New AML/CFT Package: a selection of bits and pieces for the industry

In collaboration with

Arendt / ABBL

Arendt House

5 June 2024

In collaboration with

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I. Key insights on the industry's close lobbying process

With Camille Seillès - Secretary General at ABBL

Advocacy insights on the new AML/CFT Package

ABBL/Arendt conference of 5 June 2024

Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

Key advocacy priorities on the EU package

Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

Harmonization of the professional obligations framework

Risk-based Approach and Proportionality

Consistency with International Standards and Data Protection

35 advocacy meetings

Advocacy outcomes…

Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

Beneficial owner threshold

The 25% FATF threshold has been eventually upheld against a strong push at the level of the European Parliament to bring it down to a much lower value.

High net worth customers

Softer provisions in line with the risk-based approach have been eventually adopted against proposals to introduce such a category of customers with specific obligations on obliged entities.

Possibility for MS to impose EDD if high risks spotted at national level

This leeway for Member States is at odd with the objective of a single rulebook. The obligation for MS to notify AMLA coupled with an expected propensity of the AMLA for making rules could, however, constitute a bullwark against excessive fragmentation.

Data retention period

Advocacy efforts to limit the data retention period for AML purposes were not successful.

II. First impressions and views

With Mathilde Girard - Banking Supervision - AML/CFT expert at CSSF

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AML Package

Anti Money Laundering Authority (AMLA)

05 June 2024

cssf

Commission de Surveillance
du Secteur Financier

Agenda

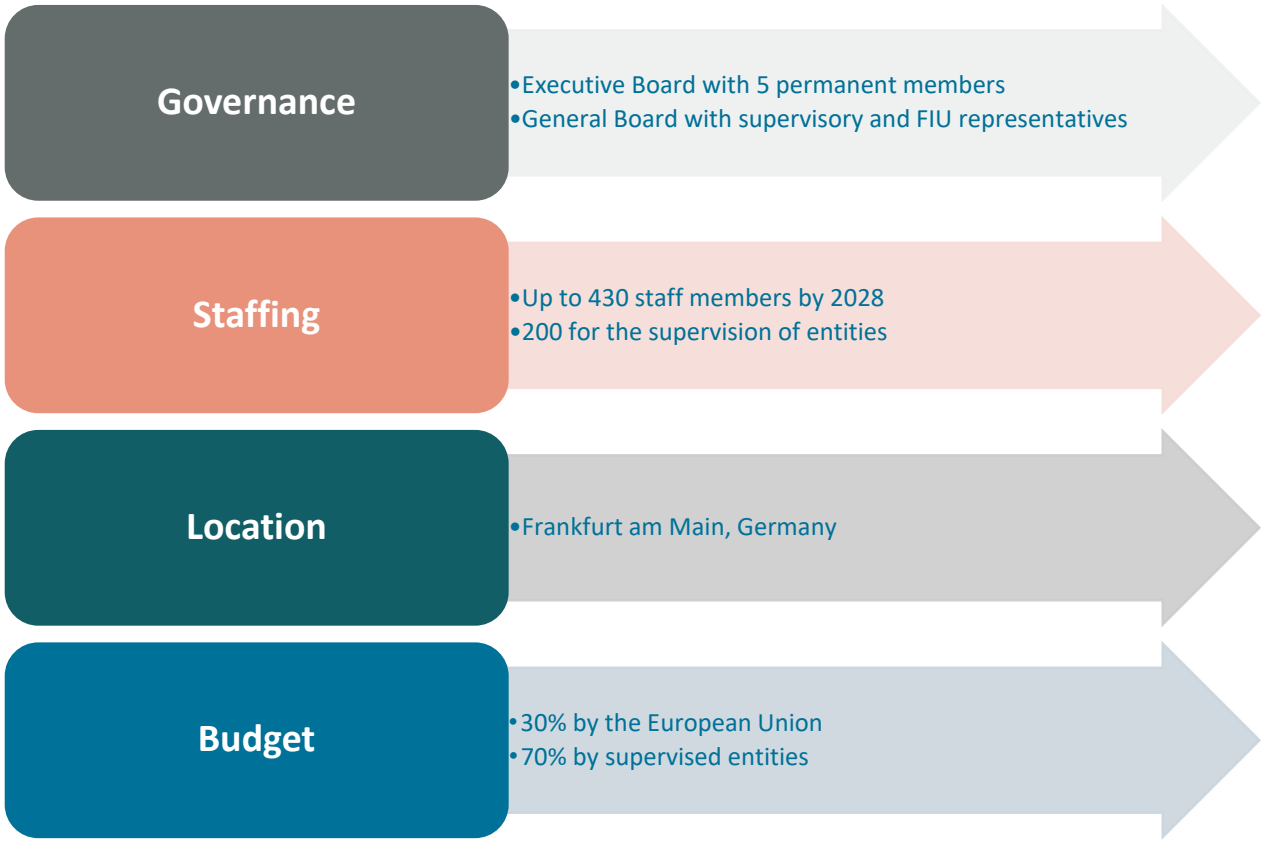
- Few words about AMLA
- Missions
- Powers
- Supervision of entities
- Timeline
- AMLD6 and the Central Register of Bank Accounts

Few words about AMLA

Why setting up AMLA?

- Closing the gaps in the implementation of the existing framework → harmonised rules
- Ensure effectiveness of the implementation of the AML/CFT framework
- Protect the single market to ensure proper functioning → cross-border nature of financial crimes
- Protect public interest

Key facts



Mission

Prevention

- Monitoring of ML/TF/PF threats, vulnerabilities and risks
- Monitoring of developments in third countries

Risk assessment

- Support ML/TF risk analyses
- Perform ML/TF risk analyses

Convergence

- Harmonised rules, best practices and recommendations
- Training & awareness
- Ensure effective implementation of rules by AML/CFT supervisors

Mission

Supervision

- Direct supervision of selected entities exposed to higher ML/TF risk
- Indirect supervision of non selected entities
- Central database

