. Indeed, the CSSF noticed that long-term audit plans did not always cover all the activities and areas within a reasonable timeframe. Moreover, the CSSF noticed that the information transmitted to the board of directors and, where applicable, to the audit committee was neither comprehensive nor sufficiently clear for an overall and complete view of the manner in which the authorised management ensures the monitoring of the recommendations and compliance with the annual audit plan. In some cases, procedures for the authorisation of new products did not include the involvement of the internal control functions.

In one case, the CSSF decided to initiate a non-litigious administrative procedure so as to impose an administrative sanction within the meaning of Article 63 of the law of 5 April 1993 on the financial sector due to significant flaws noted in the internal audit function. This procedure led the CSSF to impose an administrative fine.

[5] Also see item 2.21. of Chapter III "Supervision of the banking sector" for further details on the methodological aspects of the model review.

[6] Also see item 2.6. of Chapter III "Supervision of the banking sector".

[7] Also see item 2.4. of Chapter III "Supervision of the banking sector".

[8] Three of which in the form of management interview.

Breakdown of the "Corporate Governance" control missions by type of entity

Type of entity controlled	Corporate Governance on-site inspections
Banks	12
UCIs	1
Management companies	1
TOTAL	**14**

1.7. "MiFID" on-site inspections

During 2012, the CSSF carried out three on-site inspections regarding the MiFID rules of conduct. In two cases, the CSSF noted that the information on the benefits included in the terms and conditions was insufficient and written in a manner that was incomprehensible for the average investor. In addition, the mandates for discretionary portfolio management services of two credit institutions did not mention the benefits received in relation to the investments made on behalf of customers.

One bank used a deficient IT tool to make suitability tests. This tool compared the risk indicators attributed to financial instruments and to customers concerned. The flaws of the framework resulted from the fact that no analysis or classification were made for most of the financial instruments. Thus, it was impossible to carry out a suitability test.

Furthermore, two banks allocated investor profiles (e.g. defensive, conservative, well-balanced, dynamic and aggressive) to customers. An undefined number of investment profiles corresponded to these investor profiles. The CSSF requested the relevant banks to provide clients with information on the asset allocation associated with each investment profile and, when providing discretionary portfolio management services, the breakdown of the financial instruments composing the model portfolio.

An injunction was transmitted to a credit institution which was unwilling to communicate the asset allocation of portfolios as well as the financial instruments which were to be acquired for the clients before signing the mandate for discretionary portfolio management services. The same bank also showed deficiencies in the management of conflicts of interest related to the distribution of the group's funds. The variable remuneration of some sales and marketing people was likely to favour the selection of investment funds which offer these people a more important variable remuneration, albeit to the detriment of the clients' interests.

1.8. "Depositary bank" on-site inspections

The purpose of the six "Depositary bank" controls carried out in 2012 was to get a general view of the organisation and tasks effectively exercised by the Luxembourg depositary banks.

This type of on-site inspections allows identifying the organisational model of the depositary function in Luxembourg and understanding the supervision carried out with regard to possible delegations of functions. During these controls, the CSSF also revised the depositary function as regards the different types of assets as well as the specific custody obligations according to the applicable laws and regulations. Different market practices were highlighted and resulted from the presence of multiple participants, thus making the processes related to this function quite complex.

As current regulation on the depositary function is being reviewed at the moment, the CSSF decided to put the files concerned on hold for the time being, except in cases where severe flaws were noted.

1.9. "Anti-money laundering and counter-terrorist financing" (AML/CFT) on-site inspections

"AML/CFT" on-site inspections are carried out within all players of the financial centre in order to assess the quality of the AML/CFT framework implemented by the respective entities with respect to the legal and regulatory requirements. The controls cover both private banking (portfolio management, domiciliation, etc.) and transfer agency.

In 2012, the CSSF carried out 45 "AML/CFT" on-site missions[9] broken down by type of entity as set out below.

Breakdown of the "AML/CFT" on-site missions by type of entity

Type of entity controlled	AML/CFT on-site inspections
Banks	18
Investment firms	7
Specialised PFS	12
SICARs	4
Management companies	3
Electronic money institutions	1
Total	**45**

The most significant flaws that were identified during "AML/CFT" on-site missions in 2012, be it as a result of their frequency or their seriousness, were the following.

Description of the flaws	Number of times the flaws were noted
Shortcomings in the verification of the customer's identity (natural and legal persons)	19 cases noted
Absence of regular verification of the conditions for the application of simplified customer due diligence measures during the business relationship	15 cases noted
Absence of a risk analysis inherent to the business activities as required in Circulars CSSF 11/519 (for credit institutions) and CSSF 11/529 (for the other professionals referred to in the law of 12 November 2004)	13 cases noted
Lack of formalization in the treatment of detected alerts following name matching checks	11 cases noted
Shortcomings noted in AML/CFT training (training was not provided to all concerned employees)	11 cases noted
Information relating to the origin of the funds not sufficiently backed up in the customer file	10 cases noted
Non-exhaustiveness of the list of high-risk countries compared to the list of countries included in the CSSF circular in force during the on-site inspection as regards the jurisdictions whose AML/CFT regime is considered not to be satisfactory by the FATF	10 cases noted
Absence of a the four-eyes principle when encoding information into the customer database	10 cases noted
Lack of information that allows understanding the structure of the control of the customer that is a legal person	9 cases noted
Absence of control that allows ensuring that a customer did not become a politically exposed person during the business relationship	8 cases noted
Absence or lack of involvement of the Compliance Officer in the supervision of transactions	7 cases noted
Insufficient documentation relating to the situations of possible cases of suspicion which were not reported to the Prosecutor in the end	7 cases noted
Deficiencies noted in relation to the identification and verification of the identity of the legal persons' representatives	7 cases noted
Non-inclusion of proxies in name matching checks	7 cases noted
Non-application of enhanced customer due diligence for business relationships in a country which does not or insufficiently applies AML/CFT measures	6 cases noted

[9] Among which nine follow-up missions following previous AML/CFT missions.

Non-exhaustiveness of the lists used for name matching checks (lists of financial sanctions regarding the fight against money laundering and terrorist financing and lists of international financial sanctions)	6 cases noted
Insufficient documentation / lack of formalization with regard to the reasons which led to the refusal of a business relationship	5 cases noted
Shortcomings with respect to the obligation of cooperating with the authorities (non declaration of money laundering suspicions)	4 cases noted

For 11[10] of the 45 missions carried out, the CSSF decided, in 2012, to initiate an injunction procedure within the meaning of Article 59 of the law of 5 April 1993 on the financial sector or a non-litigious administrative procedure in order to impose an administrative sanction within the meaning of Article 63 of the aforementioned law. In seven cases[11], this procedure led the CSSF to impose an administrative fine.

For certain files[12] still being processed, the above-mentioned procedure is likely to be initiated.

In eight cases, a suspicion report pursuant to Article 23(3) of the Code of Criminal Procedure and a notification to the Financial Intelligence Unit pursuant to Article 9-1 of the law of 12 November 2004 on the fight against money laundering and terrorist financing concerning the cooperation between authorities was submitted by the CSSF.

2. MEANS OF ADMINISTRATIVE POLICE

2.1. Legal framework

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 administrative fines on legal or natural persons subject to the CSSF supervision and on persons in charge of the administration or management of the establishments concerned;
- under certain conditions, apply to the District Court (*Tribunal d'Arrondissement*) 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 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 15 of the law of 17 December 2010), 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 criminal sanctions and that could, where applicable, entail prosecution against the implicated persons. The following cases are concerned:

[10] Among which six dated from 2011.

[11] Among which four dated from 2011.

[12] I.e. three files at the cut-off date of the annual report.

- persons performing an activity of the financial sector without holding the required licence;
- persons operating in the field of domiciliation of companies without belonging to any of the professions entitled to carry out this activity pursuant to the law of 31 May 1999 governing the domiciliation of companies;
- persons other than those entered in official lists of the CSSF, who use a title or name, thereby breaching Article 52(2) of the law of 5 April 1993 on the financial sector, purporting to indicate that they are authorised to perform any of the activities reserved to persons entered in such a list;
- attempted fraud.

2.2. Decisions taken in 2012

In 2012, the CSSF took the following decisions with respect to administrative police. It should be noted that the total amount of administrative fines imposed in 2012 reached EUR 562,375 against EUR 330,875 in 2011.

2.2.1. Credit institutions

In 2012, the CSSF imposed nine administrative fines pursuant to Article 63 of the law of 5 April 1993 on the financial sector among which seven, each amounting to EUR 10,000, on persons in charge of the management of the credit institutions and two (one of EUR 50,000 and the other of EUR 100,000) on credit institutions. These fines were imposed due to non-compliance with the professional obligations regarding the fight against money laundering and terrorist financing (AML/CFT), due to non-compliance with the obligations regarding internal control or for providing support for a transaction aimed to circumvent foreign legislation.

A formal reprimand was given to a credit institution for serious breach of the obligation to implement an adequate internal control mechanism.

Moreover, in 2012, the CSSF filed three complaints with the State Prosecutor related to the illegal exercise of banking and financial activities by unauthorised entities.

2.2.2. Investment firms

In accordance with Article 63 of the law of 5 April 1993 on the financial sector, the CSSF imposed an administrative fine of EUR 5,000 on an investment firm for breach of the professional obligations as regards AML/CFT. The CSSF also imposed an administrative fine of EUR 10,000 on another investment firm for non-compliance with the legal obligations relating to the publication of annual accounts.

The CSSF used its right of injunction in accordance with Article 59 of the law of 5 April 1993 on the financial sector twice. One of the injunctions concerned the non-compliance with the provisions of Article 41 of Grand-ducal regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector and Article 37-3(3) of the law of 5 April 1993 on the financial sector. The other injunction concerned the non-compliance with the applicable laws and regulations on AML/CFT.

With respect to investment firms, the CSSF filed two complaints with the State Prosecutor in 2012, pursuant to Articles 23(2) and 23(3) of the Code of Criminal Procedure.

Furthermore, the CSSF filed four complaints with the State Prosecutor regarding entities which provided unauthorised investment services.

