



AML V: How to safely navigate through the new requirements of Directive (EU) 2018/843 !

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Agenda

I. Introduction

II. Scope

III. Professional customer due diligence (“CDD”) obligations – What’s new?

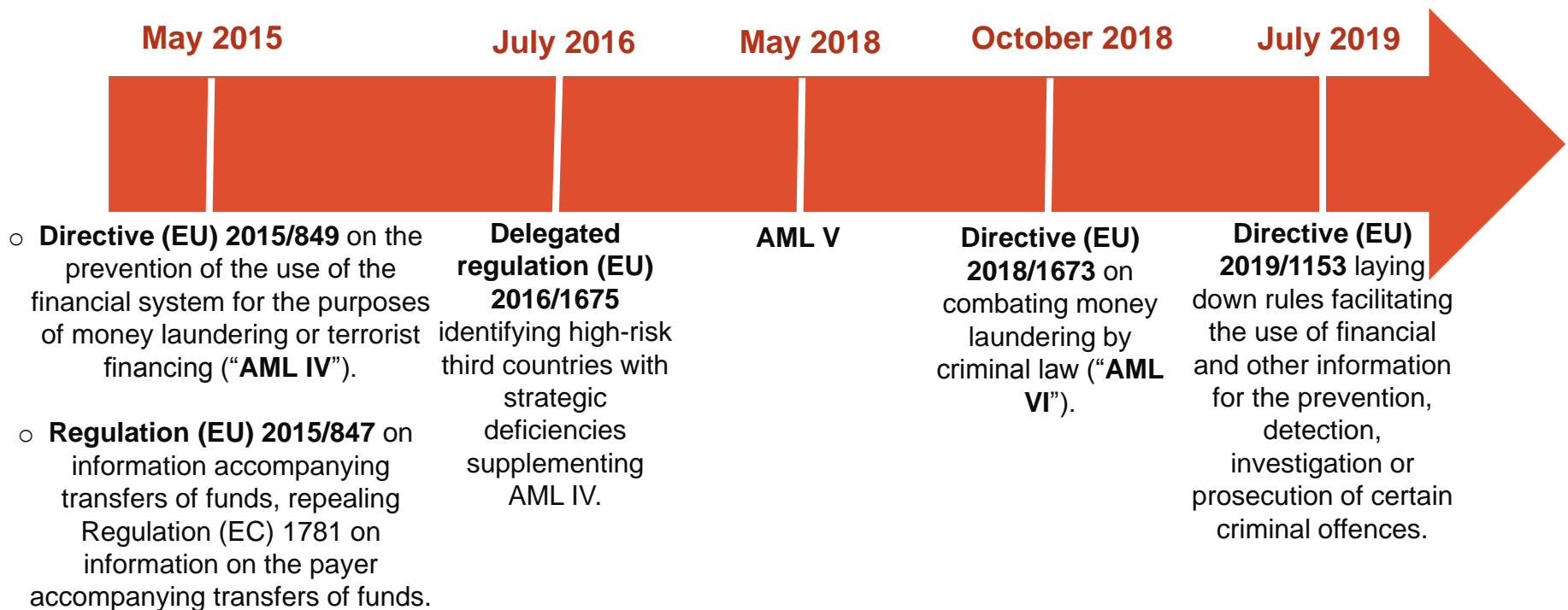
IV. Adequate internal organisation – new components !

