



Frequently asked questions - Virtual Asset Service Providers

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CONTENTS

Context	3
Question 1: What is a virtual asset?	3
Question 2: Who must register with the CSSF as a VASP?	4
Question 3: When must a non-Luxembourg established entity, which provides VA services in Luxembourg, be registered as VASP?	6
Question 4: When should the registration as a VASP take place?	7
Question 5: Can a VASP registered with the CSSF passport its services to other European Member States?	7
Question 6: How to proceed with the registration as a VASP?	8
Question 7: When will a VASP appear in the CSSF register?	8
Question 8: What are the main legal texts applicable to VASPs?	9
Question 9: Must providers which solely offer the technology to support VA services register as VASP?	9
Question 10: Can a credit institution established in Luxembourg offer VA services?	9
Question 11: What is the regime applicable to undertakings for collective investment?	10
Question 12: What is expected as regards the understanding of ML/TF risks to which VASPs are exposed to?	10
Question 13: What level of information is expected for the ML/TF risk assessment to be submitted as part of the registration file for a VASP?	11
Question 14: What is expected in terms of AML/CTF policies and procedures?	11
Question 15: What is expected in terms of monitoring of the transactions?	12
Question 16: What is expected for the reporting of suspicious activities or transactions to the Financial Intelligence Unit?	13
Question 17: What is the applicable legal framework related to international financial sanctions and what are the obligations of VASPs?	13
Question 18: Is a registered VASP subject to any supervisory fees?	14
Question 19: What is the role of the CSSF as regards VASPs?	15
Question 20: What are the powers of the CSSF in the context of its supervision related to VASP?	15

Frequently asked questions - Virtual Asset Service Providers

Context

This document is of interest for entities being already registered in the CSSF register as a virtual asset service provider (“**VASP**”), as defined in Article 1 (20c) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the “**AML/CTF Law**”), or willing either to be established or to offer virtual asset (“**VA**”) services in Luxembourg.

The document has been established based on the current legal AML/CTF framework applicable to VASPs and does not take into account the evolution of the framework related to VA at European level (i.e. the Regulation on Markets in Crypto-Assets (“**MICA**”).

Question 1: What is a virtual asset?

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A VA is defined in Article 1 (20b) of the AML/CTF Law as follows:

- (i) *a digital representation of value, including a virtual currency,*
- (ii) *that can be digitally traded, or transferred,*
- (iii) *and can be used for payment or investment purposes,*
- (iv) *except for VA that fulfil the conditions of electronic money within the meaning of point (29) of Article 1 of the Law of 10 November 2009 on payment services, as amended, and*
- (v) *that fulfil the conditions of financial instruments within the meaning of point (19) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended.*

A virtual currency is defined in Article 1 (20a) of the AML/CTF Law as follows:

- (i) *a digital representation of value,*
- (ii) *that is not issued by a central bank or a public authority,*
- (iii) *is not necessarily attached to a legally established currency,*
- (iv) *and does not possess a legal status of currency or money,*
- (v) *but is accepted by persons as a means of exchange,*
- (vi) *and which can be transferred, stored and traded digitally.*

Well-known VA currently include virtual currencies such as Bitcoin, Ethereum or most of the stablecoins.

Question 2: Who must register with the CSSF as a VASP?

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Any person, **natural or legal**, who is established in Luxembourg and/or provides in Luxembourg any of the following VA-related services **on behalf of customers or for its customers**, must register as a VASP in the CSSF register:

- a) Exchange between VA and fiat currencies, including the service of exchange between virtual currencies and fiat currencies,
- b) Exchange between one or more forms of VA,
- c) Transfer of VA,
- d) Safekeeping or administration of VA or instruments enabling control over VA, including custodian wallet service,
- e) Participation in and provision of financial services related to an issuer's offer or sale of VA.

In order to determine whether a person is subject to a registration as a VASP, the following analysis should initially be conducted by the person:

(i) Determination whether the assets subject to the services are VA

It is worth noting that where the assets fulfil the conditions of financial instruments, an analysis must be performed in order to determine whether the services are subject to an authorisation under the Law of 5 April 1993 on the financial sector or any other laws applicable to the financial sector. The same applies where the assets fulfil the conditions of electronic money, an analysis must be performed in order to determine whether the services require an authorisation under the Law of 10 November 2009 on payment services.

(ii) Determination whether the services are provided for or on behalf of customers

Where the person performs the services only for its own account, it is not subject to a registration as a VASP.