2.2.3. Specialised PFS

Pursuant to Article 59(1) of the law of 5 April 1993 on the financial sector, the CSSF imposed six injunctions on five specialised PFS in 2012. In four cases, these injunctions concerned unjustified delays of the entity to remedy the shortcomings noted during on-site inspections in 2010 and 2011. The entity had to remedy deficiencies with respect to the professional obligations relating to AML/CFT as well as delays related to approval, deposit and publication of the annual accounts of the domiciled companies. Two injunctions were

imposed on an entity due to flaws with respect to internal audit and due to unjustified delays to implement the recommendations issued by the *cabinet de révision agréé* (approved audit firm) in the 2010 report on the compliance with CSSF circulars.

During 2012, the CSSF imposed nine administrative fines pursuant to Article 63 of the aforementioned law, among which three fines, each amounting to EUR 3,000, for refusal to communicate, within the deadlines set, the documents and reports on the financial year 2011 and six fines, amounting to EUR 2,500, EUR 2,500, EUR 5,000, EUR 15,000, EUR 20,000 and EUR 25,000 respectively, for breach of the professional AML/CFT obligations. Among the latter, three fines were imposed on the persons in charge of the day-to-day management of the specialised PFS concerned and the three other fines were imposed on specialised PFS as legal persons.

Moreover, in five cases, the CSSF reprimanded the managers of specialised PFS, either because the CSSF was provided with inaccurate information in a written position or because of incomplete declarations of honour provided in the framework of authorisation requests. The CSSF may take into account these personal reprimands in case new elements are to be added from information on other incidents or irregularities in future activities of these persons which may, where applicable, lead the CSSF to decide that these persons are no longer fit pursuant to Article 19 of the law of 5 April 1993 on the financial sector to continue to exercise a management function or any other function subject to authorisation at an entity supervised by the CSSF.

With respect to specialised PFS, the CSSF filed four complaints with the State Prosecutor in 2012, pursuant to Articles 23(2) and 23(3) of the Code of Criminal Procedure.

2.2.4. Support PFS

During 2012, the CSSF imposed administrative fines amounting to EUR 1,500 each on three persons in charge of the day-to-day management of a support PFS for non-communication, within the deadlines set, of the information required by the CSSF.

2.2.5. Undertakings for collective investment

Pursuant to Article 148(1) of the law of 17 December 2010 relating to undertakings for collective investment and Article 51(1) of the law of 13 February 2007 relating to specialised investment funds, respectively, the CSSF imposed administrative fines of EUR 500 each on 95 managers of 27 SIFs for non-filing of financial reports within the statutory deadlines, on four managers of a UCI and on 141 managers of 42 SIFs for non-transmission of management letters within the regulatory deadlines. Administrative fines of EUR 1,500 each were imposed on three managers of a UCI for non-filing of the annual report within the regulatory deadlines.

In addition, the CSSF imposed fines of EUR 500 each on seven managers of two SIFs for non-filing of information within the deadline set.

On the basis of Article 148(1) of the law of 17 December 2010 relating to undertakings for collective investment and Article 63(2) of the law of 5 April 1993 on the financial sector, the CSSF imposed fines of EUR 4,000 each on three directors for the transmission of incomplete declarations of honour.

In accordance with Article 148(1) of the law of 17 December 2010 relating to undertakings for collective investment, the CSSF imposed administrative fines of EUR 500 each on the managers of nine management companies authorised under Chapter 16 of the aforementioned law for non-filing of the audited annual reports within the legal deadlines.

During 2012, the CSSF decided to withdraw 13 SIFs from the official list for non-compliance with the legal provisions governing SIFs. Furthermore, the CSSF refused to register three entities on the official list of SIFs.

2.2.6. Investment companies in risk capital (SICARs)

In accordance with the provisions of Article 17 of the law of 15 June 2004 relating to the investment company in risk capital (SICAR), the CSSF imposed 33 administrative fines amounting to EUR 500 each, during 2012. These fines were imposed, on an individual basis, on managers of nine SICARs for non-filing or late filing of audited annual reports and management letters.

2.2.7. Securities markets

In the framework of a posteriori controls of final terms, several injunctions concerning requests for transmission of information and documents to the CSSF were imposed on an issuer following irregularities noted with respect to the provisions of Articles 8(1) and 8(4) of the Prospectus law. Since these injunctions were not complied with, the CSSF imposed a first administrative sanction of EUR 9,000 on this issuer. Then, a second sanction of EUR 18,000 was imposed for non-compliance with the subsequent injunctions.

The review of financial reports under the Transparency law led the CSSF to issue 39 injunctions, mainly due to delays in the disclosure and filing of annual and half-yearly financial reports. As a result of the non-compliance with some of these injunctions, 13 administrative fines totalling EUR 36,375 were imposed pursuant to Article 25 of the Transparency law. Moreover, the CSSF required from one issuer the withdrawal and from another the suspension of bonds from trading on the regulated market of the Luxembourg Stock Exchange.

As regards details relating to one of these fines which was imposed in relation to the control of the coherent application of accounting standards (enforcement) and as regards the other decisions and more specific administrative measures in relation to this control, please refer to item 5.2.1. of Chapter X “Supervision of securities markets”.

Concerning market abuse, four injunctions regarding some specific obligations deriving from the provisions of the law on market abuse were imposed. For further details on these injunctions, please refer to item 7. of Chapter X “Supervision of securities markets”.

CHAPTER XIV

FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

1. Amendments to the regulatory framework 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

1. AMENDMENTS TO THE REGULATORY FRAMEWORK REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

During 2012, the Luxembourg regulatory framework regarding the fight against money laundering and terrorist financing (hereinafter "AML/CFT") has significantly developed, in particular as regards the actions taken by the CSSF. First, reference should be made to the adoption of CSSF Regulation N° 12-02 on the fight against money laundering and terrorist financing. This regulation, adopted on the basis of Article 9 of the CSSF organic law, is part of the measures already taken at the legislative and regulatory level in order to improve the Luxembourg AML/CFT framework in response to the criticism made in the third mutual evaluation report on Luxembourg adopted by the FATF in February 2010. It takes into account and supplements the requirements already set out in the former Circular CSSF 08/387 and is thus in line with the financial sector practices.

With respect to the concrete execution of its supervisory mission, the CSSF stood by its commitment in this regard and stayed on the track with, in particular, on-site inspections focused on the AML/CFT frameworks implemented with the professionals under its supervision, in consistency with a risk-based supervisory approach. The measures taken within the scope of its supervisory mission, including when analysing applications for licenses, on-site inspections or other specific files, and the sanctions are presented in greater detail in the respective chapters relating to the different financial sector activities.

1.1. Law of 12 November 2004 on the fight against money laundering and terrorist financing

The scope of the law of 12 November 2004 was extended in order to make professionals carrying out the Family Office activity, pursuant to the law of 21 December 2012 relating to the Family Office activity, subject to the AML/CFT obligations.

1.2. Ministerial regulations

In 2012, the Ministry of Finance issued seven ministerial regulations, implementing UN Resolutions 1988 (2011) (Taliban) and 1989 (2011) (Al-Qaida).

1.3. CSSF Regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing

This regulation shall apply to the professionals of the financial sector subject to the CSSF's supervision and referred to in Article 2 of the law of 12 November 2004. It should be placed in the context of the criticism made by the FATF on the occasion of the assessment in 2010 of the Luxembourg AML/CFT framework and the professional obligations so far included in CSSF circulars, which are not sufficiently binding according to the FATF's standards. The regulation thus includes provisions specifying and supplementing those already provided for in the Luxembourg AML/CFT regulations.

The major issues of the CSSF regulation may be summarised as follows:

- Risk-based approach: details on the methodology for risk assessment and respective risk mitigation measures.
- Customer due diligence obligations: details on, inter alia, the customer acceptance policy with examples of customers for whom a specific examination is required; the timing of identification and verification of the identity; measures for the identification and verification of customers, proxies and beneficial owners of customers as well as intermediaries; information to be obtained on the purpose and intended nature of the business relationship; record-keeping obligation of documents and information; enhanced customer due diligence obligations; ongoing diligence and activities requiring particular attention; keeping information up-to-date; performance of due diligence by third parties.
- Adequate internal management requirements: details on the required written procedures, monitoring of

business relationships and transactions, conditions applicable to the person in charge of AML/CFT, internal audit control and staff training.

- Cooperation requirements with the authorities: details on, in particular, the obligation to answer information requests from the competent authorities.
- Audit by the *réviseur d'entreprises agrée* (approved statutory auditor): details on the tasks to be assigned to the *réviseur d'entreprises agréé* regarding AML/CFT within the scope of the audit of annual accounts.

1.4. CSSF Circulars

Circular CSSF 13/556 provides professionals with information on the entry into force of CSSF Regulation N° 12-02 of 14 December 2012 on AML/CFT and the repeal of the most important circular in this regard, i.e. Circular CSSF 08/387.

Circular CSSF 12/547 follows Circulars CSSF 12/541 and 12/532 published in 2012 and relates to the FATF statements concerning:

- jurisdictions whose AML/CFT regimes have substantial and strategic deficiencies;
- jurisdictions not making sufficient progress;
- jurisdictions whose AML/CFT regimes are not satisfactory.

1.5. Frequently asked questions

In 2012, the CSSF published a document entitled "Frequently asked questions regarding the fight against money laundering and terrorist financing ("AML/CFT") for private individuals/investors".

2. PARTICIPATION OF THE CSSF IN MEETINGS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

2.1. International AML/CFT working groups

The high frequency of committee and working group meetings at international level in which the CSSF took part continued into 2012. One reason is the numerous working meetings relating to the review of the methodology of the Financial Action Task Force (FATF) under which the mutual evaluations will be carried out in the future and the substantial update of other documents of the FATF which became necessary due to the review of FATF recommendations in 2012.

2.1.1. Financial Action Task Force (FATF) and its working groups

At the FATF Plenary in February 2012, the new "International standards in combating money laundering and financing of terrorism and of proliferation" were formally adopted. In order to inform professionals of the adoption of the new FATF recommendations, a press release was published by the CSSF on 21 February 2012.

The former 40+9 FATF recommendations are now grouped under 40 recommendations organised in seven thematic chapters. The main changes which are of particular interest for the professionals of the financial sector are:

- the implementation of a risk-based approach aimed to apply resources more efficiently by focusing on higher risk areas, whilst enabling more flexibility in the implementation of simplified measures where risks are low;
- the expansion of the scope of predicate offences to include tax crimes;
- the enhancement of due diligence measures, among others vis-à-vis politically exposed persons;

- the systematic application of targeted financial sanctions to combat the financing of proliferation of weapons of mass destruction when these are called for by the United Nations Security Council;
- the improvement of the transparency in order to avoid that criminals and terrorists conceal their identities or hide their assets behind legal persons and arrangements.

