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## European Union

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## New European Legislation on Anti-Money Laundering

The European Commission has presented a new set of legislative proposals to strengthen the European Union's anti-money laundering and countering terrorism financing (AML/CFT) rules. This proposal is scheduled for implementation in 2026. A new European supervisor, the AML Authority, will be introduced and a single rulebook will be created. The present AML Directive will be replaced by a new Directive and the regulation on crypto assets will be revised. The main changes resulting from this proposal in France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom will be discussed.

### 1. Introduction

The fight against money laundering (ML) and the financing of terrorism (FT) is essential to protect citizens. The Financial Action Task Force (FATF) was founded in 1989 and it has issued Recommendations<sup>[1]</sup> aimed at aligning the worldwide fight against ML and FT since 1990. The FATF Recommendations are updated on a regular basis. The FATF Recommendations (last update February 2023) distinguish three pillars: (i) anti-money laundering (AML); (ii) combatting terrorist financing (CFT); and (iii) preventing the financing of proliferation of weapons of mass destruction.

The European legislative framework is included in European AML directives. The first European AML directive<sup>[2]</sup> – applying to financial institutions – was published in 1991 to prevent the misuse of the financial system. This directive was aimed at AML and the financing of terrorism had not yet been included. The second European AML directive<sup>[3]</sup> was published in 2005, requiring non-financial institutions to comply with AML/CFT legislation. The third European AML directive<sup>[4]</sup> – together with the directive for politically exposed persons<sup>[5]</sup>

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1. Adopted on 16 Feb. 2012 and last updated in Feb. 2023, available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html> (accessed 7 Nov. 2023) [hereinafter FATF Recommendations].
2. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0308&from=FR> (accessed 7 Nov. 2023).
3. Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0097> (accessed 7 Nov. 2023).
4. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005L0060> (accessed 7 Nov. 2023).
5. Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0070> (accessed 7 Nov. 2023).

(PEPs) – created a more detailed legal framework with enhanced client due diligence being required if a client is not physically present. If the client is a PEP, or an ultimate beneficial owner (UBO) of the client is a PEP, enhanced client due diligence, (consisting of additional reasonable measures to establish the source of wealth, conduct enhanced ongoing monitoring of the business relationship and obtain senior management approval for establishing the business relationship, see Recommendation 12) must take place. In 2015, the fourth European AML Directive (4th Anti-Money Laundering Directive (2015/849) (ALMD4))<sup>[6]</sup> introduced the function of AML/CFT compliance officer and auditor, as well as a requirement that every legal entity have at least one UBO. The fifth European AML directive– introduced in 2018 – currently applies (5th Anti-Money Laundering Directive (2018/843) (ALMD5)).<sup>[7]</sup> A key change is the ongoing development and coordination of UBO registers between EU Member States.<sup>[8]</sup>

On 20 July 2021, the European Commission presented an “ambitious package of legislative proposals to strengthen the EU’s anti-money laundering and countering terrorism financing (AML/CFT) rules”.<sup>[9]</sup> This proposal consists of four legal initiatives:

- (1) the introduction of a new European supervisor, the AML Authority (AMLA);
- (2) the introduction of a new regulation to create a single rulebook;
- (3) a new directive replacing AMLD5; and
- (4) a revision of the regulation on crypto assets.<sup>[10]</sup>

On 28 March 2023, the proposed rules were approved to close existing gaps in the legislative framework aiming to combat money laundering, terrorist financing and the evasion of sanctions in the European Union.<sup>[11]</sup> It is envisaged that the entire EU AML package, including the AML Regulation, will be in force in 2026.

## 2. New European Legislation

### 2.1. New AML Authority

The most important change in European legislation is the creation of one European supervisor for AML/CFT.<sup>[12]</sup> The location of the AMLA is to be announced in the course of 2023 and it is currently expected to open its doors in the second half of 2023 at the earliest. Direct supervision by the AMLA would start in early 2026.

