Anti-Money Laundering Newsletter

Main new legislation and news in relation to Anti-Money Laundering and combating Terrorism Financing (AML/TF) - 2Q22

GARRIGUES

Spain

July 2022

1. Internal control bodies: EBA publishes new guidelines on role and responsibilities of the compliance officer

The goal is to ensure a common understanding and implementation of the requirements by compliance officers to avoid uneven implementation of measures across the European Union.

On June 14, the EBA published the new Guidelines on the role and responsibilities of the AML/CFT compliance officer. These guidelines are intended to ensure a common understanding and implementation of the requirements in Directive 2015/849 with a view to resolving the adverse consequences that have arisen for the EU's financial system from the requirements being implemented unevenly and not always being applied effectively. If further implements article 9 "Compliance functions" of the Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Proposal for an AML/CTF Regulation).

It is notable that both the Proposal for an AML/CTF Regulation and the guidelines adopt a model that strengthens the role of compliance manager (as described below), in contrast to the Spanish model which has a collective Internal Control Body with representation in the various areas of the obliged entity's business, as the individual responsible for implementation of AML/CTF policies and procedures.

The guidelines relate to three key areas:

- Firstly, they set out the **role and responsibilities of the management body**. In relation to its supervisory role, the document sets out that the management body is responsible for overseeing and monitoring implementation of the governance and internal control framework to ensure compliance with the AML/CTF legislation. To fulfill this role, the management body must be informed of the results of the business-wide ML/TF risk assessment, oversee and monitor the extent to which the AML/CTF policies and procedures are adequate and effective in light of the risks, review, at least once a year, the activity report of the compliance officer and assess, at least once a year, the effective functioning of the AML/CFT compliance function.

  As part of its management function, provided for in Directive 2015/849, the management body should, among other responsibilities, implement the structure necessary to comply with the AML/CTF strategy, ensure adequate, and sufficiently detailed AML/CTF reporting to the competent authority and ensure compliance with the European supervisory authorities' guidelines.

  The management body should also designate one of its members to be **responsible for AML/CTF,** and where no management body is in place, a senior manager responsible for AML/CTF which the Proposal for an AML/CTF Regulation refers to as **compliance manager**, who must satisfy certain requirements relating to knowledge and experience and who will be the main contact point for the compliance officer with the management body. The guidelines set out among the compliance manager's functions the obligation to ensure that AML/CFT policies, procedures and internal control measures are adequate and proportionate; the assessment of whether it would be appropriate to appoint a separate AML/CTF compliance officer and a support unit for the performance of the officer's functions; the obligation to ensure that the management body receives sufficient information on AML/CTF matters and that there is periodical reporting on the activities carried out by the AML/CFT compliance officer; to inform

the management body of any serious or significant AML/CFT issues and breaches and recommend actions to remedy them.

- Secondly, the guidelines contain the **role and responsibilities of the compliance officer**. Financial or credit institutions should appoint a separate compliance officer, unless they have a limited number of employees, or the nature of their associated business or risks, the number of customers or the number or volume of transactions justify not appointing that separate compliance officer. Where a separate compliance officer is not appointed, the compliance officer's tasks should be performed by the compliance manager or by outsourcing them. Additionally, the compliance officer must meet the suitability, skills and expertise requirements set out in paragraphs 35 and 36 of the Guidelines.

  The EBA has also included the compliance officer's tasks which should be clearly defined and documented and consist of:

  - developing a risk assessment framework for business-wide and individual risk assessment;
  - setting out the AML/CTF policies and procedures to be adopted by the institution and ensuring that they are effectively implemented. They should include, at least, the ML/TF risk assessment methodology, customer due diligence, internal reporting, record keeping and provisions for monitoring AML/CTF compliance;
  - ensuring that policies are revised and updated where necessary and proposing how to address any change;
  - being consulted before onboarding new high risk customers or maintaining business relationships with those types of customers;
  - monitoring whether the AML/CTF measures, policies, controls and procedures implemented by the credit or financial institution comply with the credit or financial institution's AML/CFT obligations laid down by the legislation (as a "second line of defense") and oversee the effective application of AML/CFT controls applied by business lines and internal units ("first line of defense");
  - reporting to and advising the management body on measures to be taken to ensure compliance with the applicable rules;
  - giving due consideration to the sensitivity and confidentiality of the information that may be disclosed and the non-disclosure obligations the credit or financial institution has to adhere to in the transmission of information on suspicious transactions
  - duly inform staff about the ML/TF risks to which the credit or financial institution is exposed and ensure that all employees receive AML/CTF training.