(iii) Determination whether the services are considered as one of the services (a) to (e) of Article 1 (20c) of the AML/CTF Law

It is worth noting that under the current Luxembourg legal framework, the registration as a VASP is without prejudice to any other service which may require an authorisation, a license and/or a registration. Therefore, a person who is already under the supervision of any competent authority (the CSSF or other) and intends to offer or is offering VA services in Luxembourg must still be registered as a VASP in the CSSF register. Similarly, a person who is already authorised as a VASP by a foreign competent authority and intends to offer VA services in Luxembourg must equally be registered as a VASP in the CSSF register.

Concretely speaking, persons who provide or intend to provide the following services in Luxembourg should register within the CSSF register:

<p>Exchange between VA and fiat currencies, including the service of exchange between virtual currencies and fiat currencies</p>	<ul style="list-style-type: none"> - The exchange of VA against fiat currencies - The operation of a trading platform i.e. a platform where buyers and sellers can interact and conclude a transaction to buy/sell VA - The execution and/or the transmission of orders to buy/sell VA on behalf of clients - The operation and provision of an Automated Teller Machine ("ATM")
<p>Exchange between one or more forms of VA</p>	<p>This service includes the same services as those for exchange between VA and fiat currencies above but target the exchange between one or more forms of VA.</p>
<p>Transfer of VA</p>	<p>The execution of a transaction on behalf of a client that essentially moves a VA from one address, wallet or account to another.</p> <p>As for the services of exchanges above, a transfer service is considered as being rendered as soon as a person, acting on behalf of its client, performs an action which in turn facilitates the transfer of VA (for example in initiating the execution of the transaction to move or transfer the VA from one address to another).</p>
<p>Safekeeping or administration of VA or instruments enabling control over VA, including custodian wallet service</p>	<p>The safeguarding of the VA or of the instruments enabling access to them (i.e. cryptographic private keys).</p> <p>It also includes any service allowing the person to control or manage the VA on behalf of clients (administration aspects).</p>

<p>Participation in and provision of financial services related to an issuer's offer or sale of VA</p>	<p>The participation in the issuance of a VA where the person is responsible/participates actively in the distribution of the VA issued.</p> <p>This service also includes, among others but without being limited to:</p> <ul style="list-style-type: none"> • the placement of VA, • providing investment advice on VA (giving recommendations to a person regarding the purchase or sale of VA where the person is remunerated for giving the advice), as well as • the management of a portfolio of VA on behalf of clients based on a mandate. <p>The publication of general information on VA assets or on the VA market is not considered as a VA activity subject to a registration.</p>
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Please note that the above list is not exhaustive and an analysis on a case-by-case basis must be performed.

Question 3: When must an entity not established in Luxembourg, which provides VA services in Luxembourg, be registered as VASP?

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According to the AML/CTF Law, even VASPs which are not established in Luxembourg but which offer or intend to offer their VA services to the Luxembourg market are required to register as VASP with the CSSF prior to providing those VA services in Luxembourg.

A set of internal criteria is analysed by the CSSF in order to determine whether a person providing services in Luxembourg needs to register as VASP or not. The criteria follow the recommendations of the Financial Action Task Force ("FATF") as detailed in the latest version of the FATF Guidance for a risk-based approach for VA and VASPs.



The CSSF seeks, therefore, to understand whether, among others but not limited to, the entity provides VA services in Luxembourg and hence:

- (i) Has an active commercial approach/strategy to offer the VA services to the Luxembourg market. This includes for instance having a dedicated section on its website for supporting customers of the Luxembourg market, physically visiting prospects/customers or organising or participating in events to establish a relationship with prospects and/or customers,
- (ii) Offers the VA services on a durable and continuous basis,
- (iii) Has a distribution network in Luxembourg and relies on intermediaries either authorised or not to seek customers,
- (iv) Has contact details in Luxembourg such as dedicated phone lines,
- (v) Has a presence in Luxembourg via the opening of an office; has staff/representatives located in Luxembourg,
- (vi) Has part of its technological infrastructure, notably its servers used for running the VA services, located in Luxembourg,

In all circumstances, a case-by-case analysis will be performed by the CSSF.

Question 4: When should the registration as a VASP take place?

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Entities which intend to be established in Luxembourg to provide VA services or indeed those entities established outside Luxembourg which intend to provide VA services to the Luxembourg market should be registered in the CSSF VASP register **prior to** offering the VA services.

According to Article 8-4 (1) of the AML/CTF Law, the CSSF has the power to impose administrative sanctions/measures with respect to persons who do not comply with the registration requirements as a VASP as laid down in Article 7-1 (2) of the AML/CTF Law.