Cooperation & mediation

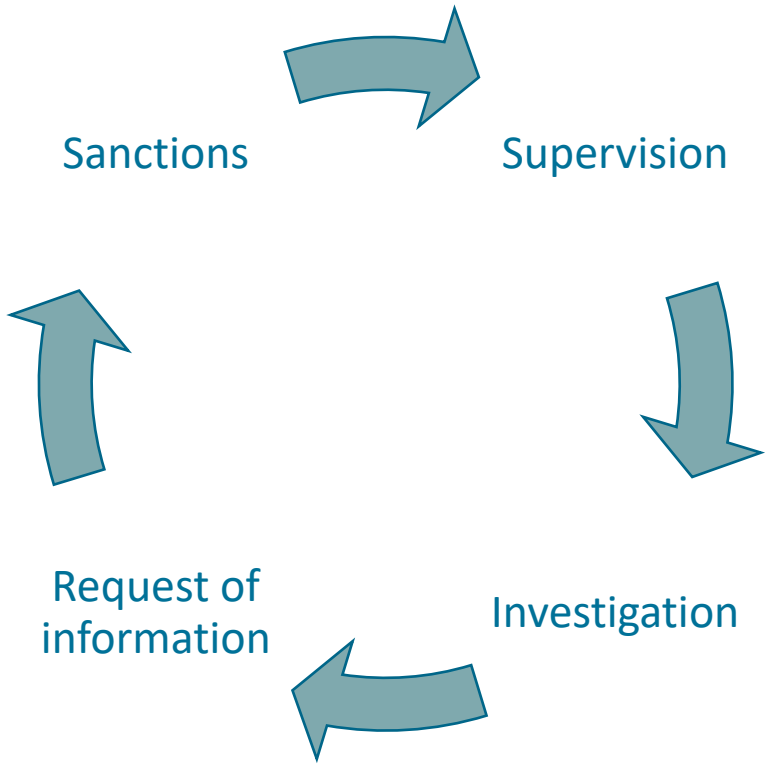
- Support and facilitate cooperation between competent authorities
- Mediation in case of disagreement between competent authorities

Support of FIUs

- Facilitate cooperation, information exchanges among FIUs
- Identification of best practices

Powers

- At the level of the supervised entities:



- Vis-à-vis AML/CFT supervisory authorities:
  - Assessment/peer reviews
  - Information
    - Statistics
    - Any information deemed as relevant
  - Request for assistance
  - Assistance and mediation
  - Order to execute

- And also…
  - Act as standard setter for financial entities
  - Facilitator for the cooperation between FIUs

Supervision of entities

What ?

- Determination of selected entities → high ML/TF risk exposure
- Harmonised risk scoring methodology
- Harmonised collection of data

- At group level and at entity level
- Harmonised supervisory methodology
  - Off-site measures
  - On-site inspections
- AML/CFT colleges

- Specific ML/TF risks identified
- Across jurisdictions
- Among a number of selected entities

Supervision of selected entities

How?

Joint supervision

- Set up of joint supervisory team for each selected entity
- Composed of members of AMLA and members of the national supervisory authorities
- Coordinated by AMLA

AML/CFT colleges

- Establish colleges where deemed as relevant and even if criteria not met
- Facilitate the organisation and the functioning
- Permanent member's rights

National supervisory authorities

- Collaborate and elaborate methodologies and supervisory approach
- Collaborate on regulatory policies and recommendations
- Remain the main contact point of entities
- Collect and report data

Central database

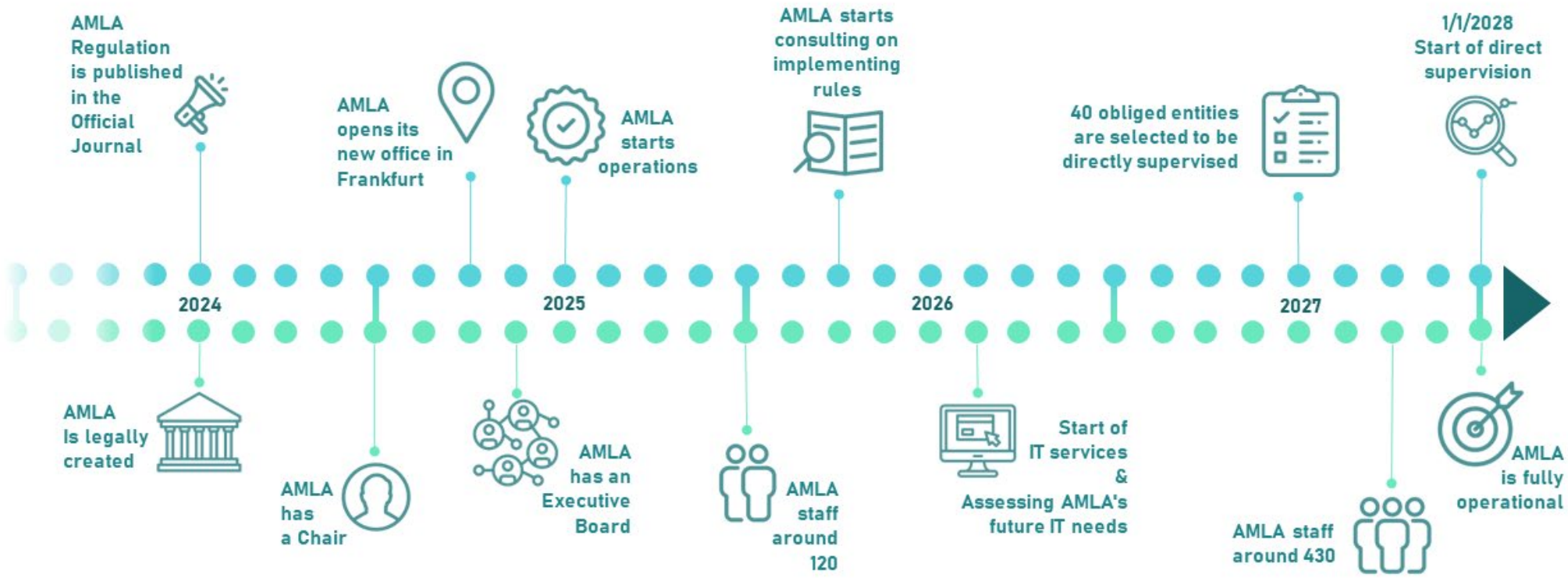
- Statistics: entities by risk scoring, supervisory measures, sanctions…
- EuReCA: central register of serious/material weaknesses or potential breaches including remediation plan

Supervision of selected entities

Who?

- Selected entities
  - Credit institutions, financial institutions, group of credit institutions or financial institutions
- At least 40 entities
  - But can extend the selection to a specific number of selected entities that is greater than 40
- Criteria
  - High residual ML/TF risk exposure
    - Risk factors: customers, products and services, transactions, geographical areas
    - Including the assessment of the quality of the mitigation measures
  - Operating in the largest number of EU Member States
    - Through an establishment or via freedom of services
  - Highest ratio of volume of transactions with third countries
- For a 3-year period

Timeline: key dates



[AMLA - European Commission (europa.eu)]

AMLD6

Central Register of Bank Accounts

Today

- Reporting of accounts identified by IBAN
- CSSF
  - Maintenance of the register
  - Supervision: ensure daily upload process is effective and controls are performed on a regular basis by obliged entities
- CRF
  - Main user → speed up of the investigation (immediate and unfiltered access)

Tomorrow

- CSSF role: the same
- Extension of the scope
  - Payment accounts, bank accounts identified by an IBAN ***including Virtual IBAN,*** **securities accounts, crypto-assets accounts** and safe-deposit boxes
- Inter-connection of register of all EU Member States
  - Cross-border access information for the FIUs

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Commission de Surveillance
du Secteur Financier

Thank you for your attention

II. First impressions and views

With Julien Leroy - Référendaire de justice (responsable de conformité) at CRF and
Elodie Schmidt - Référendaire de justice at CRF

