

Compare version between Regulation 2016/N° 21 and Regulation 2010/N°6 (repealed) of 2010 (as amended in 2011 and 2012) (main changes)



Unofficial English translation – For information purposes only

**In case of discrepancy between the French and the English text,
the French text shall prevail**

BANQUE CENTRALE DU LUXEMBOURG

**Regulation of the “Banque centrale du Luxembourg” 2016/N° 216 of 8-September-15
January 2016**
**concerning the oversight of payment systems, securities settlement systems, and
payment instruments, central counterparties and trade repositories in Luxembourg**

Area: Oversight

The “Direction” of the “Banque centrale du Luxembourg”,

Having regard to the Treaty on the functioning of the European Union and notably to article 127 (2) and (5);

Having regard to articles 3.1 and 22 of the Statutes of the European System of Central Banks (hereafter the “ESCB”) and of the European Central Bank (hereafter the “ECB”);

Having regard to article 108 bis of the Constitution;

Having regard to the law of 23 December 1998 (hereafter the “Law”) concerning the monetary status and the “Banque centrale du Luxembourg” (hereafter the “Banque centrale”), as amended, in particular articles 2 (5), 27-3 and 34 (1);

Considering that, in accordance with article 2 (5) of the Law, “In view of its tasks relating to the promotion of the smooth operation of payment systems, the Banque centrale shall ensure the efficiency and safety of payment systems and securities settlement systems, as well as the safety of payment instruments. The means of coordination and cooperation employed for the performance of these tasks shall be the subject of agreements between the

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Banque centrale and the Commission de surveillance du secteur financier, respecting the legal competences of the parties”;

Considering article 27-3 of the Law stating that “For the purpose of performing the tasks set out in Article 2(5), the [Banque central] may ask payment systems and securities settlement systems to provide any information relating to the operation of those systems which is necessary in order to assess their efficiency and safety and may also ask issuers of payment instruments to provide any information relating to those payment instruments which is necessary in order to assess their safety. The Banque centrale shall be authorised to undertake site visits in order to collect the information referred to in paragraph 1. It shall coordinate with the *Commission de surveillance du secteur financier* to this end”;

Considering article 34 (1) of the Law stating that “Within the limits imposed on its powers and tasks, the central bank may adopt regulations. The Banque centrale's regulations shall be published in the *Mémorial* (Official Gazette)”;

Having regard to the law of 10 November 2009 on payment services, on the issuance of electronic money and on settlement finality in payment systems and securities settlement systems, as amended;

~~Having regard to the law of 20 May 2011 (relating to the activity of electronic money companies);~~

~~Considering regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28) that, in accordance with the Opinion of the European Central Bank of 13 January 2011 (CON/2011/1) (2011/C 57/01), the role of the central banks of the Eurosystem is to safeguard financial stability as well as the safety and the efficiency of financial infrastructures, “this role is performed both by central banks responsible for oversight of CCPs [central counterparties] and TRs [trade repositories] and central banks of issue of currencies used in relation to transactions cleared by CCPs or registered by TRs”.~~

HAS ADOPTED THIS REGULATION:

Article 1: Definitions

“system”: a system enabling the transfer of funds and/or securities and which is governed by formal standardized procedures and common rules concerning processing, clearing or settlement of payment transactions and/or securities transactions.

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“system operator”: the entity or the entities legally in charge of the running of a system. A system operator may intervene, as well, as settlement agent, central counterparty or clearing house.

“payment instrument”: a personalized device and/or a set of procedures enabling a natural person or a legal entity to place, transfer or withdraw funds.

“issuer of payment instruments”: a legal entity which, within the scope of its commercial activity, provides a payment instrument to the public.

“governance authority”: a central organization responsible for the smooth functioning of the payment instrument and for the compliance of all involved actors with the rules. It is the main interlocutor of the authorities.

“technical agent”: a service provider, with whom a system operator, an issuer of payment instruments, or a governance authority, ~~a central counterparty or a trade repository~~ has placed or centralized an important part of its operational and/or technical infrastructure.

~~“Central counterparty”: a legal entity that interposes itself between the counterparties to financial transactions traded within one or more markets, thus becoming the buyer to every seller and the seller to every buyer.~~

~~“Trade repository”: an electronic register centralising the collection, the storage and the dissemination of data related to derivatives transactions.~~

Article 2: Scope

1. The Banque centrale shall carry out the oversight of the systems which it designates and which operate in Luxembourg in accordance with article 2 (5) of the Law.
2. The Banque centrale shall carry out the oversight of the payment instruments, which are in particular credit transfers, direct debits, payment cards and electronic money schemes. The Banque centrale is entitled to ensure the oversight of other forms of payment instruments made available to the public in Luxembourg.

~~3. The Banque centrale shall carry out the oversight of central counterparties and trade repositories based in Luxembourg.~~

Article 3: Oversight general framework

1. To exercise its oversight, the Banque centrale shall apply, in particular, the decisions taken by the Governing Council of the ECB relating to the recommendations, principles and standards, including the assessment methodologies. The Banque

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centrale shall ensure in particular the compliance with the recommendations listed in the appendices attached to this regulation.

2. The Banque centrale's oversight relates to the security and efficiency of the systems, ~~of the central counterparties and of the trade repositories~~; it relates also to the security of payment instruments.
3. The Banque centrale shall carry out its oversight towards the operating rules and the contracts of the system. Its oversight is also applied to the system itself, including operators, services (in particular operational and IT) offered by technical agents or third-party providers, and participants according to the risk assessment of their participation in the system.
4. The Banque centrale's oversight relating to the payment instruments applies in particular to issuers and governance authorities, to services (particularly operational and IT) offered by technical agents or third-party providers, to the governing rules and the contracts.

