

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 19 July 2011

To all credit institutions

CIRCULAR CSSF 11/519

Re: Risk analysis regarding the fight against money laundering and terrorist financing (AML/CFT)

Ladies and Gentlemen,

The purpose of the first part of this circular is to specify the CSSF's requirements relating to application of Article 3(3) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (“AML/CFT” or “ML/FT”) (the “Law”), as amended by the law of 27 October 2010.

The second part of the circular concerns the CSSF's study on the analysis of ML/FT risks to be carried out by credit institutions.

The **questionnaire** available in the Annexe is intended for the internal assessment of ML/FT risks and for the information of the CSSF on this assessment. This questionnaire shall be sent to the CSSF **by 30 September 2011** at the latest according to the modalities set forth hereafter.

I) Article 3(3) of the Law

Article 3(3) of the Law sets out: *“Professionals are required to perform an analysis of the risks inherent to their business activities. They must set down in writing the findings of this analysis”*.

In order to specify the scope and application of these provisions, particularly in relation to the risk analysis that the professionals shall carry out, two stages shall be distinguished. Thus, the management of the institution shall first identify the ML/FT risks to which the institution is exposed. Then, the management shall set up a methodology in order to categorise these risks (1) and afterwards define and implement measures to mitigate the identified risks (2).

1. Identification of ML/FT risks

There is no set list of ML/FT risks. The types of risks which are generally identified concern country risk or geographical risk, customer risk and product or service risk.

The importance given to each type of risk (individually or in combination) will be different for every institution. Each institution shall carry out the identification and categorisation of ML/FT risks to which it considers to be exposed according to its own methodology. However, it shall observe the parameters provided by the legal and regulatory texts.

Thus, the following characteristics may reveal important information for the analysis and assessment of the ML/FT risks linked to the nature of customers:

- geographical origin of customers (residential/non-residential customers, customers coming from countries which do not or insufficiently apply AML/CFT measures; customers coming from countries subject to international sanctions);
- activity sector/customers' profession;
- means of entering into business relationship with the customer (business providers, non face-to-face entry into business relationship, execution of customer due diligence by third parties, etc.);
- degree of complexity of the structure implemented for the benefit of a customer (use of shell companies, trusts, etc.);
- customers who require the application of enhanced due diligence measures, notably in case of politically exposed persons;
- customers who may be subject to limited due diligence measures.

As far as the risk identification according to the nature of offered products and provided services is concerned, the following elements shall be taken into account:

- importance of cash transactions;
- possibility to open payable-through accounts;
- possibility to execute transactions for the collection and/or making available of funds for group clients which do not hold an account with the institution;
- provision of correspondent bank services and relations with correspondent banks (notably located in countries which do not apply AML/CFT measures considered as equivalent);
- transfers from or to countries which do not apply or insufficiently apply AML/CFT measures and/or which are subject to international financial sanctions;
- provision of services to occasional customers (securities and coupons given to the bearer/given for physical cashing, precious metals physically delivered or given, cash, etc.);
- product/service offers facilitating anonymity (holding numbered accounts);
- holding accounts with hold-mail;
- offer of new products or services or products or services which are not part of the regular activity of the institution.

2. Measures for the mitigation of ML/FT risks

The risk analysis according to Article 3(3) of the Law shall be completed with a clear and precise description of the different measures implemented by the institution in order to mitigate the risks which were previously identified.

The analysis shall show the number of customers to whom enhanced, respectively limited, due diligence measures are applied and the manner in which these measures are concretely executed.

The implemented AML/CFT measures shall be described at different levels and particularly in the framework of:

- the acceptance procedure to enter into business relationship;
- the regularisation system of incomplete files;
- the account blocking system;
- the procedure to terminate a business relationship;
- the procedure for the regular systematic review of business relationships;
- the system for detecting complex, unusual and suspicious transactions;
- the “name matching” and “name missing” systems;
- the “country matching” system;
- the maintenance of the customer database (notably insofar as the controls are based on these data);
- the procedure for training and informing employees;
- the cooperation with the FIU and the CSSF;
- the corporate governance (involvement of the management, reporting guidelines of the Compliance Officer, application of the rules set by the group to which the institution belongs, review by the internal audit, etc.).

Please refer to the FATF report on the application of the risk-based approach for AML/CFT called “Guidance on the risk-based approach to combating money laundering and terrorist financing - High level principles and procedures”. The report is available at: <http://www.fatf-gafi.org/dataoecd/43/46/38960576.pdf>

II) Questionnaire relating to ML/FT risks

The purpose of this circular is also to carry out a survey of some key information relating to the results of the self-assessment which each institution has to perform in accordance with the Law and Part I above.

