



EUROPEAN UNION AML PACKAGE

AML REGULATION

LEGAL ALERT

March 2023

Issues related to anti-money laundering and countering the financing of terrorism remain at the centre of attention of European Union bodies. According to the Joint Declaration of the European Parliament, the Council of the European Union and the European Commission on the Union’s legislative priorities for 2023 and 2024, AML and CTF are among the most important matters facing the Union’s legislature.

There are ongoing legislative works at the European Union level on a consolidation of EU AML and CFT rules. The, so-called, ‘AML package’ consists of four legislative acts, at the core of which sits the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Its provisions are intended to replace the current substantive provisions of the Polish Act on Counteracting Money Laundering and Terrorism Financing.

AML PACKAGE

The AML package consists of four legislative proposals:

<i>Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing</i>	➔ This Regulation lays out, among others, the duties of obliged entities and the beneficial ownership and control transparency requirements for its subjects (the “ AML Regulation ”)
<i>Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010</i>	➔ This Regulation establishes an EU-level body responsible for anti-money laundering and countering the financing of terrorism
<i>Regulation on information accompanying transfers of funds and certain crypto-assets (recast)</i>	➔ This Regulation lays out rules on the information which shall accompany transfers of funds and crypto-assets regarding the parties to such transfers
<i>Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849</i>	➔ This Directive repeals AML Directive IV and lays out, among others, national anti-money laundering measures and the duties of domestic AML/CTF bodies.

This summary aims to acquaint You, its reader, with the provisions of the proposed AML Regulation.

In its proposed draft of the AML Regulation, the European Union legislature maintains its current approach to issues surrounding anti-money laundering and terrorism financing. The draft text is based on similar foundations to the current European Union AML directives, in particular the risk based approach rule (i.e., the rule that one's approach should be based on foreseeable risk and providing for the application of risk limiting measures appropriate to the identified level of risk one faces). However, contrary to the current approach, where AML and CTF matters are regulated by way of directives, the European Commission has chosen to propose a regulation, which will have direct effect in Member States. Consequently, this will result in the harmonization of AML and CTF rules across the entire European Union single market – where the Regulation's provisions apply, they will have priority over the relevant national regulations. Furthermore, with respect to matters governed by the Regulation, it will replace the current AML directives.

The provisions of the AML Regulation are primarily focused on obliged entities and the financial security measures they apply. The regulations proposed serve mainly to clarify the existing duties of obliged entities, but are not without novel elements. In this regard, it is worth highlighting the following particular developments proposed in the draft text:

- expanding the catalogue of obliged entities by, for example, persons trading in precious metals and stones, creditors for mortgage and consumer credits, other than credit institutions and financial institutions,
- expanding the scope of the catalogue of obliged entities by including crypto-asset service providers, in accordance with the recommendations of the Financial Action Task Force (FATF),
- allowing Member States to exclude certain providers of gambling services and persons engaged in certain financial activities from the catalogue of obliged entities, with exemptions requiring the European Commission's confirmation,
- the duty to put in place appropriate policies, controls and procedures, proportional to the nature and size of the obliged entity, concerning, among others, risk management practices, independent audit functions, employee training, and the use of third-party service providers for the performance of AML duties,
- the requirement that obliged entities take the specific risk variables and risk factors, as specified in Annexes I, II, and III to the AML Regulation into account in their institutional risk assessment and risk assessments for particular clients,
- the duty to appoint one executive member of the board of directors (or equivalent governing body) as the entity's compliance manager, responsible for the implementation of measures ensuring compliance with the AML Regulation,

- the duty to assess each employee engaged in the performance of AML and CTF duties in respect of their individual skills, knowledge, reputation, honesty, and integrity,
- clarifying the circumstances which should be taken into account when assessing a client business relationship,
- providing examples of simplified and enhanced customer due diligence measures.

Moreover, the AML Regulation also lays out beneficial ownership and control transparency obligations incumbent on legal entities and legal arrangements (e.g., trusts). The Regulation further tailors the beneficial owner definition and imposes a duty on all corporations and other legal entities incorporated in the Union to obtain and hold adequate, appropriate, and current information on their beneficial owners.

PLANNED COMMENCEMENT

The proposed instruments comprising the AML package are currently being negotiated between the Council of the European Union and the European Parliament.

According to the text of the draft AML Regulation, it will enter into force on the twentieth day following its publication in the Official Journal of the European Union, while the Regulation will commence application from the third anniversary of its entry into force. This means that obliged entities will have three years (from the date of the Regulation's entry into force) in which to prepare and commence applying the new provisions. In this regard, obliged entities will need to take the following actions, among others:

- verify and update current AML procedures,
- verify the simplified and enhanced financial security measures they apply,
- conduct an institutional risk assessment taking into account the risk variables and risk factors specified in Annexes I, II, and III to the AML Regulation,
- assess those employees engaged in the performance of AML and CTF duties within the entity, including establishing assessment criteria,
- verify the scope of the duties incumbent on the person responsible for AML compliance within the organisation.

From the Polish legislature's perspective, the AML Regulation's adoption will necessitate, first and foremost, the implementation of appropriate amendments and deletions to provisions of the Polish Act on Counteracting Money Laundering and Terrorism Financing.

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