

What changes will new AML Regulation bring?

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Regulation 2024/1624 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the 'AML Regulation') was passed on 31 May 2024. Money laundering issues have been regulated at EU level for a long time, but this was so far done in the form of a directive laying down only minimum standards and giving the member states wide discretion to choose ways of implementing them.

The purpose of the new AML Regulation

The AML Regulation seeks to achieve a single approach in every member state and strengthen AML measures at EU level. The format has been chosen to promote a single approach that provides for implementing uniform minimum requirements. The AML Regulation will help the member states fight money laundering vigorously and will make their national markets as well as the EU single market more resilient against the evolving models that circumvent EU safeguards.

Applying the new requirements

Most of the relevant entities will be governed by the AML Regulation from 10 July 2027, except for football agents and professional football clubs in their transactions with investors, sponsors, football agents or other intermediaries and in transactions aimed at footballer transfers, who will be governed by the AML Regulation from 10 July 2029.

Even though Latvia meets several of the AML Regulation's requirements already, we need to focus on a couple of new aspects directly affecting some Latvian companies as well.

Changes relating to ultimate beneficial owners

1. Both EU and Latvian laws have so far defined the ultimate beneficial owner (UBO) as a person that owns more than 25% (e.g. 25.1%) of an entity's shares or voting power or controls it directly or indirectly. The new AML Regulation lays down a threshold of 25% for UBO purposes.

It's important to note that the AML Regulation makes it possible in the future for the European Commission (EC) to prescribe a lower ownership threshold (15%) for categories of subjects that carry a particularly high risk of money laundering. These categories have yet to be identified, but there are plans for the member states to identify and report high-risk subjects to the EC by 19 July 2029, while the EC is to evaluate and determine those categories by the same date.

Thus, all companies are advised to check that the new ownership threshold does not make it necessary to enter one or more other individuals qualifying as UBOs on the Enterprise Registry. This applies to cases of both direct and indirect control.

2. The AML Regulation precisely defines persons that are treated as UBOs where it's impossible to identify one. In foundations, for instance, all the persons listed below are treated as UBOs:

- a. The founders
- b. The members of the management body in its management function
- c. The members of the management body in its supervisory function
- d. Any other individuals directly or indirectly controlling the subject

In express trusts and similar entities, all the persons listed below are treated as UBOs:

- a. The settlors
- b. The trustees
- c. The protectors (if any)
- d. Any other individual exercising ultimate control over the express trust through direct or indirect ownership or by other means, including a chain of control or ownership

Accordingly, the entities in which it has so far been impossible to identify the UBO based on ownership should revise their structure and, if necessary, provide the Enterprise Registry with additional information to register one of the persons listed above as the entity's UBO.

Changes relating to politically exposed persons (PEPs)

1. The AML Regulation has also addressed the definition of a PEP and required the newly formed Anti-Money Laundering Agency to draw up guidelines covering, among other things:

- The criteria for identifying persons known to be closely linked with a PEP
- The level of risk associated with specified categories of PEPs for a member of their family or a person known to be closely linked with the PEP, including instructions on how to assess these risks if the person no longer holds an important public office

These guidelines will allow the entities governed by the AML Regulation to act in a clear and uniform way, as well as mitigating risks associated with identifying a PEP inappropriately. These guidelines will also serve as a valuable source that could help the entities improve their internal control systems and policies to meet the latest practices and standards. This will ensure the entities do not face an excessive administrative burden where PEP status needs revoking as well as where it's necessary to assess risk levels for PEP family members and persons linked with a PEP, because it's not always reasonable to elevate the risk to high.

2. As regards changes affecting PEPs, the AML Regulation, like the previous EU enactments, defines the scope of the term 'PEP family member', which is narrower than what is currently defined by section 1(1)(18.1) of the Latvian Anti Money Laundering and Counter Terrorism and Proliferation Financing Act (AMLCTPFA). Latvia treats grandparents and grandchildren as PEP family members in addition to persons listed by the AML Regulation. However, a set of proposals for amending the AMLCTPFA are coming up for their second reading in Parliament (more details here). The proposals narrow the scope of the term 'PEP family member' to exclude grandparents and grandchildren. Adopting these changes will ease the administrative burden in Latvia, as the entities will be relieved of excessive client due diligence (CDD).

In summary, the AML Regulation will bring a number of innovations addressing many of the unresolved issues and lending a practical hand to companies in avoiding the extra burden of excessive CDD. We recommend that all companies should revise their procedures and familiarise themselves with the full AML

Regulation package to get ready for its implementation in good time.