

# 2022 AML/CFT Conference

Dedicated to Specialised Professionals  
of the Financial Sector

24 January 2022



## Topics

- Reminder of basics of “Responsible du Respect” and “Responsible du Contrôle” functions
- Targeted financial sanctions and proliferation financing
- Insights from the FIU for Specialised PFS
- Update on AML/CFT Regulatory trends
- Activity of depositary of bearer shares

# **Reminder of basics of “Responsible du Respect” and “Responsible du Contrôle” functions**

## RR/RC - Legal and regulatory basis:

Requirement to appoint an RR and an RC is laid down in **Article 4 (1) of the amended AML/CFT Law dated 12 November 2004** and **Article 40 (1) of the amended CSSF Regulation N° 12-02**.

**Article 1 of the CSSF Regulation N° 12-02** provides definitions:

- Person responsible for compliance with the professional obligations ('RR'):

*"The member of the authorised management responsible for the fight against money laundering and terrorist financing (...). For professionals which do not have an authorised management, this person is a member of the Board of Directors or the Board of Directors as a whole."*

Specialised PFS always have an authorized management

- Compliance officer in charge of the control of compliance with the professional obligations ('RC'):

*"The person who shall implement AML/CFT, for example, the compliance officer, where applicable (...)."*

RC is somebody from the 2<sup>nd</sup> line of defense -> article 39 (7) CSSF Regulation N° 12-02

- **The RR is hierarchically above the RC**
- **RR and RC are two separate persons**



## RR/RC criteria for appointment:

The RR and RC must fulfil the 4 requirements mentioned in **article 40(3)** of the CSSF Regulation N° 12-02:



**cssf**

The RR and RC shall have the

- 1. professional experience**, and
- 2. knowledge** of the Luxembourg legal and regulatory framework relating to AML/CFT, and
- 3. hierarchy and powers** within the entity, and
- 4. availability.**



Names and any changes need to be communicated to the CSSF prior to appointment

## RR/RC – duties and roles

### RR

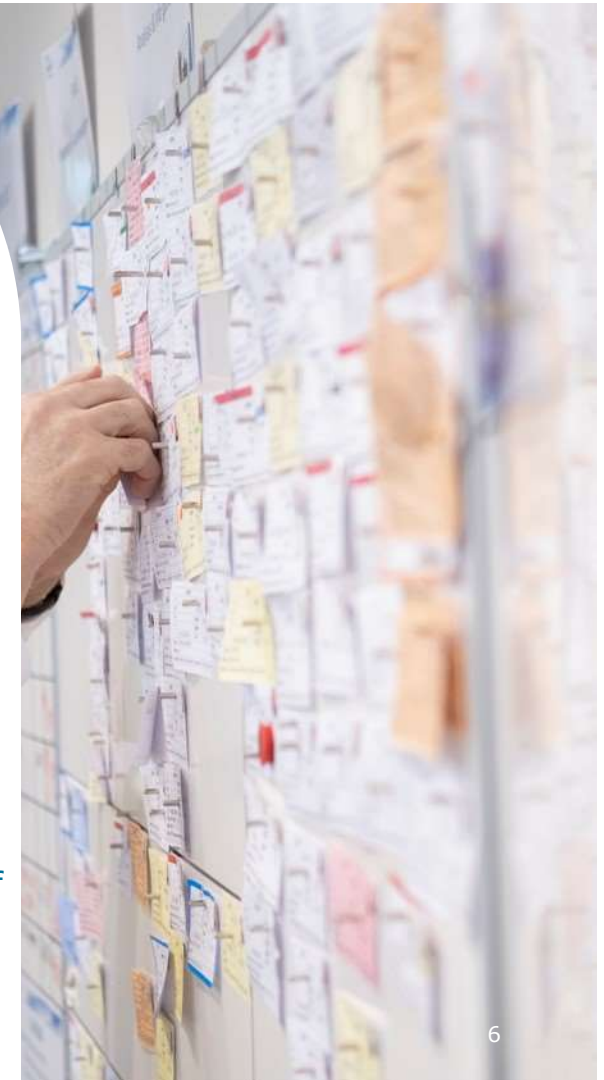
- ✓ defines the AML/CFT framework of the entity,
- ✓ oversees the activities of the RC and reviews reportings (regular, ad-hoc and annual) provided by RC,
- ✓ being part of authorised daily management, approves the establishment of business relationships with PEPs and high risk country clients,
- ✓ submits the annual RC report to the CSSF.



**Note: non-exhaustive lists**

### RC

- ✓ makes sure that the AML/CFT framework set by the RR is **implemented** and **applied** by the entity, e.g. implementation of AML/CFT procedure, carrying out of controls,
- ✓ verifies that SPFS is compliant with the AML/CFT professional obligations,
- ✓ ensures trainings,
- ✓ is the privileged contact person for the Luxembourg authorities,
- ✓ reports in writing on a regular basis to the RR,
- ✓ submits annual report to RR, the authorised management and Board of Directors.



## RC report

The **annual report** should be a summary of the **activities** and **operations** performed by the RC during the year. It should cover **findings** and **remediation actions** put in place. For example:

- controls performed on 1st line of defence,
- other controls e.g. review of procedures (further to changes in the AML Law, activity of SPFS)
- periodic file reviews according to their risk level,
- in the case of delegation of tasks, the results of the oversight,
- cooperation with authorities (FIU, CSSF, prosecutor, MoF),
- trainings (in line with activity, attended by all employees),
- internal and external audit findings + remediation actions,
- etc.



## RC Delegation of tasks



**Article 41** of CSSF Regulation 12-02 mentions that the RC can delegate **certain tasks** to one or more employees connected to the professional, provided that the employees fulfil the criteria of article 40 paragraph 3.

### Delegated tasks:

e.g. name screening, transaction monitoring, KYC review, etc.



- No delegation of responsibility
- The **RR and RC function** **cannot** be delegated



In case of questions please send an email to:

**[aml.psf-sp@cssf.lu](mailto:aml.psf-sp@cssf.lu)**



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
*Ministère des Finances*

# INTERNATIONAL FINANCIAL SANCTIONS

## LEGAL FRAMEWORK & OBLIGATIONS OF THE OPERATORS

JANUARY 2022

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# Financial sanctions: How are they defined?

Economic and financial restrictive measures, targeted or not, that:

- Aim to **counter threats** to the international peace and security.
- Aim to **change the behavior** of those that the international community identifies as responsible for these threats.
- **Support** democracy, the rule of law, human rights and **defend** the principles of international law.
- Do **not cause** transfer of property rights.



# New legal framework

- **Law of 19 December 2020** on the implementation of restrictive measures in financial matters.
- **Repealing** the Law of 27 October 2010.
- Applicable sanctions in Luxembourg:
  - ❖ **United Nations** (UN sanctions)
  - ❖ **European Union** (EU sanctions)
  - ❖ **Luxembourg** (sanctions decided at national level)





# Main changes

- The scope of the law **is extended beyond** terrorism financing.
- **Automatic transposition** of UNSCR designations.
- **Extension** of the scope of persons subject to the Law (i.e. branches)





## What else ?

- **Clarification and reinforcement** of powers of supervisory authorities and SRBs.
- **New provisions** on national designations (similar to the provisions of the export control law of 27<sup>th</sup> June 2018).
- **Strengthening** of penalties:
  - ❖ Imprisonment of 8 days to 5 years.
  - ❖ Fine of between 12,500 EUR and 5,000,000 EUR.
  - ❖ Substantial financial gain = fine four times the amount of the offence.





