

Belgian Audit Oversight Board's AML Recommendation of 30 May 2024

Time of the identification and the verification of the identity of the client and of the client's beneficial owners and agents

1. Scope:

Natural persons or legal entities that carry on activities in Belgium and that are registered or enrolled in the public register kept by the Institute of Registered Auditors (Instituut van de Bedrijfsrevisoren/Institut des réviseurs d'entreprises).

2. Summary/Objective:

This recommendation specifies and clarifies at what point an auditor must proceed to identify and verify the identity of the client and of the client's beneficial owners and agents, as required under the Anti-Money Laundering Law¹. This recommendation replaces the AML Recommendation issued by the BAOB on 5 October 2023².

3. Belgian Audit Oversight Board (BAOB) as supervisor of compliance with AML obligations

Article 85, § 1, 6° of the AML Law designates the BAOB as supervisor of compliance with the AML Law by auditors and trainee auditors. In this capacity, the BAOB may, pursuant to Article 86, § 2, first paragraph, 1° of the AML Law, draw up recommendations to clarify the scope of their AML obligations.

4. The beginning of the business relationship in the case of a statutory audit mandate related to annual financial statements

Article 30, first paragraph of the AML Law states that the identification and the verification of the identity of a customer and of the customer's beneficial owners must be carried out before entering into a business relationship or before carrying out the occasional transaction for which the auditor was engaged.

¹ Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, Belgian Official Gazette, 6 October 2017.

² https://www.fsma.be/sites/default/files/media/files/2023-10/ctr_csrl_aml_recommendation_202310_en.pdf

There are various possible ways of determining the time when a business relationship between an auditor and a client comes into existence, and therefore also regarding the point at which the identification and the verification of the identity of the client and of its beneficial owners must be carried out. In what follows, we set out four such scenarios. This overview is not exhaustive, but outlines the most important principles and applies them to specific situations.

- The auditor applied prior to being appointed, without reservations and without any suspensive conditions in the offer:

In the case of a **statutory audit mandate** related to annual financial statements, the BAOB considers the appointment by the general meeting – after the definitive and unconditional offer by the auditor – as the point when the business relationship comes into existence. It is, after all, when the appointment takes effect that the auditor has been formally engaged. From that point onwards, the mandate can only be terminated for reasons that are exhaustively listed in the Code on Companies and Associations. The identification and the verification of the identity of the client and its beneficial owners must therefore take place **before the appointment of the auditor by the general meeting**³.

The auditor must in that case proceed to the identification and the verification of the identity of the client and of the latter's beneficial owners:

- either before presenting the binding offer;
 - or at the time when the governing body notifies the auditor of its task as a candidate auditor at the general meeting. In this case, the auditor shall do so immediately, so that there may be no impediment to the general meeting's decision-making.
- The auditor submitted an application prior to his/her/its appointment and included in the offer a suspensive condition regarding the AML identification and verification obligation:

The BAOB has noticed that some auditors submit an offer in which there is a **suspensive condition** on the basis of which the appointment as statutory auditor will only come about on condition that the auditor has first been able to successfully perform the requisite AML identification and verification. In this case, the acceptance of the offer and the appointment by the general meeting will only give rise to a business relationship if the suspensive condition is fulfilled.

³In the case of an appointment of an auditor by an entity that has no general meeting, the principles as set out in this recommendation continue to apply for the appointment by the competent governing body.

The auditor must in that case immediately carry out the identification and the verification of the identity of the client and of the latter's beneficial owners. This means **immediately** after the auditor has been **notified by the governing body that his/her/its application** will be put to the general meeting. If no such notification takes place, the auditor must proceed to identify and verify the client's identity **immediately after the appointment** has been made. In that case, the auditor should not wait for the engagement letter to be drawn up and the subsequent start of the audit activities before proceeding to perform the identification and the verification of the identity of the client.

In this scenario, it is important that the formulation of the suspensive condition clearly specify that the beginning of the business relationship is postponed and conditional on the successful completion of the requisite AML identification and verification of the identity of the client and the latter's beneficial owner(s)⁴.

The auditor's mandate begins on the day when the suspensive condition has been met and not on the day of the conditional appointment.

- The auditor is unilaterally appointed by the entity:

It may happen that an auditor is appointed without having first applied or even being aware of the appointment. If an auditor is appointed by the general meeting without his/her/its knowledge or without first submitting an offer, the auditor has not expressed any intention or acceptance.

