

# Significant changes to the AML/CFT System since the 6<sup>th</sup> Follow-up Report (2014)

## 1. New AML/CFT laws and regulations

The **2014 Shares Register Law** modifies the 1915 Companies Law and requires bearer shares to be deposited with a depository. The depository maintains a register with the information pertaining to the shareholder and number of shares, the date of deposit and any transfers or conversions into registered securities.

The **Regulation 2015/847** on information accompanying transfers of funds which was published in the Official Journal of the European Union on 20 May 2015 became applicable on 26 June 2017. This regulation ensures the traceability of payment transactions, thereby facilitating the prevention, detection and investigation of money laundering and terrorist financing.

The **2015 Free Zone Operator Law** added "operators in a free zone authorised to carry out their activity pursuant to an authorisation by the ADA within the Community control type 1 free zone" to the persons to whom the scope of the AML/CFT Law applies, thus, strengthening the free zone by providing it with an effective AML/CFT regime.

The **2015 GDR** amended the 2010 AML/CFT Regulation, by specifying some cases where, pursuant to the risk-based approach, professionals may adapt their due diligence measures with respect to customers and, where applicable, beneficial owners of the business relationship. The application conditions are cumulative and strict and concern the provision of certain online payment services specifically and exhaustively described in article 2 of the 2010 AML/CFT Regulation.

The **Regulation 2016/1675** supplements the 4AMLD by identifying high-risk third countries with strategic deficiencies. This Regulation has been amended by the Regulation 2018/105, the Regulation 2018/212 and the Regulation 2018/1467.

The **2017 Tax Reform Law** modifies both the 2008 Tax Authorities Cooperation Law and the Penal Code. With regard to the 2008 Tax Authorities Cooperation Law, it introduces the possibility of an exchange of information for tax matters between the CRF or State Prosecutor and the tax administration. With regard to the Penal Code, it adds aggravated tax fraud and tax evasion related to direct or indirect taxes to the list of predicate offences.

The **2018 AML/CFT Law** aims to (1) further transpose into Luxembourg law the provisions relating to the professional AML/CFT obligations and powers of the supervisory authorities arising from 4AMLD, and (2) implement Regulation 2015/847.

The **2018 AML Information Law** aims at transposing the DAC 5 by providing the necessary adaptations to the Luxembourg legislative framework in order to ensure access by tax authorities to information relating to the fight against money laundering. The access by tax authorities to information on taxpayers for AML purposes aims at improving administrative cooperation and thus combatting tax avoidance and tax evasion more effectively. Upon request, Luxembourg VAT authorities and direct tax authorities get access to information and documents on taxpayer, and on the mechanism and process triggered by the obliged entities when performing their customer due diligence. While DAC 5 Directive foresees this access for the European administrative cooperation in tax matters, the Luxembourg law extends access to comply with international standards in this area.

The **2018 Asset Confiscation Law** amends the provisions of the Penal Code pertaining to special confiscation. Special confiscation is now always to be pronounced in cases concerning crimes and may be pronounced when dealing with misdemeanours. With regard to ML/TF, special confiscation applies to goods that were used or which were intended to be used to commit an offence. The same Court that ordered the special confiscation remains competent for restitution claims by victims or other interested third parties.

The **2018 FIU Law** modifies the 1980 Judiciary Organisation Law. The 2018 FIU Law institutes the new operationally independent and autonomous CRF, whose mission it is to receive and analyse suspicious transaction reports ("STRs") and any other information which could reveal ML/TF or an underlying offence and where there is a suspicion, to disseminate the results of its analysis to other national competent authorities or to foreign CRFs. To complete its mission, the CRF has access to certain registers held by public establishments containing personal data.

The **2018 Fiducies Information Law** aims at identifying the beneficial owners of trusts (fiducies) and similar legal arrangements. It obliges trusts to obtain and store information on the identity of the beneficial owners, including the settlor, the trustees, the protector, the beneficiaries or the class of persons in whose main interest the legal arrangement or entity is set up or operates and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means. This information must be adequate, accurate and current. Supervisory authorities use their surveillance powers to ensure compliance with the law and may hand down administrative sanctions where there is non-compliance. Following the entry into force of the 2020 RFT Law, the provisions of the 2018 Fiducies Information Law have been incorporated into the new law and the 2018 Fiducies Information Law has been repealed.