This is in line with the banking sector, with the European Central Bank exercising supervision in addition to national banking supervisors. The AMLA’s key purpose is to align national AML/CFT legislation of EU Member States, as well as its implementation and interpretation. This is relevant given that criminals frequently cross borders from one country into another.

The AMLA’s role is fourfold:

- (1) supervising AML-regulated institutions;
- (2) coordinating national AML/CFT supervisors;
- (3) issuing guidelines; and
- (4) managing the relationship between European legislation and specific national laws.

In section 2.1.1.-2.1.3., the different roles are addressed.

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6. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849> (accessed 7 Nov. 2023) [hereinafter AMLD4].
  7. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0843> (accessed 7 Nov. 2023) [hereinafter AMLD5].
  8. There are differences in the EU Member States. For example, some Member States have different UBO registers for legal entities and trusts, while other Member States have one UBO register for both legal entities and trusts.
  9. European Commission, *Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules* (20 July 2021), available at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3690](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3690) (accessed 7 Nov. 2023).
  10. See also MiCA-Directive and *Amending Directive to the 2011 Directive on Administrative Cooperation (2023/2226)* Primary Sources IBFD [hereinafter DAC8]. DAC8 relates to exchange of information between tax authorities in Member States with respect to crypto users. DAC8 has been adopted by the Council of the EU on 17 October 2023.
  11. See New EU measures against money laundering and terrorist financing (News – European Parliament, 28 Mar. 2023), available at <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78511/new-eu-measures-against-money-laundering-and-terrorist-financing> (accessed 7 Nov. 2023).
  12. Proposal for a Regulation of the European Parliament and of the Council 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 [hereinafter AMLA Regulation], available at [https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package\\_en#amla](https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package_en#amla) (accessed 7 Nov. 2023).

### 2.1.1. Supervision

The AMLA will have direct supervisory powers over the riskiest financial institutions, known as “selected obliged entities”, across the European Union.<sup>[13]</sup> It looks like every EU Member State will have to indicate which financial institutions (one or two) are to be controlled directly by the AMLA. In addition, the AMLA will have indirect supervisory powers with regard to other financial institutions.<sup>[14]</sup> Non-financial institutions are outside the AMLA’s scope with respect to supervision.<sup>[15]</sup> The list of selected obliged entities – published by the AMLA – will be reviewed every 3 years, as will the selection benchmark and methodology. The AMLA’s far-reaching supervision of selected obliged entities includes the power to restrict or limit an entity’s business and to require changes to its governance structure, as well as to impose administrative fines.

### 2.1.2. Monitoring

It is important to monitor and coordinate national AML/CFT supervisors,<sup>[16]</sup> because how supervisors have been set up and what entities they supervise varies per EU Member State. In the Netherlands, for example, there are two supervisors for financial institutions and four supervisors for non-financial institutions. In addition to coordinating national supervisors, the AMLA is also charged with coordinating the national Financial Intelligence Units (FIUs). It is essential to improve cross-border analyses in joint consultation.<sup>[17]</sup> To this end, the AMLA will conduct joint analyses, support personnel exchanges and secondment schemes, and prepare training programmes.

### 2.1.3. Guidelines and EU vs. national law

The AMLA has the authority to draw up guidelines and recommendations for financial and non-financial institutions.<sup>[18]</sup> Guidelines may be issued to national AML/CFT supervisors, national FIUs and AML-regulated institutions. Recommendations may be issued to national supervisors or AML-regulated institutions, but not to national FIUs.

Guidelines or recommendations to financial AML-regulated institutions will be in line with European legislation because the financial sector is already EU-regulated. There is already a certain level of uniformity within Europe with respect to AML as demonstrated by the work of the European Banking Authority (EBA), the European Securities and Markets Authority, and by the European Insurance and Occupational Pensions Authority guidelines.

