Think Ahead ACCA

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Outline of selected changes under the European Union 6th Anti Money Laundering Package

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Disclaimer

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland and the Association of Chartered Certified Accountants.

The main goal of the publication is to provide users with a high-level outline of some of the changes which will occur once the provisions of AML Regulation ((EU)2024/1624) and AML Directive ((EU) 2024 /1640) ("AMLD 6") take effect, (mostly) in 2027. Differences from the position under current law are highlighted. This publication is a compare and contrast document rather than a specific or detailed set of instructions or guidance on AMLD 6. In many parts of this publication a summary (only) has been provided of the Article of the AML Regulation or the AML Directive. Readers are strongly advised to refer to the AML Regulation and the AML Directive for exact wording and full scope of the provisions.

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INTRODUCTION

The European Union 6th Anti Money laundering package entered into force on 9 July 2024. It comprises:

A regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing: AML **Regulation**. ((EU)2024/1624).

A directive on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing: AML **Directive.** ((EU) 2024 /1640).

There was also a directive adopted to establish the European Anti Money Laundering Authority AMLA . This publication focusses on some of the changes to the current anti -money laundering regime which will occur because of the AML Regulation and the AML Directive. These changes will take effect in the main from 10 July 2027 when the current 4 AML Directive (2015/849) as amended by 5 AML Directive (2018/843) (referred to from now on in this publication as AMLD4 (as amended)) is repealed by the AML Directive. Any changes referenced below to be made under AML Regulation and AML Directive will occur on 10 July 2027 unless otherwise specified.

With the new package, the rules applying to the private sector will be transferred to the AML Regulation, the AML Regulation contains the bulk of the new framework. For example, who obliged entities are, internal policies, procedures and controls of obliged entities, compliance function, employees, outsourcing, customer due diligence, politically exposed persons, reporting obligations, information sharing, limits on large cash payments, beneficial ownership transparency. (The AML Directive also contains provisions on beneficial ownership -see further below).

Some key matters which the AML Directive will deal with are the organisation of institutional AML/CFT systems at national level in the member states. It lays down rules about setting up and accessing central beneficial ownership registers, tasks and responsibilities of national Financial Intelligence Units (FIUs), co-operation between competent authorities and exchange of information.

In many respects, the main obligations under the AML Regulation reflect the requirements under the existing regime under AMLD 4 (as amended) but in the form of a regulation. However, there are several areas where the requirements are more prescriptive.

There is a strong theme in the AML Regulation and the AML Directive for the provisions of the legislation to be supplemented by AMLA delivering guidance and regulatory technical standards.

Readers are referred to draft Regulatory Technical Standards (RTS) which the EBA has drafted and consulted on, on behalf of AMLA. One of the draft standards, if adopted, is on the extent and quality of information institutions will have to obtain as part of the customer due diligence process under the new AML/CFT regime. Reference is made to the draft standard in this chapter, where relevant.

Reference to “AML Technical Guidance” in this document refers to Technical Release 01-2019 (Updated March 2022) AML Guidance for CCAB-I members.

PART 1-GENERAL

OBLIGED ENTITIES-EXTENDED SCOPE

There have been several additions of obliged entities which will be subject to EU AML/CFT rules upon coming into force of the AML Regulation. Readers should consult the AML Regulation for full details. For example, the provisions under AMLD 4 (as amended) whereby traders in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more are obliged persons have been changed to include traders in luxury goods, including precious metals, stones, yachts, and cultural goods. Cultural goods and high value goods are defined in the AML Regulation. Obliged entity also includes all crypto asset service providers.

PART 2 - GOVERNANCE

2.1 POLICIES AND PROCEDURES

Policies and procedures are applicable across various AML related areas. The AML Regulation harmonises and clarifies the scope of internal policies, procedures and controls that obliged entities must put in place. Internal policies should be approved by the management body. Internal procedures and controls should be approved at least at the level of the compliance manager.

Article 9 of the AML Regulation provides that obliged entities must have internal policies and procedures to include the following:

- Carrying out and updating of the Business Wide Risk Assessment (BWRA);
- Risk management framework;
- Customer due diligence (CDD) including procedures to determine if a customer or a beneficial owner is a politically exposed person, family member or close associate;
- Reporting suspicious transactions;
- Outsourcing and reliance on customer due diligence done by other obliged entities;
- Record retention and processing personal data;
- Monitoring and managing compliance with internal policies and procedures, identifying and managing deficiencies and implementing remedial actions;
- Verification of good repute when recruiting and assigning staff and appointing agents and distributors;
- Communication of internal policies procedures and controls including to agents, distributors and service providers involved in implementing AML/CFT policies;
- Internal controls and independent audit function;
- Training employees, agents, distributors;
- Implementation of a sanctions compliance programme as part of a firm's AML internal policies, procedures and controls. See more under separate "Financial Sanctions" heading below.

