Adoption of the

Anti-Money Laundering Regulation ("AMLR")

applicable to the EU financial institutions

Time to act!

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Context

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On 28 March 2023, Members of the European Parliament from the Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees (hereafter referred to as "MEPs") adopted their position on a legislative Package on the financing provisions of EU Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) policy (hereinafter referred to as the "AML/CFT Package").

This AML/CFT Package includes three pieces of draft legislation which consist of:

- **The EU "single rulebook" Regulation (hereafter referred to as "AMLR" - discussed here)**: contains provisions on conducting customer due diligence (hereafter referred to as "CDD"), transparency of beneficial owners, and the use of anonymous instruments, such as crypto-assets. According to the EU Commission, the replacement of certain rules in a Directive with more harmonised and directly applicable rules in a Regulation will remove the need for transposition work in the EU Member States and facilitate doing business for cross-border entities in the EU.
- **The 6th Anti-Money Laundering – Directive (hereafter referred to as "AMLD6"):** contains provisions that will be transposed into national law, such as rules on national supervisors and financial intelligence units in Member States. AMLD6, together with AMLR, will replace AMLD4.
- **The Regulation establishing the European Anti-Money Laundering Authority (hereafter referred to as "AMLA Regulation"):** contains provisions for the creation of a new EU financial authority. The AMLA will have direct supervision powers and the ability to crack down on illicit finance across all EU Member states. Furthermore, AMLA will be able to impose fines and penalties upon any subject person who fails to comply with the AMLR.

The motivation for the adoption of this AML/CFT is mainly the inefficiency of AMLD in achieving that goal in an era of permanently increasing security and criminal threats. Indeed, the EU considers that the AML/CFT legal framework should be strengthened and harmonised through a Regulation to tighten up current AML/CFT requirements to hinder criminal activity in this area.

What’s in it?

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The most significant features introduced by the AMLR are summarised hereafter:

- Clarification of some requirements concerning **internal policies, controls, and procedures**;
- Streamlining of the **beneficial ownership** requirements to ensure an adequate level of transparency across the EU;
- Creation of new categories of **high-risk profiles customer to** be detected by the financial institutions (hereafter referred to as "FIs");
- Minor clarification on **politically exposed persons** (hereafter referred to as "PEPs") definition;
- Deepening of the requirements to perform **simplified due diligence** (hereafter referred to as "**SDD**") on low-risk customers;
- Application of CDD measures to FIs involved in or carrying out an occasional transaction involving crypto-assets;

- Adding guidance for the **reporting of suspicious transactions** (red flags raising suspicion are clarified);
- Integration of a regulatory framework for the organisation of **outsourcing** activities in the framework of AML/CFT tasks;
- Appointment of the EU Commission to carry out a compliance assessment of **third countries' policies** with EU anti-money laundering and anti-terrorist financing regulations, to establish a list of "high-risk countries" for enhanced due diligence purposes;
- Adding new caps for transferring cash and crypto assets.

Who does it impact?

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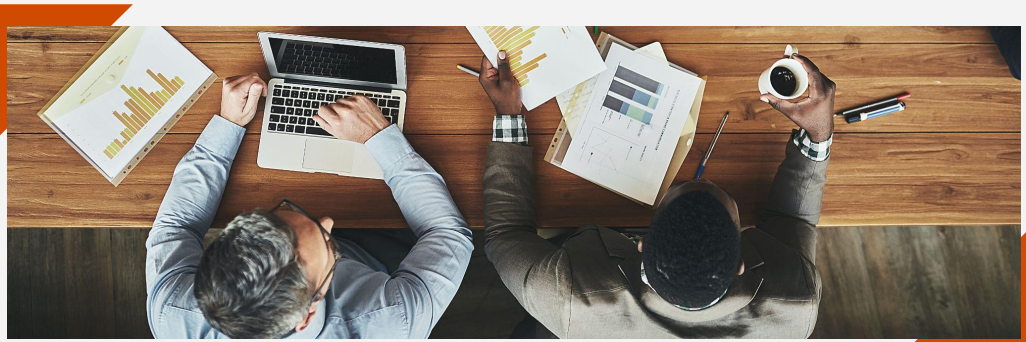
AMLR will apply to all the "obliged entities" as defined by the AMLD4, i.e.:

- Banks and Credit institutions;
- Financial institutions, i.e.:
  - insurance companies,
  - insurance intermediaries,
  - investment firms,
  - collective investment firms (UCITS and AIFM),
  - the branches of the above mentioned FIs, when located in the EU Union, whether their head office is situated in an EU member state or in a third country;
- Payment services providers;
- Auditors, external accountants, and tax advisors;
- Notaries and other independent legal professionals (under specific conditions);
- Trusts or company service providers;
- Estate agents;
- Traders in goods making or receiving payments above 10.000 €;
- Providers of gambling services

Furthermore, AMLR will expand the above-mentioned list to include:

- All types and categories of crypto-asset service providers;
- Wealth or asset managers to the list of obliged entities;
- Sports agents in the football sector, high-level professional football clubs, and football associations that are members of the Union of European Football Associations (UEFA).



