





The EU AML/CFT Legislative Package: Stronger EU rules to fight financial crime

Chiara Xuereb

Legal Officer – Legal & International Relations



Components of the EU AML Package

AML/CFT Regulation (AMLR)

- Rules applicable to the private sector

6th AML/CFT Directive

- Rules applicable to competent authorities

Regulation creating an AML/CFT Authority (AMLAR)

- Oversight of EU AML/CFT architecture

Transfer of Funds Regulation recast

- Traceability of crypto-asset transfers



An AML Package with important benefits for:



EU citizens – can place trust in the EU’s uniform and robust regulations aimed at addressing ML/TF. Additionally, they can rely on stronger actions against criminal activities, as it will not be possible for criminals to exploit differing national approaches or evade the detection of illicit money flows.



Subject persons – are subject to harmonised EU rules, meaning that entities experience a more level playing field.



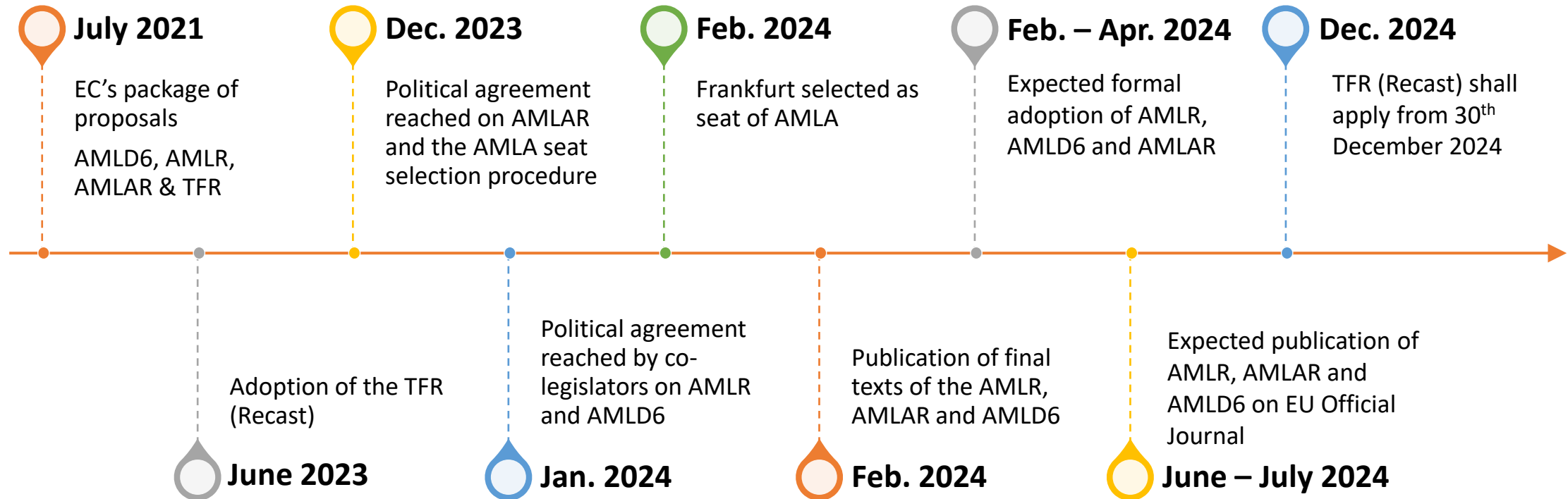
National supervisors – will have their powers clarified. AMLA will play a key role in supporting the work of national supervisors.



EU FIUs will have stronger and clearer powers. Moreover, cooperation and exchange of information across the EU will be strengthened thanks to the set up of AMLA.



Timeline





Legislative Implementation

— *When to expect changes*

AMLR

Entry into Force –
20th day following
OJ Publication

Application – **3
years** following
entry into Force

AMLAR

Entry into Force –
7th day following
OJ Publication

Application – **1 July
2025**

AMLD6

Entry into Force –
20th day following
OJ Publication

Transposition into
national law:

- Articles 11-13, 55a
(Beneficial Ownership
Registers) – **2 years**
after entry into force
- Remaining articles – **3
years** after entry into
force



Malta Interventions



EU Council Working Parties

- Representatives from FIAU and other Maltese authorities participated as experts
- Review of texts proposed by the Commission
- Input taken on board for a number of provisions



Trilogues

- Input requested prior to political meetings
- Malta proposed amendments to draft text



Thank you!





AMLA: towards better coordination & support at EU level

Clara Galdies
Legal Affairs Section

Information Sessions on the new EU AML Legislative Package
3rd – 5th April



The EU's AML Authority - AMLA

The centerpiece of an integrated AML/CFT supervisory system - essential to address current shortcomings in AML/CFT supervision within the EU. Will also have a support and coordinating role vis a vis FIUs.

AMLA will be legally established this year following entry into force of AMLA Regulation.

Location: Frankfurt, Germany

Will have more than 400 staff members



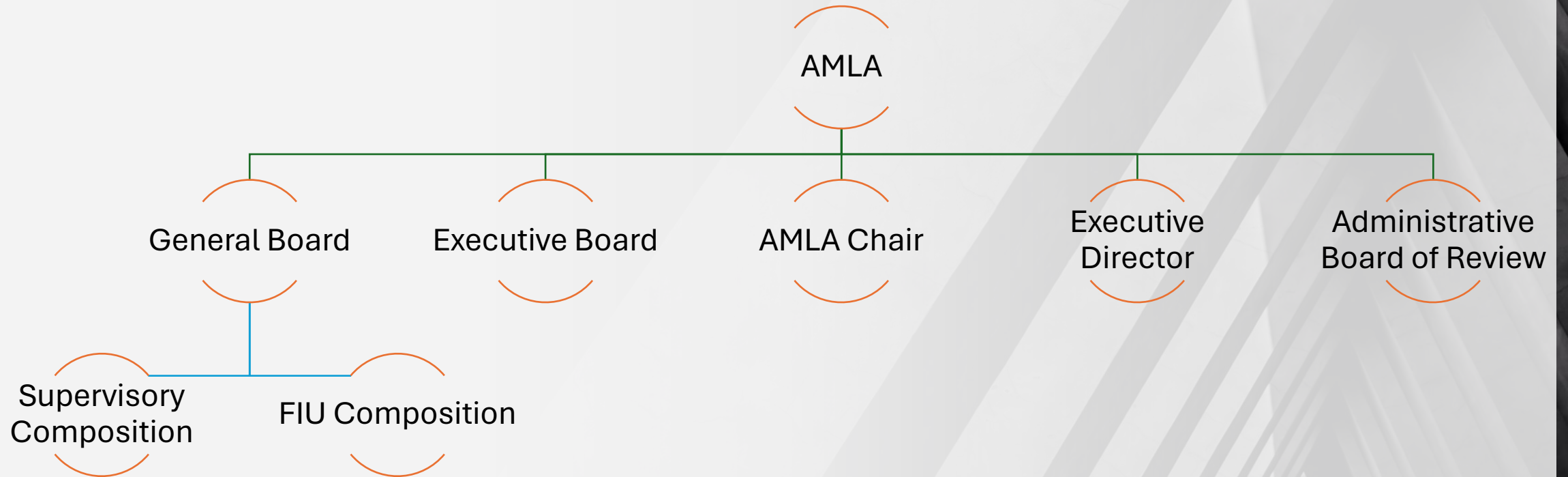
AMLA.... What's in this for you?

