FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

1. Amendments to the legislation regarding the fight against money laundering and terrorist financing
2. Participation of the CSSF in meetings regarding the fight against money laundering and terrorist financing
3. Reports regarding the fight against money laundering and terrorist financing
1. AMENDMENTS TO THE LEGISLATION REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the law of 12 November 2004 on the fight against money laundering and terrorist financing completed the Luxembourg regulatory framework in this area. The new Grand-ducal regulation has an extended scope as it addresses all professionals subject to the requirements in this matter, including those not related to the financial sector.

While integrating the existing legal framework, comprising *inter alia* the law of 12 November 2004, the Grand-ducal regulation shall follow and faithfully transpose the various requirements set by the Financial Action Task Force (FATF), notably those from the recommendations of the FATF and from its methodology for the assessment of compliance with the 40 recommendations and 9 special recommendations.

Generally, the purpose of the Grand-ducal regulation is to confirm some interpretations which could have been subject to uncertainty in relation, among others, to the cooperation requirement with the Financial Intelligence Unit (FIU) of the Luxembourg State Prosecutor’s office and to some requirements already included in Circular CSSF 08/387.

Thus, the Luxembourg anti-money laundering and anti-terrorist financing framework is completed with details on standard, simplified and enhanced due diligence requirements. Among the cases which require the application of enhanced due diligence, a new case has been added to the existing framework which concerns the business relationship or transaction with a customer from a country which does not apply or insufficiently applies measures for the fight against money laundering and terrorist financing.

Other specifications relate to adequate internal organisation requirements and to the application of due diligence measures by third parties.

The sanctions in respect of the non-compliance with the professional obligations as set out in the Grand-ducal regulation are the same as those laid down in Article 9 of the law of 12 November 2004.

It should also be noted that Grand-ducal Regulation of 1 December 2009 repealed Grand-ducal regulation of 29 July 2008 establishing the list of “third countries which impose equivalent requirements” within the meaning of the law of 12 November 2004 on the fight against money laundering and terrorist financing.

In 2009-2010, the Luxembourg regime for the fight against money laundering and terrorist financing was subject to a mutual evaluation process by FATF in the framework of the third round of mutual evaluation of its members. As a result of this mutual evaluation, Luxembourg will take legislative and regulatory measures in order to respond to the criticisms raised by this international authority recognised as the main international body for the fight against money laundering and terrorist financing. Grand-ducal regulation of 1 February 2010 already allowed putting right certain deficiencies identified by the FATF.
2. PARTICIPATION OF THE CSSF IN MEETINGS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

On international and national level, the CSSF took part in 2009 in the meetings and works of the following groups.

2.1. International working groups

2.1.1. Financial Action Task Force (FATF) and its working groups

The CSSF participated, inter alia, in the working group relating to the study of risks in the securities sector. This group published a typology report the purpose of which is to draw the attention of all actors (including the supervisory and prosecution authorities) to the ML/TF\(^1\) risks and the vulnerabilities existing in the securities sector. The identified risks differ according to the product type, intermediary, market and payment/distribution channel. The report also includes several case studies and some indicators likely to constitute suspicions of money laundering.

2.1.2. Committee for the prevention of Money Laundering and Terrorist Financing (CPMLTF)

The committee, established at the European Commission, met five times in 2009 and the discussions related, among others, to works done at FATF.

2.1.3. Anti-Money Laundering Task Force (AMLTF)

This cross-sectoral working group was set up by CESR, CEBS and CEIOPS. In 2009, the AMLTF submitted for approval to the above-mentioned European committees two studies regarding due diligence and know your customer measures drawn up by the Member States in a national and cross-border context for the transposition of the third anti-money laundering Directive (2005/60/EC). The three committees adopted the documents drawn up by AMLTF and published, on 15 October 2009, a compendium paper on the supervisory implementation practices across the different European supervisory authorities of the third Directive.

It should be pointed out that one table annexed to the compendium indicates, for every Member State, the legal and regulatory due diligence requirements as regards identification and verification measures of customers who are natural persons in the framework of a business relationship which does not present a high risk.

Another annexed document provides for useful information concerning the legal and regulatory framework on AML/TF applicable in each Member State as well as information about the national authorities competent in this matter.

2.1.4. AML/CFT Expert Group (AMLEG)

This working group of the Basel Committee on banking supervision finalised, in 2009, a document which includes instructions for due diligence and transparency measures regarding cover payment messages related to cross-border wire transfers. The document adopted by the Basel Committee on 12 May 2009 describes the expectations of the supervisory authorities as regards information which must be indicated in a cover payment message and specifies the requirements of the different participants during the process of wire transfers in order to achieve greater transparency and to fight money laundering and terrorist financing.

2.1.5. The Wolfsberg Group

During its annual meeting in May 2009, the group discussed new and topical subjects such as Islamic finance and the effect of the financial crisis on the fight against money laundering and terrorist financing.

\(^1\) ML/TF: money laundering and terrorist financing
2.2. National working groups

At national level, the Ministerial regulation of 9 July 2009 established the Committee for the prevention of money laundering and terrorist financing (Comité de prévention du blanchiment et du financement du terrorisme) which has the following missions:

- creating a multidisciplinary round table for the exchange of information on money laundering and terrorist financing phenomena;
- contributing to the drawing-up, coordination and evaluation of national policies and strategies for the prevention of money laundering and terrorist financing;
- ensuring an appropriate spread of knowledge relating to the prevention of money laundering and terrorist financing.

The committee includes representatives of all public and private sector actors concerned by the fight against money laundering and terrorist financing. It met for the first time on 11 September 2009.

The Anti-Money Laundering Consultative Committee of the CSSF met once in 2009. Moreover, the CSSF also participated in the meeting of the Anti-Money Laundering Committee of the Commissariat aux Assurances.

3. REPORTS REGARDING THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

In 2009, the CSSF received 729 reports regarding the fight against money laundering and terrorist financing. This figure also includes reports made in relation to financial restrictive measures and which were transmitted to the CSSF. In order to allow useful comparisons with the previous years, the total number of reports does not include the reports made by one particular professional who transmitted over 1,000 reports in 2009.

The total number of reports continuously increased compared to the previous years (765 reports in 2008 (of which 277 reports from the particular professional mentioned above) and 546 in 2007 (of which 107 from this professional)). This increase results, among others, from the introduction of new money laundering and terrorist financing predicate offences by the law of 17 July 2008 and, in particular, from the number of reports on suspicions made by professionals in relation to the reception of counterfeit and, particularly, forged bank notes.

Overall, 103 professionals of the financial sector transmitted a report to the CSSF in 2009 (idem in 2008 and 89 in 2007), namely:

- 68 credit institutions out of 149 credit institutions registered on the official list as at 31 December 2009;
- 29 PFS out of 276 PFS registered on the official list as at 31 December 2009 (excluding the European branches), among which 12 investment firms, 16 other PFS and one support PFS;
- 6 management companies governed by Chapter 13 of the law of 20 December 2002 out of 194 management companies registered on the official list as at 31 December 2009.

Without taking into account the reports made by the above-mentioned particular professional, twelve banks and one PFS each made over ten reports in 2009. Their reports represent 82% of the total number of reports received that year.

These figures reveal that the proportion of professionals who make reports on suspicions remains low. Therefore, it is necessary that every professional, subject to the fight against money laundering and terrorist financing framework, examines his specific situation in relation to cooperation requirements with the authorities based on Article 5 of the law of 12 November 2004. This examination shall be carried out together with a detailed analysis of the risks to be used for the purpose of money laundering or terrorist financing to which every professional is exposed.