



# The CSSF's approach to the execution of the write-down and conversion of capital instruments and bail-inable liabilities in resolution

(“DESCRIPTION OF THE  
EXCHANGE MECHANIC”)

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## TABLE OF ACRONYMS

<b>Acronym</b>	<b>Description</b>
2015 Law	Law of 18 December 2015 on the failure of credit institutions and certain investment firms
AT1	Additional Tier 1
EBA	European Banking Authority
EBA/GL/2017/03	EBA guidelines 2017/03 on the rate of conversion of debt to equity in bail-in
ECB	European Central Bank
EU	European Union
BcL	<i>Banque centrale du Luxembourg</i>
BRP	Business Reorganisation Plan
Capital Instruments	CET1 and relevant capital instruments as defined in Article 1(74) of the 2015 Law
CET1	Common Equity Tier 1
CSD	Central Securities Depository
CSSF RA	CSSF as Resolution Authority
Ex-post definitive valuation	Valuation in accordance with Article 37(10) of the 2015 Law
Exchange Mechanic	Operational steps necessary to execute the write-down and conversion of relevant capital instruments or the use of the bail-in tool
FGDL	<i>Fonds de garantie des dépôts Luxembourg</i> (Luxembourg Deposit Guarantee Fund)
FOLTF	Fail Or Likely To Fail as defined in Article 33(3) of the 2015 Law
ICSD	International Central Securities Depository
NCWO	No Creditor Worse Off
NIP	Normal Insolvency Proceedings
NNA	National Numbering Agency
Provisional ex-ante valuation	Valuation in accordance with Articles 37(2) and 37(9) of the 2015 Law
SRB	Single Resolution Board
T2	Tier 2
Valuation 1	Valuation in accordance with Article 37(1), (3), (4) point 1, (6), (8) and (10) of the 2015 Law

Valuation 2	Valuation in accordance with Article 37(4) points 2 to 7 of the 2015 Law
Valuation 3	Valuation in accordance with Article 74 of the 2015 Law
WDCCI	Write-Down and Conversion of Capital Instruments

## **VERSIONS**

<b>Date</b>	<b>Version</b>	<b>Type</b>	<b>Changes</b>
1 January 2024	1.0	Initial version	Not applicable

# The CSSF's approach to the execution of the write-down and conversion of capital instruments and bail-inable liabilities in resolution

## 1. Introduction

### 1.1 Subject matter

In compliance with the Guidelines of the European Banking Authority ("EBA") to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic (EBA/GL/2023/01), the CSSF in its role as Luxembourg resolution authority ("CSSF RA") hereby publishes the high-level description of its approach to the operational steps necessary to execute the write-down and conversion of relevant capital instruments or the use of the bail-in tool ("Exchange Mechanic") from the preliminary steps to the final execution of the Exchange Mechanic, including any ex-post definitive valuation adjustments, where applicable. This description takes as starting point the resolution planning phase, where institutions earmarked for resolution [i.e. where normal insolvency proceedings ("NIP") would not be in the public interest], and for which the use of the bail-in tool is envisaged (either as preferred or as variant resolution strategy), shall prepare bail-in playbooks and demonstrate their capabilities to provide the data requested in the bail-in data list<sup>1</sup>.

It is to be noted that the actual execution of write-down and conversion processes might differ to the ones set out in this document, if the resolution objectives or the circumstances of the case so require. Further, processes are subject to change, and the present document is to be considered an evergreen document susceptible to updates.

The updates will always be published on the CSSF's website at [www.cssf.lu/resolution](http://www.cssf.lu/resolution).

### 1.2 Scope of application

This publication applies in accordance with the scope of application as set out in the Law of 18 December 2015 on the failure of credit institutions and certain investment firms ("2015 Law").

### 1.3 Definitions

Unless otherwise specified, terms used and defined in the 2015 Law and in the EBA Guidelines 2022/01 on improving resolvability for institutions and resolution authorities ("Resolvability Guidelines") have the same meaning in this publication.

<sup>1</sup> Please refer to <https://www.srb.europa.eu/en/content/operational-guidance-bail-implementation> for the SRB's Operational guidance on bail-in playbooks, as well as the Bail-in data list and related instructions.

