

## **NAVIGATING THE CHALLENGES OF THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING IN THE EUROPEAN UNION**

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### **Abstract**

This paper analyses the current anti-money laundering and counter-terrorist financing regulations applicable to businesses and organisations in the European Union. Key terms like money laundering, terrorist financing, and the types of entities concerned are explained. The paper then examines the processes for assessing risks, including how high-risk countries are identified and the steps which are taken to apprehend those risks. A significant portion thereof is dedicated to the due diligence requirements companies must follow when onboarding new customers and monitoring existing ones. This includes verifying customer identities, understanding who truly owns or controls the customer's business, and ongoing monitoring obligations. The involvement of external parties in this procedure and the necessity for clarity concerning beneficial ownership data is examined.

Additionally, the paper offers in-depth analysis on the essential role of Financial Intelligence Units (FIUs) and outlines the methods by which authorities coordinate and share information to counter financial illicit activities. It also discusses duties concerning maintaining records, regulatory oversight, and the consequences and penalties for failing to adhere to regulations.

Furthermore, as it investigates the regulatory framework within the EU, the article candidly recognizes the challenges faced by businesses in conforming to these complex regulations, including the significant costs associated with the compliance and administrative duties.

**Keywords:** *Financial Action Task Force, European Union, anti-money laundering, counter-terrorist financing, Financial Intelligence Unit*

### **1. HISTORICAL INTRODUCTION TO EUROPEAN AML/CFT DIRECTIVES**

The first Anti Money Laundering Directive (AMLD1) was published in 1991 by the European Commission (EC) with the objective to increase its political competences in the field of AML.<sup>44</sup> Indeed, the European Parliament (EP) approved several resolutions calling for a global community programme to combat drug trafficking, including

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<sup>44</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, *OJ L 166*, 28.06.1991, p. 77. The European Council of Ministers obliged Member States (MS) to incorporate it into their national legal frameworks until 1 April 1994.

provisions on the prevention of money laundering.<sup>45</sup> This directive adopted a multilateral approach over the-then growing political concerns over drug trafficking in Europe appealing for an international collaboration and action in this field.

With its adoption the EC joined the efforts of the Financial Action Task Force (FATF), established by the G7 group of major industrialised nations in 1989, to treat the issue of AML seriously and emphasized the importance of international coordination and cooperation in combating money laundering.<sup>46</sup>

The FATF's initial set of 40 recommendations<sup>47</sup> had a significant impact on the first and later AMLDs, focusing on banks as the main private sector "obliged entities".<sup>48</sup>

The directive required Member States (MS) to pass laws requiring uniform Know Your Customer (KYC) and Customer Due Diligence (CDD) procedures during onboarding and regular intervals thereafter.

AMLD1 was a good beginning step towards identifying and addressing AML, but its limitations were evident as professional knowledge of money laundering increased. Other types of "predicate" criminality also gained political prominence.<sup>49</sup>

In December 2001, the-then European Community (EC) agreed to AMLD2,<sup>50</sup> a directive to address money laundering predicate offences. However, its content had been agreed sometime before the September 11 terrorist attacks. The FATF 40 Recommendations broadening the scope of responsibility and emphasizing reporting to a designated national Financial Intelligence Unit were observed in this document. The directive also extended responsibility to non-bank financial institutions, including designated non-financial businesses and professions (DNFBPs) and Money Service Bureaus (MSBs). Attorneys were included in the directive and their right to professional confidentiality was no longer protected if they were actively involved in money laundering or provided information on how to launder money.<sup>51</sup>

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<sup>45</sup> P. C. van Duyne, "Money-Laundering: Estimates in Fog", *Journal of Financial Crime*, vol. 2, no. 1, Feb. 1994, pp. 58–74.

<sup>46</sup> J. Welbeck et al., "The Determinants of Anti-Money Laundering Compliance among the Financial Action Task Force (FATF) Member States", *Journal of Financial Regulation and Compliance*, vol. 26, no. 3, July 2018, pp: 442–459.

<sup>47</sup> FATF, *Methodology for assessing compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, Paris, FATF-GAFI/ OECD; June 2023. Available from: [www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf](http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf) (accessed 22 April 2024).

<sup>48</sup> H. Chitimira and Sh. Munedzi, "Overview International Best Practices on Customer Due Diligence and Related Anti-Money Laundering Measures", *Journal of Money Laundering Control*, vol. 26, no. 7, Sept. 2022, pp. 53–62.

<sup>49</sup> N. Clark, "The Impact of Recent Money Laundering Legislation on Financial Intermediaries", *Journal of Financial Crime*, vol. 3, no. 2, March 1995, pp: 131–47.

