

# REGULATORY COMPLIANCE UPDATE



## AML/CTF REGULATION

01.2023

### Moneyval Report On Lithuania: Improvements in Transparency of Legal Persons and in Powers of Customs Authorities



LINK

Moneyval, in its latest report on Lithuania's anti-money laundering and counter-terrorist financing measures, have found that Lithuania has improved its measures to combat money laundering and terrorist financing and upgraded Lithuania from "partially compliant" to "largely compliant" with the Financial Action Task Force's Recommendations 24 and 32, related to transparency of legal persons and cash couriers.

Overall, Lithuania has achieved full compliance with eight of the 40 FATF recommendations constituting the international AML/CFT standard and retains minor deficiencies in the implementation of 27 recommendations where it has been found "largely compliant". Five recommendations remain "partially compliant" and Lithuania has no "non-compliant" rating.

### The Bank of Lithuania and the Financial Crime Investigation Service: Plan of Inspections of Financial Market Participants for the Year 2023



LINK

On January 17, the Bank of Lithuania announced the 2023 inspection plan for financial market participants. In the majority of planned inspections, the Bank of Lithuania will aim to assess the compliance of financial market participants with the requirements for the prevention of money laundering and terrorist financing (ML/TF). This year's inspection plan includes two banks, two credit unions, eight electronic money and payment institutions, two management companies and up to two issuers (to be decided in July).

On January 3, the Financial Crimes Investigation Service announced its scheduled inspections plan, according to which 24 market participants, including virtual asset service providers, will be checked for compliance with ML/TF prevention requirements.

### Draft Instructions: instructions for financial market participants aimed at preventing money laundering and/or terrorist financing



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The Bank of Lithuania has issued Draft instructions for financial market participants aimed at preventing money laundering and terrorist financing. The Draft instructions introduces requirement for market participants to inform the Bank of Lithuania on the appointed board member responsible for AML/CTF and MLRO in 7 business days and provides specific requirements for the assessment of internal control system. Crowdfunding operators will also have to follow the Draft instructions.

### Centre of Registers List of Virtual Asset Service Providers in the Republic of Lithuania



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The Centre of Registers has publicly listed virtual exchange and wallet operators in the Republic of Lithuania. Currently There are over 200 authorised virtual asset service providers.

The register includes names, codes, addresses, date of the beginning of operations, email address and webpage of authorised VASPs.



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### 2022 Corruption Perception Index



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The 2022 Corruption Perceptions Index (CPI) reveals that 124 countries have stagnant levels of corruption, while the number of countries in decline is increasing. The CPI ranks 180 countries and territories around the world by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean). Lithuania has increased its score by 1 in comparison to 2021 and now ranks at 33rd place with 62 points.

### The Bank of Lithuania has restricted the activities of Transactive Systems UAB



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The Bank of Lithuania conducted an inspection of Transactive Systems UAB and found significant violations of the Law on the Prevention of Money Laundering and Terrorist Financing, related to the identification of the customer's representative, beneficial owner, risk management measures applied to high-risk customers, ongoing due diligence and implementation of international sanctions.

As a result, the Bank of Lithuania has temporarily instructed the institution to not establish new business relations with customers or provide services to existing customers that provide financial services (including agent services, Forex or CDF investing, money remittance, issuance of electronic money) or whose activities are related to virtual currencies, or provide a payment account service when the identity of third parties has not been determined.



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**Detailed and full Regulatory Compliance report on AML/CTF regulation can be found here:**

*Our recommendations and details are in this file*





#### Review of the Bank of Lithuania on financial services and market supervision (IV quarter of 2022)



LINK

The Bank of Lithuania has summarized the statistics of IV quarter of 2022 in regards to supervision of financial market participants:

##### Supervisory actions taken:

- 5 inspections
- 11 thematic analyses
- 11 impacts measures
- 1 blocked Website
- 69 meetings with financial market participants
- 5 sites added to the list of illegal sites
- 74 letters drawing attention to practices to be improved

##### The Bank of Lithuania received 655 complaints and requests.

- 14 new financial market participants:
- 1 electronic money institution
- 8 collective investment undertakings
- 1 management company
- 1 peer-to-peer lending operator
- 1 financial brokerage institution
- 1 insurance brokerage firm
- 1 consumer credit provider

#### Financial Market Participant Inspection Plan for 2023



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The Bank of Lithuania published the Financial Market Participant Inspection Plan for 2023.

