

# Steps to be taken and conditions to be met when submitting an out-of-court complaint resolution application to the CSSF



Date: February 2021

Version: 1.2

## Contents

<b>1</b>	<b>Definitions.....</b>	<b>1</b>
<b>2</b>	<b>Scope.....</b>	<b>2</b>
<b>3</b>	<b>Reference texts.....</b>	<b>2</b>
<b>4</b>	<b>Provisions relating to the procedure before the CSSF.....</b>	<b>2</b>
<b>4.1</b>	<b>Admissibility of Requests.....</b>	<b>2</b>
<b>4.2</b>	<b>Conduct of the OOCC Procedure.....</b>	<b>3</b>
<b>4.2.1</b>	<b>Bringing proceedings before the CSSF.....</b>	<b>3</b>
<b>4.2.2</b>	<b>Languages.....</b>	<b>3</b>
<b>4.2.3</b>	<b>Review of the Request dossier by the CSSF.....</b>	<b>3</b>
<b>4.2.4</b>	<b>The CSSF's reasoned findings.....</b>	<b>4</b>
<b>4.2.5</b>	<b>Length of the OOCC Procedure.....</b>	<b>4</b>
<b>4.2.6</b>	<b>Representation and assistance.....</b>	<b>4</b>
<b>4.2.7</b>	<b>Written procedure and storage of documents.....</b>	<b>4</b>
<b>4.2.8</b>	<b>Concluding the OOCC Procedure.....</b>	<b>4</b>
<b>4.2.9</b>	<b>Data protection.....</b>	<b>5</b>
<b>4.2.10</b>	<b>Confidentiality.....</b>	<b>5</b>
<b>4.2.11</b>	<b>The officers responsible for dealing with Requests.....</b>	<b>5</b>
<b>4.2.12</b>	<b>Costs of proceedings.....</b>	<b>5</b>
<b>4.2.13</b>	<b>Court proceedings.....</b>	<b>5</b>
<b>5</b>	<b>Links to other documents:.....</b>	<b>Erreur ! Signet non défini.</b>

## 1 Definitions

- 📄 "Bank": Banque Raiffeisen and its branches ;
- 📄 "consumer": pursuant to Article L. 010-1 of the Consumer Code, any natural person who acts for purposes which are outside his/her commercial, industrial, artisanal or professional activity;
- 📄 "CSSF": the *Commission de Surveillance du Secteur Financier*.
- 📄 "OOCC Procedure": out-of-court complaint resolution procedure before the CSSF;
- 📄 "Request": request for the out-of-court resolution of a complaint submitted to the CSSF in accordance with the rules of the present note;
- 📄 "Applicant": any natural or legal person having submitted a request to the CSSF;
- 📄 "Complainant": any natural or legal person having filed a complaint with the Bank;
- 📄 "Complaint": complaint filed with the Bank to recognise a right or to redress a harm;
- 📄 "Durable Medium": any instrument which enables a person or an entity to store information addressed to him/her/it personally in a way easily accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

## 2 Scope

In accordance with Directive 2013/11/EU, the Bank participates in the OOC Procedure in order to ensure that consumers have access to redress and that they are not obliged to forego their Complaints.

The purpose of this note is to provide the Bank's customers with information on the rules of OOC Procedures submitted to the CSSF. The OOC Procedure is not a mediation procedure within the meaning of the Luxembourg law of 24 February 2012 on the introduction of mediation in civil and commercial matters.

The CSSF may terminate the OOC Procedure at any time if it notes that any party is using the OOC Procedure for a purpose other than seeking an amicable settlement to the dispute. CSSF's involvement is subject to the principles of impartiality, independence, transparency, jurisdiction, effectiveness and fairness. Its reasoned findings are not legally binding on the parties and may be based on legal provisions or on grounds of fairness.

In case of discrepancies between the French and the English text published on the Bank's website [www.raiffeisen.lu](http://www.raiffeisen.lu), the French text shall prevail.

## 3 Reference texts

- 📄 Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC ("Regulation 524/2013").
- 📄 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC ("Directive 2013/11/EU").
- 📄 Luxembourg law of 17 February 2016 on the introduction of alternative dispute resolution for consumer disputes into the Luxembourg Consumer Code and amending certain other provisions of the Luxembourg Consumer Code (the "ADR Law").
- 📄 CSSF Regulation no. 16-07 of 26 October 2016 on alternative dispute resolution.
- 📄 CSSF circular 17/671 of 13 October 2017.

