



Suspicious operations report

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This document, which is aimed at all professionals covered by the AML/CFT Law, replaces the FIU circular 22/10 of 8 November 2010 pertaining to Article 5 of the Law of 12 November 2004, as amended, on the fight against money laundering and terrorist financing, concerning the professionals covered by said law.

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1 INTRODUCTION

Pursuant to the law of 12 November 2004, as amended, on the fight against money laundering and terrorist financing (“AML/CFT Law”), professionals, their directors, officers and employees are obliged (1) to cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing and (2) to inform without delay, on their own initiative, the financial intelligence unit (“FIU”) when they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being committed, has been committed or attempted.

If you are one these persons or entities, this guideline can assist you in meeting your obligations to report suspicious operations to the FIU.

This guideline is for informational purposes only. It does not contain any legal advice, nor does it replace the relevant laws and regulations.

2 WHO MUST REPORT SUSPICIOUS OPERATIONS?

If you are a person or entity known as “professionals covered by this law”, as listed hereafter, or if you are director or employee of such a person or entity, you are obliged to report suspicious operations to the FIU:

1. credit institutions and professionals of the financial sector (PFS) licensed or authorised to exercise their activities in Luxembourg in accordance with the law of 5 April 1993 on the financial sector, as amended “and payment institutions “and electronic money institutions” licensed or authorised to exercise their activities in Luxembourg in accordance with the law of 10 November 2009 on payment services;

1bis. the natural and legal persons benefiting from the waiver in accordance with Article 48 “or 48-1” of the law of 10 November 2009 on payment services;

2. insurance undertakings licensed or authorised to exercise their activities in Luxembourg in accordance with the law of 6 December 1991 on the insurance sector, as amended, in connection with operations covered by point II of the Annex of the law of 6 December 1991, as amended, and insurance intermediaries licensed or authorised to conduct business in Luxembourg in accordance with the law of 6 December 1991 on the insurance sector, as amended, when they act in respect of life insurance and other investment related services;

2bis. professionals of the insurance sector authorised to carry out their business in Luxembourg pursuant to the law of 6 December 1991 on the insurance sector, as amended;

3. pension funds under the prudential supervision of the *Commissariat aux assurances*;

4. undertakings for collective investment and investment companies in risk capital (SICAR), which market their “units, securities or partnership interests” and to which the “law of 17 December 2010 relating to undertakings for collective investment, as amended”, or the “law of 13 February 2007 relating to specialised investment funds” or the “law of 15 June 2004 relating to the Investment company in risk capital (SICAR)” applies;

5. management companies under the “law of 17 December 2010 relating to undertakings for collective investment” which market “units, securities or partnership interests” of undertakings for collective investment or perform additional or auxiliary activities within the meaning of the “law of 17 December 2010 relating to undertakings for collective investment”;

6. pension funds under the prudential supervision of the *Commission de surveillance du secteur financier*;

6bis. managers and advisors of undertakings for collective investment, investment companies in risk capital (SICAR) and pension funds;

6ter. securitisation undertakings, when they perform trust and company service provider activities;

6quater. insurance and reinsurance undertakings and their intermediaries whenever they perform credit and surety operations;

6quinquies. alternative investment fund managers governed by the law of 12 July 2013 on alternative investment fund managers and which market units, securities or partnership interests of alternative investment funds or which carry out additional or non-core activities within the meaning of Article 5(4) of the law of 12 July 2013 on alternative investment fund managers;

7. persons other than those listed above who conduct as a business one or more of the activities or operations listed in the annex for or on behalf of a customer, without prejudice to restrictive measures or prohibitions relating to applicable activities or operations, under other laws.

8. *réviseurs d'entreprises* (statutory auditors), *réviseurs d'entreprises agréés* (approved statutory auditors), *cabinets de révision* (audit firms) and *cabinets de révision agréés* (approved audit firms) within the meaning of the law of 18 December 2009 concerning the audit profession;

9. accountants, within the meaning of the law of 10 June 1999 on the organisation of the accounting profession;

9bis. accounting professionals, within the meaning of Article 2(2)(d) of the law of 10 June 1999 on the organisation of the accounting profession;

10. real estate agents, established or acting in Luxembourg;

11. notaries, within the meaning of the law of 9 December 1976 on the organisation of the profession of notary, as amended;

12. lawyers, within the meaning of the law of 10 August 1991 on the legal profession, as amended when:

(a) assisting in the planning or execution of transactions for their customer concerning the

- (i) buying and selling of real property or business entities,
- (ii) managing client money, securities or other assets,
- (iii) opening or management of bank, savings or securities accounts,
- (iv) organisation of contributions necessary for the creation, operation or management of companies,
- (v) creation, domiciliation, operation or management of trusts, companies or other similar structures,

(b) or acting for and on behalf of their customer in any financial or real estate transaction;

(c) or providing a service of a trust and company service provider;

(d) or carrying out the activity of Family Office.

