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The Risk of Double-Hatting and the AML Provisions and Regulations – Present and Future Perspective. Part 1¹

[Ryzyko łączenia funkcji a przepisy i regulacje dotyczące przeciwdziałania praniu pieniędzy (AML) – perspektywa obecna i przyszła. Część 1]

Abstract

This publication addresses the risk of holding (potentially conflicting) positions from the perspective of AML/CFT regulations (i.e., those concerning anti-money laundering and countering the financing of terrorism). In English, the author uses the term “double-hatting,” which is difficult to translate into Polish in a way that fully captures the meaning of the term (“double-hatting” refers both to wearing two hats and to holding two positions simultaneously).

This issue is analyzed from the perspective of ensuring that the obligated institution operates in compliance with the law, with particular emphasis on ensuring the effectiveness and proper management of AML/CFT risks within such an entity.

The author examines currently applicable regulations (EU/Polish) as well as so-called “soft law” regulations (codes of good practice, guidelines, etc.). In the latter part of the publication, she will examine the new EU regulations in the area of AML, which will be implemented into the legal systems of the member states.

The main issue addressed in this article is the combining of roles in smaller obligated institutions, including sole proprietorships.

The issue of combining roles from the perspective of AML/CFT regulations has not yet been the subject of debate. Yet it is significant, particularly when considering the need to ensure that a regulated institution operates in compliance with AML/CFT regulations. As regulations in this area continue to grow, it is unreasonable to expect that a single person will be able to manage—or be responsible for—two distinct areas within a regulated institution. Furthermore, in such a case, there may be a risk of a conflict of interest if the same person were to evaluate their own actions in another area. Effective management of operating costs by regulated institutions should not come at the expense of

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¹ Part 2 of the article will appear in issue 1/2027/81 (ed.) / Część 2 artykułu ukaże się w numerze 1/2027/81 (red.).

employing an adequate number of staff. For this reason, the author decided to address this topic and examine the risks from the perspective of regulated institutions.

Keywords: AML, regulated institution (obliged entity), double-hatting, conflict of interest, compliance, AML/CFT risk management, AMLR Directive, EBA, sole proprietor (practitioner).

Introduction

Instead of an introduction, here are a few words of explanation for those not familiar with the topic. ‘AML’ refers generally to anti-money laundering regulations. The term is used worldwide and may also cover combatting the financing of terrorism (although a specific abbreviation ‘CFT’ exists for this latter aspect, it is not as popular as AML; hence I will stick to AML throughout the article).

An obliged institution or an obliged entity is a legal or a natural person that must comply with AML regulations. This obligation typically derives from both EU and domestic acts of law.¹ For example, a bank (or credit institution) is such an entity. Certain natural persons like attorneys at law or notaries public can become obliged institutions only if they undertake specified actions as stipulated in the AML regulations.

The new AML package refers to three acts of law passed by the European Council and Parliament and consists of the following:

- (1) Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 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 money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (Text with EEA relevance) (‘AML 6 Directive’);
- (2) Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (‘the AMLR’);
- (3) Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 (‘the AMLA regulation’).

¹ It derives also from other international regulation, guidelines and recommendations issued by international regulatory bodies like FAFT (Financial Action Task Force), <https://www.fatf-gafi.org/en/home.html>.

The said acts will apply:

- 1) by 10 July 2027 (by the EU Member States) – By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 74 by 10 July 2025, with Articles 11, 12, 13 and 15 by 10 July 2026 and with Article 18 by 10 July 2029. Up to the said date, the previous directive will bind (that is, Directive 2015/849 “The AML 5 Directive”);
- 2) from 10 July 2027 – the package shall apply from 10 July 2027, except in relation to obliged entities referred to in Article 3, points (3)(n) and (o), to which it shall apply from 10 July 2029;
- 3) from 10 July 2025 (however: Articles 1, 4, 49, 53, 54, 55, 57 to 66, 68 to 71, 100, 101 and 107 shall apply from 26 June 2024, and Article 103 shall apply from 31 December 2025).

The author uses the term “double-hatting” to describe a situation where one person performs two or more functions in the same company (or in a group of companies/holding, etc.). Usually, double-hatting implies some sort of potential conflict of interest where for instance the same person would be a compliance officer and the AML Officer in one company.³ Double-hatting can undermine the independence of the person holding such positions, and can also lead to overstretch of the employees or to blurring of the responsibility.

Present Perspective

At present (January 2025) AML is mainly regulated by the aforementioned AML 5 Directive at the EU level. At the domestic level, each EU Member State has its own act dedicated to AML. In Poland, the main act is the Act on Combating Money Laundering and Financing of Terrorism; in Germany it is Geldwäschegesetz – GwG;⁴ in France – Décret n° 2020-119 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme.⁵ Apart from these acts, we also have internal regulations issued on the grounds of the main legal acts. For instance, the Pol-

² DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

³ The author deliberately omits the issue of double-hatting in international arbitration, as it falls outside the scope of the paper.

