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ANNUAL REPORT 2002

LEGAL ACTIVITIES

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Legal activities of the Bank encompass the general follow-up of legislative evolution within its scope of powers at European and national level. They consist more specifically in contributing to the elaboration and implementation of legal instruments within the Eurosystem. They also include advisory activities, more specifically with respect to the consultative mission assigned to the Governing Council by article 105, indent 4 of the Treaty establishing the European Community. They finally relate to the follow-up of litigations.

7.1 New legislation

7.1.1 European and international legislation

7.1.1.1 Legislation in force

Among European and international laws enacted in 2002, the market abuse directive, the financial conglomerate directive as well as the take-over bid directive have contributed to the achievement of the Action Plan for Financial Services.

a) Market Abuse

The directive[1] lays down common rules for combating market abuse and ensures the integrity of the European financial markets (Annual report of the BCL, 2001, p. 181 and 182). It notably defines the constituent elements of insider dealing. It also organises the conduct of efficient proceedings designed in order to, on the one hand, ensure the compliance with codes of conduct and, on the other hand, harmonise sanctions. Member States will have 18 months, as from the entering into force of this directive, to transpose it into national law.

b) Financial conglomerates

The directive[2] takes into consideration international recommendations on supervision of financial conglomerates adopted in the framework of the G-10 and under the auspices of the BIS. It aims at reinforcing and harmonising prudential supervision of large financial groups. The directive provides for the appointment of competent leaders of good repute, the conduct of appropriate internal control mechanisms and risk management procedures and the designation of a single supervisory authority, in order to coordinate the overall supervision of the conglomerate. All this has to be carried out in cooperation with the other national supervisory authorities. This directive must be transposed into national law within 18 months, following its entering into force.

c) Prospectuses

The directive[3] – its main features were already described in the 2001 BCL Annual Report (p. 182 and 183) – evolved as follows in 2002:

- The possibility for the Member States to apply their own national rules for certain types of securities issuances (limited offers of small and medium-sized enterprises and credit institutions in general);
- The freedom of choice of the competent authority for issuers of covered warrants;
- The new conditional express exemption to publish a prospectus for securities, already traded on the stock market of a Member State when the issuer itself or a third party decides to admit them to trading in another Member State;
- The five-year transitional period, in order to allow Member States to align their national rules on the new regime.

1 Common position (EC) No 50 /2002 adopted by the Council on 19 July 2002 with a view to adopting a Directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) (2002/ C 228 E/03)

2 Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35 11.2.2003, 1)

3 Despite the Common position adopted by the Council at the end of March 2003, with a view to adopting Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, the text of this directive was not available on the date of publication of this annual report.

d) Financial collateral arrangements

The directive[4] lays down a minimal validity and enforceability regime for financial collateral arrangements, largely defined as collateral arrangements made by any legal entity (private or public) in the form of cash or financial instruments, by way of security interest or by way of title transfer, including repo transactions.

To the extent that this directive favours the integration and the cost efficient functioning of financial markets, it increases the freedom to provide services and the freedom of capital movements in the single financial market.

In its opinion, dated 13 June 2001, the ECB suggested extending the scope of this directive to all types of eligible assets for credit operations within the Eurosystem, including loans granted in the form of bank loans. The European Parliament and the Council rejected this suggestion, insisting that the financial collateral arrangements, subject to the directive, relate to cash or financial instruments. Member States will have 18 months, running as from the publication of this directive, in order to implement it into national law.

e) Distance marketing of consumer financial services

In order to increase consumer confidence in the use of techniques for the distance marketing of financial services, the directive[5] achieves the convergence of national rules of Member States in this sector.

The directive consolidates and complements the pre-existing legal framework in order to facilitate the smooth operation of the internal market and to attain an appropriate level of consumer protection. More specifically, the directive grants consumers a non-discriminatory access to a wide range of financial services, defined as any service of a banking, credit, insurance, personal pension, investment or payment nature.

