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The new anti-money laundering and countering the financing of terrorism (AML/CFT) legislative package of the European Union**

The expected amendments of the Hungarian Anti-Money Laundering Act according to the “EU Single Rulebook”¹

ABSTRACT: The final elements of the new anti-money laundering and countering the financing of terrorism legislative package of the EU were published in the Official Journal on 19 June 2024. The highly ambitious legislative package delivers a stronger and consistent set of anti-money laundering and countering the financing of terrorism rules at EU level. The implementation of the legislative package can be achieved by comprehensively amending the Hungarian AML/CFT Act (or the adoption of a new AML/CFT Act) and the provisions of the current AML/CFT Act must be reviewed and modified on the basis of the new requirements.

This study analyzes some of the most important differences between the requirements of the EU AML/CFT Directive currently in force and the EU Single Rulebook (the new EU AML/CFT Regulation and Directive), referring also to the necessary amendment of the AML/CFT Act in these fields. The study especially focuses on key requirements of obliged entities, especially regarding the scope and the elements of the customer due diligence.

KEYWORDS: money laundering, financing of terrorism, AML/CFT, EU AML/CFT legislative package, EU Single Rulebook, EU AML/CFT Directive, AML/CFT Act.

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1. Introduction²

The final elements of the new anti-money laundering and countering of the financing of terrorism legislative package of the European Union (hereinafter: new EU AML/CFT legislative package) were published in the Official Journal of the European Union on 19 June 2024.

The highly ambitious new EU AML/CFT legislative package delivers a stronger and more consistent set of anti-money laundering and countering the financing of terrorism (hereinafter: AML/CFT) rules at EU level, in order to protect EU citizens and the EU's financial system more effectively against money laundering and the financing of terrorism. Furthermore, it covers the institutional side by creating a new EU authority to fight money laundering, which will be at the core of the system implementing the new framework.

The elements of the new EU AML/CFT legislative package will replace and supplement the EU AML/CFT Directive currently in force (Directive (EU) 2015/849³ as amended, hereinafter: Directive (EU) 2015/849) and recast the Transfer of Funds Regulation⁴. Accordingly, this will result in a significant change in the AML/CFT system of the EU member states.

The Hungarian AML/CFT Act⁵ (hereinafter: AML/CFT Act) is fully compliant with the requirements of the Directive (EU) 2015/849. Accordingly, the implementation of the new EU AML/CFT legislative package can be achieved by the comprehensive amendment of the AML/CFT Act (or the adoption of a new AML/CFT Act) and the provisions

² This point used the „News Article” of 24 April 2024 by the European Commission, available: Latest update on Anti-money laundering and countering the financing of terrorism legislative package - European Commission (europa.eu); furthermore the „Press Release” of the Council of the European Union, available: Anti-money laundering: Council adopts package of rules - Consilium (europa.eu)

³ 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

⁴ 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

⁵ Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing

of the AML/CFT Act must be reviewed and modified based on the new requirements.

This study analyzes certain important differences between the requirements of the Directive (EU) 2015/849 and the new EU AML/CFT legislative package, referring also to the necessary review and amendment of the AML/CFT Act in a number of areas.

2. The new EU AML/CFT legislative package

2.1. Background⁶

Money laundering and terrorism financing pose a serious threat to the integrity of the EU economy and financial system and to the security of its citizens. In July 2019, following a number of prominent money laundering cases in the EU, the Commission adopted a *Communication*⁷ on better implementation of the EU's AML/CFT framework, accompanied by *four reports* on the effectiveness of the different aspects of AML/CFT policy. As a result, the Commission concluded that reforms were necessary.