<sup>50</sup> Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration, *OJ L 344*, 28.12.2001, p. 76.

<sup>51</sup> H. Xanthaki, "Lawyers' Duties under the Draft EU Money Laundering Directive: Is Confidentiality a Thing of the Past?", *Journal of Money Laundering Control*, vol. 5, no. 2, 2001, pp. 103-114.

The EC's third directive in the field of anti-money laundering and combating the financing of terrorism (AML/CFT), AMLD3<sup>52</sup>, was implemented in 2005, to address concerns related to terrorism funding, responding to the "War on Terror" promptly. The FATF revised its recommendations in 2003, creating nine Special Recommendations on terrorist financing<sup>53</sup>, which formed the basis of CFT material for the AMLD3. The directive extended previous AML duties to other industries, such as casinos and accountants, and introduced a risk-based approach (RBA) to AML/CFT processes. This allowed for more variance in the application of CDD based on product, client risk profile, and other considerations. AMLD3 also established penalties for AML/CFT violations, acknowledging the need to motivate required institutions. However, the directive remained vague on how fines would be calculated, leaving that up to national law.

A directive adopted in 2015, Directive (EU) 2015/849 (AMLD4) brought new EU-level and national risk assessments requirements, new rules in relation to the beneficial ownership as well as home and host responsibilities for companies operating in other MS. New Financial Intelligence Units (FIUs) powers were strengthened, due diligence simplified, and gambling services extended. The definition of politically exposed persons (PEP) was adapted, and suspicious activity reports were introduced.<sup>54</sup>

The latest directive in force was adapted in 2018. The Directive (EU) 2018/843 (AMLD5)<sup>55</sup> proposes several measures to enhance the work of Financial Institutions (FIUs) and strengthen cooperation between anti-money laundering supervisors and the ECB. It also calls for a broadening of criteria for assessing high-risk third countries, lifting anonymity on prepaid cards, interconnecting beneficial ownership registers at

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<sup>52</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, *OJ L 309, 25.11.2005, p. 15.*

<sup>53</sup> See namely: J. Johnson, "An analysis of the obligations of gambling entities under the FATF's 2003 anti-money laundering recommendations", *Journal of Money Laundering Control*, vol. 9, no. 1, 2006, pp. 7-18.

<sup>54</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, *OJ L 141, 5.6.2015, p. 73.* This directive is implemented in Croatia by Law on Prevention of Money Laundering and Financing of Terrorism (*Zakon o sprječavanju pranja novca i financiranja terorizma*), Official Gazette (*Narodne novine*), NN 108/2017.

<sup>55</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU, *OJ L 156, 19.6.2018, p. 43.* This directive is implemented in Croatia by two Laws Amending the Law on Prevention of Money Laundering and Financing of Terrorism, Official Gazette, NN 39/2019 and NN 151/2022. In 2023 an important document was adopted by the Croatian Agency for Supervision of Financial Services (HANFA): Regulation on supervisory reports and information on matters essential for the performance of supervision or for monitoring the compliance of obliged entities in the sense of the Law on Prevention of Money Laundering and Financing of Terrorism, Official Gazette, NN 76/2023.

EU level, increasing transparency about companies' and trusts' ownership, and introducing new cryptocurrency rules.<sup>56</sup>

Please note that hereinafter we will use AMLD shortening for all these directives.<sup>57</sup>

## 2. KEY CONCEPTS AND DEFINITIONS

The involvement of the EU in the field of the AML/CFT implementation measures is based on article 114 of the Treaty on the Functioning of the European Union.<sup>58</sup> It authorises the EU to proceed to the harmonisation of the national legislations of the MS. Indeed, money laundering and terrorist funding pose unique threats to the European Union (EU) and its MS, necessitating a comprehensive, risk-based strategy. This approach requires evidence-based decision-making and requires the EU and the MS to recognise and reduce these risks.

The European Supervisory Authorities (ESA)<sup>59</sup>, European Insurance and Occupational Pensions Authority (EIOPA)<sup>60</sup>, European Securities and Markets Authority (ESMA)<sup>61</sup> through their Joint Committee are responsible for providing opinions on risks impacting the EU financial sector. The EC is the best placed to examine cross-border risks and is responsible for evaluating transnational operations.<sup>62</sup> The effectiveness of

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<sup>56</sup> Please note that the same year another directive was adopted which by some scholars at the time was called AMLD6. However, even if the scope of this directive was the prevention of money laundering, its text was not integrated into existing AMLD directives. See Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, *OJ L 284, 12.11.2018, p. 22.*

<sup>57</sup> Consolidated text: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), *OJ L 30.06.2015, p. 1.*

<sup>58</sup> Article 114, para. 1. of the Consolidated version of the Treaty on the Functioning of the European Union (OJ 115, 9.5.2008, p. 94) reads as follows: "Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."

