



GUIDELINES ON THE OBLIGATION TO REPORT TO TRACFIN

Background regulations: Articles L. 561-15, L. 561-32, R. 561-38 and D. 561-32-1 of the Monetary and Financial Code and Articles 320-16, 320-19, 320-20, 321-143, 321-146, 321-147, 325-22, 325-62, 560-9, 560-10 and 560-11 of the AMF General Regulation

Preventing money laundering and terrorist financing is based on obligations that are complementary: the due diligence obligation determined according to a risk-based approach¹ and the obligation to report to TRACFIN. The purpose of these guidelines is to assist portfolio asset management companies, financial investment advisers and crowdfunding investment advisers (hereinafter referred to as “obliged entities”) in implementing the obligation to report to TRACFIN. In relation to the due diligence obligation, obliged entities should refer to the guidelines on due diligence obligations with respect to clients and their beneficial owners.

The French AML/CFT system is not an automatic reporting system based on objective criteria defined ex ante. It is based on a **case-by-case analysis** of amounts and transactions, according to the business relationship profile and the risk classification determined by the obliged entity.

The obliged entity is required to detect suspicious transactions by using a pragmatic and phased approach based on an assessment that draws on its expertise and experience and is supported by an internal system for detecting anomalies. The suspicious transaction report is the result of this intellectual approach and the conclusion of an analysis that cannot be carried out by automated systems alone.

These guidelines have been discussed with TRACFIN.

1. SCOPE OF THE OBLIGATION TO REPORT TO TRACFIN

1.1. Obligated entities must report suspicious transactions to TRACFIN in the cases referred to in Articles L. 561-15 I, II and V

1.1.1. In cases of suspicion relating to offences punishable by one year’s imprisonment (L. 561-15 I)

Almost all forms of criminal activity are covered, including breach of trust, misuse of corporate assets, scams, counterfeiting, insider trading, price manipulation, undeclared work and embezzlement of public funds.

1.1.2. In cases of suspicion relating to terrorist financing

Following the Finance Minister’s plan for combating terrorist financing dated 18 March 2015 and 23 November 2015 and the Treasury Directorate General’s press release on combating the financing of ISIS dated 27 January 2015, the AMF and TRACFIN have drawn the attention of financial institutions in particular to combating terrorist financing.

To this end, obliged entities must ensure consistency between the source and/or destination of funds relating to one or more transactions and the up-to-date knowledge of their clients, especially when these funds originate from

¹ AMF Position-Recommendation DOC-2019-15 Guidance on the risk-based approach to combating money laundering and terrorist financing.

or are destined for geographical areas considered to be at risk with regard to terrorism or terrorist financing or where they relate to transactions carried out in these areas.

The AMF and TRACFIN also encourage obliged entities to review the Financial Action Task Force (FATF) typology reports on terrorist financing, particularly those published in 2015 on ISIS financing and emerging terrorist financing risks respectively, which are updated regularly, and the documentation distributed regularly by the competent national or European administrations or authorities (TRACFIN activity and analysis reports published since 2013, TRACFIN newsletters for professionals, the Minister for the Economy's action plans, etc.). They also refer to national and European measures taken in connection with combating terrorist financing to freeze assets.

1.1.3. Where the suspicion relates to amounts or transactions resulting from **tax fraud** (L. 561-15 II)

Article L. 561-15 of the Monetary and Financial Code states: "II. - As an exception to I, the individuals referred to in Article L. 561-2 shall report to the department referred to in Article L. 561-23 any amounts or transactions that they know, suspect or have good reason to suspect arise from tax fraud where at least one criterion defined by decree is met."

The offence of tax fraud is defined in Article 1741 of the General Tax Code as the act of fraudulently evading or attempting to fraudulently evade the assessment or total or partial payment of taxes due.

The offence of tax fraud may be committed by:

- deliberately failing to submit a tax return within the prescribed time limits;
- deliberately concealing part of the amounts subject to tax;
- orchestrating one's own insolvency;
- taking any other action which impedes the collection of tax;
- acting in any other fraudulent manner.

