REGULATORY COMPLIANCE UPDATE

AML/CTF REGULATION

07.2023

ECOVIS ProventusLaw

Opinion of the European Banking Authority on money laundering and terrorist financing risks affecting the EU's financial sector

LINK

The European Banking Authority has issued its fourth opinion on money laundering and terrorist financing risks. The report consists of cross-sectoral risks that are new or emerging, existing risks that remain relevant, risks arising from legislative divergence and divergent supervisory practices, risks of particular sectors, such as:

- Credit institutions
- Payment institutions
- E-money institutions
- Bureaux de change
- Investment firms
- Collective investment undertakings
- Fund managers
- Credit providers
- Life insurance undertakings
- Life insurance intermediaries
- Crypto-asset service providers
- Other financial sectors

The EBA's analysis reveals that there is a noticeable increase in awareness of ML/TF risks across all sectors falling under the EBA's AML/CFT jurisdiction. However, the effectiveness of the AML/CFT systems and controls implemented by institutions is often lacking. Notably, transaction monitoring and reporting of suspicious transactions show significant weaknesses, with approximately 30% to 50% of competent authorities rating them as 'poor' or 'very poor.' The worst-performing sectors in this regard are payment institutions and e-money institutions.

Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies

LINK

The European Commission has updated its list of high-risk third countries. As of 16 July 2023, the following countries are included in the list:

- Nigeria
- South Africa

Cambodia and Morocco were excluded from the list.

Jurisdictions under Increased Monitoring – 23 June 2023

LINK

The Financial Action Task Force has updated its list of jurisdictions under increased monitoring ("Grey List"). As of 23 June 2023, the following jurisdictions are included in the Grey List:

- Cameroon
- Croatia
- Vietnam

MONEYVAL: Money Laundering and Terrorist Financing Risks in the World of Virtual Assets

LINK

The MONEYVAL has published a report on money laundering and financing of terrorism risks related to virtual assets and their service providers in MONEYVAL members states and territories.
According to the Report, around 80% of the assessed members are only partially or not compliant with the FATF Recommendation 15, according to which VASPS must be regulated for AML/CTF purposes, they must be licensed or registered, and subject to effective systems for monitoring or supervision.

FCIS Draft Order V-7 Instructions for Financial Institutions

LINK

The Financial Crime Investigation Service has issued a draft instructions for financial institutions that are not supervised by the Bank of Lithuania on how to prevent money laundering and/or terrorist financing.

The FCIS Draft Instructions are identical to the Bank of Lithuania instructions No. 03-17 of 12 February 2015 for Financial Market Participants on the Prevention of ML/TF.
According to the Draft instructions, other financial institutions will be obliged to, inter alia, perform the assessment on how effective, efficient and compliant to legal regulation are used internal control measures on the ongoing basis (daily by employees) and periodically – during enterprise-wide assessment.
It is foreseen that Draft Instructions come into force on 1 September 2023.

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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

REGULATORY COMPLIANCE UPDATE

EMI, PI REGULATION

07.2023

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European Securities and Markets Authority: Consultation Paper on Technical Standards Specifying Certain Requirements of the Markets in Crypto Assets Regulation (MiCA)

LINK

ESMA and EBA has published the first consultation package of Markets in Crypto Assets Regulation, which includes technical standards on the following:

- content forms and templates of notification from selected entities to National competent authorities (such as investment firms, credit institutions, electronic money institutions, etc.)
- forms and templates of the application for authorisation for CASPs
- complaint handling procedure
- management and prevention, disclosure of conflict of interest
- intended acquisition information requirements

ESMA invites the stakeholders to comment until 20 September 2023. ESMA will consider the feedback received to this consultation and expect to publish a final report and submit the draft technical standards to the European Commission for endorsement by 30 June 2024 at the latest. Second consultation package will be published in October 2023, third in the first quarter of 2024, title III and IV of MiCA will come into force in June 2024, while the remaining parts in December 2024.

Our recommendation:

EBA as well issued consultations related to MiCAR:

- on authorisation process and assessment of acquisition of qualifying holdings in issuers of Asset reference tokens.
- handling complaints under MiCAR.