<sup>59</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, *OJ L 331, 15.12.2010, p. 12.*

<sup>60</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, *OJ L 331, 15.12.2010, p. 48.*

<sup>61</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, *OJ L 331, 15.12.2010, p. 84.*

<sup>62</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, *OJ L 55, 28.2.2011, p. 13.*

this process depends on the participation of specialists, including the Expert Group on Money Laundering and Terrorist Financing, representatives from Financial Institutions (FIs), and other EU level entities. Experience and national risk assessments are crucial sources of data. Personal data processing should not be part of the EC's evaluation of cross-border risks, and data must be completely anonymised. National and EU supervisory agencies for data protection should only be involved when assessing the impact of the AML/CFT on individual privacy and data protection.

The AMLD defines money laundering as the intentional conversion or transfer of property,<sup>63</sup> concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, acquisition, possession or use of property, participation in, association to commit, attempts to commit, aiding, abetting, facilitating and counselling the commission of any of the actions in relation to, namely the act of converting or transferring property with knowledge of its criminal origin or involvement in such activity<sup>64</sup>, hiding its real nature or ownership, or purchasing or using property with knowledge of its acquisition through illegal conduct or involvement in such action.<sup>65</sup>

Money laundering is encompassed even if the property to be laundered were carried out in the territory of another MS or a third country.<sup>66</sup>

The AMLD also encompasses the terrorism financing<sup>67</sup>. The “terrorism” is defined as deliberate acts that could gravely harm a nation or international organisation, such as assaults on life, bodily integrity, kidnapping, damage to infrastructure, seizing vehicles, production of weapons, hazardous materials, and threats as well as crimes connected to terrorist organisations (such as leading terrorist groups or participating in their operations) and to terrorist activity, such as grand theft, extortion, and creating fictitious documentation.<sup>68</sup>

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<sup>63</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, *OJ L 141*, 5.6.2015, p. 1.

<sup>64</sup> See namely Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf), (accessed 20 April 2024) as well as Article 1(1) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, *OJ C 316*, 27.11.1995, p. 49.

<sup>65</sup> A. Orlović, *Gospodarska kriminalistika: uvod u kriminalističko istraživanje gospodarskog kriminaliteta i korupcije (Economic criminology: an introduction to criminal investigation of economic crime and corruption)*, Zagreb, MUP, 2016.

<sup>66</sup> Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005, *OJ L 284*, 12.11.2018, p. 6.

<sup>67</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, *OJ L 88*, 31.3.2017, p. 6.

<sup>68</sup> AMLD relies on the definition of terrorism on the Council Framework Decision of 13 June 2002 on combating terrorism, *OJ L 164*, 22.6.2002, p. 3.; S. Cindori and al., *Sustav sprječavanja pranja novca: nove prijetnje globalnoj sigurnosti (Anti-Money Laundering System: New Threats to Global Security)*, Rijeka, Libertin naklada d.o.o., 2020.

The following entities, also called obliged entities, must observe the rules edited by the AMLD: credit institutions<sup>69</sup>, financial institutions<sup>70</sup>, natural or legal persons acting in their professional activities, notaries and independent legal professionals, trusts, companies, foundations, trust or company service providers, estate agents, other persons trading in goods, gambling services, exchange services between virtual currencies and fiat currencies<sup>71</sup>, custodian wallet providers, and persons trading or acting as intermediaries in the trade of works of art.<sup>72</sup>

MS may decide to exempt providers of certain gambling services from these provisions based on proven low risk posed by the nature and scale of operations of such services, with the exception of casinos.<sup>73</sup> Risk assessments consider the degree of vulnerability of the applicable transactions, including payment methods used. MS must notify the Commission and communicate their decision to other MS. For persons engaging in financial activities on an occasional or very limited basis where there is little risk of money laundering or terrorist financing, they may not fall within the scope of the AMLD. The total turnover of the financial activity must not exceed a threshold that must be sufficiently low, and a maximum threshold per customer and per single transaction should be established at the national level but should not exceed EUR 1 000. Also, the turnover of the financial activity should not exceed 5% of the total turnover of the natural or legal person concerned.