As regards other reports or guidelines adopted by the FATF in 2012, the attention of the professionals of the financial sector should be drawn to the documents updated in June and October 2012 on the fight against corruption, i.e. the reports entitled "Specific Risk Factors in the Laundering of Proceeds of Corruption - Assistance to reporting institutions" and "Reference guide and information note on the use of the FATF Recommendations to support the fight against corruption". The first report aims to identify the most common methods used to launder the proceeds of corruption, and highlights the vulnerabilities leading to an increased risk of corruption-related money laundering. It assists professionals to better identify and understand these specific risk factors. The second report provides clarification on the due diligence obligations of professionals in this regard following the adoption of the new recommendations.

These works and documents directly fall along the lines with the initiatives taken in recent years by the FATF to combat corruption. Indeed, the money-laundering offence and the corruption offence being intrinsically tied, the efficient implementation of a strong anti-money laundering and counter-terrorist financing framework also enables to fight the scourge of corruption, a money laundering predicate offence. In general, the purpose is to "better safeguard the integrity of the public sector; protect designated private sector institutions from abuse; increase the transparency of the financial system and facilitate the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets".

In this context, it is interesting to note that the FATF requested advice from the private sector during a public consultation organised in September 2012 on, in addition to the topic of the new payment methods, a document including guidelines relating to the treatment of politically exposed persons.

Based on the conclusions of the International Cooperation Review Group (ICRG), the different lists of high-risk and non-cooperative countries and territories were updated during the FATF meetings in February, June and October 2012. By way of three circulars published in February, July and October 2012, the CSSF drew the attention of the supervised professionals to these countries and territories.

As the last round of mutual evaluations ended in 2011, the next mutual evaluations will not start before the end of 2013 within the context of the fourth round of mutual evaluations which will cover the implementation of the new recommendations of the FATF adopted in February 2012.

Finally, the FATF adopted the fourth follow-up report on the Luxembourg AML/CFT framework in February 2012. This report is part of the annual follow-up procedure as determined by the FATF Plenary meeting in respect of the mutual evaluation report of Luxembourg adopted in 2010.

2.1.2. Committee for the Prevention of Money Laundering and Terrorist Financing (CPMLTF)

This committee, instituted within the European Commission, was established pursuant to Article 41 of Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The committee assists the European Commission in its work related to this subject.

The CPMLTF met four times in 2012. Its work focused mainly on the revision of the third AML/FT directive, the preparation of the FATF Plenary meetings and the coordination of the positions between Member States.

2.1.3. Anti-Money Laundering Committee (AMLC)

This committee dedicated to the fight against money laundering in the broad sense is a sub-committee of the Joint Committee of the three European supervisory authorities (ESMA, EBA and EIOPA). In 2012, the committee met on three occasions. The agenda included, inter alia, issues of cooperation between authorities responsible for AML/CFT within the supervision of payment institutions, their branches and agents, the new FATF recommendations and the role of the European authorities in determining countries with equivalent AML/CFT framework. Mention should also be made of the formal publication by the three aforementioned authorities of

the two following reports announced in 2011: “Report on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements” and “Report on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions”.

In addition, the CSSF took part in the working group dedicated to the analysis of the implementation of AML/CFT as regards electronic money institutions. A report on the application of AML/CFT in the field of electronic money was thus drawn up in 2012. In parallel, the working group sought dialogue in this respect with the European Commission, and in particular with the CPMLTF. In March 2012, it also organised a workshop which brought together both public authorities and representatives of the private sector and contributed to fruitful interaction on the various approaches of fight, instruments of supervision and cooperation and due diligence measures.

Moreover, the CSSF is part of a working group created in 2012 and dedicated to the study on the implementation of the risk-based approach within the context of the AML/CFT supervision. This working group organised a workshop in September 2012 which aimed to present the various supervisory models.

2.1.4. AML/CFT Expert Group (AMLEG)

In 2012, the AMLEG working group of the Basel Committee on Banking Supervision started reviewing its documents entitled “Customer Due diligence for banks, October 2011” and “Consolidated KYC Risk Management, October 2004” in order to take account of developments in this area and, in particular the new FATF recommendations. To this end, a first meeting of the group was organised in 2012. This meeting also enabled to discuss other topics and documents including the project to develop a guide for correspondent banking relationships, the update of the “General guide to account opening and customer identification” and the role of colleges in the banking supervision.

2.1.5. The Wolfsberg Group

As every year, the Wolfsberg Group, composed of eleven important banks operating at international level, invited private and public market participants to its annual Plenary meeting in May 2012. The group published the three following documents after its annual meeting: “Wolfsberg Private Banking Principles”, “Wolfsberg FAQs on Intermediaries” and “Wolfsberg FAQs on Beneficial Ownership”.

2.2. National AML/CFT working groups

2.2.1. Coordination for the purpose of the FATF’s work

In light of the importance of the work carried out at the FATF’s level, many coordination and cooperation meetings were organised by the respective Ministries in which the CSSF took part in 2012.

2.2.2. Follow-up committee on “international restrictive measures”

As a member of the Follow-up committee on “international restrictive measures” established pursuant to the Grand-ducal regulation of 29 October 2010 enforcing the law of 27 October 2010, the CSSF took part in the meeting held in July 2012. The exchange of views between the different members of the Follow-up committee concerned in particular the fight against the proliferation of weapons of mass destruction and its financing and the national risks related thereto. In respect of the implementation of international financial sanctions, those against the regime in Iran were in particular addressed by the Follow-up committee.

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

This committee which is also referred to as national AML/CFT “Platform” is composed of all public authorities and all players of the private sector concerned by AML/CFT. It is chaired jointly by a representative of the

Ministry of Finance and a representative of the Ministry of Justice. The committee met in 2012 in order to inform all relevant parties of the new FATF recommendations adopted in February 2012.

2.2.4. Meetings with the Financial Intelligence Unit (FIU)

The enhanced cooperation between the FIU and the CSSF on the basis of Article 9-1 of the law of 12 November 2004 relating to AML/CFT was enforced in practice by three formal meetings held in 2012.

CHAPTER XV

FINANCIAL CONSUMER PROTECTION

1. Financial consumer protection
2. Out-of-court dispute settlement

1. FINANCIAL CONSUMER PROTECTION

The financial crisis underscored the needs to strengthen financial product consumer protection and many regulatory and other initiatives have appeared since then. The European Commission as well as the three authorities created within the context of the European System of Financial Supervision (EBA, ESMA and EIOPA) make this subject a priority. The regulations relating to the European supervisory authorities entrust them with important missions in the field of consumer protection and financial education.

Indeed, the financial consumer protection showed remarkable progress during 2012, particularly through means granted at international and national level. The CSSF is directly involved in this work, both through its contribution to the works undertaken in specialised international bodies and through the initiatives in which it participates within the national context of financial consumer protection.

Over the last few years, many regulatory texts significantly expanded the missions and competences of the CSSF as regards consumer protection, like the Consumer Code. The role and powers of the CSSF are very broad and include in particular financial education, the handling of complaints by customers of supervised entities, the representation in international bodies, the adaptation of applicable regulations or the prohibition of certain products.

1.1. Consumer protection at international level

The CSSF contributes to the work of two international groups with the aim to protect the financial consumer, i.e. the Task Force on consumer protection of the OECD Committee on Financial Markets and the International Financial Consumer Protection Network (FinCoNet).

1.1.1. Task Force on consumer protection of the OECD Committee on Financial Markets

The Task Force which met three times in 2012 developed an action plan to implement the “G20 High-level Principles on Financial Consumer Protection”. This action plan was endorsed at the G20 summit in Los Cabos in June 2012. In July 2012, the OECD Council approved the “G20 High-level Principles on Financial Consumer Protection” as “OECD Recommendation” in order to raise their importance at international level.

The Task Force decided to focus its efforts, first, on the development of three of the ten Principles which it considers to be the most important following a written consultation of its members. These principles are as follows:

- Disclosure and transparency

  “Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold.

  In particular, information should be provided on material aspects of the financial product. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading. Standardised pre-contractual disclosure practices (e.g. forms) should be adopted, where applicable and possible, to allow comparisons between products and services of the same nature. Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services. Where possible, consumer research should be conducted to help determine and improve the effectiveness of disclosure requirements.

  The provision of advice should be as objective as possible and should, in general, be based on the consumer’s profile considering the complexity of the product, the risks associated with it as well as the customer’s financial objectives, knowledge, capabilities and experience.

Consumers should be made aware of the importance of providing financial services providers with relevant, accurate and available information."

- Responsible business conduct of financial services providers and authorised agents

"Financial services providers and authorised agents should have as an objective to work in the best interest of their customers and be responsible for upholding financial consumer protection. Financial services providers should also be responsible and accountable for the actions of their authorised agents.

Depending on the nature of the transaction and based on information primarily provided by customers, financial services providers should assess the related financial capabilities, situation and needs of their customers before agreeing to provide them with a product, advice or service. Staff (especially those who interact directly with customers) should be properly trained and qualified. Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.

The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided."

- Complaints handling and redress

"Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public."

For the continuation of work, it was decided to create a sub-group for each of the three Principles classified as priorities, with the mission to drive forward reflection in each of their given areas.

The work plans of the three sub-groups were endorsed by the Task Force. For each area, the first stage involves a field research in order to identify the practices in the various countries and to draw conclusions from the experiences relating thereto. The next stage consists of drawing up an inventory, including both the practices deemed effective and those deemed ineffective before analysing the reasons and consequences of these assessments. Finally, it is planned to develop a list of measures which members may use to improve the arrangements to protect the financial consumer in their respective jurisdictions. A first report is expected for the G20 summit in Saint Petersburg in September 2013.

1.1.2. International Financial Consumer Protection Network (FinCoNet)

FinCoNet, which is defined as a forum for exchange between financial regulators organised at international level, is called upon to play a role of international body for the protection of the financial consumer in banking and credit.

In its statement dated 5 November 2012 following the summit in Mexico City, the G20 acknowledged the work accomplished by FinCoNet to support the exchange of Best Practices and expressed interest in the report on the progress made which is planned for the summit of Saint Petersburg in September 2013. FinCoNet decided to pay special attention to responsible lending.

