

Progress on the EU AML/CFT package

It is well known that global anti-money laundering and terrorist financing (AML/CFT) regulations are constantly evolving, and the European level is no exception and is at the top of the agenda. On Wednesday 24 April, the European Parliament gave its consent to the AML/CFT package and, following formal approval by the Council, it will be published in the EU's Official Journal. It includes:

- A Regulation on anti-money laundering and combating terrorist financing (AML/CFT) obligations applicable to the private sector.
- A Directive on mechanisms for combating ML/TF, which will replace the current 5th Directive.
- A Regulation establishing an EU Anti-Money Laundering and Combating Terrorist Financing Authority (AMLA) in the form of a decentralised EU regulatory agency.
- An amendment to the Funds Transfer Regulation.

The following is a brief description of this package of measures, detailing what it will mean for the EU Member States and, above all, for those subject to the AML/CFT rules.

1. Regulation on combating ML/TF

The current EU AML/CFT framework is regulated through Directives, which leads to divergences in the transpositions to national rules in the Member States. This new Regulation seeks to harmonise and clarify these divergences, transferring all the rules applicable to the private sector of the AML/CFT Directives to a Regulation whose scope is general and directly effective, so that those subject to the preventive rule are subject to this directly applicable rule, thus avoiding the variations produced by the national transposition of the Directives.

Other changes are also foreseen to take place under the new regulation, including the following:

- i. The list of parties obliged to comply with AML/CFT regulations has been extended, including the following:
 - all types of crypto-asset service providers,
 - Crowdfunding platforms,
 - mortgage credit intermediaries and consumer credit providers other than financial institutions,
 - operators working on behalf of third-country nationals to obtain a residence permit to live in the EU,
 - persons trading in certain high-value goods such as jewellery, watches, precious stones or metals, luxury cars (over 250,000 euros), aircraft and boats (over 7,500,000 euros).
 - Professional football clubs and agents in transactions with investors, sponsors or agents.
- ii. It is established that the two components of beneficial ownership - ownership and control - must be analysed in parallel.
- iii. The threshold for actual ownership is set at 25% (up to now >25%) and lower thresholds are allowed in cases of high risk.

- iv. A maximum limit of 10,000 euros is imposed on cash payments.
- v. It regulates the obligation for all foreign entities that have acquired real estate in the EU to register their beneficial ownership (in the central registry of the state where they own the real estate) with retroactive effect as of 1 January 2014.
- vi. It regulates the obligation for financial and credit institutions to apply enhanced measures when business relations with high net worth individuals ($\geq 50,000,000$ euros) involve the management of a large amount of assets ($\geq 5,000,000$ euros).
- vii. It requires enhanced due diligence measures to be applied in transactions involving high-risk third countries.

2. 6th AML/CFT Directive

The Directive will deal with the organisation of institutional systems to combat money laundering and terrorist financing at national level in the Member States. It is intended to be a single rule book, containing provisions which are not appropriate for a Regulation, but require transposition, such as rules on national Financial Intelligence Units, and on compliance supervisors.

Among the novelties that the new directive will bring are the following:

- i. The Central Registries of Beneficial Ownership are given powers to carry out inspections of registered entities and to impose sanctions in case of non-compliance or false information.
- ii. The competent authorities are authorised to access real estate registers to carry out investigations and obtain information on price, type of property, history and encumbrances.
- iii. States' Financial Intelligence Units will be granted immediate and direct access to financial, administrative and law enforcement information, tax information, information on funds and other assets frozen under targeted financial sanctions, information on transfers of funds and crypto-assets, national registers of motor vehicles, aircraft and vessels, customs data and national arms registers, among others.
- iv. It establishes the obligation to interconnect centralised automated mechanisms allowing the identification of natural or legal persons holding or controlling bank, payment and safe deposit accounts. The Bank Account Record Interconnection System (BARIS) will be developed and operated by the European Commission.
- v. Increased cross-border cooperation will be established between the Financial Intelligence Units of the States. To this end, it is also planned to improve the FIU.net system used for the dissemination of cross-border reports.
- vi. Each Financial Intelligence Unit shall be obliged to have a Fundamental Rights Officer to ensure that fundamental rights are safeguarded in the course of its activities.
- vii. A new form of supervision is established: each Member State must ensure that all obliged entities established in its territory are subject to adequate and effective supervision by one or more supervisors. These non-financial sector supervisors will in turn form colleges of supervisors which will be monitored by the EU Anti-Money Laundering and Combating Terrorist Financing Authority.

3. Regulation establishing the AMLA

The Anti-Money Laundering and Combating the Financing of Terrorism Authority is the centrepiece of the anti-money laundering and combating the financing of terrorism reform package, and its main objectives are to coordinate the Financial Intelligence Units of the EU Member States, and to be a supervisor with competence mainly in the financial sector.

In the financial sector, its level of supervision will be direct supervision of obliged entities that are cross-border, represent a high level of risk and are present in at least six Member States, or at the request of the Commission or of a Member State where the circumstances justifying such supervision are established. In the non-financial sector, it will support national supervisors and seek to contribute to the harmonisation of supervisory practices in both sectors.

It will be based in Frankfurt and is expected to have more than 400 employees, starting operations in mid-2025.

4. Regulation on the Transfer of Funds

The revision of the Funds Transfer Regulation seeks to extend its scope of application to the transfer of cryptoassets and to align it with the rules set out in the MiCA regulation (which regulates the cryptoasset market). The new amendments introduce the so-called "*travel rule*", i.e. the obligation for all cryptoasset service providers involved in cryptoasset transfers to collect and make accessible data on the originators and beneficiaries of transfers of virtual assets or cryptoassets.

This will provide the EU with a robust and proportionate framework that meets the highest international standards for crypto-asset exchanges, in particular recommendations 15 and 16 of the Financial Action Task Force (FATF).

Conclusion

As can be seen, the European Parliament and Council have made a major commitment to strengthening anti-money laundering and counter-terrorist financing measures at the European level, aimed at protecting EU citizens and the EU financial system.

The package of measures covers many changes in different areas, which once formally approved by the Council will be published in the Official Journal of the EU, but their entry into force will be gradual, for example:

- It will not be until 2029 that professional football clubs and agents will have to start complying with the obligations of regulated entities.
- While the AMLA will become operational in mid-2025, its direct supervision of high-risk financial institutions will start in 2028.
- The Bank Account Record Interconnection System (BARIS) will be established by mid-2029.

We will have to wait for the final texts to know the entry into force of the Regulations and the deadline for transposition of the Directive.