However, in cases of tax fraud, suspicion alone is not sufficient to trigger the obligation to report. Reporting suspicious activity is only required if, after having carried out the due diligence required to detect and analyse the anomalies:

- the obliged entity suspects or cannot rule out the suspicion that the amounts or transactions in question are the result of tax fraud;
- AND if one of the 16 criteria defined in Article D. 561-32-1 II of the Monetary and Financial Code is met.²

1.1.4. In cases of attempted transactions referred to in i, ii, and iii above (L. 561-15 V)

Attempted suspicious transactions must be reported to TRACFIN. These may, for example, be subscription or redemption transactions for units, for which the execution request is:

- either refused by the obliged entity, due to doubts as to the legality of the transaction detected by agents, account managers or an automated system;
- or cancelled or abandoned by the client, in order to avoid sending the financial institution the information or supporting documents requested.

Refusals to enter into a business relationship do not necessarily result in a suspicious transaction report, which should only be filed if there is a suspicion of money laundering or terrorist financing and if the identity details of the individuals are known. TRACFIN may therefore have an interest in knowing these identity details and the stated aims of the individual seeking to enter into a business relationship. In these cases, the suspicion must be similarly substantiated.

² The obliged entity is required to investigate whether the disputed transactions correspond to one of the criteria [defined in Article D. 561-32-1 II of the Monetary and Financial Code] (Council of State, 20 January 2016, no. 374950).

1.2. Obligated entities must file a suspicious transaction report following the outcome of the enhanced scrutiny set out in Article L. 561-10-2 (L. 561-15 III)

Following the enhanced scrutiny set out in Article L. 561-10-2 of the Monetary and Financial Code for any transaction that is particularly complex, that involves an unusually large amount or that does not appear to have any economic justification or lawful purpose, the obliged entities must file a report (Article L. 561-15 III of the Monetary and Financial Code).

A report must be filed if the enhanced scrutiny does not eliminate the suspicion. In this situation, the suspicious transaction report is filed based on Article L. 561-15 I or II (as in the cases referred to above).

If, following the enhanced scrutiny, the obliged entity does not have clear and consistent information on the business relationship, or if the source of funds remains uncertain, then a report must be made based on Article L. 561-15 III.

1.3. Special case: where the obliged entity is considering terminating the business relationship (Article L. 561-8)

According to Article L. 561-8 of the Monetary and Financial Code: *“Where an obliged entity has not been able to identify and verify the identity of its client and the beneficial owner(s) or obtain information about the purpose and nature of the business relationship, it must not carry out any transaction, regardless of the methods used, and must not enter into or pursue any business relationship. If the business relationship has nevertheless already been entered into pursuant to Article L. 561-5 IV, the obliged entity must terminate that relationship and must file the report stipulated in Article L. 561-15 in accordance with the conditions specified in that Article.”*

The likelihood of filing a report in these circumstances must be reviewed systematically as soon as the obliged entity considers terminating the business relationship. Reporting suspicious activity to TRACFIN is not done automatically. The obliged entity must carry out an in-depth assessment of the situation to determine whether or not to file a report based on a review of the information available to it.

Terminating the business relationship cannot take the place of an obliged entity complying with its due diligence obligations. In particular, where checks are initiated or transactions require enhanced scrutiny, the obliged entity must not terminate the business relationship until the in-depth analysis has been completed. The obliged entity’s responsibilities continue until such time as the checks have been completed.

Terminating the business relationship must not be a substitute for filing a suspicious transaction report.

Position

If the conditions set out in Article L. 561-15 are met, then the suspicious transaction report must be filed before the business relationship is terminated, if possible, or at least at the same time.

The decision whether or not to terminate the business relationship, in particular after filing a suspicious transaction report, is the obliged entity’s responsibility and its responsibility alone. Continuing the business relationship constitutes a regulatory breach when one of the conditions set out in Article L. 561-8 is met.

1.4. Other reporting obligations

Where the applicable local law does not permit the implementation of equivalent AML/CFT measures in obliged entities’ foreign subsidiaries or branches, these obliged entities must ensure that they implement specific due diligence measures. TRACFIN and the AMF must be informed of this (Article L. 561-33 II 2° of the Monetary and Financial Code).

Pursuant to Article L. 561-15 IV, TRACFIN must be informed **without delay** of any additional information that could invalidate, support or modify the information contained in a suspicious transaction report.

Position

This obligation to provide additional information is even more important when the client carries out new suspicious transactions.