1.2. Consumer protection at national level

1.2.1. Creation of the Financial Consumer Protection Committee

The subject of financial consumer protection concerns various business sectors. Consequently, the CSSF considered useful to bring together, within the same committee, the main players concerned in order to discuss the various approaches and, where appropriate, to coordinate future actions. Thus, the Financial Consumer Protection Committee was created in February 2012. The CSSF chairs this committee composed of delegates of authorities, institutions and associations representing the public sector, the private sector and consumers.

The purpose of the committee is not to interfere with the work of the various represented players but to exchange information, to identify areas for improvement, to coordinate certain initiatives or even to carry out joint projects. The aim is to set up a dialogue which enables to achieve concrete results (adaptation of regulatory texts, improvement of the published information, achievement of joint projects in the field of financial education).

The committee considers that the prevention component is highly important; hence, the decision to focus on the development of financial education. In this context, contact has been made with the Minister of National Education and Professional Training who strongly supports the project. The committee was requested to prepare proposals in order to include certain elements of financial education at the level of secondary education.

Moreover, the committee discussed other topical issues including responsible lending and household over-indebtedness. Discussions focused, inter alia, on the works carried out in the field of consumer protection at European level, on a study concerning banking mobility, electronic payments, complaints regarding early payment of loans and on a study concerning compliance with the Consumer Code within the context of Internet publications on consumer credit.

1.2.2. Direct interventions of the CSSF

In 2012, the CSSF intervened on two occasions to request the cessation of the marketing of structured financial products whose financial information was likely to mislead the investor as regards the real benefits of those products. In both cases, the contested structured product was immediately removed from sale by the relevant professional.

1.2.3. Creation of a section dedicated to consumer protection on the CSSF's website

In order to offer a higher visibility to the public concerned, the CSSF established a "Consumer's corner" on its website. The consumer is thus better informed on the existing contents in this regard. It is planned to further develop this section by including documents relating to financial consumer protection and financial education.

2. OUT-OF-COURT DISPUTE SETTLEMENT

This section deals with disputes between financial consumers and financial professionals that are supervised by the CSSF within the context of which the CSSF intervened to reach an amicable settlement. It also provides examples of the out-of-court settlement of disputes handled in 2012 which illustrate the concrete approach of the CSSF as regards complaints and give a series of lessons which the financial consumers should keep in mind in their relationships with financial professionals. Finally, it includes the latest legislative developments at European level as regards out-of-court dispute settlement the purpose of which is to promote access to quick, cheap and effective out-of-court dispute settlement procedures for the proper functioning of the single market.

2.1. Statistical data

In 2012, the CSSF received 610 complaints from customers of the Luxembourg financial centre concerning entities under its supervision. It closed 441 files over the course of the year.

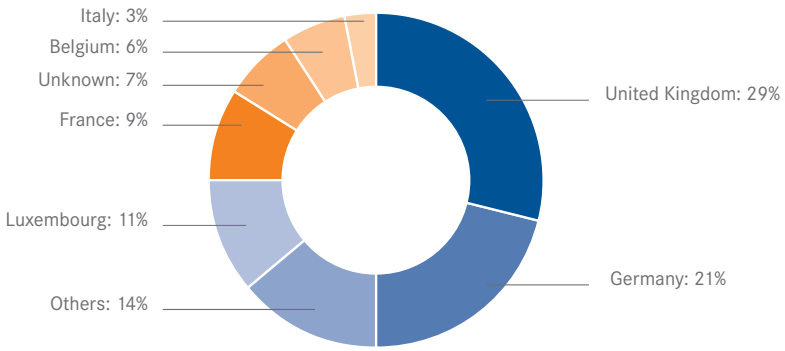
The 2012 figures are in line with those of 2011 and confirm that the CSSF's intervention to help the parties to the dispute to reach an out-of-court settlement meets an increasing need from the financial consumers but also from professionals of the financial sector.

Outcome of the CSSF's intervention / reasons for closing the files

Outcome	Number
Referral to the Court	2
CSSF's reasoned opinion without amicable settlement	2
Contradictory positions of the parties	6
Outside the scope of the CSSF's powers	12
Amicable settlement	23
Withdrawal by complainants	25
Opinion of the CSSF in favour of professionals	57
Acknowledgement of receipt where the complainant did not revert to the CSSF	314

When the CSSF receives a complaint from a consumer, its first approach consists in encouraging the parties to find a bilateral agreement. Thus, the fact that a high number of acknowledgements of receipt sent by the CSSF resulted in closing the files without any further action is probably due to the fact that the complainant often obtained satisfaction from the professional after having contacted the manager appointed to deal with complaints as indicated by the CSSF. Indeed, in most cases where the complainant provides the CSSF with the reason thereof, his withdrawal results from the fact that he received a settlement proposal from the professional and accepted it. This approach of the CSSF thus enables to solve many problems between customers and financial professionals.

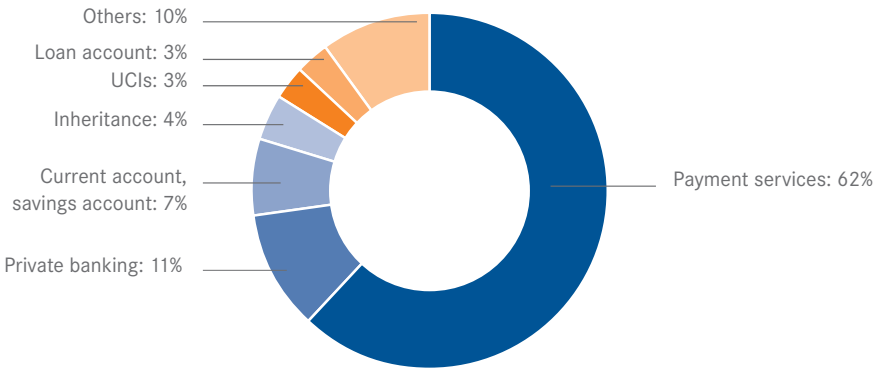
Breakdown of the complaints according to the complainant's country of residence



In 2012, the complaints lodged by British residents became dominant which accounts for the increasing importance of the disputes related to electronic payment services which are specifically used in the United Kingdom. Most of the other complainants have their residence in Luxembourg and in the neighbouring countries.

The country of residence of the complainants is not identified in 7% of the cases mainly due to the fact that these complainants addressed the CSSF by way of emails without indicating their country of residence. Furthermore, the category "Others" covers about forty different countries.

Breakdown of complaints according to their object



In 2012, most complaints related to payment services issues. This trend of the previous years was thus confirmed in 2012 and will further develop in the coming years. There has been a slight decrease in the complaints relating to private banking. The part of complaints in connection with UCIs remains very low as compared to the importance of the UCI sector in Luxembourg.

2.2. Analysis of the complaints dealt with in 2012

The complaints received in 2012 underline with increasing clarity the expectations of customers vis-à-vis financial professionals. The customer considers himself as a consumer of financial services and products and the professional is accountable to him. The CSSF's role is then seen by the complainant as that of an institution which should help him in his efforts for the recognition of his rights. That being said, the CSSF had the opportunity, within the context of the handled files, to show that it listens to customers, but does not, however, have any bias for any party, customer or professional, to the dispute and that it endeavours to settle the disputes each time objectively following a careful analysis of the complaint file.

The analysis of the cases dealt with in 2012 is focused on the following points:

- obligation of the professional to inform its customer;
- asset management by the customer or by the professional;
- recurrent frauds against which the CSSF would like to caution the financial consumers;
- lessons to be drawn from complaints targeting UCIs.

2.2.1. Obligation of the professional to inform its customer

The CSSF regularly deals with complaints which raise the question whether the professional is required, in the absence of specific contractual terms specific on this issue, to inform the customer on transactions involving securities which are deposited with the professional.

The CSSF received, among others, the complaint of a customer who blamed his bank for not having informed him of the financial difficulties encountered by a company in which he held securities which he bought as customer of the bank and which he deposited with it. When the company which had issued the securities proved to be insolvent, the relevant securities lost almost all of their value.

The bank highlighted that the customer did not enter into an advisory agreement with it. It also specified that the securities deposited by the customer were subject to a mere administrative management which did not force the bank to inform the complainant of the events relating to the issuing company. The bank also put forward in its defence that the difficulties of the issuing company were well known and that the press reported it in the country of residence of the complainant.

The CSSF held that the customer entered into a depositary agreement with the bank without entering into an advisory agreement relating to the management of his assets. The bank only had to comply with the information obligation arising from the depositary agreement. Within the context of its analysis, the CSSF took note of a decision of the Court of Appeal of 26 March 1997 (*Bulletin Droit et Banque,* n° 28, page 29) that the information obligation of the bank under the agreement relating to the deposit of securities is limited to the facts which are likely to have an impact on the securities themselves, such as the pooling of securities, capital increase, exchanges, conversions or issue of premiums. The obligation of the bank does not however extend to the facts having an impact on the situation of the issuing company, as such an obligation arises from a portfolio management agreement. The CSSF therefore concluded that the bank had no obligation to inform the complainant of the bankruptcy of the company issuing the securities deposited with it.

Moreover, the bank's information duty exists in respect of prices. The CSSF often receives complaints where the complainant challenges the fees which the professional charged him. In general, the customer blames the professional for not having informed him in advance of the fees and commissions.

Even if the CSSF is not the competent authority to assess the prices applied by the professionals to their customers as part of their business policy, it intervenes however in disputes in which the complainant challenges the pricing conditions which the professional applied to him in the case where the professional did not inform the customer in advance of its prices or where the professional did not properly inform the customer of its prices. In general, the customer is informed of the prices in the terms and conditions of the professional which he signed when he opened the account.

In one case, the complainant argued against the prices which his bank applied to him and considered in particular that the bank withheld commissions without his knowledge. The complainant also denied that he wanted to open a current account with the bank.

The bank explained to the CSSF that the customer accepted the terms and conditions which contain a reference to the prices of the bank. The CSSF requested the bank to issue a copy of the terms and conditions signed by the complainant as evidence of the acceptance of these terms and conditions.

On the basis of this exhibit, the CSSF could ensure that the complainant countersigned the declaration according to which he received and accepted the terms and conditions of the bank in which reference is made to the prices. The terms and conditions related, in particular, to the opening of a current account from which

the bank could, inter alia, withdraw its fees and commissions. The CSSF thus noted that the grievances of the complainant vis-à-vis the bank were unfounded because the customer had been informed of the pricing conditions and the opening of the current account.

