

Circular no. 8 / 2019-2020

Luxembourg, 3 July 2020

Regarding: Reporting breaches of professional obligations in the fight against money laundering and terrorist financing

Since 30 March 2020, Article 8-3 of the amended AML Act of 12 November 2004 ("**the AML Act**") introduces the obligation for supervisory authorities and self-regulatory organisations to put in place appropriate procedures enabling persons to report potential or actual violations of professional obligations in the field of AML/CFT through a specific, independent and anonymous channel.

Such a disclosure shall not constitute a breach of any restriction on disclosure of information imposed by contract or by professional secrecy and shall not cause the professional or person concerned to incur any liability whatsoever. The AML Act also adds that persons who report a suspicion of money laundering or terrorist financing to the supervisory authorities or self-regulatory bodies are protected from any threat or hostile act, in particular from any prejudicial or discriminatory measure in employment matters.

Reporting, commonly referred to as "*whistleblowing*", is not an obligation, but an option to report potential or actual violations of professional obligations deriving from the MLA Act alone. It should not be confused with the obligation to cooperate with the financial intelligence unit, which requires that any suspicion of a money laundering or terrorist financing offence be reported without delay through the goAML system. Indeed, pursuant to the provisions of Article 7 (2) of the AML Act, professionals, their officers and employees are required to immediately inform, at their own initiative, the Bar President on whose roll the reporting person is registered when they know, suspect or have "reasonable grounds to suspect that money laundering, an associated underlying offence or terrorist financing" is being carried out, has taken place or has been attempted.

1. Who can act as a whistleblower to the Association ?

Any person may report to the Bar Council of the Luxembourg Bar Association, in a confidential and secure manner, any malfunctioning or breaches committed within a law firm in AML matters. This Circular does not apply to the controllers appointed by the Council of the Association within the framework of points 89 et seq. of the Regulation of 12 September 2018 on the fight against money laundering and terrorist financing.

2. How do I make a declaration ?

- Before contacting the Association, lawyers are invited to first use the whistleblowing procedure internal to the law firm, as applicable.
- The Association will only examine written statements sent by e-mail to the following address : whistleblowing@barreau.lu

3. What can whistleblowing relate to ?

The whistleblowing procedure is exclusively dedicated to the reporting of potential or proven violations of professional obligations in the field of the fight against money laundering and terrorist financing.

It should be recalled that the suspicion of a money laundering/terrorist financing offence must be reported to the President of the relevant Bar Association through the goAML system.

As for persons with knowledge of facts that could constitute a crime or offence (outside the AML obligations), they are invited to make a report to the State Prosecutor.

4. Will the identity of the whistleblower be protected ?

The whistleblower is protected within the limits of the provisions of section 8-3 of the AML Act. In other words, neither the identity of the lawyer who has whistleblowed, nor that of any third parties involved, will be disclosed to the professional concerned.

The identity of the whistleblower and third parties will only be disclosed in circumstances where this becomes unavoidable by law (e.g. because of the Association's obligation to inform the Public Prosecutor if the facts are likely to constitute a crime or offence, or in the context of criminal proceedings vis-à-vis the entity where the declarant may, if necessary, be called as a witness).

5. What information will the whistleblower be required to provide to the Association ?

A lawyer wishing, in good faith, to engage in whistleblowing must have reasonable grounds to believe that the information he or she is about to provide to the Association, and all the allegations contained therein are true and genuine. Documents corroborating the revelations may also be provided.

6. Does the Association provide legal advice in the framework of a whistleblowing procedure?

No, the Association will not provide legal advice to a whistleblower with respect to information provided to it. He or she is recommended to take advice from a lawyer.

7. What follow-up will be given to the declaration ?

The Council of the Association will advise on the action to be taken, if any, on the declaration within the framework of its legal duties.

Sincerely

For the Bar Council
François KREMER
President of the Bar