V. New and enhanced supervisory and cooperation rules

I. Introduction

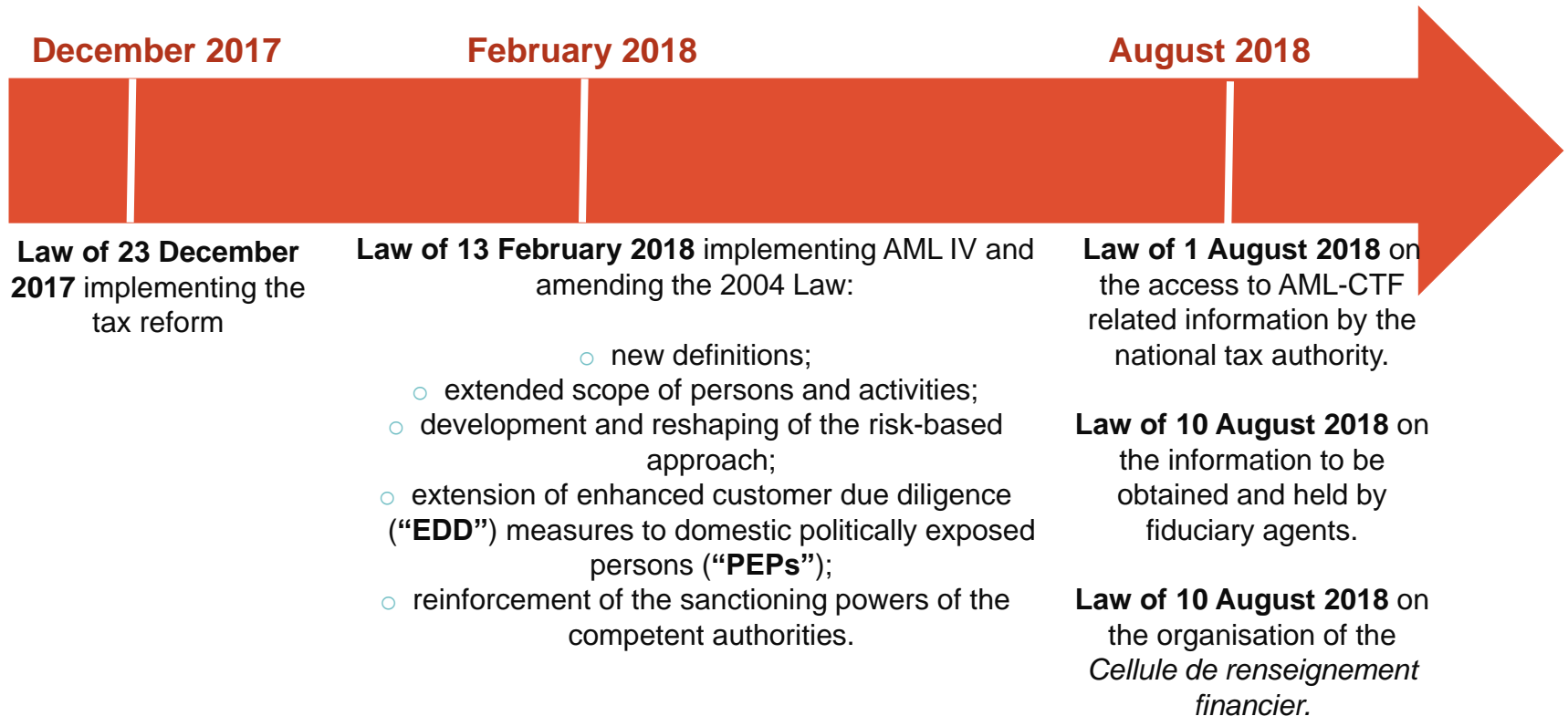
I. Introduction

1. Reminder: the Luxembourg AML-CTF framework has significantly evolved over recent years



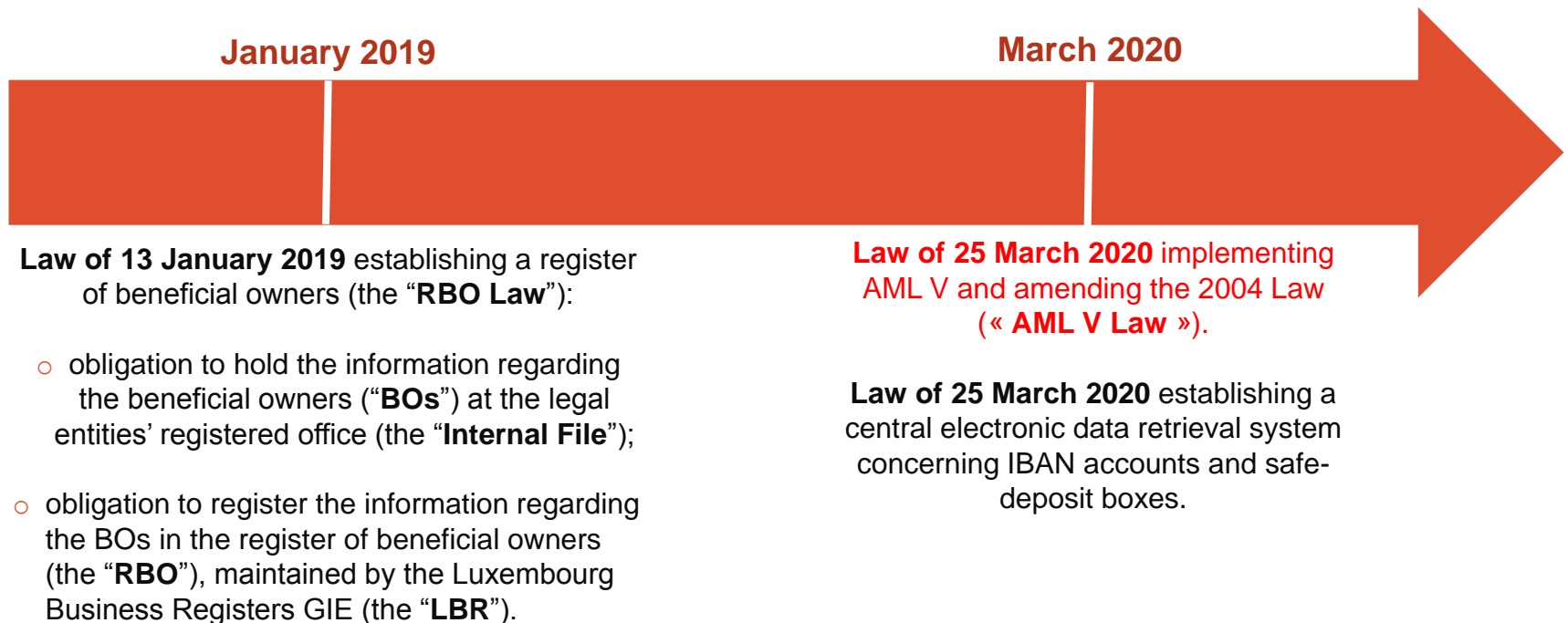
I. Introduction

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I. Introduction

2. What is the AML V Law about?

- Only part of a legislative package (30 March 2020)
- Implements AML V and amends the law of 12 November 2004 on the fight against money laundering and counter terrorism financing (the “**2004 Law**”)
- Some gold plating has been done !
- The main changes brought by the AML V Law affect all professionals subject to the 2004 Law, such as:
 - credit institutions;
 - investment firms and other professionals of the financial sector;
 - investment funds and their management companies;
 - insurance companies, etc.



I. Introduction

- The main changes entailed by the AML V Law are in essence the following :
 - extended scope of professionals subject to AML-CTF obligations, notably in the following sectors:
 - → trade of art
 - → real estate
 - → virtual assets and currencies;
 - limitation of the use of prepaid cards;
 - reinforcement of the CDD measures applicable to professionals, including new rules for EDD measures;
 - new rules for professionals relying on third parties for their CDD measures (*i.a.* the third party introducer regime);
 - reinforcement and alignment of the powers of self-regulatory bodies (*e.g.* *Institut des Réviseurs d'Entreprises*, *Ordre des avocats*) to the ones applicable for competent authorities; and
 - strengthening of both national and international cooperation powers between competent authorities and self-regulatory bodies.

A red, 3D-style stamp with the word "NEW!" in a bold, sans-serif font, tilted upwards to the right.