The **2018 NPC Regulation** amends the 2009 NPC Regulation. The new regulation gives the NPC the task of keeping the national risk assessment up-to-date and, in order to fulfil its mission, further members were added to the NPC, including, but not limited to, the national coordinator for the fight against ML/TF, a representative of the AED, a representative of the CdH and a representative of the free zone operators. It was also decided that the Minister of Justice should chair the NPC alone (no longer with the MoF) and that further representatives or experts could take part at certain meetings of the NPC depending on the circumstances.

The **Regulation 2018/1542** and the Regulation 2019/84 entered into force on their date of publication.

Article 16 of the **Regulation 2018/1672** became applicable on 2 December 2018. Other articles shall apply from 3 June 2021.

The **Regulation 2018/1542** concerns restrictive measures against the proliferation and use of chemical weapons.

The **Regulation 2019/452** establishes a framework for the screening of foreign direct investments into the Union.

The **Regulation 2019/758** supplements the Directive 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist in certain third countries.

The **Regulation 2018/1108** supplements the Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions.

The **2019 RBE Law** created the RBE. This new register contains information on the identity of the beneficial owners of companies, including, among other things, their name, date of birth, nationality and their private or professional address. The law obliges companies to hand over adequate, accurate and current information to the RBE, which signifies that there is an ongoing obligation for companies to check that the information in the register is correct and to inform the RBE where this is no longer the case. Companies must also store this information at their registered office. Any request for registration that is incomplete or incorrect will be denied. Most of the information contained in the RBE is available to the public; however the access to some information is restricted to the authorities. A violation of the provisions of this law is punishable in accordance with the penal provisions of the same law.

The **2020 AML/CFT Law** amended the 2004 AML/CFT, as well as the 1976 Notaries Law, the 1990 Bailiff Law, the 1991 Lawyers Law, the 1999 CPAs Law and the 2016 Audit Profession Law. The 2020 AML/CFT Law subjects virtual currencies, virtual assets and virtual asset service providers to the 2004 AML/CFT Law, reinforces customer due diligence obligations of professionals, reinforces national and international cooperation between supervisory authorities, SRBs and their foreign counterparts and reinforces and streamlines the supervisory and sanctioning powers of the different SRBs.

The **2020 RBASD Law** transposed part of the 5 AMLD, by obliging professionals to hold and keep a file on data relating to payment accounts, bank accounts and safes and by establishing a central electronic system for retrieving data concerning payment accounts and bank accounts identified by an IBAN number and safes held by credit institutions. The law gives the CSSF the task of maintaining said central electronic system for retrieving said data and determines who has access to the data.

The **2020 RFT Law** introduced a BO register for trusts, fiducies and other similar legal arrangements into Luxembourg law. It obliges trusts and fiducies to obtain and store information on the identity of the beneficial owners, including the settlor, the trustees, the protector, the beneficiaries or the class of persons in whose main interest the legal arrangement or entity is set up or operates and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means. This information must be adequate, accurate and up-to-date. The 2020 RFT Law also provides for the establishment of a register managed by the AED

with the purpose of storing accurate information on the trusts and fiducies and on the beneficial owner(s). It also provides the requirements for accessing said information stored in the register. Administrative penalties and other administrative measures are foreseen in case of violation of the professional obligations referred to in the law.

The **2020 AML/CFT Regulation** amends the 2010 AML/CFT Regulation. Among other changes, it (1) gives a definition of the term «appropriate time», which is used by the 2004 AML/CFT Law in the context of professionals required to apply the CDD procedures to existing customers on a risk-sensitive basis, (2) states that CDD measures must be carried out for occasional operations of virtual asset service providers exceeding 1 000 EUR and (3) clarifies that business relationships and transactions involving notably high-risk countries constitute higher-risk situations which require the application of enhanced CDD measures.

