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 2nd 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 fulfill the 4 requirements mentioned in article 40(3) of the CSSF Regulation No. 12-02:

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.

**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.

*Note: non-exhaustive lists*
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.

Note: non-exhaustive list
Delegated tasks:

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

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.
In case of questions please send an email to:

aml.psf-sp@cssf.lu
INTERNATIONAL FINANCIAL SANCTIONS

LEGAL FRAMEWORK & OBLIGATIONS OF THE OPERATORS

JANUARY 2022
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 27th 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?
Thank you for your attention!

Ministère des Finances
3 Rue de la Congrégation
L-1352 Luxembourg
sanctions@fi.etat.lu
Coffee Break
Insights from the FIU Luxembourg for Specialised PFS

AML/CFT SUPERVISION FOR SPECIALISED PROFESSIONALS OF THE FINANCIAL SECTOR
JANUARY 24TH 2022
Agenda

- 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
Brief presentation of the FIU Luxembourg

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

International cooperation

National cooperation
- Judicial authorities
- SRE (terrorism)
- Supervising authorities
- Self-regulatory bodies
- Tax authorities
- Other authorities
Brief presentation of the FIU Luxembourg

- Spontaneous cooperation
  - Suspicious Transaction Reports
- Obliged entities' obligation to cooperate
- Cooperation on request
Interaction with the FIU
Interaction with the FIU
How?

www.crf.lu
Interaction with the FIU

How?

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

Connection to LuxTrust for authentication

Please select your authentication method:

- Token
- Smartcard
- LuxTrust Scan
- LuxTrust Mobile

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.

Registration

Please note that in order to get access to the content, you first need to register as a service provider.

Contact

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

In case you need further help, contact our helpdesk:

Tel: (+352) 47 59 81 2903

Information

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

For more information on using goAML, visit our FAQ.
Interaction with the FIU

Disclaimer

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

<table>
<thead>
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<th>Article</th>
<th>Description</th>
<th>Registered within goAML (ytd 2022)</th>
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<td>Registrar agents</td>
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<td>Article 27.</td>
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<td>Article 28-2.</td>
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<td>Article 28-4.</td>
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Interaction with the FIU

SUSPICIOUS TRANSACTION REPORTS
Interaction with the FIU
Suspicious transaction reports

Number of spontaneous transaction reports received

- 2010: 4,866
- 2011: 8,306
- 2012: 11,138
- 2013: 4,492
- 2014: 6,866
- 2015: 11,023
- 2016: 30,710
- 2017: 38,744
- 2018: 55,948
- 2019: 52,374
- 2020: 40,782
- 2021: 50,197

[Graph showing the trend over years]
Interaction with the FIU

Suspicious transaction reports

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

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## Interaction with the FIU

*Suspicious transaction reports filed by Specialised PFSs*

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Interaction with the FIU

Suspicious transaction reports – predicate offenses

- Reluctance to provide full KYC information
- Reluctance, difficulties to explain or inconsistencies regarding the source of wealth / funds
- Reluctance to provide corroborating documents concerning transactions
- Unusual or suspicious behavior of the client
- Inconsistencies regarding the business activity
- Adverse media in relation with the client or the group
- UBO issues

![Pie chart showing offense types: Tax offenses 18%, Money Laundering 2%, Corruption 8%, Fraud 12%, Forgery and falsification 3%, Other 53%, Misuse of corporate assets 3%, Market abuse and insider dealing 1%]
Interaction with the FIU

REQUESTS FOR INFORMATION
Interaction with the FIU
Requests for information

Number of requests for information sent:

- 7...
- 1.057
- 1.435
- 1.831
- 2.426

Years: 2017, 2018, 2019, 2020, 2021
## Interaction with the FIU

### Requests for information

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Key elements in applying a risk-based approach to AML/CFT
National Risk Assessment of Money Laundering and Terrorist Financing (NRA 2020)

Why?