Where several transactions subsequent to an initial suspicious transaction report need to be brought to TRACFIN's attention, the reporting party may, for the sake of efficiency, group several transactions together in a single supplementary suspicious transaction report covering a certain period of time appropriate to the case in question. In this case, the supplementary suspicious transaction report must specify the reasons for grouping the reported transactions together. Several supplementary suspicious transaction reports may be filed by the same obliged entity if circumstances dictate.

2. DETECTING AND ANALYSING THE EVENTS LEADING TO SUSPICION

Reports filed in accordance with Article L. 561-15 of the Monetary and Financial Code must be submitted after anomalies have been detected and the factors that led to the suspicion have been analysed. Regardless of whether the suspicious transaction report falls under Article L. 561-15 I or II of the Monetary and Financial Code, each obliged entity must first analyse each abnormal transaction detected and rule out any automatic transmission.

The effectiveness of the system depends on the implementation of adequate and effective internal systems and procedures for the prevention of money laundering and terrorist financing within each obliged entity, in accordance with the provisions of the AMF General Regulation, to enable them to detect and analyse anomalies.

2.1. What is meant by “suspect or have good reason to suspect”?

There is no legal definition of suspicion. To understand the term “suspect”, it may be helpful to refer to the interpretation given by the Council of State in its ruling of 31 March 2004.³ According to this, if the information gathered by an investment firm, in accordance with the due diligence required by the applicable regulations, is insufficient to lift any suspicion about the legality of the transaction or the source of funds, and therefore rule out the possibility that these funds may be the proceeds from an underlying crime, the investment firm must report the suspicion to TRACFIN.

The phrase “have good reason to suspect” supplements and broadens the concept of suspicion. Obligated entities do not, therefore, have to specify the underlying offence.

2.2. Implementing a detection system

Pursuant to Article L. 561-32 of the Monetary and Financial Code, obliged entities must set up an organisation structure, internal procedures and an internal control system that enables them to detect, in particular:

- transactions carried out with natural persons or legal entities resident, registered or established in a high-risk country or territory;
- transactions requiring enhanced scrutiny;
- transactions that are subject to reporting requirements.

Accordingly, the internal procedures that the obliged entity develops and implements must relate in particular to detecting and processing unusual or suspicious transactions and operations (4° of Articles 320-20, 321-147 and 550-10 of the AMF General Regulation).

³ Council of State, from both sub-sections 6 and 1, of 31 March 2004, no. 256355.

According to the Council of State's case law,⁴ "failure to detect a transaction that constitutes an anomaly with regard to the business relationship profile is in itself a regulatory breach when, due to its nature, it reveals a deficiency in the monitoring and analysis systems in place" and "when the extent of the failure of those involved in the implementation of their monitoring obligations reveals a deficiency in the control system in place, the failure to report transactions in accordance with Article L. 561-15 of the Monetary and Financial Code constitutes a breach of these provisions".

The obliged entity must also develop and implement procedures for analysing and monitoring its business relationships and, where appropriate, for forwarding information to the TRACFIN reporting officer and correspondent, in accordance with their respective powers.

The resources allocated to detecting suspicious transactions and processing them must be sufficient for and appropriate to the obliged entity's specific situation (size, organisational structure, nature of activities, risks identified in the classification of money laundering and terrorist financing risks, etc.).

Use of automated detection systems. According to the regulations, the use of automated detection systems is neither mandatory nor sufficient. Depending on the obliged entity's business activities, their use may be appropriate or even necessary.

Position

The obliged entity must ensure that its tools are configured in such a way that they are effective in detecting unusual transactions. The configuration must be updated regularly, in particular with regard to the risk classification, the business relationship profile and transactions carried out by the obliged entity. The configuration therefore cannot be based on a single threshold in terms of the value of transactions without taking into account information that increases knowledge about the business relationship. The system must be configured using a sufficiently precise nomenclature for clients. Obligated entities belonging to a group or operating in several institutions are not required to implement a single central system. Where they use several systems, they must ensure that all these systems cover exhaustively the type of business and clients involved and the transactions carried out and that the information can be aggregated for the purposes of an overall analysis of the business relationship.

In any event, the obliged entities cannot operate without using human resources. The involvement of staff with sufficient expertise, experience and training, as well as access to valuable internal information, is required to analyse the anomalies detected.

