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ANTI-MONEY LAUNDERING IN THE EUROPEAN UNION: NEW MAJOR REGULATORY SHIFTS AND THEIR IMPACT

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Abstract

The paper analyses the new set of rules published in the European Union Official Journal on 19 June 2024 and the way it will impact the existing anti-money laundering mechanisms applicable to the EU citizens and institutions. The AML Regulation, effective from 10 July 2027, encompasses new obliged entities subject to AML rules like professional football clubs and agents, crypto assets' service providers and luxury goods traders, enhanced due diligence measures regarding cross-border correspondent relationships or in relation to certain high net-worth individuals as well as a limit of 10,000 euros for cash payments subject to some exemptions. This set of rules also comprises a new regulation establishing the Anti-Money Laundering Authority, a centralised body, based in Frankfurt, tasked with overseeing and coordinating AML activities across Member States. It will directly supervise high-risk entities such as banks and asset managers. The new AML Directive introduces major modifications to the organisation of the existing AML systems at the national level namely in the areas of beneficial ownership registers and the responsibilities and collaboration between FIUs and competent authorities. By enhancing regulatory consistency and cooperation, the new legislation aims to create a more resilient and secure financial environment across the European Union.

Key words: *Anti-Money laundering (AML), AML authority (AMLA), AML regulation, high-risk entities supervision, beneficial ownership registers.*

Historical Overview of the existing EU AML/CFT Framework

The first anti money laundering directive (AMLD1) was issued in 1991 by the European Commission (EC) to enhance its political authority in this field [1].
The European Parliament (EP) ratified previously many resolutions promoting for a global initiative to address drug trafficking, encompassing measures for the prevention of money laundering [2]. This directive included a multilateral strategy in response to the escalating political concerns over drug trafficking in Europe, advocating for international cooperation and action in this domain. By its approval, the EC aligned with the Financial Action Task Force (FATF), created by the G7 in 1989,

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to address anti-money laundering (AML) with seriousness and underscored the significance of international coordination and collaboration in the fight against money laundering [3]. The FATF's original 40 recommendations significantly influenced the initial and subsequent AMLDs [4], emphasising banks as the primary private sector "obliged entities" [5]. The directive mandated Member States (MS) to enact legislation necessitating standardised Know Your Customer (KYC) and Customer Due Diligence (CDD) protocols during onboarding and at frequent times afterward. AMLD1 was an estimable initial effort in recognising and combating AML, although its shortcomings became apparent as expertise in money laundering expanded. Alternative forms of "predicate" criminality also attained political significance [6]. In December 2001, the European Community approved AMLD2 [7], a directive aimed at addressing offences related to money laundering. Nonetheless, its substance had been established prior to the September 11 terrorist events. This document reflects the FATF 40 Recommendations, which expand the scope of accountability and underscore the necessity of reporting to a designated national Financial Intelligence Unit. The directive additionally assigned responsibilities to non-bank financial institutions, encompassing designated non-financial companies and professions (DNFBPs) and Money Service Bureaus (MSBs). Attorneys were covered by the directive, and their right to professional confidentiality was forfeited if they participated or disclosed methods in money laundering [8]. The EC's third directive on anti-money laundering and fighting the financing of terrorism (AMLD3) [9], was enacted in 2005 to address issues in relation to terrorism financing, in response to the "War on Terror." In 2003, the FATF updated its recommendations, establishing nine Special Recommendations on countering the financing of terrorism (CFT) [10], which served as the foundation for the CFT content in AMLD3. This directive expanded prior AML obligations to additional sectors, including casinos and accountants, and implemented a risk-based approach (RBA) to AML/CFT procedures. This facilitated greater variability in the implementation of CDD according to product, customer risk profile, and additional factors. AMLD3 instituted penalties for AML/CFT infractions, recognising the necessity to incentivise obligated institutions. Nevertheless, the directive lacked specificity about the calculation of fines, delegating that responsibility to national legislation.