⁴ https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG_en.html [accessed: 29.07.2026].

⁵ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041567199/> [accessed: 29.07.2026].

ish PEP ordinance that stipulates positions treated as PEPs (that is, politically exposed persons).⁶ Furthermore, we have the EU guidelines drafted by the European Banking Authority (see for instance: EBA guidelines on compliance management and Compliance Officer⁷, international guidelines and instructions issued by domestic regulators (see for instance:⁸ an opinion issued by the Polish FSA on the AML Compliance Officer,⁹ announcement of the General Inspector of the Financial Information¹⁰ regarding derisking practice¹¹ and guidance on the application of the German GwG issued by the German Financial Services Authority – BaFin¹²). One must not forget about announcements and documents issued by FATF or likewise bodies. From the point of view of compliance, the black and grey list (high-risk money laundering jurisdictions and jurisdictions under increased monitoring respectively) published periodically by FATF is of utmost importance in the process of proper due diligence and client onboarding.

Hence, obliged institutions must comply with three key layers of regulation (EU, domestic, and soft law regulations issued by international, EU, or domestic bodies or authorities).

⁶ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20230001632/O/D20231632.pdf> (Ordinance of the Minister of Finance, Funds and Regional Politics of July 27, 2021 on the list of domestic functions and public functions treated as PEPs) (Polish name of the Act: rozporządzenie Ministra Finansów, Funduszy i Polityki Regionalnej z 27 lipca 2021 r. w sprawie wykazu krajowych stanowisk i funkcji publicznych będących eksponowanymi stanowiskami politycznymi – załącznik do obwieszczenia Ministra Finansów z 14 lipca 2023 r. (Dz.U. z 2023, poz. 1632) [accessed: 29.07.2026].

⁷ https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2022/EBA-GL-2022-05%20GLs%20on%20AML%20compliance%20officers/1035126/Guidelines%20on%20AMLCFT%20compliance%20officers.pdf (title of the document: Guidelines On policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive [EU] 2015/849 of 14 June 2022) [accessed: 29.07.2026].

⁸ Ibid.

⁹ The opinion of the Polish FSA on the AML Compliance Officer of 1 December 2022 – https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_UKNF_AMLRO_80468.pdf [accessed: 29.07.2026].

¹⁰ The General Inspector of the Financial Information – The Inspector along with the Department of The Financial Information of the Ministry of Finance is regarded as FIU (Financial Intelligence Unit). The organ is regulated by the Polish Act, the Inspector is generally appointed by the Prime Minister (upon the motion of the Minister of Finance and after the opinion of the Minister responsible for the special services. The Act regulates the competences of the Inspector as well as the criteria that a candidate for the position of the Inspector shall meet.

¹¹ <https://www.gov.pl/web/finanse/komunikat-nr-73-w-sprawie-wykluczania-niektorych-kategorii-klientow-z-nawiazywania-stosunkow-gospodarczych-derisking-oraz-skarg-wnoszonych-do-generalnego-inspektora-informacji-finansowej-przez-klientow-instytucji-obowiazanych> [accessed: 29.07.2026] (in English: Announcement no 73 of the General Inspector of the Financial Information regarding the exclusion of certain categories of clients from entering into commercial relationships – derisking and regarding the complaints submitted to the Polish General Inspector of the Financial Information).

¹² Interpretation and application guidance on the German Money Laundering Act of October 2021.

AML/CFT Management in an Obligated Institution: Current EU Perspective

The currently binding AML 5 Directive states that obliged entities should have internal compliance policies. The policies should regulate, *inter alia*, compliance management, the appointment of a Compliance Officer at management level and employee screening (Article 8 item 4 point a of the Directive). The Directive also defines the role of senior manager (Article 3 point 12), defining it as an officer or an employee that has sufficient knowledge of AML/CFT risks in the obliged institution and can make decisions in that respect. The definition also stipulates that the said person should be at a senior level in the entity and does not have to be a member of the management board of the entity.

In Article 46 item 4 of the Directive, it says that domestic regulations of EU Member States should contain regulations that require obliged institutions to identify a member of the management board responsible for implementing the laws and regulations to comply with the Directive.

However, the more detailed description of the personnel responsible for AML/CFT management is covered mainly in the domestic regulations of EU Member States. EU Member States are the addressees of the Directive, so they are required to implement the Directive into their domestic laws.

Poland's Perspective: Current Regulations

In Poland, the Act on Combatting Money Laundering and Financing of Terrorism ("the Act" or "The Polish Act") does not use the term 'compliance' or 'Compliance Officer'. Instead, it refers to 'management staff of a higher rank'¹³ (Article 2 item 2 point 9 of the Act). This comprises: a) a member of a management board (of an obliged entity), b) a director or an employee thereof.