On 7 May 2020, the Commission presented an *Action Plan*⁸ for a comprehensive Union policy on preventing money laundering and terrorism financing. The Action Plan set out the measures that the Commission will undertake to better enforce, supervise and coordinate the EU's rules in this area. The Action Plan was built on six pillars: 1. Ensuring the effective implementation of the existing EU AML/CFT framework; 2. Establishing an EU Single Rulebook on AML/CFT; 3. Bringing about EU-level AML/CFT supervision; 4. Establishing a support and cooperation mechanism for financial intelligence units (hereinafter: FIUs) (the national bodies which collect information on suspicious or unusual financial activity

⁶ This point used the „News Article” of 24 April 2024 by the European Commission, available: Latest update on Anti-money laundering and countering the financing of terrorism legislative package - European Commission (europa.eu); furthermore the „Press Release” of the Council of the European Union, available: Anti-money laundering: Council adopts package of rules - Consilium (europa.eu)

⁷ „Communication from the Commission to the European Parliament and the Council - Towards Better Implementation of the Eu's Anti-Money Laundering and Countering The Financing of Terrorism Framework”, [Online]. Available at: <https://eur-lex.europa.eu/legal-content/en/txt/?uri=celex:52019dc0360> (Accessed: 5 May 2024).

⁸ „Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing”. [Online]. Available at: [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0513\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0513(03)) (Accessed: 5 May 2024).

in member states); 5. Enforcing Union-level criminal law provisions and information exchange; 6. Strengthening the international dimension of the EU AML/CFT framework.

Pillars 2, 3 and 4 of the Action Plan required legislative action. Accordingly, a package of legislative proposals (comprising four elements) was presented by the Commission in July 2021 in order to strengthen the EU's AML/CFT rules. The package harmonizes the AML/CFT rules across the EU and also proposes the creation of a new EU authority to fight against money laundering.

Following a rather long legislative process, the co-legislators finally reached political agreement, and the Council adopted the package of new anti-money-laundering rules on 30 May 2024, which will protect EU citizens and the EU's financial system against money laundering and the financing of terrorism.

It is worth mentioning some important features of the current EU AML/CFT framework:

1. It takes the form of a directive that requires transposition into the national law of the member states, which often leads to delays in implementation and divergence in national rules.
2. The current regime is not detailed or granular enough for proper convergence.
3. There is no central coordination body at EU level, which hinders cooperation between national supervisors and FIUs. These gaps have been remedied by the reform.

2.2. Elements of the package

The new EU AML/CFT legislative package (i.e. the new Union's AML/CFT framework) consists of four legal acts, as follows.

2.2.1. New EU AML/CFT Regulation⁹ and new EU AML/CFT Directive¹⁰ (hereinafter collectively referred to as: EU Single Rulebook)

With the new EU AML/CFT legislative package, all requirements applicable to the service providers will be transferred to the (directly applicable) new EU AML/CFT Regulation, which for the first time comprehensively harmonizes AML/CFT rules throughout the EU to effectively strengthen the EU framework. Among the most important provisions of the new AML/CFT Regulation are:

- The extension of the AML/CFT rules to new obliged entities (such as most of the crypto-sector, traders of luxury goods, football clubs and agents).
- More detailed and tighter normal, simplified and enhanced customer due diligence requirements (including detailed rules regarding internal policies, procedures and controls of the obliged entities, as well as specific provisions applying to groups and outsourcing).
- Comprehensive regulation of beneficial ownership transparency.
- More detailed requirements regarding the reporting obligation (including the reporting obligation regarding suspicious transactions and the threshold-based reports of transactions); and
- The definition of specific measures to mitigate risks derived from anonymous instruments, including a cash payment limit of EUR 10,000.

The new EU AML/CFT Regulation was published in the Official Journal of the European Union on 19 June 2024 and shall enter into force on the twentieth day following of its publication. Most of its provisions shall apply from 10 July 2027. The new EU AML/CFT Regulation shall be binding in its entirety and directly applicable in all member states.¹¹

⁹ Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

¹⁰ Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849.

¹¹ Article 90 of the new EU AML/CFT Regulation.

At the same time, the new EU AML/CFT Directive will address the organization of national competent authorities fighting against money laundering and terrorism financing. The new EU AML/CFT Directive replaces Directive (EU) 2015/849 and contains provisions that are not appropriate for regulation, thus requiring national transposition. It will improve the organization of national anti-money laundering systems by setting out clear rules on how FIUs and supervisors work together.

