

# AML Tuesday's Session #32 on:

**Sector Specific CDD/EDD measures for DPMS, Real estate & Casino sectors**

October 1, 2024

# Discussion Topics

01

The CDD process, including the relevant sector-specific thresholds

02

CDD for different types of customers

03

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

**Common findings** on the application of CDD/EDD by the DPMS, real estate and casino sectors arising from **AMSF supervision** are reflected in orange text boxes at relevant parts of the presentation



# The CDD process

# FATF International standards on combating ML and TF

**FATF Recommendation 22** cover **CDD obligations for DNFBP sectors**, including:

- General obligations to conduct CDD (referring to R.10)
- Record-keeping requirements (referring to R.11)
- EDD requirements for PEPs (referring to R.12)
- Provisions for reliance on third parties (referring to R.17)

# 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 obliged entities to apply **appropriate vigilance measures** when:
  - Establishing business relationships
    - For real estate brokers, this concerns:
      - business relationships involving sales/purchases
      - rental arrangements where the monthly rent is  $\geq$  **€ 10.000**
  - 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 gambling operators: for all transactions  $\geq$  **€ 2000**, including for collection of winnings and placement of funds
  - For DPMS and real estate brokers: for all transactions  $\geq$  **€ 15.000**
  - For all cash transactions  $\geq$  **€ 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



# 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**, on a risk-sensitive basis, 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 i.a. **the types of transactions which the customer requests or intends to request.**
- The information on the purpose and nature of the business relationship, including information relating to the socio-economic background/SoW, 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. If they are inconsistent/unusual, there may be a need to conduct a special examination (see **Article 14 of Law 1.362**).

# 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.

# Reliance on third parties

- **Art 8 of Law No. 1.362:** Obligated entities are authorised to have **part of the CDD obligations carried out by a third party.**
- The CDD obligations that can be carried out by a third party are the ones laid down in **Art. 4-1 & Art. 4-3 of Law No. 1.362:**
  - Identification & verification measures for customer and BO
  - Collection of proportionate and risk-based information relating to the intended purpose and nature of the business relationship
- The third party must be a **credit institution, PI/EMI, capital market institution, TCSP, auditor, tax advisor, accountant or lawyer.**
- The third party must carry out its activity on the **territory of the Principality or a State with equivalent legislation** & subject to **monitoring.** The third party cannot be on the list of high-risk States and territories referred to in **Article 14- 1 of Law No. 1.362**
  - **Art. 18 of SO 2.318** lays down the factors and sources to be taken into account when determining equivalence
- The obliged entity must ensure that they have access all information, a copy of the identification data and other documents relating to the vigilance measures collected by the third party under the conditions laid down by **Art. 16-5 of SO 2.318**, e.g. specific procedures shall be laid down in a **written contract concluded between the obliged entity and the third party.**
- **Final responsibility for compliance with the CDD obligations remains with the obliged entity using third parties.**

# 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 of 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 of Law 1.362**).

**Breaches of CDD obligations can be sanctioned** as per **Art. 65 et seq. of Law 1.362** both at entity-level and at level of directors, employees, agents & persons acting on behalf of the entity based on personal involvement.



02

## CDD for different types of customers

# 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**. This includes, in particular, the **name and address** of natural persons.
- 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**,
  - 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

# Onboarding of non-face-to-face customers

## AMSF common supervisory finding on application of CDD:

- Non face-to-face business relationships are not subject to appropriate CDD/EDD measures
- In the rare occasion that a real estate agent or DPMS establishes a business relationship whereby there is **no face-to-face interaction** with the customer, the entity shall take this into account in the customer's **risk classification** and **apply EDD as appropriate**.
- When verification of identity **cannot take place in the presence** of the natural person, 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 legal entities

**Article 4-1, para 4 of Law No. 1.62 & Chapters II and III of SO No. 2.318:** The following vigilance measures must be taken in relation to the identification & verification of the client/their representative, when they are a **legal entity** (company, or other type of **legal person**; trust or other type of **legal arrangement**):

- Identify the client and **verify his identity** by means of documents, data and information from **reliable and independent sources**. This includes the **company name, registered office, list and identification of directors, and knowledge of the provisions governing the power to bind the entity**.
- Identify **the BO of clients** who are legal entities. In addition, they must also take **reasonable measures to verify the identity of the BO(s)**, including (but not limited to) obtaining an extract from the BO registry where applicable. The BO is always a **natural person** (or multiple persons, in case of equivalent control being executed). 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**.
- The vigilance measures must lead to an **understanding of the client's ownership and control structure**.

# Identifying and verifying the BO of legal entities

## Identifying the BO

- All supervised entities must identify the beneficial owner of clients who are legal persons/legal arrangements
- **Following information must be collected on the BO:** 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.

See **Chapter III of SO 2.318**.