II. Scope

II. Scope

1. Extended scope of professionals subject to AML-CTF obligations

- **Persons trading or acting as intermediaries in the trade of works of art**
 - **(auction houses, art galleries...) \geq EUR 10.000**
- **Persons storing, trading or acting as intermediaries in the trade of works**
- **(freeports) \geq EUR 10.000**
- **Real estate agents (letting component – rent \geq EUR 10.000)**
- **Real estate developers acting as intermediaries with regard to purchase or sale**



II. Scope

1. Extended scope of professionals subject to AML-CTF obligations

- **Any person** who commits to provide, directly or via another person to whom s/he is related, **a material assistance or advice from a tax perspective** as a principal economic or professional activity;
- **Virtual asset service providers**
- **Custody and administration service providers**

Registration obligation with the CSSF

II. Scope

1. Extended scope of professionals subject to AML-CTF obligations (clarifications...)

- Although this was already provided for in the 2004 Law, the AML V Law emphasizes that the Luxembourg AML-CTF obligations apply to:
 - All **tied agents** as defined under Article 1 of the financial sector law of 1993;
 - All **agents** as defined under Article 1 of the payment services law of 2009;
 - all Luxembourg **branches** of professionals incorporated outside of Luxembourg;
 - All **professionals providing services into Luxembourg on a cross-border basis** without a physical presence in Luxembourg.

- All professionals who are now falling within the scope of the 2004 Law will thus **need to comply with all relevant AML-CTF obligations** contained in the 2004 Law (*i.a.* CDD obligations, internal organisation and cooperation obligations with competent authorities).



III. Professional CDD obligations – What's new?

III. Professional CDD obligations – What’s new?

1. Specifications in relation to CDD measures – Prepaid Cards

- **limits the use of prepaid cards and e-money by lowering the threshold** below which the simplified CDD measures may be applied from EUR 500 to **EUR 150**;
- provides that credit and financial institutions acting as acquirers must **only acquire payments made by means of anonymous prepaid cards issued in third countries** which meet requirements equivalent to those laid down in Article 3-1, paragraph 4, indents 1 and 2 of the 2004 Law (*i.a. third countries which represent a low risk of AML-CTF*).



III. Professional CDD obligations – What's new?

2. Specifications in relation to CDD measures – BO

- Specifications relating to the measures to be taken in relation to the identification and verification of the identity of BO of legal entities and other legal arrangements:
 - **Clarification of the methodology to be followed for the identification and verification of the identity of the BO of legal entities**
 - ✓ identification of the natural persons, if any, who ultimately hold a controlling interest (within the meaning of Article 1(7)(a)(i) of the 2004 Law) in a legal person ;
 - ✓ if there are doubts as to whether the persons having a controlling interest are the beneficial owners, or where no natural person exercises control through a participation, the identification of natural persons, if any, exercising control of the legal person by other means;
 - ✓ where no natural person can be identified, the identification of any relevant natural person who holds the position of senior managing official.
 - ✓ 'control by other means' now defined by reference to the law on commercial companies and in accordance with the a number of criteria.
 - **Documentation obligation of such verification process (including of any difficulty)**
 - **Similar clarification for trusts, fiduciary arrangements and other legal arrangements**
 - **When contracting with an entity subject to RBO registration – collecting proof thereof !**

III. Professional CDD obligations – What's new?

2. Specifications in relation to CDD measures - BO

- Specifications relating to the identification and verification of beneficiaries of life insurance contracts or other investment-related insurance contracts:
 - Requirement to **identify and verify the identity of the beneficiary of the life insurance contract** or other investment-related insurance **only where the relevant contract** was entered into or negotiated by the relevant bank or financial institution acting as intermediary.
 - This identification and verification must take place at the time of payout.
 - In case of partial or total assignment, the identification and verification must take place at the time of the assignment to the natural or legal person which receives for its own benefit the value of the contract.
 - The **beneficiary must be taken into account as a risk factor** when carrying out the risk assessment of the relevant relationship.

III. Professional CDD obligations – What's new?

3. Specifications in relation to CDD measures - Proxies

- **For all clients: measures to be taken regarding the identification and verification of the identity of any person acting in the name or on behalf of the customer**

- **For clients in the form of a legal entity or a legal arrangement: measures to be taken in order to ensure**
 - **a proper understanding of the nature of the customer's activity and the legal structure of the customer**
 - **verification of the name, legal form, existence (proof of incorporation or inception)**
 - **receipt of information on the main places of business, managers, managers of trustees...**