13. persons other than those listed above who exercise in Luxembourg on a professional basis an activity of tax or economic advice or one of the activities described in (12)(a) and (b);

13bis. persons other than those listed above who exercise on a professional basis in Luxembourg a trust and company service provider activity;

14. casinos and similar gambling establishments within the meaning of the law of 20 April 1977 on gaming and betting on sporting events;

14bis. operators in a free zone authorised to carry out their activity pursuant to an authorisation by the *Administration des douanes et accises* (customs and excise) within the Community control type 1 free zone located in the municipality of Niederanven Section B Senningen called Parishaff L-2315 Senningerberg (Hoehenhof).

15. other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15,000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

3 WHAT IS A SUSPICIOUS OPERATION?

3.1 GROUNDS FOR SUSPICION

A transaction is suspicious when the professional knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being committed or has been committed or attempted, in particular in consideration of the person concerned, its development, the origin of the funds, the purpose, nature and procedure of the operation.

Generally speaking, a suspicion can be described as “a negative opinion of someone or of his/her behaviour, based on hints, impressions, intuitions, but without any specific evidence”¹. This means that, when reporting a suspicion, no evidence of money laundering or terrorist financing is required. All that is needed are circumstances, which would make such a hypothesis likely.

3.1.1 MONEY LAUNDERING

The offence of money laundering, defined in Article 506-1 of the Penal Code and Article 8-1 of law of 19 February 1973, as amended, on the sale of medicinal substances and measures to combat drug addiction, covers three different types of behaviour:

(1) those who knowingly facilitated, by any means, the misleading justification of the nature, origin, location, availability, movement or ownership of property, which are referred to in section 32-1, paragraph 1 (1) and which constitute the direct or indirect purpose or product of one or more primary offences or which constitute any kind of patrimonial benefit, resulting from one or more of those offences²,

(2) those who knowingly assisted in the placement, concealment, disguise, transfer or conversion of property, which are referred to in section 32-1, paragraph 1 (1) and which constitute the direct or indirect purpose or product of one or more primary offences or which constitute any kind of patrimonial benefit, resulting from one or more of those offences,

3) those who have acquired, held or used property, which are referred to in section 32-1, paragraph 1 (1) and which constitute the direct or indirect purpose or product of one or more primary offences or which constitute any kind of patrimonial benefit, resulting from one or more of those offences.

The concept of primary offence refers to all offences covered by Article 506-1 of the Penal Code. This list includes most of the serious offences contained in the Penal Code (for example bankruptcy, corruption, kidnapping, sexual exploitation, forgery, fraud, murder, human trafficking, theft, etc.) or contained in special acts of legislation (for example counterfeiting, criminal tax offences, environmental offences, trafficking of illicit narcotics and psychotropic substances, etc.).

Money laundering is a punishable offence, even when the primary offence was committed abroad³.

Money laundering is a punishable offence, even when the perpetrator is also the perpetrator or accomplice of the primary offence⁴.

¹ Le Larousse

² The property, referred to in Article 32-1, paragraph 1, (1) of the Penal Code, covers property of any kind, whether corporeal or incorporeal, movable or immovable, as well as legal acts or documents evidencing the title to or a right to such an asset, property constituting the direct or indirect purpose or product of an offence or constituting any kind of patrimonial benefit, resulting from an offence, including the income generated from such assets.

³ Art. 506-3 Penal Code

⁴ Art. 506-4 Penal Code

3.1.2 TERRORIST FINANCING

The offence of terrorist financing, defined in Article 135-5 of the Penal Code, is “the act of providing or collecting, by any means, directly or indirectly, unlawfully and intentionally, funds, assets, or properties of any nature, with a view to utilise them or knowing that they will be utilised, partly or in whole, for the purpose of committing or attempting to commit one or more of the offences referred to in paragraph (2) of the present article, even if they have not actually been used to commit or attempt to commit any of these offences or if they are not related to one or more specific terrorist acts”⁵.

The obligation to report suspicious operations also applies to funds where there are reasonable grounds to suspect, or they are suspected, to be linked or related to, or will be used for, terrorism, terrorist acts, by terrorist associations, organisations or groups or by those who finance terrorism⁶.

3.2 COMMITTED OR ATTEMPTED OFFENCE

Suspicion may relate to a money laundering or a terrorist financing operation that has already been committed or that has only been attempted.

