

REGULATORY COMPLIANCE UPDATE



AML/CTF REGULATION

09.2023

2023-2027 Strategic Draft Guidelines for the Prevention and Prosecution of Money Laundering, Terrorist Financing and the Financing of Proliferation of Weapons of Mass Destruction



LINK

The Lithuanian Ministry of Foreign Affairs has prepared a Draft of Strategic Guidelines aimed at AML/CTF and prevention of proliferation of weapons of mass destruction. In the Draft Guidelines it is stated that a platform for sharing information on potential money laundering, terrorist financing, proliferation financing, sanctions evasion and fraud activities between public-public, public-private and private-private institutions must be created to strengthen the prevention of money laundering and terrorist financing.

Technical Assistance Report—Nordic-Baltic Technical Assistance Project: Financial Flows Analysis, AML/CTF Supervision, and Financial Stability



LINK

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As per the report's findings, the Lithuanian banking sector, despite demonstrating a strong understanding of ML/TF risks, has encountered several international ML scandals. This sector's extensive engagement in cross-border and non-resident activities amplifies the ML/TF risks. The IMF highlights Lithuania's increased financial transactions with several Commonwealth of Independent States countries, namely Georgia, Azerbaijan, Moldova, Kyrgyzstan, and Armenia. These interactions pose a heightened ML/TF/Sanctions evasion risk in light of war against Ukraine.

Webinar of the Bank of Lithuania – MiCAR Requirements



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The Bank of Lithuania has held an event on the upcoming Markets in Crypto Assets Regulation. During the event, the BoL has provided insights on how the BoL is preparing for the MiCAR implementation, key requirements and extent of the MiCAR, requirements for the authorisation and process of crypto asset service providers.

The MiCAR will be in full force from December 30, 2024, while third part (asset-referenced tokens) and fourth part (e-money tokens) will come into force from 30 June, 2024.

Webinar of the Bank of Lithuania – Fraud Prevention in Financial Institutions



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The Bank of Lithuania has hosted a webinar during which it overviewed fraud trends, legal regulation on fraud, the BoL dispute resolution practices and recommendations on how to deal with fraud.

The BoL identified that the most prominent fraud types are phishing, vishing, and social engineering. Customers become victims of fraudsters because of customers' carelessness and the ease of use of electronic banking (one app solutions).

Decisions of the Bank of Lithuania



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The Bank of Lithuania has issued a warning to the Lithuanian branch of AS "Citadele banka". The Bank of Lithuania has found that the Lithuanian branch has improperly applied enhanced due diligence measures when transactions or business relations were concluded with politically exposed persons. In addition, senior management approval was not always obtained for establishing or continuing business relationships with high-risk customers. Lastly, the BoL identified deficiencies in the transaction and business relationship monitoring.



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

Our recommendations and details are in this file





09.2023

An instruction adopted by The State Inspectorate



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The State Tax Inspectorate (hereinafter referred to as the "STI") has adopted an instruction confirming the rules on the accumulation, storage and submission of data on international payment transactions. It applies to payment service providers that carry out payment transactions in the territory of the Republic of Lithuania.

Main points:

1. Data reporting requirements:

The obligation for payment service providers to collect and store records and data of international payment transactions carried out through them and to submit the data to the STI arises under the following conditions:

- the payment service provider conducts more than 25 international payment transactions to the same recipient per calendar quarter.
- the payment is received from another Member State of the European Union, or the payment is made to a third territory or a third country.

2. Data adjustment

There is set a possibility to correct the data provided if it is incorrect, inaccurate or incomplete. The data set is corrected when:

- the STI determines that the data provided by the payment service provider is incorrect, inaccurate or incomplete. The payment service provider must correct the data no later than within 10 working days from the date of receipt of the notification by the STI.
- the payment service provider determines that the submitted data is inaccurate, incorrect or incomplete. The payment service provider is obliged to update the data file from the date of discovery of this circumstance, at the latest within 10 working days.

3. Storing data at the STI

The document stipulates that the State Tax Inspectorate has to keep data received from payment service providers for five calendar years from the year of receipt of the data.

4. Submission of data to the CESOP

The data received from payment service providers must be submitted unedited to the Central Electronic System of Payment Information (CESOP) as they were submitted to the State Tax Inspectorate. This data shall be transmitted to CESOP in accordance with the procedures established by the European Commission.

Please get familiar with the content of the instruction which shall enter into force on 1 January 2024.

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



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Fine for non-compliance with equity capital requirements SatchelPay, UAB.