Member States have to transpose this directive into national law within 2 years as from the entering into force of the directive.

f) The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary

The text of the Convention on the law applicable to certain rights in respect of securities held with an intermediary (hereafter "the Convention") was signed in December 2002 in The Hague, on the occasion of a diplomatic conference, attended by a Luxembourg delegation. The objective of the Convention is twofold:

(i) On the one hand, to provide legal certainty and predictability as to the law applicable to securities, which are now commonly held through clearing and settlement systems or other intermediaries;

(ii) On the other hand, to reduce legal risk, systemic risk and associated costs in relation to cross-border transactions involving securities held with an intermediary.

For the determination of the law applicable to securities held with an intermediary, the Convention refers to the principle of "Place of Relevant Intermediary Approach" (PRIMA), deemed as the most adequate to provide the required legal certainty and predictability. The Convention restricts however the scope of application of this approach to the following issues (article 2 of the Convention):

- "The legal nature and effects against the intermediary and third parties of the rights resulting from a credit of securities to a securities account;
- The legal nature and effects against the intermediary and third parties of a disposition of securities held with an intermediary;
- The requirements, if any, for perfection of a disposition of securities held with an intermediary;
- Whether a person's interest in securities held with an intermediary extinguishes or has priority over another person's interest;
- The duties, if any, of an intermediary to a person other than the account holder who asserts in competition with the account holder or another person an interest in securities held with that intermediary;

4 Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, (OJ L 168 27.06.2002, 43)

5 Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (JO L 271, 9.10.2002, 16)

- The requirements, if any, for the realisation of an interest in securities held with an intermediary; and
- Whether a disposition of securities held with an intermediary extends to entitlements of dividends, income or other distributions, or to redemption, sale or other proceeds."

Pursuant to article 4, first indent of the Convention, the law applicable to all issues specified here-above is "the law in force in the State expressly agreed in the account agreement as the State whose law governs the account agreement or, if the account agreement expressly provides that another law is applicable to all such issues, that other law."

The law designated in accordance with this provision applies only if the relevant intermediary has, at the time of the agreement, an office in that State, which exercises activities relating to securities, enumerated in article 4, or "is identified by an account number, bank code, or other specific means of identification as maintaining securities accounts in that State."

g) Fight against terrorism and financial sanctions

In 2002, several measures were adopted at the European level, in order to fight against terrorism and its financial resources.

The Council has adopted four decisions, implementing article 2, indent 3 of the Regulation 2580/2001 imposing certain specific measures directed against certain persons and entities in the framework of the fight against terrorism.

The Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, was modified seven times by European regulations.

In 2002, the Council Regulation (EC) No. 1081/2000 prohibiting the sale, supply, and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country was amended by the Commission Regulation (EC) No. 1883/2002 of 22 October 2002. The Council Regulation (EC) No. 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe was modified three times through European regulations adopted in 2002.

The Council Regulation (EC) No.1705/98 of 28 July 1998 relating to the interruption of certain economic relations with Angola, in order to induce the *União Nacional para a Independência Total de Angola* (UNITA) to comply with its duties in the peace process, which repealed the Regulation No. 2229/97, was modified twice in 2002.

In a communication of the ECB Governing Council of 1st October 2001, the Eurosystem committed itself to undertake everything within its power to contribute to the adoption, implementation and execution of measures against the use of the financial system for terrorist activities.

On 28 June 2002, the BCL issued circular letter No. 2002/172, entitled "Protection of payment systems and securities settlement systems against crime and terrorism". This circular letter contains an annex, inventorying the legislation applicable in Luxembourg, including the texts specified here-above. This annex, which has an information purpose and is regularly updated, is available on the BCL website www.bcl.lu.

7.1.1.2 Legislation in preparation

a) Takeover bids

After the European Parliament rejected a first proposal for a directive on takeover bids in July 2001, the European Commission presented a new proposal on 2 October 2002. This aims to strengthen the legal certainty of these transactions and to ensure protection for minority shareholders[6].