The new EU AML/CFT Directive was published in the Official Journal of the European Union on 19 June 2024 and shall enter into force on the twentieth day following its publication. The new EU AML/CFT Directive requires national transposition, and the EU member states must bring into force the necessary laws, regulations and administrative provisions to comply with this Directive by 10 July 2027 at the latest.¹²

2.2.2. AMLA Regulation¹³

The AMLA Regulation establishes an EU AML/CFT Authority (hereinafter: AMLA) in the form of a decentralized EU regulatory agency. The AMLA will have two main areas of activity: AML/CFT supervision and support for EU FIUs. The AMLA will become the center of an integrated system of national AML/CFT supervisory authorities, ensuring their mutual support and cooperation. Furthermore, the AMLA will facilitate cooperation, information exchange and identification of best practices among FIUs. The AMLA will be based in Frankfurt, Germany.

The AMLA Regulation was published in the Official Journal of the European Union on 19 June 2024 and shall enter into force on the seventh day following its publication. Most of its provisions shall apply from 1 July 2025, and the Regulation shall be binding in its entirety and directly applicable in all member states.¹⁴ (The detailed requirements of the AMLA Regulation are not analyzed in this study.)

¹² Article 78-79 of the new EU AML/CFT Directive.

¹³ Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

¹⁴ Article 108 of the AMLA Regulation.

2.2.3. New Transfers of Funds Regulation (recast)¹⁵

The new Transfers of Funds Regulation has amended the Regulation (EU) 2015/847 to extend its scope to transfers of crypto assets. This means that full information about the sender and beneficiary of such transfers must be provided by crypto-asset service providers with all transfers of crypto-assets, just as payment service providers currently do for wire transfers (in order to identify those who send and receive crypto-assets for AML/CFT purposes, detect possible suspicious transactions, and, if necessary, block them). (It is worth mentioning that the Regulation (EU) 2015/847 has been recast for the sake of clarity.)

The new Transfers of Funds Regulation was published in the Official Journal of the European Union on the 9 of June 2023 and entered into force on the twentieth day following its publication. It shall apply from 30 December 2024 and will be binding in its entirety and directly applicable in all member states.¹⁶ (The detailed requirements of the new Transfers of Funds Regulation are not analyzed in this study.)

2.3. New requirements of the EU Single Rulebook and its impact on the AML/CFT Act

As mentioned in the Introduction, this study analyzes some of the most important differences between the requirements of the Directive (EU) 2015/849 and the EU Single Rulebook, referring also to the necessary amendment of the AML/CFT Act in these fields. The study especially focuses on key requirements of obliged entities, particularly regarding the scope and the elements of the customer due diligence.

2.3.1. Directive vs. Regulation

As noted earlier, the current AML/CFT framework of the EU takes the form of a directive: Directive (EU) 2015/849, which requires transposition into the national law of the member states. The directive is binding as to the result to be achieved, but that leaves member states discretion as to how to

¹⁵ Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (recast)

¹⁶ Article 40 of the new Transfers of Funds Regulation.

achieve the result. The Directive (EU) 2015/849 is a minimum-harmonization directive: member states may adopt or retain in force stricter provisions in the field covered by the directive to prevent money laundering and terrorist financing, within the limits of EU law¹⁷. The directives are addressed to the member states, and in the case of the Directive (EU) 2015/849, member states had to bring into force the necessary laws, regulations and administrative provisions to comply with the directive by 26 June 2017 (with some exemptions)¹⁸.

As mentioned earlier, the EU Single Rulebook consists of the new EU AML/CFT Regulation and the new EU AML/CFT Directive. All requirements applicable to the service providers will be transferred to the new EU AML/CFT Regulation, which is binding in its entirety and directly applicable in all member states and must be applied immediately from the date of its entry into force (without needing to be transposed into national law). (The member states may adopt implementing provisions, if they consider it necessary on the basis of the content of the Regulation.)

At the same time, the new EU AML/CFT Directive will address the organization of national competent authorities fighting against money laundering and terrorism financing and, as characteristic of a directive, requires national transposition.

In Hungary, the requirements of Directive (EU) 2015/849 have been transposed into national law by the AML/CFT Act. Accordingly, the transposition and implementation of the EU Single Rulebook require a comprehensive review and subsequent modification or repeal the affected provisions of the AML/CFT Act, taking into account the following aspects:

- According to the above mentioned features of a regulation, it will not be necessary (nor possible) to regulate issues already covered by the new EU AML/CFT Regulation.
- According to the mentioned features of a directive, it will be necessary to modify the AML/CFT Act in order to transpose into the national law the requirements of the new EU AML/CFT Directive (taking into account the possible decision-making options for the member states).
- It will be necessary to take decisions whether it is more appropriate to comprehensively modify the provisions of the AML/CFT Act or adopt a new one in view of the large number of amendments.