~~5. The Banque centrale shall carry out its oversight towards the central counterparties and the entities operating the trade repositories, as well as the governing rules and the contracts. Its oversight is also applied to services (particularly operational and IT) offered by technical agents or third-party providers.~~

Article 4: Implementation

~~1.~~ 1. The Banque centrale shall oversee the systems and; the payment instruments, ~~the central counterparties and the trade repositories~~ by collecting all useful information available following its different missions and cooperation with other central banks and prudential supervisory authorities. The Banque centrale shall indicate in particular to the respective entities the quantitative and qualitative information it must be provided with as well as its frequency. The Banque centrale shall determine the means of communication and transmission for the purpose of this regulation.

~~1.~~

2. ~~2.~~ The Banque centrale may request from the system operators, issuers of payment instruments, and governance authorities, ~~central counterparties and trade repositories~~, regular self-assessments of their level of compliance with regard to the recommendations, principles and applicable standards referred to in article 3.
3. ~~3.~~ The Banque centrale shall carry out controls as it deems appropriate. It shall be

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entitled in particular to perform on-site controls of system operators, issuers of payment instruments, and governance authorities, ~~central counterparties and trade repositories~~.

4. ~~4.~~ The Banque centrale may, within the scope of its oversight, issue recommendations or specific instructions to the system operators, issuers of payment instruments, and governance authorities, ~~central counterparties and trade repositories~~.

Article 5: The obligations of the system operators, the issuers of payment instruments and, the governance authorities, ~~the central counterparties and the trade repositories~~

1. The system operators, the issuers of payment instruments and, the governance authorities, ~~the central counterparties and the trade repositories~~ shall put in place a risk management framework for the system, and/or for the payment instrument, ~~the central counterparty and/or the trade repository~~, adapted to the size and complexity of their activity. The framework shall be based on an organization, procedures and internal rules enabling an efficient management, monitoring and control of the security and/or the efficiency of the system, and/or the payment instrument, ~~the central counterparty and/or the trade repository~~, the associated risks as well as the applicable legal and operational environments. The systems' operators, the issuers of payment instruments, and the governance authorities, ~~the central counterparties and the trade repositories~~ shall follow the recommendations, the principles and the oversight standards referred to in article 3.1.

~~4.2.~~ The system operators, the issuers of payment instruments ,and the governance authorities, ~~the central counterparties and the trade repositories~~ shall be required to provide the Banque centrale with all the information it deems useful for the fulfilment of its oversight mission.

This information shall inter alia include:

- general information on the systems, or the instruments, ~~the central counterparties or the trade repositories~~ ;
- data on the activity, incidents and fraud ;
- financial data ;
- information relating to the risks the systems, or the instruments, ~~the central counterparties or the trade repositories~~ are exposed to, as well as on the internal risk mitigation tools ;

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- information relating to changes affecting the systems or, the instruments, ~~the central counterparties or the trade repositories~~ ;
- information relating to the governance and to internal rules and procedures.

3. ~~3.~~ The system operators, the issuers of payment instruments and, the governance authorities, ~~the central counterparties and the trade repositories~~ shall appoint one or several contact persons, duly mandated, to deal with the Banque centrale in the context of its oversight mission.

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Article 6: International cooperation

In the context of its oversight mission, the Banque centrale shall cooperate with other central banks, in particular with the Eurosystem and the ESCB, as well as with prudential supervisory authorities.

Article 7: Sanctions

1. Without prejudice to financial sanctions, the Banque centrale may impose administrative sanctions which may lead to the procedure of removal of the designation of the system in case of non-compliance with the provisions of this regulation.
2. The Banque centrale may notify any breach to this regulation to the authorities in charge of the supervision of the financial sector or to the Minister in charge of the financial place. It may publish the recommendations or the instructions it may adopt.

Article 8: Miscellaneous provisions

1. The Banque centrale shall adapt its oversight of the systems, and the payment instruments, ~~the central counterparties and the trade repositories~~ in accordance with the principle of proportionality.
2. Appendices are attached to this regulation.

~~3. The circulars BCL 2001/163 and 2001/168 are hereby repealed.~~

Article 9: Entry into force and repeal

The present regulation shall enter into force on the day of its publication and on the same day, the Regulation of the "Banque centrale du Luxembourg" 2010/N° 6 of 8 September 2010 concerning the oversight of payment systems, securities settlement systems, payment instruments, central counterparties and trade repositories in Luxembourg, consolidated

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version with the regulations of the "Banque centrale du Luxembourg" 2011/N° 10 of 14 July 2011 and 2012/N°11 of 10 July 2012, shall be repealed.

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Article 10: Publication

1. The present regulation shall be published on the Banque centrale's website (www.bcl.lu) and in the *Mémorial* (Official Gazette).
2. The appendices to the present regulation, as updated, shall be published on the Banque centrale's website (www.bcl.lu).
3. The official list of systems, ~~central counterparties and trade repositories~~ that the Banque centrale oversees shall also be publicly available on its website (www.bcl.lu).

BANQUE CENTRALE DU LUXEMBOURG

La Direction

[Note: Appendices are published on the BCL's website (Art. 10.2)]

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