

The 6th EU AML/CFT Directive (AMLD6)

Frequently Asked Questions
(FAQs)

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REGULATORY BACKGROUND IN THE EU

The European Parliament adopted a new Anti-Money Laundering Package on 30 May 2024, consisting of the 6th Anti-Money Laundering Directive (AMLD6) and the Anti-Money Laundering Regulation (AMLR).

The 6th EU Anti-Money Laundering Directive (AMLD6) introduces several key elements regarding beneficial ownership, aimed at enhancing transparency and accountability in the ownership structures of legal entities.

- **Standardizing the definition and identification methods for beneficial owners:** The directive clarifies that beneficial ownership consists of two components: ownership and control. Both aspects must be analyzed to identify all beneficial owners of a legal entity, including non-EU entities conducting business in the EU or purchasing real estate in the EU.
- **Threshold for Beneficial Ownership:** The directive establishes a beneficial ownership threshold of 25%. This means that individuals or entities holding 25% or more of a legal entity's shares or voting rights are considered beneficial owners. However, the directive allows for the possibility of lowering this threshold to 15% for high-risk sectors, enabling more stringent oversight where necessary.
- **Unifying access rights and procedures across member states and defining access rights based on legitimate interest:** Member states are required to maintain central registers of beneficial ownership, which must be accessible to competent authorities, obliged entities, and potentially the public. Access is granted based on demonstrating a legitimate interest, which includes NGOs, academics, and journalists involved in AML activities. This now also encompasses providers of AML/CFT products (including Moody's) to the strict extent that products developed on the basis of this information are only provided to competent authorities or to obliged entities operating in the EU. Member states have two years to set up the required procedures and structures to enable this, and Moody's has already been licensed as an authorized service provider in several EU member states.
- **Verification of data entered in the registers:** Authorities are mandated to verify the accuracy and timeliness of the information submitted to these registers. Registers must include historical data for up to 10 years, with an additional five years for ongoing criminal investigations. This provision aims to enhance the traceability of ownership over time.
- **Interconnected Registers:** The directive promotes the interconnection of national registers across the EU, facilitating better access and sharing of beneficial ownership information among member states.
- **Clarification on Ownership Structures:** The directive addresses complex ownership structures, ensuring that individuals cannot hide behind multiple layers of ownership to obscure beneficial ownership. This reinforces the need for transparency in ownership arrangements.

These provisions collectively aim to strengthen the EU's framework for combating money laundering and terrorist financing by ensuring that beneficial ownership is clearly defined, accurately recorded, and easily accessible to relevant authorities.

WHAT ARE OBLIGED ENTITIES?

Obligated Entities are categories of entities that are required to undertake measures prescribed in AML regulation to prevent money laundering and the financing of terrorism. The new Anti-Money Laundering Package expanded the definition of obliged entity to include Crypto-Asset Service Providers (CASPs), Traders of Luxury Goods, Professional Football Clubs and Agents and Central Securities Depositories.

The following entities are considered obliged entities (AMLR, art. 3):

- credit institutions;
- financial institutions;
- the following natural or legal persons acting in the exercise of their professional activities:
 - a) auditors, external accountants and tax advisors, and any other natural or legal person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity;
 - b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning any of the following:
 - i. buying and selling of real property or business entities;
 - ii. managing of client money, securities or other assets;
 - iii. opening or management of bank, savings or securities accounts;
 - iv. organization of contributions necessary for the creation, operation or management of companies;
 - v. creation, operation or management of trusts, companies, foundations, or similar structures;
 - c) trust or company service providers;
 - d) estate agents, including when acting as intermediaries in the letting of immovable property for transactions for which the monthly rent amounts to EUR 10 000 or more, or the equivalent in national currency;
 - e) persons trading in precious metals and stones;
 - f) providers of gambling services;
 - g) crypto-asset service providers;
 - h) crowdfunding service providers other than those regulated by Regulation (EU) 2020/1503;
 - i) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;
 - j) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;
 - k) creditors for mortgage and consumer credits, other than credit institutions defined in Article 2(5) and financial institutions defined in Article 2(6), and credit intermediaries for mortgage and consumer credits;

- l) investment migration operators permitted to represent or offer intermediation services to third country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity to the public good and contributions to the state budget.

WHAT REQUIREMENTS DOES THE AML LEGISLATION IMPOSE ON OBLIGED ENTITIES RELATED TO CUSTOMER DUE DILIGENCE?

Obligated entities are required to (AMLR, art. 16):

- Identify and verify the identity of their client
- Identify and verify the identity of the beneficial owner of their client, so that they are satisfied that they know who the beneficial owner is and that they understand the ownership and control structure of the customer.