- Understanding AMLA's structure
- Identifying the extent of AMLA's direct supervisory powers
- Understanding AMLA's indirect supervision over the financial sector
- Looking at AMLA's coordinating and overseeing role in relation to the non-financial sector
- Deciphering AMLA's CSM mechanism in relation to FIUs

In short.... understanding properly AMLA's role and the changes it will bring about at national and EU level



AMLA's Governance Structure





The General Board

- To draft regulatory instruments, standards, guidelines & recommendations
- Provide its opinion on any draft decisions by the Executive Board on directly supervised OEs
- To decide on the relevant measures for FIUs and adopt decisions in relation to the FIUs support and coordination mechanism

The Executive Board

- Taking all decisions towards individual OE or individual supervisory authorities if AMLA is carrying out its direct/indirect supervisory function
- Taking decisions regarding matters relating to budget, operations and the functioning of the Authority



AMLA's Supervisory functions, powers and tasks

An introduction

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



Thematic Reviews

Supervisory authorities shall provide information to AMLA on supervisory reviews they intend to carry out on a thematic basis.

- Where scope and relevance of thematic reviews justify coordination at Union level, they shall be carried out jointly by the relevant supervisory authorities and shall be coordinated by AMLA.



AMLA's direct supervisory powers over selected obliged entities (financial sector)

01

Only credit and financial institutions that are present in at least **6 MSs** are **eligible** for AMLA's direct supervision

02

These OEs will be **risk assessed according to a common methodology** developed by AMLA

03

OEs that fall within the classification of **high residual risk** will **qualify** for direct supervision by AMLA



AML A's direct supervision over SOEs cont.

- 40 selected OEs in the 1st round
- AML A is to commence direct supervision of selected OEs 6 months after publication of the list
- AML A's supervisory term will be of 3 years after which there will be a second selection process
- At second selection round - full geographical coverage

Only credit and financial institutions that are present in at least **6 MSs** are **eligible** for AML A's direct supervision

01

These OEs will be then classified as being **low, medium, substantial or highest** residual risk

02

OEs that will fall within the classification of **high risk** will **qualify** for direct supervision by AML A



Implementing Technical Standards

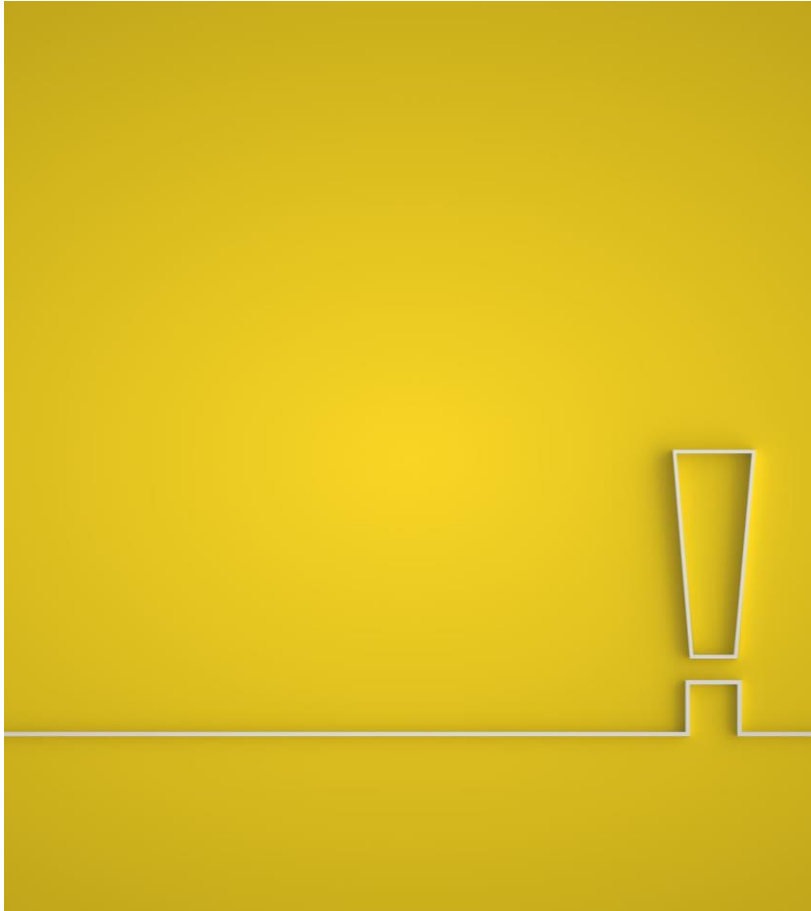
→ AMLA shall develop ITSs specifying (among others)

- The roles of supervisory authorities in assessing the risk profile of CI and FIs
- The working arrangements for the transfer of supervisory tasks and powers
- Procedures for the preparation and adoption of decisions on selection of OEs
- Detailed rules and arrangements for composition and functioning of Joint Supervisory Teams



Joint Supervisory Teams

- To be established for the supervision of each selected OE
- Shall be composed of staff from AMLA and from each financial supervisor responsible for supervision of the selected OEs at a national level
- Shall perform the supervisory reviews for selected OEs
- Shall coordinate on-site inspections at the selected OE and prepare supervisory measures where necessary
- Liaise with financial supervisors where necessary for the exercise of supervisory tasks in any MS where the SOE is established



Indication of Breaches

- Independent investigatory team appointed
- EB must decide if one or more of the breaches have been committed and impose an administrative pecuniary sanction or measure
- A request for review may be brought before the ABOR against certain decisions taken by the EB
- Final decision of EB can be appealed to the CJEU



Imposition of administrative measures and pecuniary sanctions

- Administrative measures include:
 - Issuing of recommendations
 - Implementation of specific corrective measures
 - Requiring change in governance structure
 - Propose withdrawal or suspension of authorisation of OE
- Serious, repeated or systematic breaches - pecuniary sanction
- Basic amounts laid down in legislation
 - Maximum amount for serious, repeated or systematic breaches (CDD, group wide policies and procedures, reporting obligations) shall not exceed 10% of total turnover; for breaches of other requirements shall not exceed EUR 10 Million after application of the coefficients.
- ABOR + CJEU



