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COMMUNICATION TO SUPERVISED ENTITIES ABOUT THE RELEVANCE OF MONEY LAUNDERING AND TERRORIST FINANCING RISKS IN THE PRUDENTIAL SUPERVISION

This communication is addressed to credit institutions, CRR investment firms, payment institutions and e-money institutions, including Luxembourg branches of regulated entities having their head office in the EEA or in a third country, as well as the other professionals of the financial sector (supervised entities).

It aims to inform supervised entities that, in accordance with past practice and evolving future best practice, the CSSF will continue as a prudential supervisor to act upon money laundering and terrorist financing (ML/TF) risks that may have an impact on an institution’s safety and soundness. To this end, CSSF will use any information obtained in its capacities as national prudential as well as anti-money laundering and counter-terrorism financing (AML/CFT) supervisor or through cooperation with foreign AML/CFT and prudential supervisors.

Supervised entities’ management bodies and senior management should be aware of the enhanced legal framework put in place at European level with the relevant provisions of AMLD5\(^1\) and CRDV\(^2\) that further clarify the link between prudential supervision and AML/CFT supervision and require prudential supervisors to act on AML/CFT information, as well as of the European Council Anti-Money Laundering Action plan adopted in December 2018\(^3\) also aiming among others for an enhanced and effective cooperation between prudential and AML/CFT supervisors.

With regard to CSSF supervisory processes, concerns about ML/TF, including concerns stemming from ML/TF risks associated with individual institutions, will be considered in particular, but not solely, in the following areas:

i. at authorization, the extent to which the applicant’s business model, the proposed risk management systems and controls, and the suitability of its shareholders or members (whether direct or indirect) and of its management body, senior management and key function holders give rise to ML/TF risks;

ii. as part of ongoing supervision, the assessment of acquisitions of qualifying holdings and the fit and proper assessment of the management body;

iii. in the context of prudential supervision (as exercised for instance through the CSSF’s supervisory review and evaluation process (SREP)), as part of the review of risks, business models, credit operations, governance and internal risk management; and

iv. in the context of taking any administrative measures, imposing sanctions or proceeding to a withdrawal of authorization process, thus ensuring that AML/CFT-related weaknesses with a prudential impact are taken into account in applying prudential supervisory measures and powers to alleviate prudential concerns.

Supervised entities are reminded to give at all times due consideration to ML/TF risks and ensure that their governance and risk management arrangements are appropriate and enable them to identify, assess and manage all risks to which they are (or may be) exposed. Supervised entities should also ensure that the members of their management body and senior management are and remain of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and to prevent ML/TF.

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\(^1\) Article 57a of Directive (EU) 2015/849

\(^2\) Articles 91, 97 and 117 of Directive (EU) 2019/878 that will apply to credit institutions and CRR investment firms

Attention is also drawn to the general aim of closer cooperation between authorities and to the fact that not only prudential supervisors will be able to use information held by AML/CFT authorities in their supervisory processes, but conversely AML/CFT supervisors also will be able to use the information from prudential supervisors to inform their approach to the AML/CFT supervision. The European Supervisory Authorities’ forthcoming joint Guidelines on cooperation and information exchange will be an important step in strengthening supervisory relations in this regard. Against this background, it is worth mentioning that the CSSF has recently signed a multilateral agreement for exchange of information with the European Central Bank on the practical modalities for exchange of information between the European Central Bank (ECB) and all competent authorities responsible for supervising compliance of credit and financial institutions with AML/CFT obligations under the 4th Anti-Money Laundering Directive (AMLD4) and will continue to work towards closer cooperation and increased information exchange with other AML/CFT and prudential supervisors abroad.

This communication follows up on the Opinion on communications to supervised entities regarding money laundering and terrorist financing risks in prudential supervision published by the EBA on 24 July 2019.

Luxembourg, 29 August 2019

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