



## DISPUTE RESOLUTION

# New ASAE Regulation

## Preventing and Combating Money Laundering and Terrorist Financing

On 24 February 2023, ASAE<sup>1</sup> Regulation 1191/2022 (the “Regulation”)<sup>2</sup> will enter into force. This Regulation sets out the conditions and Determines the content of the obligations to prevent and combat money laundering and terrorist financing (“ML/TF”).

This Regulation implements Law 83/2017 of 18 August, which establishes preventive and repressive measures to combat ML/TF. It also repeals ASAE Regulation 314/2018 of 25 May and introduce changes and clarifications on how to comply with those duties.

Besides the extensive regulatory rules brought in by the new Regulations, these are the most significant changes:

**Among the most relevant changes are the scope of application of the Regulation and the obligations of control, identification and due diligence and training.**

### Scope of application

The bodies listed below are subject to regulation and supervision by the ASAE. Also, the ASAE has regulatory power over other bodies whose supervision or control does not fall under the exclusive responsibility of another sector-specific body:<sup>3</sup>

- Tax advisers and any other person whose principal commercial or professional activity is to provide, directly or through others, substantial assistance, support or advice in tax matters.
- Providers of services to companies, other legal persons or entities without legal personality.

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<sup>1</sup> Authority for Food and Economic Safety.

<sup>2</sup> The Regulation was published on 26 December 2022 and can be consulted at [Regulamento n.º 1191/2022, de 26 de dezembro | DRE](#)

<sup>3</sup> Including: The Office of Gaming Regulation and Inspection of Turismo de Portugal, I. P., Inspectorate General of the Ministry of Work, Solidarity and Social Security, IMPIC, I. P., CMVM (Portuguese Securities Market Commission), Certified Accountants Association, Bar Association, Solicitors and Enforcement Agents Association, Banco de Portugal.

- Professionals engaged in transactions involving the disposal and acquisition of rights over professional sportsmen and sportswomen.
- Any person involved in auctions or pawnbroking.
- Any person importing or exporting rough diamonds.
- Any person engaged in the transportation, custody, handling or distribution of money or valuable goods.
- Any person who stores, trades or acts as an intermediary in the trade of works of art (including in free zones) and traders in goods with a high unit value, where payment for the goods traded or services rendered, whether in a single operation or in several operations, is made:
  - i) In cash, if the value of the transaction is €3,000 (three thousand euros) or more, or
  - ii) By other means of payment, if the value of the transaction is €10,000 (ten thousand euros) or more.

The Law does not specify the concept of “high unit value”, but the Regulation now defines it as any asset which, because of its intrinsic value, combined with the amount of the transaction, may pose an ML/TF risk. This includes:

- i) Gold and other precious metals, precious stones, antiques, aircraft, vessels and motor vehicles.
  - ii) Motorhomes, motorbikes, clothing and accessories, cosmetics, furniture, electronic equipment and alcoholic beverages.
  - iii) Transactions related to oil, weapons, tobacco products, cultural artefacts and other articles of archaeological, historical, cultural and religious relevance or of rare scientific value, and ivory and protected species.
- Other traders<sup>4</sup> and service providers who trade in goods or provide services, where payment for the transaction is made in cash and the value of the transaction is €3,000 (three thousand euros) or more, regardless of whether payment is made in a single transaction or in several transactions.
  - Obligated entities that are engaged in the trade of goods or the provision of services wholly or partly by means of distance contracts<sup>5</sup>.

**The Regulation now defines the concept of “high unit value” as any asset which, because of its intrinsic value, combined with the amount of the transaction, may pose an ML/TF risk.**

<sup>4</sup> The Regulation defines “trader” as any professional who engages in commercial activities, in particular by concluding sale and purchase contracts, where the other party is the final consumer, excluding commercial relationships in the production, intermediation and wholesale chain.

<sup>5</sup> Under the Regulation, a distance contract is a contract concluded between a customer and a supplier of goods or services, without the simultaneous physical presence of both parties, and integrated into a sales or service-provision system organised for distance trading, through the exclusive use of one or more means of distance communication up to and including the conclusion of the contract, even if the subsequent delivery of the goods or services is made in person.

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## In the context of control obligations

### ML/TF prevention manual

The new Regulation clarifies that internal policies and procedures must include, as a minimum, a ML/TF prevention manual. This manual must be in writing and available for use and consultation by relevant staff. It must also contain at least the following information:

- The internal control measures to be implemented, in particular the identification and evaluation of the specific ML/TF risks associated with the activity carried out.
- The nominal and functional identification of relevant staff.
- The internal control procedures to mitigate the identified risks.
- The procedures for the storage and processing of personal data.

### Compliance officer

A member of senior management or equivalent must be appointed as the compliance officer to be responsible for implementing internal policies and monitoring compliance with the regulatory framework.

### Periodic evaluation of effectiveness

This is mandatory and is designed to monitor the quality, suitability and effectiveness of the policies, procedures and controls in place, with a view to correcting any identified deficiencies that affect the proper functioning of internal risk control. The new Regulation states that it must focus at least on (i) the risk management model and other policies, procedures and controls, (ii) the quality and adequacy of communications and other information provided to judicial, police and sector-specific authorities, and (iii) the status of implementation of any corrective actions.

