

# KYC RELOADED

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Why are we still using passwords?  
(5 October 2017, Washington DC)

# David Shrier (MIT – Connection Science)

## « Internet of Trusted Data »



An Internet of Trusted Data includes:

- Robust digital Identity
- Distributed Internet Trust Authorities
- Distributed Safe Computation
- Universal Access



**MIT  
Connection  
Science**

Trusted data



=> Digital identity



# KYC RELOADED

**I. FROM KYC 1.0 TO KYC 6.0**

**II. FEATURES OF KYC 5.0**

**III. FEATURES OF KYC 6.0**

**IV. SOME LEGAL CHALLENGES**

**V. WHAT'S NEXT?**



## I. FROM KYC 1.0 TO KYC 6.0

1989

-

1992

Law of 19 February 1973 as modified  
in 1989 and 1992:

- Only offenses related to drugs (primary offenses)



- Violation of professional obligations



# I. FROM KYC 1.0 TO KYC 6.0

Old style KYC

1989  
-  
1992

## I. FROM KYC 1.0 TO KYC 6.0

### KYC 1.0

#### Characteristics:

- Paper based
- Limited information
- No case-law



(N.B.: « sound organization » obligation - in 2008 only)



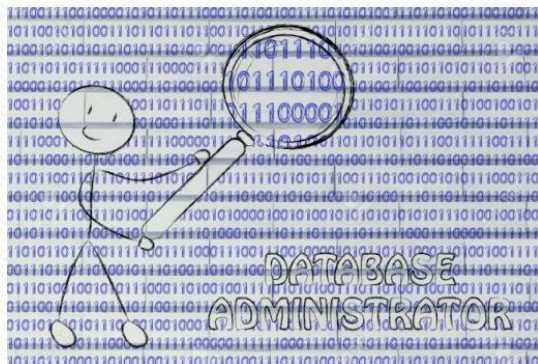
# I. FROM KYC 1.0 TO KYC 6.0

## KYC 2.0

= 2016!

Tech assisted KYC:

- Paper
- Database checking



# I. FROM KYC 1.0 TO KYC 6.0

## KYC 2.0

### Characteristics:

- Still largely paper based
- PEPs + Sanctions – checks = automated

### Innovative features:



### Automation elements:

- Welcome SMS
- Welcome email
- 1 cent wire

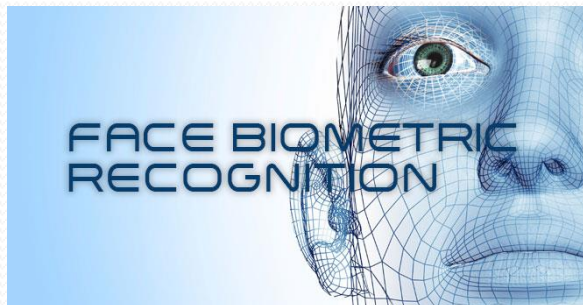
# I. FROM KYC 1.0 TO KYC 6.0

## KYC 3.0

2016<sup>+</sup>

### Tech-driven KYC

- Example: camera onboarding



## I. FROM KYC 1.0 TO KYC 6.0

### KYC 4.0



Camera onboarding carried out by 3rd parties

but the responsibility for AML/CTF compliance remains  
with the professional who relies on a third party.



## I. FROM KYC 1.0 TO KYC 6.0

### KYC 4.0

Characteristics:

KYC process = Camera onboarding (+ sanctions / PEP lists)

Whereas for KYC 3.0: Camera onboarding = one element of the process



# I. FROM KYC 1.0 TO KYC 6.0

Germany, August 2014



Ministry of Finance:

*This type of online identity verification method allows establishing the identity of a contracting party personally attending the customer acceptance process.*

≠ EDD but ODD

Liechtenstein, March 2015



FMA:

*Visuelle Wahrnehmung:*

*Die fehlende physische Präsenz muss in einem der persönlichen Anwesenheit vergleichbaren Weg mittels Videoübertragung ausgeglichen werden. Im Falle einer Videoübertragung kann die zu identifizierende Person visuell wahrgenommen und mit ihr entsprechend kommuniziert werden, sodass dies mit einer persönlichen Anwesenheit vergleichbar ist.*

Switzerland, March 2018



Circular 2016/7 "Video and online identification"

*Video identification has equal validity to in-person identification, Provided the following criteria are met:*

