



Freezing of suspicious transactions

Guideline applicable from 01/11/2018

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This document, which is aimed at all professionals covered by the AML/CFT Law, replaces the Guideline of 31 December 2016 on the freezing of suspicious transactions.

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1 INTRODUCTION

Article 5 (3) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (hereafter “AML/CFT Law”) states that professionals must refrain from carrying out a transaction which they know or suspect to be related to money laundering or terrorist financing before having informed the financial intelligence unit (hereafter “FIU”) thereof, by making a suspicious transaction report or by responding to a request for information by the FIU. The FIU can order the non-execution of one or more operations relating to the transaction.

If you are a professional to whom the AML/CFT law is applicable, the following guideline will further inform you about the status of pending transactions, which you reported to the FIU or for which you responded to a request for information by the FIU, and will help you manage freezing orders issued by the FIU.

If you are uncertain whether this legislation applies to you, please consult the guideline on suspicious operations on our website: www.crf.lu.

The following guideline is for informational purposes only. It does not contain any legal advice, nor does it replace the relevant laws and regulations.

2 WHICH TRANSACTIONS MAY BE SUBJECT TO A FREEZING ORDER?

The term “transaction” should be understood in the broadest sense of the term, meaning the FIU can issue a freezing order for any transaction executed within the framework of a business relationship and executed by a professional covered by the AML/CFT law. Thus, a freezing order can refer to transactions made from a bank account, to the content of a safety-deposit box, to the redemption of a life insurance policy, to the registration of one or more investors within a fund or sub-fund, etc.

A freezing order is not a means to an end in itself, rather the idea is to intercept the money laundering or the financing of terrorism. It is an exceptional measure, which usually precedes a judicial seizure of assets or gives the FIU some time to analyse the situation. In some cases, the FIU prefers to let the suspicious operations happen so as not to alert the client.

3 WHEN CAN A FREEZING ORDER BE ISSUED?

The FIU may issue a freezing order at any given moment.

To avoid the freezing order from becoming ineffective, you should not execute a transaction, which you know or suspect to be linked to an act of money laundering or terrorist financing, before having informed the FIU of your suspicion by means of a suspicious operations report. Likewise, when the FIU makes a request for information relating to a transaction, you must not execute said transaction before having responded to the request for information made by the FIU.

An acknowledgment of receipt of your report by the FIU is automatically generated by goAML Web and will be sent to you via the *message board*, usually around midnight. From this moment on, as long as you have not received any freezing order from the FIU, you may execute, under your own responsibility, the transaction related to the report, as well as any subsequent non-suspicious transactions.

4 HOW IS A FREEZING ORDER NOTIFIED?

In case of emergency, the FIU will call you to inform you of the freezing order. Within three days, a written confirmation will be sent to you through the post.

If you have an account for the goAML Web, you will also receive a notification via the *message board*; if not, the message will be sent to you via email, assuming that we have your email address.

5 CAN THE FIU AUTHORISE TRANSACTIONS?

No, the FIU does not authorise any transactions, nor does it express any opinion on the legality or suitability of said transactions. The professional is solely and exclusively liable for any transaction executed by him. We ask you not to contact the FIU for authorisation to execute a transaction. Where a transaction raises questions or raises a feeling of discomfort, worry or suspicion, you must examine the transaction within its context, keeping in mind the standard business practices of your sector and the knowledge you have of your client, in order to evaluate whether your doubts are founded. If your suspicions persist, you must immediately inform the FIU via a report.¹

6 DOES THE FIU NEED TO BE NOTIFIED OF SUBSEQUENT TRANSACTIONS?

The FIU does not need to be informed of subsequent transactions, provided they are not suspicious. If they appear suspicious to you in any way, you should immediately inform the FIU via a new report.

7 WHAT ARE THE EFFECTS OF A FREEZING ORDER?

7.1 ON THE TRANSACTION

The freezing order suspends the relevant transaction. Such an order may vary depending on the circumstances. Thus, a freezing order can be general and affect all transactions linked to a business relationship, or it can be partial and only relate to specific transactions, which are specified by the FIU. In case of a partial freezing order, you are obliged to suspend those transactions referred to in the decision, but are free to execute all the other transactions, under your responsibility.

7.2 ON THE BUSINESS RELATIONSHIP

You must not terminate a business relationship while the freezing order is on-going as this might jeopardise the order's efficiency.

On the other hand, no legislative provision requires you to terminate the business relationship once the freezing order has expired. This is your decision.

8 DO I HAVE THE RIGHT TO INFORM MY CLIENT?

You are not allowed to inform the client of the freezing order, without being given express prior consent by the FIU². However, in most cases, the decision taken by the FIU authorises you to inform your client of the freezing order as well as of his/her right of legal action against the freezing order pursuant to article 9-3 of the AML/CFT Law., when said client contacts you following the non-execution of his/her transaction.

The client can write to the FIU to have confirmation of the measures taken against him/her. Nevertheless, none of this authorises you to inform your client of the existence of a report of suspicious operations or of a request for information made by the FIU. Such conduct could expose you to criminal sanctions.

¹ See our guideline on suspicious operations reports, title 7 "How to recognise a suspicious operation"

² Art. 5(3)(4) AML/CFT law

9 HOW LONG IS THE VALIDITY PERIOD OF THE FREEZING ORDER?

9.1 VALIDITY PERIOD OF THE FREEZING ORDER

Following the legal changes that were brought about by the Law of 10 August 2018, amending various laws for the purpose of organising the Financial Intelligence Unit (FIU), the validity period of a freezing is no longer limited in time.³

9.2 RELEASE

The FIU may, at its discretion and at any given moment, order the release, in full or in part, of the freezing order if the circumstances no longer justify it being upheld. If you are notified of such a release decision, you are free to execute, under your own responsibility, the previously frozen transaction(s).

10 APPEAL AGAINST THE FREEZING ORDER

The freezing order may be appealed pursuant to article 9-3 of the AML/CFT Law:

“(1) Any person demonstrating an interest in the property concerned by the instruction from the Financial Intelligence Unit not to carry out the operations in accordance with Article 5(3) and the professional concerned by this instruction may request, by simple request to the Chambre du Conseil du Tribunal d’arrondissement de Luxembourg (Judges’ Council Chamber of the Luxembourg District Court), the withdrawal of this instruction.

(2) The request shall be communicated within 24 hours upon its receipt by the registry (greffe) of the Chambre du Conseil to the Financial Intelligence Unit and to the State prosecutor.

(3) The Financial Intelligence Unit shall draw up a written and reasoned report justifying the instruction taken in application of Article 5(3) and transmit it to the registry (greffe) of the Chambre du Conseil within five days of the receipt of the request. This report shall be communicated by the registry (greffe) of the Chambre du Conseil to the State prosecutor and the requestor.

(4) The Chambre du Conseil may request or authorize a judge of the Financial Intelligence Unit to provide his/her observations orally.

(5) The Chambre du Conseil shall rule based on the report transmitted in accordance with paragraph 3, the comments made in application of paragraph 4 and after hearing the State prosecutor and the requestor.

(6) The order of the Chambre du Conseil can be appealed by the State prosecutor or by the requestor in the forms and within the deadlines set out in Articles 133 and following of the Code of Criminal Procedure.”

Max Braun
Director of the FIU

³Law of 10 August 2018 amending: 1° the Code of Criminal Procedure; 2° the Law of 7 March 1980 on the organisation of the judicial system, as amended; 3° the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; 4° the Law of 25 March 2015 determining the salaries and the advancement conditions and rules for civil servants for the purpose of organising the Financial Intelligence Unit (FIU)