The evaluation may be internal or external and its scope must be proportionate to the nature, size, complexity and risks associated with the entity's activities. The results of the evaluation must be recorded in writing and the evaluation is no longer carried out on an annual basis, but rather:

- When deficiencies in the quality, adequacy and effectiveness of the internal control system are identified.
- Every two calendar years if the obliged entity employs up to 249 (two hundred and forty-nine) employees.
- Every calendar year if the obliged entity employs 250 (two hundred and fifty) or more employees.

**Tools or information systems must enable the effective management of ML/TF risks and be appropriate and proportionate to the nature, size, complexity and risks of the activity carried out.**

### Tools or information systems

They must enable the effective management of ML/TF risks and be appropriate and proportionate to the nature, size, complexity and risks of the activity carried out. They must make it possible to:

- Record identifying data and other information on customers, their representatives and beneficial owners, and update such data and information.
- Identify measurable circumstances that should justify updating the identifying data and information.
- Define and update the risk profile associated with customers, business relationships, occasional transactions and operations in general.
- Monitor customers and transactions against the identified risks, including the timely detection of:
  - i) Unjustified changes in the usual pattern of behaviour of a particular customer or group of related customers, where these may represent a risk.
  - ii) Transactions or groups of transactions that raise suspicions or require enhanced measures.
- The acquisition of the status of a politically exposed person or holder of other political or public office, as well as any other specific status that should lead to the intervention of a member of senior management or another person at a higher hierarchical level.
- Persons or entities identified in any determinations issued by the competent authorities of the sector in question.
- Detection of persons or entities identified in restrictive measures.
- Blocking or suspending the establishment or continuation of a business relationship or the execution of an occasional transaction when it depends on the intervention of a member of senior management or another person at a higher hierarchical level.
- Timely acquisition of reliable information to support the analysis and decision-making of the internal structures, as well as the exercise of the communication and cooperation duties provided for by law.

## In the context of the duty of identification and diligence

### Distance contracting

The possibility of identifying the customer by videoconference or video recording is now provided for when identification by other technological means and services is not possible or feasible and provided that (i) the identification procedure is recorded in full, (ii) there is prior consent from the customer, and (iii) during the procedure the front and back of the customer's identification document is displayed and the obliged entity must capture and keep a photographic record of this document.

### Customer identification templates

The templates annexed to the Regulation, now have more fields to be filled in and all are mandatory. They must be completed digitally and submitted on the [ASAE website](#), printed for the client's signature, and filed and retained by the entity. Any supporting documentation must be attached. Manual completion is only allowed when online completion is not available and it is no longer possible (and in certain cases mandatory) to send these documents to ASAE by email. The Regulation clarifies that in the case of occasional transactions, identification must be carried out prior to their conclusion and in the case of business relationships, identification must be carried out within a maximum of 30 (thirty) days of their establishment. This defines what is meant by the "shortest possible period" referred to in the Law<sup>6</sup>.

**The Regulation clarifies that in the case of occasional transactions, identification must be carried out prior to their conclusion and in the case of business relationships, identification must be carried out within a maximum of 30 days of their establishment.**

### Simplified measures

In addition to the reinforced measures, the new Regulation provides for simplified measures where the risk can be demonstrated to be low.

<sup>6</sup> Article 26 of the Law stipulates that several conditions must be met in order for this identification to be carried out after the business relationship has been established. It must be clear that the situation is one of reduced risk and that the postponement is necessary in order not to interrupt the normal course of business.

**It is now mandatory to provide training within a maximum period of 180 days when workers are hired and their functions are relevant to the prevention of ML/FT. The frequency of training is differentiated according to the number of workers.**

## Duty of training

### Training

It is now mandatory to provide training within a maximum period of 180 (one hundred and eighty) days when hiring employees whose functions are relevant to the prevention of ML/TF<sup>7</sup>. It is also mandatory to provide at least one training session:

- Every two calendar years if the obliged entity employs up to 249 (two hundred and forty-nine) employees.
- Every calendar year if the obliged entity employs 250 (two hundred and fifty) or more employees.

The training may be internal or external<sup>8</sup> and must be adapted to the level of complexity of the operations and the level of risk, with a minimum duration of three hours and covering at least the following subjects: *(i)* preventive duties, *(ii)* directives, regulations or other standards as well as national, international and EU guidelines applicable to the sector, *(iii)* types of operations related to the commission of ML/TF offences, *(iv)* internal policies and procedures adopted, *(v)* processing of personal data, and *(vi)* guidelines or recommendations issued by ASAE.

Documentation of the training provided must be maintained and, in the case of internal training, the Regulation requires that at least the following information be included: the name of the training, the date of the training, the identification of the trainers and their specific training, the duration in hours, the schedule of the training, the name and position of the trainees and, if applicable, the final evaluation of the trainees.

ASAE may require the adoption of corrective measures, recommendations and countermeasures, and failure to comply with the provisions of the Regulation may result in the liability of the obliged entity for an administrative offence. ■

<sup>7</sup> All employees working in areas such as customer service, business promotion, sales, accounting and finance, as well as the managers of the obliged entities.

<sup>8</sup> Training providers, whether internal or external, must meet a number of requirements set out in the Regulation and a prior opinion of the compliance officer is required. For these purposes, conferences, seminars or similar events and the successful completion of curricular units of postgraduate or higher education courses are now explicitly considered.