

## LEGAL UPDATE

### Proposals to establish a European authority and a regulation on money laundering

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On 20 July 2021, the [European Commission](#) presented four legislative proposals to harmonise the EU's anti-money laundering and countering the financing of terrorism ("**AML/CFT**") rules. Member States currently have some leeway in implementing the 4th and 5th Anti-Money Laundering Directives ("**AMLD 4**" and "**AMLD 5**"), leading to some unavoidable differences between Member States. The proposed European rules include three directly effective regulations that will apply automatically and uniformly in all Member States when they enter into force.

This Legal Update briefly discusses the consequences and implications of the European proposals. We devote particular attention to the Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism ("**AMLA Regulation**") and the Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("**AMLR**"). We will also briefly discuss the proposed 6th Anti-Money Laundering Directive ("**AMLD 6**"). We will not, however, examine the [revision of the Regulation on Transfers of Funds](#) on information accompanying such transfers and certain crypto-assets.

#### **AMLA, the European anti-money laundering authority**

The [AMLA Regulation](#) aims to create a new EU authority to fight money laundering (AMLA). The establishment of the AMLA is considered crucial for the effective and adequate supervision of so-called obliged entities (those responsible for applying AML/CFT rules) that have a high inherent AML/CFT risk as well as for improving cooperation among Financial Intelligence Units ("**FIUs**").

The AMLA will be entrusted with the direct supervision of some of the financial sector's highest-risk cross-border obliged entities (*selected obliged entities*). In effect, a *joint supervisory team* will be established for each selected obliged entity, consisting of members of the AMLA and the national supervisory authority (the DNB in the Netherlands). A parallel can, therefore, be drawn with the conduct of prudential supervision under the Single Supervisory Mechanism ("**SSM**"), whereby the ECB and DNB exercise (joint) supervision, directly or indirectly, depending on a bank's significance.

For direct AML/CFT supervision purposes, the AMLA identifies the selected obliged entities on the basis of a periodic review. For example, banks that are established in at least seven Member States, have a high inherent risk profile in at least four Member States and have been under supervisory or other public investigation will qualify as selected obliged entities (Articles 2(1)(1), 12(1)(a) and 13(1)(a) of the AMLA Regulation). The process whereby the AMLA selects obliged entities will be completed for the first time on 1 August 2025 and every three years thereafter. The AMLA will begin conducting direct supervision five months after publishing the list of selected obliged entities.

The AMLA will be given a number of direct powers to enforce compliance with the AML/CFT rules. Among other things, it will be able to request information, conduct on-site investigations, impose specific individual requirements on entities and fine them up to 10% of their annual turnover (Articles 16 to 25 of the AMLA Regulation).

In addition to directly supervising selected obliged entities, the AMLA will be indirectly involved in supervising obliged entities that have *not* been selected. It will conduct periodic assessments of them regarding compliance with AML/CFT standards (Article 28 of the AMLA Regulation) and may request national supervisors to act in exceptional cases (Article 30 of the AMLA Regulation).

Finally, the AMLA Regulation contains amendments to the Regulations establishing the EBA, EIOPA and ESMA (Regulations (EU) No. 1093/2010, 1094/2010 and 1095/2010, respectively) to enhance cooperation and coordination among supervisors and transfer the EBA's remaining powers as regards AML/CFT supervision to the AMLA.

## **Anti-Money Laundering Regulation**

The [AMLR](#) aims to contribute to the establishment of a European Single Rule Book on AML/CFT supervision, given that most of the rules have been adopted piecemeal by Member States. For obliged entities, the AMLR includes provisions on internal controls and procedures, customer due diligence ("CDD"), beneficial owner(s) (UBOs), and the reporting of suspicious transactions to the FIU. This Legal Update is limited to discussing the provisions on CDD and the prohibition on large cash transactions.

## **Customer Due Diligence**

Just like the current AML/CFT framework, the AMLR takes a principle-based approach. It does not prescribe any method for conducting due diligence but rather only the results it should achieve (Articles 8 and 16 AMLR). For example, obliged entities must verify the identities and beneficial owner(s) of their customers and ascertain the structure, purpose and intended nature of their business relationships. Based on an individual analysis of the risks of money laundering and terrorist financing, obliged entities must also determine the extent and scope of the customer due diligence (simplified or enhanced) (Article 16(2) AMLR). Annexes I to III AMLR provide indicative lists of high/low risk variables for customer due diligence.

## **Prohibition on large cash payments**

The AMLR prohibits traders in goods or services from accepting cash payments in excess of EUR 10,000 (Article 59 AMLR). Member States may, however, continue to apply lower limits that already exist (or adopt them following consultation with the ECB). In the Netherlands, a [bill](#) setting a maximum of EUR 3,000 for cash payments in business transactions is currently being drafted. It is expected to be presented to the Lower House of Parliament in [September 2021](#). Other Member States have already adopted lower limits. Differences among Member States therefore continue to exist.

## **AMLD 6**

In practice, the abbreviation AMLD 6 has already been used frequently (and incorrectly) for the amendments to AMLD 4 and AMLD 5. The proposal for [AMLD 6](#) repeals AMLD 4 and includes provisions on/for central registries of beneficial owners, national supervisors, the FIUs and cooperation between the national supervisors and authorities.

## **What next?**

Before being published and entering into force, these legislative proposals will first have to be debated by the European Parliament and the Council. Direct supervision by the AMLA is scheduled to begin in early 2026.

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