This information will form an integral part of the CSSF's credit institution assessment in the framework of its supervision pursuant to the principles of the risk-based approach in AML/CFT.

To this end, a questionnaire has been drawn up. A copy of this questionnaire is annexed to this circular and an electronic version may be downloaded on our website at: <http://www.cssf.lu/fileadmin/files/ESPREP-B0xxx-2010-12-AML-EN.doc>

The answers shall be presented in the form of a summary (a few pages at the most). They shall allow a clear and precise decision on the adequacy of the measures implemented against the risks identified by the institution itself.

The institution shall also point out residual risks, i.e. risks not covered or insufficiently covered by the measures implemented as well as, where necessary, actions envisaged to appropriately cover those risks.

The duly filled in questionnaire shall be signed by both the Compliance Officer and the member of the management responsible for AML/CFT.

The requested information shall be sent via the transmission channels E-File or SOFiE by **30 September 2011** at the latest. The name of the file must comply with the file naming convention for special enquiries as defined in Circular CSSF 08/344, using the following file name: ESPREP-B0xxx-2010-12-AML.doc for the AML/CFT survey (“xxx” corresponds to the three-digit CSSF identification number of your institution). The information may be transmitted in French, German or English.

If you have further questions, you may send an email, which shall include your name, the name of your institution, your function and your telephone number, to the following address: lbcft@cssf.lu.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexe: Questionnaire regarding AML/CFT

**Questionnaire for the analysis of risks in relation to the fight against money
laundering and terrorist financing (AML/CFT)**

I INFORMATION ABOUT THE INSTITUTION

Name of the credit institution:

Identification number:

Contact person:

Tel.:

Name of the person in charge of AML/CFT in the authorised management:

Name of the Compliance Officer:

Number of persons working for the compliance department in charge of AML/CFT:

II GENERAL ANALYSIS (to fill in in the end)

Based on the questions answered below, your institution's exposure to risks related to money laundering and terrorist financing is:

Low / Average / High

Please explain your answer:

III ANALYSIS IN VIEW OF YOUR CUSTOMERS

In view of your customers, your institution's exposure to risks related to money laundering and terrorist financing is:

Low / Average / High

Please explain your answer by taking into account the composition of your customers, notably according to the following criteria:

- Your customers' home countries (Luxembourg and Greater Region, EU, others, including countries with an insufficient AML/CFT regime)
- Natural persons / Legal persons (including specific legal structures)
- Customers under private portfolio management
- Domiciled customers
- Customers under the scope of enhanced due diligence requirements / besides the case referred to in Article 3-2 of the law of 12 November 2004 (the “Law”) and Article 3 of Grand-ducal regulation of 1 February 2010 (the “Regulation”), which types of customers do you consider as subject to higher risks? / Which measures do you apply in these cases?
- Customers under the scope of simplified due diligence requirements / do you apply simplified due diligence in other cases than those referred to in Article 3-1 of the Law? / Do you abandon the application of simplified due diligence in cases referred to in Article 3-1 of the Law?

IV ANALYSIS IN VIEW OF YOUR PRODUCTS AND SERVICES

In view of your products and services, your institution's exposure to risks related to money laundering and terrorist financing is:

Low / Average / High

Please explain your answer by taking into account your products and services, notably according to the following criteria:

- Importance of transactions in cash, in physical securities and coupon, in bearer securities and coupons, in precious metals
- Importance of the transfers from and to countries with an insufficient AML/CFT regime
- Importance of the transactions of less than EUR 15,000 performed without the identification of the customer / What is your procedure to detect payments by instalments?

V ANALYSIS IN VIEW OF YOUR ORGANISATION AND PROCEDURES

In view of your organisation and procedures, your institution's exposure to risks related to money laundering and terrorist financing is:

Low / Average / High

Please explain your answer by taking into account your organisation and procedures, notably according to the following criteria:

- Use of your group's standards
- Hierarchical relations of your Compliance Officer/internal audit
- Appointing third parties for the execution of AML/CFT due diligence (Article 3-3 of the Law and Article 6 of the Regulation)
- Use of outsourcing or agency relationships (Article 3-3, subparagraph 5 of the Law)
- Use of business providers
- Analysis of the number of suspicious transaction reports made and the related results
- International letters rogatory received
- Committee for the acceptance of customers/Frequency and analysis of the refusals to enter into business relationships
- IT system to detect ML/FT suspicions
- AML/CFT training of the personnel of your establishment (Article 4(2) of the Law and Article 7(3) of the Regulation)