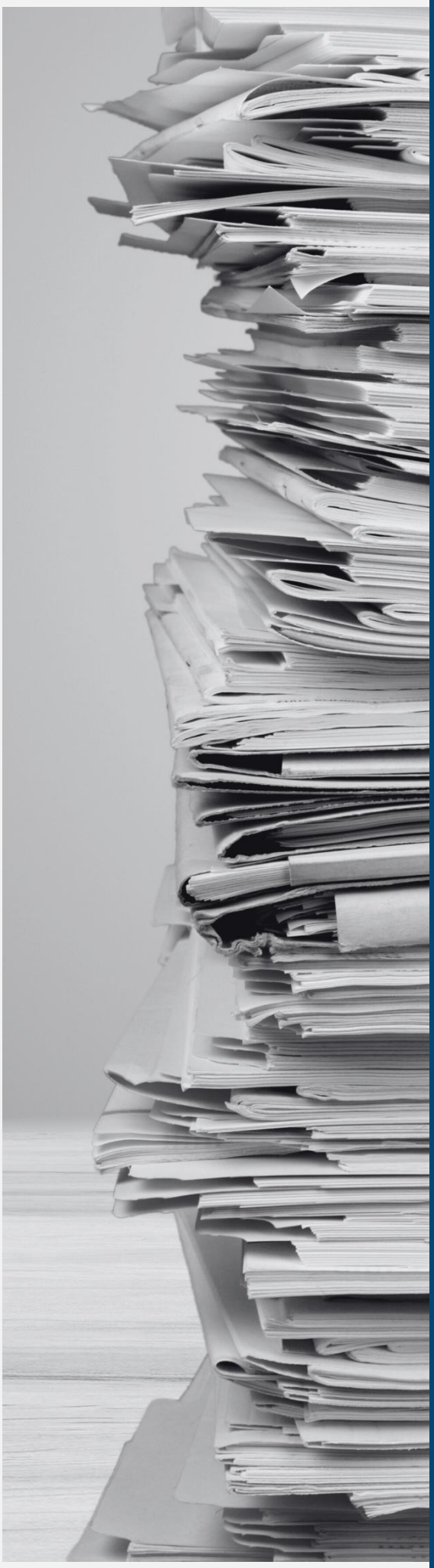

UNPACKING THE EU AML/CFT PACKAGE

IMPACTS ON THE NON-PROFIT SECTOR

March 2025

European Center for Not-for-Profit Law

Philea | Philanthropy Europe Association

Authors

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INTRODUCTION

Civil society organisations, be they associations, foundations or other public benefit legal arrangements, are increasingly affected by policies and security measures adopted by global bodies, governments and private sector actors with the aim to counter money-laundering and terrorism financing (AML/CFT). In May 2024, the European Parliament and the Council of the European Union, adopted a new Anti-Money Laundering / Countering the Financing of Terrorism package (hereafter also referred to as: "package"), which was published in the Official Journal on 19 June 2024. This paper aims to give a simple overview over this new EU AML/CFT package and its potential impact on the non-profit sector. This paper can be considered a 'living document', which will be updated as our understanding of the package evolves based on new developments or information.

The package consists of the following elements:

1. **Regulation (EU) 2024/1624** on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, also referred to as "AML Regulation" or "AMLR";
2. **Regulation (EU) 2024/1620** establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism ("AMLA"), "AMLA Regulation";
3. **Directive (EU) 2024/1640** on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of replaces the existing AML Directive (Directive (EU) 2015/849 as amended by Directive (EU) 2018/843);
4. In addition, **Regulation (EU) 2023/1113** on information accompanying transfers of funds and certain crypto-assets is part of the package. This Regulation, which recasts Regulation (EU) 2015/847, was already passed in May 2023 and published in the Official Journal in June 2023. It was adopted together with Regulation (EU) 2023/114 on markets in crypto-assets, which provides a comprehensive regulation of crypto-assets at EU level ("MiCA").

The package marks a shift in an approach from AML directives, which need to be transposed by Member States into national legislation, to the introduction of a directly applicable AML Regulation, which establishes an "EU single rulebook". With the package, the EU aims to take a risk-based approach, meaning that mitigation measures are tailored to the level of risk identified. While the AMLR harmonises the measures to be put in place, Member States can make exemptions or impose additional requirements in situations where they have identified lower or higher risk. However, it should be noted that the ability for Member States to impose additional requirements is more broadly provided than the ability to make exemptions, which implies that rules are likely to be stricter in practice.

More specifically, the package introduces the following changes:

EXPANDS THE LIST OF OBLIGED ENTITIES TO NEW BODIES.

Crowdfunding service providers and intermediaries as well as Crypto-Asset entities in the AMLR. The AMLR also extends the scope of obliged entities to further include other sectors (Article 3).

EXTENDS THE CUSTOMER DUE DILIGENCE REQUIREMENTS FOR OBLIGED ENTITIES.

The AMLR describes in more detail which measures needs to be taken by obliged entities and also introduces new measures (further described in the section "extended regulatory framework for obliged entities").

CLARIFIES THAT BENEFICIAL OWNERSHIP IS BASED ON TWO COMPONENTS - OWNERSHIP AND CONTROL.

Both components need to be analysed to identify all the beneficial owners of that legal entity or across types of entities. It also sets out further details on what constitutes beneficial owner for different kinds of legal entities, including non-profit ones. These new details do not, however, bring the desired clarity for our sector, as will be explained below.

INTRODUCES ENHANCED DUE DILIGENCE MEASURES FOR HIGH-RISK THIRD COUNTRIES.

Obliged entities, such as banks, payment service providers and notaries, will be required to apply enhanced due diligence measures to occasional transactions and business relationships involving high-risk third countries whose shortcomings in their national anti-money laundering and counter-terrorism regimes make them represent a threat to the integrity of the EU's internal market. The Commission will make an assessment of the risk, based on the Financial Action Task Force (FATF) Listings. Furthermore, the high level of risk will justify the application of additional specific EU or national countermeasures, whether at the level of obliged entities or by the member states.

SETS AN EU-WIDE MAXIMUM LIMIT OF €10 000 FOR CASH PAYMENTS.

Member states will have the flexibility to impose a lower maximum limit if they wish.

INTRODUCES A NEW EU WIDE AUTHORITY.

The Authority for Anti-Money Laundering and Countering the Financing of Terrorism; "AMLA". AMLA will be the central body overseeing the implementation of AML/CFT standards across Member States. It will coordinate and oversee national authorities and directly supervise certain financial institutions that operate across multiple EU jurisdictions. Moreover, its tasks include developing guidelines and standards, conducting risk assessments, and monitoring third countries.

Implementation timeline

JUNE 2023

The Regulation on information accompanying transfers of funds entered into force.

JULY 2024

The AMLR and the 6th AML Directive entered into force.

DECEMBER 2024

The European Banking Authority (EBA) will issue guidelines for crypto-asset service providers on risk variables and risk factors to be taken into account, internal policies and procedures, mitigation measures for transfers originating from or directed to self-hosted addresses, and mitigation measures for interactions with cross-border correspondent relationships.

JUNE 2025

AMLA will conclude a Memorandum of Understanding with the European Supervisory Authorities and the European Central Bank regarding their cooperation.

DECEMBER 2025

AMLA shall issue draft regulatory technical standards on the central database which will be established by AMLA.