Non-financial institutions tend to be more national in their approach. Some non-financial AML institutions do have EU-based legislation, for example, a code of conduct for European lawyers.<sup>[19]</sup> This type of code is not currently in place for other professions, such as notaries. This means that guidelines relating to these professions or businesses must be issued by the AMLA looking at the local law of all European Member States. If the AMLA guidelines conflict with local mandatory professional law, national law will prevail.

## 2.2. Single rulebook

AMLD5 contains provisions about:

- client due diligence;
- UBOs; and
- the reporting of suspicious transactions.

These provisions must be “translated” into national AML/CFT legislation. This currently results in varied implementation in the various EU Member States. To create uniformity, these provisions will be included in a new EU AML regulation (the single rulebook), which means more uniformity and less national legislation. A regulation has direct effect, which means that national legislation is not required for implementation.

The text of the single rulebook was adopted on 28 March 2023 and is expected to become applicable in 2026.<sup>[20]</sup> The main areas of uniformity in legislation relate to client due diligence and beneficial ownership. The single rulebook also includes provisions relating to the use of anonymous instruments (such as crypto assets) and introduces new AML-regulated institutions (such as crowdfunding platforms).

13. Arts. 21-27 AMLA Regulation.

14. Arts. 28-30 AMLA Regulation.

15. Arts. 31-32 AMLA Regulation.

16. Arts. 33-37 AMLA Regulation.

17. B. Snijder-Kuipers, *Navigating the Anti-Money Laundering Landscape – The Role That Companies Play in Protecting the Financial System*, 24 Fin. & Cap. Mkts. 4 (2023), Journal Articles & Opinion Pieces IBFD.

18. Art. 43 AMLA Regulation.

19. See Code of Conduct for European Lawyers, available at <https://regelgeving.advocatenorde.nl/content/code-conduct-european-lawyers> (accessed 7 Nov. 2023).

20. See New EU measures against money laundering and terrorist financing (News – European Parliament, 28 Mar. 2023), available at <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78511/new-eu-measures-against-money-laundering-and-terrorist-financing> (accessed 7 Nov. 2023).

The definition of a UBO remains an important topic.<sup>[21]</sup> A UBO, always a natural person, is one who directly or indirectly controls the corporate entity, either through an ownership interest or through control via other means.<sup>[22]</sup> Ownership interest refers to shareholding, voting rights or any other interest, such as an economic interest. Control via other means is more explicitly determined in the new proposed AML regulation:

- (a) the right to appoint or remove more than half of the members of the board or similar officers of the corporate entity;
- (b) the ability to exert a significant influence on the decisions taken by the corporate entity, including veto rights, decision rights and any decisions regarding profit distributions or leading to a shift in assets;
- (c) control, whether shared or not, through formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents depending on the specific characteristics of the legal entity, as well as voting arrangements;
- (d) links with family members of managers or directors/those owning or controlling the corporate entity;
- (e) use of formal or informal nominee arrangements.

The powers relating to control are still open standards. If an *individual* has the right to appoint or remove all managing directors of entity X, this individual has control and will be regarded as a UBO. But it is more complex where a *legal entity* has the right to appoint or remove managing directors of entity X. If, for example, the appointing entity has six shareholders and one managing director, is that managing director is to be regarded as entity X's UBO?

The threshold for shares, voting rights and economic benefits in AMLD5 is 25% plus one share, which in practice is implemented in the Member States as "more than 25%". Member States may adopt a lower threshold. According to members of the European Parliament (MEPs), this threshold will be lowered to 15% plus one share.<sup>[23]</sup> Apparently, a "more than 15%" threshold is more in line with current practice. This means that an individual who indirectly holds 15.001% will be regarded as a UBO. The threshold drops to 5% plus one share (assuming this is "more than 5%") if a company is regarded a high-risk company in relation to money laundering and the financing of terrorism.