¹⁷ Article 5 of the Directive (EU) 2015/849.

¹⁸ Article 67 of the Directive (EU) 2015/849.

2.3.2. Extension of the scope

Directive (EU) 2015/849 lists the types of institutions – as well as natural or legal persons acting in their professional activities – that fall under its scope as obliged entities. These include credit institutions, financial institutions and certain designated non-financial businesses and professions (hereinafter: DNFBPs). The following DNFBPs are under the scope of the directive: auditors, external accountants and tax advisors; notaries and other independent legal professionals; trust or company service providers; real estate agents; traders in goods (where payments are made or received in cash amounting to EUR 10,000 or more); gambling service providers; virtual asset service providers (including those engaged in exchange services between virtual currencies and fiat currencies, as well as custodian wallet service providers); traders in works of art (where the value of the transaction is 10,000 EUR or more). In the case of notaries and other independent legal professionals (including lawyers), the directive specifies the concrete types of transactions in which they are subject of the directive.¹⁹

With the exception of casinos, and following an appropriate risk assessment, member states may decide to exempt, in whole or in part, providers of certain gambling services from national provisions transposing this directive, based on the proven low risk posed by the nature and, where appropriate, the scale of their operations.²⁰

Member states may also decide that persons engaging in a financial activity on an occasional or very limited basis, where there is little risk of money laundering or terrorist financing, do not fall within the scope of the directive (provided that all of the criteria mentioned in the directive are met).²¹

Based on Directive (EU) 2015/849, member states shall, in accordance with the risk-based approach, ensure that the scope of the directive is extended, in whole or in part, to professions and categories of undertakings other than the obliged entities mentioned in the directive, if these entities engage in activities that are particularly likely to be used for money laundering or terrorist financing.²²

¹⁹ Article 2 (1) of the Directive (EU) 2015/849.

²⁰ Article 2 (2) of the Directive (EU) 2015/849.

²¹ Article 2 (3)-(9) of the Directive (EU) 2015/849.

²² Article 4 of the Directive (EU) 2015/849.

According to the EU Single Rulebook there will be several additions to the list of obliged entities, subject to the EU AML/CFT rules.

The new EU AML/CFT Regulation determines those entities that are considered obliged entities for the purposes of the regulation: credit institutions, financial institutions and DNFBPs, with a number of additions compared to the Directive (EU) 2015/849. The new EU AML/CFT Regulation also extends its scope to include: all types and categories of crypto-asset service providers (which will be considered as financial institutions under the new rules); traders in precious metals and stones; traders in high-value goods; crowdfunding service providers and crowdfunding intermediaries; credit intermediaries for mortgage and consumer credits (other than credit institutions and financial institutions); investment migration operators (permitted to represent or offer intermediation services to third-country nationals seeking to obtain residence rights in a Member State in exchange for any kind of investment); non-financial mixed activity holding companies; football agents and professional football clubs (in respect of certain transactions with investors, sponsors or agents).²³

According to the new EU AML/CFT Regulation, member states may decide to exempt (in whole or in part) certain service providers (under specific conditions) from the requirements set out in the Regulation: for example gambling service providers; professional football clubs and persons engaging in a financial activity on an occasional or very limited basis.²⁴

Furthermore, it is important to mention, that according to the new EU AML/CFT Directive the member states have the option to identify exposed sectors at national level. If a member state identifies that, in addition to the obliged entities, entities in other sectors are exposed to money laundering and terrorist financing risks, it may decide to apply all or part of the new AML/CFT Regulation to those additional entities.²⁵

The scope of the AML/CFT Act fully complies with the requirements of Directive (EU) 2015/849 and applies to financial service providers and certain DNFBPs (with a registered office, branch or business establishment in Hungary)²⁶, as specified in the Directive (EU) 2015/849. According to the

²³ Article 3 of the new EU AML/CFT Regulation.

²⁴ Article 4-6 of the new EU AML/CFT Regulation.

²⁵ Article 3 of the new EU AML/CFT Directive.

