

Changes to the EU's AML framework

Reflecting on developments in AML reform and their impacts



| Introduction

The European Union (EU) is transforming how it regulates, supervises, and enforces anti-money laundering (AML) for member states. We are 12 months on from the European Court of Justice (ECJ) decision which revoked public access to national beneficial ownership registries, and in the middle of the "trilogue" process to finalise the EU's "AML Package" – a new AML Regulation, Directive updates, and a new AML Authority.

In this paper, Moody's takes a look at the key developments in AML reform and analyzes implications for regulated businesses and those working in risk management and compliance.



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1 | ECJ ruling on national beneficial ownership registries – one year on

We are 12 months on from the European Court of Justice's (ECJ) ruling that led to radical changes in who could access national beneficial ownership registries. The ruling also raised important questions about transparency versus privacy and personal data protection within the European Union, which to some extent remain unanswered.

The ruling removed public access to beneficial ownership registries, a decision based on a person's rights to privacy and personal data protection under the EU Charter of Fundamental Rights.

The judgment, however, also had a significant impact on the way financial crime processes were managed. It removed some of the transparency in beneficial ownership data used by regulated businesses, such as financial institutions and those working in risk management and compliance, to understand company ownership structures and thereby potential risks related to bad actors within those structures. This beneficial ownership data is crucial to anti-money laundering (AML) activity.

Legitimate interest and access to beneficial ownership data

The key determining factor after the ECJ ruling became legitimate interest. Regulated businesses could continue to access data direct from the registries for KYC due diligence, but not automatically using third-party providers.

The ruling also highlighted the importance of data verification. It brought attention to the quality of data available in beneficial ownership registries. While the decision may have limited public access to these registries, it did not necessarily ensure that the data within them was accurate and trustworthy.

Data is at the core of anti-money laundering processes, and the ruling has prompted a reevaluation of risk management and compliance practices over the past year.

One of the significant challenges brought to light by the ruling was the difficulty in identifying the controlling parties of an entity. While the decision was made in favor of protecting individual privacy, it impacted the ability to trace information related to ownership and control of businesses used to prevent and detect financial crimes.



While the ECJ ruling in November 2022 revoked public access to national beneficial ownership registries, changing the way organizations performed KYC and customer due diligence, amendments tabled in the 6th anti-money laundering directive would extend the definition of "legitimate interest". In March 2023, the European Parliament voted in favor of persons with legitimate interest being extended to include journalists, reporters, any other media, civil society organizations, higher education institutions, so they could also access the register, including the "interconnected central registers".

2 | The EU's AML package – what is being addressed and when?

The European Union's AML Package will transform the regulatory landscape, with the largest reform since rules were first put in place. The EU is committed to strengthening efforts to control financial crime. Europol estimates that between **EUR 715 billion and 1.87 trillion** of illegal funds are laundered across Europe each year. The next stage in addressing this significant issue is through an AML Package consisting of three main pillars, announced in a press release by the European Parliament in March 2023.

Each of the three elements – regulation, directive, and authority – were adopted by members of the European Parliament voting in favor of them.

1. "Single Rulebook" (AML Regulation):

This regulation stipulates the rules regarding customer due diligence, transparency of beneficial ownership, and the use of anonymous instruments such as crypto-assets. It also includes new entities like crowdfunding platforms and addresses the issue of "golden" passports and visas.

There are key impacts expected for Crypto Asset Service Providers (CASPs) who come within the widened scope of the Transfer of Funds (TFR) regulation. The TFR also applies to intermediaries: businesses that are not the originators or beneficiaries, but who receive and transmit transfer of crypto assets on behalf of a CASP. These newly obligated entities are likely to fall within the scope of the rulebook.

Several key operational aspects remain to be determined using Regulatory Technical Standards (RTS), including specifics on data sources for know your customer (KYC) and customer due diligence (CDD) activity for all obliged entities.