The ECB, on its own initiative, provided the Commission with its comments in January 2003. The ECB

6 Proposal for a Directive of the European Parliament and of the Council on takeover bids (COM (2002)534 final)

supports the project and this without prejudice to its formal power of consultation, based on article 105 of the Treaty. The ECB requests that the directive expressly provide that it is not applicable to central banks, in view of their mission of public interest.

b) Investment services and regulated markets

The proposal[7] – designed to replace the investment services Directive adopted in 1993, and amended in 1995 and 1997 – follows the Communication of the Commission of 16 November 2000 (discussed in the BCL annual report 2001, p. 180 et 181).

This proposal aims to revise and complete the existing legislation in order to address financial markets efficiently and comprehensively, and in accordance with their recent evolution.

More specifically, this proposal seeks, on the one hand, to harmonise national rules, in order to allow effective mutual recognition of investment firms and, on the other hand, to ensure a high protection of investors in their relation with stock markets, other order-execution platforms and investment firms.

Practically, this proposal completes the list of financial instruments traded on regulated markets and among investment firms. It also extends the range of investment services, for which an agreement is required, by including notably investment advice and, as non-core service, financial analysis or research. In addition the proposal authorises investment firms to internalise the orders of their clients, on condition that the investment firm is able to demonstrate that such internalisation is in the client's interest.

With a view to a consistent enforcement within the EU, the new proposal sets up minimal rules for the attribution of responsibilities and powers at the disposal of national authorities. It creates also efficient real-time co-operation mechanisms in order to investigate and prosecute infringements of obligations provided for by the directive, by reinforcing the duty to co-operate of competent authorities *via* information exchange and joint investigations.

Insofar as this proposal impacts eligible assets in monetary policy operations of the Eurosystem, the ECB shall be consulted. One should note, however, that this proposal would not apply to the members of the ESCB and other national bodies performing similar functions charged or intervening in the management of the public debt.

c) Taxation of savings income

The proposal for a directive on taxation of savings income[8] aims at ensuring a minimum level of taxation on interest payments in each Member State to natural persons with tax residence in another Member State. It does not apply to nationals of non-EU states. A political agreement was reached on 21 January 2003 at the ECOFIN level.

This agreement provides for an exchange of information among 12 of the 15 Member States, while Luxembourg, Belgium and Austria may operate a withholding tax system as long as six other countries and territories (*i.e.*, Switzerland, Liechtenstein, Monaco, San Marino, Andorra and the United States) do not share information based on OECD 2002 rules. The withholding tax rate to be applied will be of 15% between 2004 and 2007, 20% between 2007 and 2010 and finally 35% as from 2010.

The agreement of the 15 Member States is subject to an agreement with Switzerland, which should apply the same withholding tax rates under the same conditions as the EU. The exchange of information among authorities on bank accounts held in the EU by a natural person resident of another Member State shall start in 2004.

d) Single payment area

In its document entitled "A possible legal framework for a single payment area in the internal market", the Commission assessed the necessity of a global legal framework for retail payments in the internal market. The objective of such a framework would be to increase the efficiency and security of payment means and systems - with a view to greater consumer confidence - and to ensure fair competition among the players on this market. The Commission should launch a general consultation on this topic in 2003.

7 Proposal for a Directive of the European Parliament and of the Council on investment services and regulated markets, and amending Council Directive 85/611/EEC, Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC (COM(2002) 625 final)

8 Proposal for a Council Directive to ensure effective taxation of savings income in the form of interest payment within the Community (COM (2001) 400 final – OJ C 270 E, 25.9.2001)

e) External monetary relations – Proposal for a monetary agreement with Andorra

The text of this proposal provides for the assignment to the principality of Andorra of the right to issue numismatic coins in Euro and monetary tokens with legal tender status. In its opinion addressed to the Council, the ECB asked to be fully associated to these negotiations. The ECB insisted that such an agreement should not be seen as a precedent for the opening of negotiations in the monetary field between the Community and other countries.