In collaboration with

The new AML package

From an FIU perspective

PARQUET GÉNÉRAL
DU GRAND-DUCHÉ DE LUXEMBOURG
CRF - Cellule de renseignement financier

The role of the FIU

Obliged entities

Suspicious declarations

FIU

"fit for prosecution"

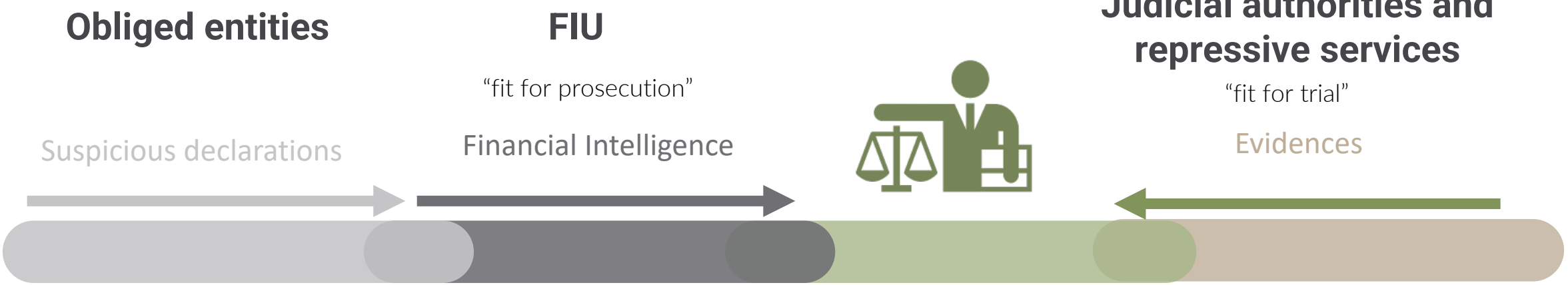
Financial Intelligence

Prosecutor's office

Judicial authorities and repressive services

"fit for trial"

Evidences



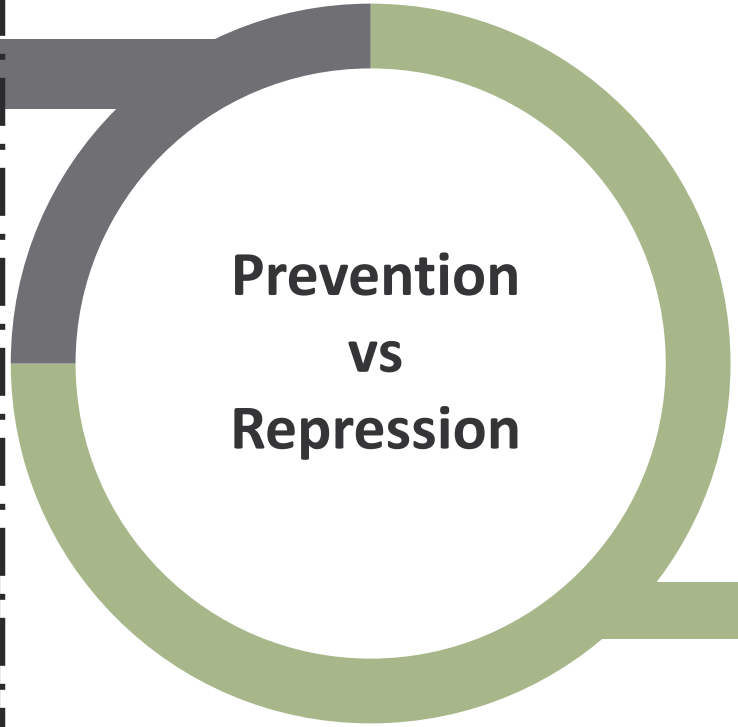
Prevention vs. Repression

PREVENTION

PROFESSIONAL OBLIGATIONS

- The obligation to carry out a risk assessment
- Due diligence obligation
- The obligation of adequate internal organization
- Cooperation obligation

Amended law of 12 November 2004 on the fight against money laundering and terrorism financing



REPRESSION

MONEY LAUNDERING

- Art. 506-1 of the Criminal Code
- Art. 8-1 of amended Law of 19 February 1973 regarding the sale of medicinal substances and the fight against drug addiction

TERRORISM FINANCING

- Art. 135-5 and following of the Criminal code

AML package from an FIU perspective

Cooperation

Harmonisation

Reinforcement

AML Authority

SUPERVISION

Coordinating national supervisor to reach an harmonized and common application of the EU rules

FIUs

Enhancing cooperation among Financial Intelligence Units to improve their analytical capacity around illicit flows and make financial intelligence a key source for law enforcement authorities.

Access to information

- FIU should act as a single central national unit, operationally independent and autonomous
- Immediate and direct access to financial, administrative information and direct or indirect access to law enforcement information
- Timely access to relevant information such as the Bank Account Registers Interconnection System (BARIS) single access point to be developed and operated by the Commission

For further insights, please refer to article 21 of the AMLD6

Withholding of consent

- FIUs may suspend or withhold consent to a transaction or suspend an account.
- For urgent action taken by the FIU on its own initiative or at the request of an other EU FIU.
- Prevent the flight of suspect funds or assets beyond the reach of national law enforcement and prosecutorial authorities during the time it takes for those national authorities to seek and obtain a freezing or seizing order from the judicial or other competent authorities
- The suspension shall be imposed on the obliged entity within 3 working days of receiving the suspicious transaction report in order to analyze the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities.
- The suspension cannot exceed a period of a maximum of 10 working days from the day of the imposition of such suspension to the obliged entity. If longer period chosen by MS, possibility of challenge before court should be granted to suspect (5 working days for crypto assets and business relationship).
- Obliged entities may carry out the transaction concerned after having assessed the risks of proceeding with the transaction if they have not received instructions to the contrary from the FIU within 3 working days of submitting the report.(art.71 AMLR)
- From a Luxembourg perspective : withholding of consent vs. article 5 (3) 2004 law?

