Assessment of current regulations at the national (Poland) and EU level

Author: **Michał Barszcz** — CAMS, AML/CFT Expert, Bank Millennium

Money laundering (ML) and **terrorist financing** (TF) constitute some of the most serious threats to the integrity of the European Union's financial system and the security of its citizens. Both ML and TF frequently occur in a **cross-border** context. Measures implemented solely at the national level—or even at the EU level—without coordination and cooperation at the international level would therefore have only very limited effect. The EU has established a **comprehensive regulatory framework** in the area of AML/CFT, incorporating the recommendations of the Financial Action Task Force (FATF).

Within the current AML/CFT regulatory framework, the following legal instruments should be identified:

Directive (EU) 2015/849 of the European Parliament and of the Council (AMLD IV)[1], whose main provisions concern:

- **Risk-based approach** – obliged institutions identify and assess the risk of money laundering/terrorist financing and apply appropriate preventive measures depending on the identified level of risk;
- **Obligation to identify beneficial owners** – Member States must maintain central registers containing information on the beneficial owners of companies and other legal entities;
- **Expansion of the scope of obliged institutions** – including, among others, real estate intermediaries agents and entities providing gambling services;
- **Lowering of the cash transaction threshold** (to EUR 10,000), above which customer due diligence measures must be applied;
- **Strengthening international cooperation and supervision** – broader powers for supervisory authorities and the obligation of cooperation between Member States.

Directive (EU) 2018/843 of the European Parliament and of the Council (AMLD V)[2], amending AMLD IV, whose principal provisions concern:

- **Expansion of the scope of obliged entities** – including, inter alia, providers engaged in virtual currencies as well as entities operating art galleries and auction houses;
- **Greater accessibility of central registers of beneficial ownership** – Member States are required to ensure public access to information on the beneficial owners of companies and other legal entities;
- **Strengthening cooperation among Financial Intelligence Units (FIUs)** – facilitation of information exchange between Member States;
- **Restriction of access to anonymous financial products** – through stricter provisions concerning prepaid cards and virtual currencies;
- **Emphasis on risks associated with high-risk third countries** – introduction of an obligation to apply enhanced customer due diligence measures in respect of business relationships and transactions involving entities from such jurisdictions.

Directive (EU) 2018/1673 of the European Parliament and of the Council (AMLD VI)[3], whose principal provisions concern:

- **Harmonisation of the definition of the criminal offence of money laundering** – the Directive aims to criminalise money laundering where the act is committed intentionally and with knowledge that the property originated from criminal activity;
- **Scope of predicate offences** – the Directive requires money laundering to encompass a broad range of predicate offences, including corruption, drug trafficking, tax offences, cybercrime, and environmental crimes;
- **Cross-border cooperation** – the Directive strengthens mechanisms for cooperation between law enforcement and judicial authorities in the Member States.

The key obligations of obliged entities arising from the provisions forming the basis of the AML/CFT regulatory framework include:

- **Assessment of money laundering and terrorist financing risk** – obliged entities must identify and assess the risk of money laundering and terrorist financing associated with their clients and transactions;
- **Customer Due Diligence (CDD)** – obliged entities are required to apply customer due diligence measures on the basis of risk analysis. Such measures include the identification and verification of the client's identity, obtaining information on the client's beneficial owners, assessing the purpose and intended nature of the business relationship, and ongoing monitoring of the business relationship;
- **Enhanced Due Diligence (EDD)** – in cases of higher risk of money laundering or terrorist financing (e.g., relationships with politically exposed persons – PEPs), obliged entities must apply enhanced due diligence measures, such as obtaining information concerning the source of the client's wealth;
- **Reporting of suspicious transactions** – obliged entities are required to report to the Financial Intelligence Units (FIUs) of the Member States any information regarding circumstances or transactions that may give rise to a suspicion of money laundering or terrorist financing;
- **Record-keeping and data retention** – obliged entities are required to retain documents and information related to the application of due diligence measures or the execution of transactions for a minimum period of five years from the date of termination of the business relationship or the execution of an occasional transaction;
- **Implementation of internal procedures** – obliged entities must establish and implement internal procedures for the prevention of money laundering and terrorist financing, taking into account the nature, type, and scale of their business activity;
- **Staff training** – obliged entities must ensure appropriate training of persons performing duties related to the prevention of money laundering and terrorist financing, including issues relating to the protection of personal data.

[1] **Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849)**

[2] **Fifth Anti-Money Laundering Directive (5AMLD)**

[3] **Sixth Anti-Money Laundering Directive (AMLD6)**

The effective and efficient implementation of the AML Directives remains a fundamental element of the **European Commission's AML/CFT strategy**. As emphasised in the Action Plan for preventing money laundering and terrorist financing of May 2020, the main priority is to ensure the effective application of the existing EU AML/CFT[4] framework. Member States are required to transpose the EU provisions on anti-money laundering and counter-terrorist financing. Likewise, the obligations and powers deriving therefrom must be effectively implemented by the competent authorities and obliged entities. According to the Commission's Report to the European Parliament and the Council on the implementation of **Directive (EU) 2015/849[5], the transposition of AMLD IV and AMLD V has been considered completed.**

In the aforementioned Action Plan for preventing money laundering and terrorist financing, six fundamental pillars of an integrated EU AML/CFT system were identified:

- Ensuring the effective implementation of the existing EU AML/CFT framework;
- Establishing a single EU rulebook on AML/CFT;
- Introducing EU-level AML/CFT supervision;
- Establishing a support and cooperation mechanism for Financial Intelligence Units (FIUs);
- Enforcing criminal law provisions and facilitating information exchange at EU level;
- Strengthening the international dimension of the EU AML/CFT framework.

