



# Investment Services & the AML Package

*What News?*

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# Outline

1. What is the AML/CFT Legislative Package?
2. Timelines – when will it ever be published?
3. The new EU AML/CFT Authority
4. Pertinent provisions under the proposed AMLR + AMLD6
5. Conclusion



# Content of the EU AML/CFT Legislative Package

## AML/CFT Regulation (AMLR)

- Rules applicable to the private sector

## 6<sup>th</sup> 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

**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

**First quarter 2024?**



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

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# 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.



# AMLA's direct supervision over selected OEs

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01

**Only credit and financial** institutions that are present in at least **[7] MSs** are **eligible** for AMLA's direct supervision

02

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

03

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

*AMLR – 'financial institution' means [...] (d) an investment firm as defined in Directive 2014/65/EU; (e) a collective investment undertaking, in particular (i) an undertaking for collective investment in transferable securities and its management company or an authorised investment company which has not designated a management company that makes available for purchase units of UCITS in the union (ii) an alternative investment fund as defined in Directive 2014 and its alternative fund manager [...]*





# AMLA's direct supervision over selected OEs cont.

- AMLA is to commence direct supervision of selected OEs **5 months** after publication of the list;
- AMLA's supervisory term will be of 3 years after which there will be a second selection process;
- Possible capping of **40 selected OEs** in the 1<sup>st</sup> round
- Possible **full geographical coverage**



# 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;

## Tasks of JST shall include:

- Performing the **supervisory reviews and assessments** for the selected OEs;
- Coordinating **on-site inspections** at selected OE and preparing supervisory measures where necessary;
- Participate in the preparation of **draft decisions** applicable to the respective OE.



## Identification of breaches

- Independent investigatory team
- 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 decision taken by the EB;
- Final decision of EB can be appealed to the CJEU.

# Anti-Money Laundering Regulation (AMLR)

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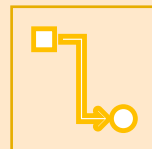




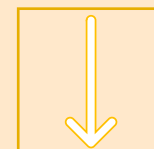
# AMLR: Main aspects of relevance to the Investment Services Sector



IDENTIFICATION OF BENEFICIAL  
OWNERSHIP



OUTSOURCING



APPLICATION OF  
SIMPLIFIED CDD



COMPLIANCE FUNCTIONS



HIGH RISK THIRD  
COUNTRIES



# 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

**(a) 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

→ Calculation of indirect ownership interest clarified

**(b) 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**



## BO for legal entities similar to express trusts, express trusts & collective investment schemes

- New article regulating the identification of BOs **for legal entities similar to express trusts** (such as foundations)
- Article on **BO for express trusts** – similar to AMLD (settlor, trustees, protector, beneficiaries, natural person exercising control)
  - What if legal entity occupies any of the above positions?
- New **derogation** where **CISs** are set up in the form of legal arrangement – BOs = natural person holding directly/indirectly 25% or more of the units held in the undertaking or ability to define or influence the investment policy of the undertaking/control its activities through other means



# Identification of class of beneficiaries and other developments

Where beneficiaries have yet to be determined → class of beneficiaries and general characteristics to be identified

*What happens in the case of discretionary trusts? Still under discussion*

Other developments worth noting:

- Article 48 Foreign Legal Entities and Arrangements
- Article 45a Listed Company Exemption



# AMLR: Outsourcing Provisions (council mandate)

MSs views on original COM proposal – different but prevailing opinion = strict prohibitions set out in current proposal to be loosened



Council mandate → only following explicit list of tasks shall not be outsourced under any circumstances:

<b>Approval of the OE's risk assessment</b>	<b>Approval of OE's policies, controls and procedures</b>	<b>Reporting of STRs/threshold-based declarations UNLESS:</b> <ul style="list-style-type: none"><li>• group; or</li><li>• partnerships for information sharing; or</li><li>• <b>Collective investment undertakings</b></li></ul>
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# Compliance functions (council mandate)

The AMLR proposes to define the roles and responsibilities of the compliance manager and compliance officer, reflecting principles already laid down in EBA guidelines

## → Roles of compliance manager include:

- Ensuring that OE's policies, procedures and controls are consistent with the AML/CFT risk exposure and that they are implemented with sufficient human and material resources
- Receive information on significant or material weaknesses in such policies, controls and procedures
- To submit at least once a year to the management body a report on the implementation of the OE's internal PCPs. To take necessary actions to remedy any deficiencies.

## → Roles of the compliance officer include:

- Responsible for the policies, controls and procedures of the OE in the day-to-day operations
- Reporting suspicious transactions to FIU





## Further Developments

- SDD: Where the business relationship/transaction presents a **low degree of risk**, OEs may apply the following SDD measures:

[...] Verify the identify of the customer & BO after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement but no later than **3 months** or the period set out in regulatory technical standards or what is **appropriate with regards to RBA, whatever is shorter**, of the relationship being established;

- HRTCs: Article 23 foresees the identification of HRTCs and Article 24 the identification of TCs with compliance weaknesses, mirroring the dual list by the FATF
  - The council mandate intends to translate the FATF listings to the EU legislation within 10 working days after any change in FATF
  - EP foresees that AMLA monitors and assesses third countries that pose a specific and serious threat to the financial system of the Union.



# The 6<sup>th</sup> Anti- Money Laundering Directive

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# 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 Investment Services 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!