For further insights, please refer to article 24 of the AMLD6

Cooperation and information sharing

- Duty to share information : Spontaneous or upon request exchange of information between FIUs is confirmed under AMLD6 but has been improved.
- Principle of equivalence : The FIU to whom the request is made is required to use all powers which it would normally use domestically for receiving and analyzing information.
- Deadline: 5 days that may be extended to 10 days.
- Necessary elements : Facts, background information, reasons for the request, links with the country of the requested FIU and how the information sought will be used.
- Template for exchange : AMLA will setup common technical standards, adopt a common format for the exchange of information, set up the relevant factors to be taken into account when determining whether a report concerns another MS, the procedure to be put in place when forwarding and receiving the report as well as the follow-up to be given.
- Principle of territoriality: if additional information is requested from an obliged entity that is established in another Member State, the request should be made through the FIU where the obliged entity is located.
- Limits: no sanction in case of non cooperation. However, collegiality in the General board of AMLA composed of heads of FIUs may foster cooperation

For further insights, please refer to article 31 of the AMLD6

Cooperation through joint analysis

- Origin and goal: Introduced by AMLD4 as an alternative to ordinary cooperation on information
- FIUs staff: Conducted by staff of different FIUs. Staff designated by FIUs assisted by AMLA
- Mainly performed in case of complex cross-border files
- Advantage : immediate information sharing and contextual analytical activity
- Joint analyses framework provided by AMLA : the Authority will set up common procedures and IT solutions as well as methods and criteria for the selection and prioritization of cases relevant for the conduct of joint analyses
- Acceptance: FIUs should make every effort to accept the Authority's invitation to take part in a joint analysis. An FIU that declines to take part in a joint analysis should provide sufficient justification:
- Access to information : Upon express consent of the FIUs involved, AMLA may have access to the information.
- Outcome: transmitted to EPPO and OLAF (may be extended to Europol and Eurojust)

For further insights, please refer to article 32 of the AMLD6 and 40 AMLAR

Use of FIU.net

- Secured channel : FIU.net is a secured channel of communication used by EU FIUs to exchange information.
- Hosting : FIU.net is hosted by the Commission and soon by AMLA (article 47 AMLAR)
- Scope : information exchanged among intra-EU FIU but also communications with FIUs' counterparts in third countries and with other authorities and with Union bodies, offices and agencies
- Increase data protection : FIU.net will propose a robust framework in terms of DP especially when the network will be open to information coming from countries with a lower level of protection
- Limits : As AMLA is not an EU centralized FIU, certain intelligence will not be not be communicated and AMLA will be limited to maintenance.

For further insights, please refer to article 30 of the AMLD6

Reporting made to the FIU: a few novelties introduced by the (EU) AML Regulation compared with the AML Law of 12 November 2004

1) Will the current definition set for reporting and cooperation with the FIU remain unchanged?
2) What about the reporting to the FIU for branches?
3) Intra-group rules unchanged?
4) Delays when reporting to the FIU?
5) "Priorisation, relevance and quality": any novelties here?
6) Feedback of the FIU to the supervisory authorities…
7) Refraining from carrying out transactions
8) New upcoming EU standards for reporting ?

(1) Comparing the definitions : Art. 69 (1) AMLR *vs* Art. 5 (1) of the AML/CFT Law of 12 November 2004

*Reporting still based on "**SUSPICION**"*

Art. 5, 1 (a) AML Law: "(…) the professionals (…) are required to:

(a) inform promptly, on their own initiative, the Financial Intelligence Unit (…) when they know, suspect or have reasonable grounds to suspect that money laundering, an associated predicate offence or terrorist financing is being committed or has been committed or attempted, (…)"

(…) "in particular in consideration of the person concerned, its development, the origin of the **funds**, the purpose, nature and procedure of the operation".

vs Art. 69(1) AMLR: "Obliged entities, and, where applicable, their directors and employees, shall cooperate fully with the FIU by promptly:

(a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that **funds** *or activities*, regardless of the amount involved, *are the proceeds of criminal activity or are related to terrorist financing or criminal activity* and by responding to requests by the FIU for additional information in such cases";

(1) Comparing the definitions: Art. 69 (1) AMLR *vs* Art. 5 (1) of the AML/CFT Law of 12 November 2004

→ *Customer Due Diligence*

Art. 5, 1 (a) AML Law:

"All suspicious transactions, including attempted suspicious transactions, shall be reported, regardless of the amount of the transaction."

Art. 69 (1) (*fourth para.) AMLR :*

"All suspicious transactions, including attempted transactions and suspicions arising from the inability to conduct customer due diligence shall be reported in accordance with the first subparagraph".

- AMLR now **expressly mentions** that the inability to conduct CDD shall be reported to the FIU … (SARs)
- **Systematic reporting** to the FIU?
- **Onboarding** Customers **periodic reviews**?

(2) Scope of application: Quid for the reporting of Branches?

CURRENTLY:

✓ AMLD V: Transmission of the information "to the FIU of the MS in whose territory the obliged entity is established" (Art. 33, (2)).

✓ AML Law: "The scope of application (of the Law) and the notion of professional also includes **branches in Luxembourg of foreign professionals** as well as professionals established under the laws of foreign countries who supply services in Luxembourg without establishing any branch in Luxembourg" (Art. 2 *in fine*)

QUID AMLR?

✓ The compliance officer shall transmit the information "to the FIU of the Member State in whose territory the obliged entity transmitting the information is established"(Art. 69 (6) AMLR)

→ = Same as AMLD V!

✓ Definition of credit institution in AMLR **also including branch** *("of a credit institution, when located in the Union, whether its head office is located in a MS or in third country ")*.

TERRITORIALITY PRINCIPLE REMAINS

See however provisions re. "partnership for information sharing":

WHO will report ? (…)

(*Art. 69(8) of the AMLR*)

(3) Quid intra-group sharing for STRs ?
(exception to the communication ban)

AMLD V:

✓ "The prohibition (*no to tip off*) **shall not prevent disclosure between the credit institutions** and financial institutions from the Member States **provided that they belong to the same group** (…)" *(Art. 39 (3))*

AML Law :

✓ **Transposed quasi identically !**

(*See Art. 5, para. (5) & (6)):*
+ recall: Information reported to the FIU shall be shared within the group, unless otherwise instructed by the FIU

vs AMLR:

✓ "By way of derogation from (…) (*the non tipping off obligation*), disclosure may take place **between obliged entities that belong to the same group**, (…)"

NO CHANGES TO THE INTRA-GROUP EXCEPTION

(4) Delays for reporting to the FIU: Distinguishing between STRs/SARs and Requests for information

(A) SARs/STRs:

Art. 5, 1 (a) AML Law: "(…) the professionals (…) are required to: (a) inform **promptly** *("sans délai"),* on their own initiative, the Financial Intelligence Unit (…) when they know, suspect or have reasonable grounds to suspect that money laundering, an associated predicate offence or terrorist financing is being committed or has been committed or attempted, (…)"

QUID AMLR?

Recital 140 (AMLR): "FIUs should be able to obtain **swiftly** from any obliged entity all the necessary information relating to their functions" (…)

Art.69(1) (AMLR): "Obliged entities, and, where applicable, their directors and employees, shall cooperate fully with the FIU **by promptly**: (a) **reporting** to the FIU (…)

✓ No changes here:
STRs/SARs shall be reported "promptly"

(4) Delays for reporting to the FIU: Distinguishing between STRs/SARs and Requests for information

(B) FIUs Requests of information:

Art. 5, 1 (b) AML Law: "(…) the professionals (…) are required to "provide without delay, to the Financial Intelligence Unit, at its request, any information. This obligation includes the submission of the documents on which the information is based. information requests that are based on sufficiently defined conditions".

QUID AMLR?

Recital 141 AMLR: "Obliged entities should reply to a request for information by the FIU as soon as possible and, in any case, within 5 working days of receipt of the request or any other shorter or longer deadline imposed by the FIU. In justified and urgent cases, the obliged entity should reply to the FIU's request within 24 hours (…)".