Question 5: Can a VASP registered with the CSSF passport its services to other European Member States?

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Under the current national and European legal frameworks, no passporting regime is foreseen.

As such, the registration as a VASP with the CSSF is without prejudice to any requirements applicable in the other countries where a VASP provides its services or intends to provide its services. As a consequence, VASPs must ensure they comply with i.a. the registration and/or licencing requirements in said countries.

Question 6: How to proceed with the registration as a VASP?

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Persons who intend to provide VA services need to contact the CSSF (ipig@cssf.lu) in order to present their project.

After review of the person's analysis as referred to in question 2 and where it is confirmed that a person must be registered as a VASP with the CSSF, the person must submit a registration file. The VASP registration process is described on the CSSF website, please refer to the following link: <https://www.cssf.lu/en/registration-virtual-asset-service-provider/>.

The registration file and all its supporting documents must be submitted to the CSSF through a secured communication channel which will be provided by the CSSF upon request.

Question 7: When will a VASP appear in the CSSF register?

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Once the VASP registration file has been analysed by the CSSF and the CSSF is satisfied that all the conditions for being registered are met, including compliance with the professional obligations as laid down in the Luxembourg AML/CTF framework, the CSSF will take a formal decision as regards the registration.

Where a positive decision is taken, the VASP will be informed in writing and the VASP will appear in the CSSF public register within a few days.

Please refer to the following link to access to the CSSF register: <https://searchentities.apps.cssf.lu/search-entities/search?lng=en>. Registered VASPs can be found under type "PSAV – Virtual Asset Service Provider".

It is **important** to note that the fact of being listed in the CSSF register cannot, in any case and under any form whatsoever, be "*interpreted as a positive assessment by the CSSF of the quality of the services offered*" as stated in Article 7-1 (6) of the AML/CTF Law.

A VASP registered with the CSSF **cannot, under any circumstances**, use the fact that it is registered with the CSSF as commercial argument or for marketing purposes.

Lastly, the length of the registration process depends on the quality and completeness of the registration file provided by the applicant and obviously on the quality of the AML/CTF framework defined / established by the applicant who must comply with the applicable AML/CTF rules and regulations.

Question 8: What are the main legal texts applicable to VASPs?

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VASPs currently fall under the scope of the AML/CTF Law and must comply with all the professional obligations laid down in the AML/CTF Law.

The most relevant applicable AML/CTF texts (including Laws, Grand-Ducal Regulation, CSSF Regulation, CSSF circulars...) are available on the CSSF website, section "Financial crime", under "Anti-money laundering and counter-terrorist financing" and "International financial sections": [Financial crime – CSSF](#).

Question 9: Must providers which solely offer the technology to support VA services register as VASP?

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Persons who provide solely either the hardware or the software to design and support the offering of VA services are not subject to a registration as a VASP. This is notably the case for persons that develop the software, the internet providers that offer the technical and network infrastructure, the cloud service providers, etc.

However, in case they also play or will play another role, the conclusion may be different. This is notably the case where the person is actively involved in one of the 5 services referred to in the above Question 2 and is remunerated for it. In that case, a VASP registration is required.

Question 10: Can a credit institution established in Luxembourg offer VA services?

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Yes, a credit institution established in Luxembourg can offer VA services. A credit institution that intends to offer VA services as defined in Article 1 (20c) of the AML/CTF Law and as detailed in the above Question 2 must register as a VASP with the CSSF.

Please refer to the FAQ VA – Credit institutions which provides details on the conditions to be fulfilled: [FAQ – Virtual assets \(Credit institutions\) – CSSF](#).

Question 11: What is the regime applicable to undertakings for collective investment?

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Where an Alternative Investment Fund Manager (“AIFM”) intends to manage an alternative investment fund (“AIF”), regulated or not, investing in VA, the AIFM must fulfil certain conditions. The FAQ VA – Undertakings for collective investment provides details on these requirements: [FAQ – Virtual assets \(UCIs\) – CSSE](#).

In addition and in general, an analysis of the services performed needs to be conducted in the light of the activities listed under Article 1 (20c) of the AML/CTF Law.

Question 12: What is expected as regards the understanding of ML/TF risks to which VASPs are exposed to?

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The identification and understanding of the ML/TF risks emerging from the VA ecosystem and the ML/TF risks to which VASPs are exposed through their business model is essential to fight against ML and TF and prevent ML and TF schemes from taking place.

This analysis is fundamental for the management bodies to determine and regularly reassess the risk appetite with respect to ML/TF risks.

