



MAQIT

AML/CTF
REGULATORY
WATCH REPORT



NOVEMBER-DECEMBER 2021

During the months of November and December 2021, MAQIT noticed the following developments in the field of AML/CFT which could be of interest to you

On November 29th the **Council of the European Union**, agreed on a mandate to negotiate with the European Parliament on the proposed Regulation on information accompanying **transfers of funds and certain crypto assets**.¹ This proposal is part of a package of legislative proposals to strengthen the EU's anti-money laundering and countering terrorism financing rules, presented by the Commission on 20 July 2021.

On December the **Luxembourg Financial Intelligence Unit** (CRF) published its annual report of 2020.² The main focus area of CRF was intended to improve its internal operational processes and the quality and relevance of the information received from professionals subject to the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing (the AML Law). This related to:

- the investment sector;
- service providers to companies and trusts;
- virtual assets service providers; and
- types of money laundering that have emerged in connection with the Covid-19 crisis

The conclusions of the report were the following:

- decrease in the total number of reports
- criminal tax offences and fraud remain areas where banks and insurers have reported the highest number of reports
- the CRF maintains regular exchanges with the CSSF in order to identify the VASPs active in Luxembourg, which may not yet have complied with the registration requirement.

¹ <https://data.consilium.europa.eu/doc/document/ST-14259-2021-INIT/en/pdf>

² <https://justice.public.lu/dam-assets/fr/publications/rapport-activites-crf/rapport-crf-2020.pdf>

On December 10th the **European Banking Authority** (EBA) launched a public consultation on draft guidelines on the **use of remote customer onboarding solutions**.³ The draft guidelines set common EU standards on the development and implementation of sound, risk-sensitive initial customer due diligence processes in the remote customer onboarding context.

On December 13th the **International Monetary Fund** (IMF) and the **World Bank** published a report setting out a **draft framework and methodology for risk assessment in remittance corridors**⁴ having the potential of being identified as “safe remittance corridors”.⁵ The IMF and the World Bank were assigned to cover the building blocks - BB7 on “safe payment corridors,” which involves the development of a framework for remittance corridors’ risk assessments. BB7 is part of focus area B within the G20 cross-border payments roadmap. BB7 on safe payment corridors has two phases:

- The first phase is about the development of a framework and methodology for the assessment of the money laundering / terrorist financing (ML/TF) risks in remittance corridors and the identification of potential “lower risk corridors,” as part of or consistent with a country’s national ML/TF risk assessment.
- The second phase, the proposed framework is expected to be piloted in some corridors with a view to testing and further refining the assessment methodology.

On December 16th the **EBA** published updated guidelines on **risk-based supervision of credit and financial institutions’** compliance with AML/CFT obligations.⁶ The guidelines set out the steps supervisors should take to ensure adequate AML/CFT oversight of their sector and support the adoption, by credit and financial institutions, of effective ML/TF risk management policies and procedures.

³ <https://www.eba.europa.eu/calendar/consultation-draft-guidelines-use-remote-customer-onboarding-solutions>

⁴ Remittance corridor: essentially the sum of remittances sent between two specific countries

⁵ <https://www.fsb.org/2021/12/a-draft-framework-for-money-laundering-terrorist-financing-risk-assessment-of-a-remittance-corridor/>

⁶ <https://www.eba.europa.eu/eba-strengthens-amlcft-supervision-eu-through-revised-guidelines-and-enhanced-cooperation>

On December 16th the **EBA** published final guidelines setting out how prudential supervisors, AML/CFT supervisors and financial intelligence units (FIUs) should **cooperate** and **exchange information** in relation to AML/CFT, in line with provisions laid down in the Capital Requirements Directive IV (CRD IV).⁷ The guidelines apply as from 1 June 2022.

On December 17th Eurojust published the **Eurojust Casework on Counterterrorism: Insights 2020–2021 report** that presents the tangible results achieved (including seizures, confiscations, arrests and convictions) due to Eurojust's coordination of counter-terrorism cases.⁸ The report highlights the Eurojust's experience in assisting cross-border counter-terrorism investigations and prosecutions, and in facilitating the exchange of information on judicial proceedings. It also outlines Eurojust's role in coordinating judicial cooperation when dealing with the protection of terrorism victims, jurisdiction issues and requests for assistance to third countries.

On December 20th the **law of 17 December 2021** was published in the Official Journal of the Grand-Duchy of Luxembourg.⁹ The Law **amends the Criminal Code as well as the Criminal Procedure Code** by introducing new measures to combat ML/TF from a criminal law perspective. More specifically:

- the Law introduces an aggravating circumstance under Article 506-5 of the Criminal Code, leading to the applicability of more severe criminal sanctions, where the ML offences were carried out by a professional in the context of its professional activity.
- the Law amends Article 506-8 of the Criminal Code, setting out the principle that in order to prosecute a perpetrator of an act of ML, it will not be necessary to establish all facts or circumstances relating to the underlying primary offence, including the identity of the perpetrator of the underlying primary offence.
- the Law also amends Article 5-1 of the Luxembourg Criminal Procedure Code and will allow for the prosecution of the perpetrator of a ML offence in front of Luxembourg courts, even where the underlying primary offence has been committed abroad, such offence is not subject to criminal sanctions in the relevant foreign jurisdiction (thus creating an exception to the principle of "dual criminality" set out under Article 506-3 of the Criminal Code), and has been carried out by a foreigner who is not a Luxembourg resident or has not been found in Luxembourg.

⁷ <https://www.eba.europa.eu/eba-issues-final-guidelines-cooperation-and-information-exchange-between-prudential-supervisors>

⁸ <https://www.eurojust.europa.eu/publication/eurojust-casework-counter-terrorism-insights-2020-2021>

⁹ <https://legilux.public.lu/eli/etat/leg/loi/2021/12/17/a900/lo>

On December 22nd the **Commission de Surveillance du Secteur Financier** (CSSF) published three new Circulars that introduce new regulatory reporting obligations for Investment Fund Managers (IFMs) and Undertakings for Collective Investments (UCIs).¹⁰ One of the many goals of these circulars is to harmonize the controls of the report dedicated to AML/CFT for IFMs.

- **Circular CSSF 21/788** introduces a **new CSSF AML/CFT external report** to be prepared by the approved statutory auditor (*réviseur d'entreprises agréé*), as mentioned in Article 49 of the RCSSF 12-02, applicable as from the first time as at year end 31 December 2021 for all Luxembourg investment fund managers including registered AIFMs and all Luxembourg investment funds supervised by the CSSF for AML/CFT purposes. The report is divided into two sections to cover key AML/CFT controls:
 - The first section requires the external AML/CFT expert to review and corroborate the latest AML/CFT online survey submitted on the eDesk platform by the supervised entity in scope.
 - The second section involves sample testing or specific work to be performed by the external AML/CFT expert. The CSSF determines the sample sizes using a risk-based approach and must be detailed in the CSSF AML/CFT external report.

¹⁰ <https://www.cssf.lu/en/2021/12/publication-of-circulars-cssf-21-788-21-789-and-21-790-concerning-ifms-and-ucis/>

MAQIT

AML/CTF REGULATORY WATCH REPORT

