

## Administrative sanction of 19 July 2024 for non-compliance with professional obligations related to “anti-money laundering / counter financing of terrorism”

Luxembourg, 25 September 2024

### Administrative decision

On 19 July 2024, the CSSF imposed an administrative fine amounting to EUR 40,000 on the electronic money institution “Dock Financial S.A.” (the “**EMI**”), authorised as electronic money institution in accordance with the provisions of the Law of 10 November 2009 on payment services.

### Legal framework/motivation

This administrative fine was imposed by the CSSF pursuant to Article 2-1(1) of the amended Law of 12 November 2004 on the fight against money-laundering and terrorist financing (“**AML/CFT Law**”) read in conjunction with the provisions of Article 8-4(1), (2) and (3)(a) of the AML/CFT Law for non-compliance with anti-money laundering / counter financing of terrorism (“**AML/CFT**”) professional obligations.

In order to determine the type and amount of the administrative sanction, the CSSF duly took into account all the legal and factual elements set out and discussed, the gravity and duration of the breach and the financial situation of the legal person held responsible for the breach existing at the time of the on-site inspection in accordance with the provisions of Article 8-5(1) of this law.

The professional obligations in relation to which the breaches were observed are namely quoted in the relevant provisions of:

- (i) the **AML/CFT Law**,
- (ii) the amended Grand-ducal Regulation of 1 February 2010 (“**AML/CFT Grand-ducal Regulation**”) providing details on certain provisions of the AML/CFT Law,
- (iii) the Law of 19 December 2020 on the implementation of restrictive measures in financial matters (“**Law of 19 December 2020**”),
- (iv) the amended CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing (“**CSSF Regulation 12-02**”) which constitutes an implementing measure of the AML/CFT Law, and
- (v) Circular CSSF 17/650 regarding the application of the AML/CFT Law and AML/CFT Grand-ducal Regulation to predicate tax offences (“**Circular CSSF 17/650**”),

in their version applicable at the time of the on-site inspection.

## Legal bases for the publication

This publication is made pursuant to Article 8-6(1) of the AML/CFT Law, insofar as, following an assessment of proportionality, the CSSF considers that the publication on a nominative basis is not disproportionate and jeopardises neither the stability of the financial markets nor an ongoing investigation.

## Context and major cases of non-compliance with the professional obligations identified

This administrative fine follows a CSSF on-site inspection at the EMI between 8 December 2021 and 28 November 2022 covering the AML/CFT framework. During the on-site inspection, the CSSF identified important breaches by the EMI of its AML/CFT professional obligations, which related in particular to the following points:

- A substantial part of the EMI's client portfolio was not subject to name screening controls on a daily basis, over a substantial period of time, thus constituting a failure to comply with the obligation to detect persons, entities and groups subject to restrictive measures in financial matters without delay so that the necessary restrictive measures can be applied to them in line with all United Nations Security Council resolutions, acts adopted by the European Union (resolutions and acts directly applicable in Luxembourg) and national regulations concerning prohibitions and/or restrictive measures in financial matters with respect to certain States, persons, entities or groups in the context of the fight against terrorist financing or with respect to other financial embargos as well as with Article 6 of the Law of 19 December 2020.

In this regard, it was a failure to comply with the provisions of Articles 33(1) and 39(1) of the CSSF Regulation 12-02 which requires the detection of persons subject to prohibitions and restrictive measures in financial matters as it constitutes an essential professional obligation to ensure compliance with the above-mentioned provisions.

- Although the EMI had identified indicators that generated serious suspicions of money laundering in 11 client files, the EMI had reported them with substantial delays to the Financial Intelligence Unit ("FIU"), further to questions raised by the CSSF during the on-site inspection. This constitutes a breach of the obligation to inform promptly the FIU of each fact which might be an indication of money laundering as foreseen by Article 5(1)a) of the AML/CFT Law and Article 8(2) of the AML/CFT Grand-Ducal Regulation.
- The website of the EMI was advertising for one of its services with statements, which could have encouraged some persons to become clients in order to hide revenues, and thereby evade paying taxes on them. In this context, the CSSF identified some cases where indicators existed, suggesting that client accounts could have been used for avoiding reporting revenues to local tax authorities and hence to evade paying taxes and finally, for laundering the monies. The EMI failed to further investigate these indicators and/or file suspicious activity reports to the FIU, which resulted in a breach of Article 5(1)a) of the AML/CFT Law.

- The internal governance framework was deficient notably due to insufficient controls performed by the second and the third lines of defence.

