

THE LATVIAN COUNCIL OF SWORN ADVOCATES

RESOLUTION

In Riga

20.08.2019

No.136

Minutes No. 10

Re: Approval of the “Regulations for exchange of information with foreign supervisory and control bodies entrusted in the field of preventing money laundering and the financing of terrorism and proliferation with the duties that are substantially similar to those of the Latvian Council of Sworn Advocates”

Having reviewed the information provided by Mr. Andris Rukmanis, Attorney-at-Law, Member of the Latvian Council of Sworn Advocates, Chairperson of the Supervisory and Control Committee regarding enforcement of the “Schedule of measures aimed at preventing money laundering and the financing of terrorism for the period till 31 December 2019” approved by Cabinet Decree No. 512 of 11 October 2018 in relation to the actions to be taken under the 2nd Immediate Outcome “International cooperation”, and

WHEREAS:

1) In July 2018, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (**hereinafter also referred to as – “the Moneyval”**) has approved the 5th Round Mutual Evaluation Report on the effectiveness of preventing money laundering and the financing of terrorism in Latvia for the accounting period till November 2017 (**hereinafter also referred to as – “the Report”**), and certain recommendations have been made as a part of the Report regarding the compliance of the legal acts of Latvia with the recommendations issued by the Financial Action Task Force (**hereinafter also referred to as – “the FATF”**);

2) The FATF Recommendation No. 40 stipulates that Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate. Should a competent authority need bilateral or multilateral agreements or arrangements, such as a Memorandum of Understanding, these should be negotiated and signed in a timely way with the widest range of foreign counterparts. Competent authorities should use clear channels or mechanisms for the effective transmission and execution of requests for information or other types of assistance. Competent authorities should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received;

3) The Report contains extended analysis of the regulatory acts applicable in Latvia and the current practice for the preventing and combating money laundering and the financing of terrorism (**hereinafter also referred to as – “the AMLTF”**). Compliance of the regulatory acts of Latvia with the international standards for the preventing money laundering and distribution of terrorism and weapons of mass destruction (FATF 40 recommendations) has been evaluated as well as effectiveness of the system according to 11 indices. Specific recommendations have been issued for Latvia on the basis of expert opinions aimed at elimination of the identified shortcomings in relation to the AMLTF system, and implementation of the FATF 40 recommendations has been assessed as well. According to the terms of Moneyval evaluation procedure, increased supervision is currently applied to Latvia, whereby Latvia has to develop and present a progress report on the measures taken for implementation of the recommendations;

4) As a part of amendments to the Law on the Prevention of Money Laundering and Terrorism Financing adopted on 13 June 2019 and enacted on 29 June, title of the Law was amended to read as follows:

“Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing”;

5) Section 45, Part One, Para 2 of the Law on Prevention of Money Laundering and Terrorism and Proliferation Financing (**hereinafter also referred to as the PMLTPF Law**) stipulates that attorneys-at-law as subjects of the PMLTPF Law shall be supervised and controlled in compliance with the requirements of this Law by the Latvian Council of Sworn Advocates;

6) Section 46, Part One, Par 7 of the PMLTPF Law imposes on the supervisory bodies the duty to exchange information, either at their own initiative or upon request, with foreign bodies entrusted with substantially similar duties, provided that confidentiality of data is ensured and provided that such information can only be used for mutually agreed purposes;

7) Chapter V of the Regulation (EU) 2016/679 of the European Parliament and of the Council (27 April 2016) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) “Transfers of personal data to third countries or international organizations” prescribes the eligibility criteria for transfer of personal data to third countries organizations:

- A transfer of personal data to a third country or an international organization may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organization in question ensures an adequate level of protection. Such a transfer shall not require any specific authorization (Article 45 of the Regulation 2016/679 45);

- In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organization only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are

available (settlement of disputes, appropriate competent authority in the field of data protection, etc.). The given clause can be implemented through the integration of standard data protection clauses approved by the European Commission in the cooperation agreements, or through coordination of the cooperation agreement with the competent data supervision authority (Article 46 of the Regulation 2016/679);

- Pursuant to the regulation of derogations in specific situations including transfer that is necessary for important reasons of public interest (Article 49 of the Regulation 2016/679);

8) On 25 May 2018, the European Data Protection Board (**hereinafter also referred to as – “the EDPB”**) has enacted the Guidelines 2/2018 on Derogations in specific situations in accordance with Article 49 of the Regulation 2016/679. The Guidelines stipulate that, in the absence of an adequacy decision adopted by the European Commission, or provided adequate guarantees, transfer of personal data to a third country is only permissible on exceptional basis, and the term “public interests” should be very narrowly interpreted. For example, where a cooperation agreement is entered into between institutions, it shall not be treated as exemption from the general data security requirements, since the existence of such agreement indicates to repetitive, bulk and structured transfer of data. As a rule, application of the specified exemptions must not extend to infringement of fundamental rights of the data subjects;