# Financial sanctions landscape

- More than **30 sanctions regimes** EU/UN directly applicable in Luxembourg (**automatic transposition**).
- **Not limited** to terrorism financing (e.g. human rights, cyberattacks, proliferation and use of chemical weapons etc.)
- Competent authorities in Luxembourg in matters relating to financial sanctions:
  - ❖ **Ministries** (Finance, Foreign and European Affairs)
  - ❖ **Supervisory authorities** (CSSF, CAA, AED)
  - ❖ **SRBs** (IRE, OEC, Ordres des avocats, Chambre des Notaires, Chambre des huissiers)
  - ❖ **FIU**



## What are the latest news in the financial sanctions world? (A selection)

- **In terms of targeted regimes:** Strengthening of restrictive measures concerning **Belarus**, new designations in **ISIL (Da'esh)** and **Al-Qaida**, **Nicaragua** and **Central Africa** sanctions regimes.
- **As regards proliferation financing:** Amendment of **FATF recommendations 1 and 2** and **new FATF Guidance on Proliferation Financing Risk Assessment and Mitigation**.
- **Obligation** to carry out a **proliferation financing risk assessment** both at national and at operators' level.
- The subject of proliferation financing risk is included in the new **EU AML package (full alignment with FATF)**.







# Proliferation Financing

- Refers to the sanctions regimes relating to (a) **The Democratic People's Republic of Korea (North Korea)** and (b) **Iran**.
- **In the context of FATF** “proliferation financing risk” refers strictly and only to the **potential breach, non-implementation or evasion** of the **targeted financial sanctions obligations** referred to in FATF Recommendation 7.
- **As per the FATF guidance** Customer Profile Risk Indicators, Account and Transaction Activity Risk Indicators, Maritime Sector Risk Indicators, Trade Finance Risk Indicators **must be taken into account during the entire duration of the business relationship**.



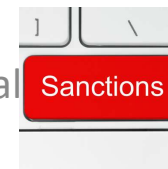
## The competence of the Ministry of Finance

- Deal with matters relating to the implementation 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.
- Exceptionally issue authorizations derogating from the prohibitions and restrictive measures imposed if the legal texts imposing restrictive measures provide this possibility.



## Role of the Ministry at EU and supranational level

- **Participation** in the RELEX Group and Expert Groups on extraterritorial implementation of sanctions.
- **Communication** with the Commission when it comes to specific questions in matters of sanctions implementation (with or without the issuance of Commission opinions)
- **Participation** in FATF discussions in matters of Financial sanctions.





# What are the operators' obligations?

The **Law of 19 December 2020** brings changes, however

- Obligations to (1) apply sanctions; (2) to report the application thereof and (3) to request authorization before executing an impacted transaction remain **UNCHANGED**.
- Remember: Operators have an obligation to achieve **a specific result**, for example, freezing of funds or economic resources – not an obligation tailored to their means / the nature of their business.
- We do not have the notions of obliged vs. non-obliged entities in TFS; **everyone** is obliged to respect the measures.



## What are the operators' obligations?

Financial restrictive measures do not concern only specific sectors or types of activity. Economic operators are obliged:

- To **implement** the financial sanctions **without delay** – important, in particular, to **minimize the risk of capital flight**.
- To **communicate** the implementation to the Ministry of Finance with a copy to the regulator and
- In case operators would like to apply an exemption from the restrictive measure, **to ask and obtain the prior authorization** of the Ministry of Finance.



# Targeted financial sanctions

## ➤ Freezing of funds



"**freezing of funds**" means preventing 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

"**freezing of economic resources**" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

NOTE: These are standard definitions; always look up the definition in the text that serves as legal basis to the restriction.



# Exemptions

- The exemptions must be provided for in the legal acts. **No provision, no exemption.**
- To apply an exemption, operators need **a prior authorization.**
- Authorizations are **not** granted with **retroactive effect.**
- In case of execution of a transaction despite the existence of a restrictive measure, operators must contact **without delay** the Ministry of Finance.





# Authorizations

- It is the **responsibility** of the operators to check whether the transaction conforms to the sanctions regimes.
- It is the **responsibility** of the operators to request an authorization from the Ministry of Finance, if the legal texts provide for such possibility.
- The authorization requests have to mention the **legal provisions** according to which they are submitted.
- Requests can be sent **by letter or by e-mail** to the Ministry of Finance.





## Good practices - examples

- Consult regularly the consolidated lists of EU/UN. These are freely accessible.
- Consult regularly EU guidelines, FAQs, opinion and tools (EU Sanction map, questionnaires, and due diligence helpdesk).
- Consult regularly the website of the Ministry of Finance and of the regulator.
- Subscribe to the Newsletter of the Ministry of Finance.



## Good practices - examples

- In case of **homonyms**: Contact the Ministry of Finance in case the research does not enable to confirm whether or not the match concerns indeed a designated person or entity.
- Where applicable: Check if **export licenses** have been obtained.
- An export license **does not exempt** the operator from obtaining the authorization for the related financing & vice-versa. In case of doubt, contact the Ministry of Finance.
- Be **particularly vigilant** when it comes to structures that involve persons or entities that either **have already been** designated or, without being listed, **have a history of violations** of financial sanctions. In case of doubt, contact the Ministry of Finance.



## Good practices - examples

- Be particularly vigilant when dealing with **sanctioned countries**. The degree of « sanctioned » can vary (for example, RU is not the same case as DPRK and none of them is like IR – aso), but the implication of a country against which sanctions are applied, is always **a red alert**. In case of doubt, contact the Ministry of Finance.
- Be particularly vigilant on the **links between sanctions regimes**.



## Good practices - examples

- Financial sanctions are **not always linked** to an ML or TF offense. Very often the underlying transactions would be **entirely legal** were it not for the designated persons/entities.
- An authorization in a specific case **does not mean** operators do not have to request an authorization in other similar cases. Authorizations apply strictly to the case at hand and are **not transferable** amongst cases, operators or sanctions regimes.
- Contact the Ministry of Finance **before executing the transaction**. And if - **exceptionally** - the transaction is executed in violation of financial sanctions, contact the Ministry of Finance **as a matter of urgency, i.e. not after days, weeks or months**.



## Bad practices - Examples

- Absence of freezing of funds or late freezing of funds. It is the **responsibility** of the operator to freeze the funds **without delay**.
- Execution of transactions **without authorization or late request** to the Ministry of Finance.
- Inappropriate procedures regarding sanctions.
- Reporting of homonyms **without prior investigation**.





## Bad practices - Examples

- Reticence to provide **required information to authorities**/incapacity to provide the required information (a.o. identity of the designated person, transaction history, documents...) – in general, lack of cooperation.
- Poor **knowledge of financial sanctions regulations** (including the incorrect reading of EU Regulations).
- Absence of **critical thinking**.
- Rejection of **responsibility**.





## Reminders

- The Ministry of Finance **does not** issue comfort letters of general nature. Each case is **specific** and each case is **different**.
- It is the **responsibility** of the operator to ensure its compliance with financial sanctions.
- Authorization request must **be complete and clear** (clear explanation, legal basis, evidences etc.)



# Extraterritoriality

- The EU introduced the Blocking Statute in 1996.
- The European Union and Luxembourg do not recognise the extra-territorial application of laws adopted by third countries.
- Operators are not discouraged to consult other lists for information purpose only but these lists must not be considered as compulsory and binding.