- Technical and organisational requirements*
- Identity verification*
- The video identification process has been stopped due to quality, risk or authenticity considerations*

Luxembourg, 12 February 2016:



Luxembourg, 12 February 2016

SCHILTZ & SCHILTZ  
2, rue du Fort Rheinsheim  
L-2419 Luxembourg

to the attention of Mr Jean-Louis  
SCHILTZ

O'Ref.:	P/R 15/237-ASSE/HR	Contact person :	Amélie Heintz
V/Réf.:		Direct dialing:	+352 26 250 - 2393
Dispatch:	mail and e-mail		

Re: **verification of identity through online video chat**

Dear Sir,

Further to some discussion we had at the beginning of the year 2015 regarding the above mentioned matter, please be informed that the CSSF took recently position as follows (and a FAQ with the official position of the CSSF on this subject will be published shortly).

Please note that the requirements below refer to the respective situations in which:

- the customer video identification process has not been delegated to an external provider. In this case, an external tool of identification has been acquired from a provider or developed by the professional himself; or
- the customer video identification process has been delegated to an external provider.

We would thus like to inform you that where the professional of the financial sector uses a process which will be fully complying with the following requirements, we would have no further objections on its use for the purpose of fulfilling his anti-money laundering and counter-terrorist financing obligations (AML/CFT) in relation to the customer identification/verification of identity requirements.

Scope

We understand that the video identification/verification of identity could apply to natural persons regardless of their actual situation as either (direct) customer, representative of a legal person customer, proxyholder, co-holder of a joint account, or beneficial owner (hereinafter as the "customer").

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**SCHILTZ & SCHILTZ**  
AVOCATS A LA COUR



# I. FROM KYC 1.0 TO KYC 6.0

2016 +

## Camera onboarding: basic requirements

- (1) Consent
- (2) Prior provision of identification data by customer
- (3) ID-Document(s):
  - must be readable
  - official with security features
- (4) Person recognizable
- (5) Real-time professional verification
- (6) TAN-confirmation



## I. FROM KYC 1.0 TO KYC 6.0



Camera onboarding - additional conditions:

- Storage, record keeping and data security (encryption)



- External provider:

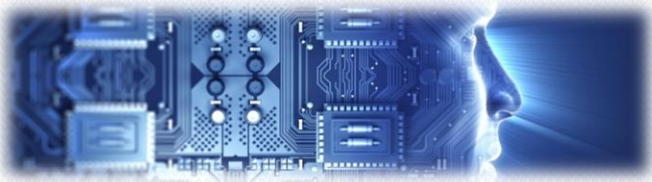
- due diligence required
- security (!)