The business relationship will come into existence only at **the point when the auditor accepts the mandate**. As a result, the identification and verification obligation is to be fulfilled **before the auditor accepts the mandate**. The auditor must therefore ensure that at the point when he/she/it accepts the mandate, the applicable ALM obligations have been met.

- The auditor is appointed by the president of the commercial court:

In the event that an auditor is appointed by the **president of the commercial court**, the auditor must perform the identification and the verification of the identity of the client and the beneficial owners **immediately after the appointment** (or after being notified of it). The auditor should not wait for the engagement letter to be drawn up and the subsequent start of the audit activities before proceeding to carry out the identification and the verification of the client's identity.

⁴ It is up to the auditor to duly inform the (future) client of the scope of the suspensive condition. The recommendation does not go into this aspect.

5. Carrying out a statutory or other audit engagement

The above principles also apply to performing **other statutory audit mandates**.

As in the case of statutory audit mandates related to annual financial statements, the basic principle is that the identification of the client and the beneficial owners, and the verification of their identity, must be performed **before the definitive appointment by the competent governing body**.

In the case of a unilateral appointment, the identification and the verification of the identity must take place **before the acceptance by the auditor** (see point 4, third summary).

In the event of an appointment under a suspensive condition, the identification and the verification of the identity must take place as soon as possible, that is, immediately after the auditor has been notified by the governing body of the appointment or of the proposal as a candidate to the general meeting (see point 4, second summary).

The same is true for other tasks, such as keeping the accounts, that an auditor may perform based on his/her/its enrolment in the public register and that are thus subject to the AML Law.

If an auditor is asked to carry out a statutory audit for the company for which he or she is already engaged as the statutory auditor of the annual financial statements, the statutory engagement is carried out within the same business relationship and therefore no new identification or verification of the company's identity is required.

6. The first use by the client's agent of his or her authorization to take binding action on behalf of the company he/she represents

Article 30, second paragraph of the AML Law states that the identification of **an agent**, the verification of his or her identity and authorization to act in the name of the client must be carried out before the agent proceeds to take any actions that bind the client⁵. In practice, this will begin mainly (but not always) at the time when **the engagement letter is signed** by the client's agent, so that the identification and verification obligation in respect of the agent must take place beforehand.

Please note: if the entity's agent has already carried out another transaction before signing the letter of engagement, the identification and verification obligation must take place before then.

⁵ Article 30 in conjunction with Article 22 of the AML Law.

7. Exception to the point when the identity is to be verified

The AML Law allows⁶ that in very exceptional cases, the **verification of the identity** (not the identification itself) of the client and of the client's beneficial owners may take place **in the course of** the business relationship.

For this exception to be invoked, the following cumulative conditions must be met:

- **Special circumstances as listed exhaustively** in the internal procedures of the auditor must be present;
- It must be **necessary for the mandate not to be interrupted** by carrying out the verification;
- The individual risk assessment must indicate that the business relationship presents a **low ML/FT⁷ risk**.

In the exceptional case that all these conditions are met, the verification must nevertheless be carried out **as soon as possible** after the first contact with the client.

An auditor who wishes to invoke this exception must, moreover, practice **increased vigilance** with regard to all transactions, including the verification of identity⁸. This may lead to a mandatory written report⁹ if the identity cannot be verified sufficiently quickly.

8. Point when the individual risk assessment must be carried out

The identification of the client and of the client's beneficial owners and agents is among the measures of vigilance that an auditor adopts vis-à-vis the client¹⁰. These measures and the appropriate level of vigilance follow from the individual risk assessment and the risk level determined by that assessment¹¹.

It thus follows logically that **the individual risk assessment of the client must take place before the auditor proceeds to identify the client**, in order that he or she may apply the appropriate level of vigilance.

9. Documentation requirement

The point when the business relationship comes into existence and when the identification and the verification of the identity must be carried out for the various persons who are to be identified should be documented in the items found in the audit file.

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⁶ Article 31, first paragraph, of the AML Law.

⁷ Money laundering, financing of terrorism.

⁸ Article 37, § 1 of the AML Law.

⁹ This is the written report that must be drawn up under the responsibility of the AMLCO, for instance in cases of atypical transactions. Article 45 of the AML Law.

¹⁰ Article 19, § 1 of the AML Law.

¹¹ Article 19, § 2 of the AML Law.