Money laundering or terrorist financing has been committed once the suspicious operation has taken place. This is the case when the suspicion only arises after the operation has been committed, due to circumstances that were unknown at the time of the operation. It is important that you refrain from executing a transaction that you know or suspect to be related to money laundering or terrorist financing⁷.

There is an attempt to launder money or finance terrorism when the client or prospective client started to launder money or finance terrorism, but failed due to circumstances beyond his control, in particular due to the diligence of the professional. A simple request for information on the terms and conditions of an operation does not mean an offence is committed; an offence is only committed when concrete measures are implemented, such as entering into business negotiations, making a transfer order, setting up a legal framework, etc.

4 HOW TO MAKE A SUSPICIOUS TRANSACTION REPORT?

If you know or suspect an operation to be related to money laundering or terrorist financing, regardless of whether it has only been attempted or already executed, you are obliged to report it to the FIU without delay⁸. To do so, you must first register as a reporting entity on the FIU's goAML Web application and designate at least one compliance officer. Only then can you save your report.

4.1 PRIOR REGISTRATION WITH GOAML WEB

4.1.1 REPORTING ENTITY

If you are a person or entity referred to in Article 2 of the AML/CFT Law (see paragraph 2 above) you are entitled to register on goAML Web as a reporting entity.

⁵ Paragraph (2) of the article refers to Articles 112-1 (attacks against persons enjoying international protection), 135-1 to 135-4 (terrorist offences), 135-9 (terrorist attacks using explosives), 135-11 to 135-13 (offences related to terrorist activities) and 442-1 (hostage taking) of the Penal Code, Articles 31 and 31-1 of the Law of 31 January 1948, as amended, on the Regulation of Air Navigation, Article 2 of the Law of 11 April 1985, as amended, approving the Convention on the Physical Protection of Nuclear Material, opened for signature in Vienna and New York on 3 March 1980, and Article 65 -1 of the Law of 14 April 1992, as amended instituting a disciplinary and penal code for the navy.

⁶ Art. 5 (1bis) AML/CFT Law

⁷ Art. 5 (3) AML/CFT Law

⁸ Art. (1) (a) AML/CFT Law

To find out more about registering as a reporting entity, please visit the following website:

http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arondissement/lutte-anti-blanchiment/goaml/enregistrement/premiere_inscription/index.html

As soon as your application is validated by the FIU, you will receive a confirmation email with your account information. This will allow you to designate a compliance officer, who will be responsible for communicating with the FIU in the future.

4.1.2 COMPLIANCE OFFICER

Once registered as a reporting entity, you must designate one or more persons, who will be able to cooperate with the FIU, and attach them to your goAML Web account.

For more information on registering a compliance officer, please visit the following website:

http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arondissement/lutte-anti-blanchiment/goaml/enregistrement/personne_supplementaire/index.html

4.2 REGISTRATION OF A REPORT

Once registered on goAML Web, you are able to file your suspicious operation reports. To do so, you have the choice between filling out an online report or downloading XML files. The different types of forms offered on goAML Web allow you to distinguish between money laundering and terrorist financing and between reports that do [suspicious transaction report (STR)] and reports that do not contain suspicious transactions [suspicious activity report (SAR)]. The forms include mandatory fields, marked with an asterisk, and optional fields, that we ask you to fill out if you possess the relevant information.

4.2.1 ONLINE REPORTING

If you only make few reports or if your reports contain few or no financial transactions, you can opt for online reporting.

To learn more about our online forms, please visit the following website:

http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arondissement/lutte-anti-blanchiment/goaml/declaration/formulaire_declaration/index.html

4.2.2 DOWNLOADING AN XML

Manual encoding of financial transactions can quickly become tedious. If you regularly make reports or if your reports contain a lot of financial transactions, we recommend you to update your IT systems, which will enable you to directly export the relevant data from your computer system to an XML file, which can then be imported into goAML Web.

To learn more about downloading XML files, please visit the following website:

http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arondissement/lutte-anti-blanchiment/goaml/declaration/declaration_xml/index.html

5 HOW TO REPLY TO A REQUEST FOR INFORMATION BY THE FIU?

Even if you did not make a report, the FIU is entitled to ask you for information⁹. You must respond, without delay, to a request for information by the FIU by using the “feedback” forms, available on goAML Web. You can fill them in online or download an XML file (see sub 4.2 above). If you have not yet done so, please register in advance (see section 4.1 above) to be able to respond to the request for information.

Depending on the complexity and scope of research required, you should respond to any request for information by the FIU within a fortnight. However, if a request for information is described as “very urgent”, especially when dealing with terrorist financing, you should respond within 24 hours. A request for information described as “urgent” should be processed within a week.

