



FINANCIAL SERVICES

---

# Anti-money Laundering: New Package of Measures Announced by European Commission

by **David Naughton, Katrina Smyth**

# Anti-money Laundering: New Package of Measures Announced by European Commission

5th August 2021 | by David Naughton, Katrina Smyth

The European Commission has [proposed](#) a suite of new measures relating to anti-money laundering and countering the financing of terrorism, which includes the creation of a new EU anti-money laundering supervisory body.

## Proposed Changes to the Regulatory Framework

The proposed measures were announced on 20 July 2021 and aim to improve the detection of suspicious transactions and activities and to close loopholes in the current framework. The existing framework on anti-money laundering and countering the financing of terrorism (AML/CFT) was established under Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, known as 4AMLD, and later amended by Directive 2018/843, known as 5AMLD.

The proposed measures consist of three Regulations and a Directive to repeal and replace 4AMLD (AML/CFT Proposals). The European Parliament and Council will now discuss the AML/CFT Proposals as part of the EU's legislative process. We anticipate that the AML/CFT Proposals will become applicable in 2024.

In this article, we set out the changes that the AML/CFT Proposals will have on the existing AML/CFT framework.

## Background

On 7 May 2020, the Commission issued an action plan to better enforce, supervise, and coordinate the EU's response to AML/CFT (Action Plan).

The Action Plan required legislative action in three areas:

1. The creation of an EU single rulebook on AML/CFT.
2. The establishment of AMLA.
3. The launching of a support and cooperation mechanism for Financial Intelligence Units (FIUs).

The AML/CFT Proposals derive from this legislative agenda.

## The AML/CFT Proposals

According to the Commission the AML/CFT Proposals are necessary because of some deficiencies that have been identified in the current AML/CFT framework based on 4AMLD:

1. Delays in implementation and divergence in national rules, resulting in a fragmented supervisory approach.
2. Lack of detail and granularity resulting in low levels of convergence.
3. There is no EU-level body to coordinate national supervisory authorities and FIUs.

To address those problems, the EU Commission introduced the following AML/CFT Proposals:

1. A Regulation establishing AMLA.
2. A Regulation on AML/CFT, containing directly applicable rules, including in the areas of customer due diligence and beneficial ownership.
3. A Directive on AML/CFT, replacing 4AMLD and containing rules on national supervisors and FIUs.
4. A Regulation that revises Regulation (EU) 2015/847 on Transfers of Funds in order to trace transfers of crypto-assets.

## **AMLA**

Under the current AML/CFT framework national supervisors lead supervision. But as noted by the Commission, this has caused an uneven level of supervision across the EU, due to differences in the resources and practices of each national supervisor. So, to establish more cooperation between national supervisors and FIUs, the Commission proposed the establishment of AMLA.

AMLA will:

1. Create a cohesive system of AML/CFT supervision in the EU.
2. Directly supervise high-risk financial institutions that operate in several Member States or those entities that require immediate action to address imminent risks.
3. Monitor and coordinate national supervisors for both financial and non-financial entities.
4. Support coordination amongst the FIUs so that they can conduct joint analysis and better detect illicit transactional flows across borders.

AMLA will be established in 2023 and is likely to commence operations in 2024. It will begin direct supervision of high-risk financial institutions in 2026 provided that the new harmonised EU AML/CFT rulebook is completed and applicable by that time.

## **Single Rulebook**

To harmonise AML/CFT rules across the EU, the Commission proposed a new single rule book (Single Rulebook).

The Single Rulebook will:

1. Contain directly applicable AML/CFT rules including more detailed rules on customer due diligence, beneficial ownership, and the powers and tasks of supervisors and FIUs.
2. Be more detailed and granular and will consist of regulatory technical standards (RTS) developed by AMLA.
3. Provide a mechanism for existing national bank accounts to be connected thereby enabling FIUs to have quicker access to information on bank accounts and safe deposit boxes. Law enforcement authorities

will also have access to this system.

The Single Rulebook will apply to obliged entities currently within the AML/CFT framework such as: banks, life insurance companies, investment funds, investment firms, and payment services providers.