²⁶ Credit institutions; financial services institutions; institutions for occupational retirement provision; voluntary mutual insurance funds; operators accepting and delivering

Directive (EU) 2015/849, in the case of lawyers and notaries, the AML/CFT Act determines the specific transactions in which they fall under its scope. On the basis of Article 4 of the Directive (EU) 2015/849 (in accordance of the risk based approach), the scope of the AML/CFT Act has been extended to include certain additional service providers (among others, traders in precious metals or voluntary mutual insurance funds).

With respect to the EU Single Rulebook, the following issues need to be reviewed and the necessary amendments implemented in the AML/CFT Act:

- As mentioned above, the new EU AML/CFT Regulation determines entities considered obliged entities for AML/CFT purposes. The new EU AML/CFT Regulation shall be binding in its entirety and directly applicable in all member states. It has to be applied immediately from the date of its entry into force as the norm in all member states, without needing to be transposed into national law (contrary to the EU directives). Accordingly, it will not be necessary (and possible) to regulate the scope in the AML/CFT Act for service providers already covered by the new EU AML/CFT Regulation.
- It will be necessary to decide on possible exemptions (based on the new EU AML/CFT Regulation) and on the possible extension of the scope (based on the new EU AML/CFT Directive), and to incorporate the appropriate legal provisions into the AML/CFT Act accordingly.

2.3.3. Limit of EUR 10,000 to cash payments

Directive (EU) 2015/849 already acknowledges the risk posed by large cash sums: traders in goods fall under the scope of the Directive (EU) 2015/849 if payments are made or received in cash amounting to EUR 10,000 or more (whether in a single operation or in several linked operations) and are required to apply AML/CFT requirements.²⁷ Additionally, member states

international postal money orders; real estate agents; auditors, accountants, tax advisors; gambling service providers; traders in precious metals; traders in goods (where they receive or make a cash payment in the amount of three million forints or more); lawyers and notaries; fiduciary managers; virtual assets service providers (service providers engaged in exchange services between virtual currencies and fiat currencies, furthermore custodian wallet service providers); traders in cultural goods (where the value of the transaction or a series of linked transactions amounts to three million forints or more); providers of corporate headquarters services.

²⁷ Article 2 (1) and Article 11 of the Directive (EU) 2015/849.

may adopt or retain stricter provisions in this respect;²⁸ however, the Directive (EU) 2015/849 does not set a general limit for cash payments.

The new EU Single Rulebook will introduce a limit to large cash payments in exchange for goods and services. Under the new EU AML/CFT Regulation, persons trading in goods or providing services may accept or make a cash payment only up to EUR 10,000 or the equivalent in another currency (whether the transaction is carried out in a single operation or in several linked operations). Member states remain free to maintain or introduce lower limits at the national level. Furthermore, the member states shall ensure that appropriate measures (including the imposition of penalties) are taken against natural or legal persons acting in their professional capacity who are suspected of breaching the cash payment limit set by the new EU AML/CFT Regulation, or of a lower limit adopted at the national level.²⁹

In addition, obliged entities have to identify and verify the customers when carrying out an occasional cash transaction amounting at least EUR 3 000, or the equivalent in national currency (whether the transaction is carried out in a single operation or through linked transactions).³⁰

The provisions of the AML/CFT Act fully comply with the requirements of Directive (EU) 2015/849 in this respect. Accordingly, traders in goods that receive or make cash payments amounting of three million forints or more fall within the scope of the AML/CFT Act and they are required to apply AML/CFT measures.³¹ At the same time, the AML/CFT Act does not set a general limit for cash payments.

With respect to the EU Single Rulebook, the following issues need to be reviewed and the necessary amendments implemented in the AML/CFT Act:

- As mentioned above, the new EU AML/CFT Regulation determines a limit for large cash payments (up to EUR 10 000) in exchange for goods and services.
- The new EU AML/CFT Regulation shall be binding in its entirety and directly applicable in all member states, without needing transposition into national law. Accordingly, it will not be necessary (nor possible) to transpose this requirement into the AML/CFT Act (or other national

²⁸ Article 5 of the Directive (EU) 2015/849.

²⁹ Article 80 of the new EU AML/CFT Regulation.

³⁰ Article 19 (4) of the new EU AML/CFT Regulation.

