

ANTI-MONEY LAUNDERING: THE NEW REGULATORY PACKAGE AND THE ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM AUTHORITY

In July 2019, following several money laundering scandals in credit institutions operating in various European Union (EU) Member States, the European Commission published, among other documents, an analysis highlighting a number of shortcomings in the implementation of the EU legal framework on anti-money laundering and countering the financing of terrorism (AML/CFT) in areas such as the supervision and cooperation between Financial Intelligence Units (FIUs). This analysis concluded that the EU legal framework needed to be reformed to ensure its effectiveness and coherence, as the minimum harmonisation approach to AML/CFT legislation at the time resulted in different regulatory and supervisory frameworks.

In this regard, international AML/CFT regulations have traditionally been implemented in the EU via directives (there have been five directives since 1991), and a certain degree of flexibility has been permitted in their transposition into national frameworks. Reality has shown that such a transposition scheme is inadequate in the area of AML/CFT, and that a truly single EU-wide regulatory framework is needed instead.

AML/CFT supervision, in turn, has so far been entrusted to the national competent authorities, designated by Member States when transposing the successive directives; the various NCAs have different mandates and characteristics. Recent scandals have shown that, in certain cases, these authorities lacked the resources required to prevent them from occurring.

On 7 May 2020, the European Commission presented an action plan for a comprehensive EU-wide AML/CFT policy, defining six priorities or pillars:

- 1 Ensuring the effective implementation of the existing AML/CFT framework.
- 2 Establishing a single rulebook on AML/CFT.
- 3 Bringing about an EU level AML/CFT supervision.
- 4 Establishing a support and cooperation mechanism for FIUs.
- 5 Enforcing Union-level criminal law provisions and information exchange.
- 6 Strengthening the international dimension of the EU AML/CFT framework.

The EU is addressing these priorities by creating, through a Regulation, the new Anti-Money Laundering and Countering the Financing of Terrorism Authority (hereafter AMLA), and strengthening legislation with two legislative proposals (a new directive and a regulation that is directly applicable across the EU, which are expected to be finalised by June 2024).

The new regulation responds to the aforementioned need to harmonise key aspects of the regulations applicable to the private sector, such as the definition of obliged entities, the cases in which enhanced diligence measures apply, the limits on the use of cash, the rules on beneficial ownership and the application of enhanced measures to transactions with high-risk third countries. The AMLA Regulation was agreed by the Council and the EU Parliament in December 2023, while political agreement on the Directive and Regulation was reached in January 2024. In a significant development, on 22 February 2024, the Council and Parliament agreed that the seat of the new prevention authority will be in Frankfurt. Following this key decision, the AMLA will be legally constituted in September 2024, but will not be fully operational until mid-2025.

The current set-up of AML/CFT supervision has given rise to uneven quality and effectiveness across the EU. It is clear that shortcomings in the supervision of a national competent authority on AML/CFT can create material risks for the single market as a whole. It is worth recalling that recent money laundering scandals in the EU had a cross-border dimension and, therefore, it is necessary that AMLA and the national AML/CFT supervisory authorities form an integrated AML/CFT supervisory system, of which the new authority will be the central element.

The articulation and coordination of AML/CFT supervision by AMLA will undoubtedly be a major challenge, and one for which Spain in general — and the Banco de España in particular — is prepared. In this respect, the soundness of the Spanish regulatory and institutional framework, which has the highest compliance ratings according to the Financial Action Task Force (FATF), is an excellent starting point. The Banco de España, as an integral part of our institutional framework for AML/CFT supervision together with SEPBLAC, will actively contribute to this process, also building on the experience gained and lessons learned following the creation of the Single Supervisory Mechanism (SSM) a decade ago. Also, credit institutions will have to adapt and respond to the challenges posed by the new

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regulatory framework and, in particular, by the new AML/CFT supervisory scheme of which the AMLA will be an essential part. However, the experience accumulated by institutions in the SSM's ten years of existence, as well as the demanding Spanish regulatory framework, are strengths for this transition to the European regulatory and supervisory framework.

Like the SSM, AMLA will be responsible for the direct supervision of a limited number of higher-risk obliged

entities in the financial system with cross-border activity. Also, it will coordinate and supervise AML/CFT supervisors in the financial and non-financial sectors. It will also coordinate and support FIUs in their joint analysis of transactions reporting and suspicious activity with a cross-border dimension. In addition, it will be responsible for monitoring, analysing and exchanging information on money laundering and terrorist financing risks affecting the internal market.