

EU AML rules to be amended 2/16/23



Senior Associate, PwC Legal
Elvita Gece

To continue the fight against money laundering and sanctions breaches, members of the European Parliament sitting on the Committee on Economic and Monetary Affairs and on the Committee on Civil Liberties, Justice and Home Affairs called attention on 28 March to the need for tighter conditions in combating money laundering, terrorism and proliferation financing (“AML”) as well as sanctions breaches. These committees have drawn up a package of documents containing three draft laws, which the European Parliament is to debate in April.

The package of documents includes the draft laws outlined below.

The EU single rulebook

The uniform rules will include tighter conditions for running client checks, for identifying beneficial owners and ownership structures, and for using anonymous financial instruments, such as cryptocurrency. In future, persons subject to AML legislation, e.g. managers of various financial assets and crypto-assets, as well as real and virtual asset agents and high-level professional football clubs will be required to verify their client identities and determine the origin of their funds and ownership structures. These persons will also have to identify money laundering, terrorism and proliferation financing risks or typologies prevalent in their industry and report those to the supervisory bodies.

To impose tighter restrictions on cash transactions and dealings in crypto-assets, there are plans to set thresholds on payments that persons subject to AML legislation are permitted to accept from clients. For example, a threshold of EUR 7,000 will apply to transactions in cash, which several EU member states have already included in their national law, and a threshold of EUR 1,000 will cover cryptocurrency transactions where a client cannot be identified or is anonymous.

The fight against sanctions breaches involves separate rules on golden passports and residence permits, making it illegal to obtain a passport or residence permit if investment is made in a particular country.

The 6th AML directive

The 6th AML directive is to include rules for national supervisory bodies (e.g. the Latvian Financial Intelligence Unit) and their operations in Latvia, as well as for how the supervisory bodies and persons subject to AML legislation can access reliable information, i.e. the registers of beneficial owners.

It's also emphasised that the member states' supervisory and other competent institutions must have access to information on beneficial owners, bank accounts and property registers in order to discover money laundering schemes and to freeze assets early. Since some goods are more suitable for money laundering than others, the EU committee members want the member states to aggregate information on ownership of goods such as yachts, jets and cars worth in excess of EUR 200,000, as well as on goods kept in tax havens.

A more important amendment to the 6th AML directive involves the definition of a beneficial owner, where

the committee members agree that the beneficial owner must be an individual that owns at least 15% (currently 25%) plus one share or voting power, or some other direct or indirect ownership, or 5% plus one share if the client operates in an industry that is exposed to a higher risk of money laundering, terrorism and proliferation financing.

Looking at the topical question of access to information on beneficial owners, which has been widely publicised in recent months, we should mention that the committee members have included conditions that the registers of beneficial owners:

- Must be maintained in an EU official language and in English.
- Must have information on active and historical beneficial owners.
- Must be available to the financial intelligence units, AML authorities, other competent authorities and persons subject to AML legislation, such as external accountants, public notaries and attorneys-at-law.
- Additional access to the register will be provided to persons with legitimate interests, such as journalists, any mass media, public organisations, and higher education establishments. Access is to be granted for 30 months and renewed automatically unless a breach of the register usage rules is detected.

The AML authority (AMLA)

This newly formed authority will monitor risks and threats within and outside the EU by carrying out increased supervision of credit institutions and financial institutions. The original plan is to place under the AMLA's supervision 40 entities with the highest risk profiles based in at least two member states. At least one entity is to be chosen from each member state for increased AMLA monitoring.

For monitoring purposes, the AMLA may ask entities and their employees to file documents and other necessary information and may pay on-site visits. If breaches are detected, the AMLA will have the power to charge fines of EUR 500,000 to EUR 2 million, or 0.5–1% of the responsible person's annual revenue, while material breaches may be fined up to 10% of the person's revenue for the previous financial year.

Although these draft laws have yet to be approved and await the EU Parliament's session scheduled for April, it's important to familiarise yourself with the proposals now and monitor the latest developments.