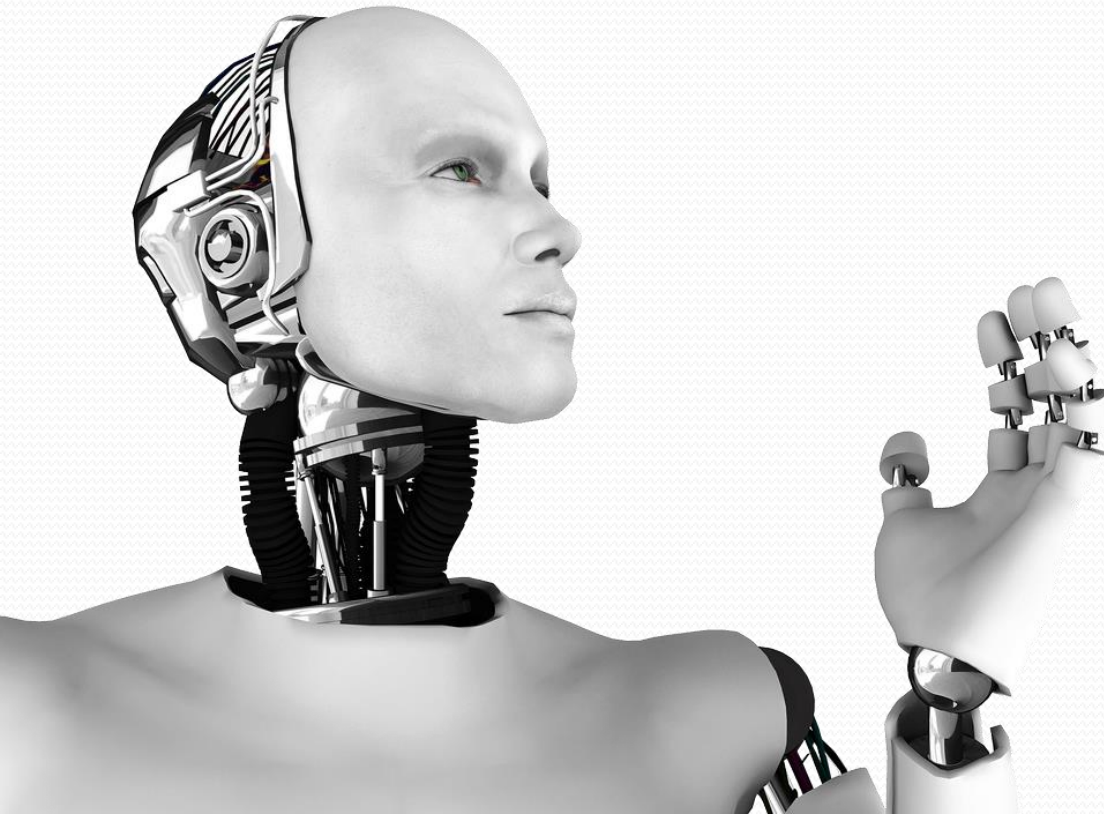
## I. FROM KYC 1.0 TO KYC 6.0

= digitalisation of  
(i) part of my identity  
(ii) for a very limited purpose



## I. FROM KYC 1.0 TO KYC 6.0

Next step: automated digital onboarding?

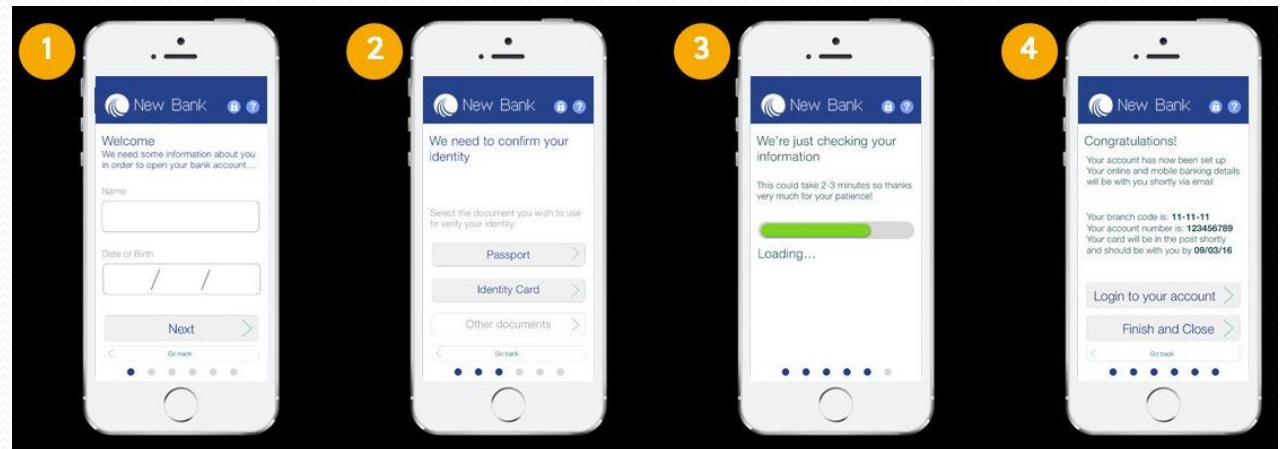


# I. FROM KYC 1.0 TO KYC 6.0

## KYC 6.0

Automated digital onboarding:

- optical & vocal character recognition + machine learning+ robotic process automation
- access account and start spending instantly
- available 24/7



## II. BASIS FOR KYC 5.0 and KYC 6.0

### **The Windhover Principles for Digital Identity, Trust and Data**

1. Self-Sovereignty of Digital Identity and Personal Data:  
*Individuals and groups should have control of their digital personal identities and personal data.*
2. Proportionate Enforcement and Risk-Based Regulation:  
*Personal privacy while promoting effective governance and accommodating legitimate auditing and enforcement needs.*
3. Ensuring Innovation in Trust and Privacy:  
*An effective, autonomous identity system reiteratively furthers trust, security, governance, accountability and privacy.*

etc

### III. FEATURES OF KYC 6.0

#### KYC 6.0

- ✓ GLOBAL
- ✓ PORTABLE
- ✓ DIGITALY  
AUTOMATED

ID



### III. FEATURES OF KYC 6.0



Financial Action Task Force

Key

⇒ Re-usable: Multi-time-one-stop-shop (MTOSS)