# Questions?



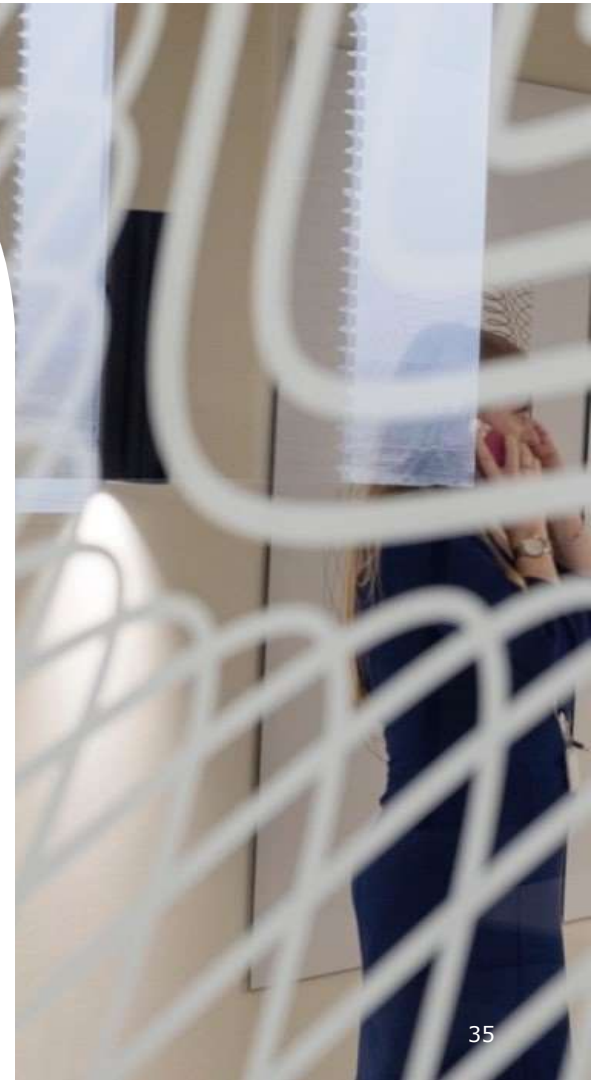


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*Ministère des Finances*

# Thank you for your attention!

Ministère des Finances  
3 Rue de la Congrégation  
L-1352 Luxembourg  
[sanctions@fi.etat.lu](mailto:sanctions@fi.etat.lu)

## Coffee Break





PARQUET GÉNÉRAL  
DU GRAND-DUCHÉ DE LUXEMBOURG  
CRF - Cellule de renseignement financier

# Insights from the FIU Luxembourg for Specialised PFS

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AML/CFT SUPERVISION FOR SPECIALISED PROFESSIONALS OF THE  
FINANCIAL SECTOR

JANUARY 24<sup>TH</sup> 2022



# Agenda

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- Introduction with a brief presentation of the FIU Luxembourg
  - Interaction with the FIU Luxembourg and statistics
  - Key elements in applying a risk-based approach to AML/CFT for Specialised Professionals of the Financial Sector
  - Interaction with the FIU and information to be provided to the FIU Luxembourg

# INTRODUCTION

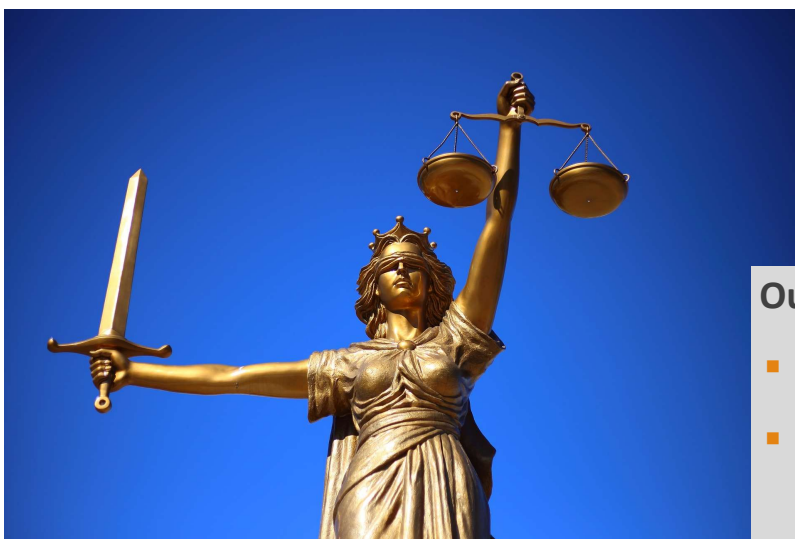
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BRIEF PRESENTATION



# Brief presentation of the FIU Luxembourg

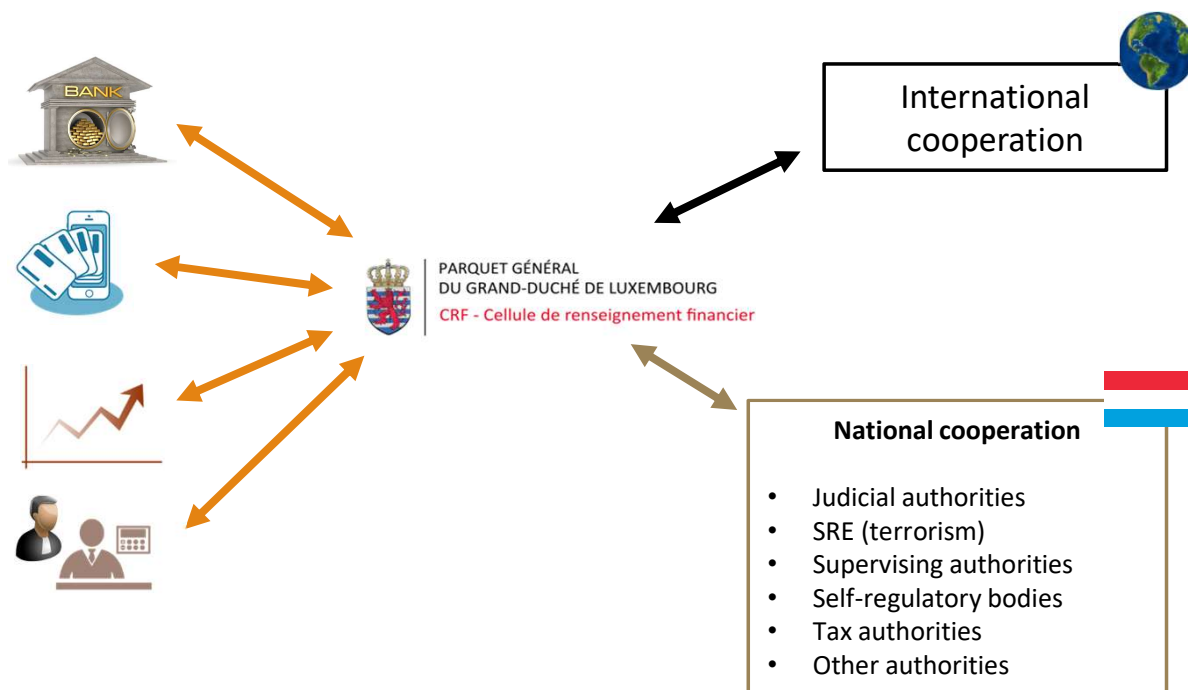
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## Our FIU in a nutshell:

