

Exchange of data for anti-money laundering and tax purposes

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Opinion

on the implications for data protection of mechanisms
for ~~automatic inter-state~~ exchanges of data for
~~administrative~~ anti-money laundering and tax
purposes”

Exchange of data

~~Automatic Inter-state~~ exchange of **[financial]** data

The scope of the modernised Convention 108 has been broadened and includes “both **automated and non-automated processing** of personal data (manual processing where the data form part of a structure which makes it possible to search by data subject according to pre-determined criteria) which falls under the jurisdiction of a party to the Convention”.

A lot of exchange of data takes place in various ways (not necessarily “automatic”, whatever that means)

FATF

In 2012 FATF integrated special recommendations on terrorist financing with the measures against money laundering, to build a comprehensive set of standards.

- “Know Your Customer” (KYC)
- Record keeping & sharing with requesting authorities
- Recommendation 18 (internal controls and foreign branches and subsidiaries): “Financial groups should be required to implement **group- wide programmes** against money laundering and terrorist financing, including policies and **procedures for sharing information** within the group for AML/CFT purposes”

Consolidated FATF Standards on Information Sharing⁵

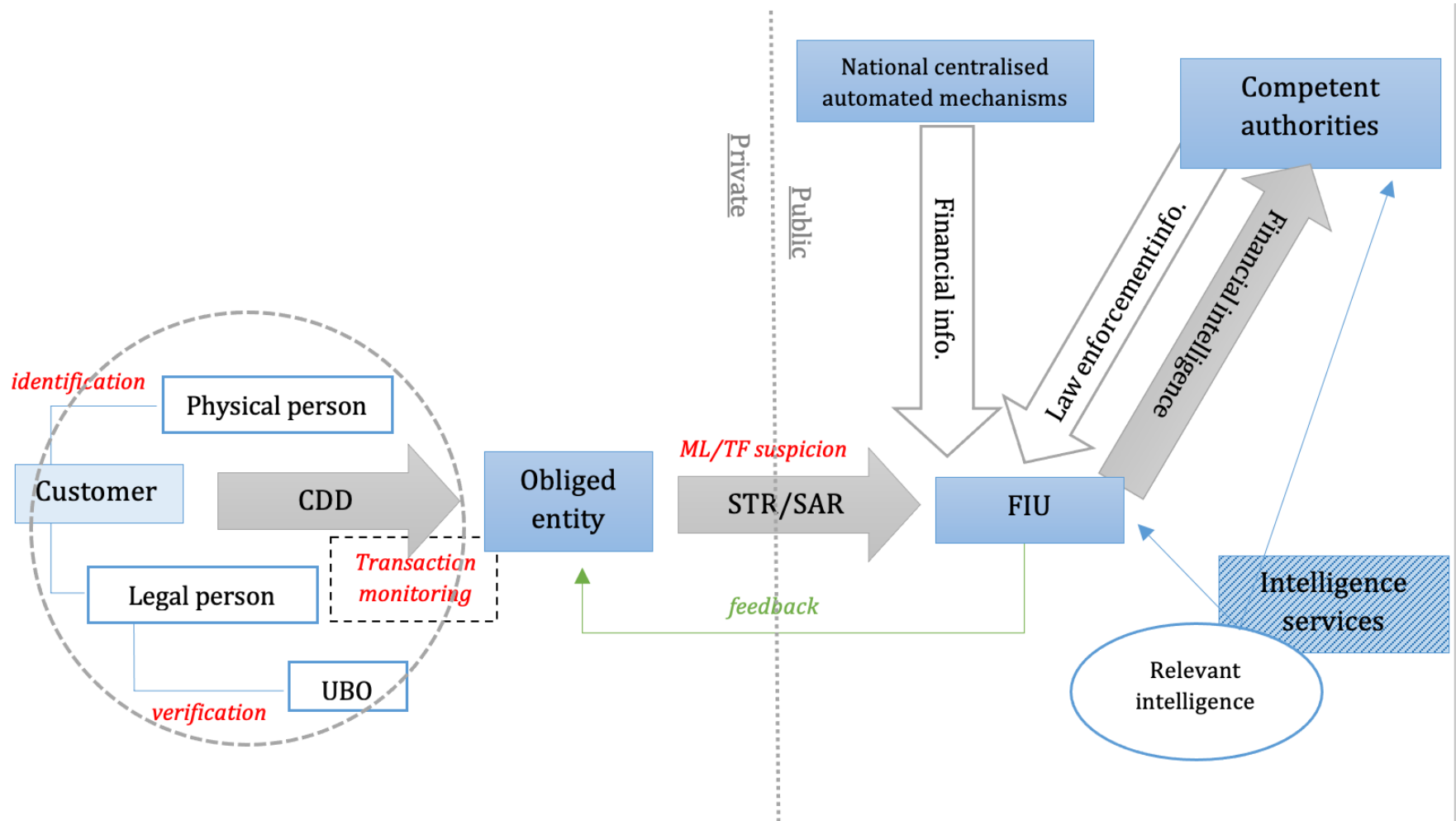
- a) requirements on the **types of information** that should be shared, including the types of information that competent authorities are required to make publicly available;
- b) requirements on the **circumstances** in which such information should be shared, and
- c) the **protections and safeguards** which should apply to information sharing and exchange.