Single rulebook continued

- **UBO thresholds**

Definition of beneficial ownership consists of two concepts - "ownership" and "control", and it is the ownership definition that is currently the subject of debate. Guidance and national legislation largely define an ultimate beneficial owner (UBO) as someone holding 25% or more of a legal arrangement. The EU Parliament has proposed that the beneficial ownership threshold be lowered to 15%, plus either one share or voting rights, or a threshold of 5% plus one share, in high-risk cases, as defined by the European Commission. The impact of this change could be significant, with a key challenge remaining around the quality of data available and the time needed for regulated businesses and service providers to meet new lower thresholds.

- **Extended due diligence obligations**

The EU Parliament also proposed that wealth managers become obliged entities. Customer due diligence obligations are expected to begin at a lower threshold (EUR 5,000 rather than 10,000) for vendors of high-value assets such as art. The Parliament has further suggested payments for goods and services without due diligence will only be accepted up to EUR 7,000 in cash and up to EUR 1,000 in crypto-assets.

- **PEPs definition**

On PEPs, article 2 of the regulation will determine the size of the change. It remains to be confirmed whether the article omits mid to low-ranking officials but includes other prominent functions referenced by member states and publicly owned companies. The emergence of bribery and corruption cases involving lower ranking officials in the EU and the May 2023 proposal for a new directive on combating corruption, may support further developments on this point.

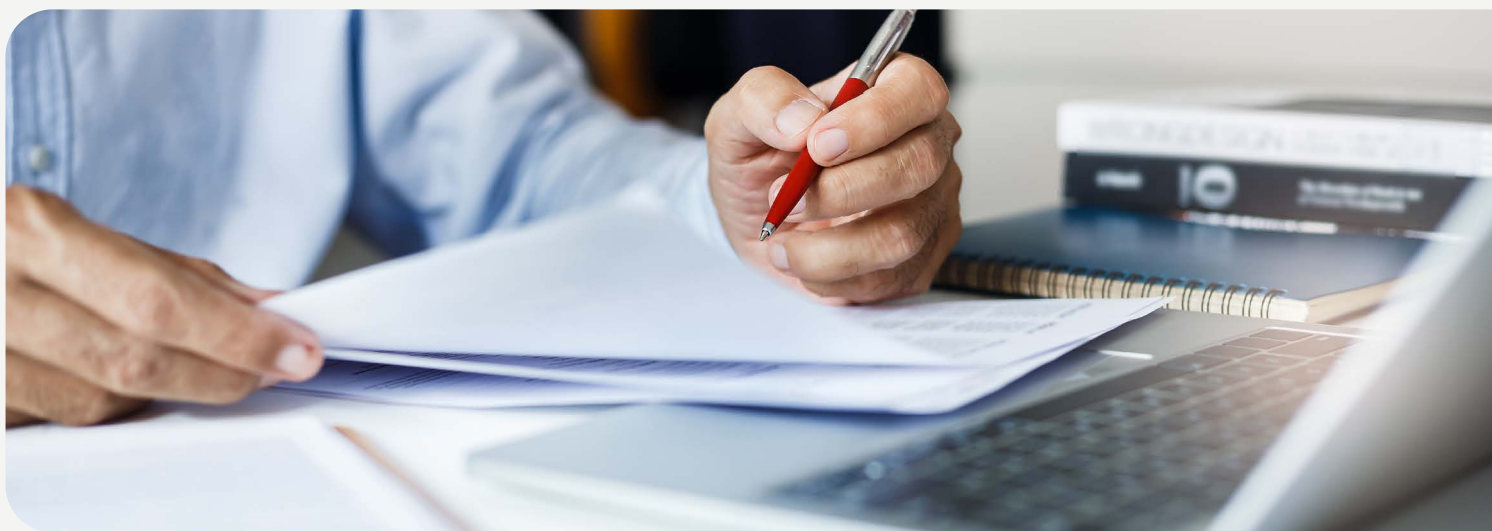
- **Suspicious activity reports**

Suspicious activity reports (SARs) remain a complex part of the AML directive. In some jurisdictions, defensive SARs have created a volume of data that FIUs cannot process and the feedback loops, needed for an effective reporting system, remain limited. However, suspicious activity reporting is in the scope of the directive and will be a key element in the action of the AML authority (AMLA).