It will also apply to a range of new entities:

1. Crypto-asset service providers of all types.
2. Crowdfunding service providers outside the scope of the EU Crowdfunding Regulation (Regulation 2020/1503).
3. Mortgage credit intermediaries and consumer credit providers that are not financial institutions.
4. Operators that obtain EU residence permits on behalf of third country nationals.

The Single Rulebook including RTS is expected to apply by the end of 2025.

## **Application of the AML/CFT Proposals to the Crypto Sector**

Persons that provide certain services relating to crypto-assets are already within the scope of the current AML/CFT framework. However, with the Commission proposing a regulation on markets in crypto-assets (MiCA), the AML/CFT Proposals will align the EU's AML/CFT framework with those activities covered by MiCA.

In respect of the crypto sector, the AML/CFT Proposals will:

1. Extend the EU's AML/CFT framework to the entirety of the crypto market thereby requiring all crypto-asset service providers to conduct due diligence on their customers.
2. Make the Transfers of Funds Regulation applicable to transfers of crypto-assets thereby requiring crypto-asset service providers to have complete information on the sender and beneficiary of such transfers.
3. Prohibit crypto-asset service providers from providing anonymous crypto-asset wallets.

The Commission has stated the AML/CFT Proposals will not hinder innovation in this burgeoning sector but will rather help the EU crypto-asset industry to develop.

## **Beneficial Owners**

4AMLD introduced the concept of beneficial ownership to increase the ownership transparency of corporates and other entities. The AML/CFT Proposals will expand and clarify the concept of beneficial ownership and what information corporate and other entities must obtain to identify their beneficial owner(s).

In respect of beneficial ownership, the AML/CFT Proposals will:

1. Impose new disclosure requirements on nominee shareholders and nominee directors.
2. Require non-EU legal entities that have a connection with the EU to register their beneficial owners in the EU's beneficial ownership registers.
3. Implement harmonised rules to increase the adequacy, accuracy, and timeliness of beneficial ownership recorded.
4. Grant national entities responsible for maintaining beneficial ownership registers more powers of verification to ensure that beneficial ownership data is accurate, adequate, and current, including the power to conduct on-site checks.

## **Third Countries**

The Commission works with international bodies to help combat money laundering and terrorist financing on a global scale. In that respect, the Commission has proposed a new harmonised policy with respect to third countries to mitigate external threats to the EU's financial system.

Third countries will either be listed on a "blacklist" or a "grey-list". Third countries that the Financial Action Task Force (FATF) has identified as "subject to a call for action" will be put on the blacklist. Third countries that FATF has identified as "subject to increased monitoring" will be put on the grey-list. The Commission may also identify and list third countries depending on the risk that they pose to the EU's financial system.

The Commission will then subject those third countries to country-specific enhanced due diligence measures or to the whole set of enhanced due diligence measures and additional country-specific counter measures. In general, third countries on the grey-list will be subject to the former set of measures whilst third countries on the blacklist will be subject to the latter set of measures.

The new policy will be implemented once the AML/CFT Proposals become applicable.

## **Large Cash Payments**

The current AML/CFT framework requires entities trading in goods to apply AML/CFT measures when receiving cash payments above €10,000. Most Member States have imposed lower thresholds that trigger AML/CFT obligations.

To complement the current position, the Commission has proposed an EU-wide limit on cash payments of €10,000. The Commission stated that imposing a harmonised threshold across the EU will make it harder for criminals to launder money using cash. Member States will still be able to retain their current thresholds under this proposal.

## **Next Steps**

The AML/CFT Proposals will be sent to the European Parliament and Council for discussion. We will keep you updated as the AML/CFT Proposals move through the EU's legislative process.

If you have any comments or questions concerning the AML/CFT Proposals, please get in touch with your usual contact within our Financial Services team.

## About the Authors



**David Naughton**  
**Partner**

David Naughton is Head of Financial Services.  
**T:** +353 1 637 1585 **E:** [dnaughton@lkshields.ie](mailto:dnaughton@lkshields.ie)



**Katrina Smyth**  
**Senior Associate**

Katrina is an experienced financial services solicitor specialising in Investment Funds and Asset Management.  
**T:** +353 16371548 **E:** [ksmyth@lkshields.ie](mailto:ksmyth@lkshields.ie)