Obligated institutions have to appoint management staff of a higher rank. These members of staff are in general responsible for compliance with the regulations stipulated in the Act. In the obliged entities, where there is a management board/board of directors or a likewise body, a member of such a body should be appointed as the person responsible for implementing the obligations stipulated in the Act. Moreover, obliged entities should appoint an employee that holds a managerial/senior function. This employee is responsible for the

¹³ This is a direct translation from Polish ('kadra kierownicza wyższego szczebla').

institution's compliance with AML regulations (AML compliance also refers to the employees of the entity and any third parties/subcontractors that provide services for the obliged entity). The employee is also responsible for notifying the General Inspector of Financial Information (the main element/authority of the Polish FIU (the Financial Intelligence Unit) about any suspicious activity or transactions (that might be linked to money laundering or financing of terrorism).

The Act also mentions that the consent/approval of the management staff of a higher rank is necessary prior to taking certain actions (such as, for instance, entering into a contract or continuation of work with a PEP). The management staff of a higher rank must also grant its approval before an internal procedure of the obliged entity is implemented.

In the said Act, there is no indication as to the educational or professional requirements for members of the management staff of a higher rank. We basically have two compliance functions in the obliged entity: one at the level of the management board and a second one at the managerial/senior level. Board members are usually appointed by a supervisory board or the General Meeting of Shareholders (depending on the type of obliged institution and its bylaws). This person is a member of the board responsible for implementing the regulations in the Act. It implies that this person meets the following requirements: thorough knowledge of AML regulations (most importantly of the Polish Act as it directly says so in the Act) and managerial experience (that is, being previously a member of management boards, holding managerial positions, etc.).

In case of an employee at managerial/senior level, such person basically has two main responsibilities: (a) the compliance of the obliged entity and its employees with the AML regulations¹⁴ and (b) notifications to the FIU. The Act does not mention any requirements needed for the role.¹⁵

¹⁴ Here the Act does not use the term 'the Act', as was so in the case of the member of the management board responsible for implementing the Act, but instead it uses the term 'AML regulations', meaning an employee at managerial/senior level who is responsible for compliance with AML regulations. This means that the employee's responsibility under the Act is broader than that reserved for a board member.

¹⁵ Here, the author wishes to point out that in other legal acts, such as, for instance, the Polish Banking Act, one can find provisions that directly stipulate the necessary qualifications for the board members. As banks are obliged institutions, the author is of the opinion that this should be mentioned. The management board of a Polish bank (meaning a bank acting in the form of a joint-stock company) consists of at least three natural persons appointed by the supervisory board of the bank. At least one member of the board should supervise the risk of non-compliance with the provisions of law, internal regulations and market standards. A candidate for the position of member of the management board of a Polish bank should possess the knowledge and experience appropriate for the function and also provide a guarantee of the diligent conduct of their obligations. The guarantee refers to the reputation, honesty and integrity of that person and to conducting the affairs of the bank in a stable and prudent manner. Knowledge of Polish is also required for candidates. One should also emphasize that the Polish FSA grants consent to appoint the president of the management board of a bank as well as members of the management board of the bank responsible for supervising the management of essential risk in the activity of the bank. This means that such persons can be appointed for the said functions upon the prior consent of the regulator. The Polish Banking Act limits the risk of conflict

The Act only stipulates that such an employee should be appointed in the obliged institution. The form of appointment (whether upon a resolution, a PoA, etc.) is irrelevant. The use of the term ‘employee’ does not always mean that it has to be an employee employed solely on the basis of an employment contract. It can be someone that renders the service on the grounds of a different type of agreement (like B2B), but in such case the agreement should be permanent and should place such provider within a structure of the obliged entity.¹⁶ Such a person actually is the AML Compliance Officer in the entity, hence the legal relationship between him/her/them/they and the obliged institution must create a strong, permanent bond. Furthermore, the AML Compliance Officer should be secure in its knowledge that its position is stable and safe (thus he/she/them/they are free to do their duties under the Act). The position of AML Compliance Officer should be seen as an independent one (yes, it is within a structure of the obliged institution, but the responsibility of such officer is broad and includes providing compliance with all AML regulations and notifications to the FIU). The officer should be able to take decision without any duress or any undue influence from the other, more senior employees or managers.

The Act guarantees (see: Article 53a) the legal protection of the officer (in respect of notifying the FIU). No action that might harm, legally impeditment or hinder the situation of such an employee is allowed. Likewise, any criminal threats towards such employees are prohibited.

The position of AML Compliance Officer is also strengthened by the obligation of confidentiality. He/she/them/they are obligated to keep any notification made to the FIU secret. This can be treated as a type of professional secrecy attributed to the role of the AML Compliance Officer.