- Independent
- Administrative supervision of the General prosecutor
- Composition: 6 magistrates, 21 analysts (02/22), 6 back office, 3 IT

# Brief presentation of the FIU Luxembourg





# Brief presentation of the FIU Luxembourg

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Obligated entities' obligation to cooperate



Spontaneous cooperation

- Suspicious Transaction Reports

Cooperation on request

# Interaction with the FIU

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GOAML



# Interaction with the FIU

## How?



[www.crf.lu](http://www.crf.lu)



[Organisation de la justice](#)

### CELLULE DE RENSEIGNEMENT FINANCIER (CRF)

*Lutte contre le blanchiment et le financement du terrorisme*

#### Dernières nouvelles:

Mise en ligne de l'Evaluation nationale des risques de blanchiment de capitaux et de financement du terrorisme (ENR 2020)

[Lien vers le site du Ministère de la Justice](#)

FATF/Egmont Trade-based Money Laundering: Trends and Developments

[Lien vers le site du GAFI](#)

Sensibilisation du secteur associatif aux risques de financement du terrorisme

[Lien vers le site du Ministère de la Justice](#)

#### FAIRE UNE DÉCLARATION D'OPÉRATION SUSPECTE À LA CRF

Rubrique générale:

[Faire une déclaration d'opération ou d'activité suspecte à la CRF](#)

goAML - Liens directs:


[Connexion à goAML](#)

[Inscription d'un nouveau déclarant](#)


[Inscription en tant qu'utilisateur d'un déclarant existant](#)

# Interaction with the FIU


## How?



Connection to an online service of



**goAML**  
Anti-Money Laundering System




**UNODC**  
United Nations Office on Drugs and Crime


To access the goaml online service, you must authenticate by selecting your device.

*Connection to LuxTrust for authentication*


PLEASE SELECT YOUR DEVICE




Token



Smartcard



LuxTrust Scan



LuxTrust Mobile

### goAML

Bienvenue sur l'environnement de production goAML  
de la Cellule de renseignement financier.

Welcome to the goAML production environment of FIU Luxembourg.

[LOGIN >>](#)

### Inscription

Afin d'accéder à goAML, vous devez d'abord inscrire votre entité sous S'inscrire/Inscrire une entité. Si vous êtes un nouvel utilisateur pour une entité déjà inscrite, choisissez S'inscrire/Inscrire un utilisateur.

### Contact

Si vous avez besoin de plus d'aide, contactez notre helpdesk.

*In case you need further help, contact our helpdesk.*

[Email](#)

(+352) 47 59 81 2993

### Information

Pour plus d'information sur l'utilisation de goAML, visitez notre FAQ.

*For more information on using goAML, visit our FAQ.*

[FAQ](#)

### Registration

*Please note that in order to get access to the system, you first need to register as a reporting*



# Interaction with the FIU

## *Disclaimer*

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### **Beware of the statistics in this presentation!**

A reporting entity can play different roles,

- *Registrar agent*
- *Corporate domiciliation agent*
- *Family Office*
- *Professional providing company incorporation and management services*

However, goAML does not allow to specify multiple roles.

Therefore, statistics may give an incomplete picture of the level of cooperation with a specific sector.

# Interaction with the FIU

## *Number of Specialised PFSs registered in goAML*

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	Registered within goAML (ytd 2022)	Reports submitted in 2021
Article 25. Registrar agents	20	18
Article 26. Professional depositaries of financial instruments	1	1
Article 26-1. Professional depositaries of assets other than financial instruments	2	1
Article 27. Operators of a regulated market authorised in Luxembourg	2	1
Article 28-2. Currency exchange dealers	-	-
Article 28-3. Debt recovery	1	15
Article 28-4. Professionals performing lending operations	6	-
Article 28-5. Professionals performing securities lending	-	-
Article 28-6. Family Offices	12	-
Article 28-7. Mutual savings fund administrators	1	-
Article 28-9. Corporate domiciliation agents	62	117
Article 28-10. Professionals providing company incorporation and management services	10	10

# Interaction with the FIU

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SUSPICIOUS TRANSACTION REPORTS



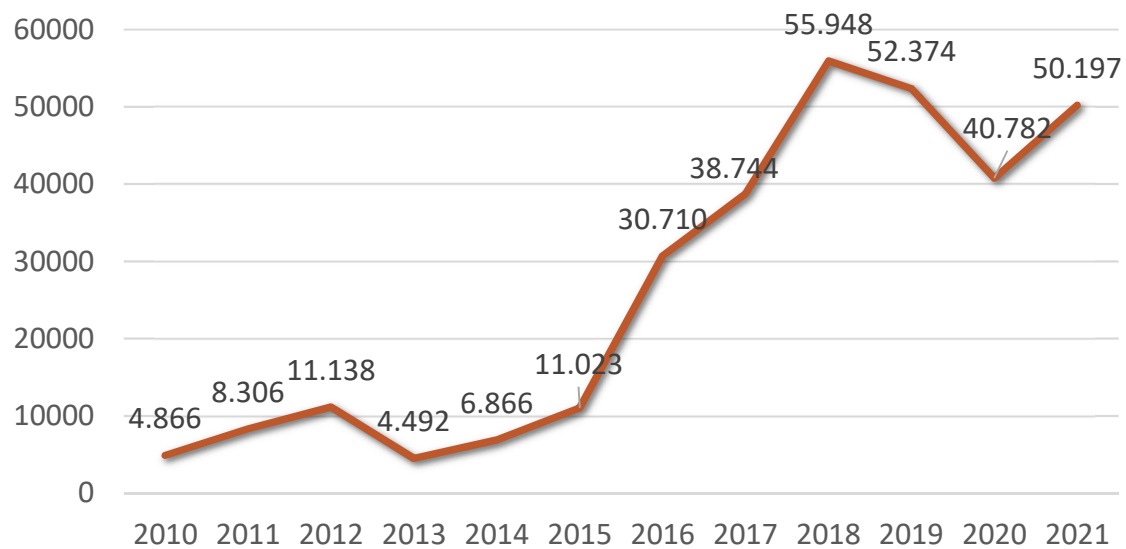
# Interaction with the FIU

## *Suspicious transaction reports*

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**Number of spontaneous transaction reports received**





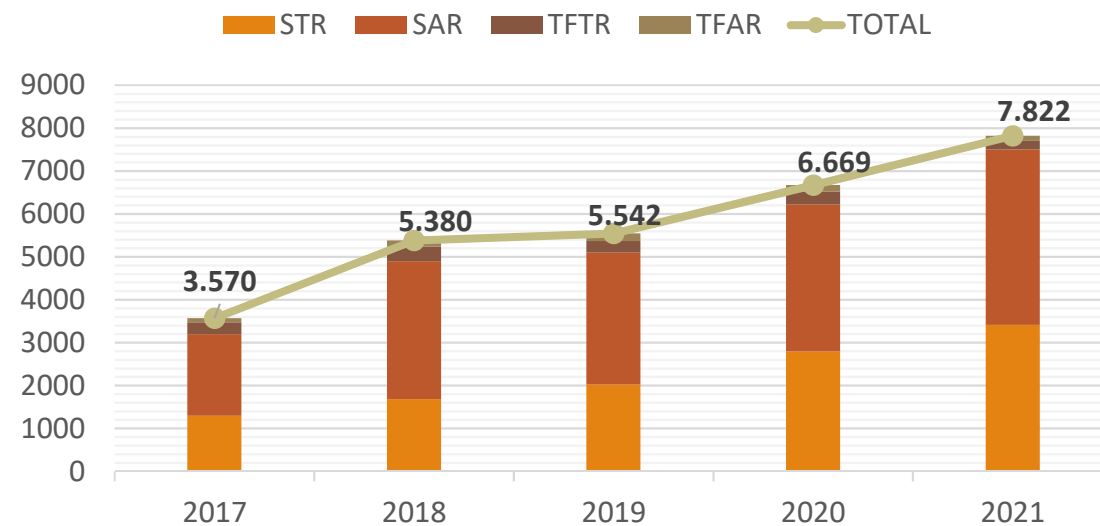
# Interaction with the FIU

## *Suspicious transaction reports*

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**Number of spontaneous transaction reports received**  
(excluding reports received from entities operating online)