<table>
<thead>
<tr>
<th>Category</th>
<th>Sector/Act</th>
<th>Inherent risk</th>
<th>Residual risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial sector</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banks</td>
<td>High</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Investment sector</td>
<td>High</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>Medium</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>MVTS</td>
<td>High</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Specialised PFSs</td>
<td>High</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Market operators</td>
<td>Low</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Support PFSs &amp; other specialised PFSs</td>
<td>Very Low</td>
<td>Very Low</td>
<td></td>
</tr>
<tr>
<td>Non-financial sector</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal professions, chartered accountants, auditors, accountants and tax advisors</td>
<td>High</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Real estate</td>
<td>High</td>
<td>High</td>
<td></td>
</tr>
<tr>
<td>Freeport operators</td>
<td>High</td>
<td>High</td>
<td></td>
</tr>
<tr>
<td>Dealers in goods</td>
<td>Medium</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Gambling</td>
<td>Low</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Legal entities and arrangements</td>
<td></td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>
NRA 2020 – Specialised PFSs

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

- Accounting services
- Corporate services
- Domiciliation services
- Transfer agency services
- Depositary services
- Directorship

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

<table>
<thead>
<tr>
<th>Sector</th>
<th>Inherent risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Banks</td>
<td>High</td>
</tr>
<tr>
<td>2. Investment sector</td>
<td>High</td>
</tr>
<tr>
<td>3. Insurance</td>
<td>High</td>
</tr>
<tr>
<td>4. Specialised PFSs providing corporate services</td>
<td>High</td>
</tr>
<tr>
<td>5. Market Operators</td>
<td>Low</td>
</tr>
<tr>
<td>6. Support PFSs &amp; other specialised PFSs</td>
<td>Very low</td>
</tr>
<tr>
<td>7. Professional service providers</td>
<td>High</td>
</tr>
<tr>
<td>8. Gambling</td>
<td>Low</td>
</tr>
<tr>
<td>9. Real estate</td>
<td>High</td>
</tr>
<tr>
<td>10. Dealers in goods</td>
<td>Medium</td>
</tr>
<tr>
<td>11. Freeport operators</td>
<td>High</td>
</tr>
<tr>
<td>12. Legal entities and arrangements</td>
<td>High</td>
</tr>
</tbody>
</table>
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.
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

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

- The diverse landscape of types of professionals acting as TCSPs, all of which are assessed to be vulnerable (given these professions’ structure, size and ownership).
- The exposure of Luxembourg’s international financial centre to business originating from multiple jurisdictions.
- The presence of many legal entities and arrangements.
- Challenges in UBO identification and origin of wealth.
- The use of complex products offered by TCSPs.
- The use of intermediaries/third parties to conduct a range of activities, from initial introductions to clients to advisory specific topics, and over relying on those intermediaries to fulfil their obligations, and non-face-to-face transactions.
Assessing ML/TF risks and risk based approach (1)

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)

- Country / Geographic risk
- Client risk
- Transaction /service /product and associated delivery channel risk

I. ML/TF risk assessment, ML/TF risk indicators & ML/TF risk appetite
II. Customer due diligence at onboarding and throughout the business relationship
III. Ongoing due diligence and transaction monitoring
Case study

Loan provided to finance the luxury car
Interaction with the FIU

INFORMATION TO BE INCLUDED IN THE REPORTS FILED TO THE CRF
Information to be included in the reports filed to the CRF

- Memo with a motivated reason for suspicion
- The reason to incorporate in Luxembourg
- Domiciliation agent agreement or other agreements with the client
- Tax memo if applicable
- Structure chart and identification of the UBOs
- Info and corroborating doc. regarding the business purpose, the SoW/SoF, loans, etc.
- Banking relations
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)
- 6th 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
Depositary 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 depositary**
- Data points on depositaries of bearer shares are collected by the CSSF from PFS-SP through the annual **AML/CFT survey**
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
Depositary 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 depositary 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**
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
Depositary of bearer shares

**CSSF Assessment**
- PFS-SP depositaries of bearer shares are **compliant** with legal requirements

**Potential issues**
- Companies in the process of **liquidation**?
- Depositary of bearer shares for a **terminated relationship**?
Thank you for your attention!