The obligations and responsibilities of the functions should be properly described and documented in a way that meet the requirements mentioned in the relevant provisions. The persons that hold positions of management staff of a higher rank should be indicated in a clear manner (name and surname of the person, their functions and duties).¹⁷

of interest (stipulating the number of functions one person can hold in the board of a bank). In the case of the said functions, the regulator verifies the previous employment of the candidates (including functions in financial entities), educational and professional courses, criminal record, any administrative sanctions imposed on such person, any ongoing litigation that might affect the reputation of the candidate, knowledge of Polish language and of other languages, way of life (how does the person behave in professional and private contacts and towards people that were harmed by the person's actions).

The Polish Banking Act does not regulate the appointment of the board member responsible for AML compliance. As mentioned above, one member of the management board of the bank should be responsible for the supervision of non-compliance with law, internal procedures and market standards. This might imply that compliance management includes compliance with AML regulations, as they are binding provisions of law.

¹⁶ One must remember that under Polish law an employment agreement creates the following situation: an employee is subjected to its employer (has to follow the orders of its supervisor) and the work has to be performed in a specific place and time. Even, if there is no formal employment contract between the parties, but the work performed meets the aforementioned criteria, it will still be considered an employment contract.

¹⁷ See: the sentence of the Polish District Administrative Court of Warsaw of 6 November 2023, V SA/Wa 249/23.

Natural Persons as Obligated Entities (and AML Compliance Officers)

It looks a bit different in case of natural persons acting obligated entities. As mentioned above, in certain situations, some professionals, such as, *inter alia*, attorneys at law or notaries public might become obligated entities. Furthermore, sole traders become obligated entities when they carry out transaction or a set of linked transactions (accept or make payments in cash or for goods) equal to 10,000 EUR or more. For natural persons that are obligated entities, the natural persons are also the management staff of a higher rank. It means that an obligated entity is at the same time a board member responsible for implementing the Act and an employee of a senior rank responsible for compliance with the AML regulations and the notifications to the respective FIU.

As you can see, in this case we might be talking about triple-hatting. As one person holds three different functions at the same time and to emphasize the point, for free. This would be done within the business activity conducted by such person. One has also to bear in mind that notifications to the FIU are limited in the case of legal professions and are thus subject to client privilege (professional confidentiality). One person holding three compliance functions is complicated enough and not very cost effective. The proper conduct of such obligations requires good knowledge of the AML regulations (at international, EU, and domestic levels), access to the binding regulations and to screening programs or systems (in the case of sanctions, PEPs, high-risk jurisdictions, UBOs, etc.).

One must not forget that in some EU Member States, access to companies' registers (and the UBOs registers) is limited and more detailed information can only be obtained upon payment. Which means that for natural persons (that are obligated entities) it is becoming difficult (regulation-wise) and costly to provide full compliance with the AML regulations.

The Opinion of the Polish FSA (Komisja Nadzoru Finansowego) on the AML Officer¹⁸

In December 2022 the Polish FSA issued an opinion on the AML Officer. The opinion contains good practices regarding proper AML management

¹⁸ https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_UKNF_AMLRO_80468.pdf; I will use the term AML Officer as applied by the BaFin see: https://www.bafin.de/SharedDocs/Downloads/EN/Auslegungsent-scheidung/dl_ae_auas_gw2025_en.pdf?__blob=publicationFile&v=1 (Interpretation and Application Guidance on the German Money Laundering Act (Geldwäschegesetz – GwG) of July 2025 [accessed: 29.07.2026]).

in an obliged entity, including the functions of management staff of a higher rank.

In the case of the member of the management board responsible for AML, it should be a person that possesses sufficient knowledge (of the AML/CFT regulations) and experience. They should also know the regulations of the sector, the functioning of the entity and be able to provide effective management of AML compliance in the obliged institution. If there is no management board in the obliged entity, the FSA suggests that the entity should appoint a member of the management staff of a higher rank to supervise the AML process in the entity. Digression: if under Polish law, the structure of the company/enterprise does not have a management board, one as a rule creates an organ that is not allowed by law. Hence, it will only be possible if one can appoint a management board in such a company or if one can attribute the said AML functions to a member of a different organ (that holds supervisory/executive power¹⁹).

The member of the board responsible for AML acts as the person of contact for the AML Officer. There should be a permanent and stable relationship between those two, based on trust. This is because they both will be the first persons liable for any non-compliance with AML regulations. Furthermore, these two should have access to all the data and information necessary to properly conduct their duties. Thus, they both should be well versed in the obliged entity's operation and the management of AML risk.