### 2.2.1. AMLD6

The sixth AML Directive (AMLD6) was adopted by MEPs on 28 March 2023,<sup>[24]</sup> replacing AMLD4 as amended by AMLD5. The AMLD6 will replace the revised AMLD4. <sup>[25]</sup> AMLD6 relates to FIUs in the EU Member States and rules on national AML/CFT supervisors. Recital 78 of AMLD6 states that a balance between de-risking policies and being excluded from the banking system is not always easy to achieve:

Cooperation with other authorities competent for supervising credit institutions under Directive (EU) 2014/92 and Directive (EU) 2015/2366 has the potential to reduce unintended consequences of AML/CFT requirements. *Credit institutions may choose to terminate or restrict business relationships with customers or categories of customers in order to avoid, rather than manage, risk.* Such de-risking practices may weaken the AML/CFT framework and the detection of suspicious transactions, as they push affected customers to resort to less secure or unregulated payment channels to meet their financial needs. *At the same time, widespread de-risking practices in the banking sector may lead to financial exclusion for certain categories of payment entities or consumers.* Financial supervisors are best placed to identify situations where a credit institution has refused to enter into a business relationship despite possibly being obliged to do so on the basis of the national law implementing Directive (EU) 2014/92 or Directive (EU) 2015/2366, and without a justification based on the documented customer due diligence. Financial supervisors should alert the authorities responsible for ensuring compliance by financial institution with Directive (EU) 2014/92 or Directive (EU) 2015/2366 when such cases arise. [Emphasis added.]

Another example of the further regulation of AML institutions is the rule requiring that exchange and cheque cashing offices, and trust or company services providers, must be either licensed or registered. And all providers of gambling services must be regulated.<sup>[26]</sup>

AMLD6 contains further provisions on UBO registers and real estate registers.<sup>[27]</sup> Most articles in AMLD6 relate to the functioning of the national FIUs,<sup>[28]</sup> including access to information, cooperation and ensuring the exchange of information between FIUs.

21. Art. 42 AML Regulation.

22. Art. 42(1) AML Regulation.

23. See New EU measures against money laundering and terrorist financing (News – European Parliament, 28 Mar. 2023), available at <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78511/new-eu-measures-against-money-laundering-and-terrorist-financing> (accessed 7 Nov. 2023).

24. Id.

25. AMLD6 will revise AMLD4 as amended by AMLD5.

26. Art. 4 AMLD6.

27. Ch. II AMLD6.

28. Ch. III AMLD6.

## 2.3. Transfer of Funds Regulation (recast)

The recast of the Transfer of Funds Regulation 2015/847/EU<sup>[29]</sup> will make it possible to trace transfers of crypto assets. The scope of the recast regulation on information accompanying transfers of funds and certain crypto-assets<sup>[30]</sup> is as follows:

The requirements of this regulation apply to CASPs (Crypto-Asset Service Providers) whenever their transactions, whether in fiat currency or a crypto-asset, involve: (a) a traditional wire transfer, or (b) a crypto-asset transfer between a CASP and another obliged entity (e.g. between two CASPs or between a CASP and another obliged entity, such as a bank or other financial institution). For transactions involving crypto-assets transfers, all crypto-asset transfers are treated with the same requirements as for cross-border wire transfers, in accordance with the FATF Interpretative Note to Recommendation 16, rather than domestic wire transfers, given the risks associated to crypto-assets activities and CASP operations.

The most important effect is that more information must be available about payments accompanying transfers of funds. In addition to the standard information (name of the payer, account number, address and identification document), the payer's LEI number (Legal Entity Identifier) must also be submitted.<sup>[31]</sup> The regulation will also include a new chapter about the obligations of crypto asset service providers.<sup>[32]</sup> The originator's crypto asset provider must also ensure that information about the originator and beneficiary is available.

This Transfer of Funds Regulation (recast) is the next step in ensuring exchange of information by crypto asset providers. AML legislation already applies to entities offering professional or corporate services to exchange virtual currency for fiduciary currency and to entities that offer crypto wallets.