JANUARY 2026

AMLA shall issue draft regulatory technical standards on the direct supervision of credit institutions and financial institutions that operate in at least six Member States, as well as technical standards for joint analyses to be conducted together with Financial Intelligence Units.

JUNE 2024

The AMLA Regulation entered into force.

DECEMBER 2024

The Regulation on information accompanying transfers of funds will be applicable and the current Regulation (EU) 2015/847 will be repealed. Member States shall transpose changes to Directive 2015/849 into national legislation.

JANUARY 2025

Member States must inform the Commission on penalties related to breaches of obligations.

JULY 2025

The AMLA Regulation will be applicable with the exception of a number of articles that are applicable as of June 2024 during the preparatory phase.

AMLA will assume its tasks and powers.

The Commission shall adopt implementing acts related to the submission of beneficial ownership information to central registers.

JULY 2026

AMLA shall issue:

- Guidelines on internal policies, procedures and controls for obliged entities;
- Guidelines on the business-wide risk assessment drawn up by obliged entities;
- Draft regulatory technical standards on customer due diligence requirements (which will also specify high-risk sectors or transactions for which lower thresholds apply and the criteria to be taken into account for identifying occasional transactions and business relationships) and draft regulatory standards on the information necessary for the performance of customer due diligence;
- Draft regulatory standards on the information necessary for the performance of customer due diligence; guidelines on the risk variables and risk factors to be taken into account by obliged entities and on monitoring business relationships and transactions;
- Draft implementing standards on reporting suspicions by obliged entities, including the format to be used;
- Draft regulatory and implementing technical standards on exchange of information between FIUs; and
- Draft regulatory technical standards on risk-based supervision, as well as on appointment of central contact points by specific obliged entities, and supervision of credit institutions and financial institutions that are part of a group, AML/CFT supervisory colleges, sanctions.

The Commission shall:

- Adopt implementing acts which provide guidance to Member States regarding penalties; and
- Issue a report assessing the risks posed by transfers to or from self-hosted addresses or entities not established in the EU.

Member States must notify the Commission on the list of public authorities that are entitled to consult beneficial ownership information and other categories of persons who will have access to this information.

OCTOBER 2026

Member States must notify the Commission on the list of competent authorities and self-regulatory bodies and the categories of obliged entities that were granted access to the central registers and the type of information available to obliged entities.

JULY 2027

The AMLR will be applicable with the exception of the provisions on football agents and professional football clubs as obliged entities, which will be applicable as of July 2029.

EU Member States must have transposed the 6th AML Directive into national legislation with the exception of provisions related to central registers and beneficial ownership information, which must be transposed partly in July 2025 and partly in July 2026 and provisions related to single access points on real estate information, to be transposed in July 2029.

The current ALM Directive (2015/849 as amended by Directive 2018/843) will be repealed.

JULY 2027

AMLA shall issue guidelines on:

- Risk assessment and risk mitigation measures to be conducted and applied by crypto-assets service providers in the context of cross-border correspondent relations with entities established outside the EU;
- Risks, trends and methods involving jurisdictions outside the EU (to be reviewed every two years);
- Outsourcing of responsibilities by obliged entities, as well as reliance on information gathered by and responsibilities of other obliged entities;
- The determination of the value of assets of customers by credit institutions, financial institutions and trust or company service providers;
- Due diligence measures for crypto-asset service providers in the case of cross-border correspondent relationships, as well as mitigation measures in relation to transactions with a self-hosted address;
- Politically exposed persons;
- Indicators of suspicious behaviours or activities; and
- Measures to be taken into account by credit institutions and financial institutions related to payment accounts (guidelines to be issued together with the European Banking Authority).

OCTOBER 2027

Member States shall notify the Commission on types of legal entities existing under its national law and a list of types of legal arrangements similar to express trusts which are governed under their law (along with specified information on each type).

2028

Direct supervision of selected obliged entities by AMLA should commence.

Relevance beyond the EU

The cross-border nature of money laundering and terrorism financing requires good cooperation and coordination between legislators and supervisory authorities at the international level. Therefore, international standard-setting bodies such as FATF and the UN Office of Counter-Terrorism will closely examine the new EU AML/CFT package and seek to harmonise their standards into a coherent framework. Since according to our assessment, the EU policy goes in some respects beyond international standards, this could also mean introducing new elements (based on EU level policy) into international standards. Caution needs to be taken that no elements get introduced at international level where the EU level policy may not be risk based, overly restrictive or sufficiently nuanced.

The following spill-over effects for outside the EU can be expected of developments at the EU level.

Firstly, there is an immediate impact on all accession and neighbourhood countries. They will copy regulation into their legal framework – but without necessarily having all the (rule of law) instruments and mechanisms at their disposal, nor the institutional capacities to implement the risk-based approach correctly. E.g. in one country we heard from the financial institution representative that the government is considering introducing rules on crowdfunding, due to the new EU AML package. Such (unnecessary) additional regulation and "gold-plating" of the AML package can result in further restrictions of legitimate non-profit and philanthropy activities and access to resources.

> "AML regulation might be copied in different contexts, not always adapted or prepared for such rules and not having adequate level of safeguards against over-regulation and incorrect implementation."

Secondly, a global "Brussels effect" can be expected beyond the European continent due to the special position of the EU market rules that foster compliance beyond the EU borders and neighbourhood. Again, AML regulation might be copied in different contexts, not always adapted or prepared for such rules and not having adequate level of safeguards against over-regulation and incorrect implementation. In particular, smaller low and middle-income countries might be compelled to over-regulate in their efforts to compensate for poor performance records on AML so far as well as lack of implementing capacities. Moreover, there are numerous examples of intentional misuse of AML/CFT legislation by authoritarian regimes to silence critical voices. To quote a human rights activist from Central Asia: "*the more Western governments raise the bar, the more ammunition they give to authoritarian governments to restrict civil society*".

KEY ELEMENTS OF THE AML/CFT PACKAGE AND THEIR IMPACT ON THE NPO SECTOR

In this chapter, we highlight five important elements of the EU AML/CFT package, and we explore their (potential) impact on the NPO sector.

1. Extended regulatory framework for obliged entities

Obliged entities (generally banks/financial institutions) must undertake specific due diligence measures on their customers, which could be Non-Profit Organisations (NPOs). For example, banks as obliged entities must do due diligence on NPOs by asking them for information and documentation, including beneficial ownership information. Under the past regulation, NPOs were only in very few exceptional cases considered as obliged entities.

The new AML package:

1 **Expands the list of obliged entities.**

The AMLR sets out a comprehensive framework of obligations for "obliged entities", entities whose business activities could be misused for illicit purposes. Article 3 lists which types of entities are considered obliged entities under the Regulation. These are credit institutions and financial institutions, as well as other natural and legal persons exercising professional activities in the financial and legal sector and in other professions that have been identified as vulnerable to misuse, including now for the first time crowdfunding platforms (more details on crowdfunding platforms are provided in the next chapter).

NPOs would be considered obliged entities only in rare cases, where they would engage in certain financial activities. Non-profit crowdfunding platforms would in all cases be considered as obliged entities.

We welcome the fact that the AMLR clarifies that NPOs are generally not obliged entities, considering that, during the implementation of the 5th AMLD, foundations and, in some cases, associations have been considered as obliged entities in certain Member States, notably Bulgaria, Cyprus, Czech Republic, Denmark, Ireland, Slovakia, Poland (in case foundations receive or transfer more than 10,000 EUR) and Spain, even though the 5th AMLD did not consider them as such[14].