-> automatic digital onboarding

-> set time limits

-> FATF



## IV. A FEW LEGAL CHALLENGES

- A. Regulate KYC-actors?
- B. Information/documents
- C. Data protection – data processing
- D. Data protection – AML Law
- E. IT outsourcing based on cloud computing
- F. Automatic digital onboarding
- G. Informational self-determination

## A. Regulate KYC-actors?

Should KYC utility providers be regulated?





## B. Information/documents

Info / Doc.

**Yesterday:** information and documents?  
information or documents?



Article 3 (2) a) of the Law of 12 November 2004 : *identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source.*

Article 18 of the CSSF Regulation n°12-02 of 14 December 2012: *verification of the identity => at least with one valid official identification document.*

## B. Information/documents

**Tomorrow:** Information only  
=> to be clarified



## C. Data protection – data processing

### Data quality principles under GDPR

Data  
protection

Reminder

- Personal data shall be :
  - processed lawfully, fairly and in a transparent manner
  - adequate, relevant and not excessive (purpose limitation)
- GDPR has come into effect on 25 May 2018



## D. Data protection – AML Law

Law of 13 February 2018 Art. 3-6bis:

- Personal data shall be processed for AML/CTF purposes **only**.
- Professionals shall communicate to new customers the information required before entering into a business relationship.
- The processing of personal data under the AML/CTF law is considered as a matter of public interest.



## D. Data protection – AML Law

Art. 3-6: Professionals are required to keep personal data for a period of (at least) five years after the business relationship with their customer has ended.



## E. IT outsourcing based on cloud computing



### CSSF Circular on IT outsourcing based on cloud computing infrastructure:

- Introduces specific description of the characteristics, service models and deployments modes.
- Supports the implementation of cloud based solutions.
- Introduces special requirements in order to ensure that consumers of cloud-based services (i.e. banks) appropriately manage the risks related to delegating these activities to a service provider.
- Introduces the role of a Cloud Officer at the level of resources operator.
- Financial service providers may outsource activities, IT-related activities without infringing the regulatory principles of central administration and sound governance.

## F. Automatic digital onboarding

Startups and others offer fully automated digital onboarding solutions



- but current interpretation of KYC regulations seems to prohibit banks from onboarding a new client until an employee has validated the process.

## F. Automatic digital onboarding

What if a negative decision is taken? i.e. the customer is rejected



- customers must be informed that they may express their opinion, contest the decision and ask for the decision to be reviewed by a physical person.



## G. Informational self-determination

Proposal for article 31 of the Constitution (2015):

*En vertu du principe de l'autodétermination informationnelle, toute personne a droit à la protection des données à caractère personnel la concernant. Ces données ne peuvent être traitées qu'à des fins et dans les conditions déterminées par la loi.*

Informational  
Self-  
determination

## G. Informational self-determination

(1) Informational self-determination

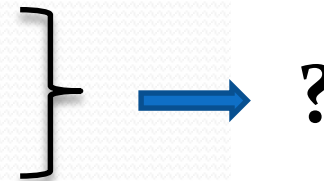
vs

(2) Provide information

Informational  
self-  
determination

(1) = Constitutional right

(2) = International obligation



# G. Informational self-determination

JEAN-LOUIS SCHILTZ

## Du choc des données personnelles : une contribution à un débat qui vient à peine de commencer

Jean-Louis Schiltz<sup>1</sup>

1.- Si on a coutume de dire que du choc des idées jaillit la lumière, la réponse à la question de savoir quelle sera la résultante du choc des données personnelles à l'ère digitale est beaucoup moins évidente. Sera-ce aussi la lumière ? Le big data ? Le néant ?

La question est complexe et il serait à tout le moins présomptueux de prétendre vouloir y répondre de façon exhaustive et complète dès aujourd'hui.

2.- A l'heure où ces lignes sont écrites<sup>2</sup> pas moins de quatorze (lisez bien : quatorze) commissaires ont été chargés de la mise en place du marché unique numérique. Parmi les domaines prioritaires de cette stratégie figure le *big data*, soit l'économie des données.

