


ML/TF risks: new regulation and emerging risks

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Agenda



EBA Guidelines on de-risking



EU AML Package



Emerging risks and innovation





EBA Guidelines on de-risking



EBA Guidelines on de-risking

Context

De-risking refers to decisions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher money laundering and terrorist financing (ML/TF) risk.

On **31st of March 2023** the European Banking Authority (EBA) **published its Final Guidelines:**

- on **the effective management** of money laundering and terrorist financing (ML/TF) risks **when providing access to financial services**. The aim is to assist in establishing effective ML/TF risk management methods to **ensure access to customers** considered as the **most vulnerable**;
- **amending the ML/TF risk factors** (EBA GL/2021/02) with a dedicated annex for customers that are NPOs. The rule defines the **factors** should be considered when determining the ML/TF risks linked to a business relationship with NPOs

Both Guidelines intends to address the situation of **de-risking** of **entire categories of customers without due consideration of individual customer's risk profile**.



EBA Guidelines on de-risking in a nutshell

- Blanket refusal is prohibited.
- Policies and procedures to set out the criteria to determine on which grounds to decide that a business relationship may be rejected or terminated (incl. all options to mitigate the risk such as increased transaction monitoring or restrictions in the use of the products). To effectively manage ML/TF risk associated with a customer, monitoring should at least include the following steps:
 - ✓ setting expectations of the customer's behaviour (nature, amount, source and destination of transactions).
 - ✓ ensuring that the account is reviewed regularly to understand whether changes to the risk profile are justified.
 - ✓ ensuring that any changes to the previously obtained KYC information that might affect the assessment of the ML/TF risk associated with the individual business relationship are taken into account.
- Additional requirements applies when dealing with:
 - ✓ asylum seekers, customer who cannot provide traditional form of identification, individuals who are granted a residence permit.
 - ✓ Non Profit organization: In particular, firms should ensure that they obtain a good understanding of the NPO's governance, how it is funded, its activities, where it operates and who its beneficiaries are.



EBA Guidelines on de-risking: what we do

Current Status

- UniCredit maintains limited **restrictions** where there is no appetite (currently under review)
- Other product base **limitations** implemented where there is limited appetite
- No limitations on NPO
- New capabilities required to address the forthcoming challenges and design requirements of an appropriate control framework.

Challenges

- Implementation of control framework to mitigate the specific risks, which require specific investments in transaction monitoring and know how.
- Different legal framework in the EU/NON EU countries (incl. local competition laws)

Our position

- It is appropriate and prudent business practice to consider the cost of effective risk management when determining the viability of a relationship or product offering.
- We would maintain the approach to for exiting/declining individual customers on a case-by-case in case of legitimate risk management reasons.
- Specific ad hoc approach on single case on certain counterparties. Further developments should be supported by business rationale/case and full assessment of compliance risks.





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EU AML Package



EU AML Package

Context

- On 7 May 2020, the European Commission published its “Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing” which include, among others, the issuance of a new AML Regulation (AMLR directly applicable to member states), the definition and set up of a new EU AML Authority (AMLA), the review of the existing AML Directive (AMLD) as well as new funds transfer regulation.
- The aim of the package is to protect **EU citizens** and the **EU's financial system** against money laundering and terrorist financing and to **harmonize** the current regulatory framework by closing existing **gaps**.
- The EU Council had delivered the draft of **the AMLR, AMLD and AMLA in December 2022**. The EU Parliament has proposed certain amendments that will be discussed in the so-called Trilogue (EU Council, EU Parliament, EU Commission) from May 2023.
- The requirements set forth in the AMLR are subject to changes and will go live in 2026, while AMLA will be operational from 2024.



EU AML Package: overview

The AML Package consists of four legislative proposals drafted by the European Commission, to be adopted by the European Parliament and the Council at the end of the consultation process



Regulation establishing a new EU AML / CFT authority

The document envisages the creation of a **new European supervisory authority in the AML/CFT area** with direct supervisory tasks over certain entities as of 2026. The powers of EBA in the AML area will be transferred to the new authority

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New AMLD VI, replacing Directive 2015/849/EU

The document provides for an **update of the 4th AML Directive** (as amended by the 5th AML Directive), which is necessary in order to align the existing rule with the creation of the new Regulation. The new Directive also promotes alignment with the latest actions taken by the FATF

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Regulation on AML / CFT with directly applicable rules

The document contains a **proposal** for a regulation directly applicable in all member states that identifies **specific rules to harmonise** - among other things - the **processes of due diligence and suspicious transaction reporting**

2



Revision of the 2015 Regulation on Transfers of Funds

The document provides for an **update of the Funds Transfer Regulation** in order to also **track crypto-asset transfers** and to **limit the high use of cash** in payments.