MS must establish risk-based monitoring activities or take other adequate measures to ensure that exemptions granted by decisions are not abused.<sup>74</sup> The definition of property includes assets, criminal activity, fraud affecting the Union's

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<sup>69</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, *OJ L 176*, 27.6.2013, p. 1. See also: Judgment of 6 October 2021, *Ukrselhosprom PCF LLC and Versobank AS v European Central Bank*, T-351/18 and T-584/18, ECLI identifier: ECLI:EU:T:2021:669.; Judgment of 28 February 2024, *Sberbank Europe AG v European Central Bank*, T-647/21, ECLI:EU:T:2024:127. The European Court of Justice (ECJ) respects the principle of the primacy of EU law (see namely: Judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33) in all cases, including the money laundering, unless a directive has been introduced validly into the internal legal system of a MS. In such case, the interpretation of national courts is sufficient to establish the scope of that national law: judgment of 24 April 2018, *Caisse régionale de crédit agricole mutuel Alpes Provence and Others v ECB*, T-133/16 to T-136/16, EU:T:2018:219, para. 84 to 92).

<sup>70</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, *OJ L 176*, 27.6.2013, p. 338.

<sup>71</sup> J. H. C. Suntura, "Customer Identification in Currency Exchange Companies as per FATF Recommendations", *Journal of Money Laundering Control*, vol. 23, no. 1, Dec. 2019, pp. 96–102.

<sup>72</sup> A. D. Kennedy, "Dead Fish across the Trail: Illustrations of Money Laundering Methods", *Journal of Money Laundering Control*, vol. 8, no. 4, October 2005, pp: 305–319.

<sup>73</sup> J. F. Kelly and M. J. Clayton, "Money Laundering and Land-Based Casinos", *Gaming Law Review and Economics*, vol. 14, no. 4, July 2010, pp. 275–284.

<sup>74</sup> B. A. Nduka and G. Sechap, "Refocusing Designated Non-Financial Businesses and Professions on the Path of Anti-Money Laundering and Combating the Financing of Terrorism Compliance", *Journal of Money Laundering Control*, vol. 24, no. 4, May 2021, pp. 693–711.

financial interests<sup>75</sup>, corruption, tax crimes, self-regulatory bodies, and beneficial owners. In the case of corporate entities, a shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person is considered direct ownership. In the case of trusts, all persons involved in the transaction or activity are considered beneficial owners. The documents to be considered are the annual financial statements, consolidated financial statements, and related reports of certain types of undertakings.<sup>76</sup> The text outlines the definitions of various roles and responsibilities in the context of trusts<sup>77</sup>, banks and family members.

### 3. RISK ASSESSMENT

Pursuant the AMLD, the EC conducts an assessment of the risks of money laundering and terrorist financing affecting the internal market and cross-border activities. The EC also makes recommendations to MS on measures suitable for addressing identified risks and informs them of any decisions or recommendations to be applied in their national AML/CFT regimes.

Each MS must designate an authority or establish a mechanism to coordinate national responses to these risks. The risk assessment findings will be used to improve the AML/CFT regime, identify sectors with lower or greater risk, allocate resources and ensure that appropriate rules are drawn up. MS must make the results of their risk assessments available to the EC, ESA and other MS. Countries designated as high-risk third countries due to strategic deficiencies in their national anti-money laundering and counter-terrorist financing regimes present notable risks to the EU's financial system. The EC has implemented delegated act<sup>78</sup> to ascertain high-risk countries, considering deficiencies in critical areas such as legal and institutional frameworks for anti-money laundering and counter-terrorist financing, measures for customer due diligence, requirements for record-keeping, procedures for reporting suspicious transactions, accuracy and timeliness of beneficial ownership information, competencies and protocols of relevant authorities, and the efficacy of the third country's anti-money laundering and counter-terrorist financing system in addressing these hazards.

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<sup>75</sup> I. Kustura, *NextGenerationEU and European Union funds in the multiannual financial framework 2021-2027 - European perspective (NextGenerationEU i fondovi Europske unije u višegodišnjem financijskom okviru 2021. – 2027. - Europska perspektiva)*, Zagreb, Mate, 2023.

<sup>76</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, *OJ L 182*, 29.6.2013, p. 19.

<sup>77</sup> D. H. Russell and T. Graham, "Maintaining the Rage: The European Union's Attack on Trusts at Home and Abroad", *Trusts & Trustees*, vol. 23, no. 2, Mar. 2017, pp. 145–148.

<sup>78</sup> Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies, *OJ L 254*, 20.9.2016, p. 1.

