

Banking - Luxembourg

New approval procedures for key function holders in credit institutions

Contributed by **NautaDutilh Avocats Luxembourg Sàrl**

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Introduction

Persons exercising key functions in credit institutions are subject to specific approval by the Luxembourg financial regulator, the *Commission de Surveillance du Secteur Financier* (CSSF). The CSSF recently published guidelines on the new prudential approval procedure, applicable as of February 6 2015.

In accordance with CSSF Circular 12/552, as amended, the following persons shall be subject to the approval procedure:

- directors;
- authorised managers; and
- persons in charge of internal control functions (ie, the chief compliance officer, chief risk officer and chief internal auditor).

Internal procedures relating to appointment of relevant persons

In order to ensure that all relevant persons fulfil the criteria pertaining to the required knowledge, skills, experience and good repute, each person shall be individually assessed by his or her relevant institution. The assessment will be conducted on the basis of the principles, policies and procedures governing the appointment and succession of the relevant persons that each institution is required to put in place. These principles and procedures must be documented in writing and comply with Circular 12/552 and the guidelines on the assessment of the suitability of members of the management body and key function holders published by the European Banking Authority.⁽¹⁾

Notification procedures

Appointment of relevant persons

Once the internal assessment of the relevant person to be appointed for the first time has been carried out, the institution shall provide the CSSF with an application file, including (without limitation) the following documents:

- a declaration of honour (available on the CSSF website);
- a copy of the relevant person's identity card or passport;
- an extract from his or her police records (not older than three months);
- a detailed and comprehensive curriculum vitae demonstrating the knowledge, skills and experience of the relevant person, as well as his or her availability for the mandate;
- confirmation from the institution that the appointment has been duly approved by the board of directors and complies with the abovementioned internal principles and procedures. The statement must also confirm that the appointment respects the internal policy governing conflicts of interest and has been preceded by an assessment of the relevant person; and
- any negative information or facts pertaining to the relevant person.

If the mandate of an already-approved relevant person is to be renewed and there is a change in the scope or nature of such mandate, the institution must provide the CSSF with a file containing documents and information reflecting the new situation as well as the information mentioned under the final two points above.

Relevant persons appointed as directors or authorised managers are subject to prior express

Authors

Josée Weydert



Jad Nader



Meliha Dacic



approval by the CSSF and may begin to perform their functions only after such approval has been given.

Departure of relevant persons

If a relevant person resigns from his or her position, the institution must immediately notify the CSSF of the resignation. A copy of the resignation letter and the reasons for the resignation must be included in the notification.

In case of the revocation of a relevant person's duties, the institution must immediately notify the CSSF by providing a detailed and comprehensive justification for such decision and by including in the notification a copy of the letter of revocation.

Processing of applications and notifications

The processing of applications and notifications pertaining to the appointment of directors and authorised managers differs depending on whether the institution is:

- a significant credit institution subject to the prudential supervision of the European Central Bank (ECB);⁽²⁾ or
- a credit institution not subject to the prudential supervision of the ECB.

The processing procedure for the appointment of the heads of internal control functions is the same for all institutions (as described below).

Credit institutions under ECB supervision

As before the entry into force of EU Regulation 1024/2013, applications for the approval of directors and authorised managers must be submitted directly to the CSSF. The application file will then be transferred to the ECB, which will assess the file with the joint supervisory team in accordance with Regulation 1024/2013. At the end of the assessment process, the ECB will directly notify the applying credit institution of the approval of the relevant person.

Credit institutions not supervised by ECB

Credit institutions not subject to the supervision of the ECB must submit their approval requests to the CSSF, which will conduct its assessment by taking into account the EBA guidelines. The CSSF will endeavour to notify the institution of its decision by way of a letter within one month of receipt of the complete application. The CSSF may request additional information, in which case the one-month period will be suspended and subsequently restarted. The new one-month period will begin on the date of receipt of the additional information by the CSSF.

At the end of the assessment period, the CSSF will notify the relevant institution of the approval of the relevant person. If the CSSF does not send notification within three months, the application is deemed to have been refused.

Appointment of heads of internal control functions

The assessment of applications for the appointment of persons in charge of internal control functions will be undertaken by the CSSF without distinction as to the nature of the applying institution.

Unlike the appointment of directors or authorised managers – which requires express prior approval of the CSSF – the CSSF's acceptance of the appointment of the heads of internal control functions is tacit. Indeed, the appointment of such persons is deemed accepted by the CSSF in the absence of a response within one month of the date of receipt of the application. Notably, the CSSF may at any time reconsider this tacit acceptance if – for example – information casting doubt on the good repute or professional competencies of the head of an internal function is brought to its attention.

Submission of documents to CSSF

The complete application files (including all requested information and documents) must be sent to the CSSF by registered mail. Any incomplete file which does not comply with the above requirements may be automatically rejected.

The CSSF has outlined that institutions which are significant in terms of size and internal organisation and the nature, scope and complexity of their activities (as set out in Article 91 of Directive 2013/36/EU⁽³⁾) must already comply with provisions relating to the number and nature of the mandates which may be held simultaneously by a director or authorised manager. The relevant directive has not yet been transposed into Luxembourg law and further information on this topic will be provided at a later stage.

For further information on this topic please contact [Josée Weydert](mailto:josee.veydert@nautadutilh.com), [Jad Nader](mailto:jad.nader@nautadutilh.com) or [Meliha Dacic](mailto:meliha.dacic@nautadutilh.com) at NautaDutilh Avocats Luxembourg Sàrl by telephone (+352 26 12 29 1) or email (josee.veydert@nautadutilh.com, jad.nader@nautadutilh.com or meliha.dacic@nautadutilh.com). The [NautaDutilh Avocats Luxembourg Sàrl website](http://www.nautadutilh.com) can be accessed at www.nautadutilh.com.

Endnotes

⁽¹⁾ EBA Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders, November 22 2012 (EBA/GL/2012/06).

⁽²⁾ In accordance with EU Regulation 1024/2013 (October 15 2013) conferring specific tasks on the

European Central Bank concerning policies relating to the prudential supervision of credit institutions.

(3) Directive 2013/36/EU (June 26 2013) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

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