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EU AML Package: new EU AML / CFT authority



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Scope

Creation and Establishment of the Authority

The Authority's Tasks and Powers

Identification of subjects to be subject to direct supervision

Internal Organisation of the Authority

Regulations

- Creation of a **new Supervisory Authority** with an **agency** established in **one of the EU countries** and **financed partly by the European Union** and partly **by the obliged entities** subject to direct and indirect supervision.
- The authority should be operational in its seat location by the **beginning of 2024**
- **Direct supervision from 2026 of limited number of obligated entities** active in a certain proportion of Member States and categorised in the highest AML/CFT risk category by the national supervisor in a minimum number of those States
- **Guidance of financial sector supervisors** and periodic reviews of the adequacy of their resources and powers to carry out their tasks
- **Coordination of non-financial sector supervisors** (including self-regulatory bodies) with requests for insights and investigation of possible anomalies
- Sharing of data, statistics and **joint analysis with the FIUs** of all member states
- Regulatory production and adoption of **Guidelines, RTS, ITS and Opinions**
- **Three-yearly selection** of obliged entities to be subject to direct supervision
- Definition of **objective criteria** to identify entities for direct supervision (e.g. presence of activities in a minimum number of member states, high inherent risk resulting from a Risk Assessment conducted using harmonised methodology; “one bank per country” approach)
- Direct supervision performed by **mixed teams of AMLA and local supervisor resources**, including **on-site inspections**
- Presence of two collegial bodies, **General Board** - composed of the representatives of the member states - and **Executive Board** - composed of five independent members
- Presence of a **Chair** and an **Executive Director** representing the Authority
- Presence of an **Administrative Board of Review** responsible for administrative appeals



AMLA at the centre with different roles

The AMLA will be the centre of an integrated system composed of the authority itself and the national authorities with an AML/CFT supervisory mandate. It would also support EU financial intelligence units (FIUs) and establish a cooperation mechanism among them.

AMLA will have also the task to draft **regulatory technical standards** (to be always submitted to the Commission for adoption) and **issue specific guidelines** (which will not need to be submitted to the Commission). The main area of intervention will be the following:

GUIDELINES

- Scope of **internal Policies, Procedures and Controls** (*by 2 years from the entry into force of the AMLR*)
- Minimum requirements for the content of **Business wide Risk Assessment** (*by 2 years*)
- Ongoing monitoring and **transaction monitoring** (*by 2 years*)
- **Trends, risks and methods** involving any geographical area outside the EU (*by 3 years*)
- **PEPs**: identification of close associates; persons no longer in a prominent public function (*by 3 years*),
- **Outsourcing** (*by 3 years*)
- Indicators of unusual or **suspicious activity** or behaviors (*periodically*)
- Abnormalities or **unusual circumstances** indicating money laundering or terrorist financing (*by 2 years*)
- **Reliance** on 3rd parties (*by 3 years*)
- **Risk factors and variables** to consider when entering into a relationships (*by 2 years*).

TECHNICAL STANDARDS

- **Minimum requirement of Group-wide Policies** (including minimum standard for information sharing within the Group)- *by 2 years from the entry into force of the AMLR.*
- **Additional measures for branches and subsidiaries located in high risk third countries** - *by 2 years from the entry into force of the AMLR*
- **Application of Customer Due Diligence**: *by 2 years from the entry into force of the AMLR, o/w:*
 - Sectors and transactions associated to high risk of ML
 - The occasional and linked transactions.
 - Minimum set of KYC information
 - Minimum set of data for the reporting of suspicious transactions.