6 RIGHTS AND OBLIGATIONS OF THE REPORTING ENTITY

The FIU does not need to be informed of subsequent transactions, as long as they are not suspicious. If they appear suspicious to you in any way, you should immediately inform the FIU via a new report.

6.1 COMMUNICATION BAN

Under no circumstances should you disclose to anyone, including your customer, that information was communicated or given to the FIU or any other competent authority in the field of anti-money laundering and terrorist financing¹⁰. You must not reveal, under threat of criminal sanctions, the existence of a suspicious operation report relating to money laundering or terrorist financing or of a request for information by the FIU. Unless expressly authorised by the FIU, you are not permitted to inform your customer of a freezing order, issued by the FIU.

However, this ban does not apply to a disclosure to supervisory bodies (*Commissariat aux assurances, Commission de surveillance du secteur financier* and *Administration de l'enregistrement et des accises*) or to the self-regulatory bodies of the different professionals (*Chambre des notaires, Institut des réviseurs d'entreprise, Ordre des avocats* and *Ordre des experts comptables*)¹¹.

Some disclosure of information between certain professionals is permitted when certain requirements are met:

- Financial and insurance sector establishments belonging to the same group¹²,
- Auditors, accountants, notaries, lawyers, tax and economic advisers, situated in a Member State or in a Third Country, which imposes requirements equivalent to those laid down in the AML/CFT Law and who perform their professional activities within the same legal person or network¹³,
- Credit institutions, financial institutions, auditors, accountants, notaries, lawyers, tax and economic advisers, in cases related to the same customer and the same transaction involving two or more professionals, provided that they are situated in a Member State or in a Third Country, which imposes requirements equivalent to those laid down in the AML/CFT Law¹⁴.

6.2 OUTCOME OF THE BUSINESS RELATIONSHIP

No provision of the AML/CFT law requires the termination of the business relationship with the client, even if you have or intend to report a suspicious operation. This decision is entirely up to you. Of course, you have the

⁹ Art. 5 (1) (b) AML/CFT Law

¹⁰ Art. 5 (5) (1) AML/CFT Law

¹¹ Art. 5 (5) (2) AML/CFT Law

¹² Art. 5 (5) (3) AML/CFT Law

¹³ Art. 5 (5) (4) AML/CFT Law

¹⁴ Art. 5 (5) (5) AML/CFT Law

right to communicate with your client within the framework of the usual business relationship; however you must not mention the existence of a suspicious operation report or a request for information by the FIU.

6.3 IMMUNITY

No civil, criminal or administrative proceedings may be brought against you, if you made a bona fide report of suspicion to the Luxembourg authorities responsible for the fight against money laundering and the financing of terrorism¹⁵. Reports, information and documents supplied by you to the FIU cannot be used against you in case of legal action for breach of professional obligations¹⁶.

Please note that this immunity does not apply when responding to a request from a foreign authority, even if the latter is competent in matters concerning the fight against money laundering and the financing of terrorism. Faced with such a request, we recommend that you notify the FIU, by reporting the suspicious operation in question. You will thus benefit from the immunity, while leaving the task of communicating with the foreign authority to the FIU.

6.4 CONFIDENTIALITY

The identity of the employees of the professional, having made a suspicious operation report or having provided information to the FIU, is kept confidential by the aforementioned authorities, unless disclosure is essential to ensure the regularity of legal proceedings or to establish proof of the facts forming the basis of these proceedings¹⁷.

Whenever possible, the FIU will not disclose to a foreign counterpart or national prosecutor (1) whether the information came from a suspicious operation report, submitted by a professional, or from a request for information by the FIU, nor (2) the identity of the professional who provided said information.

6.5 PENALTIES FOR NON-COMPLIANCE

Criminal sanctions may be imposed for violation of your professional obligations, particularly with regard to the reporting of suspicious operations. Failure to file a suspicious operation report or to respond to a request for information by the FIU is punishable by a fine, ranging from EUR 1 250 to EUR 1 250 000.

The same penalties could be applied if you disclose, in any way, the existence of a suspicious operation report, a request for information by the FIU or, without authorisation from the FIU, the existence of a freezing order.

7 HOW TO IDENTIFY A SUSPICIOUS OPERATION

7.1 METHODOLOGY

A suspicion of money laundering or terrorist financing may arise due to the person concerned, due to the development of the operation, due to the origin of the funds, due to the nature, purpose or procedure of the operation. Reporting a suspicious transaction has no minimum monetary threshold. Several factors should be taken into account, which individually may seem irrelevant, but can generate doubts on the veracity of the operation when combined. In general, when a transaction or financial operation, whether only attempted or already executed, raises questions or raises a feeling of discomfort, worry or suspicion, it could potentially be linked to money laundering or terrorism financing.

