

TECC 2018  
Warsaw

## AML Developments and Outcome

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## Evolution of AML framework and FATF standards

AML

Directive 91/308/EEC of the Council of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering

AML/CFT

Directive 2001/97/EC of the European Parliament and Council of 4 December 2001 amending Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering

Proliferation financing

Directive 2005/60/EC of the European Parliament and Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis

2012 Recs

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

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## Transposition of AMLD4

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- The **criminal tax offence** is to be considered as a new predicate laundering offence.
- The Member States must take measures and initiatives to avoid the use of **new technologies** for AML/CTF
- The Member States must ensure a **better protection** of persons who notify any suspicions of laundering or terrorist financing
- Each Member State takes measures to **evaluate and mitigate laundering and terrorist financing risks**
- Reinforce the cooperation between the financial intelligence units
- The obligations of **simplified due diligence** can no longer be applied for some types of clients but will need to be based on the risk defined by the professional itself
- The **equivalence of a third country** is no longer based on geographic criteria but must be risk based
- If it is difficult (impossible) to determine precisely the **beneficial owners**, despite all means deployed, the principal senior managers may be considered as beneficial owners
- Provide clarity with respect to the threshold of 25% referring to the beneficial owner
- Companies must keep the data on beneficial owners (cf. national **registry of beneficial owners**)

## Transposition of AMLD4

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- With regard to a fiduciary agreement, the entities subject to the law will be obliged to keep available for the authorities information on beneficial owners
- Definition of « **member of senior management** » : a director or employee having sufficient knowledge of the risk exposure of the company to laundering/terrorist financing
- The **definition of Politically Exposed Person (PEP)** is extended to national PEPs and to senior persons working in international organisations
- A PEP who has ceased to exercise a public function continues to be considered as PEP during 12 months, but the professional must continue to risk assess that person until the person is considered not to present a PEP risk any more
- Extend the duration of the **obligation to keep documents** in relation to suspicious transaction reports filed since 25 June 2015 for an additional period of 5 years
- In addition to Member States' right to impose criminal sanctions, increase **pecuniary administrative sanctions** for credit or financial institutions and natural persons to a minimum of **€5,000,000 or 10% of the total annual turnover** (institution) and publication by national authority
- Where obligations apply to legal persons in the event of a breach of national AML/CTF provisions, sanctions and measures may be applied to the members of the management body and to other natural persons who are responsible for the breach

## Impact on European investment fund sector

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### EBA/ESMA/EIOPA Risk Factor Guidelines

**Joint Guidelines** under Articles 17 and 18(4) of Directive (EU) 2015/849 (“AMLD4”) on **simplified and enhanced customer due diligence and the factors** credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions

- Published on 26 June 2017
- Will become effective on 26 June 2018

Form an essential part of the transposition of AMLD4, as these are guidelines, **will local regulators endorse them?**

Question of **KYC/KYI** versus **KYD** versus **KYCC**

Definition of **Beneficial Owner** of Investment Funds (national BO registry)

### EBA/ESMA/EIOPA Risk Factor Guidelines

#### **Sector Specific Guidelines**

- Sectoral guidelines for correspondent banks
- Sectoral guidelines for retail banks
- Sectoral guidelines for electronic money issuers
- Sectoral guidelines for money remitters
- Sectoral guidelines for wealth management
- Sectoral guidelines for trade finance providers
- Sectoral guidelines for life insurance undertakings
- Sectoral guidelines for investment firms
- Sectoral guidelines for providers of investment funds

### EBA/ESMA/EIOPA Risk Factor Guidelines for providers of investment funds (Extract)

A natural or legal person who directly purchases units of or shares in a fund on their own account, and not on behalf of other underlying investors

A firm that, as part of its economic activity, directly purchases units or shares in its own name and exercises control over the investment for the ultimate benefit of one or more third parties who do not control the investment or investment decisions

A firm, for example a financial intermediary, that acts in its own name and is the registered owner of the shares or units, but acts on the account of, and pursuant to specific instructions from, one or more third parties (e.g. because the financial intermediary is a nominee, broker, multi-client pooled account/omnibus type account operator)

A firm's customer, for example a financial intermediary's customer, where the firm is not the registered owner of the shares or units (e.g. because the investment fund uses a financial intermediary, that does not become the legal owner, to distribute fund shares or units)

### EBA/ESMA/EIOPA Risk Factor Guidelines for providers of investment funds (Intermediary)

Risk-sensitive CDD measures to the financial intermediary. Risk-sensitive measures to identify, and verify the identity of, the investors underlying the financial intermediary, as **these investors are beneficial owners of the funds invested through the intermediary.**

**Risk-sensitive steps to be satisfied that the intermediary will provide CDD information and documents on the underlying investors immediately upon request,** for example by including relevant provisions in a contract with the intermediary or by sample-testing the intermediary's ability to provide CDD information upon request.

## Next in terms of FATF guidance and AMLD5

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### **AMLD5 ... the way forward?**

- Virtual currency exchanges and custodial wallet providers
- Anonymous prepaid instruments
- FIU powers and access to information
- Central register of bank and payment accounts

### **FATF RBA guidances on:**

- Securities sector (2009)
- Banking sector (2014)
- Money or value transfer services (2016)
- Insurance sector (2018)
- Securities sector (2018)

### **ISSA (International Securities Services Association) industry guidance:**

- Financial Crime Compliance Principles for Securities Custody and Settlement (review in 2018)