Directive (EU) 2015/849 (AMLD4), enacted in 2015, included additional standards for EU-level and national risk assessments, established regulations concerning beneficial ownership, and delineated home and host duties for enterprises operating in foreign Member States. The capabilities of new Financial Intelligence Units (FIUs) were enhanced, due diligence was streamlined, and gambling services were expanded. The concept of politically exposed persons (PEP) was revised, and suspicious activity reports were implemented [11]. The most recent directive in force was amended in 2018. Directive (EU) 2018/843 (AMLD5) offers various measures to improve the operations of Financial Intelligence Units (FIUs) and bolster collaboration between anti-money laundering supervisors and the European Central Bank (ECB) [12]. It advocates for an expansion of criteria for evaluating high-risk third countries, the elimination of anonymity for prepaid cards, the interconnection of beneficial ownership records at the EU level, enhanced transparency regarding the ownership of firms and trusts, and the implementation of new regulations for cryptocurrency [13].

The New EU AML Legislative Package

In its 2021 report, the EC and the Council made a detailed assessment of the efficiency of the EU's framework for AML/CFT [14].
The EC's investigation highlighted several significant challenges:

- Over the last three decades, EU AML/CFT policy has primarily been developed through AMLDs. This approach has resulted in a slow process of integrating these directives into national laws, leading to differing interpretations and practices among MS;
- The current supervisory framework for AML/CFT has posed difficulties in handling risks that extend across borders;
- Moreover, the varying powers and resources of national supervisory bodies have caused uneven oversight throughout the EU. These variations could potentially expose the single market to risks, as some MS may have weaker supervision.

On June 19, 2024, three key legislative components were published in the Official Journal of the EU: Regulation (EU) 2024/1620, which establishes the Anti-Money Laundering Authority (AMLA Regulation) [15]; Regulation (EU) 2024/1624, focused on preventing the use of the financial system for money laundering or terrorist financing (AMLR) [16]; and Directive (EU) 2024/1640, which lays out measures for MS to prevent such financial abuse (AMLD6) [17].
These new laws introduce stricter regulations, strengthening the EU's mechanisms to fight money laundering and the financing of terrorism.

AMLD6

Introduction

AMLD6 introduces new framework on detecting and reporting discrepancies in beneficial ownership information to the administrator of the central beneficial ownership registers and allows it to conduct checks, including on-site inspections at the business premises or registered office of the legal entity, to ascertain the legitimate beneficial owners and to confirm that the information submitted to the central register is accurate, adequate and up-to-date [18].

Risk Assessments

Under AMLD4 and AMLD5, the EC was mandated to perform regular evaluations of AML/CFT risks impacting the internal market and associated with cross-border operations [19]. AMLD6 now broadens its mandate to encompass risks arising from the non-implementation and circumvention of targeted financial penalties. The EC's

periodicity for conducting periodic assessments and publishing relevant findings has been extended to four years.
AMLD6 establishes a minimal harmonisation framework, allowing MS to periodically reassess their national risk evaluations or perform targeted sector-specific risk assessments as needed.
The outcomes of these evaluations, along with any revisions, should hereafter be accessible to the AMLA. The conclusions of the assessment will continue to be disseminated in brief form.
AMLD6 broadens the parameters of a MS's national risk assessment to include AML/CFT risks associated with every category of legal entity established within its jurisdiction and every type of legal arrangement authorised by its national legislation or administered within its territory.
The EC will also publish a list of designated FIUs under the new directive.