The Bank of Lithuania has found that, according to the data of the end of the first and second quarters of 2023, the electronic money institution SatchelPay, UAB, did not meet the equity capital requirements - it was less than the equity capital requirement established in the legal acts. Having assessed the circumstances, the Bank of Lithuania imposed a fine of 25 000 EUR on the institution and decided to set an individual equity capital ratio for SatchelPay, UAB from 30 September 2023 to 30 September 2024, which is 20% higher than the equity capital requirement as calculated by the methods set out in the rules.

REMINDER ON REPORTING

Please be aware that the third quarter has ended, meaning that quarterly reports have to be submitted to the Bank of Lithuania. This includes:

- Report on statistical payment data;
- Reports for supervision of the implementation of money laundering and terrorist financing prevention measures;
- Financial reports (at all times be aware of the capital adequacy requirements).

Detailed and full Regulatory Compliance Report on EMI, PI regulation can be found here:



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Our recommendations and details are in this file





Supervisory authorities raise concerns about AI and data protection, Polish DPA launches an investigation into ChatGPT



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The news: Polish DPA is currently investigating a complaint against ChatGPT, following a complaint regarding GDPR violations including failure to correct personal data, lack of transparency in data processing, and non-disclosure of data sources and recipients.

Notably, concerns have arisen about the intentional concealment of personal data processing for model training, reflecting potential wider implications for AI data handling practices in compliance with data protection regulations. Polish DPA is not the only supervisory authority to voice its concerns regarding AI-based solutions such as ChatGPT. For example, on the 14th of September 2023, Dutch DPA initiated an inquiry into a company following concerns about a chatbot integrated into a company's app designed for children, particularly regarding the transparency of user data handling by the chatbot. Earlier this year, the Dutch DPA also requested clarification from OpenAI, L.L.C., the company behind ChatGPT, regarding the handling of personal data in the context of generative artificial intelligence (AI), with a particular focus on the training of ChatGPT.

Following the EDPB's decision, TikTok was instructed to rectify unfair design practices related to children



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The news: following the EDPB's binding decision on TikTok, the Irish DPA issued a final decision, citing GDPR violations related to processing of children data aged 13 to 17. This resulted in a EUR 345,000,000 fine. The several notable violations included the default setting of public profiles, the issues concerning the "Family Pairing" feature, lack of easy-to-understand information about the scope of processed personal data. Most notably, the EDPB scrutinized the platform's design practices, specifically pop-up notifications that encouraged children to make their accounts public and post videos instead of cancelling them.

Swedish DPA fines Trygg-Hansa EUR 3,000,000 following personal data security breaches



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The violation: the company's website allowed for access to other client personal data. By altering the website link, other persons could gain unauthorised access to other client accounts. This security risk persisted for over 2 years. Due to the large number of affected personal data subjects (around 650,000 customers) and the long duration of the violation, the company was fined EUR 3,000,000.

The Supreme Administrative Court of Lithuania issued a decision in a case pertaining to the processing of children's data



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The news: the Court reviewed a case in which an individual shared a photo of a child on their public Facebook profile as part of a post addressing the improper use of face masks in schools. This action was taken without the parent's consent. The Court asserted that the publication of the child's personal data (image) was disproportionate to the post's objective, which was to discuss mask usage in educational institutions. The same objective could have been achieved without including unnecessary data, such as photographs of underage children. The applicant's decision to publish such photographs, under specific circumstances and for particular purposes, did not exempt them from the requirements of the GDPR. As such, the Court upheld the decision issued by the court of first instance and rejected the appeal.

Denmark DPA publishes guide regarding employee access to personal data



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The news: Denmark's DPA issued guidance on employee access to personal data in digitized society. To address the challenge of increasingly broad data access due to digitization, the DPA recommends systematic rights management, centralized access control, and automation based on job roles. Logging and monitoring of user actions, especially for systems processing personal data, are crucial, with random checks suggested at least every six months. Proactive log control systems and citizen access to their data access history are also proposed. Employee awareness of confidentiality duties, control measures, and reporting procedures is vital for prevention. Responsibility for data access lies with both the organization and individual 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



REGULATORY COMPLIANCE UPDATE



FINANCIAL AND ECONOMIC SANCTIONS

09.2023

Commission publishes guidance to help European operators assess to help sanctions circumvention risks



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On 7 September 2023, the European Commission published a guidance note for EU businesses on the circumvention of sanctions. The Guidance outlines the essential components for a company's compliance program to prevent circumvention of the EU sanctions against Russia, such as risk assessment of potential sanctions circumvention, enhanced due diligence and transaction monitoring measures.