## 2. Changes at the Financial Supervisory Authority (“CSSF”) level

Since the 2014 Follow-up report, the CSSF has made significant changes in its organisation to strengthen its AML/CFT supervisory framework. The 2018 NRA identified areas of strength, and also areas which required additional actions to improve its mitigating powers. Notably, the CSSF implemented the following changes across the organisation:

- Amended its organisational structure which resulted in:
  - Dedicated AML/CFT experts within each department;
  - Increased AML/CFT resources across the organisation;
  - Setup a central coordination team for AML/CFT supervisory activities which manages a coherent approach across the departments
- Formalised AML/CFT supervisory practices in consistent and coherent policies and procedures across departments;
- Strengthened its Risk-based approach by refining ML/TF risk assessment processes and accordingly revised supervisory planning process

In August 2020, the CSSF adopted and published the 2020 CSSF Regulation that amends and updates the 2012 CSSF Regulation which is the main CSSF regulation on AML/CFT.

*CSSF Circulars published since 2014 concerning AML/CFT setting standards:*

<p><b>Circular CSSF 20/747 published on 23.07.2020</b></p>	<p>This Circular provides detailed technical and content guidance on how the respective professionals shall implement the central electronic data retrieval system that will allow competent authorities to perform AML/CFT searches on payment/bank accounts identified by an IBAN and safe-deposit boxes.</p>
<p><b>Circular CSSF 20/744 published on 03.07.2020, complement to circular CSSF 17/650</b></p>	<p>The purpose of this complementing circular is to add specific indicators of predicate tax offences for the collective investment sector to the Annex of the CSSF circular 17/650</p>
<p><b>Circular CSSF 20/742 published on 04.05.2020</b></p>	<p>This Circular informs about the two new laws of 25 March 2020 on the subject of AML/CFT and the most important changes introduced by these laws into the legal framework.</p>

Circular CSSF 20/740 published on 10.04.2020	This Circular provides detailed guidance to the financial sector on (financial crime) risks identified and related mitigating measures in the context of the COVID -19.
Circular letter published 17.03.2020	The Circular letter extended on an exceptional basis due to the COVID-19 pandemic the deadline for supervised entities to complete the AML/CFT Questionnaire.
Circular CSSF 20/746 published on 09.07.2020, replaced every 3 months or when there is an update (old versions can still be found on the CSSF website):	This Circular includes FATF statements concerning: <ul style="list-style-type: none"> <li>1) jurisdictions whose anti-money laundering and combating the financing of terrorism regime has substantial and strategic deficiencies;</li> <li>2) jurisdictions whose anti-money laundering and combating the financing of terrorism regime requires the application of enhanced due diligence measures proportionate to the risks arising from these jurisdictions;</li> <li>3) jurisdictions whose anti-money laundering and combating the financing of terrorism regime is not satisfactory</li> </ul>
Circular letter published 31.01.2020	The Circular letter outlined the deadline and process for completing the AML/CFT Questionnaire.
Circular CSSF 19/732 published on 20.12.2019	Clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s).
Circular CSSF 18/702 published on 20.12.2018	The Circular provides an overview of developments regarding the fight against money laundering and terrorist financing (AML/CFT) in the private banking sector.
Circular CSSF 18/698 published on 23.08.2018	<i>Authorisation and organisation of investment fund managers incorporated under Luxembourg law.</i> The Circular details specific provisions on the fight against money laundering and terrorist financing applicable to investment fund managers and entities carrying out the activity of registrar agent.
Circular CSSF 18/684 published on 13.03.2018	Statement is made on the entry into force of the 2018 AML/CFT Law amending, inter alia, 2004 AML/CFT Law.
Circular CSSF 18/680 published on 23.01.2018	Adoption of the Joint Guidelines of the three European Supervisory Authorities on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee.
Circular CSSF 17/661 published on 24.07.2017	Adoption of the Joint Guidelines issued by the three European Supervisory Authorities (EBA/ESMA/EIOPA) specifying money laundering and terrorist financing risk factors (including per sectors) and the application of enhanced or simplified due diligence measures.
Circular CSSF 17/660 published on 05.07.2017	Circular announcing the application of Regulation 2015/847.