## 3. Main Changes per Country

### 3.1. Introduction

This section provides a brief overview of the AML landscape in some EU Member States being: France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom. There are differences in legislation in EU Member States based on AMLD5. Each subsection addresses the most important changes in relation to present legislation.

### 3.2. France

In line with the European regulatory framework, the entities subject to AML measures in France are diverse, covering a wide range of economic sectors (not limited to the financial sector, and including the art and luxury goods industries, the gambling industry, and the legal and accounting professions). This diversity implies that all entities in these sectors must adopt a risk-based approach and meet a number of obligations towards their customers.

The French AML/CFT legislation thus appears to be fairly extensive. For instance, in order to address the new issues raised by the operations carried out by exchange of crypto assets (anonymity, opacity and difficulty in detecting funds kept on digital resources although they can be traced), France has already imposed the AML system, in particular to the obligations of vigilance with regard to the customers to virtual currency traders in 2016, and created, as of 2020, the specific category of digital asset service providers.

The new AML package will obviously have a significant impact on the French AML landscape. The main changes in this regard could be about cooperation and exchange of information with other EU Member States. The planned new cooperation framework will improve the effectiveness of information requests, which to date have relied significantly on an informal system. For instance, the French authority TRACFIN could, in order to process a request from a foreign financial intelligence (CRF), use its investigative powers to seek the information requested. Conversely, some countries consider requests received from a foreign CRF as mere questions that do not authorize their CRF to use its investigative powers for processing. TRACFIN also points out that some countries prohibit the country receiving the information from using it freely. For now, these restrictions may be judicial or tax related, but the introduction of a uniform framework for this type of exchange will most likely lead to a greater efficiency of these units.

The new AML package will also change the response time the CRF has for suspending fraudulent transactions. Within 48 hours of receiving a suspicious transaction report, the CRF will have the authority to suspend or refuse the execution of a transaction, for a maximum period of 15 calendar days from the day on which the suspension is imposed on the reporting entity. Currently, the CRF has 10 working days to suspend the use of a bank or payment account, as outlined in article L. 561-24 of the Monetary and Financial Code.

The banking sector has not yet identified any measure that would particularly challenge the current operation of the French AML landscape.

29. Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0847> (accessed 7 Nov. 2023) [hereinafter Transfer of Funds Regulation (recast)].

30. Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto assets, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0422> (accessed 7 Nov. 2023).

31. Art. 4 Transfer of Funds Regulation (recast).

32. Ch. III Transfer of Funds Regulation (recast).

For establishing the new AML Authority, new measures provide for the creation of a public supervisory authority for self-regulated authorities, which would be supervised in the future by a European authority. This authority does not currently exist under French law and may lead to important debates about the structural organization of various professional sectors.

### 3.3. Germany

Germany, like many other countries in the European Union, does not have a single supervisory authority for AML matters. Independent of the changes that will be brought about by the AMLA, there is widespread concern that the current institutional set-up for AML/CFT is far from optimal. Apart from different competent authorities, which competent authority is based on the specific type of the AML-regulated entity, the regulatory landscape of competent authorities in Germany is fragmented at the federal and state levels due to German federalism. The German FIU, in the meantime, faces severe criticism due to major delays in the processing of suspicious activity reports.<sup>[33]</sup> In August 2022, the German Finance Minister proposed setting up a new Federal Financial Crime Authority (*Bundesfinanzkriminalamt*),<sup>[34]</sup> and legislation for its establishment has been initiated. At the same time, individual German *Länder* have taken their own measures of establishing more efficient administrative structures for the AML/CFT. For example, North Rhine-Westphalia (Germany's most populous federal state) announced in March 2023 that it will establish a Financial Crime Authority at the state level.<sup>[35]</sup>

With respect to crypto assets, Germany had already introduced national legislation even before the amendments of the Transfer of Funds Regulation. The German Crypto Asset Transfer Regulation (*Kryptowertstransferverordnung*) entered into force in October 2021.

