





Real Estate Sector:

Overview of SNRA Conclusions & FIAU Proposed Guidance Document on the Application of CDD Obligations in Real Estate Transactions

Dr Daniel Frendo LL.D.

Senior Manager – Legal Affairs



What is the SNRA & Why is it important?

- Latest (3rd) Supranational Risk Assessment (SNRA) issued by the European Commission was on 27 October 2022
- It assesses the risk of ML and TF affecting the internal market & relating to cross-border activities
- It provides recommendations and action plan to address (mitigate) the risks identified
- It needs to be considered when MSs conduct their own National Risk Assessments (NRAs)
- 2022 SNRA analyses the ML & FT risks of 43 products/services, grouped within 8 categories
- Real Estate assessed under the non-financial products & services category BUT also features (indirectly) under cash-related products & services category





Investment in Real Estate



Description of Risk Scenario

- Attractive to criminals due to prices being generally stable, likely to appreciate over time, and very functional (can be used as a second home, rented out, generating income). **A 2021 Europol Report found that most criminal groups (68%) use ML methods, such as investing in property to try to legitimize/hide their illicit proceeds.**
- Common for criminals to invest high amount of ill-gotten funds to rebuild or renovate real estate for them to use for their own benefit or to sell with a much higher price than purchased, **justifying income.**
- Use of monetary instruments (cash or cheques). **By using cash, criminals often succeed in circumventing tax laws.**



Investment in Real Estate



Cont. Description of Risk Scenario

- Manipulation of valuation of properties
- Use of complex loans or credit finance, inc. back-to-back loans,
- Intermediation via professionals,
- Use of **sophisticated corporate vehicles and structures** such as shell companies, to **hide** real beneficial ownership and to **conceal** origin of monies being used to purchase real estate
- **Covid-19 pandemic** further fueled the risk of ML in real estate – undermined demand has caught attention of international buyers, inc. those seeking to launder dirty money. SNRA also notes the possibility of gatekeepers paying less attention to due diligence in their eagerness to complete deals, particularly when faced with pressure to transact quickly.



ML/FT Threat & Vulnerability in Real Estate

ML Threat

- Assessments highlighted the **recurrent use** of real estate sector for criminals to launder proceeds of crime & is **mostly combined** with other sectors/DNFBPs.
- Reliance on real estate **does not require specific expertise or knowledge**
- **Financially attractive** (high amounts can be laundered in single transaction)
- Typology reports confirm that **real estate is related to various crime types**, inc.-
 - Trafficking in human beings - criminals send cash/invest illegitimate profits in country of origin to use for real estate investment, among other high-value goods/businesses
 - Investment fraud – buy low, sell high schemes targeting commodities & real estate
 - Corruption & bribery – use of straw men (imaginary person) to obscure the BO of immovable property bought by criminals with bribery funds, or individuals with good credit record are hired by criminals to act as a front person for borrowing money



ML/FT Threat & Vulnerability in Real Estate

ML Vulnerability

- Risk Exposure related:
 - × cash can still be used in some MSs, increasing risk of anonymous transactions - not only to buy property but also for materials (VAT fraud) and paying workers (non-declared work)
 - × Real estate activities may be based on foreign financial flows & involving high-risk customers such as PEPs
 - × Cooperation with 3rd countries involved is in many cases suboptimal, making it more difficult to detect ML/FT through real estate
- Risk Awareness related:
 - × Level of AML/CFT awareness is uneven in the sector (usually larger organisations/Cos have more resources and hence more aware of risks of being misused by criminals)
 - √ General improvement noted, with stakeholders being more aware of their legal obligations
 - × In some instances, supervision of the sector is incomplete and based on weak information trails



ML/FT Threat & Vulnerability in Real Estate

ML Vulnerability Cont.

- Legal framework & checks in place:
 - ✓ Real Estate Agents are subject to EU AML requirements, together with other professionals, such as Notaries
 - ✓ Information on real estate ownership by any natural or legal person is available for public authorities
 - × Legal practices & procedures for real estate transactions differ between EU MSs
 - × STRs submission is uneven and not satisfactory

TF Threat & Vulnerability

- TF threat & vulnerability related to investment in real estate was considered together with ML schemes to hide illegal origin of funds, hence the European Commission concluded that there was no need for a separate TF assessment



Risk level in Real Estate

Risk level

As regards **terrorist financing**, the level of threat has been assessed as very significant (4), while the level of vulnerability has been assessed as very significant (4).