Circular CSSF 17/650 published 17.02.2017, as complemented on 03.07.2020 by the Circular CSSF 20/744	Following the 2017 Tax Reform Law, Circular CSSF 17/650, drafted jointly with CRF, (1) provided clarification from both authorities as regards the practical application of the new provisions by the professionals of the financial sector supervised by the CSSF and (2) provided a list of indicators to assist the professionals in relation to suspicious transaction reports in this respect.  The changes of 2020 constitute of providing specific primary tax offence indicators relevant for the collective investment sector.
Circular CSSF 15/609 published on 27.03.2015	This Circular provided an overview of the developments in automatic exchange of tax information and anti-money laundering in tax matters.

## FAQs

The CSSF has also published different FAQs with additional guidance:

- FAQ AML/CTF and IT requirements for specific customer onboarding/KYC methods for the identification/verification through video chat
- FAQ AML/CTF for individuals/ investors (also available under the section "Consumer") - latest update on 15.11.2019
- FAQ Persons involved in AM/LCFT for a Luxembourg IF or IFM – latest update on 08.03.2018

In May 2020, the CSSF has also published a number of standardized forms to be used in particular by investment fund managers.

## 3. Changes at the Insurance Supervisory Authority ("CAA") level

The 2013 CAA AML/CFT Regulation was already taken into account by FATF during the follow-up report of February 2014. However, the follow-up report mentions that "due to the very recent adoption of this regulation, the Secretariat was not in a position to fully analyse it" (page 8 of the follow-up report). This regulation was repealed and replaced on 30 July 2020 by the 2020 CAA AML/CFT Regulation.

**Main CAA Regulations/Circulars published since 2014 concerning AML/CFT setting standards:**

2020 CAA AML/CFT Regulation dated 30.07. 2020	Specifies the AML/CFT obligations of the supervised entities and repeals the 2013 CAA AML/CFT Regulation
Circular Letter 20/12 dated 9.06.2020	Relates to guidance on the application of prohibitions and restrictive measures in financial matters (International Financial Sanctions)
Circular Letter 20/8 dated 7.04.2020	Introduces new control statements for PSAs exercising a domiciliation activity and amending Circular Letter 15/6 relating to the reporting of professionals of the insurance sector (PSA)
Circular Letter 20/7 dated 17.03.2020	Amends Circular Letter 17/4 on the reporting of brokerage firms and individual insurance brokers. The Circular Letter notably introduces new data requirements in the area of AML/CFT for brokerage firms and individual insurance brokers.

Circular Letter 20/14 dated 30.07.2020 (replaced every 3 months)	The Circular Letter includes FATF statements concerning : 1. High-risk jurisdictions against which enhanced vigilance measures and, where appropriate, counter-measures are required 2. Jurisdictions under increased monitoring of the FATF
Circular Letter 19/16 dated 15.10.2019	Defines the content, format and collection dates of the quantitative data that life insurance companies must provide to the CAA, in accordance with Circular Letter 18/9 introducing new harmonised questionnaires for assessing exposure risks to money laundering and terrorist financing
Circular Letter 19/13 dated 30.04.2019	Relates to the regular verification of the good repute of insurance sub-brokers, insurance agents and persons who, within insurance and reinsurance undertakings, are directly involved in the distribution of insurance or reinsurance.
Circular Letter 19/11 dated 18.03.2019	Amendments to article 47 of the 2013 CAA AML/CFT Regulation concerning the report to be provided by the approved statutory auditors of licensed insurance and reinsurance undertakings
Circular Letter 19/8 dated 5.03.2019	Introduces a new qualitative AML/CFT questionnaire for brokers
2019 CAA AML/CFT Regulation dated 26.02.2019	CAA Regulation amending article 47 of the 2013 CAA AML/CFT Regulation concerning the report to be provided by the approved statutory auditors of licensed insurance and reinsurance undertakings
2019 CAA IDD Regulation dated 26.02.2019	CAA Regulation concerning insurance and reinsurance distribution. It provides notably further information regarding the fit & proper process and AML/CFT trainings to be done by intermediaries.
Circular Letter 19/5 dated 12.02.2019	Introduces new forms for the notification of natural persons subject to CAA supervision
Circular Letter 19/4 dated 5.02.2019	Amendments to point 13 on AML/CFT obligations of Circular Letter 09/2 concerning the report to be provided by the approved statutory auditors as regards to reinsurance undertakings
Circular Letter 19/3 dated 5.02.2019	Amendments to point 17 on AML/CFT obligations of Circular Letter 09/1 concerning the report to be provided by the approved statutory auditors as regards to insurance undertakings
Circular Letter 18/9 dated 22.10.2018	Introduces new harmonised AML/CFT questionnaires for life insurance companies
Circular Letter 18/4 dated 4.04.2018	Relates to the adoption of the common guidelines issued by the three European supervisory authorities (EBA/ESMA/EIOPA) on the risk factors of money laundering and terrorist financing