What are the requirements?

What are the main requirements?

Beneficial ownership transparency requirements

Under AMLR, individuals who hold more than 15% of the capital or voting rights or other direct or indirect ownership interests in a company will be considered beneficial owners. For companies in the extractive industry or other high-risk areas, a threshold of 5% is applied. Therefore, the threshold for being considered a beneficial owner of a legal entity, and consequently, subject to due diligence requirements, will be lowered by 10%.

In addition, due diligence requirements on the beneficial owner will be strengthened, with the obligation of result to collect the same information on the beneficial owner as on the legal entity customer itself.

Together with AMLD6, AMLR also tightens transparency requirements by creating Member States' UBO register in which legal entities will be required to declare their beneficial owners' identity and to communicate specific information about the latter. Information will have to be up to date and available for the local authorities as well as for the AMLA. Furthermore, MEPs decided that persons with legitimate interests – such as journalists and higher education institutions – should also be able to access Member States' UBO register.

Finally, legal entities will have to collect and make available to the relevant FIUs more information on beneficial owners. Indeed, additional ownership information must be collected and made available for certain products that are particularly sensitive to money laundering, including high-value assets such as yachts, aircraft, and cars worth more than 200.000 €, as well as assets stored in free trade zones.

De-risking in the internal policies, controls, and procedures

According to AMLR, FIs will be required to put in place internal policies, controls, and procedures to ensure that the application of CDD does not result in the unwarranted refusal, or termination, of business relationships with entire categories of customers or in the exclusion of non-profit organisations and their representatives and associates from access to financial services exclusively based on geographical risk. Therefore, FIs will have to include in their AML/CFT policies and procedures risk mitigation measures to be considered before rejecting a customer for ML/TF risk reasons, as well as options and criteria for tailoring the characteristics of the products or services offered to a given customer on an individual risk-sensitive basis.

What are the main requirements?

Modification of the PEPs definition and on the deadlines of declassification

The AMLR broadens the definition of PEPs to include "heads of regional and local authorities", as well as "groupings of municipalities and metropolitan regions" and includes siblings of politically exposed persons to the list of relevant family members.

Furthermore, under AMLR, FIs will have to apply EDD measures on PEPs for more not less than 24 months from the time the PEP ceased its function, instead of the 12 months indicated under the AMLD.

New categories of high-risk profiles customers

FIs will be required to put in place appropriate risk management systems, including risk-based procedures, to determine whether a customer or its beneficial owner belongs to one of the following categories:

- a high-net-worth individual who also presents any of the higher risk factors, namely, a customer whose wealth derives from the extractive industry the extraction of natural resources, or from reported links with PEP, or the exploitation of monopolies in third countries;
- a legal entity established or having a substantial link with a jurisdiction designated by AMLA as an "offshore financial centre" or;
- a person is subject to restrictive measures (sanctions).

FIs will have to put procedures in place to identify such individuals and should take additional measures, such as gaining approval from senior management to establish or continue business relationships with those customers and take adequate measures to establish the source of wealth and the source of funds involved in business relationships or transactions with those customers.

What are the main requirements?

SDD requirements on low-risk customers

AMLR provides FIs with thorough guidance on the due diligence measures to adopt simplified measures for low-risk customers. According to AMLR, SDD involves the following:

- simplified verification of the customer's and beneficial owner's identity;
- reduction of the frequency of CDD updates;
- reduction of the amount of information collected;
- reduction of the frequency or degree of scrutiny of transactions carried out by the customer.

In addition, AMLR specifies certain situations in which FIs shall refrain from performing SDD on a customer, including where:

- FIs have doubts about the veracity of the provided information or inconsistencies regarding that information;
- the factors indicating a lower-risk are no longer present;
- the 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 ML/TF or the beneficial owner is subject to targeted financial sanctions.

FIs will be required to describe such SDD measures in a procedure.

What are the main requirements?