2 **Extends the Customer Due Diligence requirements for obliged entities.**

Since NPOs may in some specific cases be obliged entities or in many cases be customers of other obliged entities, we hereby analyse the enhanced obligations of obliged entities:

- **Obliged entities must conduct a business-wide risk assessment**, proportionate to the nature of their business and their size, to identify and assess the risks of money laundering and terrorist financing to which they

are exposed[1]. Compared to the 5th Directive, the AMLR provides more detailed requirements for this risk assessment. Factors to consider in this assessment are the risk factors identified by the Regulation, the findings of EU and national-level risk assessments, as well as sector specific risk assessments and information on the customer base. This business-wide risk assessment must be regularly updated.

> **Obliged entities must apply tighter customer due diligence measures[2].** Obliged entities must conduct thorough investigations to know the identities and understand the business activities of their customers (also referred to as "Know Your Customer"). This must be conducted:

- when establishing a business relationship,
- when carrying out an occasional transaction of a value of at least EUR 10 000, either through a single operation or through linked transactions (this limit was EUR 15,000 in the past);
- in case of doubts or suspicions as further detailed in the Regulation;
- when creating a legal entity or transferring the ownership of a legal entity.

For some categories of obliged entities, the Regulation specifies who their customers are, which is not the case in the current 5th AMLD. Furthermore, compared to the 5th AMLD, the Regulation specifies in more detail which due diligence measures need to be taken. This includes the measures such as:

- identifying the customer and -in the case of legal entities- the beneficial owner of the customer;
- verifying their identify;
- assessing the purpose and nature of the business relationship or transaction; and
- monitoring the business relationship.

New measures introduced by the AMLR are assessing whether customers or their beneficial owners are subject to financial sanctions and identifying natural persons on behalf of whom or for the benefit of whom a transaction or activity is conducted if this not the customer.

> **Obliged entities must determine the extent of the measures to be implemented** based on the risk profile of their customer and its activities, the business-wide risk assessment and the risk variables and factors outlined in the Regulation.

[1] Art. 10 AMLR
[2] Art. 19-28 AMLR

In cases of **low risk**, a simplified due diligence approach can be taken, meaning less information needs to be collected and the frequency of updating the information is reduced[3].

In cases of **high risk**, more information must be collected and enhanced monitoring must be conducted[4]. Situations of high risk are not only determined by the obliged entity itself but also identified by the Regulation. This includes business relationships or transactions that involve natural or legal persons from third countries that are identified by the Commission as countries that have shortcomings in their national AML/CFT regimes. In addition, AMLA, Member States and the Commission can identify cases of higher risks and require obliged entities to apply enhanced due diligence measures. AMLA will develop more detailed guidelines and technical standards for the performance of customer due diligence.

- **Obliged entities must have internal policies, procedures and controls in place to ensure compliance** with the AMLR, Regulation 2023/1113 on information accompanying transfers of funds and certain crypto-assets and other relevant legislation[5]. The Regulation introduces a new obligation for obliged entities to take measures to ensure that their employees or persons in comparable positions whose function so requires, are aware of the legal requirements and to have employees and persons in comparable positions who are involved in the entity's compliance undergo an assessment commensurate with the risks associated with the tasks performed.

  Obliged entities must retain specified documents and information, including the information obtained in the performance of customer due diligence, for a period of 5 years[6]. They must provide information to Financial Intelligence Units or other competent authorities upon their request.

- **Obliged entities must report suspicious transactions and other suspicions** related to terrorist financing or criminal activity to Financial Intelligence Units[7].

  Obliged entities may outsource tasks to service providers, with the exception of some tasks specified in the AMLR. In such case, service providers shall be regarded as part of the obliged entity and the obliged entity remains fully liable.

  Obliged entities wishing to carry out activities within the territory of another Member State for the first time must notify the supervisors of their home

[3] Art. 33 AMLR
[4] Art. 34-46 AMLR
[5] Art. 9 and 11-13 AMLR and art. 23 Regulation (EU) 2023/113 on information accompanying transfers of funds and certain crypto-assets and other relevant legislation
[6] Art. 63 (6) and art. 77 AMLR
[7] Art. 69 and 70 AMLR

Member State of the activities which they intend to carry out in that other Member State. [8]

Enhanced due diligence measures for high-risk third countries

Compared to the 5th AMLD, the AMLR provides a more detailed framework according to which obliged entities will be required to apply enhanced due diligence measures to occasional transactions and business relationships involving high-risk third countries whose shortcomings in their national anti-money laundering and counter-terrorism regimes make them represent a threat to the integrity of the EU's internal market[9]. The Commission will make an assessment of the high-risk third countries through delegated acts, based on the Financial Action Task Force (FATF) Listings. Furthermore, the high level of risk will justify the application of additional specific EU or national countermeasures, whether at the level of obliged entities or by the member states.[10]

AMLA will issue guidelines defining the money laundering and terrorist financing risks, trends and methods involving any geographical area outside the Union to which obliged entities are exposed, taking into account, in particular, the risk factors listed in Annex III of the AMLR.[11]

There is a risk that the enhanced due diligence measures in third countries considered at high-risk may come at the expense of humanitarian aid and peacebuilding efforts, even more so in the absence of a humanitarian carve-out. Given the vital role that NPOs carry out in third countries, including in reducing conditions that lead to terrorism, it is essential that the delegated acts by the European Commission assessing the risk, the additional countermeasures, and the guidelines that will be issued by AMLA do not unduly disrupt or discourage legitimate NPO activities, in line with the risk-based approach, and thus with FATF Recommendation 8.

In this context, we regret that Article 34 on enhanced due diligence measures does not refer to the risk-based and proportionate approach, as recalled in Recital 53 of the AMLR – which however is not legally binding[12] - which states that while obliged entities should be aware that activities conducted in certain jurisdictions expose them to a higher risk of money laundering or terrorist financing, the operation of civil society organisations in those jurisdictions should not, alone, result in the refusal to provide financial services or termination of such services, as the risk-based approach requires a holistic assessment of risks posed by individual business relationships, and the application of adequate measures to mitigate the specific risks.

[8] Art. 8 AMLR
[9] Article 34, which in turn refers to Art. 29-30-31
[10] Art. 35 AMLR
[11] [3] Art. 32 AMLR
[12] Recitals may be consulted for the interpretation of the corresponding requirements in the regulation.

> Even though the AMLR seems to clarify that most NPOs are not obliged entities, we are concerned that the extended requirements of obliged entities will lead to more scrutiny of non-profit organisations.

In addition, in order not to unduly disrupt or discourage legitimate NPO activities, we strongly suggest that the delegated acts by the European Commission assessing the risk, the additional countermeasures, and the guidelines that will be issued by AMLA, take into consideration the specificities of our sector, and in particular of development and humanitarian organisations, by foreseeing exceptions and/or specific rules applicable to the sector, similar to those foreseen by the humanitarian exemption pursuant to resolution 2664 in the UN sanctions regimes and by the subsequent humanitarian exemptions introduced by the Council of the EU in various EU sanctions regimes.

In conclusion, even though the AMLR seems to clarify that most NPOs are not obliged entities, we are concerned that the extended requirements of obliged entities will lead to more scrutiny of non-profit organisations, despite recognition by multiple credible bodies, such as FATF, of the effectiveness of the non-profit sector's own risk mitigation systems. As compliance costs are likely to increase for obliged entities, commercial considerations could lead to greater tendency of obliged entities to refuse NPOs, particularly smaller ones, as clients – even though recital 53 states that AML/CFT reasons should not be invoked to justify commercial decisions.