Publication of administrative measures and sanctions



Pecuniary sanction, periodic penalty payment and a number of admin **measures published immediately after the person sanctioned is informed of that decision.**



Where there is an **appeal** against the **admin measure** and it does not aim to remedy serious/repeated and systematic breaches, **AMLA may defer publication.**



Where deadline for review by ABOR, or for appeal to CJEU expires, AMLA shall **publish information on the request for review or appeal.**



Publication shall include at least information on the **type and nature of the breach, identity of persons responsible, size of pecuniary sanction or periodic penalty payment.**



AMLA's indirect supervisory powers over the financial sector



Periodic reviews on financial supervisory authorities



Take appropriate measures in exceptional circumstances to assume direct supervision



Facilitate colleges and contribute to convergence of supervisory practices



Coordinate staff and information exchanges among financial supervisors and provide assistance



Fees levied on selected and non-selected obliged entities

- Annual supervisory fee on all selected OEs and non SOEs that meet certain criteria.
- Obligation to pay fees is enforceable under national law.
- Methodology for calculating fee to take into account the total annual turnover of OE, whether OE has qualified for direct supervision, risk profile classification etc.



AMLA's oversight over the non-financial sector

- **Coordinating peer reviews** of supervisory standards and practices among non-financial supervisors
- **Investigating potential breaches or non-application of Union law** by non-financial supervisors
- **Facilitate functioning of colleges** of non-financial supervisors
- **Mediation** (cases of cross border situations)





Reporting of breaches and protection of reporting persons

Dedicated reporting channels for receiving and handing information provided by persons reporting on actual or potential breaches of:

- the AMLR (insofar as requirements applicable to **credit and financial institutions** are concerned)
- the TFR and
- the AMLD6 insofar as requirements applicable to AML/CFT supervisory authorities and FIUs are concerned.

Reports may also be **submitted by supervisory authorities** in the non-financial sector to AMLA



AMLA's coordinating and supporting role towards FIUs

Promotion of greater efficiency and cooperation between FIUs through the following:

- Support work of FIUs and contribute to improve cooperation and coordination
- Contribution to identification and selection of cases for JA
 - Develop methods and procedure
 - Set up, coordinate and facilitate JA
- Provide assistance, including mediation in cases of disagreement
- Conduct peer reviews of activities of FIUs aimed at strengthening their consistency, effectiveness and identification of best practices
- Develop and make available IT tools, specialised training and assistance, sharing of expert knowledge etc.
- Prepare and coordinate strategic analyses of ML/FT threats, risks and methods identified by FIUs
- Hosting of FIU.Net

Collaboration and partnerships for information sharing

AMLA shall establish and maintain close cooperation with **ESAs, OLAF, Eurojust Europol and the EPPO.**

AMLA may set up **cross border partnerships for information sharing** in accordance with fundamental rights and judicial procedural safeguards or participate in partnerships for information sharing established in one or across several MSs





Common instruments

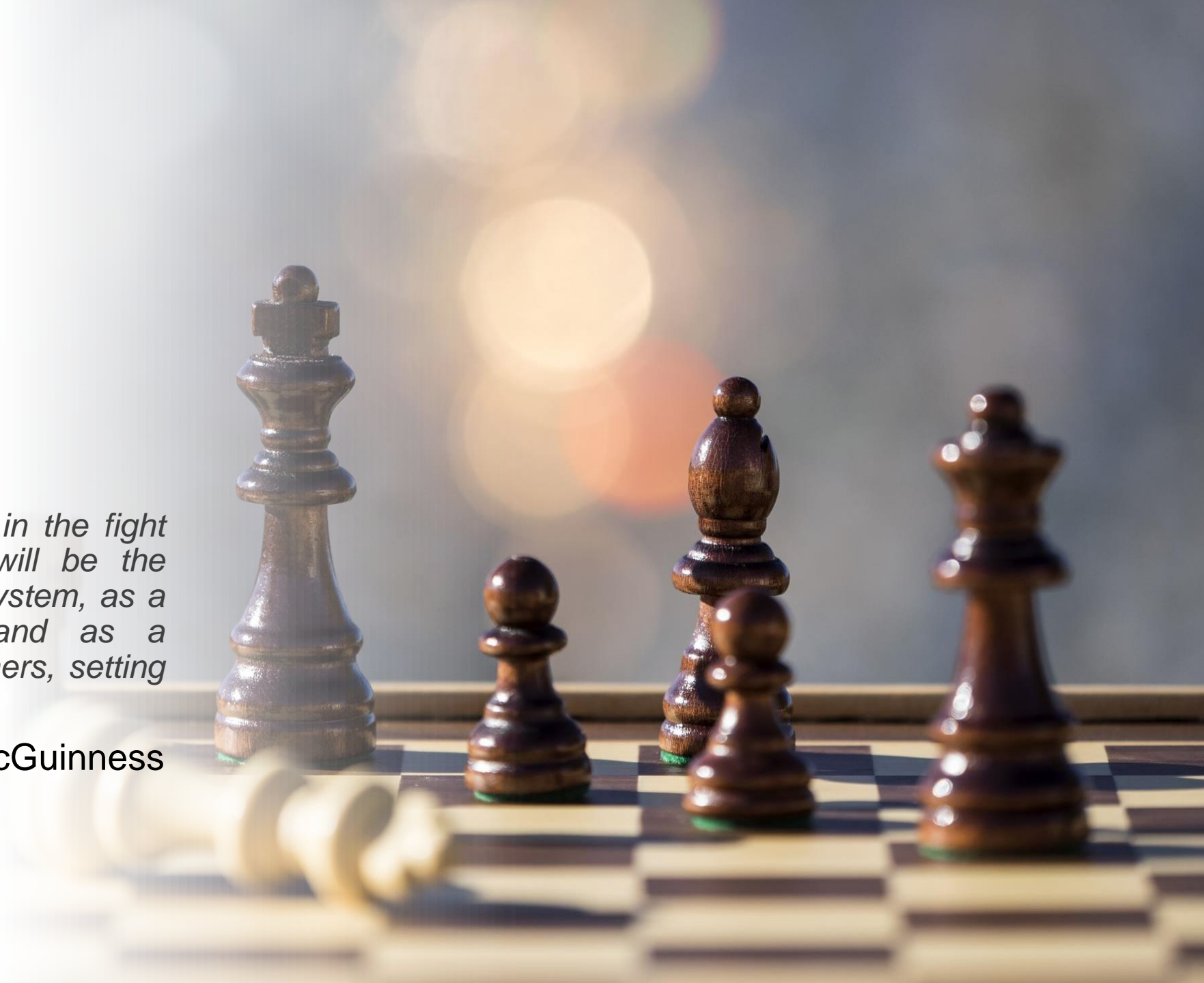
- RTSSs, ITSs, guidelines and recommendations, opinions to the EP, Council or COM.
- Public consultation
- Guidelines and recommendations issued by AMLA shall replace the guidelines and recommendations previously issued by EBA or supervisors/FIUs on the same subject.
- Guidelines and recommendations issued by EBA, or supervisors and FIUs shall remain applicable until such time as the new guidelines and recommendations issued by the Authority on the same subject start to apply.