The Compliance function was indeed not sufficiently staffed to cope with the high number of clients, and the respective number of controls that had to be performed. This lack of resources within the Compliance function to adequately cope with its AML/CFT duties resulted in a breach of Article 4(1) of the AML/CFT Law and Article 40(3) of the CSSF Regulation 12-02.

Moreover, the Compliance Monitoring Plan did not include any controls on key AML/CFT tasks outsourced to other entities of the same group (such as handling of alerts for name screening and transaction monitoring, handling of incomplete files and controls on refused and terminated accounts). The absence of such controls did not enable the Compliance function to ensure the quality of AML/CFT controls performed by the first line of defence, resulting in a breach of Articles 39(6) and 39(7), as well as Article 42(1a) and (5) of the CSSF Regulation 12-02.

It was further noted that the outsourcing agreement lacked a detailed description of the measures and procedures to be implemented to fulfil the outsourced tasks, thus resulting in a breach of Article 3-3(5) of the AML/CFT Law and of Article 37(1) of the CSSF Regulation 12-02. It further lacked a detailed description on the periodicity, content and format of the reporting.

Furthermore, significant deficiencies were not detected by the internal audit function (a third-party service provider), namely the ones subject to the current administrative fine. This constituted a breach of Articles 39(7) and 44(1) of the CSSF Regulation 12-02 which insist on the necessity for the internal audit to verify the effectiveness of the implemented AML/CFT policies and procedures.

Finally, the internal audit reports showed a lack of understanding of the business activities of the EMI and failed to differentiate in its findings between the different client types ("Business-to-Consumer", "Business-to-Business" and "Business-to-Business-to-Consumer") and as such missed to formulate the recommendations in a way that would fit the respective client type.

- The money laundering and terrorist financing ("ML/TF") risk self-assessment did not include all the relevant risks that the EMI faced, in particular (i) the inherent risk attributed to e-money institutions in the Luxembourg 2020 ML/TF national risk assessment, (ii) risks related to predicate tax offences and (iii) risks related to a part of its clients type, which constituted a non-compliance with Article 2-2(1) and (2) of the AML/CFT Law and Article 4(1) of the CSSF Regulation 12-02 which clarify the different sources and risk factors that shall be considered in the ML/TF risk self-assessment.
- In the context of the application of the risk based approach, it has been established that, when classifying clients according to their ML/TF risks, there was a lack of consideration of all risk factors and an insufficient discriminatory weight attributed to country risk, which constitutes a failure to comply with Article 3(2a) of the AML/CFT Law, Article 5(1) of the CSSF Regulation 12-02 and Point 2 of the Circular CSSF 17/650.

The CSSF also identified that the EMI applied standard due diligence measures for all its clients, irrespective of their risk rating, resulting in a breach of Article 3-2(1) of the AML/CFT Law and Article 26 of the CSSF Regulation 12-02 which require the application of enhanced due diligence measures in situations presenting a higher risk.

As the EMI did not meet physically its clients, and certain safeguards were absent, it has been established that for some of them, no sufficient measures to compensate the potentially higher risk that such non-face-to-face business relationships pose had been implemented in order to verify the identity of those clients or of the persons purporting to act on their behalf, which constituted a failure to comply with Article 27 of the CSSF Regulation 12-02.

- The transaction monitoring process did not operate efficiently as the CSSF had identified that some alerts generated were closed without proper investigation or with substantial delay, constituting a breach of Articles 3 (7) and 5(1)a) the AML/CFT Law as well as Article 39(1) and (5) of the CSSF Regulation 12-02, which emphasise the obligation to pay particular attention to unusually large transactions and unusual patterns of transactions and to take rapidly the required measures where a suspicious activity or transaction is identified.
- The CSSF had identified that (i) some clients having incomplete KYC documentation were not adequately blocked, (ii) blocking measures were not systematically applied on all products linked to the same client and (iii) the involvement of the Compliance function in the blocking/unblocking process was not sufficient in order to allow it to ensure compliance with the related obligations, constituting a breach of Article 3(4) indent 4 of the AML/CFT Law which foresees notably that no transaction should be carried out while the customer due diligence measures regarding the identification and verification of identity of the client or beneficial owner have not been finalised.
- In the context of the applied customer due diligence measures, the CSSF had identified that insufficient information and documentation regarding the source of funds involved and business activities of some medium and high-risk clients were collected, which constituted a failure to comply with Article 3(2)d) of the AML/CFT Law as further detailed in Article 24 of CSSF Regulation 12-02 which insist on the obligation to collect, record, analyse and understand information on the origin of clients' funds and, depending on the risk assessment, to obtain supporting evidence.