### 3.4. Italy

AML and CTF fall within the powers of the Bank of Italy (BoI), which is charged with regulating, supervising and sanctioning the shortcomings of the AML/CTF, and the Italian FIU, the autonomous and independent unit within the BoI that scrutinizes suspicious transactions reports (STRs) and analyses market trends.

The framework of the BoI and the Italian FIU has changed greatly over the past few years to improve the efficiency of the AML and the CTF's governance authority. While the reorganization of the BoI mainly focused on the reallocation of powers and duties, the FIU set various additional units to: (i) speed up the STRs analysis process; (ii) support the operational and strategic analysis of transactions, cash flows and STRs; and (iii) improve the exchange of information with foreign FIUs and support the Italian FIU division responsible for coordinating relations with international and European bodies, including the AMLA.

The Italian FIU welcomes the addition of the AMLA acting as coordinator of the EU FIUs. However, it disagrees with the proposal to establish an AMLA-centralized procedure for national STRs, due to potential technical, timing-related and procedural shortcomings.

CASP and custodian wallet providers must enrol with a special register held by the national agent and broker body (*Organismo degli agenti e mediatori*, OAM), and must send this body quarterly reports detailing their clients, fund transfers and transactions.<sup>[36]</sup> Curiously enough, although the OAM has enrolment and reporting duties, it does not have the authority to supervise crypto operators in their ongoing business and in their compliance with local rules, including the AML framework.<sup>[37]</sup>

### 3.5. The Netherlands

The EU AML regulation gives flexibility to EU Member States in adopting additional local rules. The Netherlands, especially, will decide if the reporting of unusual transactions<sup>[38]</sup> to FIU-the Netherlands should continue or if reporting suspicious transactions is necessary.

De-risking of and access to the financial system is a topic of discussion in the Netherlands too. The Dutch Minister of Finance has published an agenda update<sup>[39]</sup> along with an annex about how individuals and entities can access the financial system. Because several sectors face difficulties in gaining access, the Ministry of Finance, the Dutch Banking Association and the Dutch Central Bank will discuss how to improve this. Special attention will be given to: the online adult entertainment sector; the agro/transport sector; the automotive industry; payment service providers and money transfer organisations; coffeeshops; the gaming industry; traders in goods (jewellery); the hotel industry; the military industry; Muslim organizations; third-party accounts for lawyers (attorneys and notaries); not-for-profit organizations (NPOs); sex workers and trust offices.

33. A Suspicious Activity Report is a document that financial institutions, and those associated with their business, must file with the FIU-Germany whenever there is a suspected case of money laundering or fraud.

34. See Fighting financial crime (The Federal Government 11 Oct. 2023), available at <https://www.bundesregierung.de/breg-en/service/fighting-financial-crime-2229636> (accessed 9 Nov. 2023).

35. See <https://www.finanzverwaltung.nrw.de/uebersicht-rubrik-aktuelles-und-presse/pressemittelungen/neues-landesfinanzkriminalamt-lfk-die> (accessed 7 Nov. 2023).

36. Art. 5 and Annex 1 of Ministry of Undertakings and Made in Italy's decree of 13 Feb. 2022.

37. See OAM's statement of 7 Mar. 2023 (in Italian), available at <https://www.organismo-am.it/oam-it/389-in-primo-piano-operatori-valute-virtuali/1801-oam-su-operatori-in-criptoalvalute-lorganismo-non-ha-poteri-di-controllo-ma-gestisce-esclusivamente-liscrizione-al-relativo-registro> (accessed 7 Nov. 2023).

38. Unusual transactions are based on objective and subjective indicators as defined in the Ministerial Decree, available at <https://wetten.overheid.nl/BWBR0041193/2022-11-01> (accessed 7 Nov. 2023), and are defined per AML regulated institution.