Enhanced de-risking practices would hamper NPOs` access to financial services and their ability to transfer funds across borders, particularly for those organisations operating in politically sensitive contexts and other third countries considered high-risk jurisdictions. This affects their activities and thus infringes the freedom of association, while Recital 53 and the interpretative note on FATF Recommendation 8 state that measures should not unduly disrupt or discourage legitimate NPO activities.

2. Crowdfunding platforms become obliged entities

> Crowdfunding platforms are an essential vehicle for many NPOs, informal groups and activists to mobilise resources for their public benefit work.

Crowdfunding platforms are an essential vehicle for many NPOs (especially smaller ones), informal groups and activists to mobilise resources for their public benefit work. Working with Crowdfunding Platforms decentralises giving and enables NPOs to raise a large number of, oftentimes small, contributions from individual givers, without the need for expensive campaigns. Crowdfunding Platforms support individuals and organisations in their initiatives to show solidarity and contribute to social justice and environmental protection.

Scope

Under the AMLR, crowdfunding platforms will be for the first time considered obliged entities. The Regulation distinguishes two types of entities offering crowdfunding services:

1 **Crowdfunding service providers:** defined as *a legal person who provides services related to the matching of business funding interests of investors and project owner (legal and natural persons who seek funding) through a publicly accessible internet-based information system operated or managed by a crowdfunding service provider and which consists of the facilitation of granting of loans, the placing without a firm commitment basis of transferable securities and admitted instruments, and/or the reception and transmission of client orders, in relation to those transferable securities and admitted instruments for crowdfunding purposes*[13];

2 **Crowdfunding intermediary:** defined as *an undertaking other than a crowdfunding service provider the business of which is to match or facilitate the matching, through an internet-based information system open to the public or to a limited number of funders, of project owners* (defined as *any natural or legal person seeking funding for projects, consisting of one or a set of predefined operations aiming at a particular objective, including fundraising for a particular cause or event irrespective of whether those projects are proposed to the public or to a limited number of funders*) *and funders* (defined as *any natural or legal person contributing to the funding of projects, through loans, with or without interest, or donations, including where such donations entitle the donor to a non-material benefit*)[14]

In short, a distinction is made between business investment and lending-based crowdfunding service providers and project-based crowdfunding intermediaries, through which donations and loans for specific causes can be mobilised (hereafter we refer to both types jointly as "crowdfunding platforms"). Crowdfunding service providers have been already regulated under Regulation (EU) 2020/1503, which introduced safeguards to protect investors and to address potential money laundering and terrorist financing risks, as well as a requirement for crowdfunding service providers to be licensed by competent national authorities. Nonetheless, the European Council is of the opinion that there is a lack of robust AML/CFT obligations for such entities under that Regulation. In addition, according to the European Council, the lack of a harmonised regulatory approach to other crowdfunding intermediaries creates gaps in risk mitigation.

Despite the distinction made and the considerable difference in nature and purpose (business interest or public benefit) between the two types of crowdfunding platforms, the same provisions apply under the AMLR to both types. Moreover, no distinction is made between for for-profit and non-profit entities (the definition of crowdfunding intermediaries may include both types) and it does not matter whether crowdfunding platforms focus on private interests or public benefits.

As crowdfunding platforms are considered obliged entities they must comply with the provisions for such entities, including the obligation to conduct business-wide risk assessments, customer due diligence and various obligations related to their internal policies and responsibilities, as summarised on page 12-14. While relevant authorities (including AMLA) can exempt specific types of obliged entities from the obligation to conduct business-wide risk assessments, this is not the case for

[13] This definition is provided in Regulation (EU) 2020/1503
[14] Art. 2 (1) (16) AMLR

crowdfunding platforms[15]. Customer due diligence must be conducted both for natural or legal persons seeking funding and those providing funding through the crowdfunding platform[16].

Unclarities and uncertainties

There are currently several **unclarities and uncertainties** with regards to the obligations of crowdfunding platforms. These include the following:

- **It is unclear what undertakings fall within the scope of the definition of "crowdfunding intermediaries"**. For instance, in case a group launches an appeal on Facebook, would Facebook be considered a 'crowdfunding intermediary'? And what if an association sends a fundraising request to its members through WhatsApp? There is a need to clarify and define who falls within the category of crowdfunding intermediaries, to avoid diverse (mis)interpretations and legal uncertainty.

- **The extent to which crowdfunding platforms must apply customer due diligence measures is unclear**. It seems reasonable to expect that, in the case of donation-based platforms, the interaction with natural or legal persons seeking funding can be defined as "establishing a relationship" and the interaction with natural or legal persons who make a donation as "carrying out an occasional transaction", which means that customer due diligence would be applied towards donors in case of one or more linked donations of 10,000 EUR or higher (or if there is a suspicion of money laundering or doubts as to whether the contact person is the customer or authorised to act on behalf of the customer.). However, this would need to be determined on a case-by-case basis, taking into account the specific relationship between the platform operators and the donors. AMLA will develop criteria that need to be taken into account for identifying occasional transactions and business relationships[17], which may provide further clarity. We recommend that these criteria are designed in such a way that one-off donations will not be considered establishing a business relationship, even if donating requires registration at the platform. In addition, in case donations are considered occasional transactions, AMLA could determine that crowdfunding platforms are required to conduct customer due diligence for donations above a lower threshold, meaning a to be determined value below 10,000 EUR[18].

- Furthermore, there is a **risk that crowdfunding platforms will be obliged to apply enhanced customer due diligence measures**. This could be based on the

[15] Art. 10 (3) AMLR
[16] Art. 19 (6) (e) AMLR
[17] Art. 19 (9) (c) AMLR
[18] Art. 19 (9) (a) AMLR

before mentioned technical standards which AMLA will develop[19], based on obligations imposed by competent authorities of Member States as a result of national risk assessments or sectoral risk assessments[20] or based on delegated acts adopted by the Commission[21]. In addition, crowdfunding platforms must apply enhanced customer due diligence measures in the case of business relationships or transactions which involve natural or legal persons from third countries that are identified by the Commission as countries that have shortcomings in their national AML/CFT regimes[22]. Such enhanced measures should be tailored to the identified risk, based on guidance provided by the Commission. It is not clearly articulated in the Regulation that this only applies in case of direct involvement. Hence, there is a risk of a broad interpretation, meaning that crowdfunding platforms will be (or feel) obliged to apply enhanced customer due diligence measures if an EU-based CSO raises funds to support a partner in a 'high-risk' third country, even if the crowdfunding platform transfers the funds to the EU-based CSO and not directly to an organisation in a third country.

- According to Art. 22 (1) and (7), obliged entities must also **identify the natural person on whose behalf or for the benefit of whom a transaction is being conducted** and verify their identity, unless simplified due diligence measures apply. Recital 51 states that the concept of "*the person on whose behalf or for the benefit of whom a transaction is being conducted*" does not refer to the recipient or beneficiary of a transaction carried out by the obliged entity for their customer. **It is unclear, however, how this concept should be interpreted in the case of fundraising appeals**. Does this imply an obligation for crowdfunding platforms to obtain and verify information on the identity of the beneficiary of a fundraising appeal, in case this is a natural person, for example when an individual launches an appeal to cover medical cost of a friend? And what happens if this person is unable to submit an identify document, for example because of displacement resulting from war? And if this is the case, it is important to clarify the extent of this obligation, to avoid that crowdfunding platforms might even be expected to identify natural persons who are supported through a CSO who launches the appeal. We would argue that an obligation to identify the third person would only be required in case the entity or person launching the appeal acts in the name and on behalf of this third person; not in case they act in their own name to donate to the third party.

