

European Commission and UK Treasury publish proposals to reform AML/CTF regimes

In brief

On 20 July 2021, the European Commission presented a package of legislative proposals establishing a new framework for the EU's anti-money laundering and countering terrorism financing (AML/CTF) regime. The package will create an EU-wide AML supervisory authority, establish a new directly applicable single rulebook, and extend the scope and requirements of the regime including, significantly, to all cryptoasset service providers. In this briefing we explore the Commission's proposals in more detail. We also set out considerations for UK firms, including HM Treasury's recent consultations on the UK AML/CTF regime.

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The EU framework proposals

The legislative package, part of the Commission's [AML/CTF Action Plan](#), follows a number of longstanding concerns about the existing EU AML/CTF regime. Ineffective and insufficient implementation of the existing regime across EU member states has contributed to inconsistent enforcement of rule breaches. EU rules have been transposed and applied in a divergent manner across member states, leading to significant variation in transparency, supervisory oversight and enforcement powers granted to Financial Intelligence Units (FIUs). The current regime is also inadequate at dealing with suspicious activities and transactions in cross-border circumstances. These concerns were echoed on 28 June 2021 by the [European Court of Auditors](#), which highlighted weak enforcement of the existing rules, noting that EU bodies have limited tools to ensure the appropriate and consistent application of the AML/CTF regime and, further, there is generally poor coordination between member states when taking enforcement action.

Further, the existing EU AML/CTF regime is not fully consistent with the latest international standards that have evolved since the last amendment to the framework, meaning that the current rules are also ineffective in dealing with new threats arising from innovation. This issue is particularly acute in relation to illicit cryptocurrency activity in the EU, in light of the October 2018 recommendations of the Financial Action Task Force (FATF) relating to cryptoassets.

To address these concerns, the Commission has published the following package of legislative proposals:

- a [proposal](#) for a regulation establishing a new EU-wide AML/CTF authority;
- a [proposal](#) for a new regulation on directly applicable rules such as customer due diligence (also known as the new single rulebook);
- a [proposal](#) for a 6th AML Directive (MLD6), to replace MLD5 and MLD4; and
- a [proposal](#) for a revised Regulation 2015/847/EU on the transfer of funds (Wire Transfer Regulation or WTR), to make it possible to trace transfers of cryptoassets and limit large cash payments.

The package is designed to bring harmonisation throughout the EU in terms of how the rules are applied, interpreted and enforced. The proposals will:

- create a centralised EU AML/CTF authority;
- provide a new single rulebook for AML/CTF compliance; and
- expand the scope of the AML/CTF regime to apply fully to the cryptoassets sector.



New EU Anti-Money Laundering Authority

The new EU Anti-Money Laundering Authority (AMLA) will serve as the EU's central authority for AML/CTF supervision, assuming responsibility for the European Banking Authority's current related competences. The AMLA will have certain direct and indirect supervision remits, and will facilitate cooperation among EU FIUs. To achieve its objectives, the AMLA will be tasked with a large number of responsibilities, including:

- directly supervising certain of the "riskiest" obliged entities, ensuring group-wide compliance with the requirements set out in the AML/CTF framework (including any other legally binding EU acts that impose AML/CTF-related obligations on financial institutions) through supervisory reviews and assessments. These obliged entities include high-risk cross-border credit and financial institutions with activity in a significant number of member states, selected periodically, and, in exceptional cases, any entity whose material breaches of applicable requirements are not sufficiently or in a timely manner addressed by its national supervisor;
- carrying out periodic reviews of member state financial supervisors, facilitating colleges and coordinating information exchange;
- coordinating peer reviews of non-financial supervisors, requesting non-financial supervisors to investigate possible breaches of requirements and to consider imposing sanctions or remedial actions, and carrying out periodic reviews;
- supporting and coordinating the work of FIUs and contributing to improved cooperation between FIUs, including joint analyses, specialised training, expert knowledge and threat assessments; and
- adopting and implementing regulatory technical standards, guidelines and recommendations, adopting binding decisions, administrative measures, and pecuniary sanctions towards directly supervised obliged entities, and issuing to member state supervisory authorities requests to act and instructions relating to the exercise of their own supervisory powers.

The EU single rulebook

The single rulebook will act as a unified AML/CTF framework that includes directly applicable rules on the AML/CTF requirements. To address concerns about divergent member state transposition of current obligations set out in the existing AML directives, the Commission's proposal for a single rulebook is set out in a regulation, providing detailed requirements that will directly apply in member states to obliged entities. The single rulebook will be supported by a number of regulatory technical standards to be prepared by the AMLA.

In addition to those who are already obliged entities under the present regime, the single rulebook will expand the list of obliged entities to include:

- all types and categories of cryptoasset service provider. The definitions of cryptoasset and cryptoasset service provider are aligned to those set out in the proposed Regulation on Markets in Cryptoassets (for more detail on those definitions, see our [briefing here](#));
- crowdfunding service providers that are not within the scope of the Crowdfunding Regulation ((EU) 2020/1503);
- mortgage credit intermediaries and consumer credit providers that are not financial institutions; and
- operators of investor residence schemes (those working on behalf of third-country nationals to obtain a residence permit to live in an EU country).