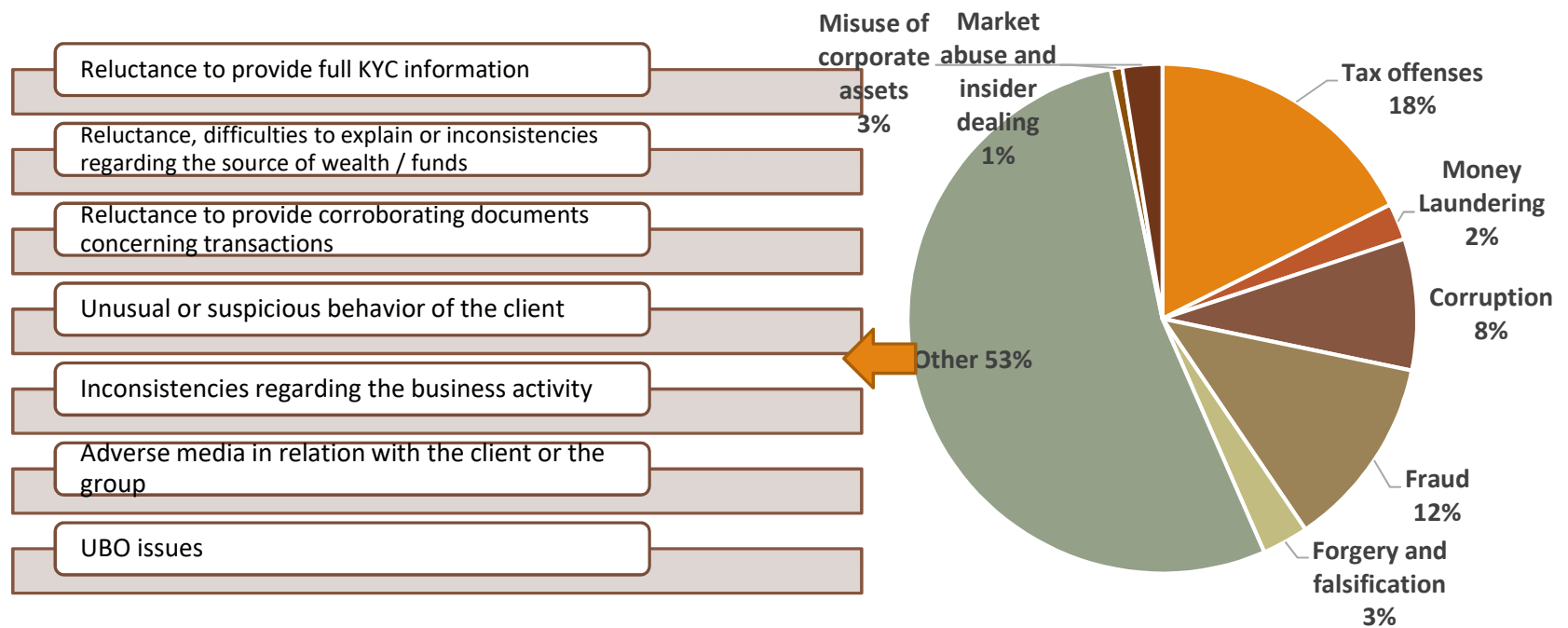
# Interaction with the FIU

## *Suspicious transaction reports filed by Specialised PFSs*

	2017	2018	2019	2020	2021	Total
Article 25. Registrar agents	29	48	36	15	18	146
Article 26. Professional depositaries of financial instruments	-	-	-	-	1	1
Article 26-1. Professional depositaries of assets other than financial instruments	-	-	-	1	1	2
Article 27. Operators of a regulated market authorised in Luxembourg	-	2	3	1	1	7
Article 28-2. Currency exchange dealers	-	-	-	-	-	-
Article 28-3. Debt recovery	4	-	-	20	15	39
Article 28-4. Professionals performing lending operations	2	2	2	2	-	8
Article 28-5. Professionals performing securities lending	-	-	-	-	-	-
Article 28-6. Family Offices	-	17	5	3	-	25
Article 28-7. Mutual savings fund administrators	-	-	-	-	-	-
Article 28-9. Corporate domiciliation agents	134	157	171	170	117	749
Article 28-10. Professionals providing company incorporation and management services	2	6	3	3	10	24
<b>Grand Total</b>	<b>171</b>	<b>232</b>	<b>220</b>	<b>215</b>	<b>163</b>	<b>1001</b>

# Interaction with the FIU

## *Suspicious transaction reports – predicate offenses*



# Interaction with the FIU

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REQUESTS FOR INFORMATION



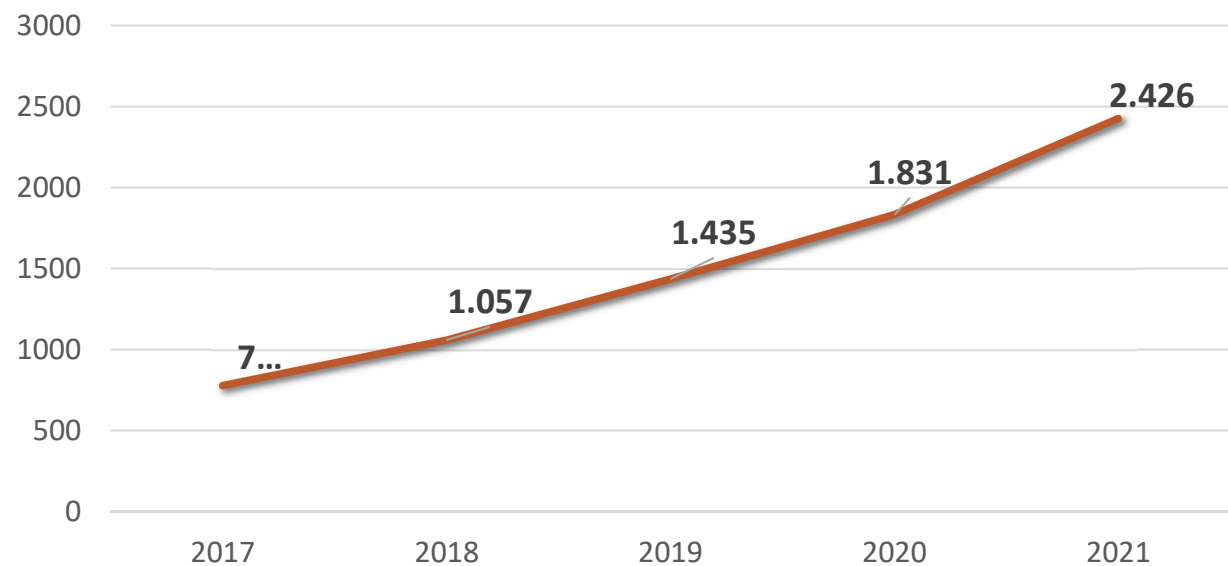
# Interaction with the FIU

## *Requests for information*

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**Number of requests for information sent:**