The BCL is of the opinion that based on article 106 of the Treaty, only banknotes issued by the Eurosystem and coins issued by Member States of the euro area may have legal tender status in the Community.

7.1.2 National legislation

7.1.2.1 Adopted legislation

7.1.2.1.1 Bank notes and coins

a) Counterfeiting

The administrative regulation *(Règlement Grand-ducal)* of 12 July 2002[9], based on article 8 of the Law of 12 January 2002 approving the International Convention for the fight against counterfeiting and amending the Criminal Code *(Code Pénal)* and the Criminal procedure Code *(Code d'instruction criminelle)*, meets the requirement to designate national competent authorities in the fight against counterfeiting. Pursuant to articles 2, 4 and 5 of the Council Regulation No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, these national authorities are in charge, on the one hand, of the analysis and identification of banknotes and coins suspected to be counterfeits and, on the other hand, of the collection of data relating the counterfeiting and their analysis.

Article 1 of the administrative regulation identifies three national authorities to which the tasks enumerated by the European regulation have been assigned, *i.e.* the BCL, the judicial police and the national central office. Articles 2 to 5 describe the missions assigned to each authority:

- The BCL and the judicial police are jointly in charge of the identification of the counterfeited banknotes and coins;
- The BCL is in charge of the collection and analysis of technical and statistical data relating to counterfeiting of banknotes and coins;
- The central national office is in charge of the collection of data relating to counterfeiting and their analysis.

Article 6 of the administrative regulation also provides that the technical expertise of the BCL is put at the disposal of the central national office, under to be agreed conditions. This provision aims at organising the practical cooperation required by article 4.2. and 5.2. of the above-mentioned European regulation between the competent monetary authority at national level and the authority in charge of the fight against counterfeiting and this by taking into account the fact that counterfeiting is, from a criminal law point of view, a piece of evidence in criminal proceedings. Article 6 takes into account the requirement, recalled by the national legislation in article 8.2 of the above-mentioned statute and acknowledged by articles 4.3. and 5.4. of the above-mentioned European regulation.

b) Private activities of guardianship and surveillance

The statute of 6 December 2002[10]– which replaces the statute of 6 June 1990 – sets up the conditions under which the private activities of guardianship and surveillance (including the guarding of movable and non-movable goods, the management of alarm centres, the conveyance of money or values or the protection of people) must be exercised.

In section IV of the new law, the legislator provides for a description of human and technical means, which undertakings of money conveyance must have at their disposal. At least three vehicles, three vans, a team of twenty agents and a secured centre, equipped with a doorway, a loading premise for the money and vaults are required. The vans used for the conveyance of funds must be tracked from the

9 Administrative regulation of 12July 2002 designating the authorities referred to in article 8 of the law of 13 January 2002, approving the International Convention for the fight against counterfeiting as well as the correlative Protocol, executed in Geneva on 20 April 1929 and amending some provisions of the criminal code and the criminal procedure code (Mémorial A-83, 5 August 2002, p. 1733)

10 Statute of 6 December 2002relating to the private activities of guardianship and surveillance (Mémorial A-131, 6 December 2002, p. 3047)

secured centre within an area of 75 kilometres.

In addition, pursuant to article 29, regular users of money conveyance services are bound to arrange a parking lot reserved for the van, a secured centre for the collection and deposit of money, the organisation of a control device covering the parking lot and the way of the conveyor as well as communication and alarm device in case of aggression.

All devices must be organised within a year and after inspection by the Luxembourg police. The non-compliance with the provisions in article 29 in spite of a first injunction of the Justice Minister may be sanctioned by a prohibition to perform conveyance services.

7.1.2.1.2 Financial and company legislation

a) Electronic money

The statute of 14 May 2002[11] – which transposes two directives into national law - sets up a regulatory regime for financial institutions, which are not banks, *sensu stricto*, and which issue electronic money. To date such institutions do not exist in Luxembourg. As electronic money institutions are excluded from the protection organised in the directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems, this directive might have to be amended.

b) Undertaking for collective investment

The statute of 20 December 2002[12] relating to undertakings for collective investment implements provisions of directives 2001/107/EC of 21 January 2002 (amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities with a view to regulating management companies and simplified prospectuses) and the Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 (amending directive 85/611/EEC as far as investment of UCITS are concerned).

