

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

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

Luxembourg, 6 June 2013

To all credit institutions

CIRCULAR CSSF 13/566

Re: Implementation of a secured electronic transmission channel for the notification and execution of court orders

Ladies and Gentlemen,

We inform you of the implementation of a secured electronic transmission channel for the notification and execution of court orders issued by the investigating judges (*juges d'instruction*) of the *Tribunaux d'arrondissement* (district courts) of Luxembourg and Diekirch based on Articles 66-2, 66-3, 66-4 et 66-5 of the Code of Criminal Procedure and of the Protocol of 16 October 2001 to the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. The aforementioned Convention of 29 May 2000 and the Protocol of 16 October 2001 were approved by the law of 27 October 2010 which also introduced the above-mentioned provisions in the Code of Criminal Procedure ("C.C.P. ").

Please refer to the technical note of the judicial investigating authorities annexed hereto. It includes technical details and steps to undertake in order to subscribe to this new secured system of information transmission which will use the electronic platform "e-file.lu" and which will be operational as from 1 October 2013.

We remind you that according to Article 66-2(1) of the C.C.P., the investigating judge may, under restrictive conditions and in specific circumstances, order a credit institution to provide information on whether a specific indicted person has or had a business relationship with the institution concerned.

Articles 66-3 to 66-5 of the C.C.P. govern the request to monitor banking transactions, the request for information on the execution of banking transactions and procedural questions relating to the various requests.

Pursuant to these provisions, and more particularly to paragraph 2 of Article 66-5 of the C.C.P., we require that you comply with the procedure of the judicial investigating authorities' technical note in the annexe in order to ensure the proper execution of orders.

In the event of an internal change within your institution which could have an impact on the transmission of the required information, we urge you to inform forthwith the competent authorities and to update the relevant data.

Please note that the contact person is Mr. Eric Ludwig from the International Judicial Assistance Department at the judicial police, eric.ludwig@police.etat.lu. You may also send any question to the email address of the Luxembourg *Cabinet d'Instruction* (Luxembourg Office of the investigating judge): cabinet.lux@justice.etat.lu.

This circular repeals Circular CSSF 11/514 of 7 June 2011.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexes: Excerpt from the C.C.P.
Technical sheet

Annexe 1 of the Circular

Introduction

As from 1 October 2013, orders will be sent via the **platform e-file.lu**. The responses are to be sent via the same system. **e-file.lu** is an application of the Bourse de Luxembourg.



Steps to be taken

e-file.lu

To **subscribe to the service "electronic searches"**, please contact e-file.lu:

Client Relationship Management (CRM)

Tel : (+352) 47 79 36 **330**

info@bourse.lu

The technical support department of e-file.lu will walk you through the order of a LuxTrust certificate, it will perform the IT installation at your premises and train the users on the tool, if necessary.

Technical support (SDI)

Tel : (+352) 47 79 36 **211**

sdi@bourse.lu

LuxTrust

The secure transfer of data is carried out via e-file. To this end, the encryption module shall be installed on the customer's computer. A **Standard SSL LUXTRUST certificate** shall be made available to the department in charge of the requests from the investigating judges' offices and the judicial police. An SSL certificate is valid for one or three years, at the user's choice. Once this period of time has elapsed, the certificate shall be renewed according to a procedure laid down by e-file.lu.

The persons who manage the requests for more than one entity (for example a bank B and a branch S), will be able to respond to the various requests using the same certificate: that of the main entity (sending of responses of B and S with certificate B). The naming convention of the file described below enables to distinguish between the responses as regards each entity. The necessary parameter adjustment will be established during the installation with the team of the Bourse de Luxembourg.

Exchanged information

The orders notified by the judicial police upon request of an investigating judge shall be in PDF format and shall include the same elements as in the fax sent so far.

Your response "yes/no" will be sent directly through the web interface made available by e-file for a search relating to Art. 66-2 of the Code of Criminal Procedure (hereafter: C.C.P.) or Art. 1 of the Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2000.