## 2. High-level description of the envisaged Exchange Mechanic as applied in Luxembourg

### 2.1 Identification and description of the stakeholders to be involved in the process

The execution of the Write-Down and Conversion of Capital Instruments (“WDCCI”) relying on the powers defined in Article 1(96) of the 2015 Law, and the use of the bail-in tool as defined in Article 1(76) of the 2015 Law by the CSSF RA involve several stakeholders having a major role to play:

1. The CSSF Resolution Board exercising all tasks and powers conferred by the 2015 Law on the CSSF as the Luxembourg resolution authority (“CSSF RA”). The contact details of the CSSF RA and its Resolution Board are:
  - [res@cssf.lu](mailto:res@cssf.lu)
  - Address: 283, route d’Arlon L-1150 Luxembourg
2. The CSSF as the Luxembourg competent authority. It is represented respectively by the service in charge of the banking supervision, and by the service in charge of the supervision of BRRD investment firms. The contact details for the CSSF as the Luxembourg competent authority are:
  - *Surveillance des banques*, [banque@cssf.lu](mailto:banque@cssf.lu), address: 283, route d’Arlon L-1150 Luxembourg.
  - *Surveillance des entreprises d’investissement*, [ei@cssf.lu](mailto:ei@cssf.lu), address: 283, route d’Arlon L-1150 Luxembourg.
3. Where applicable, the European Central Bank (“ECB”), as the relevant authority which shall assess and authorise any qualifying holding in the institution (in cooperation with the CSSF as competent authority).
4. The *Banque centrale du Luxembourg* (“BcL”) as the authority in charge of the oversight of payment systems. Its contact details are: [info@bcl.lu](mailto:info@bcl.lu), address: 2, boulevard Royal L-2983 Luxembourg.
5. The Luxembourg financial markets regulator, being the CSSF as a market supervisor. It is responsible for initiating the necessary steps for the implementation of the discontinuation or suspension of trading of the capital instruments or bail-inable liabilities respectively subject to the WDCCI power and the bail-in tool, and for their relisting and readmission to trading. Its contact details are: *Métier Surveillance des marchés d’actifs financiers (MAF)*, [maf@cssf.lu](mailto:maf@cssf.lu), address: 283, route d’Arlon L-1150 Luxembourg.
6. Société de la Bourse de Luxembourg S.A. operating a regulated market (*Bourse de Luxembourg*) and an MTF (Euro-MTF). It receives the instruction from the CSSF as a market supervisor to implement the discontinuation or suspension of trading of the financial instruments concerned, as well as their readmission to trading and relisting. Its contact details are: [info@bourse.lu](mailto:info@bourse.lu), address: 35A, boulevard Joseph II L-1840 Luxembourg.
7. Clearstream Banking S.A.:
  - as International Central Securities Depository (“ICSD”) responsible for the external execution of the WDCCI and bail-in of registered financial instruments in the form

of international bearer debt securities<sup>2</sup>. It shall also act as the CSD responsible for the registering of newly created shares, where applicable.

- o as National Numbering Agency (“NNA”) providing new ISINs to the financial instruments concerned.

Its contact details are: Corporate Actions Luxembourg, [CA\\_mandatory.events@clearstream.com](mailto:CA_mandatory.events@clearstream.com), address: 42 avenue John Fitzgerald Kennedy L-1855 Luxembourg.

8. LuxCSD S.A. as the national Central Securities Depository (“CSD”) being the primary place of deposit for financial instruments issued and safekept in the domestic market (e.g., domestic bonds).

Its contact details are: [cslux@luxcsd.com](mailto:cslux@luxcsd.com), address: 42 avenue John Fitzgerald Kennedy. L-1855 Luxembourg.

9. The institution, to whom the CSSF Resolution Board addresses its instructions to perform the relevant operations underpinning the WDCCI power and the bail-in of the financial instruments. The institution shall instruct the (I)CSD to carry out such operations via a dedicated letter providing in particular ISINs to be written down, converted or created, the write-down and conversion percentage(s) potentially taking into account pool factors, as well as the conversion rate(s).
10. The potential special manager, appointed under Article 36 of the 2015 Law and vested with all the powers of the shareholders and the management body of the institution.
11. Other intermediaries, e.g. custodian banks.
12. The *Fonds de garantie des dépôts Luxembourg* (“FGDL”) as the national deposit guarantee scheme. Pursuant to Article 113(1) point 1 of the 2015 Law, when the bail-in tool is applied the FGDL shall be liable for the amount by which covered deposits would have been written down in order to absorb the losses of the institution, had covered deposits been included within the scope of the bail-in tool and been written down to the same extent as creditors with the same level of priority. Pursuant to Article 113(3) of the 2015 Law, this contribution shall be made in cash. Its contact details are: [info@fgdl.lu](mailto:info@fgdl.lu), address: 283, route d’Arlon L-1150 Luxembourg.

