

European Commission Publishes New AML / CFT Action Plan

On 20 July 2021, the European Commission published a wide-ranging set of legislative proposals designed to strengthen EU Anti-Money Laundering / Countering the Financing of Terrorism ("AML / CFT") rules.

The proposals aim to facilitate effective and consistent cross-border application and implementation of EU AML / CFT rules and introduce a new more stringent enforcement framework in the EU.

Four New Pieces of Legislation

The package consists of the following legislative proposals:

- A Regulation establishing the Authority for AML / CFT¹ ("AMLA");
- A Regulation on the prevention of the use of the financial system for the purposes of ML / FT² of directly applicable AML / CFT rules (the "AML / CFT Regulation");
- A sixth Directive on AML / CFT³ ("ALMD6"); and
- A Regulation on information accompanying transfers of funds and certain crypto-assets (recast)⁵ amending Regulation

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0421>

² https://ec.europa.eu/finance/docs/law/210720-proposal-aml-cft_en.pdf

³ https://ec.europa.eu/finance/docs/law/210720-proposal-amld6_en.pdf

⁵ https://ec.europa.eu/finance/docs/law/210720-proposal-funds-transfers_en.pdf

2015/847/EU⁶ on transfers of funds to trace the transfers of crypto-assets.

AMLA: A New EU AML / CFT Authority

The establishment of a new de-centralised agency, AMLA, which will work with national competent authorities ("NCAs") with an AML / CFT supervisory mandate, aims to transform EU AML / CFT supervision by delivering a single integrated EU supervisory framework based on common supervisory methods and improved coordination between NCAs.

AMLA is expected to be established and become operational on 1 January 2024.

It will directly supervise financial firms which are either high risk cross-border credit and financial institutions operating in a significant number of EU Member States; or any entity whose material breaches of applicable requirements are not sufficiently or in a timely manner addressed by its NCA.

AML / CFT Regulation

This Regulation develops a number of substantive changes to the existing AML / CFT rules (contained in the Fourth Anti-Money Laundering Directive ((EU) 2015/840 and the Fifth Anti-Money Laundering Directive ((EU) 2018/843 ("5MLD")), including:

- Expansion of the list of entities subject to EU AML / CFT rules to include: (i) all types and

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0847>

categories of crypto-asset service providers ("CASPs"); (ii) crowdfunding service providers falling outside the scope of the Crowdfunding Regulation EU2020/1503⁷; (iii) mortgage credit intermediaries and consumer credit providers that are not financial institutions; and (iv) operators working on behalf of third-country nationals to obtain an EU Member State residence permit;

- Introduction of new more detailed rules on internal policies, controls and procedures;
- Clarification of customer due diligence ("CDD") requirements including more granular detail according to the risk level of the customer;
- A review of third-country requirements to ensure that enhanced due diligence measures are applied to those countries that pose a threat to the EU's financial system;
- Clarifications on the definition of a politically exposed person;
- Streamlining the beneficial ownership requirements to ensure adequate transparency; and
- Clarifications on the reporting of suspicious transactions obligations.

Critically, as well as enhancing the EU AML / CFT rulebook, the AML / CFT Regulation provides for the rules to be directly applicable, i.e. without transposing measures being required at EU Member State level. This is intended to promote convergence of supervisory and enforcement practices across EU Member States.

AMLD6

Recognising the need for flexibility for EU Member States, the organisation of the AML / CFT system at national level retains the form of a directive which EU Member States are required to transpose into national law.

The proposed AMLD6 transfers existing provisions and also makes a number of substantive changes aimed at facilitating greater level of convergence in the practices of supervisors and cooperation among NCAs.

Extension of Rules to Crypto-Assets

Currently only certain categories of crypto-assets are within scope of EU AML / CFT rules.

To mitigate new and emerging risks, all CASPs will have to apply EU rules and comply with a range of new obligations.

Timeline

Ireland has recently implemented the main elements of 5MLD (for more details, see our recent client update, Ireland Implements 5MLD⁸).

The regime will now be radically overhauled as part of this new action plan.

It is expected that the European Parliament and Council will complete the first reading of the proposals between Q3 2021 and Q1 2022.

Once the new legislative measures are in place (including transposing AMLD6 into domestic law of all EU Member States), AMLA can commence its direct supervisory work.

The new regulatory framework is expected to be fully operational by 2024.

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1503>

⁸ <https://maples.com/en/knowledge-centre/2021/4/ireland-implements-5mld>

Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide is available on our website page⁹ and in our brochure¹⁰.

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⁹ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

¹⁰ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>