This is also the foundation for the establishment of the Risk-Based Approach that VASPs must implement and that must be commensurate with the ML/TF risks identified.

It is important to bear in mind that VASPs must apply enhanced measures to manage and mitigate adequately the higher risks they identify.

Question 13: What level of information is expected for the ML/TF risk assessment to be submitted as part of the registration file for a VASP?

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In accordance with Article 2-2 (1) of the AML/CTF Law and Article 4 of CSSF Regulation No 12-02 dated 14 December 2012 on the fight against money laundering and terrorist financing, as amended, (“**CSSF Regulation 12-02**”), the ML/TF risk assessment must take into consideration at a minimum the following risk factors: the customers, the countries or geographic areas, the products (including without being limited to the VA), services, transactions and the delivery channels. Circular CSSF 11/529 provides details on the CSSF’s requirements related to such risk assessments. Please refer to the following link: <https://www.cssf.lu/en/Document/circular-cssf-11-529/>.

It is worth remembering that the ML/TF risk assessment must be based on a variety of sources of information and at a minimum the Supra-National Risk Assessment of the European Commission, the Luxembourg National Risk Assessments, the Luxembourg Vertical Risk Assessment for VASPs and the joint guidelines issued by the European Supervisory Authorities (ESMA, EBA and EIOPA) on money laundering and terrorist financing risk factors. VASPs are also invited to take into consideration the FATF guidance for a Risk-Based Approach to Virtual Asset and Virtual Asset Providers: [FATF RBA Virtual Asset and Virtual Asset Services Providers](#)

For persons who are already supervised by the CSSF, the ML/TF risk assessment must in addition cover the risks linked to the VA services.

The ML/TF risk assessment should be approved by the management bodies.

Question 14: What is expected in terms of AML/CTF policies and procedures?

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The AML/CTF policy, which must be submitted as part of the registration file and deployed by the VASP, must comply with the AML/CTF obligations as laid down in the Luxembourg AML/CTF legal framework.

Article 38 of CSSF Regulation 12-02 details the topics that must be covered in the AML/CTF policy. VASPs are therefore encouraged to ensure that their AML/CTF policy complies with said Article before submitting the document.

The policies and procedures must detail the framework that will be effectively implemented.

VASPs established outside of Luxembourg are encouraged to make a gap analysis between the AML/CTF framework applicable in the country where they are established and the Luxembourg AML/CTF framework. This must enable them to demonstrate that the AML/CTF related processes, policies and procedures applicable to the VA services provided in Luxembourg comply with the Luxembourg AML/CTF framework.

Question 15: What is expected in terms of monitoring of the transactions?

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In accordance with Article 39 (2) of CSSF Regulation 12-02, the process for monitoring transactions must in principle be supported by automated tools. This is even more relevant given the specificities of the VA ecosystem and the nature of VA transactions. In accordance with Article 39 (2) of CSSF Regulation 12-02, the implementation of a manual process is only possible when the VASP can prove that the volume, the nature of the customers, the nature of the transactions to be supervised do not require such automation. In any case, the process to be implemented must be efficient to mitigate the ML/TF risks, enable prompt information by the VASP, on its own initiative, to the Luxembourg Financial Intelligence Unit (Cellule de Renseignement Financier - the "CRF") of any suspicious transactions / attempted suspicious transactions, suspicious activities, etc. and it must be designed to meet the ML/TF risk appetite determined by the management bodies.

CSSF requirements are technologically neutral. The market practices show that VASPs are using specialised tools given the specificities of the VA ecosystem and the nature of VA transactions.

In addition, good market practices are to implement "ex ante" and "ex post" controls. In particular, "ex ante" controls allow to detect suspicious transactions before they are processed. "Ex post" may also consist among others of examining the history of transactions and potentially detecting suspicious patterns.

Alerts which are identified, must be carefully analysed considering the customer concerned, the origin of the funds or of the VA, the purpose and the nature of the transaction. VASPs must request any information and/or documentation to dispel their doubts and ascertain in particular that the economic and lawful purpose of the transactions is given based on the knowledge of their customers. Specific attention must be paid to complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose. The analysis must be documented. This is essential in case the suspicious activities or transactions detected are to be reported to the CRF. Any required reporting to the CRF should be done promptly.

It is worth remembering that such processes are essential to avoid ML or TF schemes from taking place and/or to enable the judicial authorities to pursue the perpetrators.