<sup>2</sup> *International securities issued outside the country in whose currency their value is stated (e.g. Eurobonds). In practice, the issuer can choose the currency of issue among the ICSD’s eligible currencies, including EUR, irrespective of its location. Such securities are usually identifiable by a securities ISIN starting with ‘XS’, rather than the standard 2-digit country code used for securities issued via a domestic CSD.*

## **2.2 Discontinuation or suspension of trading and delisting or removal of instruments from trading venues**

In the event of a resolution, the CSSF Resolution Board shall assume control of the institution, either directly or through the appointment of a special manager. At the request of the CSSF Resolution Board pursuant to Articles 54(2) point 2 and 62(1) point 3 of the 2015 Law, the CSSF as a market supervisor shall be informed about the financial instruments whose admission to trading or official listing is to be discontinued or suspended, and which regulated markets are concerned. This request for intervention will take place as soon as possible through direct communication channels (e-mails, phone calls) since the two authorities are separate parts of the CSSF as integrated authority. Thus, the CSSF Resolution Board has full certainty that the CSSF as a market supervisor will take the necessary steps. The CSSF as a market supervisor shall then initiate the necessary steps to implement such discontinuation/suspension of trading and delisting (only in Member States), by way of an instruction to the Luxembourg Stock Exchange (*Bourse de Luxembourg* or Euro-MTF). It is to be noted that the suspension of trading stems from the decision of the CSSF Resolution Board set out in the legal instrument used to formally implement the bail-in tool. The issuer of financial instruments is not presumed to be able to require a suspension of trading.

For instruments listed on other trading platforms in the EU, the CSSF as a market supervisor shall launch a European suspension procedure by activating SARIS (Suspension and Restoration Information System) within the EU. The suspension itself is finally operated by the relevant market operator while the (I)CSD is blocking any new instructions from settlement.

## **2.3 Description of the functioning of the potential interim instrument**

For the time being, the CSSF RA will not make use of interim instruments in the context of the Exchange Mechanism and therefore no description is provided.

## **2.4 Write-down and cancellation of relevant instruments**

### **Valuation 1**

The CSSF RA shall first instruct an independent valuer to prepare the valuation in accordance with Article 37(1), (3), (4) point 1, (6), (8) and (10) of the 2015 Law ("Valuation 1")<sup>3</sup>, in order to assess whether the institution is failing or likely to fail ("FOLTF"). If an independent resolution valuation that meets all the requirements is not possible or due to the urgency in the circumstances of the case, pursuant to Articles 37(2) and 37(9) of the 2015 Law a provisional valuation shall initially be sufficient ("provisional ex-ante valuation"). However, a definitive resolution valuation shall then be prepared at a later stage pursuant to Article 37(10) of the 2015 Law ("ex-post definitive valuation").

<sup>3</sup> Valuation 1 is intended to enable the CSSF RA to determine whether the conditions for triggering a resolution procedure have been met before it takes a resolution action, or it exercises the power to write down or convert the relevant capital instruments and eligible liabilities in accordance with Article 57 of the 2015 Law.



### **Treatment of shareholders in the Exchange Mechanic**

Pursuant to Article 48 of the 2015 Law, when applying the bail-in tool or the WDCCI power, the CSSF RA shall take in respect of shareholders and holders of other instruments of ownership one of the following actions:

1. Cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors (loss-absorption); or
2. Provided that, in accordance with the Valuation 1, the institution has a positive net asset value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of relevant capital instruments, or bail-inable liabilities issued by the institution (recapitalisation).

When considering which action to take, the CSSF RA shall have regard to the Valuation 1, the amount by which the Common Equity Tier 1 items must be reduced and the AT1 and T2 instruments must be written down or converted (Article 58(1) of the 2015 Law), and the necessary amount of bail-in (Article 47 of the 2015 Law).

The rest of the document assumes that the Valuation 1 reveals a negative net asset value for the institution, which is determined as FOLTF. It also assumes that the institution meets the other conditions for resolution as provided for in Article 33(1) of the 2015 Law, and that the CSSF RA applies the WDCCI power and the bail-in tool to the institution pursuant to the valuation under Article 37(4) points 2 to 7 of the 2015 Law ("Valuation 2")<sup>4</sup>.