Alert processing. Alerts must be analysed with regard to the information and knowledge available about the business relationship, updated if necessary at the time.

The analysis carried out by examining the information on the transactions triggering an alert may lead to a duly justified decision to close the case without further action or to a more detailed analysis and, where appropriate, to a suspicious transaction report.

The obliged entities must formalise and substantiate their analysis. They must retain any documentation relating to alert processing, in accordance with Article L. 561-12, so that they can justify any decision to take no further action to the AMF, if necessary.

In order to ensure the effectiveness of the system and the prompt reporting of suspicious transactions, financial institutions must provide the resources necessary to deal with alerts. The human resources allocated must be sufficient in relation to the institution's organisational structure (centralised or decentralised) and its size, to be

⁴ Council of State, 20 January 2016, no. 374950

able in particular to analyse alerts and transactions in depth. For example, insufficient human resources may be reflected in an inability to analyse the alerts generated and the underlying transactions or in a high volume of suspicious transaction reports.

Obligated entities must ensure that those responsible for processing alerts have adequate experience, qualifications and training, as well as an appropriate position within the organisation, and that they have access to the information necessary to carry out their duties. Adequate training and availability of information for these individuals are prerequisites for the effectiveness of the system prescribed by law (Articles L. 561-34 and R. 561-38-1 of the Monetary and Financial Code).

Furthermore, obliged entities must implement procedures for centralising the analysis of anomalies detected. These procedures must be appropriate to their specific organisation and must take into account, where appropriate, their status as part of a group or network under the authority of a central body.

In the case of portfolio asset management companies, the Compliance and Internal Control Officer (RCCI) must pay particular attention to all obligations for reporting to TRACFIN and must monitor the system for detecting and processing anomalies and suspicious transactions.

2.3. Analysis of the facts

A suspicious transaction report is the result of an intellectual approach and the conclusion of analysis supported by evidence. This analysis is based on several stages that lead from an unusual transaction to a suspicious transaction, from a relationship with the client based on trust, to doubt and then finally to suspicion. Once detected, the anomalies must then be analysed in the context of the obliged entity's in-depth knowledge of its client and business relationship.

The analysis is therefore dependent on the prior implementation of the client due diligence measures required under Articles L. 561-4-1 to L. 561-14-2 of the Monetary and Financial Code and, in particular, the measures relating to knowledge of their clients, and beneficial owners where applicable, and the purpose and nature of the business relationships, which, to be genuinely useful, must be regularly updated with regard to risk classification. Having in-depth knowledge of the client and its environment, at the time the relationship is entered into and throughout its duration, is the necessary prerequisite for understanding the transactions and movements carried out by this individual.

In the event of an unusual transaction, the obliged entity must form a personal opinion on the facts based on its experience and knowledge of the events in order to shed light on the situation. The obliged entity must consider all the information at its disposal and may proceed by means of verification, cross-checks and additional research.

In particular, the obliged entity may question the client about the source and destination of funds and encourage the client to provide any other useful additional information, particularly from among that listed in the Order of 2 September 2009 issued pursuant to Article R. 561-12 of the Monetary and Financial Code, and then assess the credibility or plausibility of the explanations provided. The quality of the responses and the behaviour of the client are illuminating insights in this regard.

An in-depth analysis of the facts will lead the obliged entity to conclude whether or not a situation giving rise to suspicion exists and, if so, proceed with the required report. If the situation remains suspicious after closer examination, a suspicious transaction report must be filed (Article L. 561-15 III of the Monetary and Financial Code).

Position

It is not up to the obliged entity to prove that the offence has been committed nor to classify it. These matters are the sole responsibility of the judicial authority.

However, in addition to the information relating to identifying the client and describing the flows concerned, the obliged entity's report must be supported by reference to the analysis on which the suspicion is based.

The approach will be similar when the offences were committed outside France.

If, following completion of their analysis, the obliged entities are not certain that the transaction in question is legal, reporting becomes obligatory.

Position

All reports must explicitly state the events that led to the suspicion giving rise to the report. Formal compliance with this reporting obligation should be the outcome of an in-depth analysis. Obligated entities must therefore refrain from filing reports that are substantiated purely by background information.