In another case of challenged banking fees, the bank responded to the complainant that he accepted at least tacitly the fees in question as he did not contest the account statements in which these fees were specified within the deadline set for the complaints. Moreover, the bank referred to the prices as communicated to the complainant and considered that it could change its prices provided that it informs the customer thereof in advance. In this case, the complainant disagreed with the withdrawal of fees which the bank carried out over the last few years and he requested the CSSF to clarify the situation.

The CSSF analysed the account statements of the complainant which showed that the bank withdrew different amounts as fees and commissions, according to the pricing lists being modified over time. These changes concerned both the amounts of the charges and the presentation of these charges under various headings which were supposed to identify the services provided by the bank. The CSSF finally noted that the complainant had not been properly informed by the bank of the pricing conditions because it applied them in an unclear manner.

In another case, the complainant took the position that the bank did not properly inform him of an interest rate change and that this change was therefore not binding on him. However, the bank's view was that the complainant tacitly accepted the rate change as he did not contest the account statement within the contractual deadline given to him to submit his contesting to the bank.

It turned out that the bank had informed the customer of the interest rate change by a mere mention on the account statement where other information was also included. It should be noted that the bank indicated "CHGT" which was intended to mean "change" (in French "changement") without any other explanation and put the indication 1.25000→ 1.05000% and a date after this abbreviation.

The CSSF concluded that the customer had not been duly informed of the rate change as this was not communicated to him in an understandable way. Under these conditions, the bank could not conclude from the absence of contesting within the set deadline that the customer had tacitly accepted the change in question.

2.2.2. Asset management by the customer or the professional

Where the customer did not conclude either an advisory agreement or a discretionary asset management agreement with a professional, he himself shall bear the consequences of the decisions he takes as regards the management of his assets. If the customer takes decisions which turn out to be regrettable later, he shall assume responsibility for these decisions, regardless of the loss arising therefrom.

In one case which was submitted to the CSSF, the customer obviously took the investment decisions himself. However, he tried, after having faced some losses, to attribute the responsibility to his bank. Thus, the complainant blamed in particular the bank for communicating inaccurate information to him regarding the issuer of the contested securities and regarding the issued securities.

The bank denied responsibility and argued that the complainant managed his portfolio by himself. It also explained that the complainant was, due to his profession, necessarily aware of the characteristics of the financial products in which he invested part of his assets. Moreover, the bank inferred from the sheet determining the investor profile of the complainant, countersigned by the complainant, that the latter was willing to accept risks higher than average.

In particular through the listening of phone conversation records between the parties, the CSSF could form its own opinion on the complainant's determination to give instructions to the person in charge of his account, fully bearing the risks of his decisions. The CSSF also noted that the complainant had a relationship with third parties to benefit from information concerning the securities which were at the heart of the dispute. The CSSF finally concluded that the bank did nothing wrong in this case.

In certain cases, the customer thinks that he concluded a contract relating to the management of his assets when this is not the case. This is in particular the case where a customer, failing to sign a discretionary management agreement or an advisory agreement with the bank, agrees on a package of services with it.

Thus, the CSSF was contacted in 2012 by a complainant who complained about not having benefited from the management of his assets. The complainant claimed to have requested the bank with which it opened an account in October 1993 to invest the funds in an aggressive perspective and over the long term and to undertake a geographical diversification in investments which should include American, European and Asian products and products of emerging markets. The complainant thus hoped to obtain a 10%-yield annually. In 2011, the complainant inquired about his account balance and learned that the aggregate yield of the investments amounted to less than 1.3%. He also learned that no manager of the bank handled his assets from 1993 to 2012 as he did not enter into a contract in this regard with the bank.

The bank explained that it followed the investment instructions of the customer which corresponded to the package of the bank by investing in two collective management structures. It specified furthermore that the form of investment chosen by the complainant did not provide for any management services by the bank; that is why the customer did not benefit from the services of a manager.

The CSSF requested the bank to provide it with all the opening documents for the examination of the file. On the basis of these documents, the CSSF noticed that the form of investment chosen by the complainant did not include the provision of a manager and it closed the case without any liability on the part of the bank.

Where the customer manages his assets, it is in his interest to carefully read the documents given to him in respect of the products in which he invests and to ask for clarification, even in written form, on any unclear point.

In another case handled in 2012, the complainant claimed that the bank misled him by selling him a financial product whose principal is guaranteed at maturity. He considered that he was misled by the bank because he was not reimbursed the guaranteed-capital financial instrument at maturity due to the bankruptcy of the issuer of these products. The complainant filed (as an exhibit purported to substantiate his claims) the presentation brochure of the contested financial instrument which he received from the bank.

In examining this brochure, the CSSF noticed that, even if the brochure presented the invested capital as being 100% guaranteed at maturity, a footnote expressly warned the potential investor of the fact that the reimbursement of the invested capital depended on the solvency of the company issuing the securities in question. As the company which had issued the contested instruments was declared bankrupt, the complainant could not obtain the reimbursement of his capital at maturity. The CSSF was not of the opinion that the bank wanted to mislead the complainant about what was meant by “guaranteed capital” as the presentation brochure clearly specified that the guarantee depended on the solvency of the company issuing the instruments in question.

The complainant moreover claimed that the presentation brochure of the contested product misled him because it mentioned that the company issuing the financial instruments was given an excellent rating by rating agencies. The CSSF noticed that the brochure referred to an excellent rating not of the company issuing the securities in question but of the securities composing the pool of securities backing the contested financial instrument. The CSSF thus concluded that the claims of the complainant vis-à-vis the bank were unfounded.

2.2.3. Recurrent frauds against which the CSSF would like to caution the financial consumers

• Fraud relating to payment orders

A type of fraud against which the CSSF cautions financial consumers is that of the wrong International Bank Account Number (IBAN) of the beneficiary of a transfer order. The following example illustrates the danger of this type of fraud.

The complainant commissioned work from a tiling firm. As the unique identifier or the IBAN of the company in question was not mentioned in the invoice submitted to him by a worker of the company, the complainant asked the worker to complete the invoice by indicating this IBAN. The worker then indicated his personal IBAN with a Luxembourg bank instead of the IBAN of his employer. The complainant willing to settle the invoice charged his bank to transfer the amount of the invoice to the account as indicated by the worker. When the tiling firm sent a reminder to the complainant for the payment of the invoice, the complainant understood that he had been the victim of a fraud.

The complainant then blamed the bank which transferred the money to the worker's account for not verifying whether the person who was mentioned in the transfer order as recipient of the payment (in this case the tiling firm) was the holder of the account indicated in the same transfer order.

However, the bank was of the opinion that it had done nothing wrong in this file. It invoked in particular Article 100 of the law of 10 November 2009 on payment services which provides that "if a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier". The CSSF admitted that the bank's position was defensible regarding the execution of the payment order.

The customer is thus in charge of taking precautions before making a transfer to a bank account. In this case, the complainant's attention should have been drawn to the fact that the IBAN code of the firm was missing on the invoice.

• Fraud relating to electronic commerce

The CSSF noticed in 2012 a type of fraud arising from the increasing importance of the electronic commerce in the consumers' habits. The CSSF is not competent to supervise electronic commerce companies. However, it is competent to supervise Luxembourg payment institutions which intervene in the settlement of transactions between buyers and sellers in the area of electronic commerce.

The type of fraud in question is perpetrated by an ill-intentioned person who declares that he wants to buy a product on an online auction website and who, when he finds a seller, proposes him to take delivery of the product in question in person, so that the seller allegedly saves the shipping costs. In order to reassure the seller, the buyer transfers the purchase price to the seller's account with the bank acting as payment institution.

If the seller personally delivers the product to the buyer, he might not have a formal proof of dispatch of the product to the buyer. It is then easy for the dishonest buyer to claim to the payment institution which intervenes in the settlement of the transaction that the seller never delivered him the sold product in order to recover the amount paid to the seller from the payment institution.

In such cases, failing to obtain a proof from the seller that he sent the sold product to the buyer, the payment institution will support the buyer's request.

There is also a variant of the fraud described above: the ill-intentioned buyer indicates an address of delivery of the bought product which is different from that officially registered with the payment institution. In this case, the seller will not be able to prove that he sent the sold product to the right address.

2.2.4. Lessons to be drawn from the complaints targeting UCIs

In 2012, the CSSF also received a certain number of complaints targeting UCIs which enable to draw the following lessons.

• Exercise of an investor's rights vis-à-vis UCIs

The analysis of certain complaints targeting UCIs causes the CSSF to draw the investors' attention to the fact that they could fully exercise their investor's rights directly against a UCI only in the case where their names appear in the register of shareholders (for UCIs incorporated in the form of investment companies) or in the register of unitholders (for UCIs incorporated in the form of common funds).

Consequently, in the case where an investor acquires units/shares from a UCI through an intermediary which/who invests in his/its own name (i.e. in the name of the intermediary), some rights attached to the capacity of shareholder or unitholder may not be necessarily exercised by the investor directly vis-à-vis the UCI.

• Advertising material made available to investors in UCIs

Even if the advertising material used by the persons in charge of the placement of the units/shares of UCIs and by the representatives of these persons is not subject to the control of the CSSF, the CSSF intervenes where it becomes aware that misleading advertising material or advertising material which does not comply with the constitutional documents of a UCI has been disclosed.

The advertising material made available to investors frequently mentions, in summarised form, the main information which the investor needs to form an opinion on a UCI. This information corresponds, in principle, to that indicated in the constitutional documents of a UCI. However, the investor shall be aware of the fact that the advertising brochure which is presented to him by the professional does not necessarily include all the information which he may need in order to gain an informed understanding of the investment proposed to him.

The analysis of certain complaints in 2012 reveals that the investors who file their claims with the CSSF often did not dedicate adequate time to carefully read the key information (in particular investment policy, risks) which was at their disposal.

2.3. EU legislative developments as regards out-of-court dispute settlement

The European Commission adopted, on 30 March 1998, Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the CSSF was recognised by the European Commission as the competent body for the out-of-court settlement of consumer disputes as regards complaints filed by customers of entities subject to its supervision.

In order to ensure that consumers benefit from a high level of protection in the EU and to enable them to better assert their rights, the European Commission submitted, on 29 November 2011, to the European Parliament, the Council and the European Economic and Social Committee two proposals, i.e.:

- a proposal for a directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (hereinafter the "proposed ADR Directive"), and
- a proposal for a regulation on online dispute resolution for consumer disputes (hereinafter the "proposed ODR Regulation").