Guidance on the reporting of suspicious transactions

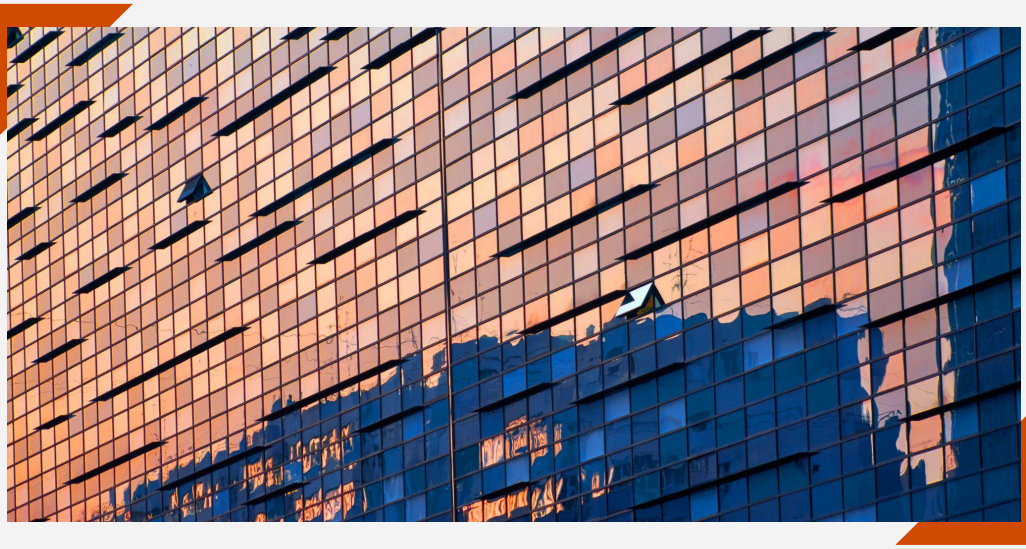
While under AMLD, reporting to relevant FIUs was limited to funds and transactions deemed suspicious by FIs, their management, and employees, under AMLR, the scope of the declaration is extended to activities and assets related to ML/TF offences.

FIs shall assess occasional transactions identified as atypical to detect those that can be suspected of being linked to ML/TF.

To facilitate the performance of such assessment, red flags raising suspicion are clarified and will guide reporting of suspicious transactions. Therefore, AMLR indicates that FI's suspicions may be based on:

- the characteristics of the customer and their counterparts;
- the size and nature of the transaction or activity;
- the use of anonymizing tools;
- the methods and patterns techniques of execution of the transaction or activity.
- the link between several transactions or activities;
- any other circumstance known to the FIs, including the origin of funds or assets and the consistency of the transaction or activity with the risk profile of the customer and the characteristics of the transaction or customer when linked to patterns highlighted by the individual risk assessment.

By two years after entry into force of AMLR, AMLA shall develop a draft implementing technical standards to specify the means and format to be used for the reporting of suspicions and submit them to the EU Commission for adoption.



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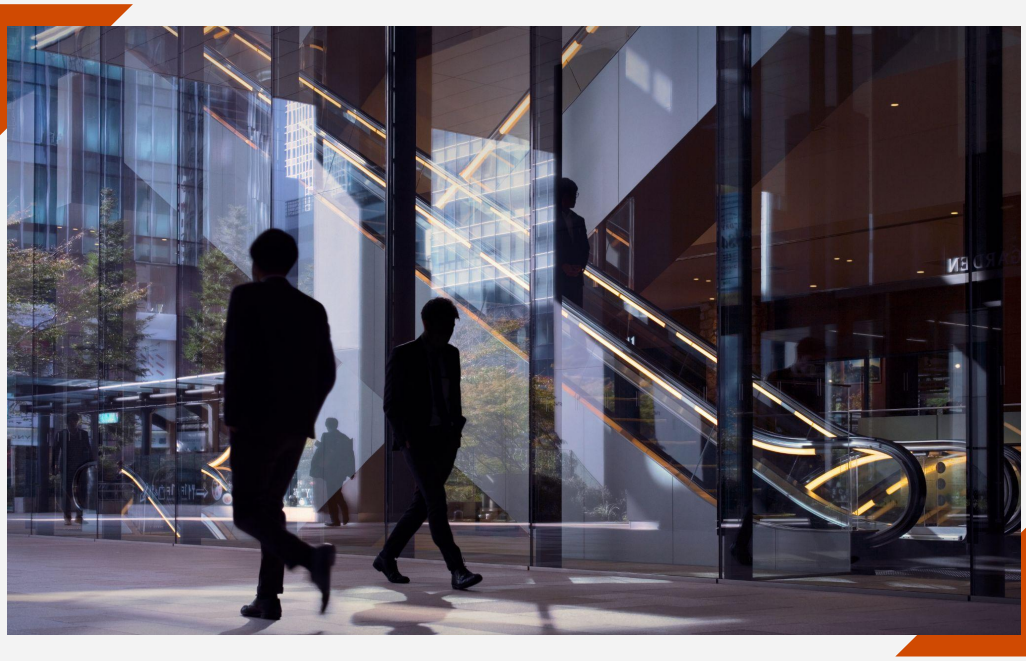
Other requirements