The deadline for the submission of comments to EBA is 12 October 2023. All interested parties can contribute to the published consultations by sharing their opinion on them, thereby making an impact on how MiCA should be implemented across the EU.

European Commission: Modernising payment services and opening financial services data: new opportunities for consumers and businesses

LINK

The European Commission has proposed two sets of measures to bring payments and the wider financial sector into the digital age.

The first set of measures aims to revise the Payment Services Directive (PSD2) and establish a Payment Services Regulation (PSR). These measures focus on combating payment fraud, improving consumer rights, leveling the playing field between banks and non-banks, enhancing open banking services, and strengthening harmonization and enforcement of payment rules.

The second set of measures proposes a framework for Financial Data Access, which establishes clear rights and obligations for managing customer data sharing in the financial sector beyond payment accounts. It allows customers to share their data with data users (e.g., fintechs), establishes obligation to make customer data available to data users, gives customers full control over who accesses their data and for what purpose.

Annual Report published by EBA

LINK

The European Banking Authority (EBA) released its Annual Report for the year 2022, highlighting its activities and accomplishments during that period. The year was marked by various challenges and uncertainties, primarily triggered by the Russian invasion of Ukraine. Other disruptive factors included the lingering effects of the COVID-19 pandemic, inflationary pressures, supply chain concerns, interest rate volatility, and the consequences of Brexit.

The Bank of Lithuania revoked the licence of the payment institution UAB Lock Trust

LINK

The Bank of Lithuania revoked the payment institution licence of UAB Lock Trust for repeated serious breaches and non-compliance with mandatory instructions issued by the supervisory authority. The institution failed to approve the set of annual financial statements within the deadlines set by the legislation and delayed submitting the annual financial statements to the Bank of Lithuania for more than one year.

Decisions of the Financial Market Supervision Committee of the Bank of Lithuania

LINK

The Bank of Lithuania has issued the first crowdfunding service provider licences to UAB HEAVY FINANCE and UAB ANDRUM Fund under the EU-wide Crowdfunding Regulation.

Crowdfunding platform operators UAB HEAVY FINANCE and UAB "ANDRUM Fund" have so far been licensed in accordance with the Law on Crowdfunding of the Republic of Lithuania. Once licensed under the Crowdfunding Regulation, companies will now be able to provide crowdfunding and ancillary services across the EU.

As a reminder, on 2021 November 10, the single legal regulation of crowdfunding across the EU entered into force. It opens up the possibility for our country's financial market participants to provide crowdfunding services in other EU countries, and for crowdfunding platform operators from other EU countries to provide services in Lithuania. The regulation replaced the current Law on Crowdfunding, so operators of these platforms must obtain licenses under the EU regulation if they wish to continue their activities (deadline to relicense – 9th of November this year). Currently, 12 more companies are seeking a license under the Crowdfunding Regulation, some of them are existing operators of crowdfunding platforms.

Detailed and full Regulatory Compliance report on Payment Services, other institutions rendering payments, regulation can be found here:

Our recommendations and details are in this file

REGULATORY COMPLIANCE UPDATE

EMPLOYMENT

07.2023

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Amendment to the Resolution No. 526 of the Government of the Republic of Lithuania of April 29, 2004 "On payment of daily allowances and other posting expenses"

LINK

The Resolution regarding daily allowances and other posting expenses has undergone significant changes recently.
Starting from August 1, 2023, a new list of maximum daily allowances will be in effect, which includes higher amounts for some countries like Lithuania, Austria, Iceland, the United States of America, and the United Arab Emirates.

The payment procedure for daily allowances has also been revised. If the event organizer pays a part of the daily allowances, the combined payment from the employer and event organizer cannot be lower than the established amounts for a specific posting. When the event organizer covers all daily allowances, the employer is not required to pay anything.

Furthermore, the payment procedure for daily allowances when an employee visits multiple countries has also changed. The average daily allowances calculated based on the determined amounts for those countries will be paid, except when the person enters another country due to a connecting flight or arrives in transit by another means of transportation.