³¹ Article 1 (1) and Article 6 of the AML/CFT Act.

legislation). However, this requirement necessitates a comprehensive review and, if necessary, the modification or repeal of the relevant national legal act in order to avoid conflicting legislation being in force.

- It will also be necessary to decide whether it is justified to introduce a lower limit at the national level.
- Furthermore, it is necessary to adopt the national implementing legislation, among others to ensure that appropriate measures (including the imposition of penalties) are taken against natural or legal persons which are suspected of a breach of this requirement.
- Additionally, as mentioned above, under the new EU AML/CFT Regulation, obliged entities must identify and verify the customers when carrying out an occasional cash transaction of at least EUR 3,000. As this is a requirement set by an EU regulation, it need not necessary (and cannot) be transposed into the AML/CFT Act, however, national implementing legislation must be adopted in this respect.

2.3.4. High-value goods

Directive (EU) 2015/849 includes certain requirements regarding large cash payments by classifying traders in goods as obliged entities when they make or receive cash payments above EUR 10,000³² (while allowing member states to introduce stricter measures).

To enhance the system's effectiveness – given that practical experience has shown that the approach of Directive (EU) 2015/849 is ineffective in light of the poor understanding and application of AML/CFT requirements³³ – the EU Single Rulebook introduced changes in this respect.

As mentioned above, to adequately mitigate risks deriving from the misuse of large cash sums, a limit on large cash payments above EUR 10,000 has been established. Consequently, traders in goods no longer need to be subject to AML/CFT requirements in the same way as before.

However, some categories of traders in goods are particularly exposed to ML/FT risks. For that reason, traders in precious metals and precious stones and other high value goods should be subject to AML/CFT

³² Article 2 (1) of the Directive (EU) 2015/849.

³³ Preamble (1) of the new EU AML/CFT Regulation.

requirements where such trading is either a regular or a principal professional activity (regardless of the means of payment used).³⁴ ‘High-value goods’ are defined as the goods listed in Annex IV of the new EU AML/CFT Regulation, such as: jewellery, gold- or silversmith articles of a value exceeding EUR 10,000; clocks and watches of a value exceeding EUR 10,000 or the equivalent in national currency; motor vehicles priced at over EUR 250,000 or the equivalent in national currency; aircraft exceeding EUR 7,500,000; and watercraft exceeding EUR 7,500,000. Furthermore, the new EU AML/CFT Regulation establishes requirements for threshold-based reports of transactions in certain high-value goods. Traders in high-value goods and financial institutions shall report to the FIU all transactions involving the sale of such goods when they are acquired for non-commercial purposes – specifically motor vehicles for a price of at least EUR 250,000; watercraft for a price of at least EUR 7,500,000; and aircraft for a price of at least EUR 7,500,000.³⁵

The provisions of the AML/CFT Act fully comply with Directive (EU) 2015/849 in this respect. Accordingly, traders in goods that receive or make cash payments amounting to three million forints or more are subject to the AML/CFT Act and its requirements.³⁶ Furthermore, based on Article 4 of the Directive (EU) 2015/849, the scope of the AML/CFT Act has been extended to traders in precious metals.

With respect to the EU Single Rulebook, the following issues need to be reviewed and the necessary amendments implemented in the AML/CFT Act:

- The provisions of the new EU AML/CFT Regulation regarding high-value goods will be binding in their entirety and directly applicable in all member states. Accordingly, it will not be necessary (or possible) to transpose these requirements into the AML/CFT Act, similar to other provisions of the Regulation.
- At the same time, these requirements necessitate a comprehensive review and, if necessary, modification or repeal of the relevant national legal acts (especially the AML/CFT Act) to avoid conflicting legislation.

³⁴ Article 3 (3) of the new EU AML/CFT Regulation.

³⁵ Article 74 of the new EU AML/CFT Regulation.

³⁶ Article 1 (1) and Article 6 of the AML/CFT Act.

- Furthermore, based on the comprehensive review, it will likely be necessary to adopt the national implementing legislation in this respect.