EU AML Package: Regulation on AML / CFT



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Scope

Scope and addresses

Policies, procedures and internal controls

Application of CDD and Beneficial Ownership transparency

Operations with Third Countries

Politically Exposed People

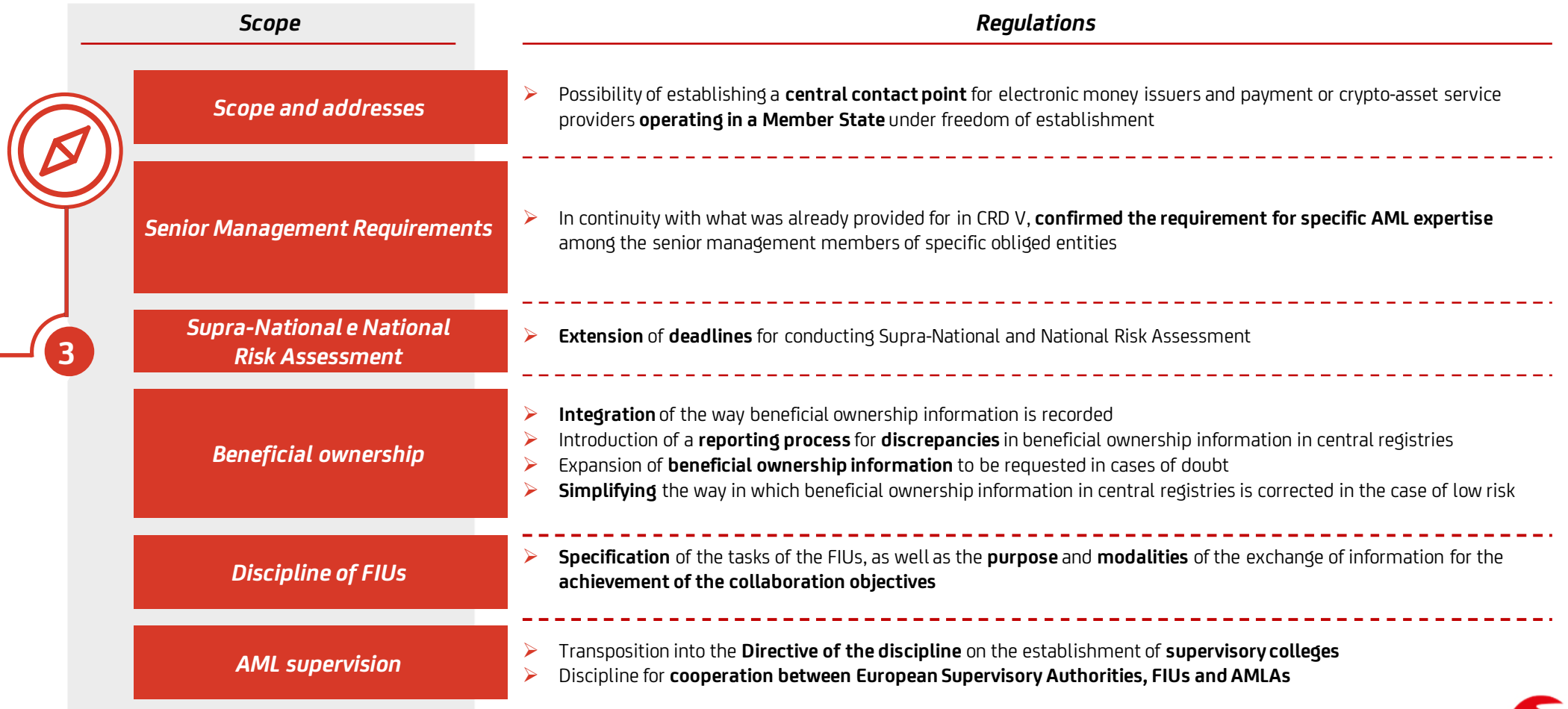
Reporting processes and data protection

Regulations

- **Extending the definitions and scope of obliged entities** to include, for instance, crypto-asset service providers and crowdfunding platform operators
- Management and **assessment of the risks** of financing weapons **proliferation programmes**
- Appointment of the “**Compliance manager**” who shall be responsible for the **implementation and monitoring of measures** to ensure compliance with the AML/CFT Regulation
- Assessing the **integrity** and **knowledge of employees** entrusted with tasks related to AML/CFT
- Specification of **minimum data** to be collected on the **purpose and nature** of the relationship or transaction
- Review of **criteria** and **procedures** for **identifying the beneficial owner**
- **Regulation of the Central Register of UBO** (mandatory consultation of UBO Register and another reliable source for the verification of the identity)
- Differentiation between **high-risk third countries** to which all enhanced due diligence measures are to be applied and **third countries with compliance weaknesses** in their national AML/CFT regimes to which enhanced country-specific measures are to be applied
- **Identification and communication**, by each Member State, of a **list of specific functions** that lead to **PEP status**
- Adoption of a **standard format for sending SOS**, common in all member states
- Alignment with **data protection regulations**