In the FSA's opinion, there are three main criteria that the AML Officer should meet: (1) reputation; (2) knowledge; (3) work/professional experience. While in case of a member of the management board, there are two elements to be taken into account prior to appointing such a person (that is, knowledge and experience), in case of an AML compliance officer, there comes vague criteria of reputation, honesty and ethical conduct. From a practical point of view, it means that the AML compliance Officer should not have any criminal record that might hinder his duties in the obliged entity. That includes any prohibition of activity or any sanctions imposed on such person. As mentioned above, the reputation criteria are a tad vague and might cause problems with employing an AML Compliance Officer. For instance, if for any reason a candidate for the function has negative publicity (gossip or of a professional nature), should it influence the appointment? How do we assess in a non-discriminatory and unbiased way that a person is of good ethical and moral standing for the job, in particular, if the same criteria are not necessary to be appointed as a board member in general.

¹⁹ E.g. in a so-called partnership company, either partner themselves can manage the company or they can appoint a management board, in personal companies the role of the management board member responsible for AML can be attributed to the partners that manage the company (that is, those that are liable for the company's obligations with all their assets). However, one must also note that certain obliged institutions (as a rule, financial ones) can only act either as a limited liability company or a joint-stock one.

In case of the knowledge criteria, the AML Officer should know the regulations on AML/CFT, should know the AML/CFT risk of the obliged entity and should have experience in managing the risk.

For work/professional experience criteria, here the opinion states that the AML Officer should have enough work experience that allows him/her/them to hold the function in an independent and efficient manner.

The AML Officer should reside in Poland. However, he/she/they can be employed in another country providing that the person can freely execute its duties from the country and be available to the Polish financial organs as well.

The AML Officer should have a deputy in case of any absence or being unable to work. The deputy should possess the knowledge and skills to substitute the AML Officer.

The obligations of the AML Officer

The duties of the officer should be documented and described in a precise manner. One can divide the scope of duties into two categories: towards the obliged entity (including the management board or the member of the management board responsible for AML) and towards the FIU. The first category can be divided into three parts: towards the obliged entity, towards the management board or the member of the board responsible for AML, and towards the employees.

The duties of the officer towards the obliged entity include: implementing efficient internal AML procedures and analyzing them on a periodic basis, designing and implementing AML/CFT risk analyses, monitoring the AML systems, ensuring the systems and procedures are up to date. The duties of the officer (towards the management board/member of the board responsible for AML and towards the management board of the obliged entity) are of an advisory nature. The officer recommends strategies and approaches to AML/CFT risk for the entity, informs of any legal changes that might impact the compliance risk of the entity. The officer also reports to the board annually on the key AML/CFT issues in the entity.

The duties towards the employees (in the AML department that the Officer manages²⁰) include: ensuring that the employees are trained on a regular basis, that they are duly informed of the AML/CFT risk of the obliged entity, and

²⁰ Providing that there is a AML department in the obliged entity where there are employees; in case of smaller obliged entities there can be just AML officer as a one man show. Likewise, in case of the sole traders as obliged entities, they themselves serve the role of the AML Officer. Polish FSA issued the guidelines addressed to the obliged entities that are supervised by this regulator (that is, *inter alia*, banks, loan companies, insurers, payment institutions etc.). Hence, in general the guidelines will apply to these very companies and not to all the obliged institutions that function in Poland.

that they are aware of any new tendencies/trends regarding money laundering or terrorism financing, etc. The AML officer is responsible for designing the AML/CFT training for the employees and for checking the knowledge of the trainees. Hence, one can say that its obligations towards the employees are of supervisory, educational/mentoring and/or informational character.

The duties of the AML Officer towards the FIU include: making sure that the notification about any suspicious transaction/activity is immediately reported to the FIU, keeping the register of the notifications to the FIU, classifying the notifications according to their importance (that is, high risk, etc.), knowing the system of monitoring transactions and accepting notifications from its personnel of any suspicious transaction, entity or person. The main area of the AML officer regarding the FIU is to react immediately in case of any suspicious transaction/activity, etc. and to notify the relevant authority. To do the job properly, the officer needs two key elements: their own knowledge/experience and a well-trained support system. By the support system, I mean help from the member of the board responsible for AML and help from the team of the officer.

No Double-Hatting According to the Polish FSA

The Polish FSA expressly says that one should not hold at the same time the following functions: a board member responsible for AML and AML Compliance Officer. In the FSA's opinion, holding simultaneously such functions might create a conflict of interest and does not separate the executive, supervisory and operational functions (see: page 3 of the opinion).

In the Act

As we remember, the roles of these functions differ in respect of the AML issues. The member of the board is responsible for implementing the regulations of the Act; the employee (the AML Compliance Officer) is responsible for the compliance of the obliged entity and its employees with the AML regulations (meaning with all the regulations, not just the ones in the Act) and for notifications to the FIU. Furthermore, one is appointed directly either by a supervisory board or a meeting of shareholders; the other is usually employed by the company to act as an AML Compliance Officer. Thus, the legal grounds of their connection to the company may vary. An employment contract is usually seen as a more permanent, stable form, offering more legal protection than being a member of the management board; while the B2B

contract does not offer the same protection as an employment contract and there is no subordination element included (at least, in theory).