Registers and mechanisms of beneficial ownership

The regulations regarding access to central registers and potential access limits in justified circumstances have been significantly revised, particularly in light of the ruling by the Court of Justice of the EU on 22 November 2022 [20]. AMLD6 establishes both general and specialised regulations for access to beneficial ownership registers [21].
The general regulations pertain namely to access to the registers by authorised authorities, self-regulatory organisations and obligated organisations. Additional authorities have been explicitly authorised access to the registry, including tax agencies, AMLA, the European Public Prosecutor’s Office, the European Anti-Fraud Office, Europol, and Eurojust.
Conversely, there are particular regulations that dictate access to the registers by individuals with a valid interest. AMLD6 stipulates that any individual or entity demonstrating a legitimate interest in detecting and combating money laundering and the financing of terrorism may be provided access to any central beneficial ownership record, including those pertaining to trusts and legal structures. AMLD6 delineates the information regarding beneficial owners that individuals may access and the procedures for granting such access. It also creates a roster of individuals considered to possess a legitimate interest in preventing and combating money laundering and terrorist financing, including journalists, civil society organisations, and individuals likely to engage in transactions with legal entities or arrangements who seek to avert any association between such transactions and money laundering or terrorist financing, among others [22].
Competent authorities shall have immediate and direct access to real estate registers, including information that facilitates the identification of land or real estate properties and their owners, as well as the identification and analysis of real estate transactions [23].

Cooperation among authorities

AMLD6 expands supervisor-FIU-policymaker-tax authority collaboration. Authorities' professional secrecy requirements are also clarified to allow supervisors, public authorities and the AMLA to share information.

AMLD6 also requires FIUs and other supervisory authorities to cooperate with the AMLA and report on their cooperation annually. The AMLA, on the other hand, is asked to work with the European Central Bank, European Supervisory Authorities, Europol, Eurojust, and the European Public Prosecutor's Office to produce cooperation guidelines under AMLD6.

AMLD6 enhances the prior AML/CFT framework by mandating MS to establish operationally independent FIUs at the national level, ensuring they have consistent access to the necessary financial, administrative, and law enforcement information to perform their duties effectively, even in the absence of a filed suspicious activities or transactions report [24]. AMLD6 also establishes the Fundamental Rights Officer. This new entity may comprise existing FIU personnel, tasked with advocating for and overseeing the FIU's adherence to fundamental rights [25].

AMLD6 delineates the conditions under which FIUs may suspend or refuse consent for transactions suspected of being associated with money laundering or terrorist financing. The blocking instruction of FIUs shall be enforced on the obligated entity within three working days of receiving a report of a suspicious transaction or activity and shall not surpass 10 working days from the date of imposition of such measure, permitting MS to establish a longer duration during which, in accordance with national law, to allow FIUs to fulfil the functions of tracing, seizing, freezing, or confiscating criminal assets.

In cases where the suspicion of money laundering or financing of terrorism pertains directly to bank, payment, or crypto-asset accounts or a commercial relationship, the duration of the measures relevant for the FIUs' analytical work shall not surpass five working days, allowing MS the discretion to establish a longer timeframe. In this connection, AMLD6 also authorises FIUs to implement surveillance measures on obliged entities. FIUs can now mandate obligated companies to oversee, for a certain duration, transactions or activities conducted via banking, payment, or cryptocurrency accounts [26]. Ultimately, AMLD6 improves collaboration between FIUs and other relevant authorities, including the AMLA [27].

Administrative measures and sanctions

AMLD6 enhances the prior AML/CFT framework for sanctions and explicitly differentiates between financial penalties and administrative actions that MS might impose on obligated entities, along with the factors to consider in determining the nature and extent of the financial penalty or administrative action [28]. The upper limit of the monetary penalty that national authorities may impose on credit or financial institutions has been increased, now amounting to EUR 10,000,000 or 10% of the entire annual turnover, whichever is greater. Furthermore, national regulators will possess the authority to impose periodic penalty payments to ensure compliance with administrative obligations [30].

AMLR

Introduction

Following years of talks, the EU Parliament has now ratified the long-anticipated EU AMLR, primarily concentrating on customer due diligence components. The primary aim is to rectify the fragmented application of AML/CFT directives throughout the EU by preventing future inconsistencies in the implementation of these laws by each MS into their national legislation. Thus far, these disparities have arisen since the existing EU AML/CFT system predominantly relies on EU directives that necessitate implementation at the MS level. This will now be accomplished through a directly applicable EU-wide law, which ensures the requisite granularity of CDD standards to be implemented by each MS. This, in turn, will facilitate a cohesive and more harmonised AML/CFT framework within the EU, promoting a true level playing field in this domain. While the primary aim of the Regulation is to attain a maximum degree of harmonisation concerning risks, MS will largely retain the autonomy to implement, at least in certain areas, more rigorous regulations than those stipulated by the AMLR [31].