Besides the above-mentioned measures, AMLR sets out new AML/CFT requirements for FIs to consider in their AML/CFT procedures, namely:

- FIs will be required to apply customer due diligence measures when involved in or carrying out an occasional transaction involving crypto-assets that amounts to 1 000 € or more.
- Although outsourcing the execution by a FI of certain AML/CFT obligations was allowed under AMLD, AMLR develops a real framework to organise such outsourcing. This directly applicable regulatory framework will provide a list of tasks that must never be outsourced.
- Under AMLR, persons trading in goods or providing services may accept or make a payment in cash only up to an amount of 7 000 €, and not 10 000 €.



What’s next?

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A draft negotiating mandate was announced at the opening of the 17 April plenary session. Since there were no objections to starting negotiations with the Council on the AML/CFT Package, the talks on the final form of the legislation can start so that the first meeting to start negotiations with the representatives of EU ministers will take place at the beginning of May. Based on the above, we can foresee that AMLR will be adopted definitively by the end of 2023, or early 2024.

What are the expected impacts for the Belgian FIs?

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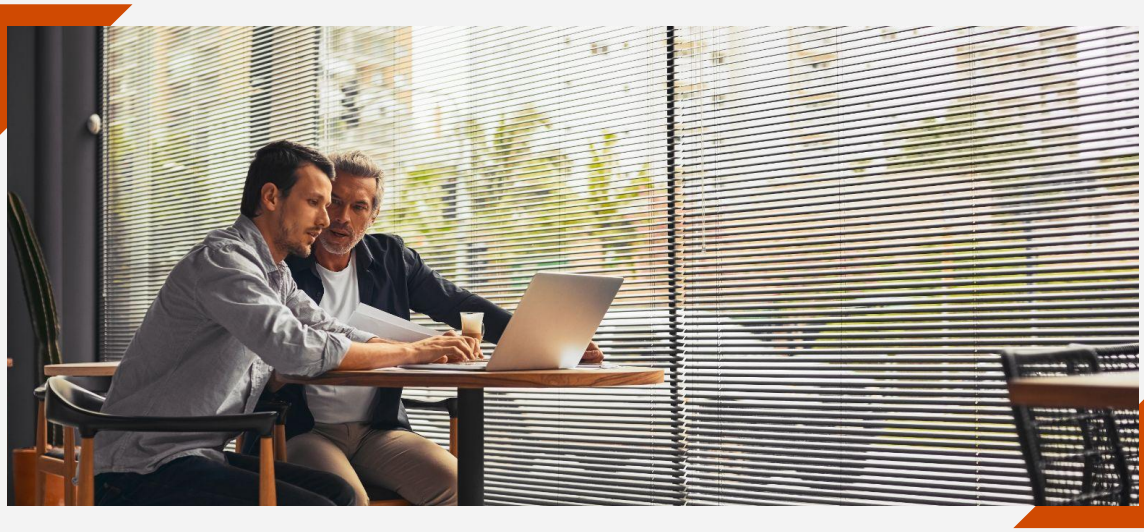


Once in force, AMLR will be directly applicable to Belgian FIs without requiring the adoption of a transposition law. The foregoing requirements will therefore have to be reflected in the AML/CFT procedures and policies as well as in the practice of Belgian FIs.

Considering the current Belgian AML law, we foresee that the main impacts of the adoption of AMLR for Belgian FIs will be the following:

- AML/CFT procedures and policies will have to be adapted to include AMLR requirements in terms of de-risking and mitigating measures, which will result in the need to perform an overall risk assessment of the FIs. The National Bank of Belgium (hereafter referred to as "NBB") guidelines will need to be updated accordingly.