- The AMLR provides that obliged entities can rely on other obliged entities to meet customer due diligence requirements if the other obliged entity is compliant with the AMLR and supervision is carried out in accordance with

[19] Art. 32 AMLR
[20] Art. 34 (6) AMLR
[21] Art. 34 (7) AMLR
[22] Art. 34 (1) AMLR

the 6th AMLD[23]. By July 2027, AMLA will issue guidelines for this, which will include conditions under which it is acceptable for obliged entities to rely on information collect by another obliged entity[24]. **At this moment, it is unclear to what extent crowdfunding platforms can for example rely on information collected by payment service providers** who process donations made through the platform.

It is important that technical standards and guidelines, which will be developed by AMLA, provide clarity on the above-mentioned issues.

Interference with CSO fundraising activities

While much remains unclear, it can be concluded that the AMLR will impose a significant compliance burden on crowdfunding platforms. This will have a detrimental effect, especially on donation-based platforms. Such platforms are exclusively set up and used for public benefit purposes. Their core mission is to provide infrastructure which enables organisations and groups to make a positive contribution to our society. They do not aim to generate profit; many of them are registered as non-commercial legal entities. Burdensome compliance requirements will threaten viability or at the very least force them to significantly increase their commission fees, which will most likely have a chilling effect on donations.

“The right of NPOs to mobilise and access resources is considered an integral part of the freedom of association. Any interference in this right must be necessary and proportionate to the risk.”

The right of NPOs to mobilise and access resources is considered an integral part of the freedom of association. Any interference in this right must be necessary and proportionate to the risk. This is also underlined in FATF Recommendation 8, which states that “*countries should have in place focused, proportionate and risk-based measures to protect NPOs from terrorist financing abuse, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach.*”

It can be questioned whether the requirements imposed on crowdfunding platforms as of July 2027 are necessary, proportionate and risk based.

First, while it is stated in the recitals that crowdfunding platforms are exposed to the misuse of new channels for the movement of illicit money and their vulnerability affects the Union’s internal market, no such evidence is provided. On the contrary, the report “Following the Crowd”[25] concluded that “*Although some well-established platforms have been abused by violent extremists, and radical groups on their fringes, formal crowdfunding’s overall current significance as a TF stream remains relatively small within the European context. It is also apparent that risks are higher outside formal crowdfunding platforms, with the internet offering possibilities for less-regulated ‘pop-up’ methods using social media and, increasingly, cryptocurrencies. Such challenges must*

[23] Art. 48-49 AMLR
[24] Art. 50 AMLR
[25] Following the Crowd - Clarifying Terrorism Financing Risk in European Crowdfunding, Stephen Reimer and Matthew Redhead, Royal United Services Institute for Defence and Security Studies, 2021

therefore be addressed, but this will need to be done in a focused and proportionate way to ensure that broader financial innovation is not stifled unnecessarily" and "*At this stage, it is apparent that many of the current assessments of the levels of risk focus on the theory of how crowdfunding platforms might be abused by terrorists, rather than by actual evidence of abuse*." The report also states about the 2021 Europol Terrorism Situation and Trend Report[26] that "*Europol has noted "several cases over the last year where donations from Sweden, the Netherlands, Spain and Switzerland – ostensibly collected to support refugees and their dependents in Syria – have been redirected to support the families of foreign terrorist fighters. The reported details of these cases suggest a preference for using informal crowdfunding mechanisms via social media and IM (Instant Messaging), combined with other traditional AVTS."* In the same vein, the 2023 Europol report[27] states that "*terrorist and violent extremist organisations (...) raise funds through membership fees or through crowdfunding campaigns, which are often advertised on social media platforms and increasingly on cloud-based mobile applications."*.

In view of this and given the extensive obligations imposed on crowdfunding platforms, the measures do not seem proportionate to the actual risks. In comparison, Regulation (EU) 2020/1503 on European crowdfunding service providers for business only requires such service providers to undertake "*a minimum level of due diligence in respect of project owners*".

Moreover, the added value of the measures is unclear. Crowdfunding platforms cooperate with payment services providers, who already are considered obliged entities. These payment service providers have IT-based solutions in place to detect unusual and suspicious payments, hence there are already checks in place. According to one crowdfunding platform, suspicious payments are identified daily, usually cases of credit card fraud, leading to the suspension or termination of fundraising appeals by the crowdfunding platform. Crowdfunding platforms have a high stake in protecting their credibility and have policies in place to ensure the appeals launched on their platform are legitimate.

> "The burdensome obligations imposed on donation-based crowdfunding platforms seem disproportionate and can lead to an undue disruption of legitimate NPO fundraising activities."

In conclusion, the current framework for crowdfunding platforms lacks legal certainty and clarity and could lead to different interpretations across Member States. The necessity of the measures can be questioned, as no evidence is provided related to the risks associated with crowdfunding platforms. Moreover, the measures are currently not tailored to the different natures of crowdfunding service providers and crowdfunding intermediaries and do not take existing safeguards into account. Hence, the burdensome obligations imposed on donation-based crowdfunding platforms seem disproportionate and can lead to an undue disruption of legitimate NPO fundraising activities. The exact scope of the obligations is still unclear: much will depend on the technical standards and guidelines which will be developed by AMLA, as well as the outcomes of national and sectoral risk assessments.

[26] European Union Terrorism Situation and Trend Report 2021, Europol
[27] European Union Terrorism Situation and Trend Report 2023, Europol

3. Extended regulatory framework for crypto-asset service providers

Non-profits are in occasions accepting donations in virtual currencies. According to the Giving Block, an estimated 2 billion USD has been donated in cryptocurrencies between 2018 and January 2024. Raising donations in cryptocurrencies provides an opportunity for non-profits to engage a new generation of (major) donors, particularly among younger, tech-savvy individuals.

The anonymity (or: pseudonymity) of crypto-assets, their decentralised character and potential for global reach are among their key benefits. The decentralised system makes it easier, faster, and cheaper to transfer funds. However, there are various considerations non-profits take into account when deciding whether or not to accept donations in virtual currencies. This not only includes financial and technical considerations, e.g. around custody and volatility, but also ethical considerations, e.g. related to the environmental impact of virtual currencies and transparency. Because of the anonymous character of cryptocurrencies, it is more difficult to know who donors are and thus decide on whether or not to accept a (large) donation based on value alignment with the donor. At the same time, this anonymity can also be an advantage: protecting one's privacy could be important when donating to sensitive causes, e.g. an LGBTQI+ group in some contexts or when supporting litigation against the government on land rights. Furthermore, crypto-assets can provide an alternative to CSOs that are not allowed to receive foreign funding or that are excluded from the financial system. However, it should be noted that these possibilities are already diminishing.

To clarify this, a distinction should be made between centralised and decentralised exchange platforms. A centralised exchange is a platform operated by a company or organisation that facilitates the buying, selling, and trading of cryptocurrencies. These platforms act as intermediaries between buyers and sellers through a user-friendly interface. Typically, they hold the keys to access users' crypto-assets in so-called "custodial wallets". Decentralised exchanges allow users to trade cryptocurrencies directly with each other through self-hosted wallets (typically a physical device or locally installed software wallets), without the need for an intermediary. This allows for more privacy and anonymity. However, most decentralised exchanges do not offer possibilities to exchange virtual currencies for fiat currencies.

