

COMMUNIQUÉ

COMMUNIQUÉ ON VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS

The CSSF would like to draw the attention of entities (including of the financial sector) to the adoption by the Financial Action Task Force ("FATF") of the modified Interpretive Note to the FATF Recommendation 15 on New Technologies ("INR15") taking account of virtual assets and virtual asset service providers. In furtherance of the principles retained in Recommendation 15, INR15 specifies the implementation measures for the activity related to virtual assets and their service providers, thereby also promoting a level playing field across jurisdictions and providers in this context.

In addition, the FATF has published in June 2019 a guidance document elaborating on the risk-based approach and how to assess and mitigate the risks associated with virtual asset financial activities. The guidance is applicable to entities providing for or engaged in virtual asset services. The document provides guidance particularly on the application of FATF recommendations 1, 10, 12, 16, 18 and 20.

The CSSF would also like to remind in this context that the European Directive 2018/843 ("AMLD5") has extended the scope of application of the European Directive 2015/849 ("AMLD4") so as to include providers engaged in virtual currencies exchange services, as well as custodian wallet providers.

The draft bill of law 7467 ("Draft Bill") aims at amending the AML/CFT law of 12 November 2004, by extending the scope of application of said law of 2004 (Article 2) so as to include the different virtual asset service providers. The Draft Bill is broader in scope than AMLD5 and aligns with the larger scope foreseen by FATF requirements. Entities (legal persons) conducting one or more of the following activities or operations in the name of a customer or on its behalf will be covered by the Draft Bill:

- i) exchange between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies;
- ii) exchange between one or more forms of virtual assets;
- iii) transfer of virtual assets;
- iv) safekeeping or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services ; and
- v) participation in and provision of financial services related to an issuer's offer or to the sale of virtual assets.

A separate draft bill (Draft Bill of law 7512, Article 11) will introduce into the AML/CFT Law of 2004 a new framework for AML/CFT supervision of virtual asset service providers that are active in Luxembourg.

Since these providers will become subject to the CSSF's AML/CFT supervision, in accordance with the aforementioned draft bills of law, preparations for compliance with the new framework should start as soon as possible.

For any questions please do not hesitate to contact the CSSF (direction@cssf.lu).

References:

1. FATF documents:

- New interpretive note to Recommendation 15:

<https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>

- Revised FATF Methodology for assessing compliance with the 2012 FTAF standards:

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatfissuesnewmechanismstostrengthenmoneylaunderingandterroris financingcompliance.html>

- FATF Guidance for a Risk Based Approach to virtual assets and virtual asset service providers:

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html>

- Public statements on virtual assets:

<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html>

- Public statement on stable coins and emerging assets:

<http://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-virtual-assets-global-stablecoins.html>

- FATF bulletin on virtual assets:

http://www.fatf-gafi.org/media/fatf/documents/bulletin/FATF-Booklet_VA.pdf

2. Luxembourg draft bills of law:

- Draft Bill of law 7467:

<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7467>

- Draft Bill of law 7512:

<https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7512>

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