The proposed ADR Directive aims to guarantee the existence of quality bodies responsible for out-of-court settlement of contractual disputes related to the sale of goods and provision of services by professionals. It also aims to guarantee that out-of-court dispute settlement bodies, which shall not only include out-of-court dispute settlement bodies for financial consumers (such as the CSSF), comply with a certain number of qualitative principles such as impartiality, independence, transparency, effectiveness and equity.

In this respect, it should be noted that Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes established the following principles that the CSSF already knows: independence, transparency, adversarial procedure, effectiveness, legality, freedom and representation.

The future ADR Directive will thus enable any consumer, regardless of his place of residence, to have recourse to out-of-court dispute settlement bodies complying with the principles set out above in case of a dispute related to the purchase of goods or services from a professional established in the EU.

The proposed ODR Regulation notably aims to establish a European online dispute resolution platform. This platform, which will be established by the European Commission, will be directly accessible to consumers and professionals. The complaints introduced through this platform will be automatically sent to the out-of-court dispute settlement body which is competent for these complaints.

The European Commission announced that the European online dispute resolution platform will be developed as an interactive website available in all official EU languages and offering, free of charge, a single point of entry to consumers and professionals who seek to resolve the disputes online.

2.4. FIN-NET

FIN-NET which was launched by the European Commission in 2001 focuses on the out-of-court financial dispute resolution. It is composed of bodies established in EEA countries which aim to resolve out-of-court disputes arising between consumers and financial services providers.

Within FIN-NET, the bodies cooperate to provide consumers with easy access to out-of-court complaint procedures in cross-border cases. If a consumer residing in a Member State has a dispute with a financial

services provider from another Member State, FIN-NET members will put the consumer in touch with the relevant out-of court complaint settlement body and provide any necessary information in this context.

In its capacity as FIN-NET member, the CSSF took part in two meetings of the network, one in Brussels in March 2012 and the other one in Budapest in October 2012. These meetings concerned in particular the proposed directive on credit agreements relating to residential property, which includes provisions on mortgage credit, the proposal for a directive on alternative dispute resolution for consumer disputes and the proposal for a regulation on online dispute resolution for consumer disputes.

CHAPTER XVI

BANKING AND FINANCIAL LAWS AND REGULATIONS

1. Directives and regulations under discussion at EU level
2. Directives adopted by the Council and the European Parliament to be transposed under national law
3. Laws and regulations adopted in 2012

1. DIRECTIVES AND REGULATIONS UNDER DISCUSSION AT EU LEVEL

The CSSF participates in the groups examining the following proposals for directives or regulations.

1.1. Proposal for a regulation on key information documents for investment products (PRIPS)

The purpose of the proposal for a regulation, commonly known as proposal for a regulation PRIPS (Packaged Retail Investment Products), is to introduce common rules for the disclosure of information about investment products to retail investors, by defining the information about these products transmitted to the investors via a succinct document.

The essential elements of the investment product which should be described in the document are:

- the identity of the product and its manufacturer;
- the nature and the main features of the product, including whether the investors might lose capital;
- its risk and reward profile;
- costs, and
- past performance as appropriate.

Moreover, the proposal for a regulation aims to define the method for the disclosure of this document to the retail investor.

Its scope includes all the products, regardless of their form or construction, where the return offered to the investor is exposed to the performance of one or more assets or reference values other than an interest rate. Through a process of packaging, these products bundle together assets so as to create exposures, provide different product features, or achieve different cost structures as compared with a direct holding in the assets concerned.

1.2. Proposal for a regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (Banking Union)

At the European Council of 28 and 29 June 2012, EU leaders agreed to deepen the economic and monetary union as one of the remedies to the financial crisis. In this context, the European Commission presented, in September 2012, a proposal for a regulation to implement a single supervisory mechanism (SSM) centred around the European Central Bank (ECB) and the national supervisory authorities of the euro area. This represents the first pillar of the Banking Union which will be completed by a single bank resolution mechanism, as well as by a European resolution fund and a European deposit guarantee scheme.

The proposal for a regulation was negotiated as a matter of priority by the Member States at the Council and the negotiations allowed finding an agreement on the general approach in December 2012. The text unanimously agreed on by the Member States lays down that the ECB will be in charge of the general operation of the SSM.

At institutional level, a supervisory board will be created within the ECB composed of representatives of the ECB and the national supervisory authorities.

The creation of the supervisory board will thus allow the national supervisory authorities of the Member States outside the euro area which chose to participate in the SSM to take part in the decisions and operations of the single supervisory mechanism. However, the decisions taken in this board will only take effect after validation by the Governing Council of the ECB whose members are exclusively from euro area Member States.

1.3. Proposal for a regulation amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Regulation (EU) No .../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (Banking Union)

The proposal for a regulation under co-decision aims to amend Regulation (EU) No 1093/2010, in particular on the voting modalities in order to ensure fair and efficient decisions taken by the EU supervisory authorities following the implementation of the Banking Union. The purpose of the amendments is to ensure that the supervisory authorities participating in the Banking Union do not excessively dominate the decision-taking procedure, to the detriment of the supervisory authorities outside the Banking Union, at the level of EBA's Board of Supervisors.

1.4. Proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EU and Regulation (EU) No 1093/2010

On 6 June 2012, the European Commission made a proposal for a directive for the recovery and resolution of credit institutions and investment firms. The proposed framework establishes the necessary phases and powers to ensure that banks and investment firms in distress in the EU (hereafter "the institutions") are managed so as to avoid financial instability and to minimise costs for taxpayers.

The text proposes three categories of tools for recovery and, where appropriate, for resolution of institutions: powers of prevention, early intervention and resolution. The provisions relating to the preparation and prevention require, in particular, that the institutions set up recovery plans. The authorities in charge of the resolution must set up resolution plans with options to manage the institutions which are in a critical situation and can no longer be saved. During the drafting of the resolution plans, and where the authorities are aware of a hindrance to the resolution of an institution or a group, the authorities may require that the institution or the group take measures to facilitate the resolution. In addition, the proposal for a directive lays down that the institutions belonging to a group may enter into an agreement to provide financial support to other entities of the group that experience financial difficulties.

The proposal for a directive provides the authorities with common tools and a common roadmap to manage crises. The resolution tools and powers associated with resolution plans prepared in advance are notably the following: exit of the business which allows the authorities to sell all or part of the failing bank to another bank, creation of a bridge institution, asset separation which must be used together with another tool and bail-in aiming to recapitalise an institution by cancelling or diluting the shares and by reducing the debts held or by converting them in shares.

The proposal for a directive also lays down rules concerning the funding of bank resolution and the implementation of a resolution fund.

Finally, the proposal for a directive enhances the cooperation between national authorities in all phases of prevention, intervention and resolution.

1.5. Proposal for a directive amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS V Directive)

The proposal for a directive published on 3 July 2012 consists in three parts:

- a definition and details regarding the tasks and duties of all depositaries acting on behalf of a UCITS;
- rules concerning the remuneration of UCITS managers, and
- a common approach of the manner in which to sanction the main breaches of the legal framework governing UCITS, by introducing common standards for the amount of administrative fines.

1.6. Proposal for a directive amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings

The proposal for a directive was discussed in detail in the CSSF's Annual Report 2011.

1.7. Proposal for a regulation amending Regulation (EC) No 1060/2009 on credit rating agencies (CRA III Regulation)

The proposal for a regulation was discussed in detail in the CSSF's Annual Report 2011. In December 2012, the two co-legislators found a political agreement on the proposal for a regulation. Thus, the text should be published in the first half of 2013.

1.8. Proposal for a directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (CRD IV)

Proposal for a regulation on prudential requirements for credit institutions and investment firms (CRR)

The two proposals which were explained in detail in the CSSF's Annual Report 2011 were discussed during 2012. In May 2012, the Member States agreed on a general approach. Since then, the discussions with the European Parliament and the European Commission have continued. As no agreement could be found in 2012, the date of entry into force, first set on 1 January 2013, was postponed.

1.9. Proposal for a directive amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority (Omnibus Directive II)

The proposal for a directive was discussed in detail in the CSSF's Annual Report 2010.

1.10. Proposal for a directive on deposit-guarantee schemes (recast)

The discussions were on standby in 2012. The proposal for a directive was discussed in detail in the CSSF's Annual Report 2010.

1.11. Proposal for a directive amending Directive 97/9/EC on investor-compensation schemes

The discussions were on standby in 2012. The proposal for a directive was discussed in detail in the CSSF's Annual Report 2010.

1.12. Proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC (MiFID II)

Proposal for a regulation on markets in financial instruments and amending Regulation EMIR on OTC derivatives, central counterparties and trade repositories (MiFIR)

The proposals for a directive and a regulation were discussed in detail in the CSSF's Annual Report 2011. The negotiations on the texts still continue at European level.

1.13. Proposal for a regulation on insider dealing and market manipulation (market abuse)

Proposal for a directive on criminal sanctions for insider dealing and market manipulation

The two proposals were discussed in detail in the CSSF's Annual Report 2011. The negotiations on the texts still continue at European level.

1.14. Proposal for a directive amending 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 and Directive 2007/14/EC

The proposal for a directive was discussed in detail in the CSSF's Annual Report 2011. The negotiations on the text still continue at European level.

1.15. Proposal for a directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

The proposal for a directive was discussed in detail in the CSSF's Annual Report 2011.

1.16. Proposal for a regulation on European Venture Capital Funds

The proposal for a regulation was discussed in detail in the CSSF's Annual Report 2011.

1.17. Proposal for a regulation on European Social Entrepreneurship Funds

The proposal for a regulation was discussed in detail in the CSSF's Annual Report 2011.

1.18. Proposal for a directive amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

Proposal for a regulation on specific requirements regarding statutory audit of public-interest entities

The proposals for a directive and a regulation are further detailed under item 1.1. of Chapter XII "Public oversight of the audit profession".

1.19. Proposal for a directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Proposal for a regulation on online dispute resolution for consumer disputes

The proposals for a directive and a regulation are further detailed under item 2.3. of Chapter XV "Financial consumer protection".

