

CSSF guidance on the scope of loan originating activities

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On 15 June 2021, the CSSF has informed the publication of the adaptation of its FAQ on the statuses of PFS with respect to the PFS status relating to the granting of loans to the public (Article 28-4 of the Law of 5 April 1993 on the financial sector ("**LFS**")).

This provides helpful guidance to the industry on the scope of loan originating activities that do not require a license as a professional of the financial sector.

The CSSF indicates in its press release that Article 28-4 of the LFS is aimed at professionals whose activity consists in granting, for their own account, loans to the public. Given the increasing number of requests to take a stance regarding the interpretation of the notion of “public” and the question of when the CSSF considers that a lending activity is directed towards the public, the CSSF updated the FAQ (Part II, Question 52) in order to provide clarification and legal certainty.

In the absence of a legal definition of the term “public” in the LFS, the CSSF considers that a lending activity is not directed towards the public where:

- loans are granted to a limited circle of previously determined persons; or
- the nominal value of a loan amounts to EUR 3,000,000 at least (or the equivalent amount in another currency) and the loans are granted exclusively to professionals such as defined in Article L. 010-1. 2) of the Consumer Code.

In all other cases, the CSSF will carry out an assessment on a case-by-case basis.

We consider that this clarification will provide added regulatory certainty to loan originating funds whilst confirming the practice of most industry players over the last years.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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