

AML Tuesday's Session #22 on:

Sector Specific CDD/EDD measures for dealers in luxury goods

- Yachting/Chartering, Motor vehicles and Arts & Antiques

July 16, 2024

Discussion Topics

01

The CDD process, including the relevant sector-specific thresholds

02

Identification and verification of beneficial owners of legal persons and arrangements

03

Levels of CDD, including sector-specific examples of factors triggering EDD



The CDD process

FATF International standards on combating ML and TF

FATF Recommendation 10 & 22 & interpretive notes cover CDD obligations for certain luxury goods/properties (real estate transactions & precious metals and stones deals conducted in cash).

To help mitigate **substantial ML/TF risks relating to other luxury/high-value goods**, the EU countries and Monaco decided to apply similar standards also to dealers in other luxury goods

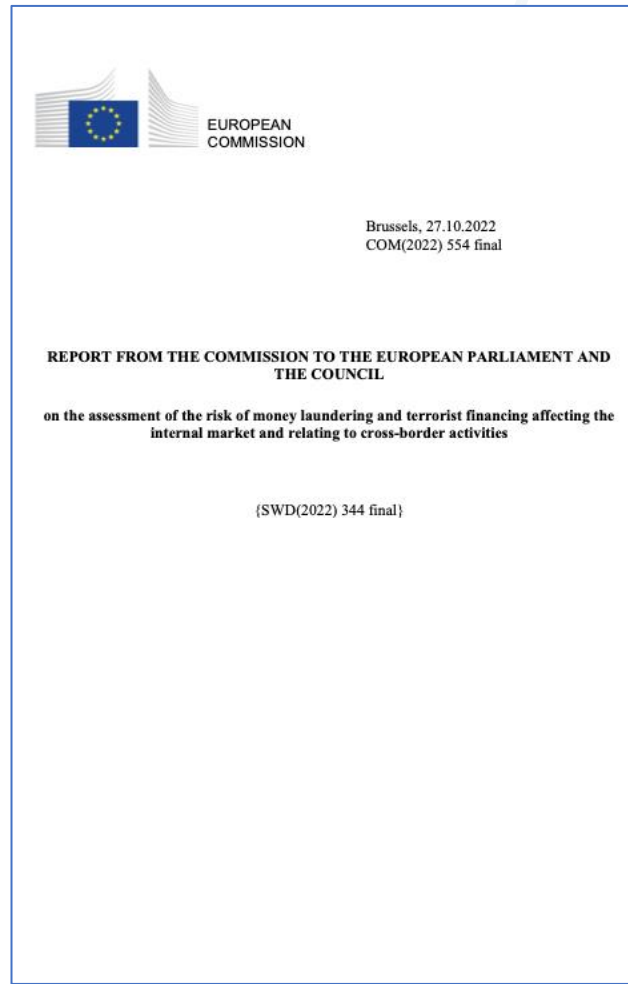
Risks relating to luxury goods



FATF REPORT

Money Laundering and Terrorist Financing in the Art and Antiquities Market

February 2023



ÉVALUATION #2
NATIONALE DES RISQUES
DE BLANCHIMENT DE CAPITAUX ET DE FINANCEMENT DU TERRORISME
NATIONAL RISK ASSESSMENT
OF MONEY LAUNDERING AND TERRORIST FINANCING



EU legal framework and new developments

- Currently in force in the EU: the **5th AML Directive (AMLD5)**:
 - Covers persons trading in or acting as intermediaries in the trade of "works of art" when conducting transactions over € 10.000, including when carried out by art galleries and auction houses and free ports (in latter case, also for storage)
 - Other "persons trading in goods" are covered when conducting cash transactions over € 10.000
 - Member states are allowed to introduce stricter measures
- Implementation of AML5 has proven to be too fragmented and ineffective across member states, creating loopholes and uneven level-playing field for private sectors between countries, hence not fully effective to mitigate the high risks which are identified