  The guidelines also contain rules and principles on outsourcing the compliance officer's tasks, including the principle that ultimate responsibility for compliance with the obligations lies with the institution, the need to define and set out in a written document the rights and obligations of the credit or financial institution and the service provider, the obligation to monitor and oversee the quality of the service provided by the institution, the establishment of the same regulatory framework for intra-group outsourcing as outsourcing to service providers and the prohibition on the outsourcing of functions being able to result in delegation of the management body's responsibilities.

- Lastly, the EBA's guidelines set out the **organization of the AML/CTF compliance function at a group level** and recommend that the credit or financial institution should adapt its internal control to the specify of its business, taking into account the group context.

  The parent company should designate a member of its management body or senior manager responsible for AML/CFT, as well as a group AML/CFT compliance officer; set up an organizational and operational coordination structure at group level; approve the group's internal AML/CFT policies and procedures; and evaluate the effectiveness of the AML/CFT policies that are implemented.

  They specify that institutions operating with branches or subsidiaries in another member state, or third country should designate a group compliance officer as coordinator. The tasks of this compliance officer should be to coordinate assessment of the ML/TF risks for each entity of the group, draft a group-wide ML/TF risk assessment, define group-level AML/CFT standards, coordinate the activities of the various local AML/CFT compliance officers, monitor the AML/CTF compliance of the branches and the subsidiaries located in third countries, set group-wide policies, procedures and measures concerning data protection and sharing of information within the group, and ensure that group entities have adequate suspicious transaction reporting procedures. The group compliance officer should also produce an activity report at least once a year and present it to the group management body.

2. Money laundering in the NFT market

The non-fungible tokens (NFT) market presents similar money laundering risks to the traditional money laundering model used in the art market.

A report by Chainanalysis (a global platform specialized in assessing and monitoring blockchain technology) published in February 2022, explains that NFTs as an asset class are exponentially gaining value, as the assets attract new users and transactions with high values in this market. In terms of transaction volume, it is estimated that in 2021 transactions in the NFT market totaled more than US$ 26.9 billion, in ERC-721 and ERC-1155, the two types of Ethereum smart contracts associated with NFT marketplaces and collections.

By way of a reminder, non-fungible tokens (NFTs) are digital certificates of authenticity, which are associated with certain digital files (individual files containing images, videos, text or compressed files which have a unique value) through blockchain technology. One of the characteristic features of NFTs is their nonfungible nature, which makes them irreplaceable and unable to be substituted or replicated; insofar as they cannot be traded or exchanged at equivalency, unlike currencies.

In this respect, NFTs share a particular similarity with works of art, as pieces that are also unique and irreplaceable and able to take the form of crypto-art. They may show a similar pattern to the archetypal problem of money laundering in the art market. Art transactions have historically provided an attractive opportunity for money laundering, mainly because of the subjective value associated with works of art, the ease of transporting them in many cases, and the opacity that transactions with works of art may have.

These characteristics of the art market are sharper in relation to NFTs, in view of the speed and agility of blockchain transactions and the lack of information on the movement of funds. This is explained by these transactions being tied to a cryptocurrency, and the self-sufficiency these assets have online, in terms of storage. The report moreover highlights the vulnerability of these virtual assets to hyper speculation, in very short timeframes, whereas the traditional art market has relatively slow trading cycles.