New Obliged Entities

Although the majority of obligated entities addressed by the AMLR were already governed by AMLD4 and ALMD5, the Regulation broadens the range of obligated entities subjected to AML/CFT mandates, particularly to:

- individuals engaged in the trade of precious metals and stones, or other high-value commodities such as jewellery, clocks, and watches, as their primary professional business, with transactions exceeding EUR 10,000;
- all crowdsourcing platforms and intermediaries [32];
- specific football clubs and football representatives [33];
- credit intermediates that lack authorisation as credit institutions or investment enterprises;
- Investment migration operators are defined as entities providing services to third-country citizens seeking residence rights in a MS in return for any form of investment;
- non-financial diversified holding corporations [34];
- crypto-asset service providers regulated under the MiCA Regulation [35].

Cash payments ban

The AMLR establishes a maximum cash payment limit of EUR 10,000 across the EU, irrespective of whether the transaction occurs as a single operation or multiple interconnected activities. The AMLR stipulates that MS may independently establish a lower maximum level.

CDD

The AMLR primarily utilises the existing CDD requirements established by AMLD4 and ALMD5 [36]. Although a comprehensive revision of such responsibilities may not be anticipated, the details are crucial in this context. The scope of client due diligence methods will be established based on a personalised risk assessment, particularly concerning the unique risk attributes of each customer and their corresponding business relationship.In this context, despite the EU-wide threshold for CDD on occasional transactions being reduced to EUR 10,000, certain limited CDD requirements persist for transactions below this threshold, particularly for occasional cash transactions of at least EUR 3,000. Crypto-asset service providers are now mandated to implement certain restricted CDD processes, even for infrequent transactions under EUR 1,000.To adequately manage the risks associated with the non-implementation or evasion of targeted financial sanctions (TFS), obligated entities must determine if the customer or the beneficial owner(s) of a transaction are subject to TFS. The recordkeeping obligation extends to instances when an obligated organisation has declined to establish a business relationship.
The criteria for identifying and registering beneficial owners are defined and standardised, with the threshold for classification as a beneficial owner set at 25% or greater of shares, voting rights, or other ownership interests. Subsequent modifications and elucidations have been implemented on the definition of "beneficial owner," offering enhanced specificity for both ownership and control [37].
The AMLR now mandates that foreign legal entities and arrangements register with EU-based beneficial owner registers when engaging in specific business relationships with EU-based obliged entities or during EU-based acquisition ventures, while provisions concerning the registers of beneficial owners have been further detailed regarding legal arrangements and trust schemes [38].

Continuous oversight and regular evaluations

The AMLR stipulates that, during continuing monitoring, obligated companies are required to:

- examine the fund's allocation, as required;
- encompass all items and services if the business relationship includes various offerings;

- consider information pertaining to business relationships that a client maintains with organisations within the same group.

Regarding the periodic updates of customer information, obligated entities must establish the frequency based on the risk associated with the business relationship, ensuring that the update frequency does not surpass one year for high-risk customers and five years for other customers, thereby instituting a shorter interval than the existing timeframe for other customers. The Regulation establishes a more detailed framework for identifying "high-risk third countries" and the corresponding CDD measures to be implemented. The AMLR grants the EC new authority to enact delegated actions in this domain. The AMLR differentiates among various categories of third nations while also allowing for the adoption of specialised countermeasures. Obliged entities must implement either all or a subset of enhanced due diligence steps, contingent upon the pertinent third country category for the given situation [39].

The Regulation explicitly forbids correspondent relationships with shell institutions and mandates that crypto-asset service providers implement policies and procedures to prevent their accounts from being utilised by such institutions for the provision of unregulated crypto-asset services, thereby enabling the detection of any attempts to misuse their accounts.

