

Implementation of CRD V into Luxembourg law

Key points of action for Luxembourg-based actors

Following the implementation of CRD Vⁱ into Luxembourg law by the act of 20 May 2021 (the **Act**) and the entry into force of most of the provisions of the Act on 25 May 2021ⁱⁱ, the CSSF issued a **statement**, on 18 June 2021, summarising the main amendments introduced by the Act in the act of 5 April 1993 on the financial sector as amended (the **Banking Act**).

The purpose of this note is to raise awareness on the key points of actionⁱⁱⁱ for Luxembourg-based actors in light of the amendments introduced in the Banking Act.

	Luxembourg-based credit institutions and investment firms ^{iv}	Luxembourg-based (mixed) financial holding company
Governance 	<p>Review and, if necessary, amend internal control arrangements to ensure:</p> <ul style="list-style-type: none"> – an appropriate monitoring of the suitability of the members of the management body of the Institution^v to guarantee that they remain fit and proper^{vi} – the proper documentation of loans granted to members of the management body or related parties^{vii} 	<p>Review and, if necessary, amend internal control arrangements to ensure:</p> <ul style="list-style-type: none"> – an appropriate monitoring of the suitability of the members of the management body of the (mixed) financial holding company to guarantee that they remain fit and proper^{viii}
Remuneration 	<p>Review and, if necessary, amend the remuneration policy and related internal arrangements to:</p> <ul style="list-style-type: none"> – ensure that they are gender neutral^{ix} – assess whether the requirements of the Banking Act apply to subsidiaries on an individual or consolidated basis^x – ensure that they apply to at least all the persons who should be considered as material risk takers^{xi} – determine whether the Institution may be exempted from certain rules on variable remuneration^{xii} – ensure, if the Institution does not benefit from an exemption and is significant within the meaning of article 38-2 (3) of the Banking Act, that the deferral applicable to the variable remuneration payable to the members of the management body and of the authorised management is not less than 5 years^{xiii} 	
Own funds, liquidity and risk management 	<p>Review and, if necessary, amend the own funds policy and related internal arrangements to ensure that the Institution can comply with applicable requirements in case the CSSF^{xiv} (i) requires additional own funds (in particular in terms of quality of such own funds and incompatibilities of use or in a situation of excessive leverage)^{xv} or (ii) make recommendations on additional own funds^{xvi}</p> <p>Review and, if necessary, amend the liquidity policy and related internal arrangements to ensure that the institution can comply with specific requirements^{xvii} imposed by the CSSF^{xviii}</p>	

Luxembourg-based credit institutions and investment firms ^{iv}	Luxembourg-based (mixed) financial holding company	
	<p>As the SREP provisions of the CSSF Regulation n° 15-02 have been fully integrated into the Banking Act with some minor adjustments, review and, if necessary, amend:</p> <ul style="list-style-type: none"> – the own funds strategy, policy and related internal arrangements (including related internal control ones) – the liquidity strategy, policy and related internal arrangements (including related internal control ones) – the risk management policy and related internal arrangements – the policy on cooperation with the supervisory authority for prudential control and assessment purposes and related internal arrangements <p>to ensure compliance with the adjusted requirements^{xix}.</p>	
<p>Authorisation</p> 		<p>Assess whether an authorisation is requested to be filled and, where necessary, file the necessary authorisation request with the CSSF or, if the Luxembourg (mixed) financial holding company belongs to a significant group within the meaning of the SSM, the ECB^{xx}</p> <p>Once authorised, have in place adequate internal arrangements for consolidated prudential supervision purposes and monitor ongoing compliance with such requirements^{xxi}</p>
<p>Reporting</p> 	<p>If the Institution is a branch of a third-country credit institution, review and, if necessary, amend the internal procedures on reporting to the authorities to comply with the new annual reporting obligation towards the CSSF^{xxii}</p> <p>If the CSSF requests additional or more frequent reporting in respect of own funds, liquidity or leverage, review and, if necessary, amend the internal procedures on reporting to the authorities^{xxiii}</p>	<p>Review and, if necessary, amend the internal procedures on reporting to authorities to comply with the new reporting obligation towards the supervisor on a consolidated basis as regards the conditions for authorisation or for exemption respectively^{xxiv}</p>
<p>Consolidated supervision</p> 	<p>Assess whether the Institution is subject to consolidated supervision in Luxembourg^{xxv}</p> <p>If the Institution belongs to a third-country group (i) which holds at least another EU credit institution or EU CRR investment firm (“Other EU Institution”) and (ii) where the combined total value of the Luxembourg Institution’s assets, of the assets of the Other EU Institution(s) and of the assets of the EU branches of the third-country group equal to or are greater than EUR 40 billion, the Institution must ensure that its group has an intermediate parent company in the EU^{xxvi}</p> <p>If the intermediate parent company is set-up in Luxembourg it must, be a duly authorised Luxembourg credit institution or a (mixed) financial holding company (see opposite column, under “Authorisation”) ^{xxvii}</p>	
<p>Capital conservation measures</p> 	<p>If the Institution is categorised as a systematically important institution, review and, if necessary, amend the internal own funds policy and related internal arrangements to ensure compliance with the new requirements (in particular on the required level of own funds buffer for systematically important institutions other than global ones or on the calculation and sectoral dimension of the systemic risk buffer)^{xxviii}.</p>	

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- i Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures
 - ii Where a different date of entry into force applies, it is specified in this note
 - iii The key action points outlined in this note are not exhaustive. Other provisions of the Act may be relevant for your Institution(as defined below)/(mixed) financial holding company and you must not rely solely on this note to satisfy the requirements of the Act with regards to your Institution/ (mixed) financial holding company
 - iv This section applies to Luxembourg credits institutions and Luxembourg investment firms that are, unless otherwise specified, CRR investment firms. It also applies to Luxembourg branches of third-country credit institutions or CRR investment firms
 - v Institution means a Luxembourg based credit institution or investment firm
 - vi Articles 7 (1) and 19 (1bis) respectively of the Banking Act. This requirement applies to all investment firms generally
 - vii Article 38-1 of the Banking Act
 - viii Articles 51 (4) of the Banking Act
 - ix Articles 5 (1bis) and 17 (1bis) respectively of the Banking Act
 - x Articles 38 (5) and 38 (6) respectively of the Banking Act
 - xi Article 38-5 (2) of the Banking Act
 - xii Article 38-6 (2) and 38-6 (3) of the Banking Act
 - xiii Article 38-6 (1) (m) of the Banking Act
 - xiv Or, as applicable, the ECB when the credit institution is subject to direct ECB prudential supervision
 - xv Article 53-3 of the Banking Act
 - xvi Article 53-4 of the Banking Act
 - xvii Article 53-5 of the Banking Act
 - xviii Or, as applicable, the ECB when the credit institution is subject to direct ECB prudential supervision
 - xix Articles 53-8 to 53-32 of the Banking Act
 - xx Article 34-2 (2) and (6) of the Banking Act
 - xxi Article 34-2 (5) of the Banking Act
 - xxii Article 32 (4bis) of the Banking Act
 - xxiii Article 53-1 (3) of the Banking Act
 - xxiv Article 34-2 (7) of the Banking Act
 - xxv Article 49 of the Banking Act
 - xxvi Article 34-4 (1), (4) and (5) of the Banking Act
 - xxvii Article 34-4 (3) of the Banking Act
 - xxviii Articles 59-4 to 59-14 of the Banking Act. Articles 59-13 ter, 59-13 quarter and 59-14 (1) of Banking Act enter into force on 1st January 2022

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.

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