2.3.5. Third-country policy

Directive (EU) 2015/849 already acknowledges the potential risks posed by third countries and establishes a third-country policy based on the following elements. The Directive (EU) 2015/849 states, that third-country jurisdictions with strategic deficiencies in their national AML/CFT regimes, which pose significant threats to the the Union's financial system (referred to as 'high-risk third countries') must be identified to protect the proper functioning of the internal market. The Commission is empowered to adopt delegated acts³⁷ to identify high-risk third countries (taking into account certain strategic deficiencies).³⁸

According to the Directive (EU) 2015/849, for business relationships or transactions involving high-risk third countries, member states shall require obliged entities to apply enhanced customer due diligence measures: the directive defines both mandatory and additional (optional) customer due diligence measures.³⁹

The EU Single Rulebook aims to ensure that external threats to the Union's financial system are effectively mitigated by implementing a harmonized approach at EU level.

Under the new EU AML/CFT Regulation, third countries with significant strategic deficiencies in their national AML/CFT regimes shall be identified by the Commission and designated as 'high-risk third countries'. In order to identify third countries, the Commission is empowered to adopt delegated acts to supplement this regulation.

Where a third country is identified as high-risk, obliged entities shall apply *enhanced due* diligence measures (listed in the regulation for the cases of higher risk) with respect to business relationships or occasional transactions involving natural or legal persons from that third country. Furthermore the delegated act shall identify specific countermeasures to mitigate the risks

³⁷ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies.

³⁸ Article 9 of the Directive (EU) 2015/849.

³⁹ Article 18 of the Directive (EU) 2015/849.

arising from each high-risk third country. Additionally, if a member state identifies a specific ML/TF risk from a third country that the Commission has identified but that is not addressed by general countermeasures, it may require obliged entities to apply specific additional countermeasures.⁴⁰

Furthermore, based on the new EU AML/CFT Regulation third countries with compliance weaknesses in their national AML/CFT regimes shall be identified by the Commission, as well. In order to identify third countries, the Commission is empowered to adopt delegated acts to supplement this regulation.

In this case, the delegated act will specify the enhanced due diligence measures (among those listed in the regulation for the cases of higher risk), that obliged entities must apply to mitigate risks related to business relationships or occasional transactions involving natural or legal persons from that third country.⁴¹

In addition the Commission is empowered to adopt delegated acts by identifying additional third countries where, in exceptional cases, it considers it indispensable to mitigate a specific and serious threat to the Union's financial system and the proper functioning of the internal market posed by those third countries (autonomous assessment by the Commission).

If the identified threat amounts to a significant strategic deficiency, obliged entities shall apply enhanced due diligence measures, and the delegated act shall identify the necessary countermeasures. Where the identified specific and serious threat from the third country concerned amounts to a compliance weakness, the delegated act shall identify the enhanced due diligence measures required to mitigate the risks.⁴²

The provisions of the AML/CFT Act fully comply with the requirements of Directive (EU) 2015/849 in this respect. Accordingly, under the AML/CFT Act, service providers must apply enhanced customer due diligence measures for high-risk customers, among others if the customer is from a third country identified as high-risk with strategic deficiencies. The AML/CFT Act defines 'high-risk third countries with strategic deficiencies', as those listed in Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016, which supplements Directive (EU) 2015/849 by identifying such

⁴⁰ Article 29 of the new EU AML/CFT Regulation

⁴¹ Article 30 of the new EU AML/CFT Regulation

⁴² Article 31 of the new EU AML/CFT Regulation

countries. The AML/CFT Act also determines the specific enhanced customer due diligence measures (both compulsory and optional).⁴³

With respect to the EU Single Rulebook, the following issues need to be reviewed and the necessary amendments implemented in the AML/CFT Act:

- As mentioned above, the new EU AML/CFT Regulation and the Commission's delegated acts will determine the relevant third countries and the applicable specific enhanced customer due diligence measures/countermeasures by the obliged entities.
- The new Regulation shall be binding in its entirety and directly applicable in all member states, without transposition. Accordingly, it is neither necessary nor possible to transpose these requirements into the AML/CFT Act for service providers already covered by the new EU AML/CFT Regulation. However, this makes it necessary to comprehensively review and, if required, modify or repeal the AML/CFT Act to avoid conflicting legislation.
- Furthermore, based on this comprehensive review, it will most likely be necessary to adopt the national implementing legislation in this respect.