2. DIRECTIVES ADOPTED BY THE COUNCIL AND THE EUROPEAN PARLIAMENT TO BE TRANSPOSED UNDER NATIONAL LAW

2.1. Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (AIFM Directive)

The AIFM Directive aims at providing a harmonised regulatory and supervisory framework which alternative investment fund managers (AIFMs) have to comply with within the EU. AIFMs are legal persons whose regular professional business is managing alternative investment funds (AIFs). This directive applies to all AIFMs established in the EU and to all AIFMs established outside the EU which have at least part of the activities exercised within the EU (either through the management of European AIFs or through the marketing of AIFs in the EU).

The AIFM Directive sets out the rules on the organisation and conduct of business for the management of alternative funds. In return, the managers of these funds are offered new opportunities through a European passport which allows them to provide management services and to offer their funds to well-informed investors in all the EU Member States. The provisions of the directive cover, among others, the authorisation conditions for AIFMs, the capital requirements, the requirements as regards liquidity and risk management, the requirements in relation to valuation, depositaries, delegation arrangements, disclosure of information, restrictions on the use of leverage and the clauses for non-EU countries.

On 16 November 2011, ESMA published its technical advice to the European Commission on implementing measures of the AIFM Directive.

On 19 December 2012, the European Commission adopted and published on its website the delegated regulation supplementing the AIFM Directive (i.e. final implementing provisions or "level 2 measures").

The AIFM Directive entered into force on 1 July 2011. It must be transposed into national law by 22 July 2013. The CSSF actively contributed to the preparation of the draft law No 6471 which was submitted to the *Chambre des Députés* (Luxembourg Chamber of Deputies) on 24 August 2012.

2.2. Directive 2011/89/EU of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate

This directive was discussed in detail in the CSSF's Annual Report 2010. Most of its articles shall be transposed into national law by 10 June 2013.

3. LAWS AND REGULATIONS ADOPTED IN 2012

3.1. Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps (Short Selling Regulation)

The regulation which is directly applicable in Luxembourg as from 1 November 2012 was discussed in detail in the CSSF's Annual Report 2010. It should also be noted that the draft law No 6513 on short selling of financial instruments submitted to the *Chambre des Députés* on 7 December 2012 aims to implement certain provisions of the above-mentioned European Regulation.

3.2. Regulation (EU) No 260/2012 of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro

The regulation which is directly applicable in each EU Member State as from 31 March 2012 aims to ensure the proper functioning of the internal market by creating an integrated market for electronic payments in euro without distinction between national and cross-border payments and regardless of the location in the EU. The single euro payments area (SEPA) project aims to develop common EU-wide payment services to replace current national payment services. SEPA should provide EU citizens and businesses with secure, competitively priced, user-friendly and reliable payment services in euro.

3.3. Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)

The regulation which is directly applicable in Luxembourg as from 1 November 2012 was discussed in detail in the CSSF's Annual Report 2011.

3.4. Law of 26 March 2012 amending the law of 13 February 2007 relating to specialised investment funds

In the light of the EU developments which led to the adoption of Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (AIFM Directive), the amendments laid down in the law of 26 March 2012 aim, first, to supplement the legal framework by providing new rules defining, in particular, the conditions under which a SIF or its management company may delegate specific tasks and functions to third parties. The law also lays down the principle that SIFs must implement a risk management method and have specific rules as regards the management of possible conflicts of interest. Second, the law revises certain provisions of the law of 13 February 2007 in order to take into account the experience acquired by the CSSF during its supervision of SIFs. Changes pertain in particular to the requirement for SIFs to have an authorisation before the beginning of their activities and to the approval of the persons responsible for the actual management of SIFs. Finally, the law introduces in the law of 13 February 2007 certain provisions laid down in the law of 17 December 2010 relating to UCIs in order to afford SIFs some opportunities which UCIs governed by the law of 17 December 2010 already have. Among these opportunities, the ability given to umbrella SIFs to invest under certain conditions in other compartments of the same entity is of particular interest.

3.5. Law of 3 July 2012:

- **transposing Directive 2010/73/EU of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) and 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);**
- **amending the law of 10 July 2005 on prospectuses for securities;**
- **amending the law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market**

The law transposes Directive 2010/73/EU of 24 November 2010 amending the Prospectus Directive. The amendments introduced by this transposition concern, on the one hand, the law of 10 July 2005 on prospectuses for securities and, on the other hand, the law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

The following main new elements and amendments were introduced in the law of 10 July 2005:

- the reduction of the information to be disclosed when securities are offered to the public or admitted to trading on a regulated market by small and medium-sized enterprises;

- the reduction of the information to be disclosed when securities, guaranteed by a Member State, are offered to the public or admitted to trading on a regulated market;
- the adjustment and standardisation of the format and content of the summary of the prospectus;
- the clarification of the exemption from the obligation to publish a prospectus where the undertaking sells shares by using intermediaries or allocates shares to the staff;
- the harmonisation of the definition of "qualified investors" included in Directive 2003/71/EC with the notions of "professional client" and "eligible counterparties" included in Directive 2004/39/EC on markets in financial instruments;
- the suppression of the Annual Document, and
- the adaptation of certain thresholds which no longer correspond to market reality.

Moreover, the Delegated Regulations (EU) No 486/2012 and (EU) No 862/2012 amending the Prospectus Regulation became directly applicable in Luxembourg on 1 July 2012 and 22 September 2012, respectively. The amendments to the Prospectus Regulation concern mainly:

- the determination of the format and content of the summary of the prospectus;
- the determination of the format of the base prospectus;
- the introduction of new proportionate schedules for rights issues, small and medium-sized enterprises, companies with reduced market capitalisation and credit institutions complying with certain criteria defined in the Prospectus Directive;
- the information to be disclosed on the consent to use the prospectus for "offers in series", and
- the information on underlying indexes and the requirement for a report prepared by a *réviseur* (auditor) on profit estimates.

As regards the amendments to the law of 11 January 2008 on transparency requirements for issuers of securities (Transparency Law), the threshold set in order to benefit from the exemption laid down in Article 7(1)(b) of the law was increased.

Indeed, the issuers whose home Member State is Luxembourg and who issue debt securities the denomination per unit of which is less than EUR 100,000 (or its equivalent in another currency) are subject to all transparency requirements previously applicable to issuers whose home Member State is Luxembourg and who issue debt securities the denomination per unit of which is less than EUR 50,000 (or its equivalent in another currency), notably the requirements to prepare annual and half-yearly financial reports. Article 7(4) of the Transparency Law provides a grandfathering clause which applies to debt securities the denomination per unit of which is at least EUR 50,000 (or its equivalent in another currency) and which have been admitted to trading on a regulated market before 31 December 2010, for as long as such debt securities are outstanding.

3.6. Law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public

The law of 21 July 2012 (Squeeze-out/sell-out Law) governs mandatory squeeze-out and mandatory sell-out transactions of certain classes of securities of companies whose registered office is in Luxembourg, where all or part of these securities are admitted to trading on a regulated market in one or several Member States, were admitted but no longer are, or were offered to the public under the conditions laid down in this law.

The Squeeze-out/sell-out Law sets up a mandatory squeeze-out right and a mandatory sell-out right within the limits and conditions laid down in this law. The squeeze-out right provides, in particular, the right for the majority shareholder of a company to require from the holders of the remaining securities of this company and, where appropriate, the holders of some transferable securities linked to these securities to sell their securities and the other transferable securities concerned at a fair price. The sell-out right gives the holder of the remaining securities of these companies the right to force the majority shareholder to buy their shareholdings at a fair price.

The Squeeze-out/sell-out Law supplements the mandatory squeeze-out and sell-out procedures already set up in the law of 19 May 2006 on takeover bids; however, its scope is larger than that of the law of 19 May 2006. In addition, in view of the provisions of Article 2(3) of the Squeeze-out/sell-out Law, the mandatory squeeze-out and sell-out procedures referred to in the laws and regulations shall not apply simultaneously.

Practical and temporal limits restrict the scope of the Squeeze-out/sell-out Law. Indeed, the law is only applicable to companies whose registered office is in Luxembourg and whose securities are or were admitted to trading on a regulated market in one or several Member States or were offered to the public. However, open-end investment funds mentioned in Article 2(2) do not fall within the scope of the law. Moreover, the application of the provisions as regards mandatory squeeze-out or sell-out presupposes the existence of a majority shareholder that the law defines as "any natural or legal person, holding alone or with persons acting in concert with it, directly or indirectly, at least 95 percent of a company's capital carrying voting rights and 95 percent of a company's voting rights". "Securities" refers to "transferable securities carrying voting rights in a company, including depositary receipts in respect of shares carrying the possibility to give voting instructions"; non-voting shares and profit shares are excluded from the definition.

As regards the temporal scope of the Squeeze-out/sell-out Law, Article 2 provides, in principle, a time limit of five years as from the date of the withdrawal of securities from trading on a regulated market or, where appropriate, as from the first day of the offer to the public of securities. However, transitional provisions depart from this general rule during three years as from 1 October 2012. During this transitional period, some conditions of mandatory squeeze-out and sell-out are not applicable, in particular the withdrawal from trading of securities for less than five years or the holding of additional securities by a majority shareholder in order to exercise the right of mandatory sell-out.

The mandatory squeeze-out and sell-out procedures are divided in several phases, each of them having a certain number of notification, communication and/or publication requirements to be complied with by the different parties concerned, among which the majority shareholder, the company concerned by these procedures and the holders of remaining securities or/and transferable securities. Common characteristics of these two procedures include, among others, the requirement for the majority shareholder to appoint an independent expert to draw up a valuation report of the securities following the exercise of the mandatory squeeze-out or sell-out right, the opposition right given to the holder of the securities concerned by these procedures and the CSSF's decision-making power regarding the fair price of the securities in case of opposition.

The CSSF is the competent authority to ensure that the provisions of the Squeeze-out/sell-out Law are applied. In this respect, it has all the necessary powers to perform the relevant duties. The CSSF may resort to administrative sanctions by imposing fines and to disclosing measures, opinions or penalties that have been taken or imposed for infringement of the provisions adopted pursuant to this law.

In the context of the Squeeze-out/sell-out Law, it should also be referred to Circular CSSF 12/545 of 1 October 2012 on the entry into force of this law. This circular explains in a succinct and general manner the scope of this new law, the procedures for mandatory squeeze-out and sell-out of securities, as well as notification, information, publication and communication requirements incumbent on the parties concerned by such transactions. A form for the notification by the majority shareholders in accordance with Articles 3(1) and 10(1) of the Squeeze-out/sell-out Law is appended to the circular.