EU AML Package: AMLD VI



EU AML Package: Revision of the 2015 Regulation on Fund Transfers



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Scope

Scope and addresses

Obligations of payment service providers

Obligations of CASPs

Assessment e reporting

Regulations

- **Update** of definitions and **extension of payment service providers' rules** on funds transfer to crypto-asset service providers (so-called 'CASPs')
- Integration of the **minimum set of data and information** that payment service providers must collect on the payer and the payee when transferring funds
- Obligation for CASPs of the entity **ordering a crypto-asset transfer** (so-called "originator") to collect a **minimum set of data and information** on both the originator and the beneficiary
- Obligation for the CASPs of the entity ordering a crypto-asset transfer to **implement procedures** to verify the **presence of information** on the originator and the beneficiary of the transfer
- Verification of the **correctness of the information** accompanying the crypto-asset transfer based on reliable independent documents and sources
- Obligations for the CASPs of the beneficiary of the crypto-asset transfer to **verify the completeness** of the information required for the transfer and to **consider making a suspicious transaction report to the FIU** in case of omitted data

EU AML Package: current status

Current Status

- The trilogue discussion started (EU Commission, EU Parliament, EU Council)
- Changes proposed by the EU Parliament on the initial text approved by the EU Council circulated in December 2022
- No deadlines so far provided on the end of the Trilogue discussion

Challenges

- The European Parliament's proposal to **include targeted financial sanctions in the scope of the AML Regulation** (practical implications of merging together two separate legal frameworks; financial sanction screening domestic payments)
- **PEP**: the European Parliament's proposal to expand the scope of PEPs to include heads of regional and local authorities (including grouping of municipalities and metropolitan regions of at least 30.000 inhabitants), as well as siblings of PEPs. The Council's proposal which adds to the list of PEPs functions "other prominent public functions provided for by Member States" as sufficient
- The Council's proposal stipulating that banks shall not enter into a business relationship with a **legal entity incorporated outside the Union** whose beneficial ownership is not in an EU UBO register, except where the relationship do not exceed EUR 250.000 (would put bank-branches in the EU at disadvantage, given branches outside the EU could continue to provide banking services to such companies)
- **Threshold** for determining **beneficial ownership** lowered to 15%.
- Data protection and Public Private Partnerships
- New requirements on High net worth individuals





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Emerging risks and innovation



Question for the audience

Next emerging risk?

- 1) Crypto currencies
- 2) Public funds (e.g PNRR)
- 3) New payments methods (e.g Fintechs)
- 4) Geo-political tension
- 5) Terrorism financing
- 6) “Traditional” risk such as use of cash
- 7) Other



New technology: opportunities and risks

New players

- Crypto providers/platforms and increased use of virtual currencies by customers
- Fintechs and payment service providers (PSP) which leverage on new capabilities for faster and cheaper processing of payments
- Challenger banks leveraging on remote onboarding capabilities to streamline the relationship with the customers

New Opportunities (Cloud, OCR, NLP, digital identity, DLT, machine learning...)

- Remote customer onboarding with sound technology and appropriate control framework
- Advance analytics capabilities to improve control framework, especially in the segmentation of customers and transaction monitoring
- Use of blockchain to process transactions
- Efficiency: use of AI to automate certain AML process such as screening hits closure and transaction monitoring alert adjudication



Old vs new risks

«Old» risks

- Cash is still king
- Use trust and nominees
- Cross border payments from/to high risk countries
- Money muling

«New» risks

- Conflict (complex ownership structures, sanctions circumvention)
- Misuse of Public funds (e.g PNRR)
- New payments and crypto
- Online gambling

Key questions

- What will be the next emerging risk?
- What part of the AML program mechanisms can improve to identify emerging risks and issues?