Article 13 of the AML Regulation requires obliged entities to have in place procedures to prevent and manage conflicts of interest that may affect the carrying out of tasks related to the obliged entity's compliance with the AML Regulation.

2.2 COMPLIANCE FUNCTION, MONEY LAUNDERING REPORTING OFFICER (MLRO)

In Ireland there is currently no legal requirement on a firm to appoint an MLRO unless requested by its designated accountancy body. However, where appropriate to the size, complexity and structure of an accountancy firm and in the light of the legal requirements imposed, the firm may find it beneficial to appoint an individual at management level or to appoint a member of senior management, a 'money laundering reporting officer' ("MLRO") with responsibility for ensuring the firm's compliance with the Irish anti-money laundering regime. Both CCAB-I bodies require firms to have a nominated MLRO .

Article 11 of the AML Regulation deals with compliance function. Under the AML Regulation there is an obligation to:

- appoint a member of the management body as compliance manager. This person will ensure consistency with risk exposure and implementation of policies, procedures and controls and is obliged to report to the management body once a year on implementation of internal policies, procedures and controls;

- appoint a compliance officer. This person is responsible for day-to-day AML CFT implementation of requirements and for making suspicious transaction reports.

Adequate resources must be allocated to, and adequate powers must be given to the compliance manager and officer to carry out their functions. There are protections to these individuals given in the AML Regulation (Article 69) against retaliation, discrimination and any other unfair treatment for carrying out their tasks which protections may need to be incorporated into their employment terms.

The AML Regulation provides that where the nature of the business of the obliged entity, including its risks and complexity, and its size justify it, the functions of the compliance manager and the compliance officer may be performed by the same natural person. Those functions may be cumulated with other functions.

Under Article 9 (4) of the Regulation, AMLA will provide guidelines by July 2026 including on this area.

2.3 INDEPENDENT AUDIT FUNCTION

As part of the internal policies, procedures and controls that obliged entities are required to have in place under the AML Regulation, they must have internal controls and an independent audit function to test the internal policies and procedures and the controls in place in the obliged entity; in the absence of an independent audit function, obliged entities may have this test carried out by an external expert. Obliged entities must ensure that the person responsible for the audit function can report directly to the management body. Independent audit appears to be mandatory under the AML Regulation.

2.4 EMPLOYEES

Article 46 of AMLD 4 (as amended) requires obliged entities to take measures including participation of their employees in special ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

When the AML Regulation is implemented, obliged entities will be required to take measures to ensure employees, agents, distributors and the like are aware of AML requirements and these measures include participation of those employees, agents, distributors in specific ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them how to proceed in such cases.

Article12 of the AML Regulation references business wide risk assessment and processing of personal data in the context of training areas.

Under article 13 of the AML Regulation (which deals with Integrity of Employees) persons such as employees, agents and distributors directly participating in the obliged entity's compliance with anti-money laundering laws must be assessed as having appropriate skills, knowledge and expertise to carry out their functions effectively. The assessment will also consider their honesty and integrity and whether they are of good repute. It is not clear if there will be guidance on how to test this. The AML Regulation (Article 9 2(a)(viii)) requires the obliged entity to have a policy/procedure for verification that staff, agents and distributors are of good repute.

PART 3 - OUTSOURCING AND RELIANCE

Current provisions on outsourcing are contained in AMLD4 (as amended). These will be repealed from 10 July 2027. Thereafter the provisions contained in the AML Regulation (and any rules in RTSs or guidelines) will regulate outsourcing.

Outsourcing is permitted under Article 18 of the AML Regulation. There is an obligation to notify the supervisor of outsourcing prior to carrying out of the task. 'Supervisor' is defined and means the body entrusted with responsibilities aimed at ensuring compliance by obliged entities with the requirements of the AML Regulation. The obliged entity must have an outsourcing policy/procedure.

Certain tasks cannot be outsourced:

- Proposal & approval of the business wide risk assessment;
- Approval of internal policies, procedures, controls;
- Decisions on customer risk profile;
- A decision to enter a business relationship or carry out an occasional transaction;
- The reporting to FIU of suspicious activities or the threshold-based reports in articles 74 and 80 of the AML Regulation except where such activities are outsourced to another obliged entity belonging to the same group and established in the same Member State;
- Approval of criteria for detecting suspicious or unusual transactions or activities.