### **Sequence of write down (and conversion)**

Consistently with Article 49 of the 2015 Law, capital instruments and liabilities of the institution shall be reduced in the following order:

- a) CET1 instruments;
- b) AT1 instruments;
- c) T2 instruments;
- d) Subordinated debt that is not AT1 or T2 capital, in accordance with the hierarchy of claims in NIP;
- e) The rest of bail-inable liabilities<sup>5</sup>, in accordance with the hierarchy of claims in NIP as published on the SRB's website, including debt instruments referred to in the 2<sup>nd</sup> subparagraph of Article 152(3) of the 2015 Law and including the ranking of deposits provided for in Article 152 of the 2015 Law.

<sup>4</sup> Valuation 2 takes place so that the CSSF RA takes a decision on a resolution action, when the conditions for triggering a resolution procedure have been met, or when exercising the power to write down or convert the relevant capital instruments and eligible liabilities in accordance with Article 57 of the 2015 Law.

<sup>5</sup> Bail-inable liabilities are defined in Article 1(44a) of the 2015 Law, as liabilities and capital instruments that do not qualify as CET1, AT1 or T2 instruments of an institution and that are not excluded from the scope of the bail-in tool. The write-down and conversion applied to the rest of bail-inable liabilities shall take into account that all claims resulting from own funds items shall have a lower priority ranking than any claim not resulting from an own funds item, in the insolvency hierarchy (Article 152(4) of the 2015 Law).

The execution of reduction shall require an instruction by the CSSF RA to the institution in order to perform all the operations underpinning the write-down.

Consequently, only when the write-down of CET1 instruments is not sufficient to ensure that the net asset value is equal to zero, and provided that CET1 instruments have been fully wiped out, relevant capital instruments and, if necessary, subordinated debt and other bail-inable liabilities must be written down. This document assumes a loss exceeding the aggregate amount of the institution's CET1 and relevant capital instruments.

#### **Loss absorption: WDCCI and write-down of bail-inable liabilities**

1. **WDCCI:** The par value of the reserves, incl. retained earnings (CET1), shall first be written down to zero, followed by the full write-down of the institution's share capital (CET1), AT1 instruments and AT2 instruments. Pursuant to Article 61(1) point 9 of the 2015 Law, the CSSF RA's resolution decision shall provide for the cancellation of the shares that have been fully written down (implying that the shareholders concerned shall no longer have any claims arising from their shares).
2. **Write-down of bail-inable liabilities (application of the bail-in tool):** the principal amount of bail-inable liabilities is wholly or partly written down. The next creditors in line to bear the losses are the holders of subordinated debt that is not AT1 or T2 capital. This document assumes that this subordinated debt is partly written down (implying that the loss is lower than the aggregate amount of own funds and subordinated debt).  
This step leads to the determination by the CSSF RA of write-down amounts and percentages by class of bail-inable liabilities. For this purpose, the CSSF RA shall rely on Article 37(8) of the 2015 Law whereby the valuation shall provide with the subdivision of creditors in classes in accordance with their priority levels, and on Article 37(6) of the 2015 Law whereby the valuation shall be supplemented by the list of outstanding liabilities shown in the institution's accounting documents, with an indication of the respective credits and priority levels.
  - The write-down amount shall correspond to the amount by which bail-inable liabilities have to be written down to ensure that the net asset value of the institution is equal to zero (Article 47(1) of the 2015 Law).
  - As a result, the write-down percentage by bail-in class corresponds to the ratio obtained through dividing the write-down amount of bail-inable liabilities required for a given bail-in class, by the carrying value of the bail-inable liabilities of this class before write-down and after subtraction of the mandatory and discretionary exclusions.

In its resolution decision, pursuant to Article 47(1) point 1 of the 2015 Law the CSSF RA will indicate the write-down amount (from which the write-down percentage may be deduced) for each affected ISIN code, where applicable.

