

Law of 19 December 2020 on the implementation of restrictive measures in financial matters

(Mém A 2020, No 1072)

We Henri, Grand-Duke of Luxembourg, Duke of Nassau,

Having heard our State Council;

With the consent of the Chambre des Députés;

Having regard to the decision of the Chambre des Députés of 17 December 2020 and that of the State Council of 19 December 2020 that a second vote is not required;

Ordered and order:

Article 1

The object of this law is the implementation by the Grand Duchy of Luxembourg of the restrictive measures in financial matters adopted against certain States, natural and legal persons, entities and groups by:

- 1° the provisions of resolutions adopted by the United Nations Security Council under Chapter VII of the Charter of the United Nations;
- 2° the following acts of the European Union:
 - a) common positions adopted before 1 December 2009 pursuant to Articles 12 and 15 of the Treaty on European Union and for the cases referred to in Articles 60(1), 301 and 308 of the Treaty establishing the European Community;
 - b) decisions adopted since 1 December 2009 pursuant to Articles 25 and 29 of the Treaty on European Union and for the cases referred to in Articles 75, 215 and 352 of the Treaty on the Functioning of the European Union;
 - c) regulations adopted before 1 December 2009 pursuant to Article 249 of the Treaty establishing the European Community or decisions taken pursuant to such regulations and for the cases referred to in Articles 60(1), 301 and 308 of the Treaty establishing the European Community;
 - d) regulations adopted since 1 December 2009 pursuant to Article 288 of the Treaty on the Functioning of the European Union or regulations or decisions adopted pursuant to those regulations and for the cases referred to in Articles 75, 215 and 352 of the Treaty on the Functioning of the European Union.

Article 2

Without prejudice to the definitions provided for in the resolutions and acts referred to in Article 1, where applicable, the terms used in this law shall be understood to mean:

- 1) "funds" means financial assets and economic advantages of any kind, including cash, cheques, claims on money, drafts, money orders and other payment instruments, deposits with financial institutions or other entities, balances on accounts, debts and debt securities, public or private debt instruments, publicly or privately traded securities and shares and other equity securities, certificates of title, bonds, promissory notes, warrants, unsecured securities, derivative contracts, interest, dividends or other income or capital gains received on assets, credit, right of set-off, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, sales contracts, as well as any document evidencing an interest in a fund or financial resources, and any other instrument of export financing;
- 2) "economic resources" means assets of any kind, whether tangible or intangible, movable or immovable, which are not funds but can be used for funds, goods or services;
- 3) "vital interests" means the competitive situation in relation to foreign countries, and any situation preventing or likely to prevent damage to the reputation of an economic sector or the economic place of the Grand Duchy of Luxembourg;
- 4) "Restrictive measures in financial matters" means
 - 1° The prohibition or restriction of financial activities of any kind;
 - 2° The prohibition or restriction on the provision of financial services, technical assistance, training or advice in relation to a State, natural or legal person, entity or group referred to in this law; or
 - 3° The freezing of funds, assets or other economic resources owned or controlled, directly, indirectly or jointly, with or by a person, entity or group referred to in this law or by a person acting on their behalf or at their direction.

"Freezing of funds" means, for the purposes of this law, any action to prevent any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

"Freezing of economic resources" means, under this law, any action intended to prevent the use of economic resources to obtain funds, goods or services of any kind, including the selling, hiring or mortgaging of such funds, goods or services.

- 5) "external security" means the security of foreign States or international or supranational organisations with which the Grand Duchy of Luxembourg pursues common objectives on the basis of an international treaty;
- 6) "national security" means the independence and sovereignty of the State, the security and functioning of institutions, fundamental rights and public freedoms, the security of persons and property, the scientific and technical potential or the economic interests of the Grand Duchy of Luxembourg;
- 7) "financial services" means any service of a financial nature, including insurance and related services and banking and other financial services.
- 8) "supervisory authorities" means
 - a. the Commission de Surveillance du Secteur Financier referred to in the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 - b. the Commissariat aux Assurances (Insurance Supervisory Authority) referred to in the Law of 7 December 2015 on the insurance sector, as amended;
 - c. the Administration de l'enregistrement, des domaines et de la TVA (Registration Duties, Estates and VAT Authority) referred to in the Law of 10 August 2018 organising the Administration de l'enregistrement, des domaines et de la TVA, as amended;
- 9) "self-regulatory bodies":
 - a. The Institut des réviseurs d'entreprises (Institute of Statutory Auditors) referred to in Part I, Title II of the Law of 23 July 2016 on the audit profession, as amended;
 - b. the Ordre des experts-comptables (Order of Chartered Professional Accountants) referred to in Title II of the Law of 10 June 1999 on the organisation of the profession of chartered professional accountant, as amended;
 - c. the Chambre des notaires (Chamber of Notaries) referred to in Section VII of the Law of 9 December 1976 on the organisation of the notarial profession, as amended;
 - d. the bar associations established by the Law of 10 August 1991 on the legal profession, as amended;

- e. the Chambre des huissiers (Chamber of Court Bailiffs) referred to in Chapter VIII of the Law of 4 December 1990 on the organisation of the court bailiffs, as amended.
- 10) "Credit institution" means any credit institution within the meaning of point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, including its branches, within the meaning of point (17) of Article 4(1) of the aforementioned Regulation (EU) No 575/2013, whether its head office is situated in the Union or in a third country.
- 11) "financial institution" means
- a) direct insurance undertakings and reinsurance undertakings with a head office in the Grand Duchy of Luxembourg which have been granted an authorisation in accordance with Article 14 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance;
 - b) any investment firm within the meaning of point (1) of Article 4(1)(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
 - c) any undertaking for collective investment which markets its units or shares;
 - d) any branch in Luxembourg of the financial institutions referred to in letters (a) to (c), whether their registered office is situated in a Member State of the European Union or in a third country.