The member of the board (in a limited liability company, or a partner in personal companies) can be liable with all its assets for the company's obligations whereas an employee's liability is limited to the amount of three-monthly salary payments (as a rule under Polish Employment Law).²¹

In the FSA's opinion

The AML Compliance Officer interacts with the board member as a first and direct point of contact in AML management. They inform the member of the board of any areas in the company that need upgrading in respect of AML, report periodically to him/her/them, inform them of any problems with the staff²² helping them while managing the AML in the obliged entity.

Hence, the conclusion of the FSA is right. These are two different and separate roles. And should not be held by the same person.

The Polish FSA on the Internal Procedure of the Obligated Entity

Polish FSA issued guidelines on the processes that should be included in the internal procedure of the obligated entity.²³ The guidelines were issued in March 2026. The document once again implies that the obliged entities should appoint a deputy AML Officer.²⁴ The said appointment should be done in order to provide the AML/CFT compliance and its continuity. In case when the AML Officer cannot perform its functions (for instance, when it is dismissed from the role or resigns from it), the deputy AML Officer should step in. Hence, an obliged entity should in fact employ two persons that will act in the capacity of the AML Officer.

²¹ Though, one must point out that the aforesaid type of liability is different than the one regulated directly in the Act (criminal and administrative liability for the infractions/crimes connected with infringement of the Act).

²² It refers to questions of enough people and sufficient technical means to conduct proper AML compliance in the obliged entity.

²³ https://www.knf.gov.pl/knf/pl/komponenty/img/Stanowisko_UKNF_AML_CFT_97484.pdf (in Polish version the document issued by the Polish FSA is called a commentary/opinion. However, the author prefers to use the term "guidelines" as the said opinion contains recommendations regarding the key elements in the internal procedure (AML/CFT) of an obliged entity. The English version of the title of the said document is as follows: The opinion of the (Polish) FSA regarding the processes accomplished by the obliged entity in respect of AML/CFT issues that should be regulated in the internal procedures" [accessed: 29.07.2026]).

²⁴ See: page 5 of the guidelines.

Likewise, in terms of the AML whistleblowing (the Polish AML Act stipulates that obliged entities should implement a procedure of notifying on the breaches of the AML regulations), the guidelines recommend the following approach;²⁵ AML Officer or an employee working in the AML area should not be appointed as a person who collects the said notifications. Such solution limits in fact the risk where the same person collects the notification regarding the breaches committed by that very person.

The aforementioned recommendations underline the importance of separation between the AML compliance functions in the obliged entity. We cannot talk about the efficient management of the AML compliance (and risk) without providing the right amount of the qualified personnel to do that. Hence, one person should not hold at the same time two AML – related functions as it would not be possible to efficiently provide the AML compliance and its risk management. And the key issue here is not just limiting the risk of conflict of interest, but also the risk of hampering the independence of the functions (in managing the AML matters, but also in taking the decisions).

To quickly summarize, the Polish Act generally contains two categories of roles responsible for AML in obliged entities. A member of the management board and an employee at senior/managerial level. They are called the management staff of a higher rank. Their roles and positions in the obliged entity differ, where the employee directly works with the said board member in AML risk management.

All obliged entities must appoint managerial staff of a higher rank. Any double-hatting (in the case of the member of the management board responsible for AML or the AML Officer) is allowed only for sole traders (which refers to natural persons conducting business activity that are considered obliged entities, e.g. in certain cases attorneys at law, notaries public, etc.). No obliged entity can be exempted from appointing management staff of a higher rank.

The Polish FSA does not have influence on the appointment or dismissal of the AML Officer.

The issue of any double-hatting/conflict of interest in respect of the AML Officer is mentioned only in the opinion/guidance issued by the regulators (Polish FSA). One must remember though that the said documents are not binding sources of law. These should be treated more like codes of good practice or instructions (where the regulator presents its point of view as to how the functions should be properly performed²⁶). They are

²⁵ See: page 25 of the guidelines.

²⁶ See for instance: https://www.bafin.de/EN/Aufsicht/BoersenMaerkte/Emittentenleitfaden/emittentenleitfaden_node_en.html [as of 29 July 2026, the link is not available]; Issuer Guidelines published by the Federal Financial Supervisory Authority with the following quote: These Guidelines are addressed to issuers for which BaFin is the competent authority for supervising compliance with the requirements of capital market legislation. The Guidelines are designed as a hands-on guide to dealing with the requirements of securities

of soft law nature and as a rule there are no sanctions for not complying with them.