Our recommendation

We recommend paying attention to changes related to daily allowances for specific countries of posting, which may be set higher than before.

It is also important to note the procedure for calculating daily allowances. If an employee goes on a business trip to several countries in one day, they should be paid the average of the daily allowances set for those countries. If an employee travels to another country and enters it through a connecting flight or other means of transport, they should be paid the average daily allowance for that country.

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REGULATORY COMPLIANCE UPDATE

PERSONAL DATA PROTECTION REGULATION 07.2023

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Swedish DPA issues orders and fines to CDON, Coop, Dagens Industri and Tele2 for the use of Google Analytics.

LINK

LINK

The violation: following complaints from the non-profit organization NOYB, Swedish DPA conducted audits into 4 companies that used Google Analytics tool. As all four companies relied solely on Standard Contractual Clauses and failed to implement supplementary safety measures for the data transfer to the United States, orders to seize the use of the tool have been issued, along with two fines: EUR 1,000,000 fine to Tele2 and EUR 25,000 to CDON.

Icelandic DPA fined Heilsuveru EUR 81,000 for insufficient technical and organisational measures to ensure information security.

LINK

The violation: the data controller, the Office of the National Medical Examiner, suffered a personal data security after two unauthorized persons accessed personal data. The weakness in the website's message section allowed logged-in users to access unauthorized messages with potentially identifiable information by changing the connection string. Additionally, another weakness in the maternity care section enabled logged-in users to view attachments of other individuals in the medical record system by altering the URL.

EDPB adopts an information note regarding EU-US Data Privacy Framework.

LINK

The news: the EDPB issued a notice in which it highlighted several important aspects, namely, that the decision requires the recipient organization in the US (importer) to be certified according to the specified framework to avoid additional safeguards. The list of certified organizations will be publicly available through the US Department of Commerce. Additionally, it was noted that data transfers between data controllers and uncertified US companies will require appropriate safeguards, such as Standard Contractual Clauses, Binding Corporate Rules, etc. Lastly, in the area of national security, data subjects may submit complaints to their local DPA's to make use of the new redress mechanism, regardless of the data transfer tool used.

EDPB adopts a review of Japan's adequacy decision.

LINK

The news: the EDPB published it's review regarding Japan's adequacy decision, in which it highlighted that some areas, such as those concerning the new category of pseudonymized personal information, may require closer monitoring and use of consent in situations of imbalance of power.

VDAI issues an overview of personal data breaches in the first half of 2023.

LINK

The news: the VDAI has published its overview of personal data breaches that happened in 2023.

The report shows that the main type of breaches continues to be breach of confidentiality. Additionally, the report indicates that only 15 percent of data breaches result from cyber incidents, suggesting that improper implementation of technical and organizational measures and human error remain equally significant factors. Lastly, the report reveals that public entities, rather than private ones, are among the most common data controllers to experience data breaches in Lithuania.

Spanish DPA fined CaixaBank, S.A. EUR 25,000 for insufficient technical and organisational measures to ensure information security.

LINK

The violation: the fine was a result of an individual's complaint stating that they received information from a third party instead of the requested information when contacting the controller. The DPA's investigation revealed that the controller had not implemented sufficient technical and organizational measures to safeguard personal data.

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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

REGULATORY COMPLIANCE UPDATE

FINANCIAL AND ECONOMIC SANCTIONS

07.2023

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U.S. Sanctions More Than 120 Russian, Kyrgyz Firms

LINK

The United States placed more than 120 Russian companies and several Kyrgyzstan firms on its sanctions blacklist due to their alleged contributions to Russia's war on Ukraine. The sanctions are intended to further restrict Russia's access to critical raw materials, manufactured goods, and financing, with the aim of hindering its military activities.

The companies targeted in the new State and U.S. Treasury blacklists include Russian banks, energy industry companies, shipping firms, defense and technology procurement businesses, manufacturers, and Russian private military companies. Additionally, seven state-controlled research institutes dealing with advanced technologies were also included in the blacklist.

EU renews sanctions over Russia's military aggression against Ukraine

LINK

The Council of the European Union decided to prolong by six months, until 31 January 2024, the restrictive measures targeting specific sectors of the economy of the Russian Federation.