For responses to searches relating to Art. 66-3 or 66-4 of the C.C.P., the file including the requested data can be downloaded via the same interface. The response files shall be in a current uncompressed format. You can also merge several files in a single response.

The following naming convention shall be complied with:

TYPDIR-RMMMMMMMM-ENNNNNNN-DDDDDD-DD-DDDD-CCCC-yyyy-mm-dd-III.ext

Meaning:

Code	Meaning	Structure	Authorised values
TYP	File type	Char(3)	'662' relating to a search based on Art. 66-2 of the C.C.P. '663' relating to a search based on Art. 66-3 of the C.C.P. '664' relating to a search based on Art. 66-4 of the C.C.P. 'PRO' under Art. 1 of the Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2000.
DIR	Management	Char(3)	'REP' for response file
R	Entity type	Char(1)	'B' for bank
MMMMMMMMM	Bank code	Num(8)	CSSF code of the bank <u>responding</u> bank code preceded by 5 '0'
E	Entity type	Char(1)	'B' for bank

NNNNNNNN	Bank code	Num(8)	CSSF code of the bank <u>searched</u> bank code preceded by 5 '0'
DDDDDD-DD-DDDD	Reference of the case	Char(14)	In the name of the file of the order addressed to you, you will find these references in the following positions: TYPxxx- <u>DDDDDD-DD-DDDD-CCCC-yyyy-mm-dd.pdf</u>
CCCC	Reference of the order	Num(4)	
yyyy	Year	Num(14)	
mm	Month	Num(2)	Date of dispatch
dd	Day	Num(2)	
IIII	Number of annexe	Num(4)	'0000' – Main Document '0001' – first annexe '0002' – second annexe ...
.ext	Extension	Char(4)	' .pdf', '.xls', '.xlsx', '.doc', '.docx', '.txt', '.jpeg' ... Not: '.zip', '.gz', '.7z'

Example 1:

If the order sent on 5 December 2013 was: **664POL-000524-12-CRID-0003-2013-12-05.pdf**, then **664REP-B00000627-B00000627-000524-12-CRID-0003-2013-12-06-0000.pdf** is the valid name of the PDF response sent on 6 December 2013 by the bank 627 (fictive) to the order 524/12/CRID/3,
664REP-B00000627-B00000627-000524-12-CRID-0003-2013-12-06-0001.png : annexe 1 to the response,
664REP-B00000627-B00000627-000524-12-CRID-0003-2013-12-06-0002.png : annexe 2 to the response,

Example 2: an employee acting on behalf of several banks:

In the case where the bank 627 and its branch 991 employ the same contact person which has only one computer with the LUXTRUST SSL security certificate of bank 627.

If the order sent to the two banks was: **664POL-000524-12-CRID-0003-2013-12-05.pdf**, then:
664REP-B00000627-B00000627-000524-12-CRID-0003-2013-12-06-0000.pdf is the valid name of the PDF response sent on 6 December 2013 by the bank 627 (fictive) to the order 524/12/CRID/3,
664REP-B00000627-B00000991-000524-12-CRID-0003-2013-12-06-0000.pdf is the valid name of the PDF response sent on 6 December 2013 by the bank 627 to the order 524/12/CRID/3 *on behalf of its branch 991*.