RISK	
1 – 1,5	Lowly significant LOW
1,6 – 2,5	Moderately significant MEDIUM
2,6 – 3,5	Significant HIGH
→ 3,6 – 4	Very significant VERY HIGH

As regards **money laundering**, the level of threat has been assessed as very significant (4), while the level of vulnerability has been assessed as significant/very significant (level 4).

RISK	
1 – 1,5	Lowly significant LOW
1,6 – 2,5	Moderately significant MEDIUM
2,6 – 3,5	Significant HIGH
→ 3,6 – 4	Very significant VERY HIGH

Conclusions: estimated risk level for both, terrorist financing and money laundering is VERY HIGH.

The **VERY HIGH** risk-level for both ML & TF has been constantly recorded in all previous SNRA risk assessments (2017, 2019, and 2022)



Proposed FIAU Guidance Document on the Application of CDD Obligations in Real Estate Transactions

WHY?

In response to most common queries/concerned received from REAs, Notaries, representative bodies, and the general public + targets most common shortcomings noted by FIAU's Supervision Section during compliance examinations.

AIM?

To assist SPs in the sector to better **adhere to and apply their CDD obligations in a risk-based approach**, including through the provision of case examples

RESULT?

A legally binding document – once issued in terms of Regulation 17 of the PMLFTR

EXTERNAL CONSULTATION

Open from 20th November 2023 till 5th January 2024 through Sectorial Representative Bodies (*AML Committee of the Notarial Council, Real Estate sub-section of the MDA, & Federation of Estate Agents*)

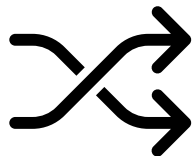
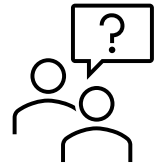


Contents of Guidance Note – what to expect:



- Provide clarity as to who is considered a Subject Person in the sector, & registration requirements on FIAU systems

- Who is deemed to be the customer/s of the notary/real estate agent

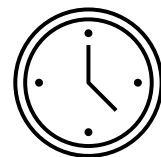


- Interpretation, accompanied with case studies when dealing with assignment of rights

- SOW & SOF obligations, and how to appropriately apply the same



- Timing of CDD application





Who is a SP in terms of the PMLFTR?

Regulation 2 of the PMLFTR definition of “**relevant activity**” + definition of “**occasional transaction**”

➤ **REAs (inc. property brokers)**: when acting as an intermediary in the process of negotiating and arranging transactions involving the acquiring, disposing, of land (immovable property) when the amounts involved are:

€15,000 or more with regards to the buying/selling of immovable property;

€10,000 or more monthly rent with regards to the letting of immovable property

Inc. when said activities are carried out through property brokers, engagement/employment of branch manager, property consultant acting obo the company as REAs (the REA entity being a SP).

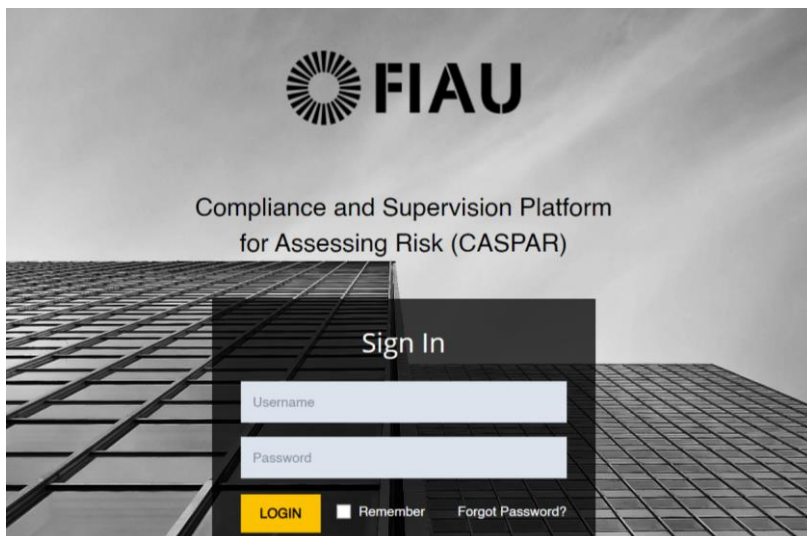
➤ **Notaries**: when they participate, whether by acting on behalf of and for their client in any real estate transaction or by assisting in the planning or carrying out of transactions for their clients concerning the (i) buying and selling of real property...the value of which is or exceeds €15,000.