“AMLA will be a game-changer in the fight against money laundering. It will be the center of our new supervisory system, as a supervisor in some cases and as a coordinator of supervisors in others, setting high standards across the EU.”

Commissioner McGuinness





Thank you!

queries@fiaumalta.org







The EU AML Single Rulebook: What to Expect

Chiara Zappala'

Manager – Legal & International Relations

Jonathan Phyll

Head – Legal Affairs

Information Sessions on the new EU AML Legislative Package

3rd -5th April 2024



6th AML Directive

Main scope of the revised AML Directive

- Sets out the tasks and responsibilities of FIUs
- Sets out the tasks and responsibilities of supervisory authorities
- Regulates cooperation between competent authorities covered by the AMLD and cooperation with other authorities
- 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 the national level





Beneficial ownership, bank account and real estate registers

- BO registers must be accessible to competent authorities, obliged entities and persons with legitimate interest. The definition of legitimate interest is better clarified and in line with the preliminary ruling of the ECJ.
- Bank account registers will now also include information on payment accounts and bank accounts identified by vIBANs, securities accounts and custodial crypto-asset accounts.
- Introduction of a single access point to real estate information which will be directly accessible by competent authorities. Information must identify:
 - Any land or real estate property
 - Any natural person, legal entity or legal arrangement owning such property
 - Information on the transactions concerning the land/real estate property.





Suspension powers of FIUs

- FIUs shall have the power to suspend or withhold consent to a transaction (either following a STR filed by the obliged entity, or on its own motion) for a period the MSs decide upon, but not exceeding 10 working days
- FIUs shall have the power to suspend the use of a bank/payment/crypto-asset account or a business relationship suspected to be related to ML/FT, for a period the MSs decide upon, not exceeding 5 working days



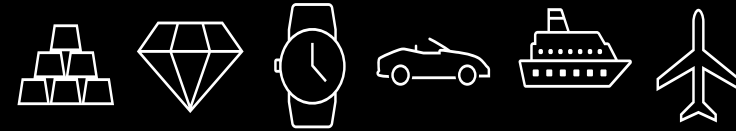
+ New obliged entities

- Dealers in precious metals and stones
- Dealers in high value goods
- Traders or intermediaries of cultural goods
- Crowdfunding service providers and crowdfunding intermediaries
- Credit intermediaries
- Investment migration operators
- Professional football clubs and agents





+ New obliged entities



Dealers in precious metals and stones

Precious metals:

- Gold
- Silver
- Platinum
- Iridium
- Osmium
- Palladium
- Rhodium
- Rhutenium

Precious stones:

- Diamond
- Ruby
- Sapphire
- Emerald

Traders in high value goods

- Jewelry, gold or silversmith articles of a value exceeding EUR 10 000
- Clocks and watches of a value exceeding EUR 10 000
- Motor vehicles of a price exceeding EUR 250 000
- Aircrafts of a price value exceeding EUR 7 500 000
- Watercrafts of a price value exceeding EUR 7 500 000

Traders or intermediaries in cultural goods

- Where value amounts to at least EUR 10 000
- Includes the carrying out of such activity by art galleries and auction houses
- Examples of cultural goods include:
 - Archaeological objects more than 100 years old
 - Certain categories of antiques
 - Means of transport more than 75 years old



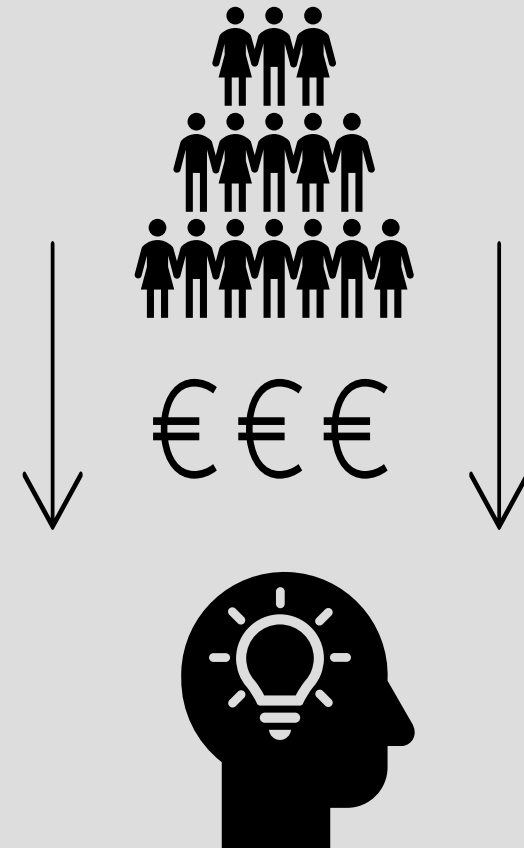
+ New obliged entities

Crowdfunding service providers

- A legal person providing crowdfunding services within the meaning of Regulation (EU) 2020/1503

Crowdfunding intermediaries

- An undertaking other than a crowdfunding service provider;
- That is in the business of matching or facilitating the matching of project owners and funders; and
- That is providing such service through an internet-based IT system open to the public or to a limited number of funders





+ New obliged entities

Credit intermediaries

- Other than credit and financial institutions
- That are providing mortgage and consumer credit
- Excluding credit intermediaries carrying out activities on behalf of the credit or financial institution that grants and processes the loan

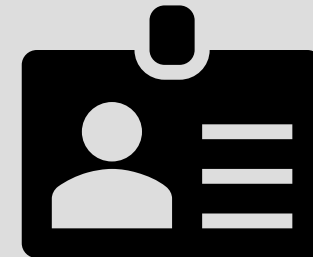
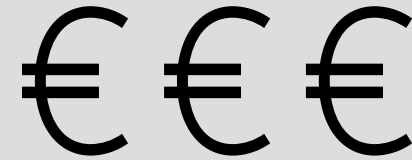




+ New obliged entities

Investment migration operators

- Representing or offering intermediation services to TCNs seeking to obtain residence rights in a MS in exchange for any kind of investment





+ New obliged entities

Professional football clubs

When engaging in transactions with:

