



Commission de Surveillance
du Secteur Financier

FAQ Complaints

FREQUENTLY ASKED
QUESTIONS RELATING TO
CUSTOMER COMPLAINTS —
COMPETENCE, POWERS AND
PROCEDURE

Version dated 11 November 2016

FAQ Complaints

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FAQ Complaints

Question 1: What is the legal context of the CSSF's intervention as regards out-of-court complaint resolution?

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Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes provided for provisions to set a framework for the out-of-court resolution of consumer disputes in the Member States of the European Union.

The directive has been transposed into Luxembourg law through the Law of 17 February 2016 (Mémorial A, No 60 of 14 April 2016) introducing the alternative dispute resolution for consumer disputes into the Consumer Code and amending certain other legal provisions of the Consumer Code.

The CSSF adopted CSSF Regulation N° 16-07 (published in Mémorial A, No 228 of 11 November 2016) to take into consideration the new requirements of the Consumer Code in its legislation. The CSSF is now listed on the "list of qualified bodies" held by the Ministry of Economy in accordance with the new legislation.

CSSF Regulation N° 16-07 is an updated version of CSSF Regulation N° 13-02 relating to the out-of-court resolution of complaints, which remains applicable for claims filed with the CSSF before the entry into force of CSSF Regulation N° 16-07.

Question 2: In which cases is the CSSF competent to intervene in out-of-court complaint resolution?

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The CSSF is, in principle, competent to intervene in any dispute you may have as a customer of a professional supervised by the CSSF (bank, private portfolio manager, domiciliation agent, etc.) whenever said dispute is related to a professional's activity that is supervised by the CSSF.

You may confirm whether the entity referred to in your complaint is indeed supervised by the CSSF via the online tool "Supervised Entities".

The CSSF is not competent to handle complaints concerning entities of the insurance sector, the competent authority being in that specific case the Commissariat aux Assurances.

The handling of a complaint by the CSSF is subject to certain admissibility conditions (please refer to Article 4 of CSSF Regulation N° 16-07). In principle, complaints concerning the professionals' marketing or fee policy will not be handled by the CSSF.

Moreover, the following should be expressly confirmed to the CSSF:

- that your complaint has not been previously submitted to another alternative dispute resolution body, arbitrator, arbitration tribunal or Court, in Luxembourg or abroad;
- that you have previously filed a complaint with the concerned professional less than one year ago (cf. Question 4 hereafter).

Question 3: How to find out whether the entity referred to in your complaint is supervised by the CSSF?

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You may confirm whether the entity referred to in your complaint is indeed a professional supervised by the CSSF via the online tool "Supervised Entities".

Question 4: What are the different steps to follow before filling a complaint with the CSSF?

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Prior to filing an out-of-court complaint resolution request with the CSSF, the complainant must submit the complaint in writing to the professional, more specifically to the person responsible for customer complaint handling at the level of the management of the professional ("manager responsible for complaint handling").

The manager responsible for complaint handling holds a key function in the management of complaints by the professional. S/he must, for example, inform the relevant staff within the institution of the policy and procedures required under CSSF Regulation N° 16-07. The professional's internal procedure must provide for the manager responsible for complaint handling to be informed about all the complaints received by the institution, at whatever level it may have been received.

The manager responsible for complaint handling must also follow the handling of complaints internally.

In principle, the manager responsible for complaint handling should have the power to reach amicable settlement with the complainants.

The CSSF may intervene only if you have previously contacted the manager responsible for complaint handling and if you have not received a satisfactory answer (or no answer at all) within one month from the date the complaint was sent.

We ask you to attach to your request a copy of the dated letter or of the complaint email that you sent to the manager responsible for complaint handling, as well as a copy of the answer received, if any.

In any case, it should be preferable to contact the manager responsible for complaint handling beforehand, even if you have been in touch with other representatives or services of the professional.

This step allows the CSSF to ascertain that you have undertaken all the possible steps from your side to find a suitable solution to your issue.