Art. 69 (1) AMLR: "(…) obliged entities shall reply to requests for information by the FIU within 5 working days. In justified and urgent cases, FIUs may shorten that deadline, including to less than 24 hours.

By way of derogation from the third subparagraph, the FIU may extend the deadline for a response beyond the 5 working days where it considers it justified and provided that the extension does not undermine the FIU's analysis".

- ✓ NEW: Moving from "without delay" to "within 5 working days" Or even: "less than 24 hours" (TF?)
- ✓ FIUs derogations (extension of delays for NRIs)

(5) Priorisation, relevance and quality – anything new?

Art. 69 (2) AMLR: "For the purposes of paragraph 1, obliged entities shall assess transactions or activities carried out by their customers on the basis of and against any relevant fact and information known to them or which they are in possession of. Where necessary, obliged entities shall prioritise their assessment taking into consideration the urgency of the transaction or activity and the risks affecting the Member State in which they are established".

- ✓ Applying the Risk Based Approach in terms of priorisation
- ✓ Assessment to be based on relevant facts & info

"A suspicion pursuant to paragraph 1, point (a), shall be based on the **characteristics of the customer** and their counterparts, the **size and nature of the transaction or activity** or **the methods and patterns** thereof, the link between several transactions or activities, **the origin, destination or use of funds**, or any other circumstance known to the obliged entity, including **the consistency of the transaction or activity** with the information obtained pursuant to Chapter III including the risk profile of the client".

- ✓ NOVELTY HERE: EFFICIENCY IN THE REPORTING!
- ✓ CURRENTLY NO DETAILS in Art. 5 of the AML Law…
- ✓ BUT *CRF* Guidelines re. suspicious operations report, in Methodology: use INDICATORS !

(6) Speaking of quality ….Feedback of the FIU to the national supervisors (AMLD VI)

Art. 23 (1), AMLD VI: "Member States shall ensure that FIUs provide supervisors, spontaneously or upon request, information that may be relevant for the purposes of supervision (…), including at least information on*":*

- ✓ **Quality** & quantity **of STRs** reported
- ✓ **Quality** & timeliness **of responses** by obliged entities
- ✓ Result of strategic analyses

Art. 23 (2)), AMLD VI:

"Member States shall ensure that **FIUs notify supervisors whenever information in their possession indicates potential breaches** by obliged entities of Regulations (EU) 2024/…+ and (EU) 2023/1113".

Obliged entities to carefully pay attention to the quality of their reporting & adherence to their AML/CFT professional obligations under AMLR and FTR recast !

(7) Refraining from carrying out suspicious transactions

AML LAW:

- ✓ **Art. 5 (3) AML Law**: **Refrain** from carrying out suspicious transactions **until informing** the FIU and comply with its instructions
- ✓ As long as no freezing order issued by the FIU, professional may under its own responsibility execute the said transaction (CRF *STRs guideline, point 3.2*)
- ✓ If freeze communicated orally, written communication within 3 business days
- ✓ CRF may at any time order partial/total withdrawal of the freeze.

QUID AMLR?

✓**Art. 71 (1) AMLR: Same principle:**

"Obliged entities shall **refrain** from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing **until they have submitted** a report (…)" and complied with FIU instructions.

→ ***SLIGHT CHANGE:***

✓"Obliged entities **may carry out the transaction** concerned after having assessed the risks of proceeding with the transaction if they have not received instructions to the contrary from the FIU **within 3 working days** of submitting the report".

(8) New standards to be used for reporting? (SARs/STRs & Requests for information)

Given that the structure and content of STRs have a direct impact on FIU's capacity to conduct analysis & cooperation…

✓ "(…) **AMLA** should **develop draft implementing technical standards** specifying a **common template for the reporting of suspicious transactions** to be used as a uniform basis throughout the Union" (*recital 139 & Art. 69 (3) of the AMLR*)

Due to a lack of harmonisation re. the provision of financial transactions to FIUs (transactions records in various format, not usable for analysis)….

✓ "(…) AMLA should develop draft implementing technical standards specifying a **common template for the provision of transaction records by credit institutions and financial institutions** to FIUs to be used as a uniform basis throughout the Union" (*recital 140 of the AMLR*)

✓ *Also confirmed in recital 78 of the AMLD VI (re. STRs)*

Contacts

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In collaboration with

III. Potential impacts of the new package

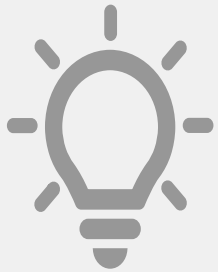
With Manfred Hoffmann - Counsel at Arendt & Medernach, Glenn Meyer - Partner at Arendt & Medernach and Sandrine Périot - Partner at Arendt Regulatory & Consulting

AGENDA:

1. THE NEED OF A NEW PACKAGE OF AML/CTF MEASURES

2. KEY CHANGES
    1. ARTICLE 3: SCOPE
    2. ARTICLE 10: BUSINESS WIDE RISK ASSESSMENT+ ANNEX I: RISK VARIABLES
    3. ARTICLE 11: ROLE OF THE COMPLIANCE FUNCTIONS
    4. ARTICLES 16+26(1): GROUP WIDE REQUIREMENTS
    5. ARTICLE 18: OUTSOURCING
    6. ARTICLE 19(1)(2)(6): CDD REQUIREMENTS, WHEN?
    7. ARTICLE 20+26(2): CDD REQUIREMENTS, WHAT IT MEANS?
    8. ARTICLE 33: SDD REQUIREMENTS
    9. ARTICLES 34-46: EDD REQUIREMENTS
    10. ARTICLES 51+52(1)(2): BENEFICIAL OWNERSHIP
    11. ARTICLES 53+66: NOMINEE OBLIGATIONS
    12. ARTICLE 67: FOREIGN LEGAL ENTITIES AND FOREIGN LEGAL ARRANGEMENTS

The need of a new package of AML/CTF measures



Why a new European AML package ?

Growing consensus that the AML/CTF framework needs to be **significantly improved**.

Fragmentation of the EU AML/CTF supervision system results in different interpretations and practices across Member States	Recent alleged money laundering cases involving EU credit institutions revealed substantial incidents and failures by credit institutions to comply with the AML/CTF requirements
Weaknesses in the cooperation between national regulators, national Financial Intelligence Units ("FIU") and EU authorities	New vulnerabilities linked to technological innovation need to be tackled (e.g. virtual currencies, more integrated financial flows in the Single Market and the global nature of terrorist organizations)

2024 → 2024 - 2028

On 18 January 2024, provisional agreement by the Council and Parliament on parts of the European Commission's EU AML Package, ie., the AML/CTF Regulation (the "EU Single Rulebook") and the 6th AML Directive ("AMLD6").

