

## Loan origination - CSSF guidance on private lending

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On 15 June 2021, the Luxembourg Financial Sector Supervisory Authority (the CSSF) updated its FAQs on the statuses of the Professionals of the Financial Sector (PSFs) by issuing clarifications on lending activities falling out of scope of the authorisation requirement, laid down by article 28-4 of the Law on Financial Sector (the LFS)[1].

As a general rule under article 28-4 of the LFS, professionals (other than credit institutions) performing lending operations are those who "engage in the business of granting loans to the public for their own account".

As the notion of "public" is not legally defined, the CSSF stated that it will not consider professional lending activities as public-oriented, should the following conditions be met:

- loans are granted to a limited circle of previously determined persons (as opposed to a multitude of non-identifiable persons) [2];
- the nominal value of the loan amount is at least EUR 3,000 (or an equivalent in another currency); and
- loans are granted solely to professionals, as defined in the Luxembourg Consumer code [3].

Further to the above, the professional character of the credit activity will be assessed based on whether it is performed repetitively, with the exclusion of one-off operations.

Finally, the CSSF has highlighted the non-application of the article 28-4 of the LFS to professionals carrying out activities whose taking up and pursuit are governed by special laws, including notably UCIs, SIFs, pension funds, SICARs and securitisation undertakings.

[1] Law of 5 April 1993 on the financial sector, as amended.

[2] Applicable also if granted through a Luxembourg SPV by an entity holding 100% or having (in)direct control over it.

[3] Any natural or legal person, public or private, who acts, including through an intermediary acting in his name or on his behalf, for the purposes falling within the scope of his commercial, industrial, artisanal or liberal activity.

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