VASPs are encouraged to review carefully the publication of the FATF Virtual Assets Red Flag indicators of Money Laundering and Terrorist Financing ([FATF Virtual Assets Red Flag Indicators](#)) to determine, and regularly review, the rules to be implemented to detect suspicious activities and transactions.

Question 16: What is expected for the reporting of suspicious activities or transactions to the Financial Intelligence Unit?

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In accordance with Article 5 of the AML/CTF Law, VASPs must, on their own initiative, report promptly any suspicious activities or transactions they discover and for which they have reasonable grounds to suspect that ML, an associated predicate offence¹ or TF is being committed or has been committed or attempted. The report must be accompanied by all supporting information and documents. The high quality of the reports is essential to facilitate the review of the CRF and the understanding of the situation and to be in a position to take further actions quickly where deemed necessary. For this, VASPs must ensure they are registered with the reporting tool of the CRF: goAML.

All information related to the process for reporting suspicious activities or transactions to the CRF can be found on their website: [CRF Luxembourg](#)

Question 17: What is the applicable legal framework related to international financial sanctions and what are the obligations of VASPs?

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VASPs need to comply, among others, with the Law of 19 December 2020 on the implementation of restrictive measures in financial matters (the "**Law 2020**") and with CSSF Regulation 12-02. Whilst CSSF Regulation 12-02, in particular its Articles 33 and 39 provide details on the controls and measures to put in place in order to achieve compliance with applicable financial restrictive measures and related professional obligations, the purpose of the Law 2020 is the implementation of restrictive measures in financial matters by the Grand Duchy of Luxembourg in respect of certain States, natural and legal persons, entities and groups.

¹ Refer to Article 506-1, point (1) of the Penal Code and Article 8(1)(a) and (b) of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended.

Further, VASPs need to consider the restrictive measures in financial matters including, notably, those implemented in Luxembourg via EU regulations or UN resolutions directly applicable without further notice and through the adoption, among others, of ministerial regulations.

VASPs must inform the **Ministry of Finance** of the enforcement of each restrictive measure taken in respect of a State, natural or legal person, entity or group involved in a transaction or business relationship and designated in accordance with the Law 2020 and the implementing regulations, including attempted transactions.

The professional must send this notification via email to sanctions@fi.etat.lu or via post to:

Ministère des Finances
3 Rue de la Congrégation
L-1352 Luxembourg

The information regarding the financial restrictive measures to be communicated **must be complete and precise**. VASPs must use the form that can be used for notifying the freezing of funds to the Ministry of Finance. It can be found on the CSSF website under the following link: [Form prepared by the Ministry of Finance for the notification of frozen funds – CSSF](#)

A **copy of this communication** needs to be sent to the CSSF at the same time. For this communication, information must be sent, in a secure manner, to the following email address of the CSSF: adm_jurcc@cssf.lu, by clearly indicating in the title “Financial sanctions”.

Please refer to the Ministry of Finance website [International financial sanctions - Ministry of Finance // The Luxembourg Government \(gouvernement.lu\)](#) for all requirements and information related to internal financial sanctions or the CSSF website [International financial sanctions – CSSF](#). Please also refer to the FAQ regarding international financial sanctions: [FAQ regarding International Financial Sanctions – CSSF](#)

Question 18: Is a registered VASP subject to any supervisory fees?

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The Grand-ducal Regulation of 23 December 2022 relating to the fees to be levied by the CSSF, as amended, (the “**GDR**”) defines in its section XXVI the fees to be paid by the VASP subject to the CSSF registration and the related AML/CTF supervision.

Question 19: What is the role of the CSSF as regards VASPs?

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The CSSF's role for the registered VASPs is currently limited to registration, supervision and enforcement for AML/CTF purposes only.

The CSSF is responsible for the preventive part of the fight against ML and TF i.e. compliance with the professional obligations with respect to AML/CTF by all the persons subject to its supervision.

The CSSF is also responsible for the supervision of the professionals falling under its scope for the purpose of the implementation of Law 2020. To this end, the CSSF must ensure effective monitoring of the implementation of financial restrictive measures and must take the necessary measures to that end.

Question 20: What are the powers of the CSSF in the context of its supervision related to VASP?

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Once a VASP is registered with the CSSF, the CSSF has all the supervisory and investigatory powers as well as sanctioning powers as provided for in Articles 7-1 (4), 8-1, 8-2 and 8-4 of the AML/CTF Law.

Further details are available in Question 15 of the FAQ regarding the fight against ML and TF for individuals/investor: [FAQ regarding the fight against money laundering and terrorist financing \(AML/CFT\) for individuals/investors – CSSF](#)



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