# Interaction with the FIU

## *Requests for information*

	2017	2018	2019	2020	2021	Total
Article 25. Registrar agents	-	1	2	-	2	5
Article 26. Professional depositaries of financial instruments	-	-	-	-	-	-
Article 26-1. Professional depositaries of assets other than financial instruments	-	-	-	-	-	-
Article 27. Operators of a regulated market authorised in Luxembourg	-	-	1	-	-	1
Article 28-2. Currency exchange dealers	-	-	-	-	-	-
Article 28-3. Debt recovery	-	-	-	-	-	-
Article 28-4. Professionals performing lending operations	-	-	-	-	1	1
Article 28-5. Professionals performing securities lending	-	-	-	-	-	-
Article 28-6. Family Offices	-	-	-	-	-	-
Article 28-7. Mutual savings fund administrators	-	-	-	-	-	-
Article 28-9. Corporate domiciliation agents	1	5	6	15	13	40
Article 28-10. Professionals providing company incorporation and management services	-	-	-	2	-	2
<b>Grand Total</b>	<b>1</b>	<b>6</b>	<b>9</b>	<b>17</b>	<b>16</b>	<b>49</b>

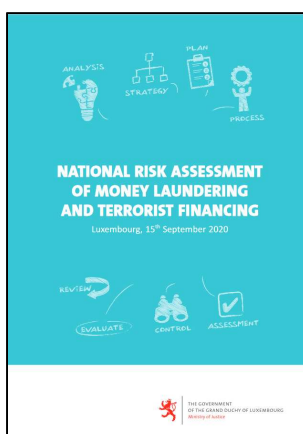
# Key elements in applying a risk-based approach to AML/CFT

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SPECIALISED PFS



# National Risk Assessment of Money Laundering and Terrorist Financing (NRA 2020)



**Table 32: Residual risk assessment (at sector-level)**

Category	Sector <sup>619</sup>	Inherent risk	Residual risk
Financial sector	Banks	High	Medium
	Investment sector	High	Medium
	Insurance	Medium	Low
	MVTS	High	Medium
	Specialised PFSs	High	Medium
	Market operators	Low	Low
	Support PFSs & other specialised PFSs	Very Low	Very Low
Non-financial sector	Legal professions, chartered accountants, auditors, accountants and tax advisors	High	Medium
	Real estate	High	High
	Freeport operators	High	Medium
	Dealers in goods	Medium	Medium
	Gambling	Low	Low
	Legal entities and arrangements	High	High

Why ?



# NRA 2020 – Specialised PFSs

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In Luxembourg, specialised PFSs can offer a variety of services, such as:



Specialised PFSs are considered as exposed to ML/TF risks due to their role as **gate-keepers** of the financial systems.

# NRA 2020 – Specialised PFSs providing corporate services

Globally, due to the important role in the global economy as **financial intermediaries**, specialised PFSs are vulnerable to be misused or abused for ML/TF purposes.

In Luxembourg, **specialized PFSs providing corporate services** are considered as particularly vulnerable due to the nature of their business.

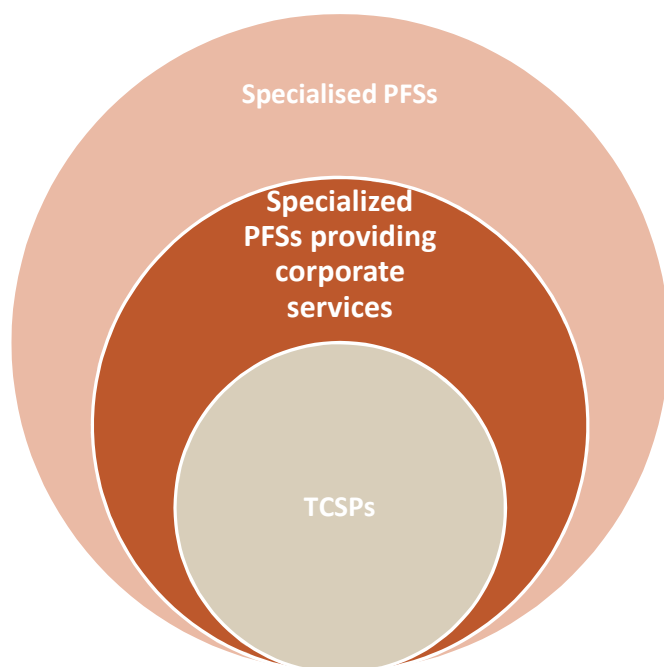
Furthermore, the ML/TF risk is driven by the fact that many specialized PFSs offer **TCSP activities**.

Table 13: Inherent vulnerabilities - by sector<sup>296</sup>

Sector	Inherent risk
1 Banks	High
2 Investment sector	High
3 AAVTC	High
4 Specialised PFSs providing corporate services	High
5 Market operators	Low
6 Support PFSs & other specialised PFSs	Very low
7 Insurance	Medium
8 Professional service providers	High
9 Gambling	Low
10 Real estate	High
11 Dealers in goods	Medium
12 Freeport operators	High
13 Legal entities and arrangements	High

# NRA 2020 - Specialised PFSs providing corporate services

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As **Specialized PFSs providing corporate services** are often involved in the establishment and administration of legal entities and arrangements, they are considered playing a key role as gatekeepers of the financial sector. They also assist clients in the management of their financial affairs and hence, can significantly impact transactional flows through the financial system.

# NRA 2020 – LEs & LAs

Table 32: Residual risk assessment (at sector-level)

Category	Sector <sup>419</sup>	Inherent risk	Residual risk
Financial sector	Banks	High	Medium
	Investment sector	High	Medium
	Insurance	Medium	Low
	MVTS	High	Medium
	Specialised PFSs	High	Medium
	Market operators	Low	Low
	Support PFSs & other specialised PFSs	Very Low	Very Low
Non-financial sector	Legal professions, chartered accountants, auditors, accountants and tax advisors	High	Medium
	Real estate	High	High
	Freeport operators	High	Medium
	Dealers in goods	Medium	Medium
	Legal entities and arrangements	High	High

The NRA 2020 assessed the risk of misuse of its legal persons and legal arrangements as “High”.

According to the **FATF GUIDANCE ON TRANSPARENCY AND BENEFICIAL OWNERSHIP** (R24 & 25):

*“Corporate vehicles—such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements—conduct a wide variety of commercial and entrepreneurial activities.*

*However, despite the essential and legitimate role that corporate vehicles play in the global economy, under certain conditions, they have been **misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other illegal activities.***

*This is because, for criminals trying to circumvent anti-money laundering (AML) and counter-terrorist financing (CFT) measures, **corporate vehicles are an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system.***

Source: FATF, Guidance on Transparency and Beneficial Ownership, 2014, paragraph 1

# Focus on Specialised PFSs providing TCSP services

## FATF

Acting as a formation agent of legal persons;

Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;

Acting as (or arranging for another person to act as) a nominee shareholder for another person.