## 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

### **AMSF common supervisory finding on application of CDD to complex structures:**

- Files involving complex structures (where they occur) show weaknesses, both in terms of documentation and the due diligence carried out.

# 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>
- **AML Tuesdays session of 30/07/2024** fully focused on Beneficial ownership, complex structures and practical application of BO verification measures



03

## Levels of CDD, including sector-specific considerations

# Risk-based approach to CDD

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

See also previous [AML Tuesdays sessions on CRA \(28/05/2024\)](#)

## **AMSF common supervisory findings on application of the risk-based approach to CDD :**

- Client risk based approach is not effective, lacks an appropriate/clear methodology
- The RBA described in the entity's internal procedures is not the one implemented in practice
- The ongoing client monitoring does not always follow the RBA adopted by the obliged entity
- The implementation of CDD remains essentially the same regardless of the level of risk
- The distinction between CDD and EDD is not always well understood

# 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, including gaining an understanding of the client's source of wealth
- 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
- 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 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 also previous AML Tuesdays Sessions of 28/03/2023 & 25/06/2024 on high-risk customers and EDD measures for all DNFBP sectors.

## **AMSF supervisory findings on EDD for high-risk countries:**

- In some instances, lack of identification of BOs of companies located in a high-risk jurisdiction
- The list of higher risk countries is not always up to date



# 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

Obtaining intelligence/information from specialised external service providers

# EDD relating to PEPs

- **Monaco NRA 2 (2021)** pointed at **difficulties amongst RE, DPMS & casino sectors to detect high-risk clients**, including difficulties to detect **PEPs**.
- **FATF Publication on Politically Exposed Persons** - <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html>
- **Monaco: 2023 amendments** to the relevant provisions (Art. 17 – 17.3 of Law No. 1.362 & Art. 23 - 25 of 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 explicitly covered):
- AMSF recently published specific **Guidance on PEPs & EDD obligations**: Available in FR & ENG at <https://amsf.mc/accompagnement/lignes-directrices-guides-et-guides-pratiques>

## AMSF supervisory findings on application of EDD to PEPs:

- PEP clients are not always properly identified
- PEP clients are not always subject to senior management approval

# Specific CDD considerations in respect of DPMS

**Monaco NRA 2 (2021):** “Few professionals have information systems enabling them to **trace transactions** easily”

**MONEYVAL evaluation (2022):** “Jewellers (...) perform manual checks on sanctions lists, but this is not systematic (**not all customers are checked**) and often not formally documented if there are no positive hits.”

In order to be able to determine whether thresholds for conducting CDD for occasional transactions are met (€10.000 for cash transactions; €15.000 for other transactions), DPMS should have a **system in place in order to allow them to detect operations which are linked and go over the thresholds**. In order to do so, at a minimum **names of the buyers** have to be recorded.

DPMS should also keep in mind the obligations in relation to targeted financial sanctions under **Sovereign Ordinance 8.664**, which apply to all customers regardless of the thresholds for CDD under the AML/CFT Law:

- Jewellery, gold, etc. fall within the definition of “economic resources”
- Anyone is prohibited from providing economic resources available, directly or indirectly, wholly or jointly, to or for the benefit of sanctioned individuals, entities, groups or undertakings.
- This prohibition applies regardless of the amount of transactions
- Identifying at least the **names of the customers** is crucial in order to be able to **screen against the national sanctions list** and comply with the prohibition.

# Specific EDD considerations in respect of casino

## MONEYVAL Evaluation of Monaco (2022):

- The collection of documentation and information on the economic background and source of funds to provide customer knowledge of **persons placing large bets** is **not sufficient given their risk profile**.
- Monaco should formalise and increase **monitoring of high value players** in the gaming sector, establish an **approval mechanism** by a sufficiently senior management level and ensure effective implementation through **follow-up** by audit and internal control departments.

## AMSF expectations:

- There should be **clear internal procedures** outlining the **factors and thresholds** which are considered when designating a player as high-value
- **EDD measures must be applied to high-value players**, including obtaining of **additional information and documentation** (incl. on **SoF/SoW**), senior management approval, screening against public records and third-party databases, increasing **ongoing monitoring**, etc.