The obliged entity must assure itself that the service provider is sufficiently qualified to carry out the tasks to be outsourced.

A written agreement about applying the obliged entity's polices & procedures must be entered into with the outsourcer. The obliged entity must perform regular controls to ascertain the effective implementation of such policies and procedures by the service provider. The frequency of such controls shall be determined based on the critical nature of the tasks outsourced.

Current regime	New regime under AML Regulation
Outsourcing permitted	Outsourcing permitted
Not specified that certain tasks are prohibited	Certain tasks cannot be outsourced
Prior notification to supervisor not specified	Prior notification to supervisor required
Prohibition on reliance on 3rd parties in high-risk 3rd countries	Prohibition on reliance on 3rd parties in high-risk 3rd countries
Saver from prohibition on high-risk 3rd countries under certain conditions	Saver from prohibition on high-risk 3rd countries for group situations with certain conditions

Article 48 of the AML Regulation continues to permit reliance on other obliged entities to meet customer due diligence requirements. This is provided that the third party is a person situated in a member state/third country which applies CDD and record keeping requirements as laid down in the AML Regulation or equivalent and is supervised in a manner consistent with the AML Directive. Reliance is not permitted on obliged entities established in high risk third countries or third countries with AML /CFT compliance weaknesses (save in group situations under certain conditions).

The relevant sections of the AML Regulation on outsourcing and reliance provide that AMLA will issue guidelines on outsourcing and reliance.

PART 4 - BUSINESS-WIDE RISK ASSESSMENTS (BWRAS)

Current provisions on BWRAs include a requirement to have the BWRA approved by senior management, persons carrying out a business risk assessment must have regard to any guidance on risk issued by the competent authority for the designated person and certain risk factors must be taken into account.

Article 10 of the AML Regulation specifically deals with BWRAs, and Annex 1 now includes a non-exhaustive list of risk variables for obliged entities to consider. Article 10 also includes items to consider for risk assessment and calls out other items to consider including Union level risk assessment and Union level/AMLA publications.

Under the AML Regulation, the BWRA must be drawn up by the Compliance Officer and approved by the management body in its management function and where it exists it must be communicated to the management body in its supervisory function.

PART 5 - CUSTOMER DUE DILIGENCE

5.1 When should CDD be done?

For the first time, pursuant to Article 26, the AML Regulation introduces a timeframe for ongoing monitoring rules for obliged entities. It mandates CDD refresh every 5 years for all customers. For higher-risk customers, updates must be carried out on an annual basis.

In addition to the current provisions some new situations will require CDD under the AML Regulation.

Requirement for CDD under current regime (Article 11 AMLD4 (as amended)	**Requirement for CDD under AML Regulation (Article 19).**
When establishing a business relationship	When establishing a business relationship (Art 19 1 (a))
Occasional transactions €15,000 or more*	*Occasional transactions* at least €10,000 (*Art.19* 1 (b))
Suspicion of ML/TF regardless of derogation exemption or threshold	Suspicion of ML/TF regardless of derogation exemption or threshold (Art.19 1 (d))
Doubts about veracity/adequacy of previously obtained customer identification data	Doubts about veracity/adequacy of previously obtained customer identification data (Art.19 1 (e))
Gambling service providers ...transactions amounting to €2,000 or more	Gambling service providers ...transactions amounting to at least €2,000 (Art.19 5)
Occasional transaction of transfer of funds exceeding €1,000	Occasional transaction of transfer of funds of value at least €1,000 (exception with more stringent rules for crypto asset service providers –see further below) (Art.19 2)
-	where an obliged entity is participating in the creation of a legal entity, the setting up of a legal arrangement or, for obliged entities including auditors, external accountants and tax advisers in the transfer of ownership of a legal entity, irrespective of the value of the transaction. (Art.19 1 ©)
-	when there are doubts as to whether the person the obliged entity is interacting with is the customer or person authorised to act on the customer's behalf. (Art.19 1 (f))

*See further at 5.3.6 below on occasional transactions

5.2 What CDD should be done ?

In general, CDD measures to be applied under the AML Regulation are consistent with the current AMLD 4 (as amended) regime but there are some additional mandatory CDD measures. This includes seeking information on the nature of the customer's business additionally in the case of occasional transactions. Also, under the AML Regulation, obliged entities will be required to verify whether the customer or the beneficial owner(s) are subject to targeted financial sanctions. See section below on financial sanctions.