Should you not know the name of the manager responsible for complaint handling within the institution concerned by your complaint, you may revert to the professional concerned who must transmit this information to you without delay.

Question 5: How can I contact the CSSF and submit my request?

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The request should be made in writing, and, in principle, any format is accepted by the CSSF. The request may be filed:

- either by filling in the form (PDF or online) available at the following address: <https://www.cssf.lu/en/customer-complaints/>
- or by mail (simple mailing, no registered letter required) to the following address: Commission de Surveillance du Secteur Financier 283, route d’Arlon L-2991 Luxembourg;
- or by e-mail at the following address: reclamation@cssf.lu. It is not necessary to come at our premises or to call to explain the issue, as the procedure is exclusively dealt with in writing.

Question 6: In which language must the request be submitted to the CSSF?

Modified on 7 September 2016

The request may be filed in Luxembourgish, German, English or French. The procedure will, in principle, be carried out in the language used by the complainant when filing the request.

Question 7: In which format must the request and the accompanying documents be filed with the CSSF and which documents must be included in the request?

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No specific format is required for filing the request with the CSSF, the only requirement is an application in writing. The request shall be supported by the following documents at least:

- a chronological and detailed description of the facts underlying the complaint and the steps you have already taken with the professional concerned by your complaint;

- a copy of the prior complaint you have addressed to the manager responsible for complaint handling (cf. Question 4 above);
- either a copy of the answer received from the professional to your complaint, or your written statement that you have not received any reply from the professional within one month from the date you have sent your complaint;
- a statement that you did not refer the matter to a Court, an arbitrator or an alternative out-of-court complaint resolution body in Luxembourg or abroad;
- a statement that you expressly agree to the request handling conditions of the CSSF as body responsible for the out-of-court resolution of your complaint; FAQ Complaints Version dated 11 November 2016 Page 4 / 7
- your express authorisation so that the CSSF can transmit your request (including the attachments) as well as any future correspondence or information to the professional concerned by your request;
- in the case you are represented by a person acting on your behalf for filing the complaint with the CSSF, a document showing that the person is legally entitled to act so has to be included in your request; in the case you are acting on behalf of a company, an official document stating that you are legally entitled to represent the company concerned (for example an abstract of the trade and companies register) must be included in your request;
- in any case (should another person act on your behalf or not), a copy of your valid ID document.

The copy of any other document you consider useful to the understanding of your dispute with the professional concerned may be attached to the request.

The documents to be included to your request may be attached to an email and sent to the following address: reclamation@cssf.lu.

Where a file is submitted per mail, please only send copies of the documents requested and keep the original documents for your records. The CSSF will inform you in due time in case original documents are needed. Generally speaking, the copies of the documents to be produced do not have to be certified.

Question 8: How does the CSSF communicate with the complainants?

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The handling of complaints is carried out in writing. When deemed useful for the examination of the complaint, the CSSF may invite all of the parties to the dispute to a meeting in order to allow them to present their observations orally to the CSSF.

Question 9: What are the powers of the CSSF?

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The mission of the CSSF consists in assisting the parties concerned to reach an amicable settlement in the conflict opposing them. However, the reasoned conclusions of the CSSF are not binding on the parties.

The powers of the CSSF are neither those of a judge or arbitrator passing a mandatory judgement nor those of an ombudsman in charge of defending the citizens' rights against public authorities.

The out-of-court complaint resolution procedure by the CSSF cannot be considered as a mediation procedure within the meaning of the Law of 24 February 2012 introducing the mediation in civil and commercial matters.

Question 10: Is the handling of complaints charged by the CSSF?

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No, the handling of complaints is free of charge. Moreover, no charges will be reimbursed to the parties.

Question 11: Can you be represented or assisted by a lawyer, a relative or an association?

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Yes.

