
AFME position paper on amendments to the Anti-Money Laundering Regulation (AML-R)

30th January 2023

The Association for Financial Markets in Europe (AFME) welcomes the progress the co-legislators are achieving towards the finalisation of the EU (European Union) AML/CTF framework.

This note provides views on the AML-R amendments to the EC (European Commission) proposed text (amendments proposed by various MEPs and published in July 2022) and on what we understand is the approach the EP negotiating team is considering in the context of their work on compromise amendments. At the same time this note also makes reference, where relevant, to the direction of travel in the Council of the EU, as defined in their general approach (published in December 2022).

In particular, we focus on the following priority issues, which are crucial to ensure a harmonised, proportionate, sustainable and risk-based approach to the EU's future AML/CTF framework:

- **Article 42 - Identification of beneficial owners:** the proposal to lower the threshold from 25% to 5% is not only a significant deviation from the FATF's internationally agreed standards, but introduces higher operational complexity and administrative burden, and diverts critical resources away from ensuring effective controls.
- **Article 44 - Beneficial ownership information:** the proposal is inconsistent with the FATF's international standards and disregards the risk-based approach. The proposal will lead to duplicative, costly, and operationally complicated implementation for Obligated Entities.
- **Article 47 - Nominee shareholders and nominee directors:** we are concerned with proposals relating to the prohibition of nominee shareholders and nominee directors, which will have a significant effect on legitimate non-financial business professionals. We suggest Commission refer to the FATF draft guidance on recommendation 24. Which provides helpful measures to ensure no misuse of the nominee shareholders and nominee directors.

The annex provides more specific views on the above-mentioned priority issues.

AFME stands ready to provide additional views.

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Annex – Detailed views on current AML-R draft texts

We believe that the importance of preventing the malign effects and costs of money laundering and terrorist financing throughout the Union is paramount. However, several of the current AML-R drafting positions are envisaged to result in significant costs and operational complexity for international businesses, with perceived limited efficacy and effectiveness in practice.

In this respect the following areas are particularly important.

1. Article 42 - Identification of Beneficial Owners for corporate and other legal entities

- The requirement for identification of 5% (plus one) ownership interests (as a rule-based baseline requirement), is not only inconsistent with the FATF's internationally applied AML/CTF standards, but will lead to duplicative, costly, and operationally complicated implementation for Obligated Entities.
- It is likely that such significant changes, which are misaligned with globally applied AML/CTF standards, will affect commercial and competitive elements of EU capital markets and EU financial services (within the Union, and operating overseas via branch and subsidiary networks).
- In practice, it is highly unlikely that an individual could exert control over an entity with just 5% of the voting rights. The proposal will be operationally challenging in practice and will increase the administrative burden for Obligated Entities with global customers.
- Therefore, our members **do not support Amendments - 751, 752, 754, 762. At the same time, we express support for amendments 753, 756, 761 (made in July 2022).**
- **We understand the current compromise text also proposes to lower the threshold to 5% plus one.** Which not only has adverse effects as mentioned above on the firms but also on the financial service sector.
- Members also note the difficulty in identifying Ultimate Beneficial Owners through control via other means. We note that in the **July amendment 773**, the proposal was to replace 'family members' with 'first-degree relatives' of manager or directors/those owning or controlling the corporate entity and informal nominee arrangements. Further, we note that 'first degree relatives' is an undefined term, if this is in the final text, we welcome a definition.
- We understand that the **compromise text proposes the same amendment to Article 42 point 1 d.** This proposal is challenging for obliged entities, as it requires them to request and hold personal details of individuals, who are not their clients, in order to verify control of the legal entity. Compliance with this obligation will introduce significant practical and operational challenges for obliged entities.
- **On Article 42 point 5**, we welcome the recent **compromise text** proposal which includes an exemption for identifying Beneficial Owner information for publicly listed companies (PLC), however, in order to ensure that this exemption works as intended it is critical that any further measures do not require obliged entities to undertake further checks in the ownership structure, which in most cases, when dealing with listed entities, could result in having one or more institutional investor being a body corporate. Furthermore, the final position should apply on a risk-sensitive basis and not create unnecessary resource-intensive checks that do not address the AML/CFT risk posed by the PLC.

- **The July amendments 744, 745, 746, 747 and 748 proposes amendment to the introductory part of Article 42 point 1.** Our Members consider that the definition of ‘beneficial owner’ should not include the notion of “benefiting from” when referring to a business relationship. Such wording unnecessarily broadens the scope of the BO definition and does not recognise that there could be individuals who benefit from the company but who are not technically a BO of the company.
- Furthermore, it is likely that such significant burdens, which are misaligned with globally applied AML/CTF standards, may affect commercial and competitive elements of EU capital markets and EU financial services (within the Union, and operating overseas via branch and subsidiary networks).

2. Article 44 - Beneficial ownership information

- We welcome **amendment 511**. However, **we do not support the position in the current compromise text**. We note that in certain jurisdictions, asking for a residential address is not mandatory. We are of the view that collecting name, surname, date and place of birth and the country of residence are sufficient to check the customers identity.
- Also, we notice that the amendment is incompatible with a risk-based approach. We consider that the identification requirements should be flexible and based on the individual risk level of customers.
- We are of the view that the requirement in Article 44 is misaligned with the FATF’s internationally applied AML/CTF standards, and will lead to duplicative, costly, and operationally complicated implementation for Obligated Entities.

3. Article 47 - Nominee shareholders and nominee directors

- **We strongly oppose the amendment 830 and the current compromise text.** We are concerned with the proposals relating to prohibition of nominee shareholders and nominee directors. While we understand that nominees can be used for concealing the identity of criminals, we note that there are many regular, non-criminal situations where nominee shareholders (e.g., financial custodians, fund managers, financial advisors) hold equity or depositary receipts representing equity on behalf of underlying beneficial owners/investors for legitimate service-based purposes, not just to conceal true beneficial ownership. Nominee directors may also be legitimate designated non-financial business professionals representing their clients (e.g., accountants, services providers, lawyers etc). We do not believe the intention here is to exclude these legitimate non-financial business professionals, however, if this was the intention, we would strongly advise a comprehensive cost/ impact assessment on those affected businesses.
- The FATF draft guidance to recommendation 24 provides several measures that countries should adopt to stop money laundering and terrorist financing as against completely prohibiting the nominee shareholders and nominee directors. FATF has helpfully defined the nominator, nominee, nominee director and nominee shareholder and stated that countries should require nominee shareholders and directors to be licensed and to disclose their nominee status and the identity of their nominator. We suggest adopting these definitions and adding provisions regarding transparency and licensing for the nominees to prove their legitimacy.

If you would like to discuss any of these points in further detail, please do not hesitate to contact us.