Article 3

Restrictive measures in financial matters apply to:

- 1) natural persons of Luxembourg nationality who reside or operate in or from the territory of the Grand Duchy of Luxembourg or abroad;
- 2) legal persons having their registered office, a permanent establishment or their centre of main interests on the territory of the Grand Duchy of Luxembourg and which operate in or from the Grand Duchy of Luxembourg or abroad;
- 3) branches of Luxembourg legal persons established abroad and branches in the Grand Duchy of Luxembourg of foreign legal persons; and

- 4) all other natural and legal persons operating on the territory of the Grand Duchy of Luxembourg.

Article 4

(1) The implementing measures necessary for the implementation of restrictive measures in financial matters shall be adopted by grand-ducal regulation.

The grand-ducal regulation designates the States, natural and legal persons, entities or groups that are subject to restrictive measures in financial matters and determines which of the measures referred to in point (6) of Article 2, apply.

The States, natural and legal persons, entities or groups referred to in the grand-ducal regulation may be published on the website of the Minister of Finance.

(2) By way of derogation from paragraph 1, the designation of States, natural and legal persons, entities or groups appearing on a list annexed to an act of the European Union or of the United Nations and the determination of the restrictive measures in financial matters which apply shall be made automatically by reference to that list.

This reference also applies to States, natural and legal persons, entities or groups included in these lists under the European Union's police and judicial cooperation in criminal matters.

Article 5

(1) A grand-ducal regulation may impose a restrictive measure against States, natural and legal persons, entities and groups in order to ensure the defence of the national and external security or vital interests of the country and pending the formal adoption of decisions within the United Nations Organisation or the European Union.

(2) The restrictive measure shall be valid for a maximum period of sixty days, and its effects shall automatically expire at the end of such period, unless it is duly extended for respective periods of thirty days with reasons.

(3) The States, natural and legal persons, entities or groups referred to in the grand-ducal regulation referred to in paragraph 1 may be published on the website of the Minister of Finance.

Article 6

(1) Natural and legal persons who are required to implement the restrictive measures provided for in this law shall inform the Minister responsible for finance of the enforcement of each restrictive measure taken in respect of a State, natural or legal person, entity or group designated in accordance with this law and the implementing regulations, including attempted transactions.

For the purposes of implementing this law, the Minister responsible for Finance is competent to deal with matters relating to the enforcement of financial restrictive measures on the part of the natural and legal persons, entities and groups concerned, as well as on the part of the natural and legal persons obliged to apply them. The Minister responsible for Finance is also competent to exceptionally issue authorisations derogating from the prohibitions and restrictive measures imposed if the resolutions and acts referred to in Article 1 allow such derogations and under the conditions provided for therein.

(2) Without prejudice to the provisions of paragraph 3, the supervisory authorities and self-regulatory bodies shall be responsible for the supervision of the persons falling within their competence for the purposes of the implementation of this law. To this end, the supervisory authorities and self-regulatory bodies shall ensure effective monitoring of the implementation of financial restrictive measures and shall take the necessary measures to that end.

(3) The Administration de l'enregistrement, des domaines et de la TVA is responsible for the supervision of the persons falling within its competence exercised pursuant to point (5) of Article 1(1) of the Law of 10 August 2018 on the organisation of the Administration de l'enregistrement, des domaines et de la TVA, as amended, for the purposes of the implementation of this law.

(4) The supervisory authorities have the same powers as those conferred on them by Articles 8-2, 8-4, 8-5, 8-6, 8-7 and 8-9 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

(5) The competent bodies within the self-regulatory bodies have the same powers as those attributed to them by Articles 8-2a, 8-10, 8-11, 8-12 and 8-13 of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

Article 7

The Minister for Foreign Affairs is designated as the competent authority to communicate to the United Nations Sanctions Committees the natural and legal persons, entities and groups to which the restrictive measures in financial matters apply, as well as all information relating thereto, for the purpose of their inclusion on the United Nations Consolidated List.

Article 8

The application of the restrictive measures provided for in this law, carried out in good faith on the grounds that such action is in conformity with the directly applicable provisions of the European Union or the resolutions of the Security Council of the United Nations or with this law, shall not give rise to any liability of any kind on the part of the natural or legal person carrying it out, its management or its employees, unless it is established that it is the result of gross negligence.

Article 9

(1) The disclosure in good faith to the authorities referred to in Article 6 by a person, employee or director of such a person, of information necessary for the execution of this law shall not constitute a breach of any restriction on disclosure of information imposed by contract or by professional secrecy and shall not involve the person, employee or director concerned in any liability.

(2) Professional secrecy shall not prevent the exchange of information necessary for the execution of this law between the authorities referred to in Article 6 and the various competent national, foreign and international authorities.

Article 10

Without prejudice to the application of the more severe penalties provided for, where applicable, by other legal provisions, failure to comply with the restrictive measures adopted pursuant to this law shall be punished by imprisonment for a term of eight days to five years and a fine of between EUR 12 500 and EUR 5 000 000 or by one of these penalties only. Where the offence has resulted in substantial financial gain, the fine may be increased to four times the amount of the offence.

Article 11

The Law of 27 October 2010 on the implementation of United Nations Security Council resolutions and acts adopted by the European Union containing prohibitions and restrictive measures in financial matters against certain persons, entities and groups in the context of the fight against the financing of terrorism is repealed.

We instruct and order that this law be inserted in the Official Journal of the Grand Duchy of Luxembourg in order to be enforced and complied with by all the persons concerned.