Annexe 2 of the Circular

EXERPT from the Code of Criminal Procedure

Art. 66-2. (L. 27 October 2010) (1) If required by the preliminary investigation and in the event that ordinary investigative methods prove inadequate due to the nature of the conduct in question or circumstances specific to the case at issue, the investigating judge responsible for carrying out the investigation may, on an exceptional basis, in respect of one or more of the acts listed below, order credit institutions that s/he designates to reveal whether or not the defendant holds, controls or has power of attorney over one or more accounts of any type or has held, controlled or had power of attorney over such an account in relation to one or more of the acts listed below:

1. felonies and misdemeanours against the national security as defined in Articles 101 to 123 of the Penal Code
2. acts of terrorism and terrorist financing as defined in Articles 135-1 to 135-8 of the Penal Code
3. violations of the law of 15 March 1983 on arms and ammunition, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
4. human trafficking, procuring, prostitution and exploitation of human beings as defined in Articles 379 to 386 of the Penal Code
5. homicide and assault and battery through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 392 to 417 of the Penal Code
6. theft and extortion through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 461 to 475 of the Penal Code
7. violations of the law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
8. money laundering and receiving and concealing of stolen property as defined in Articles 505 and 506-1 of the Penal Code
9. bribery and corruption as defined in Articles 246 to 252, Article 310 and Article 310-1 of the Penal Code
10. facilitation of unauthorised entry and residence as defined by the law of 29 August 2008 on the free movement of persons, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
11. counterfeiting as defined in Articles 162 to 170 of the Penal Code
12. abduction of minors as defined in Articles 368 to 371-1 of the Penal Code.

(2) If the response is affirmative, the credit institution shall communicate the account number and its balance, and shall forward to the investigating judge all account identification details, and in particular the account opening documents.

(3) The decision is recorded in the proceedings file upon the conclusion of the proceedings.

Art. 66-3. (L. 27 October 2010) (1) If required by the preliminary investigation and in the event that ordinary investigative methods prove inadequate due to the nature of the

conduct in question or circumstances specific to the case at issue, the investigating judge responsible for carrying out the investigation may, on an exceptional basis, in respect of one or more of the acts listed below, order a credit institution to provide notification during a specified period of any transactions to be executed or planned to be executed in connection with the account of a defendant specified by the investigating judge:

1. felonies and misdemeanours against the national security as defined in Articles 101 to 123 of the Penal Code
2. acts of terrorism and terrorist financing as defined in Articles 135-1 to 135-8 of the Penal Code
3. violations of the law of 15 March 1983 on arms and ammunition, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
4. human trafficking, procuring, prostitution and exploitation of human beings as defined in Articles 379 to 386 of the Penal Code
5. homicide and assault and battery through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 392 to 417 of the Penal Code
6. theft and extortion through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 461 to 475 of the Penal Code
7. violations of the law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
8. money laundering and receiving and concealing of stolen property as defined in Articles 505 and 506-1 of the Penal Code
9. bribery and corruption as defined in Articles 246 to 252, Article 310 and Article 310-1 of the Penal Code
10. facilitation of unauthorised entry and residence as defined by the law of 29 August 2008 on the free movement of persons, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
11. counterfeiting as defined in Articles 162 to 170 of the Penal Code
12. abduction of minors as defined in Articles 368 to 371-1 of the Penal Code.

(2) The measure is ordered for a period indicated in the order. It shall lapse automatically one month following the date of the order. Nevertheless, this period may be extended by one month at a time, with the understanding that the total duration may not exceed three months.

(3) The decision is recorded in the proceedings file upon the conclusion of the proceedings.

Art. 66-4. (L. 27 October 2010) When it is deemed useful with a view to discovering the truth, the investigating judge may order a credit institution to provide information or documents concerning accounts or transactions that have been carried out during a specified period involving one or more accounts specified by the investigating judge.

Art. 66-5. (L. 27 October 2010) (1) The order provided for in Articles 66-2, 66-3 and 66-4 is brought to the attention of the credit institution concerned by way of a notification

made either by a police officer, by registered letter with acknowledgement of receipt, by fax or by electronic mail.

(2) The credit institution notified of the order shall communicate the information or documents requested by electronic mail to the investigating judge within the time period indicated in the order. The investigating judge shall acknowledge receipt by electronic mail.

(3) Any refusal to provide assistance in the execution of orders based on Articles 66-2 and 66-3 shall be punishable by a fine of between €1,250 and €25,000.