- an investor;
- a sponsor;
- football agents or other intermediaries, whether natural or legal persons;
- transactions for the purposes of a football player's transfer

Subject to risk assessment
by the MS

Football agents

A natural or legal person,
who, for a fee:

- provides intermediary services; and
- represents football players and/or professional football clubs in negotiations;
- with a view to concluding a contract for a football player or an agreement for the transfer of a player





Gambling service providers

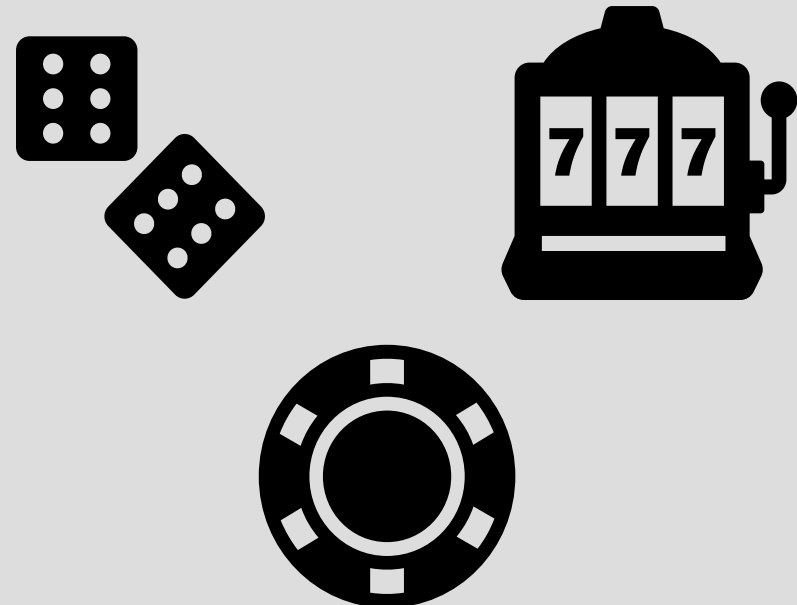
Exemption from AML/CFT requirements for certain providers of gambling services

4AMLD:

- Exemption not applicable to casinos

AMLR:

- Exemption also not applicable to gambling service providers the principal activity of which is to provide online gambling services or sport betting services, other than state operated online gambling services
- AMLR also provides for a more structured risk assessment to be undertaken by MS





Customer Due Diligence

Occasional transactions

General changes:

- Threshold for OTs lowered from EUR 15 000 to EUR 10 000
- AMLA can establish lower thresholds for certain obliged entities, sectors or transactions associated with ML/FT
- ID&V of the customer to be performed when carrying out an OT in cash amounting to a value of at least EUR 3 000 (whether in a single or linked transaction)



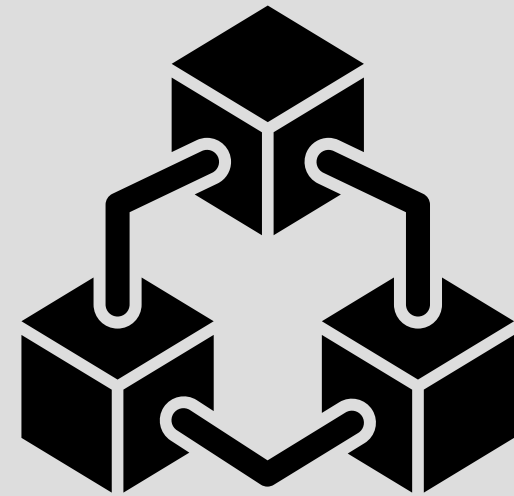
Customer Due Diligence

Occasional transactions

Changes applicable to CASPs

CDD measures on occasional transactions now dependent on thresholds:

- Full CDD to be performed when occasional transaction amounts to a value of at least EUR 1 000
- ID&V of the customer to be performed where the value of the occasional transaction is below EUR 1 000



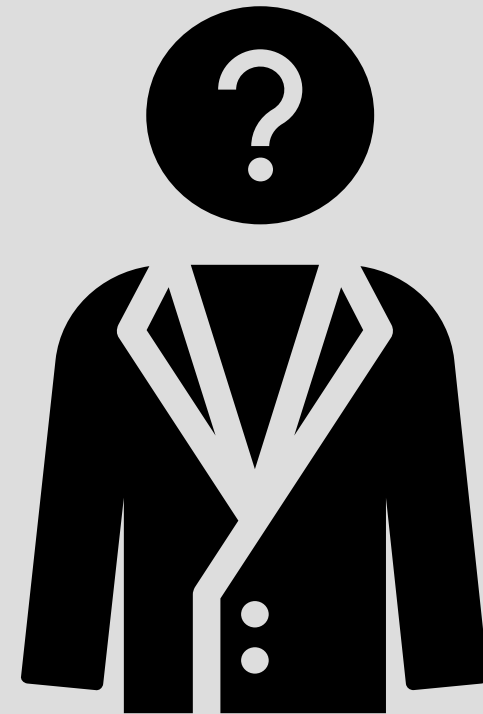


Customer Due Diligence

Identification and verification measures

Where the ID&V of the SMO (where mandated by the Regulation) may tip off the customer that the obliged entity has doubts regarding the BO of the legal person, the obliged entity shall:

- Identify the SMO/s without verifying their identity; and
- Record the steps taken to ascertain the identity of the BOs and SMOs

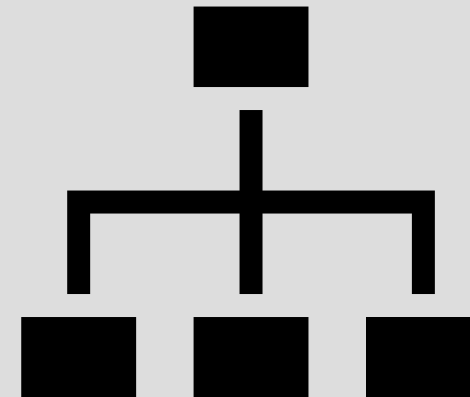




Customer Due Diligence

Reporting of discrepancies with information held in the BO register

- Obligated entities required to report discrepancies they find between the information available in the BO register and the information they collect
- The report shall contain:
 - The information obtained by the obliged entity indicating the discrepancy; and
 - Who the obliged entity considers the BO and, where applicable, the nominee shareholders and nominee directors to be, and why
- To be reported without undue delay and in any case by no later than 14 calendar days from when the discrepancy was detected
- Not applicable to legal professionals, auditors, external accountants, tax advisors when exercising legal privilege