The EBA

The European Banking Authority (EBA) has issued Guidelines for AML/CFT Compliance Officers. The document was published in June 2022.²⁷ It is 54 pages long as compared to the Directive (45 pages with annexes) and is solely devoted to the role of AML Officer in an obliged entity. One must ask what is the purpose of drafting a document that is longer than the legal act it refers to. For obliged institutions and for the AML Officers, lawyers and others that deal with the AML/CFT on a daily basis, it is difficult to go through another lengthy document that seems to be an over-the-top approach to already heavily regulated areas. The EBA is an independent EU authority that aims to provide, as we can read on its website,²⁸ *effective and consistent prudential regulation and supervision across the European banking sector*. However, EBA transferred its AML/CFT competences to AMLA²⁹ from January 1st 2026.³⁰

Within its competences, the EBA issues guidelines on specific areas of laws, such as the one regarding AML Officers.

As mentioned above, the document is quite long one and to avoid any repetitions (as it is similar to the one issued by the Polish FSA), I will focus on the double-hatting issues.

As in the Directive and in the Polish Act, the EBA guidelines refer to two roles in obliged entities:

- ◆ a member of the management board of the obliged entity responsible for implementing laws that comply with the Directive (and all other binding regulations in the AML/CFT area);

trading legislation, albeit without constituting a legal commentary. They provide an introduction to these legal issues and explain BaFin's administrative practice. S. Pabian and P. Wajda, *Natura prawna i skutki rekomendacji Komisji Nadzoru Finansowego kierowanych do zakładów ubezpieczeń i zakładów reasekuracji*, 'Wiadomości Ubezpieczeniowe' 2015, 1, p. 115; https://piu.org.pl/public/upload/ibrowser/WU/WU1_2015/WU%201-2015%2009%20pabian%20wajda.pdf; O. Świerzewski, M. Kuranc, *Nowe stanowisko KNF ws. robo-doradztwa*, 'BANK. Miesięcznik Finansowy' 2020, 10 Nov. – <https://bank.pl/nowe-stanowisko-knf-ws-robo-doradztwa/> [accessed: 29.07.2026].

²⁷ https://www.eba.europa.eu/sites/default/files/document_library/Publications/Guidelines/2022/EBA-GL-2022-05%20GLs%20on%20AML%20compliance%20officers/1035126/Guidelines%20on%20AMLCFT%20compliance%20officers.pdf.

²⁸ <https://www.eba.europa.eu/about-us/organisation-and-governance>.

²⁹ AMLA – Anti-Money Laundering Authority (https://www.aml.europa.eu/index_en).

³⁰ <https://paytechlaw.com/en/from-eba-to-aml/>; <https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-counteracting-financing-terrorism>.

- ◆ An AML Officer (as a senior employee responsible for AML/CFT issues like: internal procedures, transaction monitoring, reporting to the authorities, advising the management board in respect of AML/CFT risk management in the obliged entity).

It also addressed the AML/CFT management in smaller or one-person obliged entities.

EBA vs double-hatting

In the EBA's opinion, both roles (that is, member of the management board of the obliged entity and the AML Officer) require time. That means that the persons in the aforementioned roles have to have enough time to do their tasks properly. Furthermore, obliged entities should make sure that there is no conflict of interest with these persons and there is no risk of creating one. That is important when, for instance, one person holds the role of AML Officer and other functions/duties in the institution. In such a situation, the management board of the obliged entity needs to mitigate any risk of conflict of interest and/or any risk of lack of sufficient time and resources to properly hold these roles. The EBA's guidelines do not expressly prohibit double-hatting. They mention that the AML Officer should be independent from any business units and should not report to anyone that manages these units. Moreover, the function of an independent auditor should not be combined with the function of the AML Officer. The AML Officer can be a part of the compliance department; however, the internal procedures of the obliged entity should precisely allocate the duties and responsibilities of the AML Officer and the compliance department and regulate cooperation between those two.

Therefore, the obliged entity (its management board to be precise) will make a final decision in that respect and as to whether it is possible (time/resources wise) and justified to allocate other duties to the AML Officer. At the end of the day, the obliged entity is the one liable for any omissions in the AML area.

AML functions in smaller obliged entities

The EBA tackles the issue of AML management within smaller obliged institutions. For instance, if the institution does not have a management board, it should appoint a senior manager. The senior manager will be responsible for AML management. He/She/They should meet the knowledge/skills/experience criteria and have enough time and resources to properly do their job. Furthermore, such person needs to have a sufficient level of authority to