EU legal framework and new developments

- Coming up: the **EU AML Regulation (AMLR)**: all rules applying to the private sector in the EU currently covered in AMLD5 will be transferred to a new directly applicable regulation
- EU AMLR was published in the official EU Journal on 19/06/2024, entered into force on 07/07/2024 and will apply 3 years after the entry into force, so from **07/07/2027**
- Last week AMSF & FTA organised a special outreach session on the EU AMLR developments
- Some main changes in AMLR compared to AMLD5 in relation to luxury goods:
 - Covers trade in “cultural goods” instead of “works of art”; and covers trade in “high-value goods” instead of “goods”
 - Persons trading in (high-value) goods are now also covered when they carry out transactions through payment means other than cash
 - Specifications as to which traders in “**high-value goods**” & which “**cultural goods**” are covered exactly, including those dealing in:
 - Motor vehicles over € 250.000
 - Yachts over € 7.500.000
 - Paintings, sculptures, photographs, manuscripts, books, furniture, tapestries, archaeological items etc. (wide range)
 - Introduction of an **EU-wide limit of € 10.000 for cash payments**
 - Threshold to trigger certain CDD obligations for occasional transactions in **cash of € 3.000**
 - General threshold to trigger CDD for occasional transactions lowered from € 15.000 to **€ 10.000**

Monegasque legal framework

- **Chapter II of Law No. 1.362**, and **Chapter II to VIII of SO 2.318 2009** as amended, lay down the obligations for all supervised entities to apply **appropriate vigilance measures** when:
 - Establishing business relationships
 - A suspicion of ML or TF exists
 - There are doubts about the veracity or adequacy of previously obtained customer identification information
- Furthermore, CDD must be carried out in case of **occasional transactions**, as follows:
 - For motor vehicle dealers: for all transactions above € 100.000
 - For yachting & chartering: for all transactions above € 15.000
 - For arts & antique dealers: for all transactions above € 10.000
 - For all cash transactions above € 10,000

Regular customers versus Occasional customers

Business relationship

Such a relationship is established when:

A professional and a client enter into a contract under which several successive transactions will be carried out between them for a fixed or indefinite period, or which creates continuing obligations; or

A customer regularly and repeatedly requests the assistance or intervention of the same professional for the performance of distinct and successive financial transactions.

(Article 2 SO No. 2.318 of 3 August 2009, as amended.)

Occasional Customer

An occasional customer is any person who approaches a professional with the aim of preparing or carrying out a one-off transaction or of being assisted in the preparation or performance of such a transaction over the applicable threshold, whether it is performed in a single operation or in several operations that appear to be linked together.

(Art 9-1 SO No 2.318 of 3 August 2009, as amended)

Specific provisions on cash transactions

Prohibition on cash over € 30.000

Natural or legal persons trading in property or services on a professional basis may not make or receive payments in cash the total value of which reaches or exceeds € 30,000.

This applies to any sale or supply of property or services, whether made in a single operation or in several operations which appear to be related, during a period of six calendar months.

(Article 35, paragraph 1 & paragraph 3 of Law No. 1.362, as amended)

→ **This is much higher than in neighbouring countries**
(France: € 1.000, or € 10.000 for personal expenses of foreign tax residents; Italy: € 5000)

CDD obligation for cash over € 10.000

If the total amount of cash payments reaches or exceeds € 10,000, the supervised entities must implement CDD measures as defined in the Law, as the case may be, depending on the level of risk presented by the client or the nature of the business relationship or the operation carried.

This applies to any transaction carried out in a single operation or in several operations that appear to be related, during a period of six calendar months.

(Article 35, paragraph 2 & paragraph 4 of Law No. 1.362, as amended)

Identification of the client, representative and BO

Article 4-1 of Law No. 1.62: The following vigilance measures must be taken to ensure that you know the true identity of **all clients** (= regular clients with whom business relationships are formed & occasional clients for whom an occasional transaction is carried out):

- Identify and verify the identity of each **client and their representative** (see next slide)
- Identify the **beneficial owner**, and take reasonable measures to verify the identity of the beneficial owner on risk-sensitive basis such that the professional is reasonably satisfied that it knows who the beneficial owner is (see part 2 of this presentation)

Information to be collected on client & representative

Article 4-1 of Law No. 1.62 & Art. 5 of SO 2.318: The following vigilance measures must be taken in relation to the identification & verification of the client and its representative, when they are **natural persons**:

- Identify the client and verify his identity by means of documents, data and information from **reliable and independent sources**:
- When the client/representative is **physically present for identification purposes**, his/her identity should be verified by the production of an original of **a valid official document bearing their photograph**, and either by taking a photocopy of this document or by collecting a range of specified information from this document, e.g. name, nationality, date and place of birth, and address. Where the **customer's address** is not mentioned on the supporting document, or where there is doubt as to the accuracy of the address, information on address shall be verified by another document (e.g. utility bill) of which a copy shall be kept
- When verification of identity **cannot take place in the presence** of the natural person, supervised entities must either:
 - implement the specific due diligence measures referred to in Article 13 of Law No. 1.362, including the requirement to obtain copies of **two valid official documents** bearing the person's photograph
 - verify the identity by using an **electronic means of identification** issued as part of an identification scheme offering a substantial or high level of guarantee within the meaning of Ministerial Orders 2020-461 and 2020-462 of 6 July 2020,
- If there is reason to believe that the **client is seeking to avoid physical contact** in order to conceal his true identity, or where it is suspected that the client intends to engage in operations of ML/TF/PF or corruption, this approach is not allowed and the supervised entity should **file an STR with the AMSF-FIU**.

Information to be collected on business relationship

Article 4-3 of Law No. 1.62 & Art. 10 of SO 2.318: The following vigilance measures must be taken for **all regular clients** (= all clients with whom business relationships are formed):

- Obtain appropriate information to **understand the purpose and nature** of the business relationship, taking into account:
 - The client's socio-economic background (source of wealth)
 - The characteristics of the relationship such as regularity or duration, object or purpose, nature of relationship and expected volume of transactions to be conducted.
- The information to be gathered shall be **proportionate** to the nature and size of the supervised entity, and to the scale of the risk of ML/TF/PF and corruption.
- In order to identify the intended purpose and nature of the business relationship, the supervised entity shall take note of and record **the types of transactions which the customer requests or intends to request** and any other useful information for determining the purpose of this relationship.
- The information on the purpose and nature of the business relationship, including information relating to the client's socio-economic background/source of wealth, must be supported by **reliable documents, data or sources of information.**

Ongoing due diligence

Article 5 of Law No. 1.62: CDD for business relationships is not a one-off exercise: supervised entities should **conduct ongoing vigilance** on the business relationship and exercise scrutiny of transactions throughout the course of that relationship

Ongoing vigilance should be tailored to the **risk assessment of the customer**: the riskier the customer, the more frequent and more intensive the ongoing measures.

The CDD elements should also be reviewed when the **relevant elements in a customer's situation change**, e.g. new director or new owner of the company, new location or business activity etc. As part of contractual engagements, customer can be required to keep the supervised entity informed of such elements but the supervised entity should also conduct their own checks on a risk sensitive basis as part of internal controls.

There is generally no need to conduct CDD again for each transactions, but (orders for) transactions should be scrutinized to check that they are **consistent with the customer profile and the information on expected purpose and nature of the relationship** that is collected at the start of the business relationship.

Record-keeping obligations

- **Art 23 of Law No. 1.362:** You should **keep records** on all your regular & occasional customers for at least five years:
 - After terminating relations, a copy of all documents and information, regardless of the medium, obtained as part of client vigilance measures, in particular those used to **identify and verify the identity of their regular or occasional clients**, as well as the **results of any analysis** carried out;
 - Once the operations have been carried out, the documents and information, regardless of the medium, relating to **the operations carried out by their regular or occasional clients**, and in particular a copy of the records, account books and commercial correspondence so that the **operations can be reconstructed accurately**, as well as the results of any analysis carried out;
 - A copy of any document in your possession submitted by **persons with whom a business relationship could not be established**, for whatever reason, as well as any information concerning them.
- The records that you keep should allow you to **respond quickly and fully to requests for information on customers/transactions by competent authorities**, including law enforcement authorities and supervisors.