The Guidance also recommends including contractual clauses prohibiting re-exports or transfers of the relevant goods to Russia or Belarus in dealings with third-country business partners. Such contractual clause may also include a provision that the importer commits not to re-sell the relevant goods to a third-party business partner that itself does not commit to not re-export such good(s) to Russia or Belarus.

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



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Currency exchange operator UAB Roltena has received a EUR 8 000 fine for non-compliance with international sanctions requirements. The Bank of Lithuania has found that the currency exchange operator did not verify whether clients, their representatives, or beneficial owners were subject to international sanctions, and whether their transactions fell within the scope of international restrictive measures.

Having determined that the institution has already rectified the legal violations, the Bank of Lithuania imposed a fine of EUR 8 000.

The EU imposes sanctions on six individuals under the global human rights sanctions regime for human rights violations



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On September 8, 2023, the Council decided to impose restrictive measures on six individuals responsible for gross human rights violations in the Russian Federation and in temporarily occupied territories of Ukraine, including violations of freedom of opinion and expression. Accordingly, Council Decision (CFSP) 2023/1716 and Council Implementing Regulation 2023/1715 were adopted.

The individuals included in the list comprise, among others, prosecutors and judges working in courts established unlawfully by Russian occupying forces in annexed Crimea. Additionally, two members of the Russian Federal Security Service (FSB) are included in the list.

European Commission publishes 2024 Dual-Use Control List draft



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On September 15, 2023, the European Commission adopted a Delegated Regulation to update the EU export control list of dual-use goods as presented in Annex I of Regulation (EU) 2021/821.

The updated list is aligned with decisions made within multilateral export control regimes in 2022, including the Wassenaar Arrangement (WA), the Missile Technology Control Regime (MTCR), and the Nuclear Suppliers Group (NSG).

"Export Enforcement Five" Implement Measures to Impose Economic Costs on Russia and Support Ukraine



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The E5 countries have implemented export controls and sanctions targeting specific Harmonized System (HS) codes used in Russian weapons systems. These codes include electronic components like integrated circuits and radio frequency modules critical to Russia's weapons development. Exporters are encouraged to conduct due diligence when encountering listed HS codes to ensure end-user legitimacy and prevent evasion of export controls and sanctions.

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



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Our recommendations and details are in this file



Case law of The Supreme Court of Lithuania (Case No. Nr. E3K-3-182-1075/2023)

The Supreme Court of Lithuania has ruled on a case concerning the payer's right to recover the amount of an unauthorised transaction. In the case, the Supreme Court clarified the issue of liability of the payment service provider, the conditions for exemption from such liability and the allocation of the burden of proof. The claimant, a company registered outside Lithuania, applied to the defendant, a payment institution registered in Lithuania, for reimbursement of the amount of an unauthorised payment. The defendant did not agree, and the company applied to the court.

Important insights from the Supreme Court decision:

- The payment service provider and the customer (non-consumer) could agree not to apply the rules on the payer's liability for unauthorised payment transactions set out in the Law on Payments and the burden-sharing rule for the confirmation of the authorisation of payment transactions and the provision of proof of execution. In the absence of such an agreement, the liability of the payment service provider, the conditions for exemption from liability and the allocation of the burden of proof must be determined in accordance with the provisions of the Law on Payments.
- The payment service provider's obligation to apply secure authentication measures is a statutory obligation. Therefore, where a payer's payment service provider does not apply a more secure authentication, although it was under an obligation to do so, the payment service provider is liable for the loss suffered by the payer as a result of the unauthorised payment, unless the payer acted in bad faith.
- The payment service provider bears the burden of proving that the payer has acted with gross negligence, and contractual provisions shifting this burden to the payer are void.

Consultation on Draft Fraud Prevention Guidelines



The Bank of Lithuania is inviting financial market participants to express their opinion on the Draft Fraud Prevention Guidelines, which are currently being prepared by the Bank of Lithuania.

As the problem of financial fraud in Lithuania continues to grow in importance, the Bank of Lithuania has included enhancing the resilience of consumers and financial market participants to fraud as an activity in its strategic plan. Fraud is a complex problem affecting various areas, and therefore all appropriate and effective measures to combat financial fraud must be targeted.

One such measure is the Bank of Lithuania's Fraud Prevention Guidelines, which encourages financial market participants to develop and implement advanced fraud prevention measures, primarily aimed at preventing fraud attacks themselves and the associated losses to payment.