39. See *Kamerbrief over de voortgang beleidsagenda aanpak witwassen* (17 May 2023) (in Dutch), available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/05/17/voortgangsbrief-beleidsagenda-witwassen> (accessed 7 Nov. 2023).

Discussions will also start soon about implementing a more risk-based approach, including in relation to the size and nature of specific AML-regulated institutions. A risk-based approach will lead to a more effective strategy on AML/CFT. The Ministry of Finance will provide more guidance and training on AML/CFT legislation.

The next agenda update will be published at the end of 2023.

### 3.6. Portugal

In Portugal, the most relevant news about AMLD6 is the AMLA and the accessing of UBO information. AMLD6 gives the Commission, the European Parliament and the Council the opportunity to address the identified shortcomings and to correct the fragmented EU AML/CFT framework.

The AMLA is viewed as an essential element towards standardizing the quality and effectiveness of AML/CFT supervision in the European Union. However, there is widespread concern that this objective will be mitigated by the limits placed on the AMLA in matters of direct supervision. This is because the AMLA may be limited to a very restricted set of AML/CFT-regulated entities. Additionally, the AMLA may have a role conditioned by the lengthy and bureaucratic selection process of AML/CFT-regulated entities, with results falling short of expectations.

On the other hand, the current approach for access to UBO information is uneven. The new AMLD6 limits access to information compared to what has been practiced until now. There may be some resistance to the changes, as the Portuguese system was not modified after the European Court of Justice's ruling on 22 November 2022.<sup>[40]</sup>

### 3.7. Spain

The main highlights under review in Spain relate to the amendment concerning the internal body for control, and the creation of a Compliance Manager role, together with the Compliance Officer (even though this topic is also related to the EBA Guidelines).

Besides this, the Spanish supervisor is quite interested in housing the future headquarters of the AMLA, as Madrid is one of the locations being considered.

Finally, several questions remain, such as how the supervision of obliged entities is going to take place in practice, and the role of new obliged entities, such as the crypto services providers.

### 3.8. United Kingdom

As the European Union sails towards the AMLD6, the United Kingdom is forging its own path in the wake of Brexit. The United Kingdom reviewed its AML/CFT regulatory and supervisory regime, seeking both to ensure that it “continues to evolve to meet the changing nature of economic crime”, and to consider where current AML requirements inherited from the European Union are not “fully suited to the United Kingdom’s situation”.<sup>[41]</sup>

Overall, the UK government has concluded that “there is insufficient evidence at the current time for a fundamental overhaul of the preventative measures required” under the United Kingdom’s Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs), and that “increasing consistency of compliance with the current requirements should be a priority in order to increase the overall effectiveness of the MLRs”.<sup>[42]</sup>

A number of measures reforming the United Kingdom’s AML/CFT regime are, however, in train. Most notably:

- since 1 September 2023, the so-called “travel rule” places information-sharing requirements on certain crypto asset transfers as Recommendation 16 of the FATF standards is incorporated into the MLRs;<sup>[43]</sup>
- the government has announced plans to phase out the pseudo-authorization regime that currently exists for crypto-asset exchange providers and custodian wallet providers under MLRs. Such firms will be funnelled, via a phased approach, into authorization under the Financial Services and Markets Act 2000;<sup>[44]</sup>

40. NL: ECJ, 22 Nov. 2022, Case C-69/21, *X. v. Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2022:913, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0069> (accessed 16 Nov. 2023).

41. HM Treasury, *Review of the UK’s AML/CFT regulatory and supervisory regime* (June 2022), available at <https://www.gov.uk/government/publications/review-of-the-uks-amlcft-regulatory-and-supervisory-regime> (accessed 7 Nov. 2023).

42. Id., at p. 20.

43. The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 (SI 2022/860), available at [https://www.legislation.gov.uk/uksi/2022/860/pdfs/uksi\\_20220860\\_en.pdf](https://www.legislation.gov.uk/uksi/2022/860/pdfs/uksi_20220860_en.pdf) (accessed 7 Nov. 2023).