As a result of the modalities for transposing the two above-mentioned directives, the Luxembourg Legislator preferred to adopt a new regulation on the undertakings of collective investment. This new statute combines provisions of the two directives, together with provisions of the statute of 30 March 1988, which remain up to date.

c) Register of commerce

The statute of 19 December 2002[13] adopts several measures, designed to reorganise the *"Registre de Commerce et des Sociétés"* (Company registrar). More specifically, this statute draws up a global and balanced set of rules in order to ease some administrative formalities performed by undertakings upon their creation or upon amendment of their articles of association. The overall objective of this statute is to improve the quality and update of legal information on administrative bodies of undertakings, to ensure more efficient control over activities of economic players and to create the necessary legal structure, for the setting up of a system managing accounting data for Luxembourg's economic players.

7.1.2.1.3 Miscellaneous

a) Administrative Regulation of 26 June 2002 organising the status of BCL agents[14]

This regulation, which implements article 14 (3) of the Statute of 23 December 1998 relating to the monetary status and to the BCL, is applicable to those categories of agents referred to in article 14 (3) (a) et (c) and to whom public status was granted.

The regulation replaces the administrative Regulation of 21 June 1984, setting up the status of the agents of the Luxembourg Monetary Institute, and authorises the BCL to deviate from certain provisions of the general regime of the public office, in order to ensure the smooth functioning of the BCL within the ESCB, in which the BCL takes part.

11 Statute of 14 May 2002 implementing into the amended statute of 5 April 1993 relating to financial sector of the Directive 2000/12/EC relating to the access to activities of credit undertaking sand its exercise and of the Directive 2000/46/EC relating to the access and activities of the undertakings of electronic money and its exercise as well as the prudential supervision of these undertakings (Mémorial A – 51, 22 May 2002, p. 881).

12 Statute of 20 December 2002 relating to the collective investment funds and amending the amended law of 12 February 1979 relating the value-added tax (Mémorial A – 151, 31 December 2002, p. 3660).

13 Statute of 19 December 2002 relating to the register of commerce and companies, as well as accounting and annual accounts of undertakings, and amending other legal provisions (Mémorial A – 159, 31 December 2002, p. 3630)

14 *« Règlement grand-ducal du 26 juin 2002 portant dérogation à l'application des dispositions relatives aux fonctionnaires ou fonctionnaires stagiaires de l'Etat pour les agents de la BCL bénéficiant du statut de droit public défini l'article 14 (3) de la loi du 23 décembre 1998 relative au statut monétaire et à la BCL »*

The regulation contains provisions on hiring conditions, work conditions, compensation and promotion of civil servants and trainee civil servants. It also deviates from the regulation on vacation and working hours in order to ensure the continuity of the ESCB missions.

In its opinion of 26 September 2001, the ECB welcomed the draft regulation, to the extent that it gives greater flexibility to the BCL in organising its ESCB tasks.

b) Protection of personal data

The statute of 2 August 2002[15] - transposing in Luxembourg law the directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 – has a twofold objective: on the one hand, to ensure the free movement of personal data and, on the other hand, to protect fundamental rights and freedoms, notably, the right to privacy.

For this purpose, the above-mentioned statute was designed as a general statute, applicable to private as well as public entities, to defence, public security, State security as well as to the investigation and prosecution of criminal offences. This statute rules special statutes (such as the statute on hospitals, on electronic commerce, including the electronic signature).