## 4 Provisions relating to the procedure before the CSSF

### 4.1 Admissibility of Requests

In order to initiate an OOC Procedure, the Complaint must first have been dealt with by the Bank. A Complaint must first have been submitted in writing to the manager in the Bank's Management team responsible for handling Complaints, and the Complainant must not have received a reply or a satisfactory reply from that manager within one month of sending the Complaint.

Thereafter, a Request may be submitted to the CSSF on the conditions set out below. A Request is inadmissible in the following circumstances:

- 📄 the Complaint was previously or is currently being considered by another alternative dispute resolution entity, an arbitrator, an arbitral tribunal or a court, either in Luxembourg or elsewhere;
- 📄 the Complaint relates to the Bank's sales policy;
- 📄 the Complaint concerns a non-financial product or service;
- 📄 the Request is unreasonable, fanciful or vexatious;
- 📄 the Complaint is not first submitted to the Bank;
- 📄 the Complainant does not submit a Request to the CSSF within one year of the date on which it filed a Complaint with the Bank;
- 📄 processing the Request would severely disrupt the effective functioning of the CSSF.

## 4.2 Conduct of the OOC Procedure

### 4.2.1 Bringing proceedings before the CSSF

Where the Complainant does not receive a reply or receives an unsatisfactory reply within the period referred to in the previous paragraph, he/she/it may submit a Request to the CSSF within one year of the date on which it filed the Complaint with the Bank.

The Request must be made in writing and be sent either by post to the CSSF's address (stated on its website), by fax addressed to the CSSF (to the number stated on its website), by email (to the address stated on its website), or be submitted online on the CSSF's website. A form is provided on the CSSF's website to simplify the procedure for submitting Requests.

<https://www.cssf.lu/en/customer-complaints/>

The Request must be reasoned and enclose the following documents:

- a detailed summary and chronology of the facts underlying the Complaint and the steps already taken by the Applicant;
- a copy of the Complaint sent to the Bank;
- either a copy of the Bank's reply to the Complaint, or the Applicant's confirmation that it did not receive a reply within one month of the date on which it sent its initial Complaint;
- a statement from the Applicant that it has not brought proceedings before a court, an arbitrator or any other alternative dispute resolution entity, either in Luxembourg or elsewhere;
- a statement that the Applicant agrees to the conditions on which the CSSF agrees to act as the body responsible for the out-of-court-settlement of its Request.
- the Applicant's express authorisation that the CSSF may communicate its Request (including any enclosures thereto) and any future correspondence or information to the Bank;
- where a person is acting on behalf of an Applicant or legal entity, a document evidencing that person's authority;
- for Applicants who are natural persons, a copy of a valid identity document and, for Applicants that are legal entities, a copy of a valid identity document for the natural person representing that legal entity.

The CSSF may ask for any other additional documents or information, in any form, where it considers that those documents or that information may be relevant to the Request. Where the CSSF receives a Request that meets all the conditions set out above, it shall send a copy thereof to the Bank and shall ask it to provide details of its position by a date falling no later than one month from the date on which the copy of the Request was dispatched. The CSSF shall notify the Applicant that it has sent the Request to the Bank.

As soon as the CSSF has received all relevant documents or information, it shall provide confirmation to the Applicant and to the Bank, in writing or on any Durable Medium, that it has received the complete Request and shall state the date of receipt. This written confirmation shall also inform the parties of the date on which the 90-day period began.

Where the CSSF is unable to deal with the Request, it shall send both parties, within three weeks of the date on which it receives the complete application, a detailed explanation of the reasons for which it has declined to deal with the Request. By the end of that same three-week period, the CSSF shall inform the parties whether it agrees to deal with the Request.

### 4.2.2 Languages

The Request must be submitted in Luxembourgish, German, English or French. The OOC Procedure shall, in principle, be carried out in the language in which the Request was submitted.

### 4.2.3 Review of the Request dossier by the CSSF

Analysis of the Request dossier shall begin when the CSSF has received the complete Request as described above. When reviewing the Request dossier, the CSSF may ask the Bank and the Applicant to provide it with information, documents or additional explanations, in any form whatsoever, and to provide their positions on the facts or opinions set out by the other party within a reasonable period of no more than three weeks.