3.7. CSSF Regulation N° 12-01 of 13 August 2012 laying down detailed rules for the application of Article 42a of the law of 13 February 2007 relating to specialised investment funds concerning the requirements regarding risk management and conflicts of interest

The regulation is further detailed under item 3.1. of Chapter V "Supervision of undertakings for collective investment".

3.8. CSSF Regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing

The regulation is further detailed under item 1.3. of Chapter XIV "Fight against money laundering and terrorist financing".

3.9. Law of 21 December 2012 transposing Directive 2010/78/EU of 24 November 2010 amending Directives 98/26/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 Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Omnibus Directive)

The transposition into Luxembourg law of Directive 2010/78/EU on the powers of the three European Supervisory Authorities amended several laws in order to allow the Commissariat aux Assurances and the CSSF to fulfil their duties and tasks as members of the European System of Financial Supervision.

For example, the law of 21 December 2012 removes the legal obstacles preventing the exchange of information between the national supervisory authorities, the European Supervisory Authorities and the European Systemic Risk Board. In addition, it requires the communication of certain information to the European institutions so that they can carry out their tasks. These provisions of Directive 2010/78/EU were transposed into the law of 6 December 1991 on the insurance sector, into the CSSF organic law and into several laws relating to financial services.

The European Supervisory Authorities are also competent to settle disagreements between national supervisory authorities in the cases specifically listed in the sectoral directives. Thus, where a national competent authority disagrees with the procedure or content of an action or inaction by another national competent authority in areas specified in EU legal acts and where the relevant legislation requires cooperation, coordination or joint decision-making by national competent authorities from more than one Member State, the European Supervisory Authorities, at the request of one of the competent authorities concerned, may assist the authorities in reaching an agreement. In the event that such disagreement persists, the European Supervisory Authorities are able to settle the matter. The law makes the necessary adjustments to the Luxembourg laws so that the Commissariat aux Assurances and the CSSF are able to refer disagreements to the European Supervisory Authorities.

Moreover, the law enhances the competences of the Commissariat aux Assurances and the CSSF with respect to the protection of financial services users. Since one of the tasks of the European Supervisory Authorities is to foster protection of depositors, investors, policyholders and members of pension schemes, the national authorities had to receive appropriate powers in this area to contribute to this task. The operating area of the Commissariat aux Assurances and the CSSF is restricted to the areas under their respective legal competences. In this context, the Commissariat aux Assurances and the CSSF contribute to promoting the protection of financial services users, including consumers as defined in the Consumer Code, without questioning the horizontal competence of the Ministry of Economy responsible for consumer protection.

Finally, the law clarifies several technical points in the laws relating to financial services. Thus, for example, the notion of “share capital”, “own funds” and “own assets” are specified in the law of 5 April 1993 on the financial sector. Moreover, in Article 54(1) of the same law, the provision which confers on the CSSF the power to set rules regarding the scope of the audit mandate and the content of the audit report concerning the annual accounting documents was reintroduced as it existed before the amendments made by the law of 18 December 2009 concerning the audit profession; this provision was also introduced in other sectoral laws relating to financial services.

3.10. Law of 21 December 2012 relating to the Family Office activity

The law introduces a new category of specialised PFS in the law of 5 April 1993 on the financial sector, namely Family Offices.

Following the entry into force of the above-mentioned law, only members of the regulated professions listed in Article 2 of the law are, henceforth, authorised to carry out the Family Office activity and to make use of the title “Family Office”. The professions listed in Article 2 are the following: credit institutions, investment advisers, private portfolio managers, specialised PFS authorised as Family Office, as domiciliation agent of companies

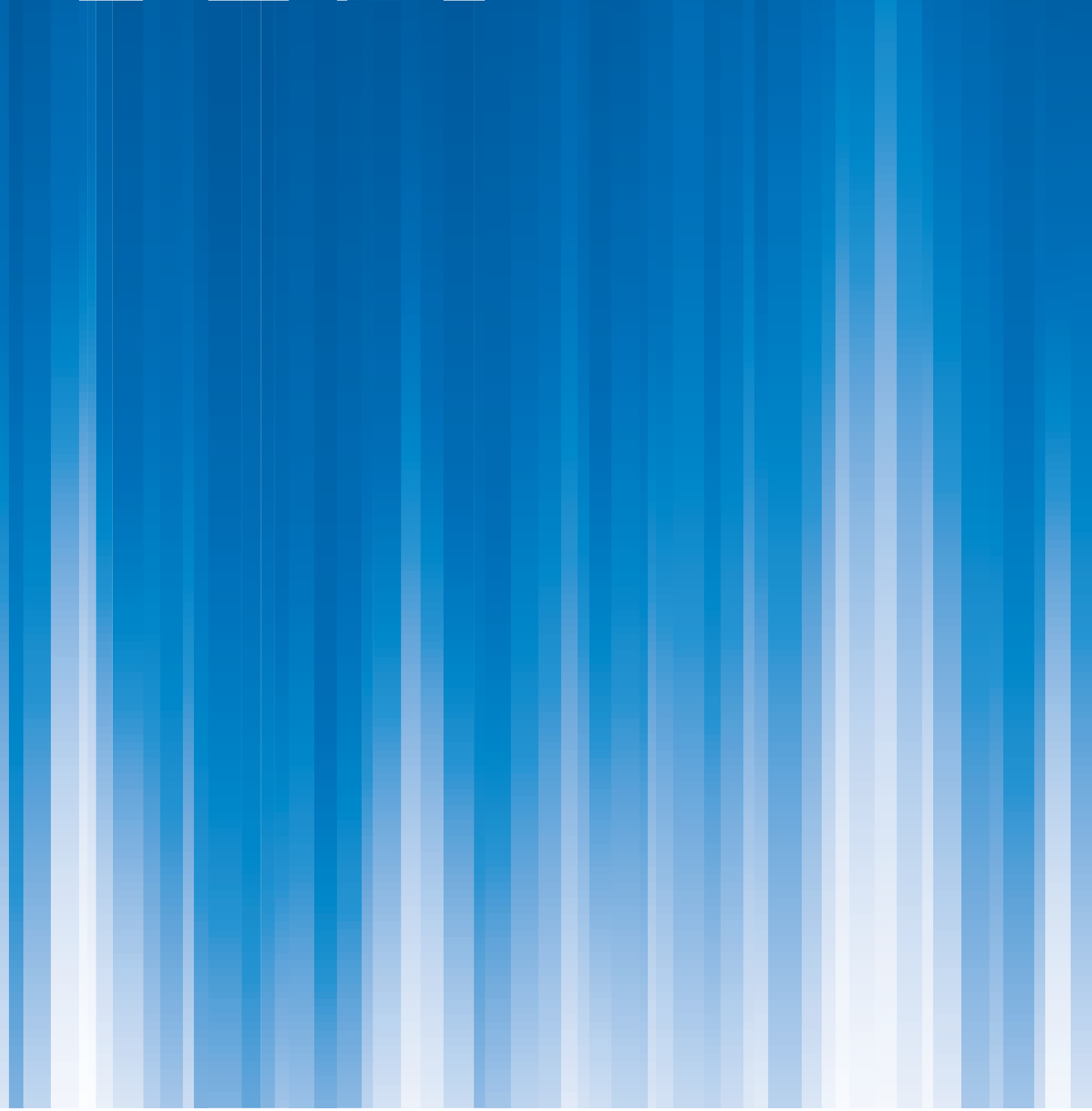
or as professional performing services of setting-up and management of companies, attorneys-at-law (*avocats à la Cour*) included in list I and European lawyers pursuing their professional activities under their original professional title included in list IV of the list of lawyers referred to in Article 8(3) of the law of 10 August 1991 on the legal profession, notaries, *réviseurs d'entreprises* (statutory auditors) and *réviseurs d'entreprises agréés* (approved statutory auditors) and chartered accountants.

In the press release of 21 January 2013, the CSSF drew to the attention of the persons established in Luxembourg and already exercising the Family Office activity without being member of one of the professions mentioned above, that they must comply with the new law by 30 June 2013 by submitting, where appropriate, a request for being authorised as Family Office within the meaning of Article 28-6 of the law of 5 April 1993 on the financial sector.

LIST OF ABBREVIATIONS

AGDL	Association pour la garantie des dépôts, Luxembourg - Deposit Guarantee Association Luxembourg
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Managers
AML/CFT	Anti-Money Laundering and Counter-Terrorist Financing
ASSEP	Pension Savings Association
BCL	Banque centrale du Luxembourg - Luxembourg Central Bank
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
CRR/CRD IV	Draft directive on the access to the activity of credit institutions and prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (CRD IV) and draft regulation on the prudential requirements applicable to credit institutions and investment firms (CRR Regulation)
CSSF	Commission de Surveillance du Secteur Financier - Financial sector supervisory commission
EBA	European Banking Authority
EC	European Community
ECB	European Central Bank
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EGAOB	European Group of Auditors' Oversight Bodies
EIOPA	European Insurance and Occupational Pensions Authority
EMI	Electronic Money Institution
EMIR	European Market Infrastructure Regulation
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange Traded Fund
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FCP	Fonds commun de placement - common fund
FINREP	Financial Reporting
FIU	Financial Intelligence Unit
FSB	Financial Stability Board
IAASB	International Auditing and Assurance Standards Board
IAPN	International Auditing Practice Note
IAS	International Accounting Standards
IASB	International Accounting Standards Board

ICAAP	Internal Capital Adequacy Assessment Process
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
MiFIR	Markets in Financial Instruments Regulation
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
PIE	Public Interest Entity
SBL	Société de la Bourse de Luxembourg S.A. - Luxembourg Stock Exchange
SEPA	Single European Payments Area
SEPCAV	Pension savings company with variable capital
SIAG	Investment company which has not designated a management company within the meaning of Article 27 of the law of 17 December 2010
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
SIF	Specialised Investment Fund
SRP	Supervisory Review Process
SSM	Single Supervisory Mechanism
TREM	Transaction Reporting Exchange Mechanism
UCI	Undertaking for collective investment
UCITS	Undertaking for collective investment in transferable securities
VaR	Value-at-Risk
XBRL	eXtensible Business Reporting Language



COMMISSION DE SURVEILLANCE
DU SECTEUR FINANCIER

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