It should be noted that a partial write-down may be reflected in two ways by the agent bank and the (I)CSD: either through a reduction of the nominal or by the application of a pool factor<sup>6</sup>, where applicable. In this regard, the resolution decision does not prescribe which of these two methods shall be used, and refers institutions to the SRB's [operational guidance on bail-in for international debt securities published in March 2021](#) (notably its section 3.1, part B) for more details. Likewise, the calculation of the new pool factor after write-down shall be within the remit of the agent bank and the (I)CSD. In particular, Annex II.2 to this operational guidance exhibits a template letter from the agent bank to the (I)CSD, containing in attachment operational guidelines for the execution of the CSSF RA's resolution decision (related details regarding the execution of the write-down and conversion) and the list of relevant instruments (accompanied by a technical glossary in Annex III). This list provides the information that the (I)CSD will need to receive in order to perform a write-down (and/or conversion), and to reflect the bail-in in the accounts of its participants.

### **Treatment of "in-flight transactions"**

"In-flight transactions", also called "open transactions", are transactions in instruments entered into the (I)CSD's system (in Luxembourg, Clearstream Banking S.A. or LuxCSD S.A.), matched but not yet settled. In the process of write-down and cancellation of the relevant instruments (capital instruments and bail-inable liabilities), such transactions shall be treated according to Clearstream Banking S.A. or LuxCSD S.A.'s compensation rules. Where applicable, settlement blocking should be taken into consideration and should be carried out as soon as possible ("effective date of settlement blocking"). For more detail on the (I)CSD's compensation rules, institutions are invited to contact Clearstream Banking S.A. or LuxCSD S.A.

Alternatively, reference should also be made to terms and conditions of the financial instrument written-down/cancelled, if they provide for a specific treatment of in-flight transactions in case of resolution.

### **Treatment of accrued interests**

In the Luxembourg insolvency law, the accrued interests rank *pari passu* with the principal amount of the instruments written-down or converted (i.e. they have the same ranking in insolvency hierarchy). Therefore, they shall be bailed-in together with the write-down or conversion of the related liabilities.

## **2.5 Description of the conversion process**

In a next step, the institution will be recapitalized so that it once again meets its regulatory capital requirements. Bail-inable liabilities are converted into newly issued shares to the extent needed. This document assumes that the remaining amount of subordinated debt (after write-down) is converted in shares of the institution.

<sup>6</sup> *Factor used to calculate the value of the outstanding principal of the financial instrument applicable until the next redemption (factor) date, or after the redemption (factor) date. Can also be defined as the ratio of outstanding principal to original face value.*

### **Recapitalisation: (partial) conversion of bail-inable liabilities**

Pursuant to Articles 47(1) point 2 and 47(2) of the 2015 Law, in its resolution decision the CSSF RA shall provide the amount by which bail-inable liabilities must be converted into shares (or other types of capital instruments) of the institution in order to restore its CET1 capital ratio, to sustain sufficient market confidence in it and enable it to continue to meet, for at least one year, its conditions for authorization.

- The conversion amount<sup>7</sup> shall correspond to the volume of bail-inable liabilities to be converted by bail-in class, which is derived from the recapitalisation amount stemming from the Valuation 2.
- As a result, the conversion percentage by bail-in class corresponds to the ratio resulting from dividing the conversion amount required for a bail-in class by the carrying value of the bail-in class after write-down (after subtraction of the mandatory and discretionary exclusions). It corresponds to the proportion of the carrying value of liabilities to be converted by bail-in class after application of the write-down.

In the case of a subsequent conversion of the remaining value of bail-inable liabilities following their partial write-down (assumption of this document with respect to subordinated debt), this document does not prescribe the calculation method of the conversion percentage by bail-in class, i.e. whether the latter should be applied to the notional of bail-inable liabilities before, respectively after their partial write-down. Indeed, pursuant to Article 47(2) of the 2015 Law the CSSF RA shall only indicate the conversion amount (from which the conversion percentage may be deduced) for each affected ISIN code, where applicable.

Alike a partial write-down, it should also be noted that a partial conversion may be reflected in two ways by the agent bank and the (I)CSD (reduction of the nominal or application of a pool factor). The same remarks made with respect to the write-down of bail-inable liabilities therefore apply here.

### **Determination of conversion rates for recapitalization**

In accordance with Article 1(110) of the 2015 Law, conversion rate means the factor that determines the number of shares or other instruments of ownership into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim. This conversion rate applies in the context of the Exchange Mechanic, i.e. both in the exercise of the WDCCI power under Article 57(3) of the 2015 Law and of the power to convert bail-in liabilities under Article 61(1) point 7 of the same law.