The inspections will largely focus on ICT, credit, liquidity and other risk management, as well as compliance with the requirements for the prevention of money laundering and terrorist financing, internal control, prudential and other requirements.

In addition to routine inspections and taking into account market participants' operational changes or their complaints and risks, the Bank of Lithuania also conducts inspections that are not pre-announced. Inspections of banks directly supervised by the European Central Bank might be also carried out (in cooperation with experts from the European Central Bank).

#### Analysis of the implementation of the risk management requirements of electronic money and payment institutions



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The Bank of Lithuania has prepared its analyses and reports for 2022, including but not limited to the following topics:

##### *Analysis of the implementation of risk management requirements for electronic money and payment institutions*

In order to assess the implementation of the market risk management requirements and the application of good practices in all EMIs and PIs, the Bank of Lithuania assessed the risk management environment of EMIs and PIs and the implementation of the risk management process. This analysis was of a wide scope, analysing 80 (more than half of the total EMIs and PIs sector) institutions operating on the market (41 EMIs and 39 PIs).

The summary of the analysis presents the overall results of the assessment of the EMIs and the PIs sector by area of risk management requirements. It should be noted that none of the evaluated EMIs and PIs achieved the highest score, 15 institutions – on average meet the requirements, 50 institutions – partially meet the requirements, and the remaining 15 – do not meet the requirements.

##### *Analysis of the reliability of the internal control and management system*

The analysis carried out for 2022 showed that the reliability requirements of the internal control and management system of the institutions being assessed are only partially implemented and that the institutions' management and risk systems are only partially adequate and reliable. In addition, the results of the analysis were found to be not significantly different from those of the analysis carried out in 2021.

The summary of the analysis succinctly presents the good practices and areas for improvement that the Bank of Lithuania seeks to draw the attention of EMIs and PIs so that they can properly implement the requirements for the reliability of the internal control, risk management and management systems.

#### REMINDER ON REPORTING

By March 1 you had to provide the following AML-related reports to the Bank of Lithuania:

- Reports on monitoring;
- Report on foreign customers and their payment transactions;
- Report on activities of intermediaries.



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**Detailed and full Regulatory Compliance report on Payment services, electronic money, other institutions rendering payments, regulation can be found here:**

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## Decision of the Supreme Court of Lithuania - concerning supplementary agreements to an employment contract.



Under Article 33 of the Labour Code, the parties to an employment relationship may conclude supplementary agreements to the employment contract.

In the case at hand, the employer challenged the legality of a supplementary agreement which provided for the payment of 8 months' severance pay in the event of termination of the employment contract on any grounds.

The employer argued that its former director had agreed with several employees on extremely high severance payments upon termination of their employment contracts, with a plan to leave the company and compete with it in another company they set up. As a result, one of the employees also terminated his contract without any valid reason and immediately started providing services to a competing company.

The Court noted that:

- Such agreements are not compulsory, but **once they are concluded, they become binding**;
- In order to determine the legality of such an agreement, it is important to establish **whether the parties knew that the agreement was contrary to the company's objectives, whether the agreement was made in bad faith and whether the parties acted intentionally**;
- Such an agreement cannot be regarded as an agreement intended to lure the employee to a competing company or to induce him to terminate his employment, since **a higher severance payment is a normal measure to encourage the employee's participation in the work process and to provide him with financial security and additional social guarantees**.

### Timely payments to the employee

According to the Article 147 (1) of the Labour Code, if, upon termination of an employment relationship, the employer is late paying the employee through no fault of the employee, **the employer must pay a forfeit in the amount of the employee's average remuneration for one month multiplied by the number of late months, but no more than six**.

As there was no evidence in the case that the severance pay had been paid when there was no reason not to, the Court held that the employer was liable to pay the employee the forfeit. However, the employer argued that the amount of the forfeit should be reduced. The court pointed out that:

- The amount of forfeit can only be reduced on the grounds set out in the legal provision itself, and since the maximum forfeit of 6 months is provided, both parties can clearly foresee the sanction that may be imposed on the employer, thus there is no reason to reduce the amount of forfeit.