2. The 6th Anti-Money Laundering Directive (directive):

This directive outlines national regulations for supervision and Financial Intelligence Units (FIUs). It also details access for competent authorities to necessary and reliable information such as the national beneficial ownership registries, previously discussed, and assets stored in free zones. There are several areas that could impact organizations at implementation.



Development of and access to beneficial ownership registries

The directive aims to ensure that beneficial ownership information for companies incorporated outside of the EU is included in registries and that bank account, crypto-asset wallets, and safety deposit box registers are accessible to the authorities and FIUs via a centralized platform. The objective is to ensure the development of registries for real estate and high-value assets (worth over EUR 200,000) with a second objective to gain consistency across all registers.

The question of exactly who qualifies as having legitimate interest to access the national registries will also be resolved through the directive (Article 12). The European Parliament voted that legitimate interest be extended to include journalists, reporters, media, civil society organizations, and higher education institutions, including access to central registers.

Central registers enable identification of holders of bank accounts and safe deposit boxes, and so on. The beneficial ownership information collected in central registers can also provide data about the ultimate owners of legal entities, essential for preventing the abuse of shell companies for example. EU countries should make sure that beneficial ownership information on legal entities incorporated outside the EU, as well as express trusts and similar legal arrangements administered outside the EU, are included in a central register.

Amendments to the directive could also extend legitimate interest to service providers acting on behalf of an obliged entity such as a banks.



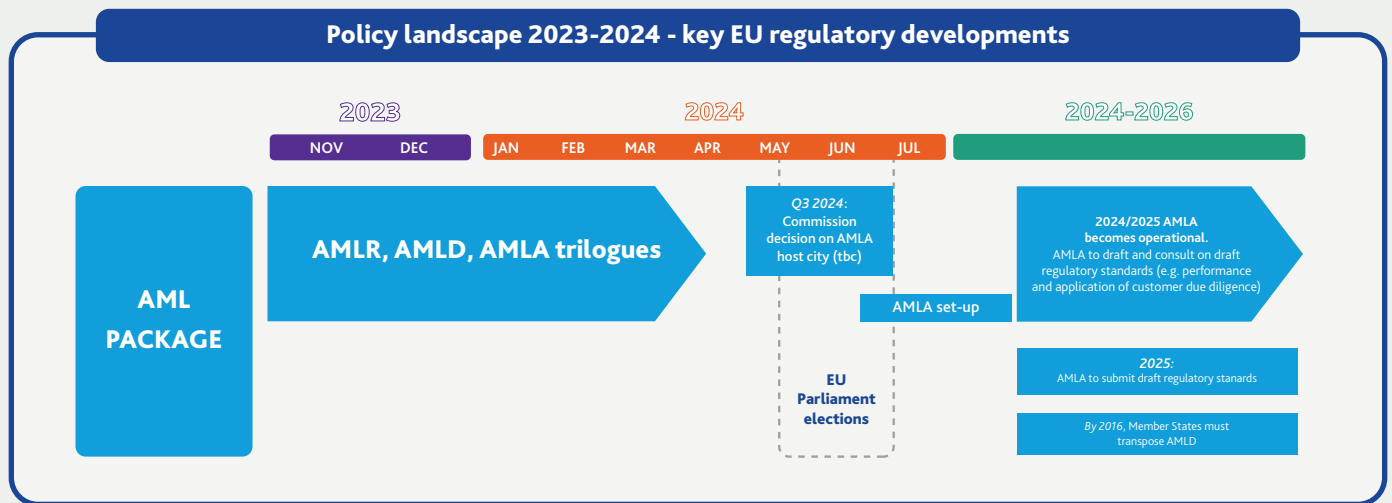
3. European Anti-Money Laundering Authority (AMLA)

Establishing an AMLA will deliver supervisory and investigative powers to ensure compliance with Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) requirements across the EU. Key actions are already underway across the EU before implementation of AMLA in 2026, including a review of the current state of AML supervision by national regulators, including assessment of financial crime risks and the frequency and completeness of the inspections carried out.