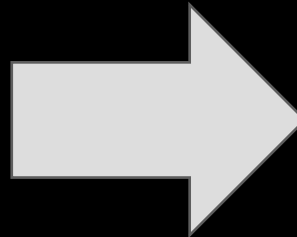


Customer Due Diligence

Reporting of discrepancies with information held in the BO register

Where discrepancies consist of:

- minor inaccuracies; or
- outdated data but the BO is known through other reliable sources and there is no suspicion of BO concealment



An obliged entity can choose not to report the discrepancy and alternatively:

- request additional information from the customer
- invite the customer to rectify the discrepancy with the BO register (if this is not carried out, discrepancy must be reported)

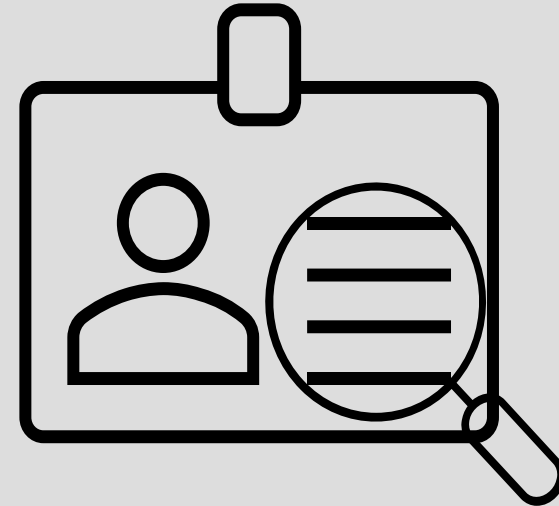
Derogation does not apply to high-risk customers for which EDD applies



Customer Due Diligence

Simplified due diligence

- The verification of identity of the customer and BO after the establishment of the business relationship cannot be made later than 60 days after the relationship is established
- SDD cannot be applied when there is suspicion that the customer or its agent is attempting to circumvent or evade targeted financial sanctions





Customer Due Diligence

Ongoing monitoring

The frequency of updating customer information shall be based on the risk posed by the business relationship and shall in any case not exceed:

- For higher risk customers to which EDD applies
 - 1 year
- For all other customers
 - 5 years





Politically exposed persons

- The definition of family members has been extended to include siblings where the PEP holds either one of the following functions:
 - Head of State
 - Head of Government
 - Minister
 - Deputy or Assistant minister
 - An equivalent function at Union level or in a third country
- MS may apply a broader scope for the designation of siblings as family members of PEPs where this is justified by their social and cultural structures and by risk.





Measures regarding applicants for residence by investment schemes

In addition to CDD measures, obliged entities must, as a minimum, conduct the following EDD measures:

- Obtain additional information on the customer and the BO(s)
- Obtain additional information on the source of funds, and source of wealth of the customer and of the BO(s)
- Obtain the approval of senior management for establishing or continuing the business relationship
- Conduct enhanced monitoring of the business relationship



Measures to mitigate risks in relation to transactions with a self-hosted address

crypto-
more CASPs must identify and assess the ML/FT risk associated with transfers of assets directed to or originating from a self-hosted address and shall apply one or of the following mitigating measures:

- Risk-based measures to ID&V the originator or beneficiary of a transfer made from or to a self-hosted address or the BO of such originator or beneficiary
- Requiring additional information on the origin and destination of the crypto-assets
- Conducting enhanced ongoing monitoring of those transactions
- Any other measure to mitigate and manage the risks of ML/FT and the risk of non-implementation and evasion of TFSs



Measures to mitigate risks deriving from anonymous instruments

4AMLD:

Credit and financial institutions are prohibited from keeping anonymous:

- Bank and payment accounts
- Anonymous passbooks
- Anonymous safe deposit boxes

AMLR:

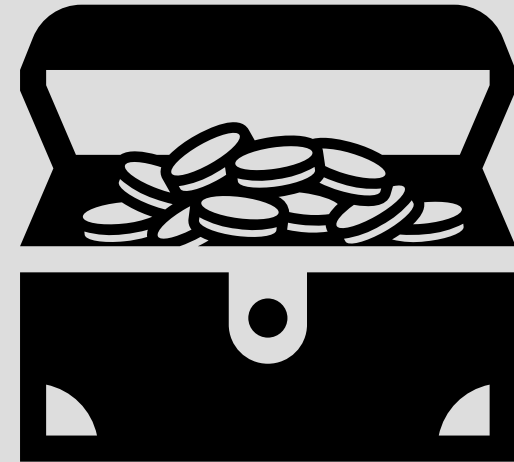
- Prohibition now also extends to CASPs
- Credit institutions, financial institutions and CASPs are now also prohibited from keeping anonymous:
 - Anonymous crypto-asset accounts
 - Any account otherwise allowing for the anonymisation of the customer account holder or the anonymisation or increased obfuscation of transactions, including through anonymity enhancing coins



High net worth individuals

Specific EDD measures must be performed by credit and financial institutions and TCSPs vis-à-vis high-risk business relationships which meet the following criteria:

- involve the handling of assets of EUR 5 000 000 or more through bespoke services for a customer
- the customer holds a total minimum of EUR 50 000 000, whether in financial or investable wealth or real estate, or a combination thereof (excluding the customer's private residence)

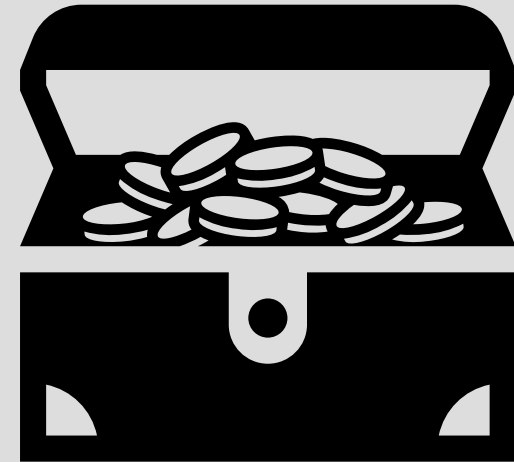




High net worth individuals

The following are the EDD measures to be taken vis-à-vis these individuals:

- Specific measures and procedures to mitigate the risks associated with bespoke services and products offered to that customer
- Obtaining additional information on the customer's source of funds
- Enhanced measures to prevent and manage conflicts of interest between the customers and senior management/employees of the obliged entity that exercise the entity's compliance function.