9) The EDPB points out that derogation for reasons of public interest may only apply if expressly provided for in legal acts binding upon the data controller. Further, legal acts shall clearly define public interest. The EDAK further points out that for transfer of data to a third country it is not sufficient to state that such transfer would serve public interest of that third country where, for example, information is requested by the third country as a part of investigation for the combating of terrorism. Such exemption can apply if transfer of data is provided for (permitted) by legal acts of the EU or a Member State binding upon the controller, and where such transfer can affect the compliance with the principle of reciprocity in the field of international cooperation;

10) The “Schedule of measures for combating money laundering and the financing of terrorism for the period till 31 December 2019” (**hereinafter also referred to as – “the Schedule of Measures**) with annexes thereto has been approved by the Cabinet Regulations No. 512 of 11 October 2018;

11) For the purposes of performance of the assignment assigned to the Ministry of Justice according to Measures 2.1, 2.2, and 2.3 in the 2nd Immediate Outcome “International Cooperation” of the Schedule of Measures, and with the view to eliminate the shortcomings identified in Annex 2 to the Schedule of Measures in relation to the implementation of the FATF 40 recommendation, the Ministry of Justice has developed “Guidelines for international cooperation of the institutions that supervise and control the preventing of money laundering and the financing of terrorism”¹ (**hereinafter also referred to as – “the Guidelines”**) that shall be further incorporated in the internal regulatory acts of the bodies supervising the subjects of the PMLTPF Law;

¹ https://lvportals.lv/skaidrojumi/303783-starptautiska-sadarbiba-2019#a_7

12) Paragraph 2.5 of the Guidelines stipulates:

“Supervisory authorities shall stipulate in the regulatory acts governing their operation that actions taken by supervisory authorities for the performance of their functions shall be treated as taken for public interests to prevent any issues in the interpretation of the norms of law.”

13) Amendments to the PMLTPF Law adopted on 13 June 2019 and enacted on 29 June 2019 supplement the PMLTPF Law with Section 5.² to read as follows:

“Section 5.2 General Conditions for Processing of Personal Data

(1) Processing of personal data for the achievement of the purpose of this Law in the amount specified in this Law is performed in the interests of the society.

(2) The subjects of the Law, the supervisory and control authorities, the Financial Intelligence Unit of Latvia, the Enterprise Register of the Republic of Latvia, and the administrators of the registers referred to in Section 41 of this Law shall not provide information to the data subject regarding processing of data performed in the field of the prevention of money laundering and terrorism and proliferation financing, except for the publicly available data.”;

14) Paragraph 2.6 of the Guidelines stipulates that:

“2.6. No express authorization to the FIU Latvia and supervisory authorities for requesting information on behalf of foreign supervisory authorities is stipulated in the regulatory acts; however, the information exchange duty prescribed by Section 46, Part One, Para 7 of the PMLTPF Law also extends to the duty to make requests on behalf of foreign partners.”;

15) Paragraph 3 of the Guidelines stipulates that:

“3. Actions required for implementation of the FATF Recommendation No. 40

Taking into consideration the regulation contained in Section 46, Part One, Para 8 of the PMLTPF Law imposing on supervisory authorities the duty to exchange information with foreign authorities; taking into account the information provided by supervisory authorities regarding compliance with the requirements of the FATF Recommendation No. 40, namely, the fact that shortcomings exist in practical application of the said regulation, and taking into consideration the fundamental principles of personal data protection, it may be concluded that the existing regulation enables efficient international cooperation by supervisory authorities in the field of preventing and combating MLTF.

To ensure the compliance of regulatory provisions with the requirements of the FATF Recommendation No. 40, supervisory authorities shall:

3.1. Establish internal systems for exchange of information with foreign bodies with the view to implement requirements of the Law. Internal regulatory acts shall

be approved for that purpose and training shall be provided to the officials responsible for their application.

- 3.2. As a minimum, the following fundamental principles of international cooperation shall be incorporated in the internal regulatory acts:
 - 3.2.1. Establish the procedure for prioritization of the requests received from foreign partners. Such procedure shall envisage that requests received from foreign partners regarding money laundering or the financing of terrorism shall be subject to prompt granting within ten business days.
 - 3.2.2. The duty and procedure shall be defined for feedback with the foreign partners providing information to the given supervisory authority regarding the application of information provided by them. The FATF Recommendation provided for regular feedback instead of feedback upon request. Feedback shall be provided to cooperation partners on regular basis without expecting their request, and this should be done without undue delay.
 - 3.2.3. Procedure shall be established for the providing of protection and control of the information received from foreign partners in accordance with the requirement to ensure confidentiality of such data as stipulated in Section 46, Part One, Para 7 of the PMLTPF Law.
 - 3.2.4. Clear and secure mechanisms and channels shall be used for exchange of requests for international assistance. Clear and secure channels shall mean channels that ensure the protection of transferred data, such as encrypted e-mails and networks.
 - 3.2.5. Procedure shall be established for the performance of the said duty by supervisory authorities with reference to Section 46, Part One, Para 7 of the PMLTPF Law, including the granting of information requests received from foreign authorities; establish the procedure for the performance of the said duty by supervisory authorities including express definition of their right to grant the requests of foreign partners based on two criteria: reciprocity (check whether or not the foreign authority is a related body that performs the PMLFTP function), and confidentiality (ensure application of the principle of confidentiality to the information).”,