On 22 February 2024, the Council and the European Parliament representatives reached an agreement on the seat of the future European authority for countering money laundering and terrorist financing (AMLA). AMLA will be based in Frankfurt and will begin operations mid- January 2025.

Following the adoption by the EU Parliament, the Council has adopted subsequently **on 31 May 2024**, the above-mentioned three texts of the AML/CTF Package. Publication in the Official Journal of the European Union should follow.

AMLA will enter into force 7 days after publication whereas AMLR and AMLD6 will enter into force 20 days after publication.

The application of the new AMLR is anticipated by **mid-2027**, concurrently with EU-Member States beginning to apply AMLD 6.

EU Member States will have 2 years to transpose certain parts of AMLD6 and 3 years for others.

The AML/CTF Authority should assume most of its tasks and powers by **mid-2025** and commence direct supervision of selected obliged entities as of **2028.**

Chapter I, section 2: Scope

Article 3

Scope

Future situation

New EU wide ban on cash payments exceeding EUR 10 000! (lower limits possible!)

- ~~persons trading in goods for which payments are made in cash exceeding EUR 10 000~~

- **Most obliged entities under AML/CTF Law remain the same, but new categories have been added:**

- **persons trading, as a regular or principal professional activity, in precious metals and stones (Annex V) or in high-value goods (Annex IV);**







- estate agents and other real estate professionals to the extent they act as intermediaries in real estate transactions, including in relation to the letting of immovable property for transactions for which the monthly rent amounts to at least EUR 10 000 or the equivalent in national currency, **irrespective of the means of payment**;

- **crowdfunding service providers and crowdfunding intermediaries;**

- persons storing, trading or acting as intermediaries in the trade of cultural goods **and high-value goods**, when this is carried out within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;

Chapter I, section 2: Scope

Article 3

Scope

Future situation

- **credit intermediaries for mortgage and consumer credits**, other than credit institutions and financial institutions, with the exception of the credit intermediaries carrying out activities under the responsibility of one or more creditors or credit intermediaries;

- **investment migration operators** permitted to represent or offer intermediation services to third-country nationals seeking to obtain residence rights in a Member State in exchange for any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity to the public good and contributions to the state budget;

- **non-financial mixed activity holding companies**;

- **football agents** and **professional football clubs (the latter only for certain transactions)** :
  i. transactions with an investor;
  ii. transactions with a sponsor;
  iii. transactions with football agents or other intermediaries;
  iv. transactions for the purpose of a football player's transfer.

- What about **UCIs**

Chapter II, section 1: Internal policies, procedures and controls of obliged entities

Article 10

Business wide risk assessment

Current situation

- Obligation for professionals to take appropriate steps to identify, assess and understand the ML/TF risks of their business activities. Those steps shall be proportionate to the nature and size of the professionals.
- Use of different sources:
  - ✓ Combination of risk factors and risk variables as defined in the AML/CTF Law;
  - ✓ the information on the risks included in the national and supranational risk assessment or communicated by the supervisory authorities, self-regulatory bodies or the ESA+ sub sector risk assessment.
- Risk assessment to be documented, kept up-to-date + available.
- Not required where the specific risks inherent in the sector are clear and understood upon decision of the supervisory authorities and self-regulatory bodies.
- ML/TF risks resulting from the development of new products and business practices, the use of new or developing technologies related to new or pre-existing products to be done prior their launch or use.

Future situation

- Similar obligation but extended to the identification and assessment of the risks of non-implementation and evasion of targeted financial sanctions.
- Same type of sources, including as well:
  - ✓ relevant information published by international standard setters in the AML/CTF area or, at the level of the Union, relevant publications by the Commission or by AMLA;
  - ✓ information on the customer base.
- Risk assessment to be documented, kept-up-to date and regularly reviewed as well as available to supervisors upon request.
- Not required for certain obliged entities where risks inherent in the sector are clear and understood. N/A for credit institutions, financial institutions, crowdfunding service providers and crowdfunding intermediaries.
- Same obligation to assess upfront any launch or use of new product, services, new technologies the ML/TF risks (extended to the use of new delivery channels).
- To be prepared by the compliance officer and approved by the management body in its management function and, where such body exists, communicated to the management body in its supervisory function.

Chapter II, section 1: Internal policies, procedures and controls of obliged entities

Annex I

Risk variables

Current situation

- 3 risk variables currently defined under the list annexed to the AML/CTF Law:
  - ✓ the purpose of an account or relationship;
  - ✓ the level of assets to be deposited by a customer or the size of transactions undertaken;
  - ✓ the regularity or duration of the business relationship.

Future situation

- List of risk variables significantly extended (15) to include risk variables linked to risk factors
  - ✓ Customer risk variables;
  - ✓ Product, service or transaction risk variables;
  - ✓ Delivery channel risk variables;
  - ✓ Risk variable for life and other investment-related insurance.

The 3 risk variables currently in place have been kept under product, service or transaction risk variables.

Chapter II, section 1: Internal policies, procedures and controls of obliged entities

Article 11

Role of the Compliance functions

Current situation

- Appointment of a RR among the management body
- Appointment of a RC at appropriate hierarchical level
- However specific conditions for IFMs and investment funds, who may appoint a third party + RR acting collegially

Future situation

- Similar obligation for the appointment of RR and RC
- RR = Compliance Manager, one member of the management body
- RC = Compliance Officer
- Similar roles and responsibilities
- Where justified by the size of the obliged entity and the low risk of its activities, an obliged entity that is **part of a group** may appoint as its compliance officer an individual who performs that function in another entity within that group.

Chapter II, section 2: Provisions applying to groups

Article 16 + 26(1)

Group wide requirements

Current situation

- Obligation for professionals that are part of a group (i.e. any group of undertakings which consists of a parent undertaking, its subsidiaries and entities in which the parent undertaking or its subsidiaries hold a participation) to implement group-wide policies and procedures.
- They shall include:
  - ✓ Data protection policies and procedures;
  - ✓ Policies and procedures for sharing AML/CTF information within the group, including the provision of customer, account and transaction information from branches and subsidiaries to the compliance, audit and AML/CTF functions at group level;
  - ✓ adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.
- Sharing of information possible within the group for ML/TF purpose with a focus on sharing of information as part of the obligation to cooperate with the authorities.

Future situation

- Extended definition of “parent undertaking”
- Obligation for a parent undertaking to ensure that the requirements on internal procedures, risk assessment and staff apply in all branches and subsidiaries of the group in the member states and, for groups whose head office is located in the Union, in third countries.
- Compliance functions shall be established at the level of the group.
- Group-wide policies, controls and procedures shall ensure that the information exchanged:
  - ✓ is subject to sufficient guarantees in terms of confidentiality, data protection and use of the information, including to prevent its disclosure;
  - ✓ Does not prevent entities within a group which **are not obliged entities** to provide information to obliged entities within the same group where such sharing is relevant for those obliged entities to comply with requirements set out in this Regulation.
- Sharing of information within the group for the purposes of customer due diligence and ML/TF risk management.