EU AML/CTF framework

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- Directive 2015/849 (4th AMLD)
- Directive 2018/843 (5th AMLD)
- Council Decision 2000/642/JHA – to be replaced by 01.08.2021 by:
- Directive (EU) 2019/1153 on the facilitation of the facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences

Traditional flows of information in AML⁷



Source: Magda Brewczyńska

UBO Registers

4th AMLD obliges MS to **establish central UBO** (Ultimate Beneficial Owner) Registers and provide **timely and unrestricted access** to information stored in it, in all cases, to **competent authorities** and **FIUs** (Financial Intelligence Units), as well as to **obliged entities** for the purpose of performing CDD (Customer Due Diligence) obligations. The 5th AMLD broadened the access to the public.

UBO Registers

Privacy First Dutch NGO filed legal action against the Dutch UBO register on data protection grounds. However The Hague District Court found did not find any violation and the NGO is taking the case to the next instance.

EDPS already found the opening of beneficial ownership information by both competent authorities and the public as not proportionate and raising risks for the individual rights to privacy and data protection.

SOVIM v Luxembourg Business Registers pending

FIUs

The FIU.net is a decentralized computer network, functioning since 2007, supporting the national FIUs in the European Union in the performance of their tasks (the European Data Protection Supervisor banned Europol from involvement in FIU.net)

The Egmont Group is an international organization that facilitates global operational cooperation and intelligence sharing between national financial intelligence units (FIUs) to investigate and prevent money laundering (including of serious tax crimes) and terrorist financing, .

FIUs

Obligated entities (e.g. banks) provide **FIUs** (Financial Intelligence Units) information upon request

Neither the FATF Recommendations nor the AMLDs require FIUs to transfer information to the tax authorities, whether *ex officio* or upon request. However, a lot of **FIUs** are **compelled by law** to transfer to the tax authorities on their own initiative any relevant information that points toward the commission of a tax offence as a predicate offence to money laundering.

Exchange of data in the field of taxation¹²

- Joint Council of Europe/OECD Convention on mutual administrative assistance in tax matters
- Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC)
- Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2)
- Council Directive 2016/2258 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities

Report

Introduction

- Developments since 2014 and issues not addressed in 2014 opinion
- Relation of data protection to the AML framework and tax information exchange
- Challenges raised by data pooling (Priority for the FATF)

Scope of application

- Exchanges of data
- Transborder
- Automatic
- National security (re. financial exchanges)
- Role of PPPs?

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Actors involved

- Data subjects: natural vs legal persons
- Data controllers and data processors:
 - obliged entities
 - third parties performing the Customer Due Diligence (CDD) measures
 - FIUs
 - Competent authorities

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Types of personal data processed

- ‘Regular’ personal data
- Special categories of data

Legitimacy of data processing

- Processing based on the law

* Issue: sharing from the FIUs or competent authorities to the obliged entities and sharing among the obliged entities

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- Respect of data protection principles on the data to be shared (Art. 5 CoE 108+):
 - Proportionality
 - Fairness and transparency
 - * Notification of persons concerned? (ECtHR case law)
 - Purpose limitation
 - * Re-use of shared information, e.g. in customer profiles
 - Data minimization
 - * Legislation to be as concrete as possible re. collected data
 - Accuracy
 - Storage limitation

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- Data security
- Rights of data subjects
 - Especially in light of algorithmic decision making
 - Exceptions and restrictions to the rights of data subjects
- Transborder flows of personal data
 - European Essential Guarantees
 - Access to data by foreign authorities (safeguards)

Thank you for your attention!

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