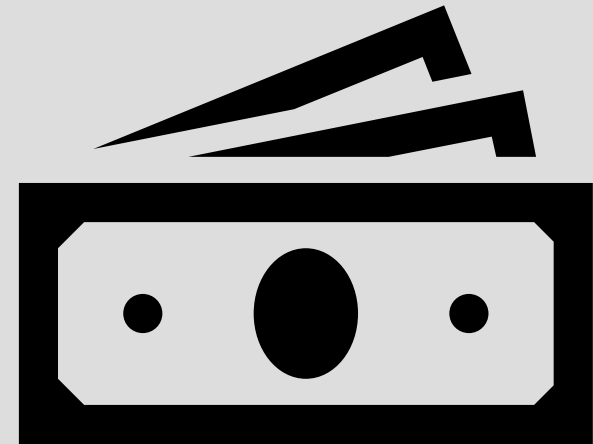


Limits to large cash payments

Persons trading in goods or providing services may accept or make a payment in cash only up to an amount of EUR 10 000, whether in a single or linked transaction

The limit shall not apply to:

- Payments between natural persons who are not acting in a professional function
- Payments or deposits made at the premises of credit institutions, electronic money issuers and payment service providers. In such cases, payments or deposits above the limit shall be reported to the FIU within the time frames established by the FIU (not a STR)





Threshold based reporting

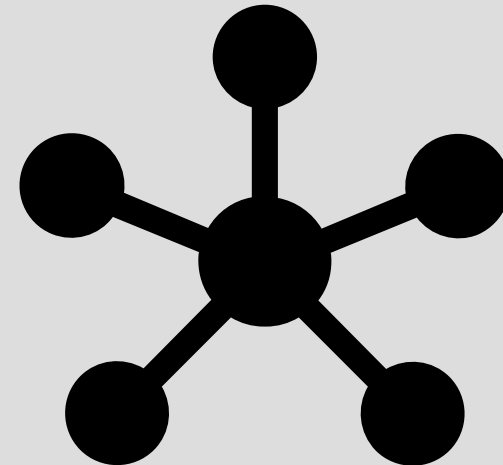
- Traders in high value goods must report to the FIU all transactions involving the sale of the following high-value goods when these are acquired for non-commercial purposes:
 - Motor vehicles for a price of at least Eur 250,000
 - Watercrafts for a price of at least Eur 7,500,000
 - Aircrafts for a price of at least Eur 7,500,000
- Credit and financial institutions that provide services in relation to the purchase of these goods or the transfer of their ownership must also report to the FIU all transactions they carry out for their customers in relation to those goods
- Timeframes for reporting to be established by the FIU





Partnerships for information sharing

- Obligated entities may participate in partnerships for information sharing subject to certain conditions and safeguards laid down in the Regulation
- Obligated entities cannot rely solely on the information received through a partnership to comply with their AML/CFT obligations
- The sharing of information can only take place in relation to customers who:
 - present a higher risk; or
 - for whom the obliged entities need to collect additional information in order to determine whether they are associated with a higher level of risk





Determination of Beneficial Ownership – **What's Changing?**

'beneficial owner' means any natural person who ultimately owns or controls a legal entity or an express trust or similar legal arrangement.

Article 2 (22)

1. No longer customer-centric.
2. Rules no longer included in the definition but set out in Chapter IV.





AML Regulation

Determination of Beneficial Ownership – **What's Changing?**

Beneficial Ownership of corporate entities and other legal entities is determined on the basis of:

1. Direct or Indirect Ownership of an Ownership Interest.
2. Direct or Indirect Control of an Ownership Interest.
3. Control via other means.

Article 42





Determination of Beneficial Ownership – **What's Changing?**

Direct or Indirect Ownership of an Ownership Interest:

1. Threshold decreased to 25% and may be decreased further.
2. 'Other ownership interest' 'including rights to a share of profits, other internal resources or liquidation balance'.

Article 42a





AML Regulation

Determination of Beneficial Ownership – **What's Changing?**

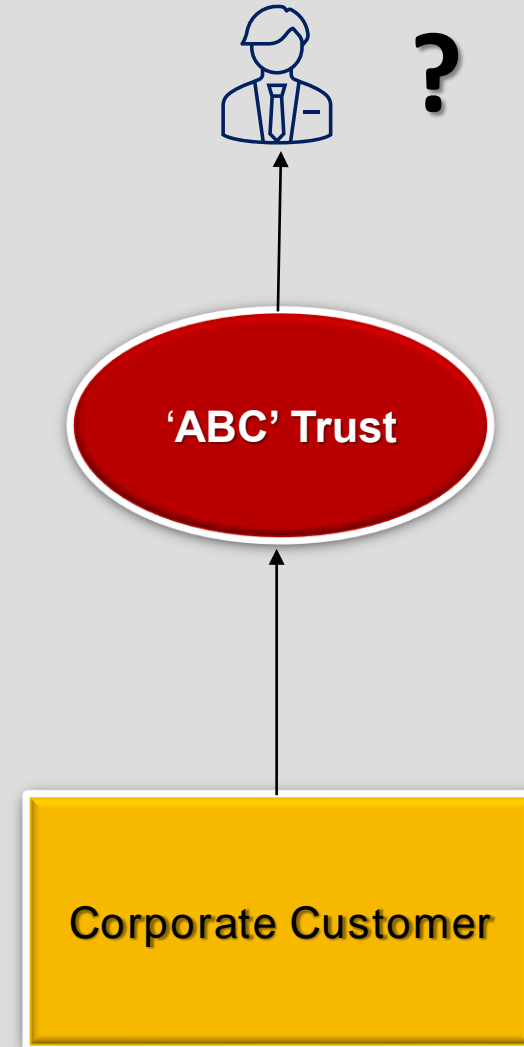
Option 1:

Determination of beneficial ownership on the basis of the rules applicable to corporate bodies.



Option 2:

Determination of beneficial ownership on the basis of the rules applicable to trusts.





Determination of Beneficial Ownership – **What's Changing?**

Beneficial Ownership of express trusts and similar legal arrangements:

1. Universal look-through approach.
2. Limit to the delimitation of the class of beneficiaries only in the case of:
 - Occupational Pension Schemes.
 - Employee Ownership/Participation Schemes.
 - Charitable or Not for Profit Arrangements.
3. Require a risk assessment in the case of the latter two.