## Law 12 November 2004

**Incorporation:** Forming companies or other legal persons;

**Directorship and secretarial services:** Acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

**Domiciliation:** Providing a registered office, business address, correspondence or administrative address or business premises and other related services for a company, a partnership or any other legal person or arrangement;

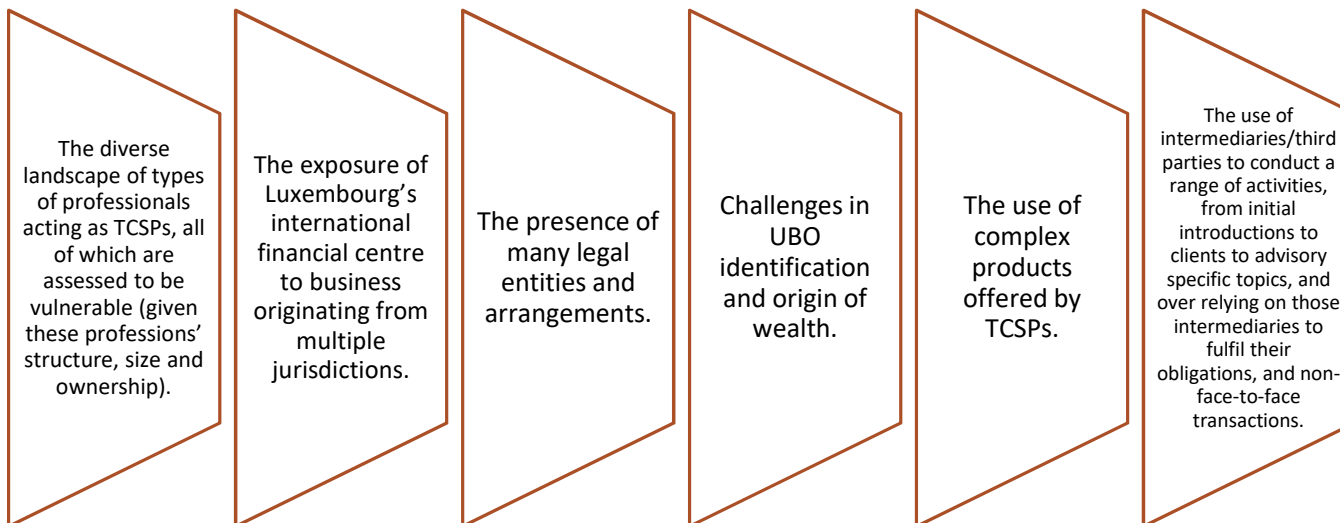
**Fiducie/trust:** Acting as, or arranging for another person to act as, a fiduciaire in a fiducie (as defined the 2003 Fiducies and Trust Law), a trustee of an express trust or an equivalent function in a similar legal arrangement; and

**Nominee shareholder:** Acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with European Union law or subject to equivalent international standards.

# ML/TF threats for specialised PFSs providing TCSP services

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It was assessed that Luxembourg TCSPs are particularly exposed to ML/TF, due to following main factors:



# Assessing ML/TF risks and risk based approach (1)

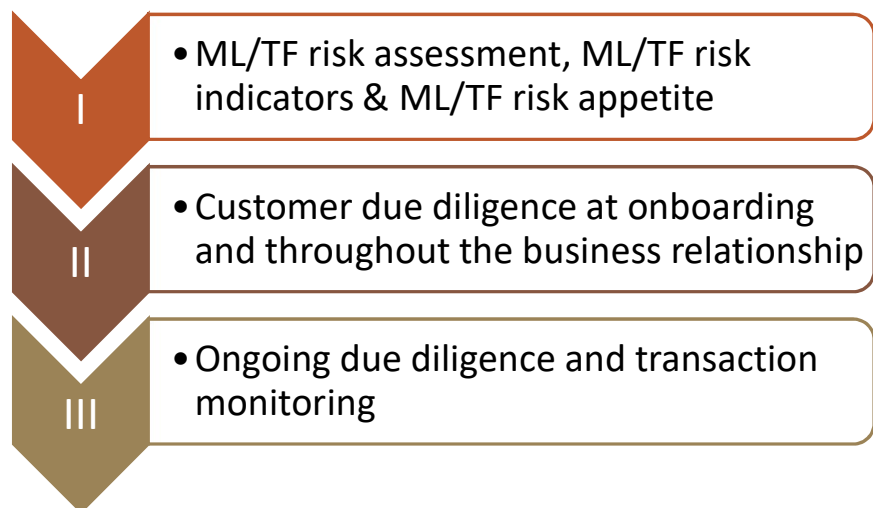
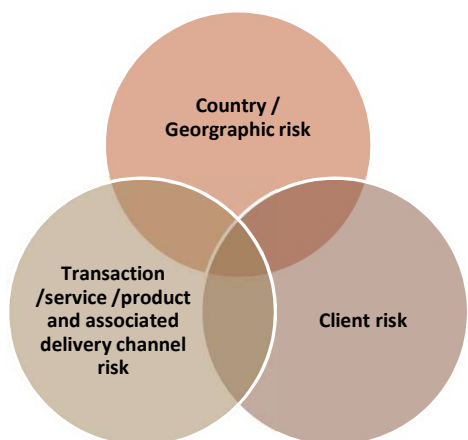
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In Luxembourg, several factors are in place to mitigate the risks, including:

- All TCSPs need to follow the AML/CFT professional obligations outlined in 2004 AML/CFT Law, and from March 2020, are required to register with the related competent authority (e.g. CSSF, CAA, AED) or SRB (e.g. OAL/OAD, IRE, OEC); and
- Specific measures are taken by competent authorities, self-regulatory bodies and other national agencies to mitigate the ML/TF vulnerabilities of TCSPs and TCSP activities.

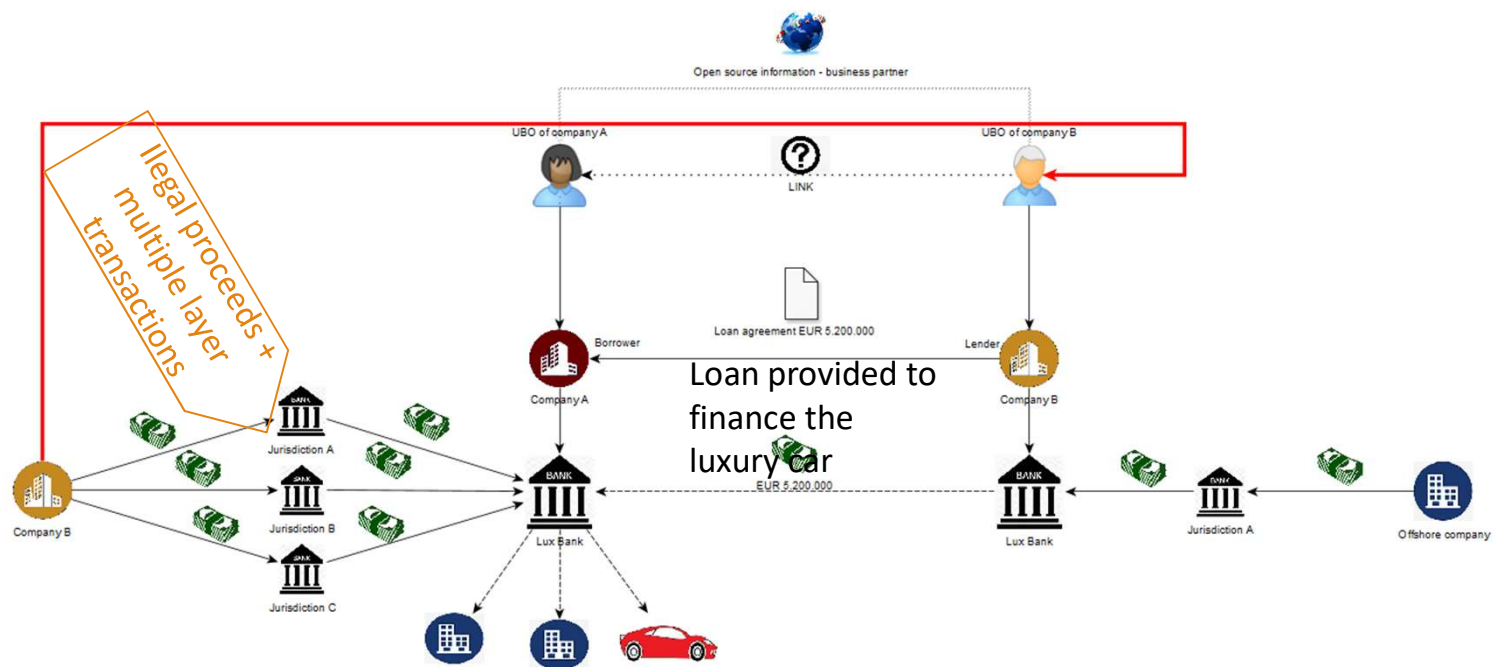
# Assessing ML/TF risks and risk based approach (2)