As stated by regulators, the anonymity associated with crypto-assets makes them susceptible to criminal misuse. Therefore, the revisions of the FATF Recommendations, published in June 2019, aimed to regulate virtual assets and virtual asset service providers. Under the current 5th AML Directive, providers engaged in exchange services between virtual currencies and fiat currencies, and custodian wallet providers are obliged entities. This means that most entities that host centralised exchanges already need to conduct customer due diligence measures (including Know Your Customer measures), limiting the anonymity of their customers and possibilities to transfer funds to certain jurisdictions. Effective July 2027, all crypto-asset service providers will be considered obliged entities. The AMLR refers to MiCA for the definition of crypto-assets service providers, which is defined there as "*a legal person or other undertaking whose occupation or business is*

the provision of one or more crypto-asset services to clients on a professional basis and that is allowed to provide crypto-asset services."

As a result, all crypto-asset service providers will be subject to the obligations for obliged entities as covered earlier in this document, including customer due diligence measures. Deviating from the general standards for customer due diligence, the threshold for applying customer due diligence measures for occasional transactions is 1,000 instead of 10,000 EUR (while currently the 15,000 EUR threshold applies). Moreover, even for occasional transactions below this value, the identity of the customer needs to be determined and verified. Furthermore, the AMLR prescribes enhanced due diligence measures in case of cross-border correspondent relationships with a respondent entity not established in the EU in the context of crypto-assets services.

The AMLR prohibits crypto-asset service providers to host anonymous accounts[28] or accounts allowing for the anonymisation or the increased obfuscation of transactions, including through anonymity-enhancing coins. The purpose of this prohibition is to allow for the traceability of crypto-asset transfers and to enable crypto-asset service providers to be able to apply an adequate level of customer due diligence. Furthermore, crypto-asset service providers must assess and address risks related to transfers to or from self-hosted wallets, which are typically used by CSOs and activists in restricted contexts. This could include requiring additional information on the origin and destination of the crypto-assets or conducting enhanced ongoing monitoring of transactions with a self-hosted wallet.

To further enhance the traceability of transfers of funds and crypto-assets, Regulation 2023/1113 on information accompanying transfers of funds and certain crypto-assets introduces an obligation for crypto-asset service providers to accompany transfers of crypto-assets with information on the originators and beneficiaries. Under the current Regulation (EU) 2015/847 such an obligation only applies to transfers of funds; banknotes and coins, scriptural money, and electronic money. The 2019 revisions in the FATF Recommendations expanded the scope of Recommendation 16 to transfers in crypto-assets. This Recommendation, the so-called travel rule, states that "*Countries should ensure that financial institutions include required and accurate originator information, and required beneficiary information, on wire transfers and related messages, and that the information remains with the wire transfer or related message throughout the payment chain*". Information which must be transferred includes the name and address of the originator, their crypto-asset account number or ledger address, and their personal document number or customer identification number (or alternatively: their date and place of birth).

[28] Accounts are user profiles on a cryptocurrency network which hold the information about the balance of crypto-assets linked to a specific address and track transactions made using that address.

> It will become even more difficult -and likely impossible- for CSOs and activists operating in restrictive contexts to use virtual currencies as an alternative to regular transfers and banking services.

While customer due diligence measures are currently already applied by entities that are engaged in exchange services between virtual currencies and fiat currencies, and custodian wallet providers, the extension of the scope of such obligations and the "travel-rule" will further reduce the possibility of certain groups of CSOs or individuals to use virtual currencies. Due to the option of using self-hosted wallets and the more flexible due diligence practices of crypto asset service providers, virtual currencies currently offer a viable alternative to groups or individuals unable to access traditional banking services. For example, crypto-assets have been instrumental in supporting Afghan CSOs after the Taliban takeover in August 2021 while banks blocked transfers to Afghan bank accounts in view of international sanctions[29]. A survey conducted by ECNL among CSO representatives living and working in forced exile (due to war, conflict, or government suppression) demonstrated that 52% of respondents faced challenges with opening a bank account after moving abroad. This process took them 6-12 months, during which period they needed to find alternative methods to receive funds to sustain themselves. Another example are stateless people; while they are usually not able to open bank accounts (although this may differ between banks), they do succeed in opening custodial wallets with crypto asset services providers. Under the new regulations with tighter customer due diligence requirements, it may become more difficult for CSOs and individuals who are excluded from the mainstream financial system to use virtual currencies as an alternative to regular transfers and banking services. Furthermore, while on the one hand transparency is important for CSOs so they can avoid accepting money from illicit sources, on the other hand, as argued above, there are situations where CSOs must protect their privacy or the privacy of their donors. This could apply to organisations working on sensitive topics (e.g. LGBTQI+ rights) or operating in very restrictive contexts. For example, there are known cases of states abusing AML/CFT measures to crack down on individuals and organisations that pose a threat to their interests, e.g. by utilising institutions and processes of data collection by obliged entities and supervisors for surveillance and evidence collection[30]. Currently, groups that want to protect their privacy must already make use of decentralised exchanges to protect their privacy and/or to be able to make transfers that obliged entities are likely to block. However, oftentimes this requires interactions with centralised exchanges, as donors might be making use of such platforms and because there are only few decentralised exchanges that offer the opportunity to cash out cryptocurrencies. As obliged entities will have to take additional measures for transactions to or from self-hosted wallets and they must apply the 'travel-rule', it can be expected that such transactions will be even more difficult -if not impossible- and no longer a viable pathway for CSOs who need to protect their privacy.

[29] "Afghans turn to cryptocurrencies amid US sanctions", BBC, March 2022, https://www.bbc.com/news/world-asia-60715707

[30] "Weaponisation of the FATF standards: A guide for global civil society", Stephen Reimer, Royal United Services Institute for Defence and Security Studies, June 2024, accessed here: https://static.rusi.org/weaponisation-of-fatf-standards-a-guide.pdf

Furthermore, there are no safeguards provided to protect the interests of the data subject when sensitive data (e.g. data on racial or ethnic origin, political opinions, trade union membership or sexual orientation) is processed. While these may not be collected directly, they may be derived from analysing data related to transfers.

4. Unclear definition of beneficial owner of an NPO

The term "beneficial ownership" ("BO") intends to provide transparency into complex for-profit company law structures with the aim of identifying those that control/own/benefit financially from such structures. Beneficial ownership refers to persons who actually control or enjoy the benefits of ownership of a legal entity, although the title or property can be in another name. The concept of a beneficial owner as the one owning/benefiting financially in the case of for-profit/private set-ups does not fit the non-profit sector which explicitly does not serve private interests but public interests.

While the AMLR now clarifies that beneficial ownership is based on two components – ownership and control – the new rules do not provide the desired clarity as to who the "beneficial owner" of a NPO is. In addition to the absence of clarity, the Regulation lists as BOs of non-profit entities (although this is based on our interpretation of the rules, as non-profits are rarely mentioned in the text) a series of natural persons who often do not enjoy ownership nor control.

The relevant provisions on BO are Article 51 to 62 of the AMLR. The Regulation distinguishes between legal entities (Articles 51 and following), legal entities similar to express trusts (Article 57) and express trusts and similar legal arrangements (Article 58).