The sanctions 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 licences of several Kremlin-backed disinformation outlets.

Detecting and Preventing Sanctions Evasion and Circumvention in Trade

LINK

Competent institutions of Estonia, Latvia, Lithuania, Finland and Poland have developed common practical guidelines for economic operators to help detect and prevent attempts to circumvent sanctions. The Joint Guidance provides a non-exhaustive list of sanctions red flags and tips on how to lower the risk of circumvention of sanctions.

EU sanctions: new law to crack down on violations

LINK

The Members of the European Parliament in the Civil Liberties Committee adopted a draft negotiating mandate on violating and circumventing EU sanctions. The Draft introduces a common definition of violations and minimum penalties to ensure that they are punished as criminal offences everywhere in the EU. EU sanctions can consist of freezing funds and assets, travel bans, arms embargoes and restrictions on business sectors, among other things.

Commission Consolidated FAQS

LINK

The European Commission has updated FAQs on Russia sanctions and imports on the following topics:

- firewall definition and derogation
- insurance & reinsurance, central securities depositories, oil imports, circumvention & due diligence, provision of services
- and road transport, sale of securities, Russian state-owned enterprises, reports regarding Central Bank of Russia assets, investment funds and oil price cap
- list of high priority battlefield items.

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

Our recommendations and details are in this file

REGULATORY COMPLIANCE UPDATE

CONSUMER PROTECTION

07.2023

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BoL news feed

LINK

Financial Literacy Centre of the Bank of Lithuania published an informational article on fraud models that are based on induced trust and romantic feelings.

BoL states that scammers usually create fake profiles on social networks and pretend to be other people. They operate in groups and have a strong front. Once trust has been established, money is lured from the victim.

According to the Association of Lithuanian Banks, the number of registered cases of romance fraud increased by more than a hundred in 2022.

Our recommendation:

Financial institutions must take proactive steps to protect their clients from falling victim to scams and fraudulent activities. The first line of defence is education. Financial institutions should provide comprehensive resources to raise awareness among clients about common scams and fraud tactics.

Clear communication is crucial in preventing scams. Financial institutions should ensure transparent information sharing with clients regarding account security, transaction procedures, and policies. Clients must be discouraged from sharing sensitive information over insecure channels.

Multi-factor authentication (MFA) is an essential security measure. By requiring clients to provide multiple forms of verification, financial institutions add an extra layer of protection.

The European Banking Authority news feed

LINK

The European Banking Authority EBA is collecting institutions' data on environmental, social and governance risks to set up a monitoring system.

EBA published the Decision on an ad hoc data collection of institutions' ESG data. The Decision will provide competent authorities and the EBA with the necessary data and tools to fulfil monitoring functions and ESG-related mandates by collecting the information that is already available to institutions as part of their Pillar 3 disclosure obligations with respect to ESG risks.

Our recommendation:

It is recommended for financial institutions to collect and analyse it's EGS data.

Collecting its own ESG data empowers a financial institution to understand its impact on the environment, society, and governance practices, allowing it to proactively address challenges and capitalize on opportunities for sustainable growth.

ESG data analytics in the financial industry supports the transition towards a more sustainable and responsible investment landscape, benefiting both the industry and society as a whole.

BoL news feed

LINK

The Bank of Lithuania published the monetary financial institution (MFI) balance sheet and interest rate data for June 2023.

Our recommendation:

It is recommended for financial institutions to follow all regulatory reports as it may contain valuable insights into market trends, economic conditions, and regulatory developments. This information can help the institution make informed decisions and stay competitive in the market.

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REGULATORY COMPLIANCE UPDATE

CORPORATE

07.2023

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Supreme Court of Lithuania

LINK

On 5th of July the Supreme Court of Lithuania passed a decision which continued the Court's practice on option contracts. The decision includes the definition and main characteristics of option contracts. It also provides the attributes which should be used to differentiate option contracts from preliminary contracts.

