

The European Commission's Anti-Money Laundering and Countering Terrorist Financing Legislative Package: A Move Towards a More Effective Enforcement of EU AML/CTF Rules?



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On 20 July 2021, the European Commission published an anti-money laundering and countering terrorist financing (AML/CTF) legislative package. The package consists of the following four legislative proposals:

- A proposal for a [Regulation which creates a new EU AML Authority \(AMLA\)](#);
- The [6th Directive on AML/CFT](#) (AMLD 6);
- A [new Regulation on AML/CFT](#), which covers the areas of customer due diligence and beneficial ownership and constitutes a complement to the AMLD 6 proposal in the review of [AMLD 5](#);
- A proposal for a [revision of the 2015 Regulation on Transfers of Funds](#).

With regard to the reasoning for such a package, the European Commission explains that the package aims to solve the issues deriving from a fragmented and differentiated implementation of the previous AML Directives, which led to regulatory divergences. For this very reason, all rules in the AMLD 5 that apply to the private sector have been transferred to a proposal for an AML/CTF Regulation, a European regulation being an instrument which is directly entering into force on the set date in all the Member States. It leaves no space, as directives do, for divergences between Member States in terms of how to transpose European law into national laws.

[AMLA](#), the new AML Authority, will be established in order to be operational by early 2024 and will be tasked with the direct supervision of some of the riskiest cross-border financial sector obliged entities, while being funded by an “annual supervisory fee” which obliged entities will have to pay. Moreover, it will act as a coordination hub for Financial Intelligence Units (FIUs) in their analysis of Suspicious Transaction Reports and Suspicious Activity Reports with a significant cross-border nature. Finally, AMLA will support the EU’s policy on third countries as regards ML/TF threats from non-EU countries.

As for the [AMLD 6](#), this clarifies the FIUs powers and tasks, as well as the minimum set of information that FIUs should be able to access, while also requiring Member States to provide for

administrative measures and sanctions for serious repeated or systematic breaches of key requirements of the AML framework by obliged entities. The minimum and maximum amounts of pecuniary sanctions are specified, as well as the publication of sanctions imposed, whistle-blower protection and the exchange of information on sanctions.

Moreover, the text explains that the Commission will be adopting a Commission Implementing Act on the format to be used for the submission of beneficial ownership information to the Registers. It also set out how the AMLA will draft Regulatory Technical Standards on the framework under which FIUs will exchange information and know-how, and it clarifies the responsibilities and powers of national supervisors and the rules for information-sharing between supervisors and obliged entities.

Compared to the AMLD 5, the [Regulation](#) sees the expansion of the list of obliged entities to include crypto-asset service providers, crowdfunding platforms, mortgage credit intermediaries and consumer credit providers that are not financial institutions and migration operators. Customer due diligence measures are made more granular, with clearer requirements according to the risk level of the customer. The requirements in relation to third countries are reviewed in order to ensure that enhanced due diligence measures are applied to those countries that pose a threat to the EU's financial system. Furthermore, beneficial ownership requirements are further streamlined, new requirements are introduced in relation to nominees and foreign entities, red flags raising suspicion are clarified, requirements for the processing of certain categories of personal data are introduced and measures to mitigate the misuse of bearer instruments are strengthened.

Finally, the European Commission issued a [proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets](#). The new Regulation is aimed at recasting [Regulation \(EU\) 2015/847](#) by expanding traceability requirements to crypto-assets. The new Regulation proposal modifies Regulation (EU) 2015/847 by extending the information requirements (currently applied to wire transfers) to crypto assets in order to introduce an obligation for Virtual Asset Service Providers (VASPs) to collect and make accessible data concerning the originators and beneficiaries of the transfers of virtual or crypto-assets they operate. Moreover, the new Regulation proposal aims to introduce into EU legislation the information sharing obligations contained in the [Interpretative Note to recommendation 15 of FATF](#) ("travel rule").

The legislative package will be discussed by the European Parliament and Council later this year.

The package, once finalized and applicable, will create an increased compliance burden for the industry soon after the introduction of AMLD 5. It might, at the same time, simplify compliance with AML rules for entities that are operating in more than one European Member State, as its implementation across Europe shall be much more consistent and uniform than what we have seen thus far.

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