44. HM Treasury, *Future financial services regulatory regime for cryptoassets* (Feb. 2023), available at <https://www.gov.uk/government/consultations/future-financial-services-regulatory-regime-for-cryptoassets> (accessed 7 Nov. 2023).



- the Economic Crime (Transparency and Enforcement) Act 2022 introduced a new “Register of Overseas Entities Beneficial Ownership of UK property” to tackle foreign criminals using UK property to launder money, and reforms the United Kingdom’s Unexplained Wealth Orders regime to enable law enforcement to investigate the origin of property and recover the proceeds of crime;<sup>[45]</sup>
- the forthcoming Economic Crime and Corporate Transparency Bill will include reforms to Companies House (constituting the most significant changes to the United Kingdom’s framework for registering companies in the last 170 years), reforms to prevent abuse of limited partnerships, additional powers to seize crypto assets from criminals, and reforms to give businesses more confidence to share information on suspected money laundering;<sup>[46]</sup> and
- the government has consulted on the reform of the AML/CFT supervisory system, which presently consists of the FCA, the Gambling Commission and HM Revenue & Customs as statutory supervisors, alongside 22 professional supervisory organizations overseeing the legal and accountancy sectors. Four potential models are proposed, including (most strikingly) bringing all AML/CFT supervision under one single public body.<sup>[47]</sup>

In addition, the Financial Services and Markets Act 2023 (FSMA 2023, which received Royal Assent in June 2023) imposes a duty on HM Treasury to amend the customer due diligence measures applying to domestic PEPs under the MLRs, and further requires the FCA to review its PEP guidance (this review was launched in September 2023).<sup>[48]</sup> On the theme of PEPs, in July 2023, HM Treasury published a policy statement on payment account contract termination and freedom of expression, making it clear (among other things) that regulations relating to PEPs do not provide grounds for account closure on the basis of political views.<sup>[49]</sup> Finally, and hammering home that changes to the United Kingdom’s AML/CFT regime will likely take place over a period of years, further consultation on amendments to the MLRs are tabled for Q4 2023.<sup>[50]</sup>

## 4. Final Remarks

The introduction of the AMLA will have an effect on all EU Member States because of the centralization of supervision, especially in relation to financial institution supervisors. This package may result in more uniformity in European legislation. The impact in the different countries varies. National legislators, supervisors and AML-regulated institutions may need to change legislation and internal procedures to comply with new AML legislation.

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45. Slaughter and May, *Evolution not revolution: the Economic Crime (Transparency and Enforcement) Act 2022* (Mar. 2022), available at <https://my.slaughterandmay.com/insights/briefings/evolution-not-revolution-the-economic-crime-transparency-and-enforcement-act-2022> (accessed 7 Nov. 2023).
  46. HM Government, *Factsheet: Economic Crime and Corporate Transparency Bill overarching* (June 2023), available at <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-economic-crime-and-corporate-transparency-bill-overarching#:~:text=The%20bill%20will%20strengthen%20anti,fraud%20and%20other%20economic%20crimes> (accessed 7 Nov. 2023).
  47. HM Treasury, *Reforming anti-money laundering and counter-terrorism financing* (June 2023), available at <https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision> (accessed 7 Nov. 2023).
  48. Secs. 77 and 78 FSMA 2023.
  49. HM Treasury, *Payment account contract termination and freedom of expression* (July 2023), available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1172799/Payment\\_account\\_terminations\\_and\\_freedom\\_of\\_expression\\_-\\_200723\\_\\_2147\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172799/Payment_account_terminations_and_freedom_of_expression_-_200723__2147_.pdf) (accessed 7 Nov. 2023).
  50. See HM Government, *Economic Crime Plan 2: 2023-2026*, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147515/6.8300\\_HO\\_Economic\\_Crime\\_Plan\\_2\\_v6\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf) (accessed 7 Nov. 2023).



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