Based on our interpretation, the application of these rules to the non-profit sector would translate into three different scenarios:

1. In the case of NPOs that are not similar to express trusts and taking different legal forms such as associations, foundations, limited liability companies, etc., BO would be the natural person who owns or controls the legal entity (Articles 51-52-53 AMLR).
2. In the case of NPOs that are similar to express trusts, such as certain foundations, BOs would be the founders, members of the management body in supervising and managing functions, beneficiaries, and any other natural person, who controls directly or indirectly the legal entity (Article 57 AMLR)
3. In the case of NPOs that are constituted as express trusts and similar legal arrangements, BOs would be the settlers, trustees, protectors, beneficiaries, and any other natural person, who controls directly or indirectly the express trust or similar legal arrangement (Article 58 AMLR)

It is important to note that, in both cases 2 and 3, Member States shall notify to the Commission by 10 October 2027 a list of these types of legal entities and legal arrangements; afterwards (presumably in 2028) the Commission may adopt, by means of an implementing act, a list of types of legal entities governed by the law of

Member States which should be subject to the requirements of Article 57 and 58 AMLR.

Furthermore, in both cases 2 and 3, only the class of beneficiaries and its characteristics shall be identified (as opposed to individual beneficiaries) provided that: the legal entity similar to an express trust, the express trust or similar legal arrangement is set up for a non-profit or charitable organisation purpose, and is considered to be at low risk of misuse for money laundering and terrorism financing, following an appropriate national risk assessment (Article 59 AMLR, which also provides that Member States shall notify to the Commission the categories of legal entities similar to express trusts, express trusts or similar legal arrangements for which only the class of beneficiaries and its characteristics shall be identified together with a justification based on the specific risk assessment).

As to the BO information that shall be reported, this is regulated by Article 62, which lists:

- all names and surnames, place and full date of birth, residential address, country of residence and nationality or nationalities of the beneficial owner, number of identity document, such as passport or national identity document, and, where it exists, unique personal identification number assigned to the person by their country of usual residence, and general description of the source of such number;
- the nature and extent of the beneficial interest held in the legal entity or legal arrangement, whether through ownership interest or control via other means, as well as the date as of which the beneficial interest is held;
- information on the legal entity of which the natural person is the beneficial owner in accordance with Article 22(1), point (b), or, in the case of legal arrangements of which the natural person is the beneficial owner, basic information on the legal arrangement;
- where the ownership and control structure contains more than one legal entity or legal arrangement, a description of such structure, including names and, where it exists, identification numbers of the individual legal entities or legal arrangements that are part of that structure, and a description of the relationships between them, including the share of the interest held.

Impact, unclarities, and opportunities for clarification

Unclear notion of express trust in civil law countries

The term express trust is a common law term and not known in civil law countries. Public benefit foundations in most EU Member States differ from express trusts and would hence fall under category 1 above and hence only list as the BO the one that controls the entity, which seems to be the appropriate solution since the concept of express trust is not known in their jurisdictions.

Article 2 para. 2(29) of the AMLR provides a traditional definition of express trust as "*a trust intentionally set up by the settlor, inter vivos or on death, usually in a form of written document, to place assets under the control of a trustee for the benefit of a*

beneficiary or for a specified purpose". Member States will need more guidance by the European Commission as to which legal arrangements or legal entities they may consider similar to express trusts.

> Cumulative listing of individuals that exercise no control/no ownership in the case of NPOs similar to express trusts and constituted as express trusts and similar legal arrangements

It is important to note that the majority of NPOs, including foundations, are not similar to express trusts and are not constituted as express trusts and similar legal arrangements, thus falling into scenario 1 described above (BO is the natural person who owns or controls the legal entity). In the case of most non-profit associations and public benefit foundations the BO would hence be the one controlling the organisation (in most cases board members, depending on the structure of the NPO).

In the case of NPOs and foundations similar to express trusts, or constituted as express trusts and similar legal arrangements, the cumulative listing of natural persons irrespective of whether those individuals exercise control over the organisation and/or own assets/have rights on the assets (scenarios 2 and 3 described above) is not in line with the rational of wanting to identify the individuals that own/control the organisation and would lead to heavy administrative burden and unnecessary cumulative listing of information of individuals who have no rights on assets or control over the organisation.

We regret that the new AMLR does not foresee that, also in the case of entities and arrangements similar to express trusts, only those founders, managers, beneficiaries, and any other natural person, who controls directly or indirectly the legal entity shall be listed as BO. This will likely lead to unintended overregulation and legal insecurity, which could have been avoided.

Below, we argue that the categories of individuals that shall be listed as BOs, in the case of NPOs similar to express trusts and constituted as express trusts and similar legal arrangements, very often exercise no control/no ownership over these structures.

1. **Board members (and senior managers) as BOs**

   Where board members exercise control and are the ones legally responsible for the entity similar to express trusts, it would make sense to list them as BO. They can be considered as the individuals behind the key decisions of the legal entity/arrangement. One needs to also acknowledge that in the case of public benefit organisations/arrangements, the board and the managers i.e. the governing bodies act as stewards and are bound to the public benefit purpose of the organisation as defined in the statutes.

2. **Founders of public benefit foundations as BOs**

   Founders of public benefit foundations (where such foundations are similar to express trusts) generally have no decision-making powers in the foundations they created. Once the foundation is created the foundation

owns itself and the law limits the rights of the founder. Often times, founders are long dead. Only in very rare cases would a founder be part of a board governing the foundation and hence exercise co-control with other board members over a foundation. It would hence only make sense to list founders as BO of a foundation similar to express trusts where they still exercise control over the foundation.

3 **Beneficiaries of NPOs/public benefit foundations are not BOs**

Beneficiaries of NPOs including foundations (where they are similar to express trusts), exercise no control over the organisation, have no rights on the assets and are distant to the running of the organisation. They should only be listed as BOs in very rare cases where they would have a right on the assets (this would be the case for private interest structures and not for NPOs).

As has occurred in the implementation of the 5th AML/CFT Directive, Member States will likely interpret the required listing of beneficiaries as BOs as an obligation for NPOs and public benefit foundations (where they are similar to express trusts, constituted as express trusts and similar legal arrangements) to report on all their grant or scholarship recipients as BOs, including individual beneficiaries.[31] This is very unfortunate as reporting on thousands of grant recipients creates administrative burdens, risks for beneficiaries and intrusion on their privacy rights. This would also be in conflict with the EU General Data Protection Regulation as it would allow to identify the physical, physiological, genetic, mental, commercial, cultural or social identity of these natural persons.

This is also a clear deviation from the real purpose to fight money laundering and terrorism financing and to identify the persons who own or control an organisation. In fact, as reported above, the beneficial ownership information that must be provided under Article 62 is lengthy and detailed, requiring a lot of time and resources in order for NPOs to collect it.

> **Listing the class of beneficiaries for "express-trust" type arrangements and legal entities**

The possibility, following an assessment of the entity as at low risk for ML/TF, to identify only the class of beneficiaries and its characteristics for legal entities similar to express trusts, constituted as express trusts and similar legal arrangements, which are set for a non-profit purpose, does not provide for a clear-cut solution and a uniform approach. ***The notion of "class" of beneficiaries, intended for example as "homeless persons, students, etc" could be helpful to resolve vagueness and would provide for a clear-cut solution for the non-profit sector***. However, the reference to risk assessments could easily lead to Member States finding different solutions for the

[31] For example, a philanthropic organisation member of Philea, had to report on all its grantees/ beneficiaries according to requirements in the Austrian law.

public benefit sector and this would counteract the desire to simplify and harmonise the legislation.