#### 4. CUSTOMER VERIFICATION AND MONITORING

MS and its obliged entities are required to apply customer due diligence measures when establishing a business relationship, conducting occasional transactions exceeding EUR 15,000 or more, or suspecting money laundering or terrorist financing. They may waive specific diligence procedures for electronic currency if particular risk-mitigation criteria are fulfilled.<sup>79</sup> These measures involve confirming the customer's identity, identifying the beneficial owner, evaluating the purpose and intended nature of the business relationship, and implementing continuous monitoring.<sup>80</sup> are tasked with ensuring that obliged entities adhere to these standards but possess the authority to adjust the extent of such measures based on risk levels.

They must also account for the factors outlined in Annex I<sup>81</sup> of the AMLD when evaluating the risks associated with money laundering and terrorist financing.

MS are obliged to verify that obliged entities can justify the adequacy of customer diligence measures in response to identified money laundering and terrorist financing risks. In the realm of life or investment-linked insurance endeavours, credit institutions and financial entities are mandated to carry out diligence procedures concerning beneficiaries of life insurance and other investment-related policies. Authentication of the customer's and beneficial owner's identity must occur prior to initiating any business association or transaction. MS have the discretion to permit identity verification during the establishment of a business relationship if essential to prevent disruption of regular business operations and mitigate the risks associated with money laundering or terrorist financing. Obligated entities must apply these measures to all new customers and existing customers on a risk-sensitive basis.

Simplified customer due diligence measures may be allowed when identifying areas of lower risk.<sup>82</sup>

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<sup>79</sup> Commission Delegated Regulation (EU) 2018/1108 of 7 May 2018 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regulatory technical standards on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions, *OJ L 203, 10.8.2018, p. 2.*

<sup>80</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, *OJ L 258, 1.10.2009, p. 11.*

<sup>81</sup> The Annex I of the AMLD4 provides for a non-exhaustive list of risk variables that obliged entities shall consider when determining to what extent to apply customer due diligence measures. This list namely includes:

- (i) the purpose of an account or relationship;
- (ii) the level of assets to be deposited by a customer or the size of transactions undertaken;
- (iii) the regularity or duration of the business relationship.

<sup>82</sup> J. Böszörményi and E. Schweighofer, "A Review of Tools to Comply with the Fourth EU Anti-Money Laundering Directive", *International Review of Law, Computers & Technology*, vol. 29, no. 1, Jan. 2015, pp. 63–77.

## 5. CONDUCTING AML/CFT IN HOME STATE AND ABROAD

The EU has implemented strategies to prevent money laundering and counteract terrorist financing in third-party nations. These strategies encompass restricting obliged entities from establishing branches or representative offices in countries lacking adequate AML/CFT frameworks, heightening supervisory examinations or external audit requirements for branches and subsidiaries, and mandating credit and financial institutions to reassess and adjust correspondent relationships.<sup>83</sup> MS are obliged to inform the EC before adopting or enforcing these measures. In cross-border correspondent relationships, credit and financial institutions must gather comprehensive information regarding the respondent institution, evaluate its AML/CFT controls, secure approval from senior management, document their duties, and authenticate the identity of customers.<sup>84</sup>

MS are required to compel obliged entities to implement enhanced customer due diligence measures to address and mitigate heightened risk scenarios, particularly when engaging with individuals or entities established in third countries identified by the EC as high-risk third countries. These measures entail acquiring supplementary information about the customer and beneficial owner(s), elucidating the intended nature of the business relationship, scrutinising the source of funds and wealth, ascertaining the purposes behind transactions, securing approval from senior management, and intensifying monitoring of the business relationship.

MS may also mandate obliged entities to adopt additional mitigating measures, such as integrating further aspects of enhanced due diligence, introducing enhanced reporting mechanisms, and restricting business relationships with individuals or entities from high-risk countries.<sup>85</sup>

In transactions or business associations involving politically exposed persons, entities must deploy appropriate risk management systems, obtain approval from senior management, ascertain the origin of wealth and funds involved, and conduct intensified monitoring.<sup>86</sup>

## 6. BENEFICIAL OWNERSHIP UNVEILED

MS may allow obliged entities to rely on third parties to meet customer due diligence requirements, but the ultimate responsibility for meeting these requirements remains

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<sup>83</sup> Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries, *OJ L 125, 14.5.2019, p. 4.*

<sup>84</sup> P. Silva, "Recent Developments in EU Legislation on Anti-Money Laundering and Terrorist Financing", *THE NEW JOURNAL OF EUROPEAN CRIMINAL LAW*, vol. 10, no. 1, Apr. 2019, pp. 57–67.