The determination of conversion rates by bail-in class by the CSSF RA shall be based upon Article 51 of the 2015 Law and the EBA guidelines EBA/GL/2017/03 on the rate of conversion of debt to equity in bail-in ("EBA/GL/2017/03", transposed as internal procedure of the CSSF RA). They allow for the application of different rates of conversion to different classes of capital instruments and liabilities under the following principles:

<sup>7</sup> Pursuant to Article 47(1) of the 2015 Law, the sum of the write-down amount and the conversion amount of bail-inable liabilities corresponds to the "aggregate amount".

- Article 51 of the 2015 Law: 1) the conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write-down and conversion powers, and 2) when different conversion rates are applied, the conversion rate applicable to non-subordinated liabilities shall be higher than the conversion rate applicable to subordinated liabilities.
- The aforementioned internal procedure of the CSSF RA transposing the EBA guidelines EBA/GL/2017/03 provides for the following principles:
  - o No creditor worse off (“NCWO”): no shareholder or creditor is expected to receive worse treatment in the Exchange Mechanic than in NIP. This determination of the expected actual treatment in the Exchange Mechanic shall rely on Valuation 2, while the determination of the expected treatment in NIP shall rely on the preliminary NCWO assessment stemming from Article 37(8) of the 2015 Law. An ex-post valuation of the actual difference in treatment shall however be performed later on by an independent valuer, according to Article 74 of the 2015 Law (“Valuation 3”).
  - o Creditor hierarchy: differential conversion rates shall only be set in order to ensure that shareholders bear losses prior to creditors, that the order of priority of creditors’ claims under NIP is respected, and that creditors of the same class are treated in an equitable manner.

When the above analysis does not reveal the need to set differential conversion rates, in its resolution decision the CSSF RA shall apply an initial conversion rate of 1:1 to each bail-in class, i.e. the reduction of the principal of a bailed-in liability will serve for the creation of new equity with an equivalent book value (EUR 1 of liability converted to EUR 1 of equity). Where applicable, any adjustments required to conversion rates pursuant to the above analysis shall result in the determination of “effective conversion rates”.<sup>8</sup>

### **Issuance of new shares**

Pursuant to Article 61(1) point 10 of the 2015 Law, the CSSF RA’s resolution decision shall provide for the issuance of new shares by the institution. This new equity shall stem from the conversion of the bailed-in liabilities as a result of the recapitalization phase, without any recourse to interim instruments (“direct conversion”).

The institution shall provide the relevant information on the newly issued shares to the CSSF as competent authority, with a view to approve them as CET1 instruments under Article 26(3) CRR. The latter shall also assess and authorize, in cooperation with the ECB, any new/increase (or complete acquisition) of qualifying holding in the institution, stemming from the Exchange Mechanic. Pursuant to Article 48(4) of the 2015 Law, the CSSF as competent authority shall carry out this assessment in a timely manner that does not delay the application of the Exchange Mechanic or prevent the resolution action from achieving the relevant resolution objectives.

<sup>8</sup> *It shall be taken into account that the effective conversion rate specified in the resolution decision can be zero for some ranks of the bail-in sequence. Regardless of the level of the conversion percentage, no new shares shall be allocated to the instruments of the corresponding ranks in this case.*

The issuance of new shares will require a change to the by-laws of the institution by means of a notarial deed to be lodged with the Luxembourg Trade and Company Register within one month upon signature.

### **Approach to deal with any fractional shares**

Less than one full share of equity is called a fractional share. Such shares may be the result of stock splits, dividend reinvestment plans, or similar corporate actions and could also result from a conversion resulting from a bail-in event.

In cases where the bail-in event results in fractional shares with a value lower than the minimum denominations or tradable amounts, the (I)CSD (in Luxembourg, Clearstream Banking S.A. or LuxCSD S.A.) needs to be informed about the treatment of these fractional shares. The market practices are the following<sup>9</sup>:

- Round down: round down to the nearest whole number of shares;
- Round up: round up to the nearest whole number of shares;
- Standard: if the fraction is greater than or equal to 0.5 of a security, round up; if less than 0.5, round down.

If the effective conversion rate provided in the CSSF RA's resolution decision entails fractional shares, and the resolution decision does not provide for rounding down at the level of the individual instrument, the (I)CSD rounds down the fractional amount per participant.