Partant du constat que « d'énormes quantités de données sont produites chaque seconde » la Commission « veut (...) que l'industrie et la société tirent le meilleur parti possible de (cette) économie des données » ; pour la Commission, les « mégadonnées ont un immense potentiel, mais leur utilisation exige de régler des problèmes importants, notamment en ce qui concerne la propriété (et) la protection des données »<sup>3</sup>.

Au vu du poids économique toujours croissant du big data et de son développement fraccasant, la Commission entend se pencher avec tous les acteurs sur la question de la propriété des données et celle de l'accès aux données dites non-personnelles, en particulier dans un contexte M-to-M<sup>4</sup>.

3.- En même temps, les autorités européennes en charge de la protection des données ont récemment fait part de leurs préoccupations quant au principe du « traitement ultérieur » des données par les entreprises dans le contexte du *big data*<sup>5</sup>.

4.- Sur ces initiatives au niveau européen, qui n'en sont en réalité qu'aux premiers balbutiements, se greffent des initiatives dans les différents Etats-membres.

Prenant l'exemple du Luxembourg, celui-ci a, comme d'autres pays européens, la volonté de devenir un data hub européen et lorsque l'on parle aujourd'hui de diversification économique le *big data* et le *data analytics* reviennent à tout bout de champ un peu partout dans le monde où le positionnement digital est de mise. D'aucuns parlent même aujourd'hui ici et là de coffre-fort (européen) des données de demain.

5.- En même temps et pour en rester avec l'exemple du Luxembourg, le nouveau projet de Constitution entend introduire le principe de l'autodétermination informationnelle dans la

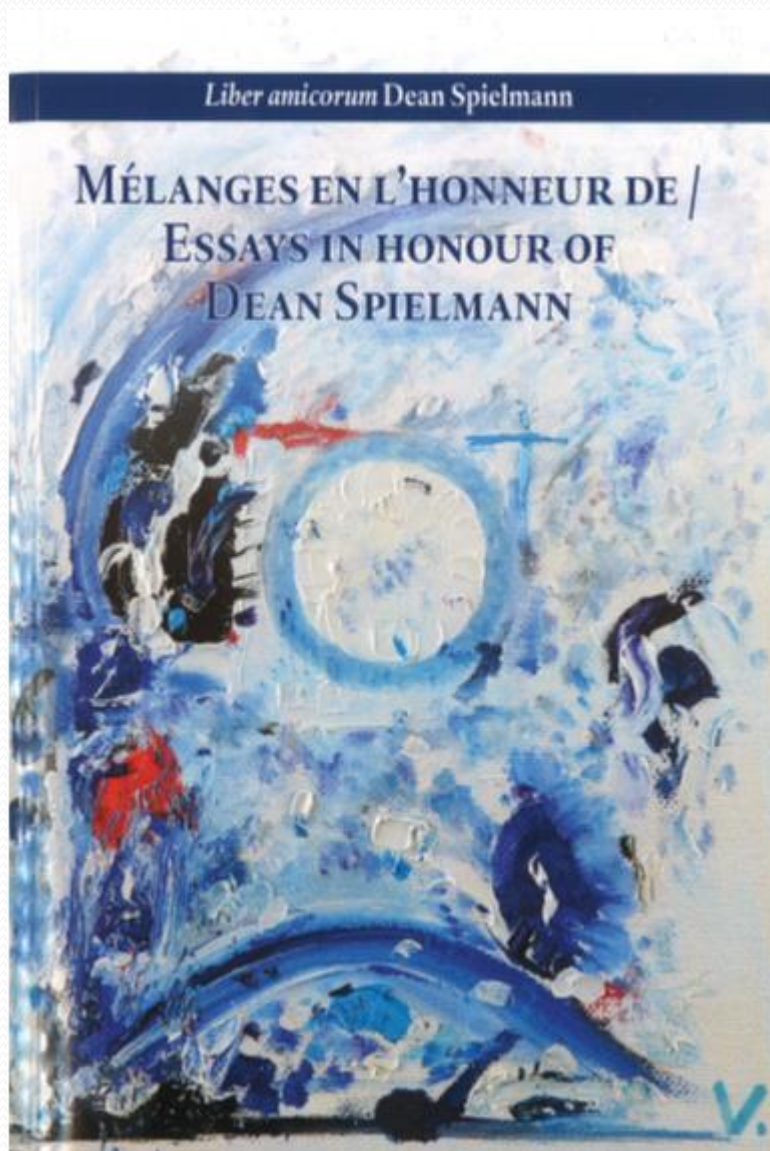
<sup>1</sup> Avocat à la Cour, professeur invité à l'Université de Luxembourg, ancien ministre.