5.3 What's extra or new in CDD measures under the AML Regulation?

5.3.1 Documenting CDD actions

Currently AMLD 4 (as amended) requires documentation of CDD actions. It requires [Article 13 (1)(d)] that documents, data or information held are kept up to date and the keeping of records in a case where there are difficulties verifying beneficial owners. It also requires retention of CDD documents for 5 years after the end of the business relationship with their customer or after the date of an occasional transaction [Article 40].

The AML Regulation provides more detail whereby it requires obliged entities to keep a record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents and justifications. Consideration must be given as to how decisions and justifications are documented. Where there are serious concerns, for example where a potential client may be denied onboarding or is off boarded, legal advice may be required, to avoid any potential legal exposure.

The documents, data or information held by the obliged entity are to be updated whenever the customer due diligence is reviewed in accordance with ongoing monitoring. The obligation to keep records also applies to situations where obliged entities refuse to enter into a business relationship, terminate a business relationship or apply alternative measures.

5.3.2 Identity and verification requirements of customers under AML Regulation

The AML Regulation brings further granularity to CDD. There are more detailed requirements in respect of the identification of the customer and verification of the customer's identity. Below is a summary (only) and readers must consult the AML Regulation for exact details.

Article 22 of the AML Regulation provides "with the exception of cases of lower risk to which measures under section 3 apply ", the information below should be collected. The referencing to section 3 may seem confusing, but this should be cross-referred to section 3 (which is article 33 onwards). Taking into account risk factors, this allows for less information to be collected in relation to certain aspects of the client.

Natural person

Names and surnames

Place and full date of birth

Nationalities (or statelessness, refugee, subsidiary protection) national identification no. (where applicable)

The usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached and, where available the tax identification number;

The wording of the provision in relation to tax identification number is ambiguous. Subject to clarification in an RTS or AMLA guidance, the better view is that a tax identification number must be obtained where one exists.

Legal Entity

Legal form and name

Office address

Names of legal representatives, registration no., tax identification no., legal entity identifier

Names of shareholders, holders of directorships

The AML Regulation also details CDD provisions for trustees and other organisations having legal capacity under national law.

5.3.3 Identifying a beneficial owner for CDD

Under the AML Regulation, in order to identify a beneficial owner an obliged entity must collect certain information (see Article 62). The details vary depending on the nature of the entity . This includes names, surnames, place and full date of birth, residential address, country of residence, nationality of the beneficial owner, number of identity document, unique personal identification number (if it exists) assigned to the person, the nature and extent of the beneficial interest held in a legal entity / arrangement, and the date as of which the beneficial interest is held. The draft RTS provides further detail on verification of beneficial owner.

5.3.4 Simplified due diligence measures

AMLD 4 (as amended) permits simplified customer due diligence measures where areas of lower risk are identified [article 15]. The AML Regulation provides an exhaustive list of the simplified measures (performed by taking into account risk factors set out in in Annexes II and III) that obliged entities can apply (see Article 33): -

- Verifying the identity of the customer/beneficial owner after establishing the business relationship (but within 60 days)
- Reducing the frequency of customer identification updates
- Reducing the amount of information collected relating to the purpose/nature of business relationship or occasional transaction
- Reducing frequency /degree of scrutiny of customer transactions
- Applying other relevant simplified DD measures identified by AMLA

Under the AML Regulation, obliged entities must regularly verify that conditions for simplified DD continue to exist and pursuant to Article 33 (5) cannot apply simplified DD in certain cases:

-doubt as to veracity of information provided;

-factors indicating lower risk are no longer present;

-monitoring of the customer's transactions and the information collected in the context of the business relationship exclude a lower risk scenario;

-there is a suspicion of money laundering or terrorist financing;

-there is a suspicion that the customer, or the person acting on behalf of the customer, is attempting to circumvent or evade targeted financial sanctions.

5.3.5 Enhanced due diligence:

The enhanced due diligence measures in the AML Regulation are largely similar to AMLD 4 (as amended) such as getting more information on a customer or source of funds but there are a couple of new measures to mention. For example, the AML Regulation requires additional enhanced due diligence measures to be applied to business relationships identified as having a higher risk which involve the handling of assets with a value of at least EUR 5,000,000 for certain customers with assets over €50,000,000. This is largely aimed at personalised asset management services, but it also applies to trust or company service providers and is therefore potentially relevant to accountancy firms.

