

Law of 10 August 2018 amending:

1° the Code of Criminal Procedure;

2° the Law of 7 March 1980 on the organisation of the judicial system, as amended;

3° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;

4° the Law of 25 March 2015 determining the salaries and the advancement conditions and rules for civil servants for the purpose of organising the Financial Intelligence Unit (FIU).

[...]

Art. II.

The Law of 7 March 1980 on the organisation of the judicial system, as amended, is further amended as follows:

[...]

2bis. - The Financial Intelligence Unit

I. – General provisions

Article 74-1.

A financial intelligence unit is created under the administrative supervision of the Chief Public Prosecutor, hereafter the “FIU”, which is competent for fulfilling the missions set out in Articles 74-3 to 74-7.

The FIU includes one principal substitute, two first substitutes and three substitutes.

The FIU is headed by the principal substitute whose title is “director of the Financial Intelligence Unit”. The two first substitutes replace the director of the Financial Intelligence Unit in his absence pursuant to their seniority ranking and have the title of “deputy director Financial Intelligence Unit”.

The FIU is operationally independent and autonomous. It has the necessary authority and capacity to freely carry out its functions, including the autonomous decision to analyse, request and disseminate specific information to the services and authorities which are competent for fighting money laundering and terrorist financing.

II. - Competences and powers

Article 74-2.

(1) The FIU is the national authority responsible for receiving and analysing the suspicious transaction reports and other information regarding suspicious facts that might amount to money laundering, associated predicate offences or terrorism financing.

(2) The FIU is also responsible for disseminating, spontaneously or upon request, to the competent authorities referred to in Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and to the judicial authorities, the result of its analyses as well as any other relevant information, when there are reasonable grounds to suspect money laundering, an associated predicate offence or terrorism financing.

Whenever practicable, spontaneous dissemination of information is done selectively so as to allow the receiving services and authorities to focus on those cases and information which are relevant for fulfilling their respective missions.

(3) The associated predicate offences are those referred to in Article 506-1, point (1), of the Penal Code and Article 8, paragraph 1, letters (a) and (b) of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended.

(4) The suspicious transaction reports and the other information mentioned in paragraph 1,

include those that are reported to the FIU:

- 1° by the professionals governed by the fight against money laundering and terrorist financing provisions, as required under Article 5(1)(a) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
 - 2° by any established authority, public official or civil servant, as well as any employee or agent tasked with a public service mission, whether hired or mandated pursuant to public law or private law, who is required to inform promptly, on his/her own initiative, the FIU when s/he knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being committed or has been committed or attempted, in particular in consideration of the person concerned, its development, the origin of the funds, the purpose, nature and procedure of the operation, and to promptly provide the FIU with all information, minutes and supporting documents in connection therewith, despite any potentially applicable confidentiality rule or professional secrecy.
- (5) The FIU's analysis function consists of two aspects:
- 1° the operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of information received and the expected use of the information after their dissemination; and
 - 2° the strategic analysis addressing money laundering and terrorist financing trends and patterns.

Article 74-3.

- (1) The FIU provides feedback to the reporting entity on the relevance of the suspicious transaction reports and information received as well as any follow-up actions.
- (2) The FIU draws up an annual report including in particular:
 - 1° statistics, covering the number of suspicious transaction reports and the follow-up actions relating to these reports;
 - 2° a listing of typologies and trends regarding money laundering or terrorist financing;
 - 3° information relating to the activities of the FIU.
- (3) The FIU sees to it, in association with the supervisory authorities, self-regulatory bodies or professional associations involved, that the persons governed by the fight against money laundering and terrorist financing provisions, have a good knowledge of the laws, regulations and recommendations applicable to them, in order to ensure compliance with the laws and adequate cooperation with the authorities.

III. – National cooperation

Article 74-4.

- (1) The FIU acts on motivated requests for information made by the competent authorities referred to in Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and by the judicial authorities.
- (2) Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant in comparison with the purposes for which it has been requested, the FIU is not obliged to comply with the request for information.

The FIU may not refuse to provide such information and supporting documents to the prosecutor's offices, except where they originate from a foreign FIU which does not consent to their dissemination.
- (3) The competent authorities referred to in Article 2-1 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, and the judicial authorities provide the FIU with feedback on the use of transmitted information pursuant

to this article and on the results of the enquiries or investigations carried out as a result of this information.

IV. – International cooperation

Article 74-5.

- (1) The FIU may exchange, spontaneously or upon request, with a foreign FIU of whatever type, any information and supporting documents that may be relevant for the processing or analysis of information related to money laundering, associated predicate offences or terrorist financing and the natural or legal person involved, even if the type of predicate offences that may be involved is not identified at the time of the exchange. This covers personal data and the other information and supporting documents which it has as well as those which it is empowered to get spontaneously pursuant to Article 74-3(4) and, upon request, pursuant to Article 5(1)(b) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.
- (2) A cooperation request from a foreign FIU contains the relevant facts, background information, reasons for the request and how the information sought will be used.
The FIU may agree with one or more foreign FIUs on an automated or structured information exchange mechanism.
- (3) In order to reply within a timely manner to cooperation requests from a foreign FIU, the FIU may use the whole range of its available powers, including, if deemed appropriate, its power to request additional information pursuant to Article 5(1)(b) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.
- (4) The FIU may only refuse to exchange information and supporting documents with an FIU from a Member State of the European Union in exceptional circumstances where the exchange could be contrary to fundamental principles of national law.

The reasons for refusal must be given.

