



# Freezing of suspicious transactions

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This document, which is aimed at all professionals covered by the AML/CFT Law, replaces the circular 2015/01 of 06 January 2015 on the status of operations following a suspicious operations report.

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## 1 INTRODUCTION

Article 5 (3) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (hereafter “AML/CFT Law”) states that professionals must refrain from carrying out a transaction which they know or suspect to be related to money laundering or terrorist financing before having informed the financial intelligence unit (hereafter “FIU”) thereof, by making a suspicious transaction report or by responding to a request for information by the FIU. The FIU can order the non-execution of one or more operations relating to the transaction.

If you are a professional to whom the AML/CFT law is applicable, the following guideline will further inform you about the status of pending transactions, which you reported to the FIU or for which you responded to a request for information by the FIU, and will help you manage freezing orders issued by the FIU.

If you are uncertain whether this legislation applies to you, please consult the guideline on suspicious operations:

[http://www.justice.public.lu/fr/legislation/circulaires/ligne\\_directrice\\_17\\_01/dos\\_v\\_2.pdf](http://www.justice.public.lu/fr/legislation/circulaires/ligne_directrice_17_01/dos_v_2.pdf)

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

## 2 WHICH TRANSACTIONS MAY BE SUBJECT TO A FREEZING ORDER?

The term “transaction” should be understood in the broadest sense of the term, meaning the FIU can issue a freezing order for any transaction executed within the framework of a business relationship and executed by a professional covered by the AML/CFT law. Thus, a freezing order can refer to transactions made from a bank account, to the content of a safety-deposit box, to the redemption of a life insurance policy, to the registration of one or more investors within a fund or sub-fund, etc.

A freezing order is not a means to an end in itself, rather the idea is to intercept the money laundering or the financing of terrorism. It is an exceptional measure, which usually precedes a judicial seizure of assets or gives the FIU some time to analyse the situation. In some cases, the FIU prefers to let the suspicious operations happen so as not to alert the client.

## 3 WHEN CAN A FREEZING ORDER BE ISSUED?

The FIU may issue a freezing order at any given moment.

To avoid the freezing order from becoming ineffective, you should not execute a transaction, which you know or suspect to be linked to an act of money laundering or terrorist financing, before having informed the FIU of your suspicion by means of a suspicious operations report. Likewise, when the FIU makes a request for information relating to a transaction, you must not execute said transaction before having responded to the request for information made by the FIU.

An acknowledgment of receipt of your report by the FIU is automatically generated by goAML Web and will be sent to you via the *message board*, usually around midnight. From this moment on, as long as you have not received any freezing order from the FIU, you may execute, under your own responsibility, the transaction related to the report, as well as any subsequent non-suspicious transactions.

## 4 HOW IS A FREEZING ORDER NOTIFIED?

In case of emergency, the FIU will call you to inform you of the freezing order. Within three days, a written confirmation will be sent to you through the post.

If you have an account for the goAML Web, you will also receive a notification via the *message board*; if not, the message will be sent to you via email, assuming that we have your email address.

## 5 CAN THE FIU AUTHORISE TRANSACTIONS?

No, the FIU does not authorise any transactions, nor does it express any opinion on the legality or suitability of said transactions. The professional is solely and exclusively liable for any transaction executed by him. We ask you not to contact the FIU for authorisation to execute a transaction. Where a transaction raises questions or raises a feeling of discomfort, worry or suspicion, you must examine the transaction within its context, keeping in mind the standard business practices of your sector and the knowledge you have of your client, in order to evaluate whether your doubts are founded. If your suspicions persist, you must immediately inform the FIU via a report.<sup>1</sup>

## 6 DOES THE FIU NEED TO BE NOTIFIED OF SUBSEQUENT TRANSACTIONS?

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

## 7 WHAT ARE THE EFFECTS OF A FREEZING ORDER?

### 7.1 ON THE TRANSACTION

Until its expiration date, the freezing order suspends the relevant transaction. Such an order may vary depending on the circumstances. Thus, a freezing order can be general and affect all transactions linked to a business relationship, or it can be partial and only relate to specific transactions, which are specified by the FIU. In case of a partial freezing order, you are obliged to suspend those transactions referred to in the decision, but are free to execute all the other transactions, under your responsibility.

### 7.2 ON THE BUSINESS RELATIONSHIP

You must not terminate a business relationship while the freezing order is on-going as this might jeopardise the order's efficiency.

On the other hand, no legislative provision requires you to terminate the business relationship once the freezing order has expired. This is your decision.

## 8 DO I HAVE THE RIGHT TO INFORM MY CLIENT?

You are not allowed to inform the client of the freezing order, without being given prior consent by the FIU<sup>2</sup>. However, in most cases, the decision taken by the FIU authorises you to inform your client of the freezing order, when said client contacts you following the non-execution of his/her transaction. The client can write to the FIU to have confirmation of the measures taken against him/her. Nevertheless, none of this authorises you to inform your client of the existence of a report of suspicious operations or of a request for information made by the FIU. Such conduct could expose you to criminal sanctions.

## 9 WHEN DOES THE FREEZING ORDER CEASE?

### 9.1 INITIAL FREEZING ORDER

A freezing order by the FIU is valid for a maximum duration of 3 months, following receipt of the decision by the professional.<sup>3</sup> Thus, a freezing order notified on the 1<sup>st</sup> of April will expire on the 1<sup>st</sup> of July at midnight.

<sup>1</sup> See our guideline on suspicious operations reports, title 7 "How to recognise a suspicious operation"

<sup>2</sup> Art. 5(3)(4) AML/CFT law

<sup>3</sup> Art. 5, paragraph 3, (3) AML/CFT Law

After the expiration date, you are free to execute, under your own responsibility, the previously frozen transactions.

## 9.2 EXTENSION OF THE FREEZING ORDER

The initial freezing order can be extended several times, for a period of 1 month each, for a maximum of 6 months in total, by a written decision. You will be notified of such an extension during the week preceding the expiration of the initial order.

## 9.3 RELEASE

The FIU may, at any given moment, release the freezing order if the circumstances no longer justify it being upheld. If you are notified of such a decision, you are free to execute, under your own responsibility, the previously frozen transactions.

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