Other relevant provisions on CDD

Where you are **unable to comply** with the applicable CDD requirements, you should not carry out the transaction nor commence business relations, or should terminate the business relationship and consider filing an STR to the AMSF FIU (**Art. 7 Law 1.362**)

Tipping Off and CDD: When you suspect that a transaction is related to ML/TF/PF or corruption, and reasonably believe that fulfilling CDD would alert the client, you may choose not to apply CDD and file an STR without delay, as appropriate, with the AMSF-FIU (**Art. 7-1 Law 1.362**).

Breaches of CDD obligations can be sanctioned as per **Art. 65 et seq.** both at entity-level and at level of directors, employees, agents & persons acting on behalf of the entity based on personal involvement.



Identifying and Verifying the Beneficial Owner of Legal Persons and Arrangements

Identifying and Verifying the BO of Legal Persons & Arrangements

- **Corporate vehicles**, including companies, trusts, foundations, and partnerships are susceptible to misuse in complex schemes aimed at **concealing true beneficial ownership** and the underlying reasons for holding assets/acquiring goods.
- By introducing **multiple layers of ownership** across various jurisdictions and employing diverse legal structures, the beneficial owner can be distanced from the asset, complicating detection and hindering investigation
- When the ownership or control of client is exercised through a **chain of ownership or indirect control** - the professional must identify all persons in this chain and also the natural person who is the BO
- Pursuant to the applicable law and regulations in force, all supervised entities must **identify the BO of clients** who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust. In addition, they must also take **reasonable measures to verify the identity of the BO(s)**
- See Article 4-1 of the Law No. 1.362 of August 3, 2009, as amended; Chapters II and III of SO No. 2.318 of August 3, 2009, as amended

Identifying and Verifying the BO of Legal Persons & Arrangements

Identifying the BO

- All supervised entities must identify the beneficial owner of clients who are legal entities, foundations, associations, federations of associations, trusts or any other legal arrangements having a structure or functions similar to those of a trust.
- **Following information must be collected:** Name; User name, nickname or pseudonym; Date and place of birth; Nationality(ies); Address; Control exercised over the entity concerned; Date on which the natural person became the beneficial owner of the entity; Any other relevant information.

Verifying Identity of BO

- Documentation used to identify natural persons
- Documentation used to identify legal entities
- Extract from Register of BO and/or Register of Trusts

Further information on Identifying and Verifying the BO

- **AMSF Generic Guidelines** - <https://amsf.mc/publications/lignes-directrices-generiques-a-destination-des-professionnels-monegasques>
- **FATF Guidance on Beneficial Ownership of Legal Persons (Recommendation 24)** - <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>
- **FATF Guidance on Beneficial Ownership of Legal Arrangements (Recommendation 25)** - <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.pdf.coredownload.inline.pdf>
- **IMF, Unmasking Control: A guide to Beneficial Ownership Transparency** - <https://www.imf.org/en/Publications/Books/Issues/2022/10/06/Unmasking-Control-A-Guide-to-Beneficial-Ownership-Transparency-517096>
- **Next AML Tuesdays session** will fully focus on Beneficial ownership, complex structures and practical application of verification measures



03

Levels of CDD, including sector-specific examples of factors triggering EDD

Levels of CDD which should be conducted

The professional's **business risk assessment (BRA)** should inform the overall approach to CDD and appropriate verification per customer/transaction category.

All supervised entities should reasonably determine the CDD requirements appropriate to each client based on the **customer risk assessment (CRA)**.

See previous AML Tuesdays sessions on BRA (14/05/2024) & CRA (28/05/2024)

Levels of CDD which should be conducted

Standard CDD - A standard level of CDD, generally to be applied to all clients to whom specified services are provided.