### Our recommendation:

The Labour Code provides for the possibility of concluding supplementary agreements on matters beneficial to the employee.

However, before concluding such agreements, it is necessary to assess whether your company will be able to continue to fulfil its obligations thereafter, as once such an agreement is concluded, it becomes binding.

It is also highly advisable to conclude non-competition agreements with employees to avoid situations where potential competition with the company puts the employer at a disadvantage without the possibility of remedying the situation. However, non-competition agreements may only be concluded with employees who have special knowledge or skills, who are in possession of the company's commercial secrets and confidential information, which can be applied in an organization in competition with the employer. A confidentiality agreement is therefore also highly recommended.

Finally, remember that employees should always be paid on time, as your company may have to pay forfeit for late payments.

If you have any questions about the agreements you enter into with your employees, we recommend you consult a lawyer.





**French DPA CNIL fines TIKTOK EUR 5,000,000 for its insufficient legal basis for data processing.**



[LINK](#)

*The violation:* CNIL found that companies TIKTOK UK and TIKTOK IRELAND did offer a button allowing immediate acceptance of cookies, however, did not put in place an equivalent solution (button or other) to allow the Internet user to refuse their deposit as easily. Several clicks were required to refuse all cookies, as opposed to just one to accept them.

**Lithuanian DPA fined Praktiškas UAB EUR 6,000 for its insufficient legal basis for data processing.**



[LINK](#)

*The violation:* The controller processed biometric data of customers in the context of their access to sports facilities. VDAI found that the customers' consent to the processing of their biometric data could not be considered voluntary as the controller did not offer alternatives to the biometric data processing, nor the information about possible alternatives.

**Hellenic DPA fined Intellexa SA EUR 50,000 for its insufficient cooperation with supervisory authority.**



[LINK](#)

*The violation:* the company had not cooperated properly with the DPA during an investigation. As such, a fine was issued solely for the lack of cooperation by the controller.

**French DPA CNIL fined company VOODOO EUR 3,000,000 for its insufficient legal basis for data processing.**



[LINK](#)

*The violation:* the company used Apple's "IDentifier For Vendors" (or IDFV) services. When a publisher offers an application on the App Store, Apple provides it with IDFV, allowing this publisher to track the use that is made of its applications by the users. An IDFV is assigned to every user and is identical for all the applications distributed by one publisher, and therefore, in this case, for all the VOODOO's applications. The company combined other information from the smartphone with the IDFV, which allowed to track people's browsing habits in order to personalize the ads seen by each of them. The CNIL found that when the users of the company opted out of the additional tracking request, a message noting that the advertising tracking has been deactivated and specifying that non-personalized ads will still be offered, was displayed. Despite the notice, the CNIL found that when a user refused the advertising tracking, the company continued reading the technical identifier associated to this user anyway and still processed the information linked to the browsing habits for advertising purposes, therefore doing it without consent and in contradiction with what it indicates in the information screen it displays.

**EDPB adopts report on Cookie Banner Task Force.**



[LINK](#)

*The news:* the EDPB adopted a report on the work undertaken by the Cookie Banner Task Force, which was established in September 2021 to coordinate the response to complaints concerning cookie banners filed with several EEA DPAs by NGO NOYB. In the report, the DPAs agreed upon a common denominator in their interpretation of the applicable provisions of the e-Privacy Directive and of the GDPR, on issues such as reject buttons, pre-ticked boxes, banner design, or withdraw icons. The report highlights the main aspects that cause non-compliance of cookie banners in the field of data protection.

**ENISA launched the "Awareness Raising in a Box (AR-in-a-BOX)" package designed to help organisations build their own awareness raising programmes.**



[LINK](#)

*The news:* The European Union Agency for Cybersecurity (ENISA) launches today the "Awareness Raising in a Box (AR-in-a-BOX)" package designed to help organizations build their awareness raising programmes. In particular, ENISA highlighted that the package is addressed to both public bodies and private organizations, highlighting that awareness raising programmes form an indispensable part of an organisation's cybersecurity strategy and are used to promote good practices and induce change in the cybersecurity culture of employees.