It is applicable whenever personal data are concerned, these being defined as any information, whether or not by automatic means, relating to an identified or identifiable individual. In principle, this information must be processed fairly, i.e. it must be collected for specified, explicit and legitimate purposes and it must not be further processed in a way incompatible with those purposes. In addition, this personal data may only be subject to close observation by the employer in the cases restrictively enumerated by the statute: for the sake of security and health of workers, for the sake of protection of assets of undertakings, for the control of production process with respect to machinery only, or for the temporary control of the production or services performed by the worker, designed to measure his / her activity, in order to calculate his / her compensation. The involved person's consent does not legitimise surveillance on the workplace.

c) Legal interest rate for 2002

According to the administrative regulation of 21 January 2002[16], the legal interest rate for 2002 is 5%.

d) Budget statute 2003 and financial relation between the Luxembourg State and the BCL

The financial relations between the Luxembourg State and the BCL are organised in an agreement dated 27 May 1999. This agreement provides for a specific deposit by the State with the BCL for an initial amount of LUF 19 556 786 864 (EUR 484 800 083), remunerated at the rate applicable to the deposit facility set up by the ECB (article II-1 (3) a).

The objective of this deposit is to "allow the BCL to design its financial situation at the end of the transitional period, after the exchange of the bank notes and coins in LUF into Euro" and to meet "the financial needs of the BCL", hence, to ensure its financial independence and to face the criticism of the ECB as to the limited financial means of this institution. Since this deposit is not motivated by the search for a profit, it is not subject to article 93 (1) of the statute of 8 June 1999 on budget, accounting and treasury of the State.

7.1.2.2 Legislation in preparation

Combating terrorism

The draft statute No. 4954[17] aims first to transpose into national law the requirements contained in the Council framework decision in fighting terrorism.

For the first time, this framework decision organises a comprehensive set of criminal rules relating to terrorism. It creates an autonomous and global definition of the terrorist offence as well as of offences relating to terrorist groups. It also organises efficient and dissuasive sanctions and a strengthened liability regime for legal persons.

15 Statute of 2 August 2002 relating to the protection of individuals with regard to the processing of personal data (Mémorial A – 91, 13 August 2002, p. 1836).

16 Administrative regulation of 21 January 2002 fixing the legal interest rate for 2002 (Mémorial A – 11, 11 February 2002, p. 225)

17 Draft statute N° 4954 (1) relating to the prosecution of terrorism and its financing and (2) approving the International Convention for the prosecution of terrorism financing, opened to signature in New York on 10 January 2000.

In addition, the draft statute provides for approval of the International Convention for the prosecution of financing of terrorism, adopted by the General Meeting of the United Nations on 9 December 1999, and opened for signature at the headquarters of the United Nations in New York on 10 January 2000.

On 18 April 2002, the Justice Minister presented this draft statute, already adopted on 12 April 2002 by the Council of government. Despite the opinion of the latter, the draft statute could not be voted at the Chamber of Deputy during 2002. The Chamber of Officers and Public Employees rendered its opinion on 16 October 2002 and the State Council on 26 November 2002.

7.2 Contribution to the elaboration and implementation of the legal instruments of the Eurosystem

Representatives of the ECB and the NCBs participate in the different committees and working groups, which support the decision making bodies of the ECB in the adoption of regulations, decisions and guidelines. The implementation by the BCL of the operational provisions in its scope of competence entails the issuance of circular letters addressed to specific persons, the amendment of the General Conditions of operations or Rules of LIPS-Gross System, or the adoption of sanctions.

7.2.1 Circular letters

In 2002, the Bank issued ten circular letters.

The circular letter 2002/172 entitled "Protection of payment systems and securities settlement systems against crime and terrorism "is specially noteworthy. It is applicable to the payment systems and securities settlement systems subject to BCL oversight and imposes the to keep track *(traçabilité)* of cash and securities transfers.

In order to avoid partial or total anonymity of order transferees, the BCL details the scope of the obligations to be borne by the systems, subject to its oversight. These systems must identify participants, giving or benefiting from orders and insist that standard messages be duly and completely filled in. They must also ensure that the content of received messages remains unchanged during the processing of the orders. The annex to the circular letter contains an inventory of the legislation applicable in Luxembourg. This annex - of informative nature and regularly updated - is available on the website www.bcl.lu.