Examples of Standard due diligence

- Identifying the **client** & its representative and verifying that client's identity using reliable, independent source documents, data or information
- Identifying the **BO** and taking reasonable measures on a risk-sensitive basis to verify the identity of the BO - For legal persons and arrangements, this should include understanding the ownership and control structure of the client.
- Understanding and obtaining information on the **purpose and intended nature** of the business relationship
- Conducting **ongoing due diligence** on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the business and risk profile of the client
- Gaining an understanding of the client's source of wealth and source of funds, where required

Levels of CDD which should be conducted

Simplified CDD – A reduction of the Standard level of CDD in recognised **lower risk scenarios** – is the lowest permissible form of due diligence and must only be used where you have determined that the client presents a low risk of money laundering or terrorist financing. **Note: This is NOT an exemption from conducting CDD.**

Examples of Simplified Due Diligence

- Limiting the extent, type or timing of CDD measures
- Obtaining fewer elements of client identification data
- Altering the type of verification carried out on client's identity
- Simplifying the verification carried out on client's identity
- Inferring the purpose and nature of the transactions or business relationship established based on the type of transaction carried out or the relationship established
- Verifying the identity of the client and the beneficial owner after the establishment of the business relationship
- Reducing the frequency of client identification updates in the case of a business relationship

Enhanced Due Diligence (EDD)

Enhanced due diligence - An increased level of CDD for those clients that are reasonably determined by to be of **higher risk**

When must you apply EDD?

- EDD must be applied in **higher risk situations**, based upon your own risk analysis or when Government and competent authorities have identified higher risks
- EDD is mandatory in respect of **PEPs** and **High-Risk Countries**
- Following an **inquiry by the FIU or law enforcement authorities** about a particular customer/transaction, the entity should have a closer look at all transactions carried out with that customer or all parties involved in a transaction (without tipping off the customer that a request for information has been filed on them!)
- See previous AML Tuesdays Sessions of 28/03/2023 & 25/06/2024 on high-risk customers and EDD measures for all DNFBP sectors.

Examples of Enhanced Due Diligence

Obtaining additional information, eg on clients' reputation /background from wider variety of sources

Additional searches, eg internet searches using independent and open sources

Obtaining additional information on source of wealth and source of funds

Additional information on nature and purpose of transaction or business relationship

Increase the frequency and volume of transaction monitoring

Lowering the threshold of ownership (e.g below 25% to ensure complete understanding of control structure of entity

Further searches on client or beneficial owner to understand the risk that they may be involved in criminal activity

Section III of Chapter II of Law 1.362 & Chapter VIIbis of SO 2.318 – EDD measures in case of high-risk territories

Obtain senior management approval

Section III of Chapter II, Law 1.362 & Chapter VII of SO 2.318 - EDD measures in case of PEPs

Aim to progressively improve client knowledge

Application of measures that are 'appropriate, effective and proportionate to the risks'

Higher risk situations in respect of luxury goods – example of regional sources

- Publications of **French AML/CFT authorities** covering enhanced risks in the **arts and antique market**:
 - TRACFIN Information letter on AML/CFT measures in the Arts & Antique sector: https://www.economie.gouv.fr/files/lettre_tracfin_16_0.pdf
 - TRACFIN/Customs sector-specific AML/CFT guidelines for the Arts & Antique sector: https://www.economie.gouv.fr/files/files/directions_services/tracfin/Lignes%20directrices%20TRACFIN-DGDDI_marchands%20d%27art%20-%20novembre%202020.pdf?v=1675950847
 - Sectorial Risk Assessment for the Arts & Antique market: <https://www.douane.gouv.fr/sites/default/files/2023-04/12/analyse-sectorielle-bc-ft-vendeurs-arts-et-antiquites.pdf>
- Examples of higher-risk factors warranting EDD, as cited in these sources:
 - Objects originating from or having transited through **conflict zones** (Iraq, Syria, Yemen, Afghanistan etc.)
 - Objects imported from a **freezone**, especially if they have spent a lot of time there
 - High-value **cash** transactions
 - Trade in **digital art/NFTs**

Higher risk situations in respect of luxury goods – example of Monegasque context

Monaco NRA 2 (2021):

Risks in relation to the Monegasque **yachting sector** are assessed as **high**, mainly due to following risk factors:

- **Confidentiality** surrounding “end customers”
- Use of **complex legal structures** to own yachts for tax reasons
- Substantial proportion of customers registered in **higher-risk jurisdictions**, including **PEPs**
- Many sales carried out completely **remotely** or through **intermediaries**, including business introducers from other countries who are not subject to AML/CFT obligations