In this respect, a practice known as **wash trading** has been identified in the NFT market, consisting of transactions in which the seller and purchaser of NFTs is the same person in successive transactions. The gain lies in increasing (or inflating) virtual asset values, through this repetitive speculative behavior, which catches the attention of potential buyers who end up buying an asset at a very high price with enrichment for the agent who gave rise to that wash trading. According to the data provided in the Chainalysis report, a group of 110 NFT owners achieved US$ 8.9 million in profits from wash trading.

This practice shows, as the FATF highlighted in a targeted update on implementation of the FATF standards on virtual assets and virtual asset service providers, that more exhaustive and customized rules are needed for this growing market, based on the risks it presents. Accordingly, because NFTs appear to fall outside the scope of application of the proposal for a MiCA Regulation which is intended to apply to crypto-assets, and they do not fall either among the financial instruments regulated by the MiFID II rules, the option is being considered of treating them as assets akin to works of art, which would open the door to effective regulation by broadening the scope of institutions subject to AML/CTF obligations, for the purpose of including these platforms for NFT transactions.

In March 2022 European supervisory authorities EBA, ESMA and EIOPA published a joint statement warning consumers about the risks of crypto-assets, among other reasons, due to their speculative uses. The statement also refers to consumers' growing interest in NFTs although it does not specifically mention the money laundering risk in these platforms' activities. The Spanish supervisory authorities, for their part, have expressed the same concern with the publication of a joint statement.

3. Legislation and publications by official bodies

EU reaches provisional agreement on transparency of crypto-asset transfers for compliance with FATF's recommendations

On June 29 the Council and the European Parliament reached a provisional agreement on the proposal updating the rules on information accompanying transfers of funds, by **extending the scope of those rules to transfers of crypto-assets**. The introduction of this **travel rule** will ensure financial transparency on exchanges in crypto-assets and will provide the EU with a solid and proportional framework that complies with the most demanding international standards on the exchange of crypto-assets, in particular the FATF's recommendations 15 and 16.

The objective is to ensure the **traceability of crypto-asset transfers** in order to be able to better identify possible **suspicious transactions** and block them, as well as to make it more difficult for individuals and entities subject to **restrictive measures** to try to circumvent them.

To achieve this, an **obligation** will be imposed on **crypto-asset service providers** to collect and make accessible certain information about the originator and the beneficiary of the transfers of crypto-assets they operate, in the same way as payment service providers currently do for electronic transfers. In particular, the new agreement requires that the full set of originator information travel with the crypto-asset transfer, **regardless of the amount of crypto-assets being transacted**. There will also be specific requirements for crypto-asset transfers between crypto-asset service providers and **un-hosted wallets**

An important element related to the **travel rule** is that facilitators or intermediaries for these types of transfers are subject in the same way as the crypto-asset service providers.

In this context, on June 30 the FATF published a targeted update on implementation of the FATF standards on virtual assets and virtual asset service providers (VASP) focusing on the travel rule and on countries' compliance with FATF Recommendation 15 and its interpretative note (R.15/INR.15). This report reveals that only 29 of 98 jurisdictions have approved the FATF's travel rule to ensure that cryptographic service providers verify who their customers are.

The report finds there is an urgent need for jurisdictions to accelerate implementation and compliance with the travel rule to help tackle money laundering and terrorist financing via virtual assets. It also informs on the market trends and emerging risks, including decentralized finance (DeFi), nonfungible tokens (NFT) and unhosted wallets.

FATF's publication regarding standards on beneficial ownership

On March 4, 2022 the FATF approved a number of amendments to Recommendation 24 and its interpretative note. The aim of the amendments is to "strengthen" the international standards on the beneficial ownership of legal entities so as to ensure greater transparency over the ownership and ultimate control of legal entities, and to mitigate the risks of their misuse.

That strengthening stems from the mutual evaluations made by the FATF which showed a generally insufficient level of effectiveness in combating the misuse of legal entities for money laundering and terrorist financing globally.