It is best to use indicators that could reveal a possible link to money laundering or terrorism financing. The report forms on goAML Web give three sets of indicators related (1) to the person of the client or prospective client, (2) to the operations or transactions and (3) to the behaviour and profile of the client or prospective

¹⁵ Art. 5 (4) AML/CFT Law

¹⁶ Art. 5 (4bis) AML/CFT Law

¹⁷ Art. 5 (5) (b), 2) AML/CFT Law

client. To justify your suspicion, you must tick one or more of these indicators, but you may also add any other indicator that you think is pertinent.

The context of an operation or transaction is vital when debating on whether your doubts are well-founded. This context will vary from one company to another and from one client to another. You must judge the merits of an operation or of a transaction, while taking into account what seems to be appropriate under the circumstances and also what seems to be in line with the standard business practices of your sector, not to mention the knowledge you have of your client. The fact that operations or transactions do not seem to comply with the standard business practices of your sector may be a determining factor in establishing the motives behind your suspicion.

The analysis of your suspicion should include a reasonable assessment of the relevant factors, including your level of knowledge of the client's business affairs, his financial history, his behaviour and the context of the operation. Sometimes, when taking several indicators into account, and not just one, you can conclude that you have reasonable grounds to suspect an operation or a transaction is related to money laundering or terrorist financing.

7.2 INDICATORS OF SUSPICION

Indicators will help you detect a potential offence of money laundering or terrorist financing and confirm your doubts. The suspicion may only be based on one indicator, which appears particularly relevant due to the context, or may be based on a combination of several indicators, which together render the hypothesis of money laundering and terrorist financing probable.

7.2.1 EXAMPLES OF INDICATORS LINKED TO THE CLIENT AS A PERSON

Indicators linked to the identity of the client cannot, in themselves, justify a suspicion, but when combined with other indicators, they can reinforce your doubts. Thus, unusual operations or transactions made by a client who has previous criminal records, who is a politically exposed person or who appears on a list of sanctions, is more likely to be linked to money laundering or terrorist financing.

Category 1: Indicators linked to the identity of the client
Criminal records
Politically exposed person (PEP)
List of sanctions

7.2.2 EXAMPLES OF INDICATORS LINKED TO AN OPERATION OR TRANSACTION

Indicators linked to operations or transactions are multifaceted. The suspicion can arise from the fact that the operation or transaction in question is the consequence of fraudulent behaviour, from the frequency of the transaction or operation, from the amount in question, from the unusual use of certain means of payment, from the interference of certain persons, natural or legal, from an act executed by a non-regulated financial intermediary, from the identity of the recipient of the funds or from the price used. The combination of several of these indicators increases the likelihood that money laundering or terrorist financing is being committed.

Category 2: Indicators linked to an operation or transaction
<i>Suspicion linked to fraud</i>
Phishing or pharming
Fraudulent operation
Use of counterfeit documents
<i>Suspicion linked to one or several operations</i>
Suspicious deposits
Suspicious withdrawals
Suspicious operations
Structuring

Smurfing
Amount of the operation
Multiple operations of a very small amount
Multiple operations of a very high amount
Transaction towards or stemming from a high risk jurisdiction
Suspicion linked to the means of payment
Unusual use of e-money, online or mobile payments
Unusual use of prepaid credit cards
Suspicion linked to the interference of actors
Interference of a figurehead
Interference of an off-shore company
Suspicion linked to the financial intermediary
Use of an informal network (<i>for example hawala</i>)
Transactions made through shell banks
Unusual use of payment services
Suspicion linked to the recipient of the funds
Handover of the funds to a suspicious NGO
Handover of the funds to a person mentioned on a list of sanctions
Handover of the funds to a politically exposed person
Suspicion linked to the price of a good or service
Abnormally low price
Abnormally high price

7.2.3 EXAMPLES OF INDICATORS LINKED TO THE CLIENT'S BEHAVIOUR AND PROFILE

The indicators linked to the behaviour and profile of the client can potentially reveal that money laundering or terrorist financing is being committed. Suspicious behaviour or a reluctance to handover the relevant supporting documents can reveal the intention to hide the true objective of the business relationship, of the operation or of the transaction. Sometimes, the client's economic profile does not fit with the specific type of operations. Open access sources can shed some light on the (future) client's intention.

Category 3: Indicators linked to the behaviour and profile of the client
The client's suspicious behaviour
Client is reluctant to handover supporting documents
Economic profile of the client
Information stemming from open access sources

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