



AML/CTF  
REGULATORY  
WATCH REPORT



JULY 2020

This is the list of pertinent legal framework which was published over the period of July 2020:

On July 1st, Luxembourg's Parliament approved the law on the creation of a register of fiducies and trusts (RFT Law). This law is in line with the 4th Directive and 5th Directive on the prevention of the use of the financial system for the purposes of ML/TF. The RFT Law applies to all fiducies and express trusts for which a fiduciaire or a trustee is established or domiciled in the Grand Duchy of Luxembourg and all fiducies and express trusts for which the fiduciaire or trustee is established in a third country, where the fiduciaire or trustee enters into a business relationship in the Grand Duchy of Luxembourg with a professional or acquires real estate located in the Grand Duchy of Luxembourg on behalf of such fiducie or trust. The law focuses on the following:

- The obligation for trustees and fiduciaires to obtain and keep data relating to beneficial owners
- The administration of the register of fiducies and trusts
- The access to the register of fiducies and trusts
- Cooperation with authorities

On July 2nd, the European Commission referred Austria, Belgium and the Netherlands to the Court of Justice of the European Union (CJEU). The European Commission has requested financial, since these countries have failed to fully implement the 4th AML Directive into their national law. The incomplete transposition concerned the following fundamental aspects:

- Betting and gambling legislation for Austria
- Mechanisms under which the Financial Intelligence Units exchange documents and information for Belgium
- The information to be provided on the beneficial ownership of corporate and other legal entities for the Netherlands

On July 2nd, the Basel Committee on Banking Supervision issued an updated version of its guidelines on 'Sound management of risks related to money laundering and financing of terrorism'. The guidelines apply to target banks, banking groups and banking supervisors. The updated version of the guidelines contains a new paragraph 96 highlighting the role of supervisors and a new Annex 5 mentioning the interaction and cooperation between prudential and AML/CFT supervisors. This new Annex sets out specific principles, recommendations and examples, to facilitate the cooperation in relation to authorisation related procedures of a bank, ongoing supervision and enforcement actions.

On July 7th, the Financial Action Task Force (FATF) issued a report based on the request of the G20 towards FATF, in 2019, to consider the AML/CTF issues relating to so-called stablecoins. The report finds that stablecoins share many of the same potential ML/TF risks as some virtual assets, depending on how they are designed, they may allow anonymous peer-to-peer transactions via unhosted wallets. In the report the FATF proposes four actions:

- First, it calls on all jurisdictions to implement the revised FATF Standards on virtual assets and VASPS
- Second, it will review the implementation and impact of the revised Standards by June 2021 and consider whether further updates are needed
- Third, it will provide guidance for jurisdictions on stable coins and virtual assets by setting out in more detail how AML/CFT controls apply to stable coins, including the tools available to jurisdictions to address the ML / TF risks posed by anonymous peer-to-peer transactions via unhosted wallets
- Forth, it will enhance the international framework for VASP supervisors to cooperate and share information in order to develop a global network of supervisors to oversee these activities



On July 3rd, the CSSF published a complement to Circular CSSF 17/650 “Application of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (hereinafter “AML/CFT Law”) and Grand-ducal Regulation of 1 February 2010 providing details on certain provisions of the AML/CFT Law (“AML/CFT GDR”) to predicate tax offences”. The purpose of the 2017 Circular was to clarify the practical application of the fourth AML Directive and to provide guidance to professionals of the financial sector on how to detect, analyse and report any suspicion of tax offences. Notably, the 2017 Circular contained a list of indicators to detect the laundering of a tax offence. With this new Circular, the CSSF expands Annex 1 of the 2017 Circular with an additional list of indicators specific to the collective investment activities and to professionals providing services in the Asset Management sector.

On July 7th, the FATF published also a review of the implementation of its revised Standards on virtual assets and virtual asset service providers. The report was based on the FATF’s agreement to undertake a 12-month review by June 2020 to measure how jurisdictions and the private sector have implemented the revised Standards of 2019 that placed AML/CTF requirements on virtual assets and virtual asset service providers (VASPs), as well as monitor for any changes in the typologies, risks and the market structure of the virtual assets sector. The report highlights the following aspects:

- The change observed since 2019 in the AML/CTF risks and the virtual asset market
- The jurisdictions’ progress in implementing the revised Standards
- The issues identified with the revised FATF Standards and Guidance
- The private sector’s progress in implementing the revised Standards, including the development of technical solutions for the implementation of the travel rule
- The FATF’s next steps regarding virtual assets

On July 9th, the Commission de Surveillance du Secteur Financier (CSSF) a new Circular 20/746 regarding the FATF statements concerning the high-risk jurisdictions on which enhanced due diligence and, where appropriate, countermeasures are imposed and the jurisdictions under increased monitoring of the FATF.

On July 10th, the European Parliament adopted a resolution on a comprehensive pan-EU strategy for the prevention of ML/TF, following the publication of the European Commission's Action Plan in May. The resolution supports a stricter, "zero-tolerance" approach towards Member States who fail to transpose the provisions of the Anti-Money Laundering Directives into national law within required timeframes. The Parliament also encourages the development of a supplementary "grey list" alongside the Commission's revised list of high risk third countries which comes into force in October 2020. Additionally, it emphasizes in the importance of cooperation. The Parliament states the importance of enabling national Financial Intelligence Units (FIUs), law enforcement and judicial systems to access relevant information and support each other on cross-Member State cases. The Parliament after the adoption of this resolution expects to see rapid progress made on the provisions set out in the Commission's May 2020 AML/CTF Action Plan. Despite the operational and economical challenges posed by the coronavirus pandemic, there remains a firm focus on the AML/CTF agenda.

On July 15th, the European Banking Authority (EBA) called for input to understand the impact of de-risking on financial institutions and customers in an AML/CTF context. The scope of the call is to understand why financial institutions choose to de-risk instead of managing the risks associated with certain sectors or customers. To manage customers' profiles associated with higher ML/TF risks, financial institutions may decide not to service a particular customer or category of customers. This is referred to as 'de-risking', and affects both financial institutions and its users. De-risking affects particular sectors and customers across the EU, such as banks engaged in correspondent banking relationships, payment institutions and NGOs. The call for input runs until 11 September 2020.

On July 20th, the CSSF published Luxembourg's first ML/FT risk analysis on specialised professionals of the financial sector providing corporate services (trust and company service provider activities). The CSSF conducted entity-level risk assessments on supervised professionals to increase its understanding of the inherent risk, mitigating measures and resulting residual risk of each supervised professional and to instruct entity-level supervisory plans. The scope of this assessment focused on Trust and Company Service Providers activities carried out by Specialised PFS. This sub-sector risk assessment provides for the link between the National Risk Assessment and entity level risk assessments. It fulfils multiple objectives, in particular:

- It reflects the CSSF's own understanding of specific ML/TF risks in the sub-sector
- It further improves the CSSF supervisory activities and sub-sector specific supervisory strategy
- It acts as an input into CSSF's entity-level risk assessments
- It serves as a resource for the industry in informing their own ML/TF risk assessments

