Policy Brief – Impact of Draft Article 21 on Customer Due Diligence under Article 28(1) of Regulation (EU) 2024/1624 on the Swedish Fund Distribution Model

Executive Summary

Article 21 (now changed to Article 17) of the EBA draft RTS on Customer Due Diligence under Article 28(1) of Regulation (EU) 2024/1624 is intended to clarify how obliged entities should fulfil customer due diligence obligations when transactions are carried out "on behalf of or for the benefit of" persons other than the customer. The proposal extends far beyond its intended scope and has been drafted without an impact assessment or an examination of how fund distribution models function across the EU. By mistakenly assuming that fund managers act on behalf of underlying investors, the draft Article 21 misinterprets the operational and legal realities of fund distribution—especially in Sweden, where distributors act entirely in their own name and under their own responsibility. The measure would not improve AML outcomes but would fundamentally disrupt a successful and well-regulated market structure.

EBA's proposed Article 21 would unintentionally dismantle the Swedish fund distribution model—one of Europe's most successful frameworks for broad-based household saving—while providing no meaningful AML/CFT benefit. The proposal misunderstands how distribution works, conflicts with existing EU legislation, and would impose obligations that are commercially impossible, operationally disproportionate, and legally questionable.

How the Swedish Distribution Model Works

The marketing of funds through Swedish distributors is structured in the same way as stock trading. The distributor, acting in its own name, is the contractual counterparty to the investor and is fully responsible for customer due diligence. There is no customer relationship between the fund management company and the distributor's clients. Instead, the distributor is the customer of the fund management company and is the entity recorded in the shareholder register. Fund management companies routinely verify and monitor that the distributor has adequate AML/CFT systems and controls. In Sweden, the Swedish NSA (Finansinspektionen) licenses investment firms and credit institutions to be registered in the shareholder register. Fund managers do not provide accounts to end-investors and have no legal right to access the distributor's customer register. The distributor maintains its own records of client holdings, consistent with its regulatory responsibilities.

Why the Proposal Threatens the Swedish Model

- Fund managers do not act "in their own name for the benefit of underlying investors." Distributors act in their own name and are the contractual counterparty to the client.
- Fund managers have no customer relationship with the distributor's clients and cannot perform meaningful CDD on them.
- Distributors already conduct all CDD and are licensed and supervised to do so.
- Forcing distributors to share their customer registers would be commercially impossible and undermine competition.
- Independent distribution would become unfeasible, dismantling a model repeatedly praised by the European Commission.

No AML Benefit – Misalignment with the Risk-Based Approach

- Distributors, not fund managers, are best placed to conduct CDD.
- Fund managers cannot conduct proper due diligence based on lists of names.
- The requirement adds burden without improving AML detection.
- No similar obligation exists for listed companies.

Conflicts With UCITS and AIFMD

- UCITS and AIFMD state that distributors acting in their own name are not acting on behalf of fund managers.
- Imposing contractual obligations via RTS contradicts Level-1 legislation.
- The proposal effectively rewrites law through a Level-2 measure.

Legal and GDPR Concerns

- Article 20(1)(h) AMLR does not appear intended to cover fund distribution.
- Recitals refer to legal professionals' client accounts, not fund distribution.
- Codifying non-binding EBA guidelines into RTS lacks legal basis.
- Mandatory data sharing lacks GDPR justification.

Consequences for the Swedish Market

- Sweden's open-architecture model has created one of Europe's highest retail participation rates.
- The model promotes competition, lowers fees, and broadens investor access.
- Article 21 would disrupt this structure without AML gains.

Conclusion

Article 21 should be deleted or substantially revised. If retained, it must be clearly limited to situations where the intermediary does not act in its own name and under its own responsibility (delegation).