Alignment with article 20 of CSSF Regulation 12/02

III. Professional CDD obligations – What’s new?

4. Specifications in relation to CDD measures – Third parties

- Ensuring that the third party introducer meets the eligibility criteria of the 2004 Law (not new!)
- Prohibition from using third parties established in high-risk countries, with one exception (**mere clarification!**)
- **Ensuring that the third party**
 - **immediately** provides the information requested by Article 3;
 - **Appropriate safeguards are in place** to ensure that, upon request, the third party immediately provides the underlying documentation to that effect; and
 - **is subject to regulation, supervision and that it complies with the relevant CDD obligations under the 2004 Law.**
- **New criterion as regards the presumption of compliance in relation to group wide programs (risks related to high risk jurisdictions)**



III. Professional CDD obligations – What's new?

5. New technologies for CDD measures

- Recourse to electronic means of identification and verification of identity:
 - Clearer legal framework with respect to **electronic identification and verification of the identity** of the customer (and, where relevant, of the beneficial owners and agents).
 - The 2020 Law **enables the electronic identification and verification of identity via trusted services** as set out in Regulation (EU) No 910/2014, **or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authority.**



III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures – Transaction Monitoring

➤ Clarifications regarding transactions which must be subject to enhanced scrutiny:

- The AML V Law specifies the concept of « complex and usual transaction », which triggers EDD measures, through the inclusion of four alternative criteria:
 - **complex** transaction;
 - transaction with an **unusually high amount**;
 - transaction operated in an **unusual manner**;
 - the transaction **does not have an apparent economic/legal purpose**.
- Transactions which meet one or more of these criteria must also be subject to enhanced scrutiny by professionals, who must assess the context and objective of such transactions.



III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures - PEP

- Clarifications relating to the concept of politically exposed persons (“PEPs”):
 - The AML V Law has deleted the reference contained in the 2004 Law to the fact that a person is no longer considered as a PEP if such person has not been entrusted with prominent public functions for a year or more.
 - Professionals are thus **required to continue to apply an appropriate risk-based approach to a former PEP until the relevant person no longer presents a particular ML-TF risk and, in any case, for a minimum period of 12 months.**
 - The AML V Law also includes the relevant persons who will be listed on the list of PEPs to be published by the European Commission in the definition of PEP.



III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures - PEP

- Clarifications relating to the concept of politically exposed persons (“PEPs”):
 - Professionals, in connection with transactions or business relationships with PEPs, **must obtain an authorisation at a senior level before executing a transaction or entering into or maintaining a business relationship with such PEPs.**
 - Professionals must take **all appropriate measures to establish the origin of the assets and funds involved in the business relationship or transaction with such PEPs.**



III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures – High-Risk Countries

- Clarifications relating to the measures to be taken in relation to transactions involving high-risk countries:
- The AML V Law provides for a new definition of “**high-risk countries**”:

“a country that appears on the list of high-risk third countries identified pursuant to Article 9(2) of AML V or designated as higher risk by the FATF as well as any other country that the supervisory authorities and professionals consider in the context of their assessment of money laundering and terrorist financing risks as a high-risk country on the basis of the geographical factors set out in Annex IV (of the 2004 Law)”



III. Professional CDD obligations – What's new?


6. Clarifications in relation to EDD measures – High Risk Countries

- Clarifications with respect to **the measures to be taken by professionals carrying out transactions involving high-risk countries:**
 - a **minimum set of EDD measures to be taken** by professionals when facing a relationship involving *i.a.* a customer in a high risk-country,
 - **countermeasures to be applied in relation to transactions involving high-risk countries:**

III. Professional CDD obligations – What's new?

6. Clarifications in relation to EDD measures – role of competent authorities

- The AML V Law provides for **measures which may be taken by national competent authorities and self-regulatory bodies towards high-risk countries**, such as:
 - refusing the establishment of subsidiaries or branches or representative offices of entities from such countries, or otherwise taking into account the fact that the relevant entity is from a country that does not have an adequate AML-CTF regime;
 - prohibiting entities subject to the 2004 Law from establishing branches or representative offices in such countries, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have an adequate AML-CTF regime;
 - requiring increased supervisory examination or increased external audit requirements for subsidiaries and branches located in such countries;
 - requiring increased supervisory examination or increased external audit requirements for financial groups with respect to all their subsidiaries and branches located in such countries;
 - obliging credit and financial institutions to review and modify or, if necessary, terminate correspondent relationships with client institutions in such countries.