Chapter II, section 3: Outsourcing

Article 18

Outsourcing requirements

Current situation

- The delegated agent or outsourcing service provider operates under the mandate and responsibility of the obliged entity
- Obligation to have internal procedures in the event of recourse to a delegated agent or outsourcing service provider as well as on the relative criteria determining the choice of the delegated agent or outsourcing service provider
- Detailed AML/CTF due diligence on the delegate agent or outsourcing service provider to enable the obliged entity to be convinced of its ability and integrity to perform the delegated tasks
- Regular control of compliance by the delegated agent or outsourcing service provider
- Contractual agreement in place between the obliged entity and the delegated third party, which shall entail a minimum information

Future situation

- Similar conditions for outsourcing of AML/CTF tasks to service providers with significant limitations:
  - ✓ No outsourcing to service provider located in identified high-risk third countries unless group policy exemptions applies;
  - ✓ Obliged entity shall notify the supervisor of the outsourcing before starting the outsourcing tasks;
  - ✓ Outsourcing should not impact the supervision of the obliged entity in a material manner;
  - ✓ Prohibition to outsource certain tasks.

Chapter III, section 1: Customer Due Diligence

Article 19 (1) (2) (6)

Customer due diligence measures: when ?

Current situation

- Application of CDD measures:

  a) when establishing a business relationship
  b) when carrying out an occasional transaction that amounts to EUR 15,000 or more or constitutes a transfer of funds exceeding EUR 1,000
  c) in the case of persons trading in goods (EUR 10,000) when carrying out occasional transactions)
  d) for providers of gambling services upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2,000 or more
  e) when there is a suspicion of ML/TF regardless of any derogation, exemption or threshold
  f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Future situation

- Most remain the same, but:
- New requirements for obliged entities (or some of them) to perform CDD or update on existing requirements:
  - ✓ when carrying out an occasional transaction of a value of at least EUR 10 000 (for **cash** EUR 3 000),
  - ✓ when participating in the creation of a legal entity, the setting up of a legal arrangement or in the transfer of ownership of a legal entity, irrespective of the value of the transaction.
  - ✓ when there are doubts as to whether the person, they interact with is the customer or person authorised to act on behalf of the customer
  - ✓ For credit institutions and financial institutions, when initiating or executing an occasional transaction that constitutes a transfer of funds of at least EUR 1 000, or the equivalent in national currency.
  - ✓ For crypto-asset service providers also (but basic KYC already for less than EUR 1 000).

Chapter III, section 1: Customer Due Diligence

Article 19 (1) (2) (6)

Customer due diligence measures: when ?

Future situation

- Concept of **customer** also to be understood as :

- ✓ in relation to persons trading in high value goods or precious metals and stones, **the supplier of goods**;
- ✓ in relation to payment initiation services carried out by payment initiation service providers, **the merchant**.
- ✓ in the case of real estate agents, **both parties** to the transaction.
- ✓ in relation to crowdfunding service providers and crowdfunding intermediaries, the natural or legal person **both seeking and providing funding** through the crowdfunding platform

Customer due diligence requirements: what it means?

Chapter III, section 1: CDD measures

Article 20 & 26 (2)

a) identifying the customer and verifying the customer's identity

b) identifying the beneficial owner and taking reasonable measures to verify his identity

c) assessing and understanding the purpose and intended nature of the business relationship and, as appropriate, obtaining information on the purpose and intended nature of the business relationship

d) conducting ongoing due diligence of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the professionals' knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information collected under the customer due diligence process is kept up-to-date and relevant. To this end, the professionals shall review existing records, particularly for higher-risk categories of customers.

- Points a) to d) remain largely unchanged (but new update frequency!)
- Extended requirements :

d) verifying whether the **customer** or the **beneficial owners** are subject to targeted financial sanctions, and, in the case of a customer or party to a legal arrangement who is a legal entity, whether natural or legal persons subject to **TFS** control the legal entity or have more than 50 % of the proprietary rights of that legal entity or majority interest in it, whether individually or collectively;

e) assessing and, as appropriate, obtaining information on the nature of the **customers' business** including, in the case of undertakings, whether they carry out activities, or of their employment or occupation;

g) determining whether the **customer**, the **beneficial owner** of the customer and, where relevant, the person on whose behalf or for the benefit of whom a transaction or activity is being carried out is a **PEP**;

h) where a transaction or activity is being conducted **on behalf of** or **for the benefit of** natural persons other than the customer, identifying and verifying the identity of those natural persons;

i) verifying that any person purporting to **act on behalf** of the customer is so authorised and identify and verify their identity

"…in the context of the business relationship"

Chapter III, section 3: SDD measures

Article 33

Simplified Due Diligence requirements

Current situation

- Possibility to apply SDD measures where the professionals identify, based on their risk assessment, a lower ML/TF risk.
- Before applying SDD measures, the professionals shall ascertain that the business relationship or the transaction presents a lower degree of risk.
- When assessing the risks of ML/TF money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, the professionals shall take into account at least the factors of potentially lower risk situations set out in Annex III.
- The professionals shall carry out sufficient monitoring of the transactions and business relationship to enable the detection of unusual or suspicious transactions.
- The professionals are required to gather sufficient information in every circumstance to determine whether the customer satisfies all of the conditions required to apply the simplified customer due diligence measures, which means that the professionals must have access to a reasonable amount of information relating to the requirements set forth in Article 3(2) and must monitor the business relationship at all times so as to ensure that the conditions for the application of Article 3-1 continue to be met.

(…)

Future situation

- Further details provided regarding SDD measures and what it means in terms of obligations.
- Obliged entities have to take into account the risk factors set out in Annexes II and III, and may apply SDD measures where the business relationship or transaction present a low degree of risk:
  - ✓ verifying the identity of the customer and the beneficial owner after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement, but in any case **no later than 60 days** of the relationship being established;
  - ✓ reducing the frequency of customer identification updates;
  - ✓ reducing the amount of information collected to identify the purpose and intended nature of the business relationship or occasional transaction or inferring it from the type of transactions or business relationship established;
  - ✓ reducing the frequency or degree of scrutiny of transactions carried out by the customer;
  - ✓ applying any other relevant simplified due diligence measure identified by AMLA pursuant to Article 28.
- To be noted that list of lower risk factors under Annex II remain unchanged.

Chapter III, section 4: Enhanced Customer Due Diligence

Article 34-46

Enhanced Due diligence requirements

- Obligation to perform EDD measures at least in case of business relationships or transactions with PEP, with respect to business relationships or transactions involving high-risk countries, in the case of cross-border correspondent relationships or other similar relationships with respondent institutions + in situations which present a higher ML/TF risk.
- Professionals shall take into at least the factors of potentially higher-risk situations set out in Annex IV.
- Existing EDD measures include among others:
  - ✓ obtaining additional information on the customer and on the beneficial owner(s) and updating more regularly the identification data of the customer and beneficial owner;
  - ✓ obtaining additional information on the intended nature of the business relationship or performed transactions
  - ✓ obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner(s);
  - ✓ having appropriate risk management system including risk-based procedures to determine if the customer, the person purporting to act on behalf of or for the customer or beneficial owner is a politically exposed person
  - ✓ obtaining the approval of senior management for establishing or continuing the business relationship;
  - ✓ conducting enhanced monitoring of the business relationship

(….)