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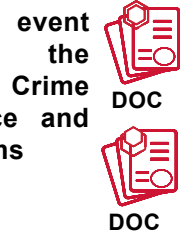
**Detailed and full Regulatory Compliance report on PERSONAL DATA PROTECTION REGULATION can be found here:**

*Our recommendations and details are in this file*





### Sanctions organized by the Financial Investigation Service and the Lithuanian Customs



The Financial Crime Investigation Service and the Lithuanian Customs have organized an event regarding implementation of financial sanctions to Russia and Belarus.

Main issues communicated in the event:

- Significant increase of exported dual-use goods and other goods to the Commonwealth of Independent States (CIS).
- Companies are being reluctant to terminate contracts with sanctioned persons.
- Difficulties in determining what is considered as a dual-use good.
- Companies unknowingly participate in sanction evasion schemes because of insufficient know your customer/partner procedures.
- Companies submit sanctions reports to competent authorities before performing internal investigations.
- Increase of CIS imported goods to the EEA, which increases the risk of import sanctions.
- Plans to further tighten of sanctions regulation.

### US sanctions & military complex Wagner Group of Russia's



The Office of Foreign Assets Control (OFAC) have imposed sanctions on individuals and entities associated with the Wagner Group for alleged links to transnational criminal activities and actions in the Central African Republic. This includes visa restrictions on 531 members of the Russian military and designations of individuals and entities linked to the Wagner Group and Russia's military industrial complex. The sanctions include asset freezes and restrictions on US dealings with designated individuals and entities.

### Russia: EU prolongs economic sanctions over Russia's military aggression against Ukraine



The Council of the European Union has decided to extend its economic sanctions against Russia for another six months until July 31, 2023. Restrictive measures currently consist of a broad spectrum of sectoral measures, including restrictions on trade, finance, technology and dual-use goods, industry, transport and luxury goods. They also cover: a ban on the import or transfer of seaborne crude oil and certain petroleum products from Russia to the EU, a de-SWIFTing of several Russian banks, and the suspension of the broadcasting activities and licenses of several Kremlin-backed disinformation outlets.

### Draft Instructions: instructions for financial market participants on the implementation of international sanctions



The Bank of Lithuania has issued Draft instructions for financial market participants on how to implement international financial sanctions.

Draft instructions, inter alia, introduce mandatory role of Committee of Audit / Supervisory board, provides directions on the performance of sanctions risk assessment, gives guidance on screening and determining the risk of sanctions evasion regarding institution's customers, transactions, partners, intermediaries, service providers, shareholders and managing personnel, requests for allocation and separation of duties, annual audit or other type of checks on the sufficiency, effectiveness and efficiency of used systems.

According to the Draft instructions, financial market participants will need to perform an annual and ad-hoc enterprise-wide sanctions risk assessment, in which the financial market participants assess their operational risk, customers risk, and the risk of proliferation financing. The enterprise-wide sanctions risk assessment may identify increased-risk situations for which a risk remediation plan would have to be drafted and the responsible person assigned.

### Free Russia Foundation: Effectiveness of U.S. Sanctions Targeting Russian Companies and Individuals



The report evaluates the effectiveness of U.S. sanctions targeting Russian companies and individuals using the detailed trade data from 2021-2022 compiled by the Federal Customs Service of Russia. The paper identifies and analyses sanctions-related changes in trade volumes, costs and geographies following Russia's full-scale invasion of Ukraine in February 2022. In particular, the analysis examines Russia's imports of UAVs and microchips.

The paper finds that:

- China, Turkey, Cyprus, UAE, Belarus, Kazakhstan, and Uzbekistan are the countries responsible for most actively facilitating the circumvention of sanctions.
- Russia has redirected a significant portion of its energy exports to China and India.
- Sanctions have resulted in a 16% contraction of Russia's imports in 2022.
- The sanctions regime, closely coordinated by the US and EU, was able to disrupt the Kremlin's direct access to western technology in the short term.
- Russia established alternative routes with imports of dual-use and controlled commodities now exceeding pre-war levels.
- Russia has retained its access to vast amounts of foreign exchange.
- Russia increased its imports of semiconductors and microchips by around 34%, with China emerging as the major source.
- Russia's exports to the US had fallen by nearly 65% March to September 2022 compared to the corresponding period of 2021. However, Russia's total exports increased by more than 30%

**Detailed and full Regulatory Compliance report on Financial and Economic Sanctions can be found here:**

*Our recommendations and details are in this file*





### European Banking Authority (Single Rulebook Q&A)



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European Banking Authority in its Single Rulebook Q&A provided feedback to Spanish company Bizum S.L. inquiry regarding strong customer authentication in credit transfers.

