



Recent developments in the AML/CFT framework and revised guidance for professionals in Luxembourg subject to AML/CTF obligations

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In the last weeks, various texts were published at international, EU and Luxembourg level which are of particular relevance for actors subject to the supervision of the Commission de Surveillance du Secteur Financier (CSSF), the Administration de l'Enregistrement, des Domaines et de la TVA (AED) and of the Commissariat aux Assurances (CAA) and to anti-money laundering (**AML**) and counter-terrorism financing (**CTF**) obligations (together, the **Obligated Entities**).

1. FATF updates the lists of high-risk and other monitored jurisdictions: implications for Obligated Entities when applying enhanced due diligence

According to article 18a¹ of the [Directive \(EU\) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended \(AMLD\)](#), Obligated Entities, must apply enhanced due diligence (EDD) measures in respect of transactions or business relationships involving high-risk third countries (as identified by the European Commission in accordance with article 9 AMLD).

Pursuant to article 1(30) of the AML Act, the concept of high-risk country is defined more widely as “a country included in the list of high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 or designated by the Financial Action Task Force (FATF) as presenting a higher risk as well as any other country that the supervisory authorities and the professionals consider, in the framework of their money laundering and terrorist financing risk assessment, as a high-risk country based on geographical risk factors listed in Annex IV”.

Therefore, to assess whether they are involved in transactions or business relationships involving high-risk third countries, triggering EDD measures, Obligated Entities must consider the updated lists published by the FATF on 27 October 2023 regarding:

- Jurisdictions under Increased Monitoring; and
- High-Risk Jurisdictions subject to a Call for Action.

The Annex to the CSSF Circular 22/822 has been amended accordingly on 30 October 2023.

The CAA has specified that it expects professionals to pay attention to the FATF's highlights and the risks stemming from these weaknesses in their business relationships and transactions with these jurisdictions².

2. EU publishes a list of prominent public functions to help Obligated Entities with EDD on politically exposed persons

According to article 20³ of AMLD, Obligated Entities must apply EDD measures in respect of transactions or business relationships with politically exposed persons (PEP).

Article 3(9)⁴ of the AMLD defines the concept of PEP in broad terms as follows:

“a natural person who is or who has been entrusted with prominent public functions and includes the following:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament or of similar legislative bodies;

¹ This provision has been implemented in article 3-2(2) of the Luxembourg act of 12 November 2004 on the combat against money laundering and terrorist financing, as amended (the **AML act**)

² Circular letter 23/12 of the Commissariat aux Assurances on the FATF declarations concerning:

1) High-risk jurisdictions against which enhanced due diligence measures and, where appropriate, counter-measures are required

2) Jurisdictions under increased monitoring of the FATF

³ This provision has been implemented in article 3-2(4) of the AML Act.

⁴ Implemented in article 1 (9) of the AML Act.

- (c) members of the governing bodies of political parties;
- (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- (e) members of courts of auditors or of the boards of central banks;
- (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (g) members of the administrative, management or supervisory bodies of State-owned enterprises;
- (h) directors, deputy directors and members of the board or equivalent function of an international organisation.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials”.

It might prove difficult for Obligated Entities to identify which persons fall within the scope of this definition, especially when dealing with persons outside of their own jurisdiction.

To assist Obligated Entities in this exercise a [list of prominent public functions at national level, at the level of International Organisations and at the level of the European Union Institutions and Bodies](#) was published in the Official Journal of the European Union on 10 November 2023.

3. The CSSF and the CAA integrate the revised EBA guidelines on the risk profiling of customers that are not-for-profit organisations in their supervisory practice

On 31 March 2023, the European Banking Authority (**EBA**) published amendments⁵ to its so-called ML/TF Risk Factors Guidelines⁶ to clarify how Obligated Entities should determine the risk profile of customers that are not-for-profit organisations for AML/CTF purposes and the risk factors that should be taken into consideration in this context.