BoL news feed



The Bank of Lithuania conducted survey on the impact of climate change on the provision of loans to businesses. The latest survey of commercial banks and branches of foreign banks operating in Lithuania, which sought to obtain information on banks' lending activities (i.e. lending standards, loan terms and conditions, factors influencing their change, demand for loans, banks' expectations on further credit development, etc.), for the first time included questions on the impact of climate change on the provision of loans to businesses.

The results are particularly favourable for green companies, with banks experiencing a significant increase in demand for lending to these companies and a softening of loan conditions and standards.

Full survey review - https://www.lb.lt/uploads/publications/docs/42561_970a4b36e228b37c5f6dc744f2035f6d.pdf



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Detailed and full Regulatory Compliance report on Consumer Protection can be found here:

Our recommendations and details are in this file



Information from the State Labour Inspectorate of the Republic of Lithuania



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The State Labour Inspectorate reminds employers of the restrictions on termination of employment contracts under the Labour Code for employees with children under 3 years old.

For employees with children under 3 years of age, the employment contract may not be terminated on the employer's initiative without any fault on the part of the employee, i.e. when the work function performed by the employee has become superfluous due to changes in work organisation or other reasons related to the employer's activities; when the employee does not achieve the agreed performance outcome in accordance to the performance improvement plan; when the employee refuses to work under changed indispensable or supplementary employment contract terms or to change the type of working-time arrangements or place of work.

Our recommendation:

To avoid labour disputes, we suggest that before deciding whether to terminate an employee's employment contract, organisations should consider whether the employee has children under the age of 3. If the employee has a child under the age of 3, the contract cannot be terminated in the following cases:

- On the initiative of the employer without any fault of the employee (Parts 1-3 of Paragraph 1, Article 57 of the Labour Code);
- At the will of the employer if the employee is on maternity, paternity or parental leave (Article 59 of the Labour Code).

If there is a need to dismiss an employee with a child under 3 years of age, we propose to make an offer to the employee to terminate the employment relationship by mutual agreement of the parties in accordance with Article 54 of the Labour Code.



Law on amending Articles 2, 15, 17, 21, 26, 27, 28, 29, 30, 30-1, 32, 34, 37, 37-2, 40, 42, 45, 47, 47-1, 51, 56, 78 and the Annex of Law on Companies and supplementing the Law with Article 461



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Last year changes to the Law on Companies added Article 461. The article regulates the procedure of squeeze-out, the technique which allows majority shareholder(s) (with 95% or more shares) to gain the ownership of the remaining shares of the company. It also provides the minority owners the right to require the majority shareholder to acquire the remainder of shares belonging to minority shareholder.

The Law on Amendments to the Law on Companies also provided a term for shareholders who had acquired 95% or more of the shares before the law came into force. The law provides that such shareholders have one year (until 30th of November 2023) to use their squeeze-out rights.

Our recommendation:

ECOVIS ProventusLaw recommends to the shareholders interested in using their squeeze-out rights and who acquired 95% or more of the shares before the law came into force (30th of November 2022) to initiate the procedure as soon as possible. The procedure is lengthy due to the requirement of price determination by an independent appraiser.

After the expiry of the one-year term, majority/minority shareholders will not be able to exercise their squeeze-out right.

The Supreme Court of the Republic of Lithuania



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On 28th of August 2023, The Supreme Court of the Republic of Lithuania reached a decision in a case concerning the material interest of a member of the management board of a company to bring action in court for the annulment of the decisions of the management board.

The Supreme court ruled that the material interest of a member of a management board to contest the decisions is determined by applying:

- The test of determining the infringement of a subjective right and a legitimate interest;
- The test of determining the negative consequences and the legal outcome.

The Supreme Court determined that the material interest may be recognised not only when seeking to defend subjective rights of a member of a management board but also when seeking to defend the rights and interests of the company. The Supreme Court also clarified that adverse effects caused by a decision to the company and that the effects can only be eliminated by the annulment of a decision, must be demonstrated by the claimant.

Our recommendation:

The decision by the Supreme Court can be a guideline to members of management bodies in case the rights and interests of the company have been infringed due to detrimental decisions by the management bodies of the company.

The rights and interests of the company can be defended in court by members of the management board. However, before taking the decision to pursue this course of action, it must be evaluated whether the material interest of a member(s) of the management board exists. The tests described in the Supreme Court's decision should be applied to determine this.