In light of the high risks, the supervisor published **sector-specific Guidelines** for the yachting sector:

https://amsf.mc/content/download/407/file/AMSF_Guide%20pratique%20pour%20le%20yachting_220125_V4.pdf?inLanguage=fr-FR&version=6, including an overview of sector-specific higher-risk factors warranting EDD, e.g.:

- Yachts (to be) owned by companies registered in tax havens
- Transactions involving multiple parties in multiple jurisdictions
- Links between the buyer and seller in a transaction (family, business associates)

EDD relating to PEPs

- **Monaco NRA 2 (2021)** pointed at **difficulties amongst traders in luxury goods to detect high-risk clients**, including difficulties to detect **PEPs**.
- **FATF Publication on Politically Exposed Persons** - <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peeps-r12-r22.html>
- **Monaco: 2023 amendments** to the relevant provisions of Law No. 1.362 & SO 2.318 to bring Monaco's legal framework fully in line with FATF Recommendation 12 on EDD for PEPs (e.g. no more 1-year limit; international organisation PEPs now also explicitly covered):

Art. 17-17.3 of Law 1.362

Art. 23 – 25 of SO 2.318

Recent AMSF Guidance on PEPs & EDD obligations



Thematic guidance:

Politically Exposed Persons (PEP)

and

Anti-money laundering, combatting the terrorist financing and the proliferation of weapons of mass destruction and corruption (AML/CFT-P-C)

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EDD relating to PEPs

- Article 17 Law 1.362 requires EDD when the client, BO or representative is **a domestic PEP or a foreign PEP or a person entrusted with a prominent function by an international organisation, or a family member or close associate of such persons.**
- Monegasque law and SO defines a PEP as someone who holds or has held important public positions, in particular but not limited to:

- Heads of state.
- Members of governments.
- Members of parliamentary assemblies.
- Members of supreme courts, constitutional courts or other high jurisdictions whose decisions are not subject to appeal, save in exceptional circumstances.
- Officials and leaders of political parties.
- Members of courts of auditors and central bank councils.
- Ambassadors, chargés d'affaires and high-ranking officers in the armed forces.
- Members of the administrative, management or supervisory bodies of state-owned companies.
- Directors, deputy directors and board members of an international organization, or persons who hold an equivalent position therein

EDD relating to PEPs

PEP Identification and screening

The AML/CFT Law requires implementation of appropriate internal procedures to determine whether a customer, beneficial owner or representative, is a PEP. In this respect, you must:

1. Identify the customer, the beneficial owner and the representative to determine whether they **qualify as PEP**
2. Conduct **background checks on the PEP customer** as part of EDD procedures using means, data and information which are of reliable and independent source, be it publicly available, private or external specialised providers.

For example: public or private databases; or of commercially available background investigation services (for example, a detailed PEP background report provided by an external specialized provider). Reliance on publicly available information is permitted, on the condition that you consider and assess the reliability of the sources and duly document and retain all the research conducted. These checks are to be conducted at the on-boarding stage or while conducting transactions for occasional customers and, following a risk-based approach, for existing customers, for which screening can take place alongside on going monitoring, or when a business relationship is reviewed.

EDD relating to PEPs

- Supervised entities should take adequate measures to establish the **source of wealth and source of funds**, to ensure that they are not proceeds derived from criminal activity that could be associated with a PEP.
- **Senior management** should approve the establishment or continuation of business relationship with PEPs or carrying out an occasional transaction for a PEP.
- Supervised entities should conduct **enhanced on-going monitoring of** the relationship with PEPs:
 - Screening PEP customers for new or emerging information
 - Reviewing and updating the customer file more frequently (for example, every six months or annually depending on exact risk profile of the PEP)
 - Performing transaction activity analysis to ensure transaction activity is aligned with your knowledge on the PEP's customer profile, including declared source of wealth/source of funds and purpose of business relationship



*Thank you for your
time*

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Next Session:

30.07.2024

Topic:

Beneficial Ownership,
Complex Structures,
Practical application of
UBO Verification Measures

Today's Host: Tamar Goderdzishvili

Today's Presenter: Suzanna van Es