2.3.6. Harmonized customer due diligence process

Directive (EU) 2015/849 contains detailed provisions regarding customer due diligence requirements. The directive specifies the following (among others)⁴⁴: cases in which the obliged entities must apply the customer due diligence measures⁴⁵; the concrete customer due diligence measures⁴⁶; the

⁴³ Article 3 and Article 16-16/A of the AML/CFT Act

⁴⁴ Article 11-29 of the Directive (EU) 2015/849.

⁴⁵ When establishing a business relationship; when carrying out an occasional transaction that amounts to EUR 15 000 or more, or constitutes a transfer of funds exceeding EUR 1 000; in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10 000 or more; for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more; when there is a suspicion of money laundering or terrorist financing; when there are doubts about the veracity or adequacy of previously obtained customer identification data.

⁴⁶ Identifying the customer and verifying the customer's identity; identifying the beneficial owner and taking reasonable measures to verify that person's identity; assessing and, as appropriate, obtaining information on the purpose and intended nature of the business

timing of the customer due diligence; simplified customer due diligence requirement; enhanced customer due diligence requirement; reliance on third parties.

Directive (EU) 2015/849 requires transposition into the national law of the member states. The directive is binding as to the result to be achieved, leaving member states discretion as to the means of achieving that result.

The EU Single Rulebook emphasizes that customer due diligence requirements are essential to ensure that obliged entities identify, verify and monitor their business relationships with their clients in relation to the ML/T risks that they pose. It is necessary to achieve a uniform and high standard of customer due diligence in the Union, by relying on harmonized requirements and reducing national divergences. At the same time, it is essential that obliged entities apply customer due diligence measures in a risk-based manner.⁴⁷

Accordingly the new EU AML/CFT Regulation provides directly applicable and significantly more detailed requirements regarding customer due diligence, including⁴⁸: circumstances under which obliged entities must apply customer due diligence measures (with specific requirements, among others, regarding the crypto-asset service providers and cash transactions, or the definition of the customers in certain sectors); customer due diligence measures (including, among others, a harmonized approach to identification of beneficial ownership); third country policy (as elaborated above under point 2.3.5.); simplified due diligence requirements; enhanced due diligence requirements (including specific requirements, among others, for cross-border correspondent relationships, transactions with a self-hosted address in case of crypto-asset service providers, applicants for residence by investment schemes, politically exposed persons); specific customer due diligence provisions (for example, for the life and other investment-related insurance sectors); reliance on third parties.

The new EU AML/CFT Regulation is binding in its entirety and directly applicable in all member states without transposition into national law.

As mentioned above, the requirements of the Directive (EU) 2015/849 have been transposed into the Hungarian law by the AML/CFT Act. With respect to customer due diligence, the provisions of the AML/CFT Act fully

relationship; conducting ongoing monitoring of the business relationship.

⁴⁷ Preamble (51)-(52) of the new EU AML/CFT Regulation.

⁴⁸ Article 19-50 of the new EU AML/CFT Regulation.

comply with Directive (EU) 2015/849, although where the member state has discretionary power, it has set country-specific requirements. In light of the EU Single Rulebook, it will be necessary to review the following issues and implement the necessary amendments in the AML/CFT Act:

- The provisions of the new EU AML/CFT Regulation regarding customer due diligence will be directly applicable in all member states; therefore it is neither necessary nor possible to transpose these requirements into the AML/CFT Act.
- At the same time, these requirements necessitate a comprehensive review, if necessary, modification or repeal of the relevant national legal acts (especially the AML/CFT Act to avoid conflicting legislation.
- Furthermore, based on the comprehensive review mentioned, national implementing legislation will likely need to be adopted in this respect.

3. Conclusion

This study analyzes only the most significant differences between Directive (EU) 2015/849 and the new EU AML/CFT legislative package, with a particular focus on the substantive new elements introduced by the legislative package that will lead to significant changes in domestic regulation regarding scope and customer due diligence requirements. The amendment of the AML/CFT Act (or the adoption of a new AML/CFT Act) based on the new EU AML/CFT legislative package – and the incorporation of the most important provisions analyzed above into the domestic legislation – will make a significant contribution to the effectiveness of the Hungarian anti-money laundering and countering terrorist financing regime.

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