The BCL has also issued eight other circular letters, designed to organise the collection of statistical information within the Eurosystem.

7.2.2 General conditions for the operations and Rules of LIPS-Gross System

7.2.2.1 General conditions for the operations

Further to the amendments to the guidelines adopted by the Governing Council of the ECB and contained in the document "The single monetary policy in the Euro area – General documentation on monetary policy instruments and procedures of the Eurosystem" in April 2002, the General Conditions of the BCL have been slightly amended. The main changes relate to chapter 8 "Eligible assets" as well as to annex 8 of the General Conditions. Thus the securities issued or guaranteed by a counterparty or entity, with which the counterparty has close links are excluded. An updated version of the General Conditions of the BCL is available on the website www.bcl.lu.

7.2.2.2 Rules of LIPS-Gross System

These rules were amended twice. In August 2002, the management council of RTGS L -GIE amended these rules in order to exclude electronic money institutions from TARGET. In implementation of the circular 2002/172 entitled "Protection of payment systems and securities settlement systems against crime and terrorism", the management council has also insisted that the forms used for the payment order be duly completed.

7.2.3 Sanctions

In compliance with article 34 of its organic law, the BCL contributes to the adoption of sanctions, decided by the ECB pursuant to European regulations relating to minimum reserves and statistics.

7.3 Litigation

In 2002, a case of principle concerning the ECB, handled by the Court of Justice of the European Communities, may be noted, as well as some cases handled by national jurisdictions.

7.3.1 European litigation

7.3.1.1 The OLAF case

The commission created in 1998 a specific anti-fraud unit (*Office de Lutte Anti-Fraude* - OLAF), based on article 280 of the Treaty. The EC regulations 1073/1999 and 1074/1999 - which organise the activities of OLAF - provide that each institution or body of the Community must adopt a decision defining more detailed rules for the procedures to be followed in internal investigations conducted by OLAF.

Such a decision has not been adopted by the ECB, which preferred to create, by a decision of 7 October 1999, its own anti-fraud committee, to which it assigned the task of checking the activities of the ECB's internal audit directorate. The Commission asked the Court of Justice to annul the decision of 7 October 1999.

In his conclusions dated 3 October 2002, the Advocate General Jacobs rejects the arguments raised by the ECB to motivate the validity of its decision and recommends annulling the challenged decision. The Court has not yet rendered its judgment.

7.3.1.2 Luxembourg Banking Secrecy

The judgment rendered on 10 December 2002 by the Court of Justice of the European Communities on occasion of a preliminary question raised by the examining judge *(juge d'Instruction)* of the First hearings court *(Tribunal de première instance)* of Turnhout (Belgium) on the interpretation of article 49 of the Treaty (on free movement of services) clarified the extraterritorial scope of Luxembourg law with respect to banking secrecy.

Basically, the question was whether an employee of a Luxembourg bank had to testify during a criminal proceeding opened in Belgium, in spite of the banking secrecy he has to abide by under Luxembourg law.

In order to reject this question as inadmissible, the European judge analysed the provisions of Luxembourg law. In the court's opinion, the provisions of Luxembourg law on banking secrecy have an extraterritorial effect, in such a way that the principle of banking secrecy as well as the exceptions thereto provided for by Luxembourg law (here, the duty of a person bound by the principle of the banking secrecy to testify in a legal proceeding) are applicable in other Member States.

7.3.2 National litigation

On 13 December 2001, the BCL has sued the Pension and Insurance fund of private employees *(Caisse de Pensions des Employés Privés et Etablissement d'Assurance contre la Vieillesse et l'Invalidité)*. As provided for in article 35.4(4) of the organic law of the BCL, the claim aims to recover the social contributions, paid on behalf of persons hired by the BCL and previously registered with the above-mentioned fund. For further details, see Chapter VIII, section 2.4 of this annual report.

At the time of the drafting of this report, the trial is still in progress.