Who should register on the FIAU's CASPAR & GoAML systems?

- **All** notaries conducting “relevant activity”
- Every **natural person** or **legal person (entity)** carrying out REA services i.e. “relevant activity” is deemed to be a SP **in their own right**, hence required to register on such systems.



- **Employees** of legal persons carrying out REA services or persons otherwise **engaged by the REA** are **NOT** to register on the said systems themselves, but rather the **REA (entity) is to register as a SP.**
- CASPAR system: <https://caspar.fiaumalta.org/>
- GoAML System: <https://goaml.fiaumalta.org/PROD/Content/NewWebForm/#/register>

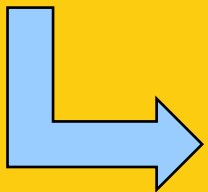


Guidance Document on the Application of CDD obligations in Real Estate Transactions

Who are the customers of the notary/REA?
Is the vendor (seller) considered as a customer too?



- Vendor is to be equally considered as the customer of both notary/REA, as the purchaser is. Ultimately, vendor is 1 of the 2 main parties to any RE transaction.



This line of interpretation is confirmed by the FATF in its recent (July 2022) update of the Risk-Based Approach Guidance for the Real Estate Sector



- Hence, both vendor & purchaser are to be considered as customers, irrespective of who is paying:

→ the notarial fees (in case of notary);



→ the agency fees/commission (in case of REA)

- Same line of thought follows when REAs are providing intermediation services relating to letting of immovable property: **BOTH** lessor & lessee need to be considered as customers.



CDD measures to be applied on the customers

- A. Identify both parties to the transaction (Sec. 4.3.1 of FIAU IPs Part I)
- B. Verify their identities (Sec. 4.3.1.1 of FIAU IPs Part I)
- C. Obtain information on the same to be able to understand the ML/TF risk that the customer is exposing you to:

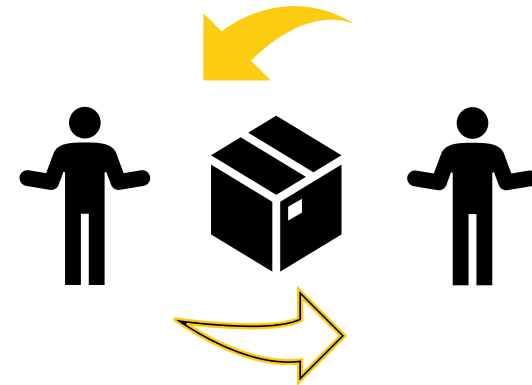
How? / What to look out for?

- i. Whether transaction is carried out directly by customer or whether someone else is acting obo of customer (in the latter scenario, in terms of Reg 7(3) PMLFTR - ID&V that agent & ensure that same is duly authorized in writing)
- ii. Whether or not the customer is a PEP (Sec. 4.9.2.2 of FIAU IPs Part I)
- iii. On a RISK BASED APPROACH, obtain info on SoW & SoF on customers (Sec. 4.4.3 of FIAU IPs Part I) - explained further in coming slides.

When customer is legal entity, besides ID&V the entity, determine & ID&V UBO !



Who are the customers of the **REA** in
the case of an Assignment of Rights?



▪ **Case Scenario 1:**

- Vendor (Party A) & purchaser (Party B) enter in a PoS
- During PoS, Party B engages a REA to help him find another purchaser
- REA finds another purchaser i.e. an assignee (Party C) that agreed to buy instead of Party B
- REA is paid a commission solely by Party B (now, assignor)
- REA only meets Party A on final deed of sale

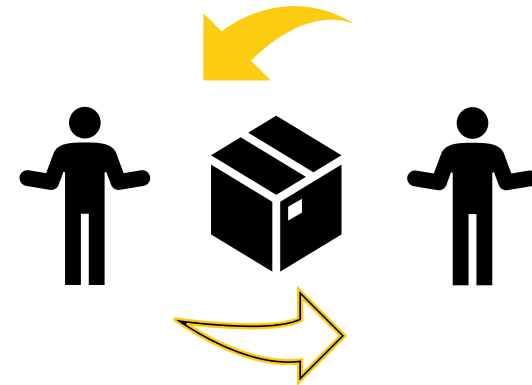
Who is the customer/s of the REA in such scenario?