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# Case study



# Interaction with the FIU

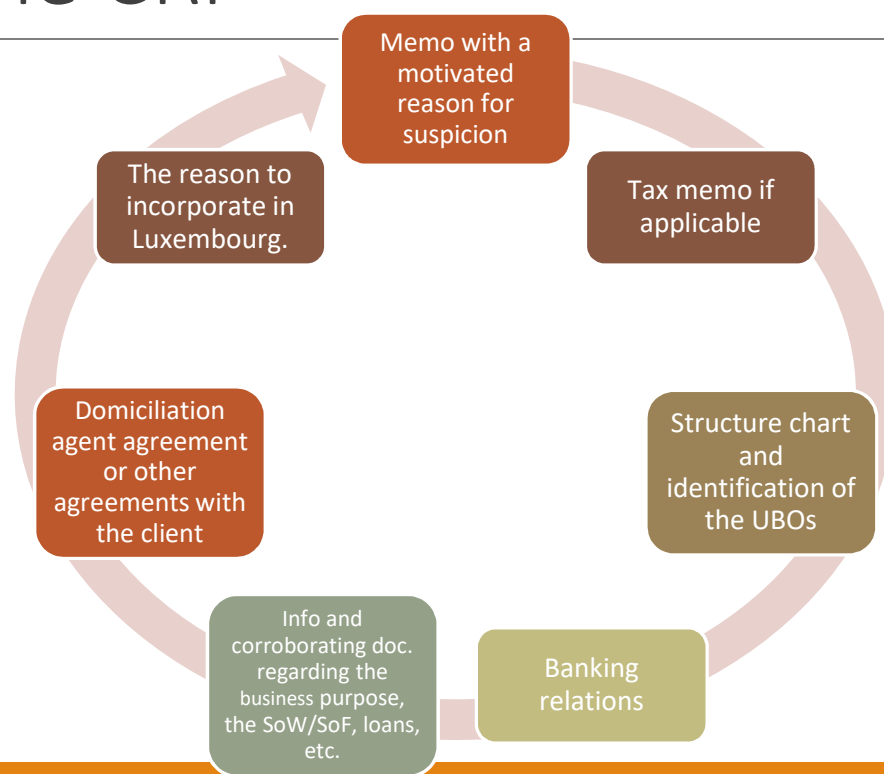
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INFORMATION TO BE INCLUDED IN THE REPORTS FILED TO THE CRF



# Information to be included in the reports filed to the CRF

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Thank you for your attention  
Questions?



# **EU Commission's package of legislative proposals to strengthen the EU's AML/CFT rules (AML Package)**

## AML Package



- Regulation establishing a new EU AML Authority (AMLAR)
- New Regulation on AML/CFT (AMLR)
- 6<sup>th</sup> Directive on AML/CFT (AMLD 6)
- Recast of the 2015 Regulation on Transfer of Funds (TFR)
  - ➔ On 1 December 2021, the Council agreed its negotiating mandate to negotiate with Parliament on the proposal
- AMLR + AMLD + TFR = AML Single Rulebook
- Negotiations ongoing

# **CSSF thematic review of the activity of depositary of bearer shares**

Article 430-6 of the law dated 10 August 1915 on commercial companies

## Thematic review

### Depository of bearer shares

- Bearer shares are a **recurrent topic** for discussion for the World Forum, the IMF and the FATF
- Following the Law of 28 July 2014, bearer shares have to be immobilized with a **professional depository**
- Data points on depositories of bearer shares are collected by the CSSF from PFS-SP through the annual **AML/CFT survey**

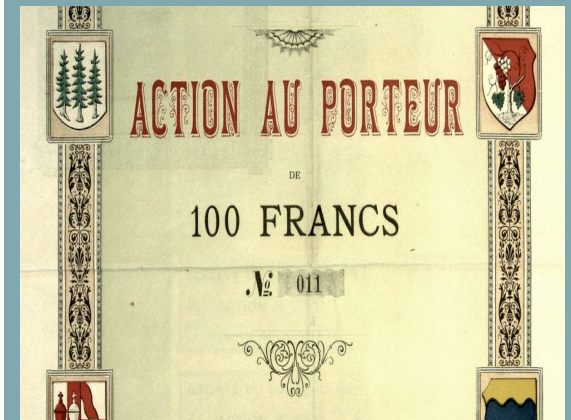




# Thematic review

## Depositary of bearer shares

- CSSF has chosen a **sample of PFS-SP** providing services as depositaries of bearer shares to perform a thematic review
- **Questions** covered among others:
  - **Number** and **types** of clients
  - **Controls** performed by the PFS-SP
  - Review of the share **register**
  - **Transfers** and **releases** of shares
  - **Screening** of shareholders



## Thematic review

### Depository of bearer shares

- Content of the **service agreement**
- Enquiry on cases where **less than 100%** of the shares are deposited
- **Access rights** to the bearer shares register
- **Storage** of bearer shares
- Enquiry about the depository service being a **standalone service**



# Thematic review

## Depositary of bearer shares

### Results of the review

- All PFS-SPs have **specific procedures** in place
- Service is provided only to **historical clients** to which the PFS-SPs provide domiciliation and/or directorship services
- Deposited bearer shares always represent **100% of the share capital** of the client
- All the shareholders are **screened**



## Thematic review

### Depository of bearer shares

- All PFS-SPs confirmed that the **number of clients is decreasing** and there is no reason anymore to have bearer shares
- Clients intend to either **liquidate or to convert** the bearer shares into registered shares. **No new clients** are requesting this service.
- Register and bearer shares certificates stored in a **safe with limited access**
- Beneficial owners **recorded in the RBE**



## Thematic review

### Depository of bearer shares

#### CSSF Assessment

- PFS-SP depositories of bearer shares are **compliant** with legal requirements

#### Potential issues

- Companies in the process of **liquidation**?
- Depository of bearer shares for a **terminated relationship**?



**Thank you for your  
attention!**