<sup>2</sup> La présente contribution a été rédigée début mai 2015.

<sup>3</sup> Communiqué de presse de la Commission européenne du 25 mars 2015 : *Stratégie pour le marché unique numérique: la Commission européenne définit les grands domaines d'action*.

<sup>4</sup> *Machine-to-machine*.

<sup>5</sup> Communiqué de presse du Groupe de travail « Article 29 » du 17 mars 2015.

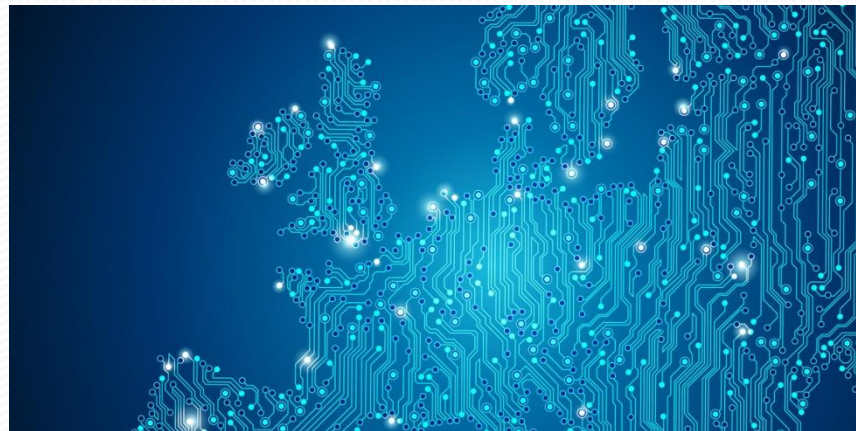


## V. WHAT'S NEXT?

Digital Single Market



**KYC 5.0 must be part of it (!)**



## V. WHAT'S NEXT?

### European Tech Alliance



*“There are so many European tech company success stories (...) (We need) to challenge mindsets about Europe, technology, and the Internet”*

Niklas Zennström, co-founder of Skype (in November 2015)



## V. WHAT'S NEXT?

# European Commission

- **Consumer Financial Services Action Plan (23/03/2017):**

### **Action 11**

**The Commission will facilitate the cross-border use of electronic identification and know-your-customer portability based on eIDAS to enable banks to identify customers digitally.**

- **Expert group on electronic identification and remote KYC (14/12/2017):** set up by the Commission to facilitate the use of electronic identification and authentication
- **European Fintech action plan (08/03/2018):** identifies the absence of clear and harmonised processes to identify consumers and businesses online, in full compliance with AML and data protection rules, as an obstacle to innovation.

## V. WHAT'S NEXT?

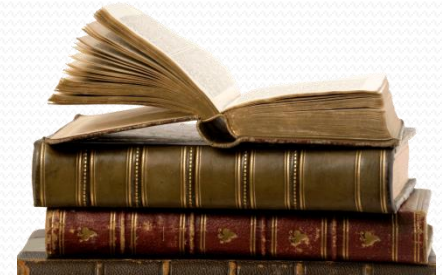
The W3C works on eliminating text-based password by replacing them with Web Authentication (WebAuthn) which enables browsers and sites to use external authenticators



## V. WHAT'S NEXT?

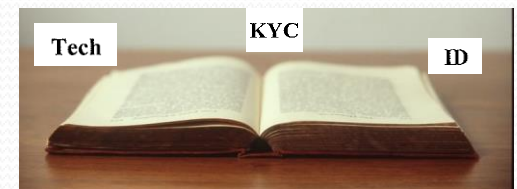


~~New laws~~



~~News regulations~~

➡ apply existing ones





“We have to avoid that the tax risk is replaced by a new risk, and that is the (risk of) non-compliance with AML(/CTF) regulations”.



Claude Marx, director general of the CSSF  
(Paperjam, June edition)

➡ and that is why we need KYC 5.0 and KYC 6.0