<sup>85</sup> K. J. Johannes, "De-Risking or Recontracting – the Risk Dilemma of EU Money Laundering Regulation", *The Journal of Risk Finance*, Oct. 2020, pp. 445–458.

<sup>86</sup> M. J. Geary, "PEPs – Let's Get Serious", *Journal of Money Laundering Control*, May 2010, pp. 103-108.

with the obliged entity.<sup>87</sup> Third parties include obliged entities from other MS or a third country that apply customer due diligence requirements and record-keeping requirements consistent with those laid down in the AMLD. MS must ensure obliged entities obtain necessary information about customer due diligence requirements and provide relevant copies of identification and verification data upon request as well as ensure that corporate and other legal entities obtain and hold adequate, accurate, and current information on their beneficial ownership, including details of beneficial interests held.

The EU has established mechanisms to ensure transparency in beneficial ownership information.<sup>88</sup> Obligated entities and competent authorities must report discrepancies between central registers<sup>89</sup> and their own information. MS must resolve these discrepancies promptly and include specific mentions in the central register. Information on beneficial ownership must be accessible to competent authorities, obliged entities, and the general public.

Additional information can be provided under certain conditions. Competent authorities and FIUs can access information on the central register without alerting the entity concerned. In exceptional circumstances, MS may grant exemptions from access to beneficial ownership information on a case-by-case basis. Central registers must be interconnected via the European Central Platform<sup>90</sup> and available for at least five years after the entity is removed from the register. Cooperation between MS and the EC is necessary to implement these access mechanisms.

MS must ensure obliged entities do not rely solely on the central register for customer due diligence, using a risk-based approach. Competent authorities and Financial Institutions (FIs) must provide information on beneficial ownership to other MS in a timely and free manner. In exceptional circumstances, MS may grant exemptions from access to beneficial ownership information, ensuring a detailed evaluation and guaranteeing administrative review and judicial remedy. Exemptions do not apply to credit institutions, financial institutions, or public officials.

Central registers must be interconnected via the European Central Platform and must be available for at least five years after registration grounds have ceased.<sup>91</sup>

## 7. ROLE OF FINANCIAL INTELLIGENCE UNITS

The European Commission has established a Financial Intelligence Units (FIUs)<sup>92</sup> to combat money laundering and terrorist financing. MS must establish their own FIU to

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<sup>87</sup> D. Meunier, "Hidden Beneficial Ownership and Control: Canada as a Pawn in the Global Game of Money Laundering", C.D. HOWE Institute, commentary no. 519, Sept. 2018, pp. 1-20.

<sup>88</sup> A. Knobel, "Technology and Online Beneficial Ownership Registries: Easier to Create Companies and Better at Preventing Financial Crimes", *Social Science Research Network*, June 2017, pp. 1-18.

<sup>89</sup> Directive 2009/101/EC, op. cit.

<sup>90</sup> See Article 22 of the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), *OJ L 169*, 30.6.2017, p. 46.

<sup>91</sup> See Article 30, pt. 10. of the AMLD4, op. cit.

<sup>92</sup> The EU FIUs Platform was registered in the "Register of Commission expert groups and other similar entities" as an informal and permanent expert group on 28 October 2014. See

receive and analyse suspicious transaction reports and other information related to money laundering, associated predicate offences, or terrorist financing.<sup>93</sup> The exchange of information in the field of taxation FIUs must be operationally independent and autonomous, with the authority to analyse, request, and disseminate specific information. However, these tasks are conducted without prejudice to other mechanism preventing money laundering.<sup>94</sup> MS must provide adequate financial, human, and technical resources for FIUs, and ensure they have access to necessary information. FIUs can take urgent action if suspicions of a transaction are related to money laundering or terrorist financing. FIU.net is a decentralised and sophisticated intern computer information exchange network supporting the FIUs in the EU in their fight against money laundering and the financing of terrorism.<sup>95</sup> The information must be searchable for customer-account holders, beneficial owners, bank or payment accounts, and safe-deposit box owners observing applicable European legislation.<sup>96</sup> MS may require other information to be accessible and searchable through centralised mechanisms. Obligated entities must cooperate fully by promptly informing FIUs of suspicious transactions and providing necessary information.<sup>97</sup>

MS are required to prevent obliged entities from carrying out transactions related to criminal activity or terrorist financing until they have completed necessary actions and complied with specific instructions from the FIU or competent authorities. If it is impossible or unlikely to frustrate efforts to pursue beneficiaries, obliged entities must inform the FIU immediately. MS must ensure competent authorities and supervisory bodies overseeing stock, foreign exchange, and financial derivatives markets inform the FIU if they discover facts related to money laundering or terrorist financing.<sup>98</sup> Disclosure of information in good faith is not a breach of any restriction on disclosure and does not involve the obliged entity or its directors or employees in liability.<sup>99</sup>

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<https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&do=groupDetail.groupDetail&groupID=3251>, (accessed 22 April 2024).