The new rulebook will also make substantial changes to existing requirements, including:

- clarification of requirements relating to internal policies, controls and procedures, including group obligations and requirements that apply to parent entities which are not themselves obliged entities;
- granular requirements in respect of customer due diligence obligations and identity verification, including the use of electronic identification (intended to align with the Commission's Digital Finance Strategy and proposed framework for a European Digital Identity);
- a more granular and proportionate approach to the identification of high risk jurisdictions: "black list" jurisdictions (in principle, those third countries "subject to a call for action" by the FATF) will be subject to all enhanced due diligence measures and to



additional country-specific countermeasures, while "grey list" jurisdictions (in principle, those third countries "subject to increased monitoring" by the FATF) will be subject to country-specific enhanced due diligence measures;

- additional requirements relating to Politically Exposed Persons (PEPs);
- clarification of beneficial ownership requirements and new requirements relating to nominees and foreign entities;
- guidance on the identification and reporting of suspicious transactions, including a harmonised template, and guidance on the red flags that should raise suspicion;
- requirements for the processing of certain categories of personal data, including a five-year period for data retention; and
- an EU-wide limit of EUR 10,000 on large cash payments.

Further significant changes to the current AML/CTF regime are set out in other proposals within the Commission's package. The Commission's proposed MLD6 provides for the interconnection of existing member state bank account registers through a single access point, to be developed and operated by the Commission. Proposed amendments to the WTR will expand scope of the FATF's recommendation 16 – the "travel rule" – to cryptoassets, requiring cryptoasset service providers to obtain, hold and share required and accurate information on cryptoasset transfers users and make that information available on request to appropriate authorities.

The AMLA will have the power to impose administrative pecuniary sanctions and periodic penalty payments. Decisions on sanctions and penalties will be appealable to the Court of Justice of the European Union, which may annul, reduce or increase the fine or periodic penalty payment imposed.

Next steps

The European Commission has extended the deadline for feedback to its proposals to 8 October 2021. The AMLA is expected to be established in 2023 and operational by 2024, with the activity of direct supervision to commence at the beginning of 2026. Direct supervision will start once the single rulebook applies in member states – the rulebook, including technical standards, is expected to be in place and apply by the end of 2025.

Firms may wish to review their AML risk assessment policies and procedures with a view to the new framework; firms can consult Annexes I, II and III of the single rulebook proposal to review the Commission's proposed non-exhaustive list of risk variables and factors evidencing potentially lower or higher risk.

More broadly, it will be critical for firms to understand how direct supervision by the AMLA will work in practice, both in terms of entities falling within scope and the role that member state supervisors will play in AML supervision and enforcement. Directly supervised entities will be those operating cross-border in multiple member states with a "high inherent risk profile", to be determined by methodology based on the risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas. This methodology will be set out in regulatory technical standards developed by the AMLA by 1 January 2025. The Commission also proposes that supervision of entities directly supervised by AMLA will be undertaken by joint supervisory teams led by the AMLA and including staff of member state supervisory authorities; however, while it is clear that the Commission intends for the AMLA to take the role of primary AML supervisor for directly supervised entities, the boundaries of any dual regulation or enforcement regime remain unclear at this stage. Firms should keep a watching brief on these issues as they develop further.

Considerations for UK firms, including HM Treasury's consultations

UK firms with EU parent undertakings should expect to comply the proposed single rulebook's expanded group-wide requirements. While UK firms without an EU nexus will not be caught by the direct application of the proposals, a similar review of the AML/CTF framework is underway in the UK, and though the final structure of the UK's framework may not match the EU's proposals, alignment with FATF standards (a stated aim of the UK's review) will naturally converge the two regimes to an extent. On 22 July 2021, HM Treasury published two consultative documents on the UK's AML framework:

- a **call for evidence** on the review of the UK's AML/CTF regulatory and supervisory regime; and
- a **consultation** on amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).



The call for evidence supports the review which will aim to assess the UK's anti-money laundering and counter terrorist financing regulatory (the MLRs and Office for Professional Body Anti-Money Laundering Supervision (OPBAS) Regulations) and supervisory regimes. The call for evidence looks at three themes:

- a systemic review of the overall effectiveness of the regimes and their extent (i.e. the sectors in scope as relevant entities);
- a regulatory review of whether key elements of the current regulations are operating as intended; and
- a supervisory review of the structure of the supervisory regime, including the work of OPBAS to improve effectiveness and consistency of supervision.

This review is part of the Treasury's legal requirements: the MLRs require the Treasury to publish a report no later than 26 June 2022 which reviews the regulatory provision set out in the MLRs and OPBAS Regulations, which must set out the objectives intended to be achieved, assess the extent to which the objectives are achieved, assess whether the objectives remain appropriate, and assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

The Treasury is also undertaking this review in the context of UK regulation post-Brexit, stating that it intends to maintain efforts to uphold FATF international standards, in particular the application of a risk-based approach to applying the AML/CTF regulatory framework, but aims to improve the effectiveness of the UK system, in line with FATF's own rebalancing towards measuring effectiveness rather than technical compliance. This rebalancing of effective outcomes versus technical compliance is a theme embedded throughout all of the Treasury's post-Brexit regulatory reviews.

In its consultation on the MLRs, the Treasury proposes to amend the MLRs to make some time-sensitive updates, which are required to ensure that the UK continues to meet international standards set by the FATF, whilst also clarifying how the AML operates. These updates include:

- changes in scope to reflect latest risk assessments, in particular to exempt particular payment service providers which may present a low risk of money laundering;
- clarificatory changes to strengthen supervision by allowing AML/CTF supervisors to have a right of access to view the content of a suspicious activity report (SAR), and to align the definition of credit and financial institutions with existing financial services legislation;
- expanded requirements to strengthen the regime, including among other changes expansion to proliferation financing;
- improving the effectiveness of the intelligence and information sharing gateway, and giving further supervisory powers to the FCA; and
- implementing the travel rule for cryptoasset transfers.

Responses to the call for evidence and consultation are due by 14 October 2021. HM Treasury proposes that firms will be allowed a grace period after the amendments to the MLRs are made, to allow the integration of compliance solutions.



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