These revised guidelines have been integrated by both the CSSF⁷ and the CAA⁸ into their respective administrative practices and regulatory approach with effect as of 3 November 2023. The requirements set out therein are applicable to, among others, credit institutions, investment firms, payment and e-money institutions, investment funds and their asset managers and (re)insurance undertakings and intermediaries (when subject to AML/CTF obligations).

⁵ [Guidelines EBA/2023/03 amending Guidelines EBA/2021/02 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions \('The ML/TF Risk Factors Guidelines'\)](#) under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁶ [Guidelines EBA/2021/02 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions \('The ML/TF Risk Factors Guidelines'\)](#) under Articles 17 and 18(4) of Directive (EU) 2015/849.

⁷ CSSF Circular 23/842 applicable to credit and financial institutions as defined in Article 1(3) and (3a) of the AML Act. This CSSF Circular complements CSSF Circular 21/782.

⁸ [Circular letter 23/13 of the Commissariat aux Assurances on the Guidelines on the revised Guidelines on money laundering and terrorist financing risk factors – complement of Circular letter 21/16](#)

4. The CSSF and the CAA integrate the EBA guidelines providing guidance on policies and controls for the effective management of money laundering and terrorist financing risks when providing access to financial services in their supervisory practice

According to article 8⁹ of AMLD, Obligated Entities, must have in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing (**ML/TF**) identified at the level of the Union, the Member State and the Obligated Entity, subject to the proportionality principle.

On 31 March 2023, the EBA issued guidelines to complement the so-called ML/TF Risk Factors Guidelines and clarify which policies, procedures and controls (including client complaint policies) Obligated Entities should have in place to mitigate and effectively manage ML/TF risks in specific situations where access to financial products and services to customers must be ensured¹⁰ (for instance, in relation to the right of access to a payment account with basic features¹¹ or in respect of individuals that are not in a position to provide traditional forms of identity documentation such as asylum seekers). For instance, the guidelines specify how Obligated Entities can impose limitations on the use of accounts or products.

These guidelines have been integrated by both the CSSF¹² and the CAA¹³ into their respective administrative practices and regulatory approach with effect as of 3 November 2023. The requirements set out therein are applicable to, among others, credit institutions, investment firms, payment and e-money institutions, investment funds and their asset managers and (re)insurance undertakings and intermediaries (when subject to AML/CTF obligations).

⁹ This provision has been implemented in article 4(1) of the AML Act.

¹⁰ [Guidelines EBA/2023/04 on policies and controls for the effective management of money laundering and terrorist financing \(ML/TF\) risks when providing access to financial services.](#)

¹¹ In accordance with articles 16(2) and 17 of [Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.](#)

¹² [CSSF Circular 23/843](#) applicable to credit and financial institutions as defined in Article 1(3) and (3a) of the AML Act.

¹³ [Circular letter 23/14 of the Commissariat aux Assurances on the Guidelines on policies and controls for the effective management of money laundering and terrorist financing risks when providing access to financial services](#)

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.

Your dedicated Financial Services Regulatory Team



Baptiste Aubry
Head of Finance Regulatory
Tel +352 44 44 5 5245
baptiste.aubry@allenoverly.com



Helena Finn
Counsel
Tel +352 44 44 5 5421
helena.finn@AllenOvery.com



Carole Schmidt
Knowledge Counsel
+352 44 44 5 5275
carole.schmidt@allenoverly.com

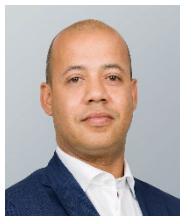


Andrei Costica
Senior Associate
Tel +352 44 44 5 5342
andrei.costica@allenoverly.com

Your dedicated Investment Funds Team



Jean-Christian Six
Partner
Tel +352 44 44 5 5524
jean-christian.six@allenoverly.com



Yannick Arbaut
Partner
Tel +352 44 44 5 5521
yannick.arbaut@allenoverly.com



Miao Wang
Partner
Tel +352 44 44 5 5521
miao.wang@allenoverly.com



Dara Ingallo
Senior Knowledge Lawyer
Tel +352 44 44 5 5301
dara.ingallo@allenoverly.com

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