#### **Inquiry:**

Can the Payee's Payment Services Provider (PSP) apply an exemption from strong customer authentication (SCA) in credit transfers that are initiated through the payee?

#### **EBA answer:**

The payee's PSP cannot apply an exemption from SCA when the payer initiates a credit transfer, even if the transaction is initiated through the payee.

#### Reasoning as follows:

Article 97(1)(b) of Directive (EU) 2015/2366 (PSD2) prescribes that the payment service provider (PSP) shall apply 'strong customer authentication (SCA) where the payer initiates an electronic payment transaction'.

Article 4(24) of PSD2 defines a 'credit transfer' as a 'payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer'.

Q&A 5247 clarified that credit transfers are by definition payer-initiated electronic payments and that SCA applies to them in accordance with Article 97(1)(b) of PSD2.

In addition, table 2 of the Opinion on the implementation of the RTS on SCA&CSC (EBA-Op-2018-04) indicated that payee's PSPs cannot apply an exemption from SCA for credit transfers.

#### **Our recommendation:**

Considering mentioned EBA position it is recommended for a financial institution to accordingly adjust the workflow of strong customer authentication procedures.

### European Banking Authority (Single Rulebook Q&A)



LINK

European Banking Authority in its Single Rulebook Q&A provided feedback to Swedish individual persons' inquiry regarding strong customer authentication in Bill-payment via postal service.

#### **Inquiry:**

Does bill-payment via snail-mail (postal service) fall into the definition of Article 97 1(c) and thus are subject to strong customer authentication (SCA) requirements?

#### **EBA answer:**

A payment transaction initiated through the described postal service is not initiated and executed electronically and thus can be considered as outside the scope of the SCA requirement.

#### Reasoning as follows:

Under Article 97(1)(b) of Directive (EU) 2366/2015 (PSD2), payment services providers shall carry out strong customer authentication where the payer initiates an electronic payment transaction.

The services of "bill payment via postal services" however, as prescribed by the questioner, do not fall under the requirements as set out in Article 97(1)(b) PSD2.

As described by the questioner, the payee provides its payment services provider with the bill, together with a "cover sheet" with the total amount to be paid in an envelope, and sends this to its payment service provider via a postal service. When the payment service provider receives the envelope, it will settle the bill. This appears to be similar as a Mail-Order payment.

In accordance with Recital 95 PSD2, payment transactions initiated and executed outside electronic platforms or electronic devices, such as mail orders or telephone orders do not seem to necessitate the same level of guarantees regarding safe authentication as electronic payments.

### The State Consumer Rights Protection Service Directors order No. 2023-01-11 Nr. 1-6



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#### Concerning the approval of the costs of consumer dispute investigation of The State Consumer Rights Protection Service in 2023

Relevant update for entrepreneurs that are providing consumer goods or services.

The State Consumer Rights Protection Service (SCRPC) approved the amount of dispute resolution expenses to be compensated by the entrepreneur in 2023.

The Law on the Protection of Consumer Rights stipulates that when making a decision on the merits of a dispute, the institution handling consumer disputes also decides on the reimbursement of costs incurred by the institution in handling the dispute. SCRPC approved the 2023 costs reimbursed by the entrepreneur - 120.75 EUR.

When SCRPC examines consumer disputes out of court, the parties to the dispute are offered to come to an agreement and make a peaceful solution. If the consumer and the entrepreneur fail to reach an amicable agreement, SCRPC examines the dispute on its merits. In cases where an examination of the result of the provision of a consumer product or service is carried out during the investigation of a dispute, and when SCRPC makes a decision to satisfy or partially satisfy the consumer's claim due to that dispute, the entrepreneur must reimburse the costs of the performed inspection in proportion to the part of the satisfied consumer's claims.

#### **Our recommendation:**

An entrepreneur should consider an economical aspect when a low value consumer dispute is being handled by SCRPC. In some cases it could be beneficial to agree with a peaceful solution in order not to start the dispute examination on its merits.

*As your legal advisors we will be happy to assist you regarding all the questions related to proposed changes in regulation, including legal advice as well as revision and preparation of your internal documents.*