Accordingly, reports with the following characteristics do not meet the requirements of Article R. 561-31 III of the Monetary and Financial Code:

- A succinct suspicious transaction report that merely mentions the receipt of a court order or a request for information from an administrative authority;
- A suspicious transaction report based on a simple presupposition related to the client's business, address, country of residence or registration, or reputation, without any further details about the reason for the suspicion.

The same applies to reports issued because of difficulties between the obliged entity and its client or because of the behaviour of the client. While a client's behaviour may constitute an interesting insight, it can in no case be sufficient to justify filing a suspicious transaction report.

3. REPORTING PROCEDURES

3.1. Content of suspicious transaction reports sent to TRACFIN

The content of the report is specified in particular in Article R. 561-31 III of the Monetary and Financial Code:

“III. - In all cases, the report shall include the following details and information:

1° The profession practised by the person filing the report, with reference to the categories specified in Article L. 561-2;

2° The identity details and professional contact information of the designated reporting person in accordance with the provisions of Article R. 561-23 I;

3° The reporting case, with reference to the cases provided specified in Article L. 561-15;

4° The identity details of the client and, where applicable, the beneficial owner of the transaction giving rise to the report and, if a business relationship has been entered into with the client, the purpose and nature of this relationship;

5° A description of the transaction and information relating to the analysis that led to the report being filed;

6° Where the transaction has not yet been executed, the time limit for its execution.”

Article R. 561-31 IV specifies that the report must be accompanied, where appropriate, by any documentation that may be useful to TRACFIN.

In accordance with Article R. 561-31 V of the Monetary and Financial Code, when TRACFIN determines that the content of a report does not meet one of the required conditions, it instructs the obliged entity to rectify it within one month by informing it that, if the report is not rectified, it cannot be used to qualify for the exemptions from civil, criminal and administrative liability referred to in Article L. 561-22 I to IV. If the report is not rectified within this period, TRACFIN will notify the obliged entity of its inadmissibility decision.

Strict compliance with these provisions is essential for the report to be useful to TRACFIN. Clarity, conciseness and accuracy in presenting this information in the report are also particularly important.

Furthermore, the report must be made in good faith, which means that the suspicion must be substantiated, documented and based on reliable and verified data.

The report must be supported by the information that led to the detection of the anomalies and by the in-depth analysis that led to the suspicion.

Examples of the information that must be included in the report:

- A description of the background (identity details and information known about the client and, where applicable, the beneficial owner, the purpose and nature of the business relationship, any other relevant information that may point to the unusual nature of the transaction or of the client's behaviour in relation to his/her profile);
- The identity details of the individuals involved in the transaction;
- A detailed description of the events and anomalies that led to the suspicion (e.g. services or transactions concerned, date, amount, parties involved in the transactions (originator, beneficial owner), numbers and types of accounts involved, source and destination of funds in the case of non-executed transactions, execution time, etc.);
- Information gathered as part of the in-depth analysis carried out by the obliged entity;
- Information characterising the suspicion, its nature and its grounds resulting from the analysis carried out, indicating, in addition and where appropriate, the stage of the money laundering process and the suspected underlying offence;
- If the suspicion relates to laundering of proceeds from tax fraud, the criterion or criteria defined in Article D. 561-32-1 II of the Monetary and Financial Code met by the case in point, and the information that led the obliged entity to apply the criterion or criteria referred to;
- Documents and supporting evidence.

The content requirements for reports in cases of attempted transactions are more flexible as there may be less knowledge about the business relationship if it has not yet been entered into, and details about the transaction may be less specific if the transaction has not yet been carried out.

In the case of reports relating to **past events**, they must contain all the necessary information set out above, before they can be used effectively by TRACFIN.

A report may relate to an **isolated transaction** that stands out because of its unusual or unexplained nature. This information must be supplemented by information as to why the transaction is suspicious or why the suspicion cannot be lifted.

Position

<p>It is essential that the report contain the grounds for the suspicion. Background information is useful as additional information, but cannot in itself trigger issuing a report.</p>

However, background information may prompt the obliged entity to perform enhanced due diligence, depending on its assessment of the risk involved. The following cases are examples of this:

- Court order, nature of the activity or address of the client;

- Nervousness or threatening behaviour on the part of the client.

3.2. Format and transmission of suspicious transaction reports to TRACFIN

Pursuant to Article R. 561-23 of the Monetary and Financial Code, obliged entities must inform TRACFIN and the AMF of the identity of their senior managers or employees authorised to file the reports required under Article L. 561-15 of the Monetary and Financial Code.