5.3.6 Occasional Transactions –Obligation to do CDD

Article 19 of the AML Regulation lowers the EU wide threshold for the application of CDD for occasional transactions from a value of €15,000 to €10,000.

Further, obliged entities may also need to apply CDD for particular lower value transactions.

CDD must be applied for a transfer of funds within the meaning of the transfer of funds regulation (2023/1113) where the transaction amounts to a value of at least €1,000.

The obligation for CDD in the case of crypto asset service providers is stricter with an obligation imposed to apply certain CDD measures when carrying out an occasional transaction of at least €1,000 and limited CDD (identify and verify the identity of their customers) even when the value of the transaction is below €1,000.

When an occasional transaction is in cash then under the AML Regulation limited CDD measures must be applied for such occasional transactions in cash amounting to a value of at least €3,000.

5.3.7 Electronic money derogation

The derogation under article 12 of AMLD 4 (as amended) is contained in Article 19 (7) of AMLD 6 with an exemption from CDD measures for electronic money . The threshold of €150 still applies and reference is now made to the payment instrument not being linked to a payment account and not permitting any stored amount to be exchanged for cash or for crypto assets.

5.3.8 Limits to large cash payments

From 10 July 2027, under article 80 of the AML Regulation, persons trading in goods or providing services may accept or make a payment in cash only up to an amount of € 10,000. This applies whether the transactions are single or linked. Member states can set lower limits. The limit does not apply to payments between natural persons who are not acting in a professional capacity and payments or deposits at financial institutions. In the case of such a payment or deposit at a credit institution of cash in excess of €10,000, there is an obligation under Article 80 to report this to the FIU. The preamble to the AML Regulation (para 162) explains that such a large cash payment (over €10,000) should not, by default, be considered an indicator for suspicion of money laundering, its predicate offences or terrorist financing but the reporting of such transactions enables the FIU to assess and identify patterns concerning the movement of cash.

5.3.9 Verification- Electronic and Other

Article 22(6) of the AML Regulation specifies two means by which obliged entities can obtain information, documents and data necessary for the verification of the identity of the customer (and of any person purporting to act on their behalf).

One is using electronic identification means which meet the requirements of Regulation (EU) No 910/2014[1] .This is arguably more stringent than AMLD 4 (as amended) which includes such electronic identification and trust services under Reg 910/2014, *or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities* .

The other way to verify set out in the AML Regulation is by submission of identity documents and acquiring information from reliable independent sources whether accessed directly or obtained through a customer. (There are similar provisions in AMLD4 (as amended)).

Readers should also refer to the draft Regulatory Technical Standards, Article 6 for further proposed guidance on verification. In addition to the above verification, the AML Regulation requires obliged entities to verify information on beneficial owners by consulting the central registers. AMLD 4 (as amended) requires that obliged entities do not rely exclusively on the central register to fulfil their customer due diligence requirements.

5.3.10 Annexes-higher and lower risk factors and risk variables

As with AMLD 4 (as amended), Annexes II and III of the AML Regulation set out lower and higher risk factors to be taken into account. Annex II, lower risk factors, is unchanged from that in AMLD 4 (as amended). Annex III, higher risk factors, has had some changes made to it from the Appendix in AMLD4 (as amended).

In addition, a new annex (Annex I), has been included in the AML Regulation called an indicative list of risk variables. The new annex contains a non-exhaustive list of risk variables that obliged entities should take into account when drawing up their risk assessment (See also BWRA) and when determining to what extent to apply customer due diligence measures in accordance with AML Regulation Article 20.

5.3.11 High Risk Third Countries

The approach to identification of high risk third countries in the AML Regulation is different to AMLD 4 (as amended). While AMLD 4 (as amended) identifies third country jurisdictions with strategic deficiencies, the AML Regulation identifies (1) high risk third countries with significant strategic deficiencies but also (2) high risk third countries with compliance weaknesses and (3) high risk third countries posing a specific and serious threat to the Union's financial system. In the case of countries with compliance weaknesses, the EU Commission will take into account, as a baseline for assessment, information on jurisdictions under increased monitoring by international organisations (such as FATF). The countermeasures to mitigate money laundering and terrorist financing threats from outside the Union in Article 35 of AML Regulation are the same as those in AMLD 4 (as amended)(see Article 18a 2&3).

[1] with regard to the assurance levels 'substantial 'or 'high', or relevant qualified trust services as set out in that Regulation.