#### **4.2.4 The CSSF's reasoned findings**

When the CSSF's review of the Request dossier is complete, it shall send a letter of findings to the parties, stating the reasons for the positions it has taken. Where it concludes that the Request is well-founded in whole or in part, it shall invite the parties to contact each other with a view to settling their dispute in light of its reasoned findings and to inform it of the outcome of their discussions. Where the CSSF concludes that the parties' positions are irreconcilable or unverifiable, it shall inform the parties in writing.

The parties shall be informed that the CSSF's findings based on its analysis of the Request may differ from those of a court applying the relevant legal provisions.

The parties shall also be informed that, since the CSSF's reasoned findings are not legally binding on the parties, they are free to accept those findings or refuse to follow them. The letter of findings shall also inform the parties that they may bring proceedings through the courts, in particular if they fail to reach agreement once the CSSF has issued its reasoned findings.

In its reasoned findings, the CSSF shall ask the parties to let it know, within a reasonable period stated in the letter, whether they decide to accept, reject or follow the solution proposed by the CSSF.

#### **4.2.5 Length of the OOC Procedure**

In principle, the CSSF shall issue its reasoned findings within 90 days. The 90-day period shall begin when the CSSF receives a complete Request that meets all required conditions. The 90-day period may be extended where Request dossiers are highly complex. In such circumstances, the CSSF shall inform the parties of the approximate length of the extension required as soon as possible and, in any event, before the end of the 90-day period.

#### **4.2.6 Representation and assistance**








The parties are not required to engage a lawyer or legal adviser in order to use the procedure. The parties to the procedure may, however, seek independent advice or be represented or assisted by a third party at any stage of the OOC Procedure.

#### **4.2.7 Written procedure and storage of documents**

The OOC Procedure is a written procedure. If, however, the CSSF considers that it may be useful to the Request, it may organise one or more meetings with the parties. The parties must enclose with their letters copies of documents relevant to the CSSF's review and keep the originals of those documents.

#### **4.2.8 Concluding the OOC Procedure**

The procedure shall conclude:

-  when a reasoned letter of findings is sent by the CSSF informing the parties of the outcome of the OOC Procedure;
-  on the Bank and the Applicant entering into an out-of-court agreement during the course of the OOC Procedure, which is notified to the CSSF;
-  in the event that either of the parties withdraws from the OOC Procedure in writing, at any moment during proceedings, provided that the withdrawal is notified to the other party and the CSSF, in writing or on a Durable Medium, within a reasonable period;
-  where the right on which the Applicant relies is time-barred and the Bank invokes the benefit of the limitation period;
-  where the Request is submitted to a court or arbitrator, either in Luxembourg or elsewhere;
-  where the Request is submitted to an alternative dispute resolution entity other than the CSSF, either in Luxembourg or elsewhere;
-  where the Applicant fails to provide the documents, information, additional explanations or statements of position requested by the CSSF within the specified period, which may not exceed three weeks.

#### **4.2.9 Data protection**

The CSSF shall take the necessary steps to ensure that the processing of personal data complies with the prevailing rules on the protection of personal data.

#### **4.2.10 Confidentiality**

The parties to the OOCC Procedure before the CSSF undertake to keep the communications and documents exchanged during the course of the OOCC Procedure confidential. The officers responsible for dealing with alternative dispute resolution Requests at the CSSF are bound by the professional confidentiality obligations referred to in Article 16 of the Luxembourg law of 23 December 1998 on the creation of a financial services authority.

#### **4.2.11 The officers responsible for dealing with Requests**

The officers responsible for dealing with alternative dispute resolution Requests at the CSSF must have the necessary knowledge, skills and experience for the role.

The officers must immediately inform the CSSF of any circumstances that may affect or be deemed to affect their independence and their impartiality or that may give rise to a conflict of interest with either party to the dispute that they are responsible from resolving. The obligation to inform the CSSF of these circumstances shall apply throughout the OOCC Procedure.

Where, in assessing the Request, the officers note that it includes a prudential supervision issue that goes beyond the scope of the Request, they shall communicate the necessary information internally and the CSSF may look into that issue as part of its prudential supervision responsibilities. The action taken by the CSSF as part of its prudential supervision responsibilities may not be revealed to the parties to the Request, due to the CSSF's professional confidentiality obligations.

The OOCC Procedure shall continue independently of any developments relating to a prudential supervision dossier.

#### **4.2.12 Costs of proceedings**

Alternative dispute resolution procedures before the CSSF are free of charge. In addition, the parties will not be reimbursed any costs.

#### **4.2.13 Court proceedings**

The parties remain entitled, at all times, to bring proceedings before the courts on the matter that is the subject of the Complaint.