All obliged entities, except for financial investment advisers and crowdfunding investment advisers, must file a suspicious transaction report via the Ermès system on the TRACFIN website at the following address: <http://www.economie.gouv.fr/tracfin/>.

Financial investment advisers and crowdfunding investment advisers may elect to file their suspicious transaction reports via the Ermès system. If they elect not to use the Ermès system, they must file their suspicious transaction reports by post using the TRACFIN reporting template, which is available on the TRACFIN website at the following address: <http://www.economie.gouv.fr/tracfin/>.

Pursuant to Articles L. 561-15 VI and R. 561-31 II of the Monetary and Financial Code, the suspicious transaction report may also be obtained verbally by TRACFIN, in the presence of the reporting party. However, the option of reporting verbally must be used if it can be justified by the exceptional circumstances in which the transaction in question is being prepared or executed, especially when reporting concerns a transaction whose execution is imminent. This reporting method involves the reporting party visiting TRACFIN's premises to deliver the supporting documentation relating to the suspicion being reported verbally.

3.3. At what point must the report be filed?

The principle set out in the first paragraph of Article L. 561-16 of the Monetary and Financial Code is that the suspicious transaction report must be filed prior to the transaction being executed, thus giving TRACFIN the opportunity, in accordance with Article L. 561-24 of the Monetary and Financial Code, to exercise its right to object. The obliged entity must therefore refrain from executing any transaction that it suspects is related to money laundering or terrorist financing.

The report may, however, relate to transactions that have already been executed (Article L. 561-16 paragraph 2 of the Monetary and Financial Code):

- where it was impossible to postpone execution of the transaction;
- when postponing the transaction could have been detrimental to ongoing investigations;
- or if the suspicion arose after the transaction in question was executed.

This exemption also applies when the operation is instantaneous. It may also apply when the transaction involves very short execution time constraints that make it difficult to implement systematic ex ante detection.

After the transaction has been executed, the report must be sent to TRACFIN without delay (Article L. 561-16 of the Monetary and Financial Code), even if the information provided to TRACFIN is to be supplemented by sending new information at a later date. This provision introduces an obligation of promptness, which requires each obliged entity to ensure that, whatever its organisational structure, the necessary action is taken as quickly as possible. Any delay in sending the suspicious transaction report relative to the date on which the suspicious transaction was executed is therefore justified by the duly documented statement of the steps taken by the obliged entity in moving from doubt to suspicion.

4. RETENTION AND CONFIDENTIALITY OBLIGATIONS

4.1. Obligations to retain documents relating to reports made

Obligated entities must retain documents and records relating to reports sent to TRACFIN for a period of five years following the termination of the business relationship concerned (Article L. 561-12 of the Monetary and Financial Code). This retention obligation applies to the following documents:

- the copy of the report and, where applicable, the documents attached to it;
- in the case of a verbal report, the name of the reporting party, the date of the report and copies of the documents sent to TRACFIN;
- the acknowledgement of receipt of the report;
- the documents relating to the transactions;
- the documents recording the characteristics of the transactions referred to in Article L. 561-12 of the aforementioned Code.

In accordance with Article L. 561-25 I of the Monetary and Financial Code, TRACFIN may request that the documents retained be provided to it regardless of the medium used for their retention and within the time limits it sets. This right may be exercised on documents or on-site in order to reassemble all the reports made by a natural person or legal entity in connection with a transaction that has been reported or about which information has been received⁵ and to inform equivalent foreign financial intelligence units, under the conditions provided for in Article L. 561-29 of the Monetary and Financial Code.

Obligated entities must put in place procedures defining the conditions under which these documents are to be retained, in accordance with procedures designed to ensure their confidentiality.

4.2. What confidentiality is applied to intra- and extra-group reporting and information sharing?

The first paragraph of Article L. 561-19 of the Monetary and Financial Code makes suspicious transaction reports confidential. This confidentiality covers both the existence and the content of the reports, which, along with any follow-up actions, cannot be disclosed. It applies both to the object of the report and to third parties. Failure to comply with this prohibition of disclosure is punishable under Article L. 574-1 of the same Code by a fine of €22,500. The same penalty applies to the disclosure of information transmitted in connection with a right of communication exercised by TRACFIN.

