

Not all EU AML legislation is the same, but that is all about to change!



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Historical Background of EU AML Legislation

The Introduction of AML Legislation in 1990

The European Union (“EU”) first adopted robust legislation for the fight against money laundering and terrorist financing (“AML”) in 1990. This legislation takes form in EU Directives (the “Directives”) that are passed by the EU Parliament and that require all EU member states to adopt these directives and implement them as part of domestic legislation.

Implementation of AML Directives by EU Member States

The EU Commission’s first AML directive (“AMLD”) back in 1990 was to criminalize money laundering. This was then followed by multiple additional Directives over the years to enhance the robustness of the legislation and adapt to the ever-changing dynamics of the financial services industry, and to the introduction of Fintech in the marketplace.

Each EU government would be given a certain amount of time to adopt the Directives and implement them into local law. The timeframe for implementation is usually two years after the EU Parliament has approved and passed the legislation. But not all EU AML legislation is the same. This is because the Directives frequently allow for Derogations (“Derogations”). A Derogation is a provision in an EU legislative measure which allows for all or part of the legal measure to be applied differently, or not at all, which therefore allows each EU jurisdiction to transpose parts of the AML legislation differently. Although fundamentally the main principals are in place in each jurisdiction, these Derogations can make application of the

legislation across the single European marketplace harder to administer and when necessary, effectively prosecute any bad actors.

The New AML Rules of 2024

But this is all about to change. On 30th May 2024 the Council of the EU adopted a new package of AML rules (the “Rules”) that are stricter that will strengthen the current systems in the fight against money laundering and terrorist financing, but more importantly, this regulation will exhaustively harmonise AML legislation for the first time throughout the EU, closing the derogation loop holes for fraudsters.

Establishment of the EU Authority for AML and CFT (AMLA)

These new Rules also include the set up of a new EU Authority for Anti-Money Laundering and Countering the Financing of Terrorism (“AMLA”) that will have direct and indirect supervisory powers over higher risk entities that are subject to AMLD in the financial sector given the cross-border nature of financial crime. AMLA is to be based in Frankfurt, Germany and operations are expected to commence mid 2025.

The Role of the European Banking Authority (EBA)

Since 2020, The European Banking Authority (“EBA”) has been leading, co-ordinating and monitoring the EU financial sector’s fight against money laundering and terrorist financing. This new legislative framework makes a significant step forward in the EU’s fight against financial crime with this harmonised and single AML/CFT rule book and the establishment of AMLA. Over the course of 2024 and 2025, in preparation for the transition to AMLA the EBA’s priorities will focus on:

- A methodology for selecting financial institutions for the direct EU-level AML/CFT supervision
- A common risk assessment methodology
- Information necessary to carry out customer due diligence
- Criteria to determine the seriousness of a breach of AML/CFT provisions

Preparing for the Transition to AMLA

Through the transition phase, the EBA will also support all EU jurisdictions in getting ready for AMLA. But getting ready to interact with the new regulator is something that needs planning and preparation. Proactive initiatives to consider are to:

- Get ready to open up new lines of communication to interact with AMLA who will likely have a different supervisory approach as well as new and heightened expectations
- Adapt to new requirements laid down in the AML/CFT framework ensuring robust compliance and governance measures
- Conduct a thorough assessment and gap analysis of the firms existing governance framework, internal policies, and procedures to remain compliant with the evolving regulatory landscape
- Put in place training and awareness initiatives to ensure all staff remain updated on the latest AMLA updates and regulatory changes
- Ensure active monitoring and analysis of AMLA related developments.

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