The room of maneuver left to Member States could potentially lead to arbitrary measures, similar to those adopted in the context of the 5th AMLD.

Additionally, it is not clear how the risk assessment would be carried out, and if it would be distinct from traditional national risk assessments.

Finally, the approach also does not seem in line and balanced with the rest of Article 59, which allows for beneficiaries of a recognised pension scheme to be identified as a class without there being a need to carry out a risk assessment. The beneficiaries of NPOs are even more distant than those of a pension scheme from an arrangement to benefit one or more specified individuals.

> Listing of legal entities and arrangements subject to BO rules by Member States and check by Commission

Finally, with regards to Articles 57 and 58, which require Member States to notify the Commission of a list of legal entities and arrangements subject to these articles, it is not clear how the Commission will check these lists. The possibility for the Commission to then issue a list of types of legal entities subject to these articles shall rather be considered as an obligation.

> The current rules on beneficial ownership could lead to different interpretations across Member States. It will be vital to ensure that there is a consistent interpretation at EU level and prevent a too far room of manoeuvre of Member States

In conclusion, the current rules on BO do not provide the desired clarity as to who the "beneficial owner" of a NPO is. The cumulative listing of individuals that exercise no control/no ownership in the case of NPOs similar to express trusts and constituted as express trusts and similar legal arrangements would lead to heavy administrative burden and unnecessary listing of information of individuals who have no rights on assets or control over the organisation.

With regards to beneficiaries, Member States will likely interpret the required listing of beneficiaries as BOs as an obligation for NPOs and public benefit foundations to report on all their grant or scholarship recipients as BOs. This is very unfortunate as reporting on thousands of grant recipients creates administrative burdens, risks for beneficiaries and intrusion on their privacy rights inconsistent with the EU GDPR obligations. The reference to national risk assessments could lead to different interpretations across Member States. It will be vital to ensure that there is a consistent interpretation at EU level and prevent a too far room of manoeuvre of Member States, which, as we have seen, can lead to arbitrary measures. Specific guidance by the Commission in the form of implementing acts is needed.

5. No Fundamental Rights Impact Assessment required

The 5th AML Directive provides that the Commission should draw up a report on the implementation of the Directive every three years, which should include an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected. However, the Report submitted by the Commission to the European Parliament and the Council in 2024[32] only covered judgements of the Court of Justice regarding breaches of the Charter of Fundamental Rights and the opinion of Member States gathered through a survey, but no proper human rights impact evaluation. The 6th AML Directives no longer specifies which elements the Commission report should contain, leaving it to the discretion of the Commission to include an explicit human rights impact assessment. On the other hand, the 6th AML Directive does impose an obligation on Member States to ensure that national level Financial Intelligence Units designate a Fundamental Rights Officer, but the opinions provided by this officer are non-binding.

[32] COM (2024)/112

CONCLUSION

The new AML/CFT package aims to harmonise the regulatory approach to AML/CFT within the EU and address new challenges resulting from technological developments. While it is expected to have significant impact on the non-profit sector, we conclude that the specifics of the non-profit sector have insufficiently been taken into account in the design of the package. Apart from a few references in the recitals, NPOs are hardly mentioned in the AMLR: only foundations similar to express trusts in the context of identification of beneficial owner. Several provisions which affect NPOs lack legal certainty and clarity which, if not sufficiently clarified under technical standards and guidelines which will be issued by AMLA, can lead to different interpretations across Member States. Furthermore, rules could be stricter in practice as the ability for Member States to impose additional requirements is more broadly provided than the ability to make exemptions.

> While it is expected to have significant impact on the non-profit sector, we conclude that the specifics of the non-profit sector have insufficiently been taken into account in the design of the package

More specifically, we have the following concerns:

INCREASED CHALLENGES FOR NPOS OPERATING IN HIGH-RISK JURISDICTIONS

We are concerned that the extended requirements of obliged entities will lead to more scrutiny of and challenges for non-profit organisations in their business relations with banks, payment service providers and other obliged entities, especially for smaller NPOs and those operating in third countries that are considered high-risk jurisdictions by the Commission. While recital 53 acknowledges the importance of the charitable and humanitarian work conducted by civil society organisations in third countries and the importance of channelling funds to developing or conflict areas to enable them to do this work, no safeguards are provided in this respect. It will be essential that the delegated acts and guidelines issued by the Commission and AMLA in this area provide for exemptions which take into account the need to deliver humanitarian assistance or activities supporting basic human needs carried out by NPOS.

SIGNIFICANT COMPLIANCE BURDEN ON CROWDFUNDING PLATFORMS

The fact that crowdfunding platforms will be considered obliged entities will lead to a significant compliance burden on crowdfunding platforms. This will have a detrimental effect on donation-based platforms, while currently no distinction is made between lending-based, business-oriented platforms and donation-based platforms. Burdensome compliance requirements will threaten the viability of donation-based platforms or at the very least force them to significantly increase their commission fees, which will most likely have a

chilling effect on donations. This affects legitimate NPO fundraising activities, while the necessity and proportionality of these measures can be questioned. The exact scope of obligations of crowdfunding platforms is currently unclear and will be further specified in technical standards and guidelines which will be developed by AMLA. We recommend that these delegated acts and guidelines clarify the highlighted issue to ensure consistent interpretation across Member States and make a distinction between business-oriented and donation-based platforms, to ensure that measures are tailored to the different nature of such platforms, minimising negative effects on NPO fundraising activities.

UNCLEAR DEFINITION OF BENEFICIAL OWNER OF AN NPO

The current rules on BO do not provide the desired clarity as to who the "beneficial owner" of a NPO is. The cumulative listing of individuals that exercise no control/no ownership in the case of NPOs similar to express trusts and constituted as express trusts and similar legal arrangements would lead to heavy administrative burden and unnecessary listing of information of individuals who have no rights on assets or control over the organisation.

UNINTENDED LISTING OF GRANT RECIPIENTS AS BENEFICIAL OWNERS

With regards to beneficiaries, Member States will likely interpret the required listing of beneficiaries as BOs as an obligation for NPOs and public benefit foundations to report on all their grant or scholarship recipients as BOs. This is very unfortunate as reporting on thousands of grant recipients creates administrative burdens, risks for beneficiaries and intrusion on their privacy rights. The reference to national risk assessments could lead to different interpretations across Member States. It will be vital to ensure that there is a consistent interpretation at EU level and prevent a too far room of manoeuvre of Member States, which, as we have seen, can lead to arbitrary measures.

IMPLICATIONS FOR CSOS AND ACTIVISTS IN RESTRICTIVE CONTEXTS

It will become even more difficult -if not impossible- for CSOs and activists operating in restrictive contexts and/or excluded from the financial system to use virtual currencies as an alternative to regular transfers and banking services.

NO OBLIGATION ON FUNDAMENTAL RIGHTS IMPACT ASSESMENT

The package does not include an obligation to conduct a fundamental rights impact assessment as part of the periodic evaluation of the implementation of the package.

POTENTIAL SPILL-OVER EFFECTS IN OTHER JURISDICTIONS

Lastly, we are not only concerned about implications within the EU but also about potential spill-over effects in other jurisdictions. Elements that go beyond international standards might be incorporated into these standards and caution needs to be taken that this does not include elements that are not risk-based, overly restrictive or insufficiently nuanced. Moreover, elements might be copied in different contexts where they might not be an adequate level of safeguards against over-regulation and incorrect implementation.

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