PART 6 -POLITICALLY EXPOSED PERSONS (PEPS)

DIFFERENCES IN DEFINITION OF POLITICALLY EXPOSED PERSON (see Article 2 paragraph 1, point 34)

Current regime	New regime under AML Regulation
	In a member state
heads of State, heads of government, ministers and deputy or assistant ministers	(a)(i)) heads of State, heads of government, ministers and deputy or assistant ministers;
members of parliament or of similar legislative bodies	(a)(ii) members of parliament or of similar legislative bodies
members of the governing bodies of political parties;	(a)(iii) members of the governing bodies of political parties that hold seats in national executive or legislative bodies, or in regional or local executive or legislative bodies representing constituencies of at least 50 000 inhabitants;
members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;	(a)(iv) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances
members of courts of auditors or of the boards of central banks;	(a) (v) members of courts of auditors or of the boards of central banks
ambassadors, chargés d'affaires and high-ranking officers in the armed forces	(a) (vi) ambassadors, chargés d'affaires and high-ranking officers in the armed forces
members of the administrative, management or supervisory bodies of State-owned enterprises	(a) (vii) members of the administrative, management or supervisory bodies of enterprises controlled under any of the relationships listed in Article 22 of Directive 2013/34/EU either by the state, or, where those enterprises qualify as medium sized or large undertakings or medium sized or large groups, as defined in Article 3(3), (4), (6) and (7) of that Directive, by regional or local authorities
---	(a)(viii) heads of regional and local authorities, including groupings of municipalities and metropolitan regions, with at least 50 000 inhabitants;
	(a)(ix) other prominent public functions provided for by Member States
directors, deputy directors and members of the board or equivalent function of an international organisation.	(b) in an international organisation: (i) the highest-ranking officials, their deputies and members of the board or equivalent functions of an international organisation; (ii) representatives to a Member State or to the Union at Union level: functions at the level of Union institutions and bodies that are

	equivalent to those listed in points (a) (i), (ii), (iv), (v) and (vi);
---	at Union level: functions at the level of Union institutions and bodies that are equivalent to those listed in points (a) (i), (ii), (iv), (v) and (vi);
---	(d) in a third country: functions that are equivalent to those listed in point (a);

Under the AML Regulation certain regional local and municipal heads are now caught within the PEP definition (see chart above).

The definition of family member has been widened in the AML Regulation to include the siblings of PEPs in cases where PEPs involve heads of state, heads of government, ministers, and deputy or assistant ministers and equivalent function at Union level or in a third country (see Article 2, paragraph 1, point (35)(d)) . Also, where it is justified by their social and cultural structures and by risk, Member States may apply a broader scope for the designation of siblings as family members of politically exposed persons (see Article 2, paragraph 5).

The AML Regulation extends to occasional transactions, the obligation in AMLD4 (as amended) to obtain senior management approval, for business relationships with PEPs, establishing source of wealth and funds and conduct enhanced ongoing monitoring (see Article 42).

As with AMLD 4 (as amended), the AML Regulation requires as part of CDD that an obliged entity determines whether a customer or beneficial owner of a customer is a politically exposed person a family member or person known to be a close associate.

Prominent public function

Like AMLD 4 (as amended) , the AML Regulation provides that prominent public functions shall not be understood as covering middle-ranking or more junior officials. (see Article 2, paragraph 2) .

Article 43 of the AML Regulation requires each Member State to issue and keep up to date a list indicating the exact functions which, in accordance with its national laws, regulations and administrative provisions, qualify as prominent public functions. Member States must request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation.

The AML Regulation provides measures for persons who cease to be politically exposed persons. There is a nuanced change in wording from AMLD 4 (as amended) where Article 45 of the AML Regulation provides that due diligence measures should apply until the risks posed no longer exist but, in any case, for not less than 12 months following the time when the individual ceased to be entrusted with a prominent public function. AMLD 4 (as amended) requires the risk to be taken into account for at least 12 months and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

PART 7 - BENEFICIAL OWNERSHIP

7.1 Beneficial ownership transparency

Under current provisions of AMLD 4 (as amended) beneficial owner in the case of corporate entities means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least a shareholding of *25% plus one share or an ownership interest of more than 25%* held by a natural person.

With effect from July 2027 under the AML Regulation, there is a nuanced change in wording where ownership interest in a corporate entity will mean direct or indirect ownership of *25% or more* of the shares or voting rights or other ownership interest in the corporate entity (see Article 52 (1)).

