

Outreach Session

EU AML/CFT Developments

July, 9, 2024



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Overview of EU AML Changes

AML Regulation

Harmonising rules that are directly applicable to obliged entities of the private sector (list of entities, governance, KYC/CDD, reporting)

Legally directly applicable three years from publication in the OJ

AML Directive

Harmonising tasks and powers of supervisors and FIUs, information exchange and central registers

MS will have three years from date of publication to transpose

AMLA Regulation

Setting up the new AML Authority establishing:

- FIU coordination
- EU supervision of obliged entities

Legally operational 2024
Administratively operational 2025
Direct supervision 2028

Reasons for EU AML changes

EU ML Banking Scandals

Regulatory Arbitrage

Inconsistent application of rules

Geo-political risks

- The EU Banking money laundering scandals revealed structural and systemic weaknesses in the EU's AML/CFT Framework. In particular, the lack of consistent cooperation between prudential and AML authorities and the quality and the effectiveness of AML/CFT supervision across Member States
- The inconsistent application of EU AML/CFT rules by Member States led to a fragmentation within the AML/CFT legislative framework
- A lack of detail in the AML/CFT rules in some areas resulted in different interpretations of the AMLD across Member States. This in turn resulted in increased costs and burdens for some financial providers whilst also creating conditions for regulatory arbitrage
- The non-financial sector or DNFPBs have consistently been called out by FATF for weaknesses in their AML/CFT frameworks. It is also very apparent that the supervision of the non-financial sector in many Member States is less than satisfactory
- The recent raft of EU sanctions imposed on Russia revealed significant divergence in implementation of such measures across the EU 27 which put the very effectiveness of the sanctions at risk

Overview of AML Regulation

- Regulation largely mirrors existing AML laws – but now directly effective in EU27
- Greater degree of granularity for a number of existing provisions
- New obligation to have systems and controls for compliance with targeted financial sanctions obligations
- Private to private information sharing – firms can establish partnerships for information sharing, subject to certain requirements
- Creates new classes of obliged entities: mortgage creditors; consumer creditors; financial, insurance and mixed activity holding companies; crowdfunding providers; crowdfunding intermediaries
- Access to BO registers (including journalists)
- Clarifying requirements on:
 - Allocating a member of the board or senior management to the role of compliance manager; application of conduct of business standards for groups and group-wide measures; role of parent entities that are themselves not obliged entities; conditions under which other structures (such as networks and partnerships) should apply group-wide measures
- A broader definition for politically exposed persons
- New category of “high risk customers” which includes high-net worth individuals, offshore financial centres and those persons subject to sanctions
- De-risking criteria in AML/CFT procedures
- A limit on cash transactions above €10,000. This limit does not apply to credit institutions. Credit institutions will be required to report cash transactions in excess of €10,000 to the FIU

Key Changes in the AML Regulation [1]

Beneficial Ownership requirements

- More detailed rules on the identification of beneficial owners of corporate and other legal entities
- The 25% threshold for ownership may be lowered by the Commission (to max 15%), for entities exposed to higher risk of ML/TF
- Non-EU entities that own real estate will need to register the beneficial owner details, with retroactivity to 1 January 2014

CDD (chapter III)

- The purpose of CDD and what mitigating measures should be applied
- Clearer and more detailed provisions on identifying persons in CDD and verifying their identity
- The standard datasets for identifying natural and legal persons
- The conditions for using electronic identification
- The conditions on which obliged entities can rely on CDD performed by another obliged entity and can outsource functions to other entities or service providers.

The AML Regulation streamlines rules and creates a level-playing field for firms across the EU 27

The Regulation provides uniformity on issues such as:

- (i) Types of obliged entity
- (ii) Customer Due Diligence
- (iii) internal controls
- (iv) reporting requirements
- (v) identification of beneficial ownership

Key Changes in the AML Regulation [2]

Crypto

- All of the crypto-asset service providers (CASPs) identified in the Markets in Crypto-Assets Regulation (MiCAR) will formally become obliged entities and thus subject to EU AML law –this was already made clear in MiCAR [under the current framework, set by the Fifth Anti-Money Laundering Directive (AMLD5), only exchange service providers and custodian wallet providers were considered as obliged entities]
- MiCAR establishes a comprehensive regulatory framework for CASPs (i.e. not just limited to AML/CFT requirements, as is the current position for VASPs). The MiCAR framework harmonises the rules pertaining to CASP authorisations and operations in the European Union.
- Customer due diligence for CASPs will need to be applied when the occasional transaction exceeds a value equal to EUR 1.000
- New specific EDD measures for CASPs who engage in cross-border correspondent relationships with respondent entities “not established in the Union and providing similar services”.
- New obligations [Article 40] on CASPs to take have policies, procedures and controls in place to mitigate risks in relation to transactions with a self-hosted wallets. The article references a risk-based approach

Private to private information sharing (chapter VI)

