



Response by ArtAML Limited to HM Treasury's Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022 - Consultation

Background

We (Chris King & Susan J Mumford) are providing answers in our capacity as the founders of ArtAML. ArtAML is a software platform specifically designed to help the art market with its compliance obligations. We took part in the HM Treasury consultation regarding the transposition of 5MLD into UK law. We have been helping AMPs of all sizes and specialities with their obligations, and regularly meet with the HMRC sector lead for AMPs. The majority of our answers here relate specifically to what we are seeing from the industry in this newly regulated sector.

Box 2.A Account Information Service Providers and Payment Initiation Service Providers

1. Not answered
2. Not answered
3. Not answered
4. Not answered

Box 2.B Bill Payment service providers and telecoms, Digital and IT Payment Service Providers

5. Not answered
6. Not answered
7. Not answered
8. Not answered

Box 2.C Art Market Participants

9. **Your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR 10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is there ML risk associated with artists and if so, how significant is this risk? Please provide evidence where possible.**

Background:

The background to this question contains the assumption that there are 800-1500 artists selling work over the threshold and 100-150 at most selling directly. We consider that the first is an underestimate, and the second is a significant underestimate.

For direct sales, look, for example, at portrait painters. Portrait commissions are very often made by the sitter approaching the artist directly.

In this collection of work that was submitted to the Royal Society of Portrait Painters 2021 Annual Exhibitions, there are a number of works well over the threshold:

<https://www.mallgalleries.org.uk/whats-on/exhibitions/royal-society-portrait-painters-annual-exhibition-2021>

Sculptures are often considerably over the €10K threshold, and again will often be bespoke commissions. The materials and manufacturing costs alone can run to make thousands of pounds.

In addition to this, the SARS-COV-2 pandemic that started in 2020 has led to an increase in artists selling directly. For an example, see

<https://news.artnet.com/market/artists-selling-direct-to-consumer-1900345>

In relation to resist selling via dealers, the assumption here seems to be that artists selling via dealers will be selling through regulated AMPs, whereas in fact a lot of artists may be represented by galleries in the USA or other countries where the art market is not regulated.

Wider Impact:

We believe that excluding artists may expose them to activity from money launderers. This is likely to be a particular problem if payments are made in cryptocurrencies. We see cryptocurrencies and NFTs as being a significant risk. We spoke to one artist who sold an NFT for £250, and then subsequently saw it reoffered for sale at £1,000,000.

We have spoken to artists whose immediate response to being excluded was to suggest that they would make more direct sales, as buyers would not have to deal with AML.

Direct costs:

Artists are likely to handle the burden of regulation poorly, which could likely lead to a significant increase in support calls to HMRC.

10. As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts?

Costs might initially decrease, but if creative structuring of art sales via artists leads to evasion of regulations, then this could lead to a higher cost in the long run.

11. In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, in Annex D, adequately cover the intention to clarify the exclusion of artists from the definition, where it relates to the sale and purchase of works of art? Please explain your reasons.

We do not believe that the drafting is sufficient.

“...created by a sole practitioner or a member of that firm”.

“Sole practitioner” is problematic.

First, not all art is personally created by the artist. Larger works and photographs are often fabricated for the artist. Secondly (though rarely), some artworks are created as collaborations between artists.

Solution - rather than focussing on the act of creation, the attribution of the completed work to an artist better reflects reality.

“...or a member of that firm” - what does this mean?

Consider - an artist sells through an AMP, who takes 50% commission. The artist and the AMP come to an agreement - The artist employs the AMP for a nominal salary (or gives them a share in their business). In return, the AMP only charges 40% commission, and can sell the work without having to do CDD.

We are aware of artist/advisor relationships where invoicing is arranged in such a way as to reduce the turnover figures of the advisors.

“Sale or purchase of art” Why would an artist be buying art through their business?

Lastly - What happens when the artist dies? Does their estate, which can trade for many years, also fall outside the purview of the MLRs? This needs to be clarified.

12. In your view, should further amendments be considered to bring into scope of the AMP definitions those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?

Yes, and the definition is important.

The suggestion in para 2.33 that digital art is that which is “created using digital technology” can be applied to any photograph taken today.

The means of display and distribution are what defines digital art, not the means of creation. The digital art world is closely tied with cryptocurrencies and trading via NFTs, and this presents a huge risk of ML.

In relation to digital art, we would like to be very clear that NFTs are not digital art, but are crypto assets.

Box 3.A Suspicious Activity Report

13. In your view, is access by AML/CTF supervisors to the content of the SARS of their supervised populations necessary for the performance of their supervisory functions? If so, which functions and why?

Yes, but not unfettered access. Randomised, anonymised samples might be an option for this. Access to SARS should be only for the purposes of improving SARs submitted by the regulated population.

14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARS to the extent they find useful for the performance of their functions?

No. "Relevant person" or "connected person" is not sufficient. Access to SARs should be allowed only for explicit reasons (and with the permission of the NCA).

15. In your view, would allowing AML CTF supervisors access to the content of SARs help support their supervisory functions? If so, which functions, and why?

Yes, for the purposes of education of their supervised populations, and for statistical purposes.

16. Do you agree with the proposed approach of introducing an explicit legal power in the MLs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

Yes

17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible

Not answered

18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.

The contents of SARs contain information that is commercially sensitive and highly confidential intelligence that may become crucial during the course of a criminal investigation.

Since we think that supervisors should be able to have some access to the content of SARs for the purposes of assisting their supervised populations, the content should be anonymised.

Box 3.B Credit and Financial Institutions

19. Not answered

20. Not answered

21. Not answered

22. Not answered

23. Not answered

24. Not answered

Box 4.A Proliferation Financing Risk Assessment

25. Not answered

26. Not answered

27. Not answered

28. Not answered

29. Not answered

30. Not answered

Box 4.B Extension of the terms ‘Trust or Company Service Provider’ and ‘business relationship’

- 31. Not answered
- 32. Not answered
- 33. Not answered
- 34. Not answered

Box 4.B Extension of the term ‘business relationship’ for services provided by TCSPs.

- 35. Not answered
- 36. Not answered
- 37. Not answered
- 38. Not answered
- 39. Not answered
- 40. Not answered

Box 4.D Reporting of discrepancies: Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information

- 41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of?
Please provide views and reasons for your answer.

The relationships between AMPs and their customers are generally considered to be ‘occasional transactions’ rather than ongoing business relationships, so ongoing reporting is not relevant to them.

- 42. Not answered
- 43. Not answered
- 44. Not answered

Box 5.A: Disclosure and Sharing

- 45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?

No. The information is extremely sensitive and should be kept to as few departments as possible.

- 46. Not answered
- 47. Not answered
- 48. Not answered
- 49. Not answered
- 50. Not answered

Box 5.B Information Gathering

- 51. Not answered
- 52. Not answered

53. Not answered

54. Not answered

55. Not answered

Box 6.A: The approach to implementation

56. Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

Yes. The art market is currently captivated by NFTs, which are cryptoassets. The danger of ML via these seems considerable.

57. If HMG agrees that NFTs are cryptoassets, then clearly AMPs (and artists) dealing them will need additional legislation and guidance.

Not answered

58. Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

Yes. 1 Year

Box 6.B Use of provisions from the Funds Transfer Regulation

59. Not answered

Box 5.B Provisions specific to cryptoasset firms

60. Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?

Yes

61. Not answered

62. Not answered

63. Not answered

64. Not answered