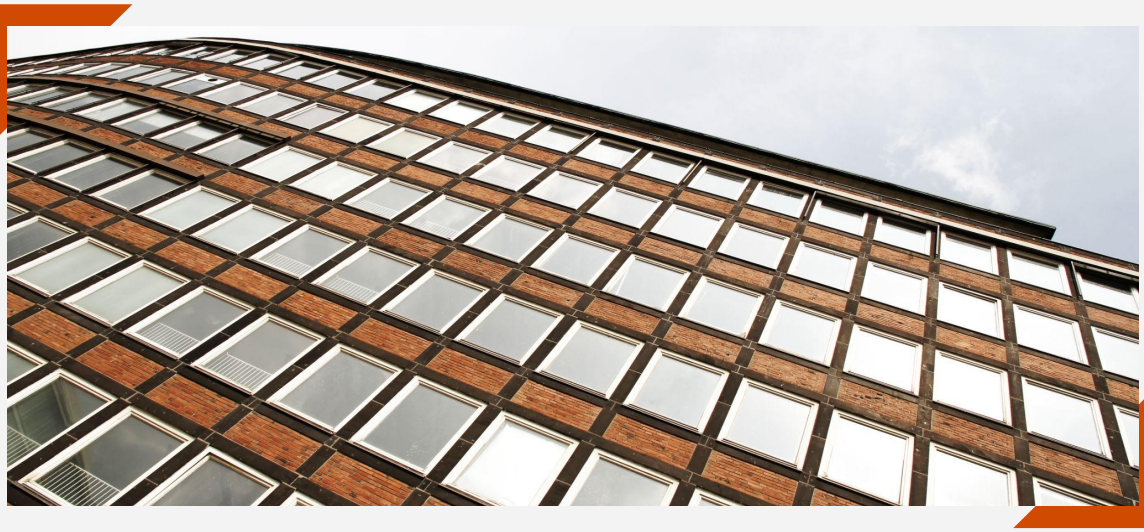
- The lowering of the shareholding threshold from 25 to 15% (or even 5% in case of high-risk criteria) to be considered as a beneficial owner of a legal entity will broaden the scope of persons considered beneficial owners and therefore the range of persons to whom CDD needs to be performed.

- The heightened identification and verification requirements of the beneficial owners' identity may also increase the KYC workload as this requirement is currently limited under Belgian AML law to a duty of care consisting of taking reasonable steps to obtain the identity and address of the beneficial owner, and to verifying this information against the information contained in the UBO register.

- The creation of new categories of high-risk customers to be detected during CDD in order to apply EDD measures will potentially increase the list of clients to be considered high-risk and therefore the need for measures and tools designed to perform transaction monitoring and ongoing screening.

In addition, we expect the Belgian financial authorities to adopt guidelines to assist FIs in implementing the EU requirements in the most suitable and harmonised way.

What are the expected impacts for the Belgian FIs? (2/2)



In this regard, one of the upcoming challenges is probably that the Belgian AML law and the currently applicable NBB recommendations are at some points stricter than those provided for by the AMLR. As an example, AMLR provides for a cash transaction limit of 7.000 € (see above), whereas Belgian law provides for a cash transaction limit of 3.000 €. On the other hand, AMLR issues some provisions without prejudice to the possibility of EU Member States applying measures that ensure a higher level of protection of the financial system of the EU Union. This for instance includes the requirement for FIs to identify any business relationships or occasional transactions with persons subject to UN sanctions and to refrain from engaging in casual transactions with such persons.

Given the foregoing, it will be interesting to closely follow how the NBB will implement Guidelines in line with these European requirements, sometimes more tolerant than the Belgian AML Law.

In any case, FIs should already initiate actions to comply with the new AML/CFT requirements to tackle these AML/CFT regulatory updates. In this view, sufficient procedures and policies should be in place. In any case, good preparation is crucial. This can be done through the following:

- Assessing the compliance of current AML/CFT procedures and policies with the regulatory requirements of the AMLR, to detect improvements points;
- Adapting current AML/CFT procedures and policies to comply with future AML/CFT requirements, according to the abovementioned assessment;
- Anticipate future reporting requirements to AMLA and understand the challenges of this new authority to tackle the impacts on the AML/CFT compliance organisation.

Regardless, it is time to get a head start in anticipating and understanding the implications of the new AML/CFT regulatory requirements and to get ready for compliance.

Our PwC Governance, Risk & Compliance professionals are fully committed to assisting you with the overall implementation and understanding of these upcoming AML/CFT updates.

Contact details

Contact details

Géraldine D'Argembeau

Financial Services
ESG & Compliance Lead

PwC Belgium

+32 476 47 19 59

geraldine.dargembeau@pwc.com

Lore Vanderstraeten

Financial Services Governance, Risk and Compliance expert

PwC Belgium

+32 494 41 89 69

lore.v.vanderstraeten@pwc.com

Alissya Coscia

Financial Services AML/CFT expert

PwC Belgium

+32 472 90 61 80

alissya.coscia@pwc.com

PwC's compliance expert team is ready to support you on your AML/CFT Journey