WHAT IS A BENEFICIAL OWNER?

The AMLR (art. 16) defines beneficial owner as any natural person who ultimately owns or controls a legal entity or express trust or similar legal arrangement, as well as any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted.

In the case of corporate entities, the beneficial owner is the natural person(s) who control(s) the entity, directly or indirectly, either through an integrated ownership interest of more than 25%, or through control via other means.

Control via other means includes at least one of the following:

- The right to appoint or remove more than half of the members of the board or similar officers of the corporate entity;
- The ability to exert a significant influence on the decisions taken by the corporate entity, including veto rights, decision rights and any decisions regarding profit distributions or leading to a shift in assets;
- Control, whether shared or not, through formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents depending on the specific characteristics of the legal entity, as well as voting arrangements;
- Links with family members of managers or directors/those owning or controlling the corporate entity;
- Use of formal or informal nominee arrangements.

WHAT IS A REGISTER OF BENEFICIAL OWNERS?

EU member states are required to establish and operate a central register of information about the beneficial owners of legal entities.

The creation of registers of beneficial owners was mandated through the EU 4th and 5th AMLD, and the information they hold is different from the shareholder information held in commercial registers, which capture the legal ownership of the company at the immediate level.

The beneficial ownership registers provide information on:

- The identity of the Beneficial Owners
- Personal data on these, such as:
 - Full name
 - Date of birth
 - Nationality
 - Country of residence
- Nature and extent of the beneficial interest, including qualification of direct or indirect ownership or control via other means
- The ownership structure, including intermediary beneficial owners and ultimate beneficial owners

Obligated entities are required to collect proof of registration or an excerpt from the register whenever entering into a new business relationship with a legal entity. They can also use the information retrieved from the register of beneficial owners for the purpose of assessing the information on the beneficial owners in their due diligence procedures. That said, the sole reliance on the information held in the beneficial owners registers to fulfil their due diligence obligations is guided against by regulatory authorities. Obligated entities need to independently identify and verify the identity of the beneficial owners in a risk-based approach, often referred to as ‘primary and secondary sources’ or ‘live and curated data’.

WHO CAN ACCESS INFORMATION IN THE REGISTER OF BENEFICIAL OWNERS?

Most of the EU member-states complied with the requirement of EU AMLD 5 to enable public access to the data in the registers of beneficial owners. However, on 22 November 2022, the European Court of Justice invalidated the public access provisions, and several member states suspended access to beneficial ownership registers to the general public.

Moody's, and any other data provider, therefore consequently and progressively, are not able to retrieve data from some of these registers. Many other registers of beneficial owners still provide access to the general public, and this data is available through Moody's products.

AMLD6 unifies registry access rules, and in addition to competent authorities and obliged entities, it establishes several other categories of entities that have a legitimate interest to access the data held in these registers.

Access based on legitimate interest now encompasses providers of AML/CFT products (including Moody's) to the strict extent that products developed on the basis of this information are only provided to competent authorities or to obliged entities. Member states have two years to set up the required procedures and structures to enable this, and Moody's has already been licensed as an authorized service provider in several EU member states.

HOW CAN MOODY'S HELP?

It is essential to know whom you are truly doing business with. Use Moody's solutions to create greater transparency around beneficial ownership, control, and shareholder structures.

With Moody's solutions, you have access to extensive, robust data on millions of companies across the world. Integrate our datasets with automated discovery tools to uncover beneficial ownership information – even across multiple ownership layers, international borders, and complex business networks.

Get the insight you need for evolving regulatory requirements and to make decisions with confidence about whom you work with.

Regulatory Requirement	How Moody's can help
"Identify and verify the identity of the customer"	KYC API for near real-time access to commercial registry data and original documents Orbis for curated entity data Entity Verification API for combined, curated data and documents
"Identify and verify the identity of the beneficial owners of the customer, by unraveling the ownership structure"	Near real-time data on immediate shareholders from registers Calculated ownership Real-time UBO discovery capabilities Access to registers of beneficial owners
"Identify persons who control entities via other means"	Access original documents, such as articles of association (e.g., voting rights) through our APIs Integrated ownership and power of coalitions (T-rank)
"Monitor the relationship with customers"	Monitoring changes in near real-time using Moody's curated data
"Collect proof of registration in register of beneficial owners"	Access to registers of beneficial owners

GET IN TOUCH

For more information about how Moody's can empower your business with detailed insights into beneficial ownership, please get in touch.

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