Also, the AML Regulation permits a lower percentage threshold where member states identify categories of corporate entities that are exposed to higher money laundering and terrorist financing risks. The beneficial ownership threshold can be lowered to 15% or even lower for corporate entities deemed as high-risk for money laundering and terrorist financing (see Article 52 (2)).

The AML Regulation sets out more detailed provisions than before to establish a consistent approach to identifying beneficial ownership. In the case of indirect ownership, that is calculated by multiplying the shares or voting rights or other ownership interests held by intermediate entities and by adding together the results from the various ownership chains.

In relation to what control means for the purposes of beneficial ownership, readers should refer in particular to Article 53 of the AML Regulation. It introduces extra criteria for control via other means such as right to appoint or remove the majority of members of a board, veto rights or decision rights or decisions regarding distribution of profits.

The AML Regulation contains provisions (see Articles 57-61) for identification of beneficial owners of express trusts and similar legal arrangements and collective investment undertakings.

7.2 Beneficial Ownership Register

General

Both the AML Directive and the AML Regulation contain provisions in relation to beneficial ownership. In relation to the central register, the AML Directive focusses on the mechanics of the central register, and the AML Regulation deals with obliged entities' obligations vis a vis the central register.

Like AMLD 4 (as amended), Article 10 of the AML Directive makes provision that beneficial ownership information must be held in a central register. The information in the central register must be available in machine readable format. Information in registers will be available for 5 years after dissolution of the legal entity or 5 years after the legal arrangement has ceased to exist.

Article 10 of the AML Directive grants more powers to entities in charge of central registers. They can request any information necessary to identify and verify beneficial owners, including board resolutions, minutes of meetings, partnership agreements, trust deeds, powers of attorney ,other

contractual documentation. They can also carry out checks including on-site inspections to establish and verify beneficial ownership.

If no beneficial owner is identified, the central register must include a statement that there is no beneficial owner, or one cannot be identified. There must also be a justification as to why it was not possible to determine the beneficial owner and what constitutes uncertainty about the information. Details of natural persons who hold the position of senior managing officials must be provided.

Member states must ensure that information held in beneficial ownership registers is adequate accurate and up to date. They must also ensure verification of whether beneficial ownership information in registers concerns persons or entities designated in relation to financial sanctions and if so an indication on the register that the person or entity is so subject.

The AML Regulation requires obliged entities when entering new business relationships with entities such as a legal entity, trustee of an express trust, person holding an equivalent position in a similar legal arrangement, as listed in Article 23 (4) of the AML Regulation, to collect valid proof of registration or a recently issued excerpt of the register confirming validity of registration (subject to registration of beneficial ownership information pursuant to the AML Directive).

Article 10 of the AML Directive contains provisions regarding discrepancies including a specific mention on the register that there is a discrepancy reported until it is resolved, and a time frame of 30 days (longer if the discrepancy is complex) for the entities in charge of managing central registers to resolve discrepancies.

The AML Regulation (Article 24) focusses on obliged entities' obligations in the case of discrepancies in the central register. It includes mandatory reporting without undue delay and in any case within 14 calendar days of their detection. There is an exception for minor errors where the obliged entity can request additional information from the customer (client).

Access rules for beneficial ownership registers

The current provisions are contained in AMLD4 (as amended) which require information on the beneficial ownership of corporate /other legal entities to be accessible in all cases to any member of the general public. Under a 2022 ECJ ruling the ECJ held invalid that accessibility to the general public. The court said it was a "serious interference" in the privacy and personal data rights of the beneficial owners.

Ireland responded to the CJEU ruling by implementing the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 on 13 June 2023. These changes mean that there has been no change to the unrestricted access afforded for example to the Garda Siochana and FIU Ireland and no change to the restricted access granted for example to designated persons such as banks doing customer due diligence. However, others who seek access and are not in these categories must provide evidence of legitimate interest in inspecting the register by demonstrating that the person is engaged in preventing, detecting or investigating money laundering or terrorist financing offences and that the relevant entity about which information is sought is connected with persons convicted of money laundering or terrorist financing offences or holds assets in a high risk third country.

EU changes required by 10 July 2025.

On the EU side, Article 74 of the AML Directive makes an interim amendment to AMLD 4 (as amended) which must be transposed by 10 July 2025 in relation to the accessibility of central registers of beneficial ownership of corporates and trusts.

From that date information on beneficial ownership in the central registers of beneficial ownership of corporates and trusts must be accessible to:

- competent authorities and FIUs (without restriction)

- obliged entities (where required for customer due diligence purposes)

- those persons and organisations (in the case of corporate and legal entities) and natural or legal persons (in the case of trusts) that can demonstrate a legitimate interest in accessing that information. They will be able to access a more limited sub-set of the information stored on the relevant register namely: name, month, year of birth, country of residence and nationality of beneficial owner and nature and extent of beneficial interest held.