The REA's services were clearly **required** for the Assignment of Rights transaction, therefore **BOTH the assignor (Party B) and assignee (Party C)** would be deemed **customers of the REA**.

Since the REA was **not involved** in the 1st (initial) transaction between Party A and Party B, Party A **cannot** be deemed to be a customer of the REA.



Who are the customers of the **REA** in
the case of an Assignment of Rights?



▪ **Case Scenario 2:**

- REA engaged by vendor (Party A) to assist with selling his immovable property
- REA managed to find a prospective purchaser (Party B)
- Party A and Party B enter in a PoS
- During term of PoS, Party B assigns his rights over to another person (Party C)
- REA is paid a commission solely by Party A

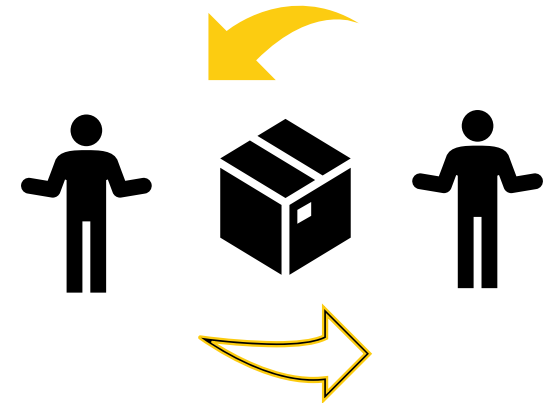
Who is the customer/s of the REA in such scenario?

At PoS stage, **BOTH vendor (Party A) and first purchaser (Party B)** would be deemed **customers of the REA**, to whom the REA has offered a service. The REA was **not involved** in the eventual assignment of rights transaction held directly between the assignor (Party B) and assignee (Party C), therefore Party C **cannot** be deemed to be a customer of the REA.



Who are the customers of the **Notary** in the case of an Assignment of Rights?

- Assignment of rights can take place at any point from moment a PoS is entered, and prior to execution of final deed of sale
- When Assignment of rights arises from a PoS agreement, CDD must be carried out and completed on the assignor before the said assignor assigns the rights to the new purchaser (assignee) and therefore before the former exits the transaction
- Since the assignment brings about the involvement of a new assignee to the transaction, notary needs to also carry out CDD with respect to the assignee (timing of CDD may vary - will be explained further in coming slides)
- The notary is expected to understand the motivation behind the assignment of rights and keep record of the same – was it purely motivated due to commercial/other justifiable reasons? Could it be motivated by illicit purposes such as ML (e.g. to conceal the identity of real party/ies concluding the transaction?)





What about SoW & SoF information?

Is it always required to look into the vendor's & purchaser's SoW/SoF information?

The Purchaser/buyer

- The use of funds to acquire or lease property = highest risk of ML/FT within real estate sector
- Even though considered as OT in terms of law, requesting and understanding SoW/SoF of the purchaser may at times prove necessary to mitigate higher risks of ML/FT.



If the CRA is rated as high, or if there are questions or concerns with respect to the funding of a specific transaction



Case examples:

- A recent graduate/young man who has just entered the workforce is purchasing a property of €300,000 using own funds (no bank loan)
- A 30-year-old teacher, purchasing a property valued at €800,000 (i.e. on the higher end of the price spectrum) of which €400,000 will be financed through her own funds



Cont. What about SoW & SoF information?

Is it always required to look into the vendor's & purchaser's SoW/SoF information?

The Purchaser/buyer

Always apply the appropriate & commensurate mitigating measure/s to manage the level of the relative risk identified, in a risk-based approach

- In case examples, REAs/Notaries would be expected to establish SoW & SoF to be used by the purchaser = to ensure legitimacy of monies to be transferred to vendor
- **In certain instances**, information provided by customer may need to be verified by obtaining supporting documentation e.g. customer claims funds from inheritance
- **In some instances**, reliable media/open-source information is readily available, e.g. on a purchaser purchasing an expensive property who happens to be a seasoned entrepreneur. Keeping record of such open-source info is enough without the need to request such directly from the customer
- **In other instances**, there might not be the need to obtain SoW/SoF information - where there are no concerns/risks related to the funding of the property, e.g. where a bank loan will be obtained by purchaser or where customer is downsizing/purchasing a cheaper property using funds obtained from sale of previous higher value property.