It should be noted that a suspicious transaction report is never spontaneously handed over to the judicial authorities to back up briefing notes, in which the source or sources are always blacked out.

The confidentiality of the report does not stop information about the reports from being disclosed to supervisory authorities and, more specifically, to the AMF.

Provision is also made for information sharing by the parties referred to in 1° to 6° of Article L. 561-2 of the Monetary and Financial Code, financial holding companies, parent companies of finance companies, mixed financial holding companies, parent companies of insurance group companies, group mutual benefit associations or social protection insurance group companies belonging to the same group, covering both the existence and the content of the reports. This information may only be shared between individuals in the same group that are subject to the reporting obligation provided for in Article L. 561-15 of the same Code.

This information is required to carry out AML/CFT due diligence within the group and must only be used for that purpose.

In accordance with Article R. 561-29, group parent companies must define the procedures for sharing information, including suspicious transaction reports, within the group.

⁵ In accordance with Articles L. 561-27, L. 561-28 or L. 561-29 of the Monetary and Financial Code.

This information may only be shared with an individual or institution that is not based in a third country on the list of high-risk third countries published by the European Commission under delegated Regulation (EU) 2016/1675, since the processing of information in that country guarantees “an adequate level of protection for privacy, freedoms and the fundamental rights of individuals” (Article L. 561-20 of the Monetary and Financial Code).

In addition, the parties referred to in 1° to 6° of Article L. 561-2 of the Monetary and Financial Code, when they are acting for the same client within a single transaction or when they are aware of a single transaction for the same client, may inform each other by any secure means of the existence and content of the report under the following restrictive conditions:

- The parties must be located in France, in a Member State of the European Union or in a State party to the European Economic Area Agreement or in an equivalent third country;
- Individuals not located in France must comply with equivalent obligations of professional secrecy;
- Such information sharing may be carried out only for the purpose of preventing money laundering and terrorist financing;
- Processing of the information shared, when it takes place in a third country, must guarantee an adequate level of protection for privacy, freedoms and fundamental rights (Article L. 561-21 of the Monetary and Financial Code).

5. RELATIONSHIP BETWEEN THE OBLIGATION TO REPORT SUSPICIONS AND OTHER MECHANISMS

5.1. Assets freezing mechanism

The fact that an individual is newly subject to a restrictive measure, including the freezing of assets, does not necessarily require the obliged entity to file a suspicious transaction report with TRACFIN.

Position

The obliged entity shall reassess the business relationship profile in light of this measure and adapt its due diligence accordingly. It must pay particular attention to how the business relationship has been operating, in particular the transactions that preceded the entry into force of the restrictive measure and also any family and property ties relating to the individual concerned. When the restrictive measure is lifted, the obliged entity must adjust the business relationship profile and its due diligence accordingly.

In any event, where there is a suspicion, the obliged entity must send a suspicious transaction report to TRACFIN without delay, detailing the analysis carried out that led to the suspicion, without prejudice to the asset freezing report filed with the Treasury Directorate General as prescribed by the European regulations on restrictive measures and the Monetary and Financial Code.

5.2. Filing a crime report with the Public Prosecutor

Sending a suspicious transaction report and filing a crime report are two separate procedures. Sending a suspicious transaction report to TRACFIN does not replace the need to file a crime report. Similarly, the obliged entity’s filing of a crime report does not in any way prevent it from sending a suspicious transaction report. The filing of a crime report must nevertheless be mentioned in the suspicious transaction report. If a crime report is not filed, the obliged entity must reassess the client’s profile and implement appropriate due diligence measures, as it does when filing a suspicious transaction report. In addition, the obliged entity must, if necessary, file a suspicious transaction report with TRACFIN.

Obliged entities must file a suspicious transaction report if the fraud giving rise to the crime report appears to be organised and/or involve several clients.

5.3. Court order or administrative request

In principle, the receipt of a court order requires the obliged entity to carry out an analysis of the transactions recorded in its books for the client concerned, to reassess the business relationship profile and adapt its due diligence accordingly.

The same applies when it receives an administrative request (from the tax authorities, customs, etc.) that names an individual and may relate to a link with money laundering or terrorist financing.