The European Banking Authority (EBA) constitutes a key authority within the **EU AML/CFT system**. Its mandate includes leading, coordinating, and monitoring AML/CFT efforts undertaken by EU financial service providers and competent authorities. The EBA is also empowered to establish an **EU-wide database on money laundering and terrorist financing risks and supervisory actions**, to conduct risk assessments with respect to competent authorities, and to request that such authorities carry out investigations and consider taking action in relation to individual financial institutions.

On the basis of its powers[6], the EBA has introduced a **comprehensive regulatory framework** establishing uniform standards for financial institutions and their supervisory authorities regarding the measures to be undertaken to counter money laundering and terrorist financing, in the form of **Regulatory Technical Standards, Guidelines, Opinions, and Reports**[7]. The EBA has also carried out detailed reviews of the approaches taken by the supervisory authorities of the Member States to address the risks associated with money laundering and terrorist financing.

As indicated in the aforementioned Commission Report on the implementation of **Directive (EU) 2015/849**, the EBA has contributed to the harmonisation of supervisory approaches and practices by issuing guidelines and opinions on the application of risk-based customer due diligence measures by credit and financial institutions[8].

[4] **EU Action Plan on AML/CFT (2020)**

[5] **Commission Report on the implementation of the 4th AML Directive**

[6] **Regulation (EU) No 1093/2010 establishing the European Banking Authority (EBA)**

[7] **EBA - Anti-Money Laundering and Countering the Financing of Terrorism**

[8] **Commission Report on the implementation of the 4th AML Directive**

In July 2023, the EBA published its fourth **biennial Opinion on the risks of money laundering and terrorist financing affecting the European Union's financial sector**[9]. The Opinion highlighted both **pre-existing risks** identified in previous opinions and newly identified risks related to money laundering and terrorist financing, including:

- Lack of harmonisation in national approaches to the enforcement of targeted restrictive measures;
- Non-compliance with targeted restrictive measures creates operational and legal risks for financial institutions and may lead to unjustified de-risking;
- Measures aimed at combating human trafficking through financial inclusion are inconsistent and often insufficient;
- Deficiencies in the identification of beneficial owners undermine the effectiveness of the EU's anti-money laundering and counter-terrorist financing systems as well as targeted restrictive measures;
- Measures for the identification of politically exposed persons remain an important component in the fight against corruption;
- Competent authorities must establish cooperation with prudential supervisors responsible for ESG matters and with environmental protection agencies in order to strengthen efforts against laundering the proceeds of environmental crime;
- AML/CFT authorities have limited awareness of the risks associated with laundering the proceeds of cybercrime;
- AML/CFT supervisory authorities and tax authorities must cooperate more closely in combating tax offences;
- Risks associated with crypto-assets continue to be identified despite ongoing regulatory changes in this area;
- The growth of risks related to financial technologies may be linked to the dynamic development of the market;
- BigTech entities may provide financial services but are not always subject to AML/CFT requirements or adequate supervision;
- Risks associated with the use of regulatory technologies are perceived as elevated;
- Risks related to the COVID-19 pandemic are diminishing, but new supervisory approaches to AML/CFT developed in response remain relevant;
- Awareness of de-risking has increased, yet challenges associated with it continue to persist.

From the perspective of Poland, the primary regulation in the field of AML/CFT is the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing[10], the provisions of which implement AMLD IV and AMLD V into the Polish legal system. Certain discrepancies between the text of the Act and the text of the aforementioned Directives – for instance, regarding the definition of a beneficial owner – have a direct impact on the practical application of customer due diligence measures, including the identification of beneficial owners by obliged entities, in respect of certain categories of legal persons, such as foundations.

The training on **AML/CFT** conducted by the **Polish Financial Intelligence Unit** – the General Inspector of Financial Information – should also be assessed sceptically. The training programme addresses only basic issues of anti-money laundering and is directed towards a general group of obliged entities. It would be advisable to introduce changes by preparing sector-specific training tailored to the nature, type, and scale of the activities conducted by particular categories of obliged entities.

In conclusion, the evolutionary approach of the EU legislator to regulation in the field of **AML/CFT** stems from the need to mitigate the identified risks of money laundering and terrorist financing. The impact of new technologies, the introduction of novel products, geopolitical changes, new schemes and money laundering techniques employed by criminal groups, and the growing threat of terrorism – which are but some of the drivers of increased money laundering and terrorist financing risks – continue to stimulate regulatory developments in this area. In the light of these factors, the identification of gaps in individual regulations is hardly surprising, particularly given that subsequent legislative amendments are almost invariably reactive in nature, following the recognition of money laundering and terrorist financing risks.

With each successive iteration of the **EU AML/CFT regulatory framework**, obliged entities are subjected to increasingly stringent obligations concerning the prevention of money laundering and terrorist financing. As a result, obliged entities, in the course of their core business activities, must take into account additional operational, financial, and legal burdens. The proper performance of AML/CFT obligations by obliged entities is subject to **regular inspections by national Financial Intelligence Units**. Deficiencies and shortcomings identified during such inspections in the application of AML/CFT obligations by obliged entities may result in the imposition of administrative pecuniary sanctions[11].

[9] **Opinion of the European Banking Authority on money laundering and terrorist financing risks affecting the EU's financial sector**

[10] **Consolidated Act on AML/CFT (Poland, 2025)**

[11] **Example of a monetary penalty imposed by the General Inspector of Financial Information**

Michał Barszcz
CAMS, AML/CFT Expert,
Bank Millennium