<sup>93</sup> In Croatia, the role of FIU is endorsed by *Ured za sprječavanje pranja novca* (Office for Prevention of Money Laundering), <https://mfin.gov.hr/istaknute-teme/ured-za-sprjecavanje-pranja-nov-ca/143>, (accessed 25 April 2024).

<sup>94</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, *OJ L 64*, 11.3.2011, p. 1. This directive has been amended several times. The latest amendment was brought by Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, *OJ L 104*, 25.3.2021, p. 1.

<sup>95</sup> INFORMAL COMMISSION EXPERT GROUP EU FINANCIAL INTELLIGENCE UNITS' PLATFORM, Terms of reference, p. 1.

<sup>96</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, *OJ L 8*, 12.1.2001, p. 1.

<sup>97</sup> S. Novak, "The Relation of Procedural Rights of Persons Connected with Terrorism in Sanctioning Procedures and Classified Data Gathered by the EU Member States", *Hrvatska i komparativna javna uprava*, vol. 19, no. 2, 2019, pp. 283-304.

<sup>98</sup> T. A. Quintel, "Data Protection Rules Applicable to Financial Intelligence Units: Still No Clarity in Sight", *ERA Forum*, vol. 23, no. 1, Jan. 2022, pp. 53-74.

<sup>99</sup> Article 37 of the of the AMLD4, op. cit.

## 8. RECORD KEEPING

The obliged entities are asked to retain certain documents and information for the prevention, detection, and investigation of money laundering or terrorist financing. These include customer due diligence documents, supporting evidence and records of transactions, and information obtained through electronic identification means.<sup>100</sup> After the retention periods, the EU<sup>101</sup> and MS must ensure that obliged entities delete personal data, unless otherwise provided for by national law. However, if legal proceedings concerning money laundering or terrorist financing are pending in a MS, obliged entities may retain information or documents for five years.<sup>102</sup> MS are required to ensure their obliged entities have systems in place to respond to inquiries from their FIU or other authorities about their business relationships with specified persons. Under GDPR Regulation, the handling of personal data for the purpose of preventing money laundering and terrorist financing is acknowledged as a matter of public concern.<sup>103</sup>

## 9. SUPERVISION AND COOPERATION

The competent authorities of the MS where obliged entities have operations must collaborate with the competent authorities of the MS where the obliged entity is headquartered. For credit and financial institutions within a group, MS must guarantee that competent authorities oversee the efficient execution of group-wide policies and procedures.<sup>104</sup>

## 10. SANCTIONS AND WHISTLEBLOWER PROTECTION

Sanctions for breaches of national provisions transposing are set to be effective, proportionate, and dissuasive.<sup>105</sup> MS must lay down rules on administrative sanctions

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<sup>100</sup> G. Goldbarsht and L. De Koker (eds.), *Financial Technology and the Law Combating Financial Crime*, Cham, Springer International Publishing, 2022.

<sup>101</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, *OJ L 295*, 21.11.2018, p. 39.

<sup>102</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJ L 119*, 4.5.2016, p. 1.

<sup>103</sup> J. Milaj and C. Kaiser, "Retention of Data in the New Anti-Money Laundering Directive—'Need to Know' versus 'Nice to Know'", *International Data Privacy Law*, vol. 7, no. 2, Apr. 2017, pp. 115–125.

<sup>104</sup> L. Demirović et al., "Risk Management of Preventing Money Laundering and Terrorist Financing", *Journal of Forensic Accounting Profession*, vol. 2, no. 2, Dec. 2022, pp. 14–43.

<sup>105</sup> The Criminal Code of the Republic of Croatia punishes with up to five years of prison individuals who invest, take over, convert, transfer, or replace property benefits obtained from criminal offenses for concealment. They also punish those who conceal the true nature of property obtained through criminal offenses. Additionally, those who launder money without knowing its illegal origin or act negligently

and measures and ensure competent authorities can impose them. Sanctions can be applied to legal persons, management bodies, and other natural persons responsible for the breach. Competent authorities must cooperate closely to ensure desired results and coordinate their actions when dealing with cross-border cases. Sanctions can include public statements, orders, temporary bans, and maximum administrative pecuniary sanctions. MS may empower competent authorities to impose additional types of administrative sanctions or administrative pecuniary sanctions exceeding the amounts provided for by the MA.<sup>106</sup>

MS are invited to publish administrative sanctions or measures for breaches of national provisions transposing the AMLD on their official websites immediately after the person sanctioned is informed. The publication should include information on the type and nature of the breach and the identity of the responsible persons. If the publication of the identity or personal data is disproportionate, competent authorities may delay it until the reasons for not publishing it cease to exist. The publication must remain on the official website for five years, with personal data only kept for the necessary period in accordance with data protection rules.