EU changes required by 10 July 2026:

Full access by competent authorities etc.

Under Article 11 of the AML Directive, from 10 July 2026 competent authorities, self-regulatory bodies, tax authorities, AMLA, EPPO, OLAF, Europol and Eurojust must have immediate, unfiltered, direct and free access to the information in the central registers. Obliged entities must have timely access, and the Article provides that member states may impose a fee on obliged entities.

More limited access for persons with legitimate interest

Under Article 12 of the AML Directive, from 10 July 2026 persons with legitimate interest will have access to the following information stored on the relevant register namely: name, month, year of birth, country of residence and nationality of beneficial owner and nature and extent of beneficial interest held. The Article sets out persons deemed to have a legitimate interest and includes the likes of journalists and civil society organisations which are connected with preventing or combatting money laundering or terrorist financing. Please refer to Article 12 to find out more about persons having a legitimate interest.

Under Article 13 of the AML Directive, which is also to be implemented by 10 July 2026, member states must ensure that entities in charge of central registers take measures to verify legitimate interest based on documents, information and data they obtain from someone seeking to access the register. Function or occupation of the applicant and (except for journalists and civil society organisations and the like) connection with the entity or arrangement whose information is sought will be taken into consideration.

Under Article 15 of the AML Directive, from 10 July 2026 access to information on the register may not be given in cases where the beneficial owner might be exposed to disproportionate risk of e.g. fraud, kidnapping, blackmail. Such possible exemptions are to be examined on a case-by-case basis.

Finally, on the information sharing side, Article 61 of the AML Directive provides in its general provisions for sharing of beneficial ownership information between competent authorities of member states or third counties in a timely manner and free of charge.

PART 8-Financial Sanctions

"Targeted financial sanctions" and "UN financial sanctions" are defined in the AML Regulation.

Under Article 9 of the AML Regulation obliged entities must have in place internal policies, procedures and controls to apply targeted financial sanctions and to mitigate and manage the risks of non-implementation and evasion of targeted financial sanctions.

Under Article 10 of the AML Regulation there is a requirement to include the risks of non-implementation and evasion of targeted financial sanctions in an obliged entity's business-wide risk assessment.

Under Article 11 of the AML Regulation the compliance officer is responsible for implementation of targeted financial sanctions.

As part of CDD measures, obliged entities will be required to verify under Article 20(d) of the AML Regulation whether the customer or the beneficial owner(s) are subject to targeted financial sanctions. As part of ongoing monitoring, this requires regular verification. The frequency of the verification is commensurate with the exposure of the obliged entity and the business relationship to risks of non-implementation and evasion of targeted financial sanctions. Under Article 33 one of the cases where an obliged entity should refrain from simplified DD is where there is suspicion of circumvention or evasion of targeted financial sanctions.

Article 27 of the AML Regulation provides for temporary measures for certain customers/persons/entities subject to UN financial sanctions. For such customers/persons/entities obliged entities must keep records of:

(a) the funds or other assets that they manage for the customer at the time when UN financial sanctions are made public;

(b) the transactions attempted by the customer;

(c) the transactions carried out for the customer.

This article is to be applied between the time the UN financial sanctions are made public and the time of application of the relevant targeted financial sanctions in the EU.

The above provisions effectively bring sanctions compliance into the AML compliance framework. They may bring about a requirement to update the procedures manual (article 9), and they also require ongoing monitoring. Obliged entities are expected to use their AML controls for ensuring compliance with targeted financial sanctions and for preventing sanctions evasion.

PART IX - Reporting obligations to FIU

Article 69 deals with reporting of suspicions. Obliged entities must promptly report to the FIU and reply to requests for information by the FIU within 5 working days. In justified and urgent cases, the FIU may shorten that deadline, including to less than 24 hours.

Article 74 imposes an obligation to perform threshold-based reporting to FIU. These relate to transactions involving sale of certain high value goods being cars of at least €250,000 and watercraft /aircraft value at least €7.5 million when the goods are acquired for non-commercial purposes. It should be noted that this is not a suspicious transaction report and there may be a requirement to report twice if there are also suspicions.

Under Article 80, in the case of a payment or deposit at a credit institution of cash in excess of €10,000 there is an obligation to report this to the FIU. (see above).