

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 13 March 2018

To all professionals subject to the supervision of the CSSF and that fall within the scope of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended

**CIRCULAR CSSF 18/684**

**Re:** Entry into force of the Law of 13 February 2018 amending, inter alia, the Law of 12 November 2004 on the fight against money laundering and terrorist financing

Ladies and Gentlemen,

We draw your attention to the entry into force on 18 February 2018 of the Law of 13 February 2018 (the "2018 Law")<sup>1</sup> transposing the provisions on the professional obligations and the powers of the supervisory authorities as regards the fight against money laundering and terrorist financing of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and implementing Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006.

It also amends:

- a) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- b) the Law of 10 November 2009 on payment services, as amended;
- c) the Law of 9 December 1976 on the organisation of the profession of notary, as amended;
- d) the Law of 4 December 1990 on the organisation of bailiffs (*huissiers de justice*), as amended;

---

<sup>1</sup> As published in Mémorial A-No 131 of 14 February 2018.

- e) the Law of 10 August 1991 on the legal profession, as amended;
- f) the Law of 5 April 1993 on the financial sector, as amended;
- g) the Law of 10 June 1999 on the organisation of the accounting profession, as amended;
- h) the Law of 21 December 2012 in relation to the Family Office activity;
- i) the Law of 7 December 2015 on the insurance sector, as amended;
- j) the Law of 23 July 2016 concerning the audit profession.

This circular thus aims to draw the attention of the professionals of the financial sector to the major changes the 2018 Law brings to the anti-money laundering and counter-financing of terrorism regime applicable to the Luxembourg financial sector. The consolidated version of the 2004 Law is available under: <https://www.cssf.lu/en/document/law-of-12-november-2004/>.

In Article 1 of **Chapter 1** of the Title I of the 2004 Law new definitions have been introduced (e.g. credit institution, financial institution, group, supervisory authority, etc.), while other definitions have been amended. Emphasis is in particular placed on the adaptation of the definitions of "beneficial owner" and "politically exposed persons" (e.g. inclusion of brothers and sisters) (Article 2 of the 2018 Law).

*Article 2* of the 2004 Law on the scope of Title 1 of the 2004 Law has been reviewed and the list of professionals subject to the 2004 Law has been adapted.

In addition, a new *Article 2-1* has been included in the 2004 Law in order to designate the supervisory authorities and Luxembourg self-regulatory bodies in charge of ensuring compliance by the professionals with their professional obligations as regards the fight against money laundering and terrorist financing (Article 4 of the 2018 Law).

The new *Article 2-2* included in the 2004 Law requires professionals to assess the money laundering and terrorist financing risks to which they are exposed. This requirement has already been regulated through Regulation CSSF No 12-02 (Article 5 of the 2018 Law).

As regards **Chapter 2** of the 2004 Law, *Article 3* of the 2004 Law as regards due diligence requirements (Article 6 of the 2018 Law) has undergone many adaptations.

Henceforth, the professionals will be required, based on *Article 3(1)(b)(ii)* of the 2004 Law, to apply due diligence measures when carrying out a transaction that constitutes a transfer of funds within the meaning of Regulation (EU) 2015/847 of 20 May 2015 exceeding EUR 1,000 (Article 6 of the 2018 Law).

The 2004 Law (*Article 3(2a)*) also requires that each professional determines the extent of the due diligence measures to be applied to customers depending on their risk assessment. To that end, the professionals shall take into account at least the variables set out in new *Annex II* of the 2004 Law. They should be able to demonstrate to the CSSF that the measures they apply as a result of this assessment are appropriate.

We draw the professionals' attention in particular to the new provisions in *Article 3* of the 2004 Law covering the identification of beneficial owners of *fiducies*, trusts, foundations or similar legal arrangements as well as new provisions covering the identification and the verification of the identity of the beneficiaries of life insurance or other investment-related insurance policies. In general, it should be noted that the professionals shall not rely exclusively on central registers to fulfil their customer due diligence requirements.

As regards personal data retention, the 2018 Law enables supervisory authorities, in specific cases and when necessary for the purpose of carrying out their relevant prudential supervisory duties, to require that the professionals retain the data for a further period which cannot exceed five years. The same applies where the professionals need a further retention period to effectively implement internal measures for the prevention or detection of money laundering or terrorist financing (sub-paragraphs 4 and 5 of *Article 3(6)* of the 2004 Law). We draw the professionals' attention in particular to the new paragraph *6a of Article 3* of the 2004 Law relating to the processing of personal data.

One of the major changes brought by the 2018 Law is the deletion of the list of situations in which the professionals could apply simplified due diligence measures to the business relationship as well as the change in situations in which the professionals had to apply enhanced due diligence measures to the business relationship.