## **2.6 (Re)listing and (re)admission to trading of instruments from trading venues**

At the request of the CSSF Resolution Board pursuant to Articles 54(2) 3. and 4. of the 2015 Law, the CSSF as a market supervisor shall be informed about the shares and written-down debt instruments to be officially (re)listed or (re)admitted to trading, and which regulated markets are concerned. The CSSF as a market supervisor shall then initiate the necessary steps to implement such (re)listing/(re)admission to trading (only in Member States), by way of an instruction to the Luxembourg Stock Exchange (*Bourse de Luxembourg* or Euro-MTF). Alike the suspension of trading or listing, the issuer of the financial instruments concerned is not presumed to be able to require a (re)listing or (re)admission to trading, as this stems from a decision of the CSSF Resolution Board.

For instruments listed on other trading platforms in the EU, the CSSF as market supervisor shall launch a European restoration procedure by activating SARIS within the EU. The restoration itself is finally operated by the relevant market operator, while the (I)CSD is unblocking any new instructions from settlement. Pursuant to Article 54(2) point 4 of the 2015 Law, the CSSF Resolution Board has the power to waive prospectus requirements for the relisting or readmission to trading of debt instruments which have been written down (prospectus requirement stemming from Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 transposed by the Luxembourg Law of 16 July 2019).

<sup>9</sup> *This does not prejudice the decisions that will be taken in the case of bail-in. From a resolution authority perspective, these rounding mechanics bear the risk of potential (minimal) different treatment of pari passu ranked creditors.*

## **2.7 Approach to address potential differences between definitive and provisional ex-ante valuation (compensation in case of over-conversion)**

In case where the ex-post definitive valuation would reveal a shortfall for some shareholders or creditors of the institution under resolution compared to the situation prevailing under the provisional ex-ante valuation, the latter should be compensated according to Article 37(11) point 1 of the 2015 Law. This situation occurs when the ex-post definitive valuation's estimate of the net asset value of the institution is higher than its provisional ex-ante valuation's estimate.

Pursuant to Article 37(11) point 1 of the 2015 Law, in this case the CSSF RA may exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool. In accordance with Article 47(3) of the 2015 Law, where capital has been written down and the bail-in tool has been applied, and the level of write-down based on the provisional ex-ante valuation is found to exceed requirements when assessed against the ex-post definitive valuation ("over-conversion"), the CSSF RA may thus apply a write-up mechanism to reimburse creditors and then shareholders to the extent necessary.

This process, often referred to as "bail-in adjustments", may be carried out through various means:

- With respect to written-down creditors, the (I)CSD may proceed to the revaluation of bonds, by increasing the nominal value of the bond after the initial write-down. Alternatively, where applicable it could amend the pool factor of concerned issuances.
- For converted owners of relevant capital instruments or creditors, the compensation mechanism would consist in the creation of new shares.

## **2.8 Drafting of the Business Reorganisation Plan ("BRP") by the institution**

In the event that the bail-in tool is applied in order to restore the institution's ability to comply with the conditions for authorisation and to continue to carry out its activities, pursuant to Article 53(1) of the 2015 Law its management body or its special manager shall draw up and submit to the CSSF Resolution Board a BRP within one month after the application of the bail-in tool. According to Article 53(4) and (5) of the 2015 Law, the BRP should refer to the factors that caused the institution's failure and include measures aiming to restore the long-term viability of the institution within a reasonable timescale, based on realistic assumptions and on a scenario-based analysis. Within one month from the submission date of the BRP by the institution, the CSSF Resolution Board shall perform its own assessment of the BRP in agreement with the CSSF as competent authority to assess the likelihood that it will restore the long-term viability of the institution. Pursuant to Article 53(10) of the 2015 Law, the institution's management body or its special manager shall submit at least every six months to the CSSF Resolution Board a report on the progress in the implementation of the BRP.

## **2.9 Valuation 3**

This valuation is to be carried out as soon as possible by an independent person once a resolution action has been taken and/or the power to write down or convert the relevant capital instruments and eligible liabilities in accordance with Article 57 of the 2015 Law has been exercised. The purpose of this valuation is to determine whether shareholders and creditors would have received better treatment under NIP, notably but not exclusively for the purposes of Article 73 of the 2015 Law ("valuation of difference in treatment").

