



The Real Estate Sector & the AML Package

What News?

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All information contained in this power point reflects draft legislation pending outcome of negotiations and is not to be taken as final.



Outline

1. What is the AML/CFT Legislative Package?
2. Timelines – when to expect the final text?
3. Pertinent provisions under the proposed AMLR + AMLD6
4. The new EU AML/CFT Authority
5. Conclusion



Content of the EU AML/CFT Legislative Package

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AML/CFT Regulation (AMLR)

- Rules applicable to the private sector

6th AML/CFT Directive (AMLD6)

- Rules applicable to competent authorities

Transfer of Funds Regulation Recast

- Traceability of crypto-asset transfers

Regulation creating AML/CFT Authority (AMLAR)

- Oversight of the EU AML/CFT architecture



Timeline – Council and EP negotiations

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July 2021 – December 2022

Council negotiations to reach General Approach on AMLAR, AMLR and AMLD6

May 2023

Council, EP + Commission start of trilogues on AMLAR, AMLD6 and AMLR

Adoption of reports on AMLR, AMLD6 and AMLAR by EP

March 2023

Council + EP expected political agreement on AMLAR, AMLD6 and AMLR

End of first quarter 2024?

Anti-Money Laundering Regulation (AMLR)





Obligated Entities/Subject Persons



Lowering of threshold proposed by the EP in context of **real estate agents** when intermediating the lease of property with monthly rent of **EUR 5 000**

All crowdfunding service providers



operators
involved on
behalf of third
country
nationals in
the context of
**investor
residence**

**Football clubs,
football agents,
football
associations** in MSs
(definitions and
what is to be
captured is still
being negotiated –
as yet not
confirmation)

Persons trading/intermediaries in the **cultural goods** as per Council proposal (previously termed 'works of art') where transactions amount to at least **EUR 5 000** as per EP proposal

- Persons storing, trading or acting as intermediaries within free zones of *cultural goods*





Obligated Entities/Subject Persons

- OEs generally remain the same as in the current AMLD5. To note however:
- **Traders in goods over 10K in cash are removed** as a cash limitation is proposed to be included at EU level. Instead, the following are proposed to be **included**:



Persons **trading in precious metals and stones** (irrespective of amount transacted) [as proposed by COM]



Persons trading in **jewelry, goldsmith, or silversmith articles** as well as **clocks and watches** of a value of at least [5 000/10 000 EUR] whether payment is made in several or linked transactions [as proposed by Council]



Persons trading in **luxury goods** other than those mentioned above such as **motor vehicles, aircrafts and watercrafts** of a value exceeding [EUR 50,000] and **garments and clothing accessories** of a value exceeding [EUR 5000] [as proposed by the EP]



Cash Restriction & Mandatory Threshold Reporting

- **EUR 10,000 / EUR 5 000 debate** by Council and EP. Limitation now includes **all persons trading in goods or providing services**
- MSs can adopt **lower limits** following consultation with the ECB. Existing limits at national level below EUR 10,000 can continue to be applied
- Limit **not applicable to payments between persons not acting in professional function** → EP proposes to not apply this limitation for transactions related to **land and real estate, precious metals and stones and other luxury goods above corresponding threshold**
- EP proposal for **mandatory threshold reporting** by **credit institutions – not an STR**





AMLR: Identification of Beneficial Ownership

Commission proposal **largely similar to AMLD5** – different interpretation and application of BO rules by MSs

Council mandate = further **clarification** on what amounts to ownership and control; particularly in context of multi-layered structures

More detailed rules for **foundations** and other legal arrangements and **collective investment schemes**

Definition of BO remains **based on ownership and control**; independent of each other although equally important and usually fulfilled at the same time



Identification of BO for corporate and other legal entities

Natural persons that have, directly or indirectly an ownership interest in the corporate entity

→ 25% or more of shares or voting rights or other ownership interest under Council Mandate – possibly lower threshold following EP stance

→ Calculation of indirect ownership interest clarified

Natural persons that control, directly or indirectly, the corporate entity, through ownership interest or via other means

→ Definition of control: *possibility to exercise, directly or indirectly, significant influence and impose relevant decisions with the legal entity*



Control further defined

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Control of the legal entity shall in any case include the possibility to exercise:

the **majority of the voting rights**

relevant **veto rights** or **decision rights** & any **decisions** regarding **distribution of profit** of the legal entity or leading to a shift in assets

the right to **appoint or remove a majority of the members of the board** or similar officers of the legal entity;

Depending on the particular situation of the legal entity and its structure, other means of control may include:

formal or informal agreements with owners, members or the corporate entities, **provisions in the articles of association** etc.

relationships between family members; or

use of **formal or informal nominee arrangements**



Anti-Money Laundering **Authority** Regulation (AMLAR)





The New AML Authority (AMLA)

- It is essential to address the current shortcomings in AML/CFT supervision within the EU;
- It will become centerpiece of an integrated AML/CFT supervisory system.

MAIN FUNCTIONS

A supervisory function through either directly/indirectly supervising Obligated Entities

Supporting & Coordinating role vis-à-vis FIUs.

EU Parliament: Wider role for AMLA: **EU restrictive measures**, **peer reviews** of FIUs & entities in charge of BO registers, **mediator** between supervisors in cross border situations, facilitate supervisory colleges in non-financial sector, **drawing up list of HRTCs**, additional **RTS and ITSs** → but to keep in mind **budgetary** constraints + timely **establishment** of AMLA?



Supervisory functions, powers and tasks

- ✓ Setting up a harmonized AML/CFT supervisory methodology;
- ✓ Develop instruments & convergence tools to promote common supervisory approaches and best practices;
- ✓ Coordinate thematic reviews across the Union;
- ✓ Establish a central AML/CFT database.



Oversight over the non-financial sector

AMLA will coordinate peer reviews of some or all of the activities of supervisory authorities in the non-financial sector to strengthen consistency and effectiveness in supervisory outcomes.

AMLA will also be tasked with the ability to request non-financial supervisors to investigate possible breaches of requirements applicable to OEs and to consider imposing sanctions or remedial actions in respect of such breaches.

EP proposal to introduce concept of colleges within framework of supervision over non-financial sector Oes



The 6th Anti- Money Laundering Directive





Main Scope of the Directive

Establishes the public authorities' framework with regards to AML/CFT:

- ✓ Sets out what are the responsibilities and tasks of Financial Intelligence Units (FIUs);
- ✓ Sets out what are the responsibilities and tasks of bodies involved in the supervision of obliged entities;
- ✓ Regulates cooperation between competent authorities under the AMLD and cooperation with authorities covered by other EEA acts;
- ✓ Regulates the set-up and access to beneficial ownership, bank account and real estate registers;
- ✓ Sets out how ML/TF risk is to be assessed at EEA and Member State levels.



Relevance to the Real Estate Sector

- ❑ **Suspension Powers** – covers both transactions and ‘business relationships’ with different proposals as to timeframes by EU Commission and EU Council [Article 20]
- ❑ **Feedback from FIUs** – Obligation explained in more granular detail [Article 21]
- ❑ **Pecuniary Penalties** – Council introduced administrative penalties for failure to carry out corrective actions [Article 41]



Thank you!