With the view to ensure the compliance with Section 46, Part One, Para 7 of the PMLTPF Law, the FATF Recommendation No. 40, Measure 2.2 of Immediate Outcome 2 in the Schedule of Measures, and Paragraph 3 of the Guidelines,

The Latvian Council of Sworn Advocates (**hereinafter also referred to as – “the Council**) has decided to approve the “Regulations for exchange of information with foreign supervisory and control bodies entrusted in the field of combating money laundering and financing of terrorism and proliferation with the duties that are substantially similar to those of the Latvian Council of Sworn Advocates” in the following wording:

**REGULATIONS FOR EXCHANGE OF INFORMATION WITH FOREIGN
SUPERVISORY AND CONTROL BODIES ENTRUSTED IN THE FIELD OF
COMBATING MONEY LAUNDERING AND FINANCING OF TERRORISM
AND PROLIFERATION WITH THE DUTIES THAT ARE SUBSTANTIALLY
SIMILAR TO THOSE OF THE LATVIAN COUNCIL OF SWORN
ADVOCATES**

1.Purpose of the Regulations

The present Regulations define the set of measures to be taken by the Council in the capacity of supervisory and control body to ensure quick, constructive and effective provision of the widest international cooperation by the Council with foreign supervisory and control bodies entrusted in the field of preventing money laundering and financing of terrorism and proliferation with the duties that are substantially similar to those of the Council (**hereinafter – the foreign supervisory and control bodies**).

**2.Procedure for prioritization of the requests for international assistance
received by the Council from foreign supervisory and control bodies**

The requests for international assistance received by the Council from foreign supervisory and control bodies regarding suspected money laundering, financing of terrorism or proliferation shall be subject to prompt granting within ten business days.

**3.Duties in and procedures for providing feedback to the foreign supervisory and
control bodies providing information to the Council**

The Council shall provide feedback on the application of their information to the foreign supervisory and control bodies that provide to the Council any information related to suspected money laundering, financing of terrorism or proliferation. Feedback shall be provided on regular basis without expecting their request.

**4.Protection and control of the information provided to and received from
foreign supervisory and control bodies**

4.1. All and any requests referred to in Paragraph 2 hereof for international assistance received from foreign supervisory and control bodies in relation to suspected money laundering, financing of terrorism or proliferation, and requests for international assistance made and information provided by the Council to the above-mentioned bodies including e-mail correspondence shall be RESTRICTED ACCESSIBILITY INFORMATION and marked as such in the respective requests for international assistance and information.

4.2. The Council shall be entitled to apply any information received from foreign supervisory and control bodies in relation to suspected money laundering, financing of terrorism or proliferation only for performance of the supervisory and control functions stipulated in the PMLTPF Law; any disclosure of such information by the Council shall be subject to written consent of the respective foreign supervisory and control body, and only for the purpose specified in such consent.

4.3. Foreign supervisory and control bodies shall be entitled to apply any information received from the Council in relation to suspected money laundering, financing of terrorism or proliferation only for performance of the supervisory and control functions stipulated in the Law applicable to them; any disclosure of such information by the respective foreign supervisory and control body shall be subject to written consent of the Council, and only for the purpose specified in such consent. The Council shall notify the respective foreign supervisory and control body of the provisions of this Paragraph upon transfer of the information concerned.

5. Mechanisms and channels for exchange of requests for international assistance and information between the Council and foreign supervisory and control bodies

The following clear and secure channels that ensure protection of transferred data shall only be used for exchange of requests for international assistance and information in relation to suspected money laundering, financing of terrorism or proliferation: encrypted e-mails and networks (approved by the transferor and the recipient).

6. Criteria for exchange of information with foreign supervisory and control bodies

The Council shall grant the requests of foreign international assistance received from foreign supervisory and control bodies in relation to suspected money laundering, financing of terrorism or proliferation, and the Council shall be entitled to make their requests for international assistance in relation to suspected money laundering, financing of terrorism or proliferation provided that the following criteria are met:

6.1. The foreign supervisory and control body is an institution allied to the Council and performs the function of supervision and control of preventing money laundering and financing of terrorism and proliferation in the foreign country in question;

6.2. Regulatory acts of the foreign country in question prescribe equivalent liability for unauthorized disclosure of restricted accessibility information; the foreign supervisory and control body shall apply the principle of confidentiality to the information provided to them and use such information solely for the performance of their supervisory and control functions prescribed by the law.

7. Miscellaneous

7.1. The Council shall appoint and provide training to the person responsible for the application of these Regulations by the Council.

7.2. The Resolution shall come into effect on the date of adopting thereof by the Council.

Chairman of the Latvian Council of
Sworn Advocates



Jānis Rozenbergs