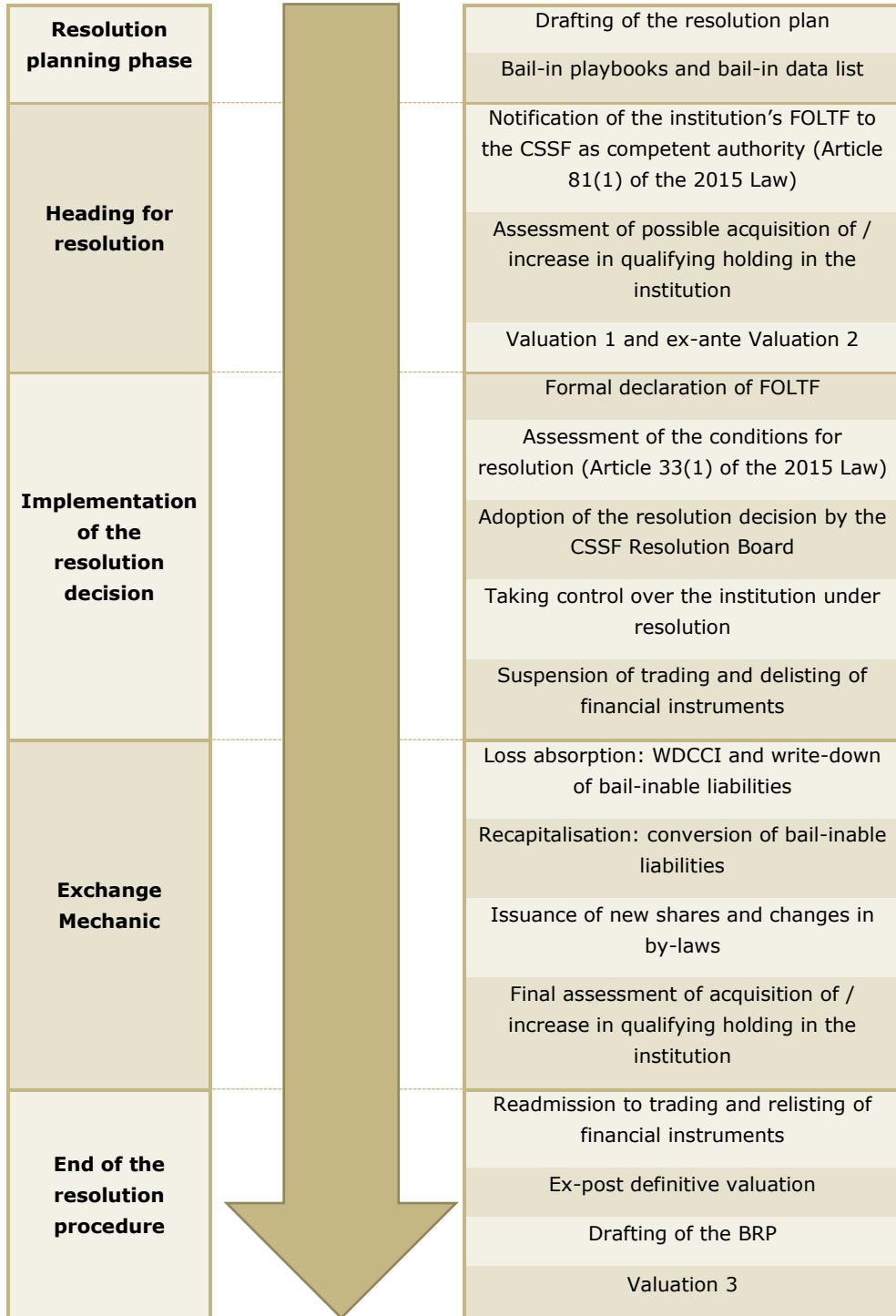
Pursuant to Articles 74 and 75 of the 2015 Law, in this case shareholders and creditors are entitled to the payment of the difference between i) the treatment they would have received if the institution had entered NIP at the time when the decision was taken, and ii) the actual treatment that they have received in the resolution of the institution.

According to the Commission Delegated Regulation 2018/345<sup>10</sup>, the reference date of Valuation 3 shall be the resolution decision date. The determination of the treatment of shareholders and creditors under NIP shall be based on the discounted amount of expected cash flows (notably reflecting the applicable insolvency law and practice in Luxembourg and recent past cases), while the determination of their actual treatment in resolution would depend on the form of the compensation received (equity: overall value of shares, debt: changes in contractual cash flows resulting from write-down or conversion considered). The shareholders and creditors found to be worse-off shall be compensated in the form of cash, equity or debt.

<sup>10</sup> *Commission Delegated Regulation (EU) 2018/345 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities.*



### 2.10 Indicative timeline for the bail-in process





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