- Similar EDD measures applicable to cases already defined under the AML/CTF Law with certain nuances however :
  - ✓ Additional enhanced due diligence measures to be applied where a a business relationship that is identified as having a higher risk involves the handling of assets with a value of at least EUR 5 000 000, through personalised services for a customer holding total assets with a value of at least EUR 50 000 000, whether in financial or investable wealth or real estate, or a combination thereof, excluding that customer's private residence.
  - ✓ Definition of PEP extended, among others:
    - i. Prominent public function holders – **set at different levels**
    - ii. members of the governing bodies of political parties **that hold seats** in national executive or legislative bodies, or in **regional or local executive or legislative bodies** representing constituencies of at least 50.000 inhabitants;
    - iii. **heads of regional and local authorities** including grouping of municipalities and metropolitan, regions of at least 50 000 inhabitants
    - iv. Family members include **siblings** but only for heads of State, heads of government, ministers and deputy or assistant ministers.

Chapter IV: Beneficial Ownership Transparency

Articles 51 & 52 (1)

Beneficial Ownership Transparency

Current situation

Article 1 (7) of the AML/CTF Law: “any natural person(s) who ultimately owns or controls the customer or any natural person(s) on whose behalf a transaction or activity is being conducted. …:

(a) in the case of corporate entities:

BO owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than ….

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. …;

If, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), any natural person who holds the position of **senior managing official**.”

Future situation

Beneficial owners of legal entities shall be the natural persons who:

(a) have, directly or indirectly, an **ownership interest** in the corporate entity; or

(b) control, directly or indirectly, the corporate or other legal entity, through **ownership interest** or **via other means**.

Control via other means as referred to in the first paragraph, point (b), shall be identified **independently of and in parallel** to the existence of an ownership interest or control through ownership interest**.**

‘**an ownership interest in the corporate entity**’ shall mean direct or indirect ownership **of 25 % or more** of the shares or voting rights or other ownership interest in the corporate entity, including rights to a share of profits, other internal resources or liquidation balance.

The **indirect ownership** shall be calculated **by multiplying the shares or voting rights or other ownership interests held by the intermediate entities in the chain of entities in which the beneficial owner** holds shares or voting rights and by adding together the results from those various chains, unless Article 54 applies.

Chapter IV: Beneficial Ownership Transparency

Article 52 (2)

Beneficial Ownership Transparency

Current situation

Possibility to apply a lower threshold on a purely voluntary basis

NOT MANDATORY!

Future situation

BUT possible new threshold !

Categories of corporate entities exposed to higher money laundering and terrorist financing risks, including based on the sectors in which they operate

Member States inform the Commission thereof, where the Commission concludes that a lower threshold is appropriate to mitigate those risks, adopt delegated acts by identifying:

- the categories of corporate entities that are associated with higher money laundering and terrorist financing risks and for which a lower threshold shall apply;
- the related thresholds.

The lower threshold shall be set at **a maximum of 15 %** of ownership interest in the corporate entity (unless Commission sets a higher threshold, which shall in any case be set at less than 25 %).

Chapter IV, Beneficial Owner Transparency

Article 53 + Article 66

Nominee obligations

Current situation

- Concept of “nominee” in Luxembourg relates mainly to financial intermediary acting on behalf of others, subscribing units or shares of a UCI or investment company in risk capital where EDD measures as per Article 3-2(3) of the AML/CTF Law, Article 3(3) of the Grand-ducal Regulation and Article 28 of CSSF regulation 12-02 shall be applied.

Future situation

- *Article 66*

  Nominee shareholders and nominee directors of a legal entity shall maintain adequate, accurate and up-to-date information on the identity of their nominator and the nominator’s beneficial owners and disclose them, as well as their status, to the legal entity. Legal entities shall report that information to the ***central*** register.

  Legal entities shall also report the information referred to in the first paragraph to obliged entities when the obliged entities are applying customer due diligence measures in accordance with Chapter III.

- Definition of formal nominee arrangement means a contract or an equivalent ***arrangement***, between ***a nominator and a nominee***:

  - ✓ Nominator = a legal entity or natural person that issues instructions to a nominee to act on their behalf in a certain capacity, including as a director or shareholder or settlor,
  - ✓ Nominee = a legal entity or natural person instructed by the nominator to act on their behalf.

Chapter IV, Beneficial Owner Transparency

Article 67

Foreign legal entities and foreign legal arrangements

No extra-territorial scope under the RBO law

Law of 10 July 2020 establishing a register of fiducies and trusts, as amended (the "**RFT Law**").

Disclosure obligations for foreign trustees and fiduciary agents insofar as they acquire real estate or enter into a business relationship in Luxemboug (Article 13 of the RFT Law.

Foreign legal entities and trustees of express trusts (or similar) that are administered outside the Union or that reside or are established outside the Union shall submit BO information to the central register of the Member State where they:

(a) enter into a business relationship with an obliged entity (higher risk sector only);

(b) acquire real estate in the Union, whether directly or through intermediaries;

(c) acquire, whether directly or through intermediaries, any of the following goods from relevant persons, in the context of an occasional transaction:

(i) motor vehicles for non-commercial purposes for a price of at least EUR 250 000 or the equivalent in national currency;

(ii) watercraft for non-commercial purposes for a price of at least EUR 7 500 000 or the equivalent in national currency;

(iii) aircraft for non-commercial purposes for a price of at least EUR 7 500 000 or the equivalent in national currency;

(d) are awarded a public contract for goods or services, or concessions by a contracting authority in the Union.

Conclusion

With Glenn Meyer - Partner at Arendt & Medernach and Camille Seillès - Secretary General at ABBL

In collaboration with

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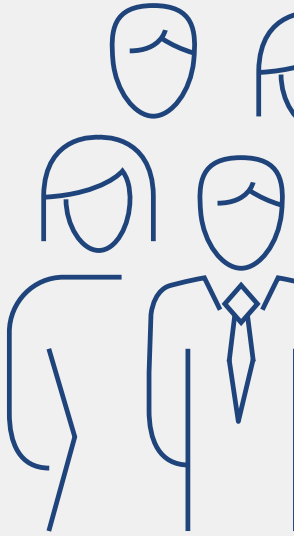
- ✓ Professional Obligations Committee
- ✓ ABBL Expert Working Groups
- ✓ ABBL Compliance Community
- ✓ ABBL AML Handbook
- ✓ Weekly Spotlight

Our speakers



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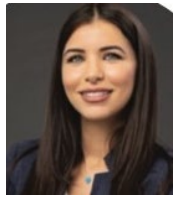

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Thank you

In collaboration with