The AMLA will be predominantly responsible for the direct supervision of 40 high-risk and systemically important financial institutions. The inclusion of crypto-currency exchanges and other platforms is in scope for supervision. The AMLA would also act as an information clearing house for national FIUs to unify standards across 26 member states, with localization and best practices under continual review.

Following EU sanctions against Russia in 2022, scope of an AMLA has been extended to implementing financial sanctions, including asset freezes, seizures, and confiscations, and to act as a peer reviewer of beneficial ownership registries, an adjudicator between national regulators and FIUs to facilitate cooperation.

3 | Impacts on regulated entities



As the European Parliament has ratified its stance and the three pillars for its anti-money laundering package, regulated businesses and those working in risk management and compliance need to prepare for even more stringent KYC, including verification of identity, beneficial ownership, and company control.

Organizations that fall within the jurisdiction of the EU will also need to report specific money laundering risks, providing the information to a central register. Certain cash and crypto asset transactions will be limited in value when customer identification hasn't been possible. And the legislation calls for a ban on citizenship by investment schemes and tighter AML controls on residence by investment schemes.

Despite the ECJ ruling, the legislation emphasizes the need to access beneficial ownership information, bank accounts, and land or real estate registers by national authorities and other "competent authorities", including regulated businesses. The parliament has recommended each state compiles information on ownership of high-value goods - like yachts, planes, and cars worth more than EUR 200,000 or goods stored in free zones.

And, as previously mentioned, businesses should prepare for beneficial ownership thresholds to be changed - defined as "...having 15% plus one share, or voting rights, or other direct or indirect ownership interest, or 5% plus one share in the extractive industry or a company exposed to a higher risk of money laundering or terrorist financing."

Finally, regulated businesses and those working in risk management and compliance should prepare to work with the proposed AMLA that will monitor risks and threats within and outside the EU, and directly supervise specific companies based on their size and risk exposure. The agency is likely to have power to request documents, conduct on-site visits, and impose sanctions when it is established.

4 | How Moody's can help

Data and Technology for Compliance (DT4C)

Moody's is engaged in DT4C, actively discussing and progressing the AML agenda in Europe, with the aim to support efficiency and transparency. The coalition engages with policymakers and other industry experts at the EU level to promote understanding of the role and significance of data and technology to the compliance industry.

The ECJ's ruling on beneficial ownership registries was a pivotal moment for the financial industry, highlighting the complex interplay between individual privacy and transparency. While the decision aimed to protect personal data, it raised questions about data quality, access to information and the role of the industry in self-policing.

The ongoing debate surrounding transparency versus privacy holds significant implications for practitioners and providers which the alliance aims to address. As the industry evolves, collaboration among data providers, compliance officers, and regulators will be essential to find a balance between the imperatives of privacy rights and transparency.

Ongoing collaboration is essential to ensuring key decisions and all their potential impacts are thoroughly considered, so those working in compliance can continue to effectively manage and mitigate risks and future challenges.

Innovating to mitigate risk

Moody's entity verification API (EVA) enables the identification and verification of entities through real-time access to data and documents with audit proof information from government registries for more than 115 million companies. EVA blends this primary source data with curated, structured legal entity data – including powerful and precise models for Beneficial Ownership identification and verification, across over 460 million legal entities worldwide.

Moody's solutions support clients with PEPs, sanctions, and UBO screening. The new EVA solution offers an enhanced level of data engagement and provides for integrated AML programs to meet the EU's new regulatory reforms.

Through research, innovation and industry engagement, Moody's remains at the forefront of understanding the AML landscape in Europe and beyond, ensuring solutions are designed for compliance standards now and flexible enough for those still to come.



GET IN TOUCH

Contact information

To find out how Moody's can help you with AML compliance and risk management in Europe and beyond, please visit [moody's.com/kyc](https://www.moody's.com/kyc) or get in touch.

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