This is not a requirement, but you may be represented throughout the different stages of the procedure by a lawyer or a Luxembourg or foreign adviser, by a relative or an association, as for example a consumer protection association. No specific qualification is required for this third party.

If your complaint refers to several persons or, for example, an omnibus account, a power of attorney given by all the persons concerned must be included in the request for the out-of-court complaint resolution in order to allow, where necessary, one single person to represent them all.

These powers of attorney are important to allow the CSSF to verify if all the persons concerned are informed of the procedure and if they have all given their consent to submit the request.

Question 12: Can the CSSF recommend a lawyer in Luxembourg?

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The CSSF does not provide such information.

However, you may view the list of lawyers of the Luxembourg Bar at www.barreau.lu.

Question 13: Is there a minimum amount required in order for the complaint to be dealt with by the CSSF?

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There is no minimum amount for the CSSF to deal with your complaint.

Question 14: How long does the out-of-court resolution procedure last with the CSSF?

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In principle, the CSSF issues its reasoned conclusions within 90 days from the date when the request is considered complete, i.e. when all the documents and information necessary to the examination of the request have been received by the CSSF, including any explanations that the CSSF may specifically request to the professional concerned by the complaint.

The CSSF may ask additional questions to the parties, or request additional documents, even after the request has been considered as being complete.

If the complaint proves to be highly complex, the CSSF may extend the 90-day period by another 90 days. In this case, the CSSF informs the parties of the extension as soon as possible.

Question 15: What is the spirit in which the procedure unfolds?

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Respect and courtesy are the key elements to allow reaching an amicable settlement of the complaint.

The CSSF may put an end to the procedure if it finds that your request to the CSSF was only directed at obtaining documents to set up a file in preparation of a future legal action.

Question 16: Is the out-of-court resolution procedure of my request impacted if the CSSF finds a prudential issue at the level of the professional?

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No.

In the case where, within the context of the examination of a request, the CSSF agents notice that a question of a prudential nature exceeding the framework of the request arises, they transmit the required information internally for that purpose and the CSSF may follow up as part of its prudential supervision. The follow-up by the CSSF as part of the prudential supervision cannot be disclosed to the parties due to professional secrecy. The out-of-court resolution procedure is, in principle, not affected by any possible investigations the CSSF may undertake in the context of its prudential supervision.

If your request reveals a prudential issue at the level of the professional, the agents in charge of your request will transmit the required information to the competent agents.

Your procedure will continue regardless of the evolution of the possible prudential supervision issue.

Question 17: How should the reasoned conclusion letter by the CSSF be interpreted?

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Article 5(9) of CSSF Regulation N° 16-07 provides that the procedure ends with the sending of a reasoned conclusion letter.

If the CSSF comes to the conclusion that your request is not justified, the conclusion letter will indicate the reasons based on which the CSSF considered your complaint as unfounded. The CSSF's reasoned conclusion is not binding and does not exclude the possibility to seek remedies through legal proceedings with the competent Courts against the professional for the same case.

If the CSSF concludes that the request is totally or partly justified, the conclusion letter will indicate the reasons for which the CSSF considered the request as partly or totally justified and it will ask the parties to contact each other to settle their dispute considering the reasoned conclusion. The CSSF's reasoned conclusion is not binding on the professional and the complainant, and you both still have the possibility to seek remedies through legal proceedings after the CSSF has issued its reasoned conclusion.



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Question 18: Is the CSSF member of an international group dealing with investor protection and/or mediation?

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The CSSF is member of FIN-NET, a financial dispute resolution network, which is composed of out-of-court complaint schemes established in countries in the European Economic Area (i.e. Member States of the European Union, Iceland, Liechtenstein and Norway). These schemes are responsible for handling disputes between consumers and financial service providers such as banks, insurance companies, investment companies and others. This network was set up by the European Commission in 2001.





Commission de Surveillance du Secteur Financier

283, route d'Arlon

L-2991 Luxembourg (+352) 26 25 1-1

direction@cssf.lu

www.cssf.lu