effectively manage AML risk. For instance, this may apply to companies or entities, where the legal structure does not allow for a management board. This will mostly concern partnerships, where the partners are liable for the company's obligations along with all its assets and they act as managers and representatives of the partnerships. If such entities employ a limited number of employees, they might not appoint a separate AML Officer (meaning a separate function within the company). The same applies to sole traders being obliged entities. Here, though, a sole trader, as mentioned previously holds a couple of roles at the same time: the role of obliged entity and the role of the management staff of a higher rank (combining both the AML Officer and the member of the management board responsible for the AML role). Thus, the main issue here will be whether the size of the entity and its operation allows for appointing a separate AML department and whether the entity can afford it. While talking about sole traders, the cost of employing a specialized manager (AML Officer) might be too high and not always justified, in particular where the sole trader becomes the obliged entity only in certain cases as enumerated in the domestic regulations. Likewise, in the case of smaller obliged entities, the combining of the role of the AML Officer with other roles might be justified bearing in mind the entity's size and volume of operation. Nevertheless, one must not forget that the main role of the AML Officer is to recognize the AML/CFT risk in the obliged entity and manage the risk in a proper and effective manner. Hence, just the question of size might not be the key indicator in respect of appointing a separate AML Officer.

Moreover, if a sole practitioner becomes an obliged entity and decides to set up a partnership company with another sole practitioner, it does not mean that the company created becomes an obliged entity. Even, if the company appoints the AML Officer (that is a separate person from the sole practitioners), the obliged entity is a sole practitioner as stipulated by the relevant regulations and such person is obligated to comply with the AML regulations. And such person will be liable for any AML breaches.

The EBA allows obliged entities decide in that respect, offering possible solutions for appropriate AML/CFT management in various legal types of obliged entities.

As one can see, in the case of smaller obliged institutions, double-hatting might occur and might be acceptable. Still, it should always be rightfully justified and relevant to the company's size, operational volume and firstly, the AML/CFT risk of the entity.

Here one should bear in mind that if such solution (that is double – hatting) is applied, the obliged entity should provide the sufficient support for the person holding two positions. Prior to appointing such person, the entity should verify whether there is any risk of conflict of interest, loss of independence or time overstretch. Moreover, the entity should confirm if it

is allowed by the regulation of the state it operates in. The double – hatting might look attractive from the cost efficiency point of view (one salary for two functions), but risk of breach of the AML regulations and thus loss of reputation may cost more in the long term than employing more than one person for two functions.

The question of double-hatting in the new AML package will be covered in the next part of the article.

Abstrakt

Publikacja podejmuje temat ryzyka łączenia (potencjalnie kolizyjnych) stanowisk z punktu widzenia regulacji AML/CFT (tj. dotyczących przeciwdziałania praniu pieniędzy oraz finansowaniu terroryzmu). W języku angielskim autorka posługuje się wyrażeniem „double-hatting”, które trudno przetłumaczyć tak, aby najpełniej oddać znaczenie tego terminu („double-hatting” to bowiem zarówno noszenie na głowie dwóch kapeluszy, jak zajmowanie dwóch stanowisk jednocześnie).

Powyższą kwestię analizuje się z punktu widzenia zapewnienia zgodności działania instytucji obowiązanej z przepisami prawa, biorąc zwłaszcza pod uwagę zapewnienie skuteczności i prawidłowego zarządzania ryzykiem AML/CFT w takim podmiocie.

Autorka bada obowiązujące obecnie regulacje (UE/PL) oraz regulacje tzw. prawa miękkiego (kodeksy dobrych praktyk, wytyczne itp.). W dalszej części publikacji przyjrzy się natomiast nowym przepisom unijnym w obszarze AML, które zostaną implementowane do porządku prawnego państw członkowskich.

Główną kwestią podjętą w artykule jest łączenie stanowisk w mniejszych instytucjach obowiązanych, w tym również w wariantcie jednoosobowej działalności gospodarczej.

Kwestia łączenia stanowisk z punktu widzenia regulacji AML/CFT nie była dotychczas przedmiotem debaty. A jest to istotne, biorąc chociażby pod uwagę zapewnienie zgodności działania instytucji obowiązanej z przepisami w obszarze AML/CFT. Jako że regulacji w tym obszarze przybywa, nie jest uzasadnione oczekiwanie, że jedna osoba będzie w stanie zarządzać dwoma różnymi obszarami – ani odpowiadać za nie – w instytucji obowiązanej. Ponadto w takim przypadku może pojawić się ryzyko konfliktu interesu, gdyby jedna i ta sama osoba oceniała swoje działania w innym obszarze. Efektywne zarządzanie kosztami prowadzenia działalności przez instytucje obowiązane nie powinno oznaczać oszczędności w zakresie zatrudnienia odpowiedniej liczby pracowników.

Z tego względu autorka zdecydowała się podjąć niniejszy temat i przyrzeć się ryzyku z punktu widzenia instytucji obowiązanych.

Słowa kluczowe: AML, instytucja obowiązana (podmiot obowiązany), double-hatting, konflikt interesów, compliance, zarządzanie ryzykiem AML/CFT, dyrektywa AMLR, EBA, przedsiębiorca indywidualny.

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