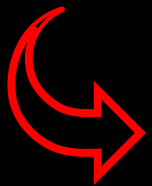


Cont. What about SoW & SoF information?

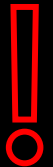
Is it always required to look into the vendor's & purchaser's SoW/SoF information

The Vendor/seller

- Will be the one to receive funds = SoW/SoF of vendor would generally not be most effective mitigating measure to adopt in addressing ML/FT risks
- Only in limited circumstances that such SoW/SoF information may be required



Where there are doubts on the wealth profile of the vendor
i.e. questions or concerns that vendor does not justify
ownership of the immovable property, he/she/it is selling



Does this mean that the vendor completely
poses no ML/FT risks, and hence do
nothing?

...NO...So?



Cont. What about SoW & SoF information?

Is it always required to look into the vendor's & purchaser's SoW/SoF information?

The Vendor/seller

- Rather than focusing on SoW/SoF of vendor, FIAU expects to be on the look-out for any red flags indicative of possible concerns with respect to transfer taking place.
- Some of these red flags, include:
 - Property being sold immediately/shortly after its purchase for no logical reason
 - Consideration (price) asked/to be paid is significantly below or above market value for kind of immovable property involved
 - Indications of any separate payment/s to the vendor apart from the main consideration to be paid

Understanding and documenting the vendor's position and reasons for any red flags within the overall context of the transaction is a more effective mitigating measure

Presence of red flags = question = satisfactory info/docs? = No = consider STR



Timing of CDD - When do AML/CFT obligations kick-in?

REAs are expected to carry out CDD on their customers:

- i. Upon being engaged by any party to be an intermediary in the process of negotiating and arrangement of lease agreement (*when rent amounts to €10,000 monthly or more*);
- ii. Upon being engaged by any party to be an intermediary in the process of negotiating and arrangement of transfer of immovable property (*where transaction value amounts to €15,000 or more*)

FIAU is aware that REAs at times encounter some difficulties in conducting CDD. This does not exonerate REAs from fulfilling their AML/CFT obligations, and highlights the importance for REAs to:

- explain to customer WHY they are asking for particular info (which they may have already provided to other SPs in the process of sale)
- start requesting the necessary info/docs (as case may require), as early as possible in the process
- apply a RBA and limit questions that may be perceived as intrusive to those situations where such is actually required



Timing of CDD - When do AML/CFT obligations kick-in?

Notaries are expected to carry out CDD on their customers:

When, amongst others, are assisting in the planning/carrying out of transactions concerning buying/selling of immovable property:

- i. Upon the entering into a PoS agreement between the customer (parties to agreement) of the notary, **where a deposit/earnest amounting to €15,000 or more is paid by the prospective purchaser;**

- i. Upon the execution of the Final Deed of Sale, where sale value amounts to or **exceeds €15,000;**

Any leeway afforded in relation to the timing of completion of CDD?!



Timing of CDD - When do AML/CFT obligations kick-in?

Cont. Notaries are expected to carry out CDD on their customers:

Not all transactions are equally risk – proper adoption of RBA caters for certain degree of flexibility



E.g. when deposit is held by notary until final deed = considered to be a contributing low risk factor

In such cases, notary can opt not to complete CDD obligations at PoS stage but rather before Final Deed of Sale is executed

Still recommended to start compiling CDD as soon as engaged = beneficial so that info/docs, as may be required, is obtained in time, and hence able to carry out the CRA before Final Deed of Sale.



Timing of CDD - When do AML/CFT obligations kick-in?

Cont. Notaries are expected to carry out CDD on their customers:

Case Scenario 1

Immovable property conveyed for €140,000, where €14,000 (10%) is paid by way of deposit upon signing of PoS:

PoS Stage: €15,000 threshold not reached = CDD may not be completed at this stage

Final Deed Stage: €15,000 threshold reached = CDD to be fully completed at this stage

Case Scenario 2

Immovable property conveyed for €200,000 where €20,000 (10%) is paid by way of deposit during PoS:

PoS Stage: €15,000 threshold reached, CDD completed at this stage (unless held by notary – in which case, completion of CDD can be delayed till before Final Deed)

Final Deed stage: €15,000 threshold reached, CDD to be fully completed at this stage



Thank you !

queries@fiaumalta.org