# Specific CDD considerations in respect of real estate

## Monaco Legal Persons Risk Assessment (2023):

- Monegasque legal entities feature prominently in FIU disseminations, law enforcement cases, criminal prosecutions and international cooperation requests.
- One of the patterns standing out when analysing ML cases involving Monegasque legal entities is that **foreign generated proceeds of crime are used to invest in or purchase real estate in Monaco through Monegasque SCIs.**

→ When dealing with SCIs as customers, real estate brokers should obtain the **extract from the Register of Beneficial Owners**, but must not rely solely on the examination and content of the extract from the register to fulfil their vigilance obligations, which must be met by applying a **risk-based approach** (see **Art. 4-1, para. 7 & Art. 22-6, para. 3 of Law No. 1.362**)

Also: obligation to **report discrepancies** between the information contained in the extract and additional information collected by the obliged entity, see **Art. 22-2 of Law No. 1.362.**

# Specific CDD considerations in respect of real estate

See also AMSF sectoral guidance for real estate agents, in particular the chapter on operational obligations, including CDD obligations in different customer scenarios

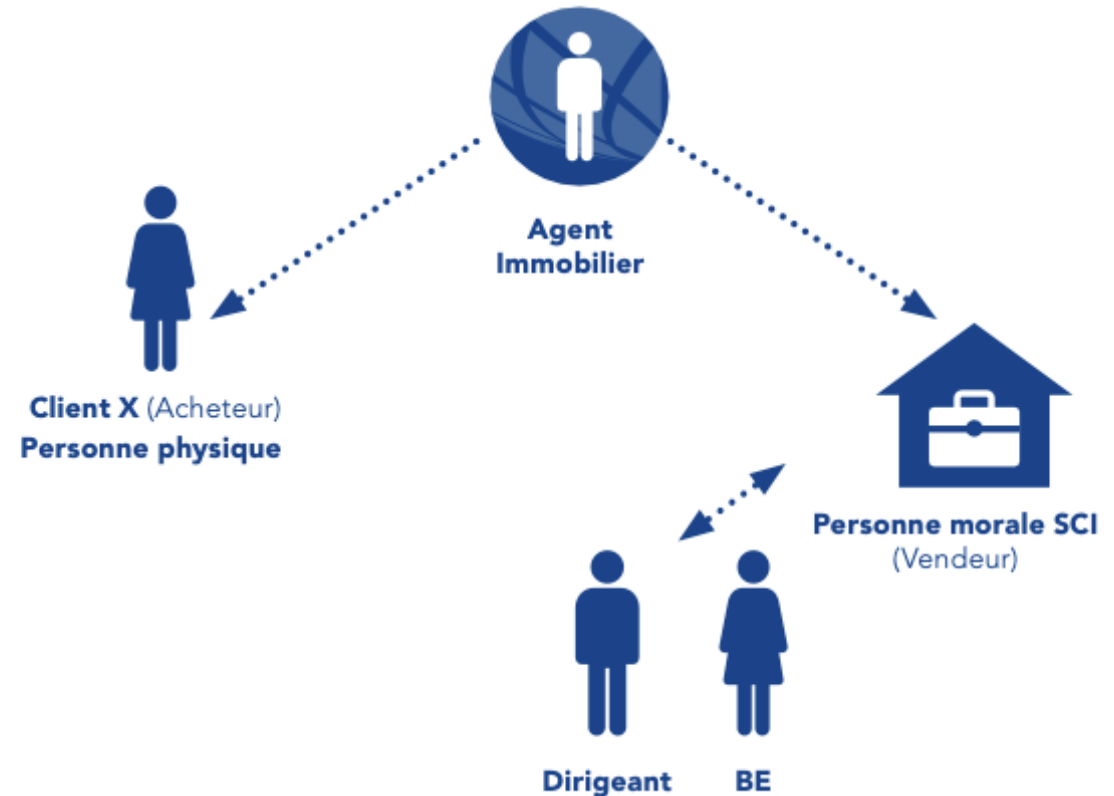
Available at:

<https://amsf.mc/accompagnement/lignes-directrices-guides-et-guides-pratiques>

## Cas de figure n°3

L'agent immobilier identifie son client X qui achète un bien en nom propre. L'agent immobilier identifie également son client Y qui est la SCI vendeuse.

> L'agent immobilier identifie la société elle-même, mais également ses dirigeants et ses bénéficiaires effectifs (BE).



# Specific CDD considerations in respect of cash

- The threshold for **cash transactions** in Monaco (**€30.000**) is notably higher than in neighbouring countries:
  - France: € 1.000, or € 10.000 for personal expenses of foreign tax residents
  - Italy: € 5000)
- As a result, Monaco may be attractive for **non-resident persons** to conduct high-value cash transactions, including with cash from illicit origins and including in the **casino** or through the purchase of high-value goods such as **jewellery and watches**. See also **Monaco NRA 2, p. 100 & Monaco Threat Assessment 2023**.
- Monaco has a mandatory declaration system in place for anyone transporting cash across borders over **€ 10.000** – for non-resident customers bringing high volumes of cash over this threshold, and on a risk-sensitive basis, the obliged entity could **require proof of having filed the declaration**.



*Thank you for your  
time*

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## **Next Session:**

08.10.2024

### **Topic:**

Transaction Monitoring,  
Tools, Scenarios, Best  
Practices

Today's Host: Tamar Goderdzishvili

Today's Presenter: Suzanna van Es