Circular Letter 17/10 dated 28.11.2017	Implementation of a revised qualitative AML/CFT questionnaire for life insurance companies.
Circular Letter 15/8 dated 22.06.2015	Instructions addressed to life insurance companies related to the adoption of the Life Insurance Charter of Quality established by ACA in 2013 and updated in 2015. The ACA Life Insurance Charter of Quality is inspired by ICMA Private Wealth Management Charter of Quality and sets, amongst others, common principles in terms of combating money laundering and financing of terrorism and of promoting tax compliance. In its Circular Letter 15/8, the CAA welcomes this private sector initiative and strongly encourages all life insurance undertakings to adopt and implement this charter. Insurance undertakings have either to comply to the charter or to explain to the CAA the reasons why they refrain from subscribing.

#### 4. Attribution of new AML/CFT supervisory powers

##### Tax Authority - Registration Duties, Estates and VAT Authority ("AED")

Since the entry into force of the 2010 AML/CFT Law, the AED (indirect tax administration) acts as a new competent authority for supervising some categories of DNFPBs for AML/CFT purposes.

The 2015 Free Zone Operator Law introduces within the supervisory scope of the AED, the operators in a free zone authorised to carry out their activity pursuant to an authorisation by the ADA within the Community control type 1 free zone located in the municipality of Niederanven Section B Senningen called Parishaff L-2315 Senningerberg (Hoehenhof);

The 2018 AML/CFT Law introduces within the supervisory scope of the AED, the gambling service providers authorised by the 1977 Gambling Law.

The 2018 AED Organisational Law creates within the AED a new division exclusively in charge of the AML/CFT supervisory strategy for the professionals listed above. The on-site inspections are carried out by the Anti-Fraud Unit of the AED.

##### Chamber of Court bailiffs ("CdH")

Since the 2018 AML/CFT Law amending the 2004 AML/CFT Law, Court Bailiffs are subject to AML/CFT obligations, when they carry out the valuation and public sales of furniture, movables and harvests. As a self-regulatory body, the CdH is in charge of the supervisor of Court Bailiffs for AML/CFT purposes.

#### Changes to the supervisory and sanctioning powers of SRBs by the 2020 AML/CFT Law

##### Supervisory powers:

The 2020 AML/CFT Law introduces a new article 8-2a to the 2004 AML/CFT Law, that unifies and aligns the supervisory powers of the different SRBs. In addition to supplementing the supervisory powers of the SRBs, the 2020 AML/CFT Law also consolidates the supervisory powers of the SRBs.

##### Sanctioning powers:

*Prior to the entry into force of the 2020 AML/CFT Law, the sanctions for non-compliance with AML/CFT obligations by SRBs' members were set out in the various sectoral laws on the different professions. With the entry into force of the 2020 AML/CFT Law, the sanctions are now all contained in the 2004 AML/CFT Law (article 8-10). This new mechanism aims, on the one hand, at harmonising the catalogue of sanctions and other measures applicable to self-regulatory professions and, on the other hand, at aligning their regime with that of the non-financial professions supervised by the AED.*