The AMLR expands the concept of "politically exposed persons" by providing more specifics of individuals who are likely to fulfil the criteria of prominent public function, applicable at the MS, EU, or third-country level. This criterion currently includes, among other entities, the leaders of regional and local administrations, as well as associations of municipalities and metropolitan regions.

The AMLR now specifies the necessary internal policies, procedures, and controls that obliged entities must implement to identify and assess potential risks [40]. The AMLR stipulates that obliged entities may continue to outsource AML/CFT-related tasks to service providers provided that they notify their supervisory authority of the outsourcing prior to the provision of the services. In this context, obliged entities are also obligated to guarantee that the outsourcing does not materially impede the capacities of the respective supervisory authorities to monitor and trace the compliance of the obliged entities with AML/CFT requirements. Concerning the cooperation duties with competent authorities, obligated entities must adhere to numerous new reporting regulations instituted across various aspects of their operations. They must furnish the FIU with all requisite information within five business days upon request, which may be reduced to under 24 hours in justified and urgent situations. If the obligated entities are located in multiple MS, the information must be provided to each pertinent FIU [41].

AMLA

Introduction

In response to recognised deficiencies in the current AML/CFT framework of the EU, its authorities created the AMLA to tackle cross-border financial crime threats more cohesively at the EU-level. In this improved AML/CFT framework, the AMLA will apply direct and indirect supervision of the financial sector, boost oversight of the non-financial sector and provide support and coordination for FIUs [42].

Selection of Obliged Entities

The AMLA will directly supervise up to 40 financial sector selected obliged entities or groups thereof (SOEs) that are active in at least six MS, either through their own establishment or under the freedom to provide services and are classified in the highest AML/CFT risk category. These entities may be subject to such direct supervision: credit institutions, bureaux de change, collective investment undertakings, credit providers other than credit institutions, e-money institutions, investment firms, payment institutions, life insurance undertakings, life insurance intermediaries, crypto-asset service providers and other financial institutions [43]. The AMLA will start the initial selection process on July 1, 2027, followed by additional selection procedures every three years.

Supervision

The SOEs will be overseen by joint supervisory teams (JSTs) that include members from both the AMLA and the relevant national supervisory bodies. These teams will operate from the AMLA's headquarters and will be managed by a specific staff member from the AMLA, referred to as the JST Coordinator.
The AMLA shall be endowed with extensive investigative and supervisory authority similar to those of financial regulators in AML/CFT issues, unless clearly specified otherwise in the AMLA Regulation. This encompasses the authority to conduct any necessary investigations into any SOEs, including relevant on-site or off-site inspections [44].
The nature and severity of the breaches will determine the amount of pecuniary sanctions. The fundamental amounts range from a minimum of EUR 100,000 to a maximum of EUR 2,000,000 or 1% of the annual turnover, whichever is greater in accordance with the relevant coefficients provided in Annex I of the AMLA Regulation.
The AMLA will also assist in the harmonisation of supervisory practices and the promotion of high supervisory standards in the field of AML/CFT for non-selected obliged entities. It will supervise and coordinate national administrators, conducting regular evaluations to guarantee that they possess the requisite resources, authority, and strategies to execute their responsibilities.
In addition, the AMLA will be responsible for the facilitation of the operation of the AML/CFT supervisory colleges in the financial sector. Furthermore, the AMLA has the authority to resolve disputes between financial supervisors, including those within the AML/CFT supervisory colleges, with binding effect and may conduct mediation upon the request of a financial supervisor [44].

Conclusion

The updated EU AML package marks a major change in the regulatory framework, establishing a centralised authority and aligning rules across MS. While the goal is to create a stronger and more uniform system for combating money laundering and terrorism financing, there are challenges related to compliance and practical implementation. The effectiveness of this approach will depend on close collaboration among the AMLA, national regulators, and obligated entities, as well as their capacity to respond to evolving financial crime risks.
As the new regulations take hold, it will be important to study how well they prevent financial crimes and what effect they have on the larger financial system. Finding the right balance between stricter oversight and keeping financial services efficient will play a key role in determining whether these regulatory changes succeed in the long run.

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