-  Such measures **must be notified to the European Commission** prior to their implementation.

III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures – Correspondent Banking

- Extension of EDD measures to be applied to correspondent banking relationship:
 - The AML V Law has abandoned the distinction between correspondent banking relationships with respondent institutions located in third countries or Member States presenting higher risks of ML-TF and **now requires the application of EDD measures to all correspondent banking relationships, irrespective of the country in which the respondent is located.**



III. Professional CDD obligations – What’s new?

6. Clarifications in relation to EDD measures – Correspondent Banking

- Extension of EDD measures to be applied to correspondent banking relationship:
 - Professionals involved in **cross-border correspondent banking relationships and similar relationships with a client institution** must:
 - know whether such institution has been **subject to investigation or action by a supervisory authority**;
 - **clearly understand and document their respective AML-CTF responsibilities**;
 - with respect to “payable-through” accounts, ensure that the respondent institution **has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts** of the respective credit, financial or other institution involved, and that it is able, upon request, to provide relevant customer due diligence data and information to the correspondent institution; and
 - **not enter into or maintain a corresponding relationship with a shell bank or with an institution known to enable a shell bank to use its accounts.**

IV. Adequate internal organisation – new components !

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1. Internal organisation and intra-group policies

➤ Reinforcement of the internal organisation processes

- **Internal control functions**, including internal audit functions, must have **sufficient resources and independence to ensure the verification of all relevant procedures, policies and control measures**.
- The compliance officer and other relevant staff must have **timely access to customer identification and other due diligence information, transaction records and other relevant information**.
- Professionals must act independently, implement **appropriate procedures when hiring employees** according to applicable criteria of honorability, competence and experience and **set up special ongoing training** programs for employees and members of the management bodies and directors.

IV. Adequate internal organisation – new components !

1. Internal organisation and intra-group policies

➤ Reinforcement of the internal organisation processes

- The AML V Law specifies that policies and procedures at the level of the group must:
 - be implemented effectively and in an appropriate manner, taking into account in particular the identified ML-TF risks;
 - make available to the compliance and internal audit functions at the level of the group information only on AML-CTF findings from branches and subsidiaries and provide adequate guarantees regarding the confidentiality and use of the information exchanged.
- Professionals operating establishments in another Member State are required to apply measures that are at least equivalent to both national and European obligations and to list explicitly the measures for the retention of the relevant information and documents.

IV. Adequate internal organisation – new components !

2. Specifications in relation to Risk Assessment

- Special focus on the need and components of the risk assessment
 - Take appropriate measures **to identify, assess and understand** the money laundering and/or terrorism (“**ML-TF**”) risks they present;
 - Take into account **all relevant risk factors** before assessing their global risk level
 - Identify the types of **mitigation measures** to be implemented when carrying out their own risk assessment
- This risk assessment must take into account **the national and supranational risk assessment**



V. New and enhanced supervisory and cooperation rules

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Enhanced supervisory powers and cooperation between the competent authorities

- **Whistleblowing:** implementation of more efficient mechanisms to encourage internal and external whistleblowing in relation to potential or actual violations of AML-CTF obligations
- **Protective legal** regime has been further improved for whistleblowers
- The **supervisory and sanctioning powers of self-regulatory bodies** have been aligned with the relevant powers of the other national competent authorities (such as the CSSF, the *Commissariat aux Assurances* (“**CAA**”) or the *Administration de l’Enregistrement et des Domaines*).
- Clear cooperation framework between various supervisory authorities, i.a.
 - Competent authorities - self-regulatory bodies - *Cellule de Renseignement Financier*
 - *CSSF and CAA in respect of banks and financial institutions (prudential supervision and AML-CTF purposes / national level)*
 - *CSSF, CAA and competent supervisory authorities at EU level*
 - *Competent authorities and self-regulatory bodies and their foreign counterparts*

QUESTIONS & ANSWERS

Thank you for your attention!



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