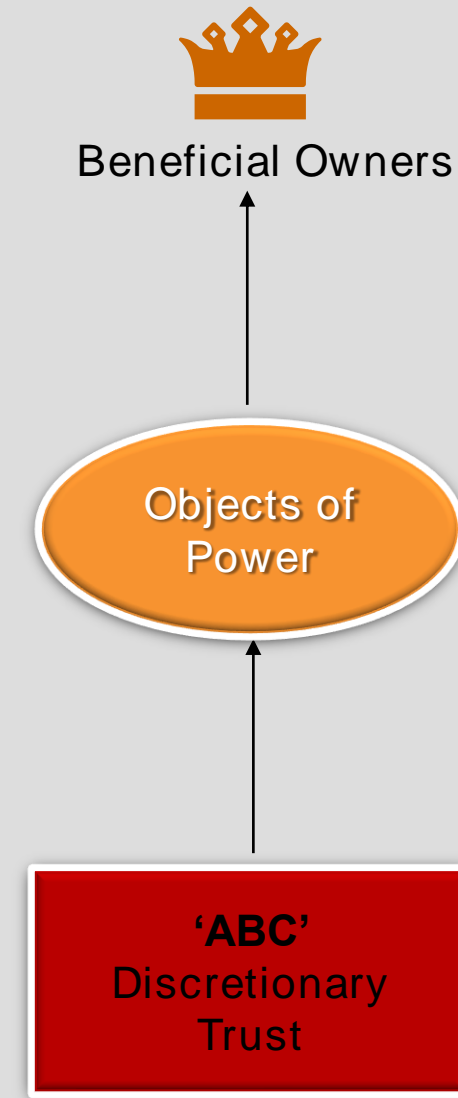


Determination of Beneficial Ownership – **What's Changing?**

Beneficial Ownership of express trusts and similar legal arrangements:

In the case of discretionary trusts:

- Objects of Power are not to be considered as beneficial owners until they are actually selected to benefit from the trust.
- Collect sufficient information to allow their identification at the time of exercise of discretion.





Determination of Beneficial Ownership – **What's Changing?**

Beneficial Ownership of collective investment schemes:

1. Own directly or indirectly 25% or more of the units.
2. Define or influence the investment policy of the Scheme.
3. Control the Scheme through other means.





Determination of Beneficial Ownership – **What's Changing?**

New obligation to disclose beneficial ownership of legal entities incorporated outside the EEA or of legal arrangements administered outside the EEA where:

1. Enter into a business relationship with an obliged entity
2. Acquires, directly or indirectly, real estate
3. Acquires, directly or indirectly, motor vehicles, watercrafts or aircrafts
4. Awarded public procurement contracts or concessions.



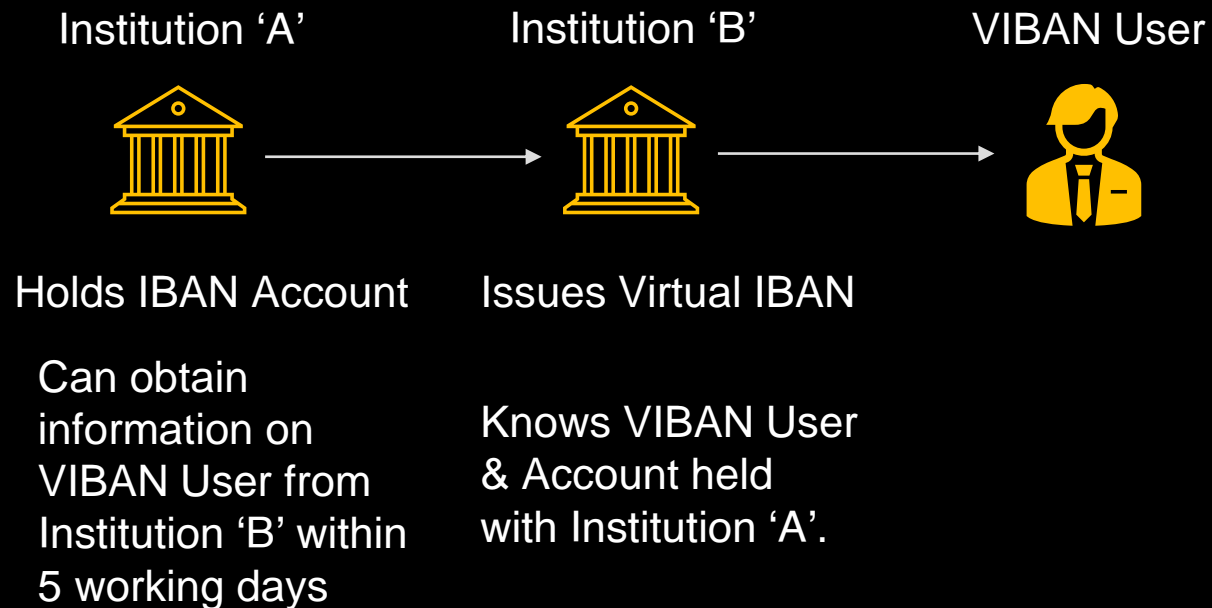


AML Regulation

Regulating Virtual IBANs

‘Virtual IBAN’ means an identifier causing payments to be redirected to a payment account identified by an IBAN different from that identifier.

Article 2 (20c)





AML Regulation

Governance, Outsourcing & Sanctions

Governance:

- Reflect the EU AML/CFT Compliance Officer GLs.
- Obligated entity to protect Compliance Officer from discriminatory treatment.
- Removal only once management body advised of as much.

Outsourcing:

- Outsourcing will entail notification to the supervisory authority.
- Specific tasks that cannot be outsourced.
- Exception for Collective Investment Schemes but requires prior approval by the supervisory authority.

Sanctions – Targeted Financial Sanctions

- Screening as part of CDD.
- Coverage of risk of non-implementation and evasion.
- Added responsibility of the Compliance Officer.





The Fund Transfer Regulation (Recast)

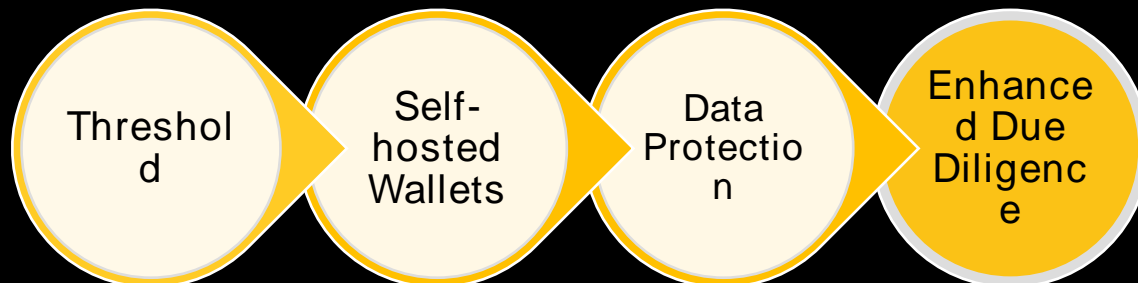
Recast of the FTR – What's New?

Credit & Financial Institutions

- Very similar to Regulation (EU) 2015/847.
- Chapter on Restrictive Measures.

Crypto-Asset Service Providers

- Ensure adherence with FATF Recommendation 15:
 - All CASPs authorised under MiCA are obliged entities.
 - Application of the Travel Rule to transfers of crypto-assets.





Thank you!

queries@fiaumalta.org



