

This coordinated text was drawn up by the CSSF for information purposes only. In case of discrepancies between the French and the English text, the French text shall prevail.

**Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies and amending:**

- 1) the Law of 5 April 1993 on the financial sector, as amended;
- 2) the Law of 8 December 1994 relating to:
  - the annual accounts and consolidated accounts of insurance and reinsurance undertakings incorporated under Luxembourg law;
  - the obligations regarding the drawing up and publication of accounting documents of branches of insurance undertakings incorporated under foreign law.

(Mém. A 2011, No 223)

as amended:

- by the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and transposing:
  - Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, 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 over-reliance on credit ratings; and implementing:
    1. Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;
    2. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
    3. Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies; and
  - amending:
    1. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    2. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;
    3. the Law of 10 November 2009 on payment services, as amended;
    4. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
    5. the Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of 16 September 2009; and
    6. the Law of 12 July 2013 on alternative investment fund managers, as amended.

(Mém. A 2016, No 39)

**Article 1. Transposition of Article 36 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies**

(...)<sup>1</sup>

The Commissariat aux Assurances has, *vis-à-vis* the persons referred to in Article 4(1), subparagraph 1 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, which are subject to its supervision, the powers provided for in Articles 46 and 101 of the Law of 6 December 1991 on the insurance sector, as amended.

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<sup>1</sup> Law of 15 March 2016

(Law of 15 March 2015)

“For the persons referred to in the first subparagraph of Article 4(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, subject to the supervision of the Commissariat aux Assurances, the latter, taking into account the nature, scale and complexity of these entities' activities, shall monitor the adequacy of their credit risk assessment processes, assess the use of contractual references to credit ratings and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on credit ratings, in line with the specific regulation applicable to them.”

**Article 2. Amendment of the Law of 5 April 1993 on the financial sector, as amended**

The Law of 5 April 1993 on the financial sector, as amended, shall be amended as follows:

1) The following phrase shall be added to Article 5(1a) after "including sound administrative and accounting procedures":

"and remuneration policies and practices allowing and promoting a sound and effective risk management,".

2) A new subparagraph 2 shall be added to Article 17(1a) which shall read as follows:

"For investment firms referred to in Articles 24-2 to 24-6, 24-7(3) and 24-9, the adequate internal control mechanisms laid down in the previous subparagraph include remuneration policies and practices allowing and promoting a sound and effective risk management.".

The current second subparagraph shall become the third subparagraph of Article 17(1a).

3) The following indents shall be added to the end of the first subparagraph of Article 53(2):

« – require the credit institution or the investment firm, respectively, to limit the variable remuneration as a percentage of total net income where this remuneration is not compatible with maintaining a sound capital base;

- require the credit institution or the investment firm, respectively, to use the net profits to strengthen its capital base.".

4) The following subparagraph shall be added to the end of Article 53(2):

"In order to determine the adequate level of own funds based on the control and assessment carried out within the framework of the prudential supervisory process, the CSSF verifies if a specific capital requirement needs to be imposed in addition to the prescribed minimum, in order to take into consideration the risks to which a credit institution or an investment firms, respectively, is or might be exposed, by taking into account the following:

(a) the quantitative and qualitative aspects of the internal capital adequacy assessment process;

(b) the provisions, procedures and mechanisms referred to in Article 5 and 17, respectively;

(c) the results of the control and assessment made within the prudential supervisory process.".

**Article 3. Transposition, for the insurance sector, of Directive 2009/49/EC of the European Parliament and the Council of 18 June 2009 amending Directives 78/660/EEC and 83/349/EEC of the Council as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts in the amended Law of 8 December 1994 relating to:**

**– the annual accounts and consolidated accounts of insurance and reinsurance undertakings incorporated under Luxembourg law;**

**– the obligations regarding the drawing up and publication of accounting documents of branches of insurance undertakings incorporated under foreign law.**

A paragraph 2a shall be added to Article 98 of the Law of 8 December 1994 relating to the annual accounts and consolidated accounts of insurance and reinsurance undertakings:

"2a. Any parent undertaking all subsidiary undertakings of which are not material for the purposes of Article 100(3), both individually and as a whole, shall be exempted from the obligation imposed in Article 92(1)."