Indeed, following the amendment of *Articles 3-1 and 3-2* of the 2004 Law, the professionals may henceforth apply simplified due diligence measures to a business relationship when they ascertain that, based on a prior assessment data taking into account at least the factors of potentially lower risk situations set out in new *Annex III* of the 2004 Law, the business relationship or the transaction presents a lower degree of risk (*Articles 7 and 8* of the 2018 Law). Thus, only certain electronic money products with a low degree of risk can directly benefit from a simplified due diligence regime as expressly referred to in the 2004 Law (*Article 3-1(4)*).

As regards the enhanced due diligence measures, the professionals must apply them in situations which by their nature may present higher risk of money laundering or terrorist financing and, in particular, associated with business relationships with natural and legal persons established in third countries which do not apply or insufficiently apply the measures for the fight against money laundering and terrorist financing and business relationships or transactions with national or other politically exposed persons (PEPs). When assessing the risks, the professionals shall take into account at least the factors of potentially higher-risk situations set out in *Annex IV* of the 2004 Law.

As regards the performance of due diligence measures by a third party, the 2018 Law restricts the reliance on third parties, as provided for in *Article 3-3(1) to (4)* of the 2004 Law by prohibiting reliance on third parties established in high-risk third countries. Nonetheless, this prohibition does not apply to third parties that are branches or majority-owned subsidiaries of entities established in the EU and fully complying with the group-wide AML/CFT policies and procedures (*Article 9* of the 2004 Law).

It should also be noted that the changes with regard to the professionals' internal management requirements (*Article 4* of the 2004 Law), in particular with regard to the implementation of policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing and through staff training and outreach measures. In this respect, professionals shall obtain from the authorities up-to-date information on the practices of criminals committing offences of money laundering and terrorist financing and on the indicators leading to the identification of suspicious transactions (*Article 10* of the 2018 Law).

Professionals that are part of a group shall implement group-wide policies and procedures, and shall ensure that these are implemented effectively at the level of branches and majority-owned subsidiaries established in Member States and third countries (new *Article 4-1* of the 2004 Law).

Finally, a new **Chapter 3-1** notably relating to the supervision of the professionals and the sanctions that might be imposed by the supervisory authorities (Article 14 of the 2018 Law) was inserted into the 2004 Law.

The supervisory authorities and self-regulatory bodies (new *Article 8-1(4)* of the 2004 Law) are henceforth required to apply a risk-based approach to supervision based on the periodic assessment of the money laundering and terrorist financing risk profile of the professionals.

The 2018 Law strengthens the supervisory powers and the sanction measures of the supervisory authorities, notably by providing, in accordance with relevant criteria, an array of administrative sanctions and measures that are effective, proportionate and dissuasive in case of non-compliance with the professional obligations by the professionals. The administrative sanctions and measures range from the simple warning over the administrative fine to the withdrawal of the authorisation. The maximum amount of the administrative fine that can be imposed on a credit institution or financial institution is EUR 5,000,000 (and/or 10% of the annual turnover for legal persons) (new *Article 8-4* of the 2004 Law).

Moreover, it should be noted that, in principle, these sanctions and administrative measures shall be published on the website of the authority that took the measure according to the provisions of the 2018 Law. As regards the administrative measures and sanctions decided by the CSSF, the European supervisory authorities shall also be informed in accordance with *Article 8-8* of the 2004 Law.

The amount of the fines imposed as criminal sanctions has been increased (*Article 9* of the 2004 Law) and can henceforth vary from EUR 12,500 to EUR 5,000,000 (*Article 15* of the 2018 Law).

Finally, the implementation of a close cooperation between all the supervisory authorities and a cooperation of each supervisory authority with the Financial Intelligence Unit, is legally provided for by way of an amendment of *Article 9-1* of the 2004 Law (*Article 16* of the 2018 Law). The cooperation between the supervisory authorities and the European Supervisory Authorities has been introduced by *Article 17* of the 2018 Law.

Please note that the preceding presentation does not entirely encompass the amendments resulting from the 2018 Law and therefore does only give a general overview of the changes of special interest for the financial sector.

Moreover, attention is drawn to the fact that the 2018 Law only transposes part of the provisions of Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (“Directive (EU) 2015/849”).

Indeed, other legal texts or recommendations in this respect have already been adopted (reference is notably made to Circular CSSF/CRF 17/650 of 17 February 2017 in relation to the introduction of predicate tax offences based on the Law of 23 December 2016 on the tax reform, Circular CSSF 15/609 of 27 March 2015 on the developments in automatic exchange of tax information and anti-money laundering in tax matters and Circular CSSF 17/661 of 24 July 2017 on the adoption of the joint guidelines issued by the three European Supervisory Authorities (EBA, ESMA, EIOPA) on money laundering and terrorist financing risk factors).

We also remind you that other texts transposing certain aspects of Directive (EU) 2015/849 will round out the Luxembourg framework in this respect (e.g. in relation with the development of

national central registers of beneficial owners of companies or *fiducies* transposing in particular Articles 30 and 31 of Directive (EU) 2015/849).

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Jean-Pierre FABER	Françoise KAUTHEN	Claude SIMON
Director	Director	Director

Simone DELCOURT	Claude MARX
Director	Director General