



# Freezing of suspicious transactions

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Guideline applicable from 01/04/2021

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This document, applicable for all professionals subject to the AML/CFT Law, replaces the Guideline of 01.11.2018 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, as amended (hereafter “AML/CFT Law”), provides that professionals must refrain from carrying out transactions of which they know, suspect or have reasonable grounds to suspect to be related to money laundering, to an associated predicate offence or to terrorist financing before having informed the Financial intelligence unit (hereafter “FIU”) thereof, by filing a suspicious transaction report or by responding to a request for information issued by the FIU. The FIU can order the non-execution of one or more operations relating to the transaction or the client<sup>1</sup>.

The concerned professionals are those subject to the AML/CFT Law in accordance with Article 2(1) defining its scope of application, as well as their directors (*dirigeants*, members of the authorised management) or employees in accordance with Article 5(1) of the AML/CFT Law.

This 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 may issue a freezing order for any transaction to be executed within the framework of a business relationship 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, to a virtual asset wallet etc.

A freezing order is not a means to an end in itself, the idea is rather 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 the necessary time to carry-out its analysis. In some cases, the FIU prefers to allow the suspicious operations to be executed 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 prevent the freezing order from becoming ineffective, it is important that you refrain from carrying out transactions of which you know, suspect or have reasonable grounds to suspect to be related to money laundering, to an associated predicate offence or to terrorist financing until you have informed the FIU of your suspicion by means of a suspicious operations report or before you have responded to an information request issued by the FIU.<sup>2</sup>

An acknowledgement of receipt of your suspicious transaction reports and responses to information requests is generated by goAML 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 can decide, **under your own responsibility**, to execute the transactions referred to in your communications, as well as any other subsequent non-suspicious transaction.

<sup>1</sup> Art. 5 (3) AML/CFT Law.

<sup>2</sup> Art. 5 (3) AML/CFT Law.

## 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.

If you have an account for the goAML Web, you will receive a notification via the *message board*, if not, the message will be sent to you via email, provided that the FIU has your email address, otherwise by regular mail.

## 5 CAN THE FIU AUTHORISE TRANSACTIONS?

No, the FIU does not provide authorisations to carry-out specific 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 the purpose of seeking the authorisation to execute a given transaction. Where a transaction raises questions or provokes 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.<sup>3</sup>

## 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. The scope of 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 freezing order, but remain free to execute any other transactions, under your own responsibility.

### 7.2 ON THE BUSINESS RELATIONSHIP

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

No legislative provision requires you to terminate the business relationship once the freezing order has been withdrawn.

## 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 FIU<sup>4</sup>. However, in most cases, the freezing order issued by the FIU explicitly 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.

<sup>3</sup> See our guideline on suspicious operations reports, title 7 "How to recognise a suspicious operation".

<sup>4</sup> Art. 5(3)(4) AML/CFT Law.

The client may address the FIU in writing to obtain 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 filed with the FIU or of a request for information issued by the FIU. Such conduct could expose you to criminal sanctions.

## 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 FIU, the validity period of a freezing order is no longer limited in time.<sup>5</sup>

### 9.2 WITHDRAWAL

The FIU may, at its discretion and at any given moment, order the withdrawal, 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 withdrawal, 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."*

<sup>5</sup>Law 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).