- For the first time, legislative provision providing for the sharing of confidential information between firms, where such information sharing is necessary to comply with CDD and reporting obligations, subject to certain limits and a data protection impact assessment

AML Directive

- Registrars of beneficial ownership registers will be required to supervise compliance with BO filing obligations and to take enforcement action for breaches
- Specific requirement on NCAs to take enforcement action for systemic breaches of CDD, reporting, record keeping and internal controls
- The imposition by NCAs of periodic penalties for failure to remediate breaches
- Requirement for NCAs to publish non-enforcement administrative measures includes the revocations and directions
- Supervisory powers mirror current powers. Market entry requirements extended to cover crowdfunding intermediaries, their senior management and the BOs
- It requires Member States to establish a body to supervise the self-regulatory bodies

AMLA Overview

- **Timelines:** Expected to be legally established by July 2024, administratively operational by 2025, direct supervision to commence in 2028
- **Supervisory (Direct):** of selected obliged entities, including the power to adopt binding decisions, administrative measures, and monetary penalties
- **Supervisory (Indirect):** of financial sector entities: AMLA will carry out periodic reviews and contribute to **convergence of supervisory practices** and promotion of high supervisory standards
- **Oversight and coordination** of DNFBPs and SRBs – evaluate supervisory standards and direct supervisors to investigate possible breaches and to consider imposing sanctions or remedial actions
- **Coordination** of FIUs, management of the information sharing platform and the establishment of models and templates for STRs
- **EU Restrictive Measures:** AMLA and national competent authorities (“NCA”) will **oversee systems and controls** in firms to prevent **EU sanctions breaches**
- AMLA will be unique in its mandate of **a supporting role** with respect to **non-financial sectors**, and **coordinate financial intelligence units** in member states

AMLA: Direct Supervision

- AMLA will directly supervise 40 (possibly more) selected obliged entities (“SOEs”) that pose the highest degree of cross-border ML/TF risk
- Selection criteria: Active in at least 6 Member States and deemed high risk according to AMLA risk criteria
- At least **one** SOE from **each** Member State - revised selection every 3 years
- SOEs will be supervised by Joint Supervisory Teams (“JSTs”), led by AMLA but will involve staff from the relevant NCA, which will carry out inspections and assessments
- AMLA will be empowered to adopt binding decisions, administrative measures, and pecuniary sanctions towards the selected obliged entities that it directly supervises
- In addition, AMLA will have ‘step-in’ powers to take over supervision of any firm from an NCA if there are indications of breaches of AML/CFT legislation which are not being efficiently and adequately dealt with by the relevant NCA

Direct supervision by AMLA will ensure robust, uniform supervision of obliged entities that pose the highest ML/TF risk.

Firms that are directly supervised can expect a change in supervisory approach with an increased focus on data and information sharing

Consistent application of AML regulatory requirements across EU 27
A change in the Bank's supervisory approach with more focus on thematic engagements

Increased focus on data and information sharing

AMLA: Indirect Supervision

- **All other firms outside of the 40 selected for direct supervision will be indirectly supervised**
- **Harmonised AML supervisory methodology** - AMLA will develop a new supervisory and ML/TF risk assessment methodology
- **Peer reviews** – AMLA will review the performance of NCAs similar to the FATF MER financial supervisors
- **Colleges** - AMLA will coordinate supervisory colleges
- **AML/CFT Database** – AMLA will maintain a database into which NCAs will be required to provide a continuous stream of information in relation to non-selected obliged entities
- **Joint supervisory actions** - NCAs will have to submit their annual supervisory work programme to AMLA and where appropriate, AMLA may require NCAs from several member states to coordinate their supervisory work
- **Investigation** - AMLA will have the power to direct NCAs to investigate and consider sanctions against non-selected obliged entities with material breaches of AML/CFT requirements

AMLA Governance

- AMLA will be located in **Frankfurt**
- AMLA will have a Chair and an Executive Director. The Chair will represent AMLA and the Executive Director will be in charge of the day-to-day management
- There will be two governing bodies, namely an Executive Board of five independent full-time members and the Chair of AMLA and of a General Board composed of representatives of Member States
- The General Board will have a supervisory composition with heads of public authorities responsible for AML supervision, and FIU composition, with heads of FIUs in the Member States. Both compositions of the General Board will be chaired by the AMLA Chair
- The Executive Board will be the governing body of AMLA, and will take all decisions towards individual obliged entities although the General Board will be able to provide its opinion

Reflections of EU AML Changes

- Move to a Single Rule-Book and central EU AML supervisory presents opportunities and challenges
- AMLA will significantly change expectations and dynamic of the EU AML framework – national supervisors will respond
- Measuring the impact of the changes on a firm's AML risk management framework – impact assessment is beneficial to examine approaches to risk assessment and systems and controls in place
- Consider the opportunities and challenges posed by the new AML framework in specific circumstances of your business
- What is the level of awareness at board and senior leader level of the extent of changes and how it impacts firms



*Thank you for your
time*

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