Legal persons can be held liable for breaches committed for their benefit. MS must establish mechanisms to encourage reporting of potential or actual breaches.<sup>107</sup> Obligated entities must have procedures for employees to report breaches internally, and individuals reporting suspicions of money laundering or terrorist financing must be legally protected from threats, retaliatory or hostile action.<sup>108</sup>

In conclusion, the AMLD aims to improve the supervision of credit institutions and investment firms, address serious crimes, and ensure transparency in the regulation of financial instruments. They also emphasize the importance of self-regulatory bodies and the identification of beneficial owners in transactions or activities.

## CONCLUSION

The AMLD directive is quite complex. Hence, businesses may encounter difficulties in comprehensively grasping and executing all the requirements accurately.

Meeting the requirements of the AMLD entails considerable expenses, especially for small and medium-sized enterprises.<sup>109</sup> This includes a range of administrative costs

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may face up to three years in prison. See Article 265 of the Criminal Code of the Republic of Croatia, Official Gazette, NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

<sup>106</sup> H. Koster, "Towards Better Implementation of the European Union's Anti-Money Laundering and Countering the Financing of Terrorism Framework", *Journal of Money Laundering Control*, vol. 23, no. 2, March 2020, pp. 379–386.

<sup>107</sup> D. Canestri, "Fourth Eu Aml Directive: What Is Missing? Section 319 Patriot Act and the New Eu Aml Directive", *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 23, no. 3, July 2015, pp. 214–240.

<sup>108</sup> J. A. Adetunji, "Whistleblowing: Interrogating the Complexities of Law, Governance, and Freedom of Expression in Developing Nations", *Journal of money laundering control*, vol. 27.2, 2024, pp. 262–274.

<sup>109</sup> In 2020, the AML compliance cost was 213 billion dollars worldwide for estimated 2,000 billion dollars funds laundered. See <https://www.fticonsulting.com/insights/fti-journal/high-costs-low-returns-aml-compliance-banks-better-way>, (accessed 30 April 2024). In 2023, Germany only spent over

linked to the incorporation of enhanced due diligence procedures, technological upgrades aimed at improving transparency and reporting, expenditures for staff training to ensure understanding and compliance with the revised regulations, and ongoing operational costs necessary to maintain compliance.<sup>110</sup>

The implementation of the rigorous requirements of the AMLD are time consuming and impacts the efficiency of business operations due to delays in transactions and customer onboarding processes.<sup>111</sup>

There is also an obvious risk of penalties. Indeed, pursuant to the AMLD, regulatory authorities can impose administrative fines for legal entities from 5 million euros or 10% of the total annual turnover, whichever is higher and up to EUR 5 million euros for individuals.<sup>112</sup>

In conclusion, the AMLD improve the supervision of credit institutions and investment firms, address serious crimes, and ensure transparency in the regulation of financial instruments. It also emphasizes the importance of self-regulatory bodies and the identification of beneficial owners in transactions or activities.<sup>113</sup> However, its interpretation and application may vary among MS leading to legal, operational and reputational uncertainty for businesses operating across borders.<sup>114</sup>

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32.5 billion dollars on the AML compliance. See: <https://risk.lexisnexis.com/global/en/insights-resources/research/true-cost-of-financial-crime-compliance-study-emea>, (accessed 30 April 2024).

<sup>110</sup> European Union Agency for Law Enforcement Cooperation, *The Other Side of the Coin, An Analysis of Financial and Economic Crime*, Luxembourg, Publications Office, 2023.

<sup>111</sup> Y. Craggs Mersinoglu and J. Espinoza, "Ericsson chief says overregulation 'driving Europe to irrelevance'", *Financial Times*, 30.4.2024., <https://www.ft.com/content/6d07fe84-5852-4a57-b09b-6fe387ed4813> (accessed 30 April 2024).

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<sup>113</sup> C.-N. Cotoc, M.C. Șcheau and M.V. Achim, "TRENDS IN COMBATING MONEY LAUNDERING IN THE EUROPEAN CONTEXT", *DIEM*, vol.7, no. 1, 2022, pp. 142-152.

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