In this situation, reviewing the business relationship may enable the obliged entity to detect suspicious transactions which it had not previously identified and which are not covered by the court order. In this case, the obliged entity must send a suspicious transaction report to TRACFIN without delay, referring to the court order or the document received from the requesting authority and stating the precise references for the procedure and the contact details for the department or judge that issued the order or request.

Furthermore, during an enhanced review, obliged entities must check whether the individual associated with the transaction has not already been the subject of a court order or a request from a government department that may relate to a link with money laundering or terrorist financing. Where there is a suspicion, they must mention this in the suspicious transaction report.

Reporting entities may find it useful to implement procedures for liaising between the department dealing with court orders and administrative requests and the AML/CFT department. These types of procedures and/or coordination measures are likely to make it easier to review the client's situation quickly if necessary.

6. TRACFIN REPORTING OFFICER AND CORRESPONDENT

6.1. Appointing the TRACFIN reporting officer and correspondent

In accordance with Articles R. 561-23 and R. 561-24, the reporting entities must appoint one or more TRACFIN reporting officers and TRACFIN correspondents who are capable of fulfilling the TRACFIN reporting and information obligations, within the specified time, and of responding to TRACFIN requests pursuant to Articles L. 561-24 and L. 561-25.

Position

The TRACFIN reporting officer and correspondent may be one and the same person, depending on the obliged entity's size and organisational structure.

Combining the functions of the person responsible for implementing the anti-money laundering and counter-terrorist financing system stipulated in Article L. 561-32 of the Monetary and Financial Code, the TRACFIN reporting officer and/or the TRACFIN correspondent must be appropriate in terms of workload and must not in any way undermine the effectiveness of the anti-money laundering and counter-terrorist financing system.

Combining one or all of these functions with those of the compliance and internal control officer in asset management companies or with those of the control officer in central securities depositaries or managers of settlement and delivery systems for financial instruments is possible as long as combining them does not affect the effectiveness of the anti-money laundering and counter-terrorist financing system and complies with the General Regulation provisions relating to the independence, objectiveness, autonomy of decision-making and adequate resources of the compliance and internal control functions.

By way of exception, in accordance with Article R. 561-28, obliged entities belonging to a group may agree, subject to the agreement of the parent company or central body, to jointly appoint a TRACFIN reporting officer and correspondent, provided that these individuals carry out their duties within France. In the latter case, the group must inform TRACFIN and the AMF of the identity of these individuals.

Both the AMF and TRACFIN must be informed of the identity and capacity of these individuals. TRACFIN and the AMF must also be informed of any changes without delay.

To send this information to TRACFIN, obliged entities must submit, via the Ermès system, the electronic reporting form available on the TRACFIN website. In the case of an initial report, the form may be sent as an attachment. TRACFIN expects all obliged entities to comply with this practice.

Any senior manager or employee of an obliged entity may report a transaction that he/she considers should be reported pursuant to Article L. 561 15, especially when a particular emergency requires it. This report must be confirmed as soon as possible by the person authorised to file reports to TRACFIN.

Pursuant to Article R. 561-38-2, reporting obligations may not be outsourced to an external service provider. However, within a group, their implementation may be outsourced to one of the group's entities, subject to the agreement of the parent company or central body.

6.2. Role of TRACFIN reporting officers and correspondents

It is important that the TRACFIN reporting officer/correspondent has the necessary tools and resources (access to client databases and transactions/flows) to be able to analyse the events that led to the suspicion. To this end, it is therefore essential that they be authorised to request the information they themselves deem useful and that customer service staff send them sufficiently accurate and detailed information in response to their requests as quickly as possible.

The procedures must ensure that anomalies detected are forwarded to the TRACFIN reporting officer and correspondent, within their respective spheres of competence.

Obliged companies must ensure that the TRACFIN reporting officer and correspondent have access to all the information necessary to perform their duties. They must provide them with the tools and means, within their respective spheres of competence, to:

- file the reports provided for in Article L. 561-15;
- process requests for information from the agency with national authority, TRACFIN.

The TRACFIN reporting officer and correspondent must also be informed of:

- incidents relating to the prevention of money laundering and terrorist financing that are brought to light by internal control systems;
- shortcomings found by domestic or foreign supervisory authorities in the obliged entity's implementation of provisions relating to the prevention of money laundering and terrorist financing.