- (5) The FIU may refuse to exchange information and supporting documents with an FIU from a third country outside the European Union in the following circumstances:
 - 1° the exchange does not fall within the scope of the provisions on the fight against money laundering and terrorist financing;
 - 2° the exchange is likely to jeopardise an ongoing enquiry or procedure;
 - 3° the exchange is clearly disproportionate in comparison with the legitimate interests of a natural or legal person;
 - 4° the exchange is likely to prejudice the sovereignty, security, public order or other essential interests of the Grand-Duchy of Luxembourg, or could be contrary to fundamental principles of national law;
 - 5° the requesting FIU is not in a position to efficiently protect the information or supporting documents.

The reasons for refusal must be given.

- (6) The exchange of information and supporting documents may not be refused on the grounds of the cooperation request also covering tax questions.
- (7) Differences between national law definitions of tax crimes do not impede the ability of the FIU to exchange information and supporting documents or provide assistance to another FIU from a Member State of the European Union, to the greatest extent possible under national law.
- (8) The FIU may require that information and supporting documents communicated to a foreign FIU be solely used for the purposes for which they were requested or provided, except prior and express authorisation by the FIU to use them for other purposes.
- (9) The FIU may authorise a foreign FIU to pass the information and supporting documents on to other authorities, either for the purposes for which they were requested or provided

or for other purposes.

The FIU may limit its authorisation for dissemination of information and supporting documents to a foreign FIU on the condition that the information and supporting documents are only used for the purposes of investigations or serve as grounds for a request of legal assistance in criminal matters with the view to obtaining evidence substantiating the exchanged information.

The authorisation for dissemination may be refused on the basis of the same conditions as those referred to in paragraph 5.

The FIU may only authorise that information and supporting documents be used in judicial proceedings by referring to the FIU as source of such information and supporting documents and by including communications with the FIU as substantiating documents to such proceedings, where it has obtained the Chief Public Prosecutor's prior and express authorisation. The Chief Public Prosecutor may refuse their use for judicial purposes as previously described on the grounds set out in Article 3 of the Law of 8 August 2000 concerning mutual legal assistance in criminal matters, as amended.

- (10) Upon request, the FIU provides feedback to a foreign FIU on the use of information and supporting documents given by the latter and on the result of the analysis carried out on the basis of such information.
- (11) The FIU, represented by its director, may negotiate and sign cooperation agreements setting the practical aspects for exchanging information and supporting documents.
- (12) The FIU and Europol may exchange all information on analyses that fall within Europol's missions as referred to in Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

V. - Access to electronic data processing systems and other information

Article 74-6.

When carrying out its mission, the FIU has direct access to the criminal data processed by the judicial authorities, to the "bulletin N° 1" of the criminal record and to the data bases referred to in Article 48-24 of the Code of Criminal Procedure.

The FIU may access, upon a summarily motivated request, information and supporting documents of enquiry and investigation files, ongoing or terminated.

The FIU may access, upon simple request, administrative and financial information held by any public administration needed for carrying out its missions.

[...]

Article III.

The Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, is further amended as follows:

[...]

Article 5, paragraph 3 is amended as follows:

The professionals must refrain from carrying out transactions of which they know, suspect or have reasonable grounds to suspect to be related to money laundering, to an associated predicate offence or to terrorist financing until they have informed the Financial Intelligence Unit thereof in accordance with paragraphs 1 and 1a and have complied with any specific instructions from the Financial Intelligence Unit. The Financial Intelligence Unit may give instructions not to carry out the operations relating to the transaction or the customer.

Where refraining from carrying out transactions referred to in sub-paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected operation, the professionals concerned shall inform the Financial Intelligence Unit immediately afterwards.

Where the instruction is communicated orally, it must be followed by a written confirmation within

3 business days, otherwise the effects of the instruction cease on the third business day at midnight.

The professional is not authorised to disclose this instruction to the customer without the express prior consent of the Financial Intelligence Unit.

The Financial Intelligence Unit may order systematically and at any time the total or partial withdrawal of the order not to carry out the operations pursuant to sub-paragraph 1.

TITLE I-II:

Appeal against the instruction of the Financial Intelligence Unit

Article 9-3.

- (1) Any person demonstrating an interest in the property concerned by the instruction from the Financial Intelligence Unit not to carry out the operations in accordance with Article 5(3) and the professional concerned by this instruction may request, by simple request to the *Chambre du Conseil du Tribunal d'arrondissement de Luxembourg* (Judges' Council Chamber of the Luxembourg District Court), the withdrawal of this instruction.
- (2) The request shall be communicated within 24 hours upon its receipt by the registry (*greffe*) of the *Chambre du Conseil* to the Financial Intelligence Unit and to the State prosecutor.
- (3) The Financial Intelligence Unit shall draw up a written and reasoned report justifying the instruction taken in application of Article 5(3) and transmit it to the registry (*greffe*) of the *Chambre du Conseil* within five days of the receipt of the request. This report shall be communicated by the registry (*greffe*) of the *Chambre du Conseil* to the State prosecutor and the requestor.
- (4) The *Chambre du Conseil* may request or authorise a judge of the Financial Intelligence Unit to provide his/her observations orally.
- (5) The *Chambre du Conseil* shall rule based on the report transmitted in accordance with paragraph 3, the comments made in application of paragraph 4 and after hearing the State prosecutor and the requestor.
- (6) The order of the *Chambre du Conseil* can be appealed by the State prosecutor or by the requestor in the forms and within the deadlines set out in Articles 133 and following of the Code of Criminal Procedure.

[...]

Article V.

This law enters into force on 1 November 2018.