The Supreme Court in its practice determines essential qualifying criteria for option contracts: the option buyer's right, not the obligation (ii) to buy or sell (iii) goods, financial instruments, currency, other financial assets (iv) at the price agreed upon at the time of conclusion of such agreement (v) on a predetermined date in the future or date of execution or earlier.

The object of an option contract is not a specific asset (commodity), but only the right to acquire it in the future. An option is the right of the buyer of the option to buy or sell commodities, financial instruments, other financial assets at a future date at a price fixed at the time of the conclusion of the contract. If the buyer of the option exercises his right, the seller of the option is obliged to perform the contract in kind.

The Supreme Court has distinguished the following essential elements distinguishing a preliminary agreement from an option agreement:

- a preliminary agreement formalises the intention to conclude a main agreement in the future, an option agreement has an independent object, Our renamely a derivative security (option) relating to a transferable asset that is only intended to be acquired or transferred in the future.
- a preliminary agreement establishes mutual rights and obligations between the parties. An option agreement does not create obligations for both parties: the buyer of the option has the right to choose to enter into an agreement at a future date, while the obligation to enter into an agreement binds only the seller of the option.
- an option agreement creates a contractual relationship rather than a pre-contractual one. In this respect, the buyer of the option, has the right to demand the execution of the option agreement.
- An option agreement is a contract of risk is characterised by (although not required to be) remuneration - the buyer of an option usually pays the seller of the option an agreed price for the acquisition of a property right (option). This element is not inherent in a preliminary contract.

Our recommendation:

Option contracts are not provided for in the Civil Code of the Republic of Lithuania (it is shortly described in other legal acts). The Supreme Court practice determines the main characteristics of option contracts. Therefore, it is paramount to take into the account the practice of the Supreme Court when drawing up the option contracts in order to ensure the satisfaction of party rights and interests.

Additionally, something that is not mentioned in this latest decision, but mentioned in the previous Supreme Court decision related to option contracts – the form requirements for option contracts. Option contracts are not required to be concluded in the notarial form, only to be concluded in accordance with the general requirements of the form of contracts. However, subsequent contract giving effect to an option agreement should be concluded in accordance with form requirements (e.g. notarial form) laid down in the law.

Court of Appeal of Lithuania

LINK

On 27th of July, the Court of Appeal of Lithuania passed a decision related to liability of management body members.

In the case, the credit union appealed the decision by a court of first instance which found that Board members and the Manager of the credit union were not liable for the losses incurred from the granted loan. In its decision, The Court of Appeal did not find the members of the management bodies liable.

In the decision it is explained that liability of management body members for failure to properly discharge their duties is related to fiduciary duties of the members of management bodies. Such fiduciary duties are set out in the Article 2.87 of the Civil Code. Paragraph 7 of Article 2.87 provides that a member of the management body who fails to perform or improperly perform their duties shall be liable to compensate the damage caused to the legal entity (unless provided otherwise). Civil liability can incur due to a violation of the fiduciary duties by taking a detrimental (adverse) decision (by not acting in good faith, reasonably, acting not in the interests of the legal entity, etc.).

A member of a management body can be liable in accordance with the law, legal entities' Articles of Association, and the agreements concluded with the legal entity. Due to Paragraph 1 of Article 6.246 of the Civil Code liability of members of management body can arise from the failure to perform a duty imposed by law or contract (unlawful failure to act) or from the performance of an act prohibited by law or contract (unlawful act). The Court did not find that members had failed to fulfil their fiduciary duties and found no grounds for their liability.

Our recommendation:

ECOVIS ProventusLaw would like to emphasize that members of management bodies (Board members, Managers, Supervisory Board members) should always be careful to perform their duties provided for in the relevant legal acts, company's Articles of Association and/or agreements with the company. Among other things, members of such bodies should act in good faith, reasonably, they should be loyal, observe confidentiality, shall avoid a situation where his/her personal interests conflict or may conflict with the interests of the legal person.

A member of a management body who has failed to fulfil their duties can be held liable in accordance with the law and whether they are liable is determined in court. Such provisions can be supplemented with provisions in the Articles of Association and Agreements with the management bodies by clearly outlining the duties of management body members and setting out clear provisions regarding their liability.