In response to this, the amendments to the recommendation require a multi-pronged approach, in other words the use of a combination of different mechanisms, for collection of beneficial ownership information to ensure it is available to competent authorities in a timely manner. Countries should require companies to obtain and hold adequate, accurate and up-to-date information on their own beneficial ownership and make that information available to competent authorities in a timely manner. Additionally, countries should require beneficial ownership information to be held by a public authority at a public registry and should use any alternative mechanism that may be necessary to ensure that the effective beneficial ownership of a legal entity may be determined.

Moreover, the revisions to Recommendation 24 will require countries to follow a risk-based approach and consider the risks associated with legal entities in their countries, for which they must assess and address the risk posed by legal entities, not only by those created in their countries, but also by foreign-created persons which have sufficient links with their country.

Lastly, the changes include stronger controls to prevent misuse of bearer shares and nominee arrangements, including prohibiting the issuance of new bearer shares and bearer share warrants and conversion or immobilization of the existing ones, and more robust transparency requirements for nominee arrangements.

EU reaches agreement on European crypto-asset regulation (MiCA)

On June 29 the Council and the European Parliament reached an agreement for approval of European Regulation on Crypto-Assets (MiCA).

MiCA regulates the issuing and trading of all types of crypto-assets on platforms, with the exception of those expressly excluded from its scope (financial instruments and NFTs); puts in place a regulatory framework on two types of stablecoins (asset-referenced tokens and e-money tokens); sets out the rules on crypto-asset service providers who will be required to have a prior authorization, for which they will have to obtain a European passport, but they must have a permanent establishment in the EU; it also contains important rules on investor protection and provides exhaustive regulations on supervision by the EBA, ESMA and national authorities; and lastly includes rules against market abuse, to avoid inside information and market manipulation.

To avoid overlaps, the regulation does not duplicate the money laundering provisions appearing in the recently updated rules on transfers of funds agreed on June 29. However, the proposed regulation tasks the EBA with maintaining a public register of non-compliant crypto-asset service providers or of service providers whose parent company is in a country considered to be high risk.

Moreover, crypto-asset service providers whose parent companies are located in countries listed on the EU list of third countries considered as high risk for anti-money laundering activities, as well as on the EU list of non-cooperative jurisdictions for tax purposes, will be required to implement enhanced checks in line with the EU AML rules.

The authorization procedure for service providers will have to take three months, and authorizations will be withdrawn if the anti-money laundering and counter-terrorist financing rules are not fulfilled.

Other notable updates in the agreement are:

- Crypto-asset issuers will have to declare information on their environmental and climate footprints.
- Stable coins will be supervised by the EBA, which will have to be consulted in relation to any issuance of asset-referenced tokens.
- Asset-referenced tokens based on a non-European currency, as a means of payment, will be constrained to preserve monetary sovereignty.
- ESMA has powers to act in relation to providers' activities if there are risks to financial stability, market integrity or investor protection.
- NFTs are definitively excluded from the scope of the Regulation - except if they fall under existing crypto-asset categories (utility tokens or means of payment) -, for which they must be "offered to the public at a fixed price". However, the Commission will be tasked with preparing an assessment for a legislative proposal on these crypto assets.

EBA launches EuReCA, the new European Union central database for combating money laundering and terrorist financing

The new EuReCA, launched by the EBA at the beginning of 2022 is based on a reporting system for material CFT/AML weaknesses.

EuReCA has been established based on provisions in article 9a (1) and (3) of the EBA Regulation and in the *draft Regulatory Technical Standards (RTS) on a central database on AML/CFT in the EU,* which were published by the EBA on December 20, 2021.

EuReCA will contain information on material weaknesses in individual financial institutions in the EU that competent authorities have identified. Additionally, those authorities will also report on the measures and penalties that will be imposed on financial institutions to rectify those material weaknesses.

Notable examples of weaknesses include a lack of adequate AML/CTF policies and procedures, including an absence of transaction monitoring at the group level, or an absence of policies and procedures on certain clients considered to be high risk.

EuReCA will also include internal audit findings identified by the authorities during onsite inspections.

The EBA will use information on the platform to inform its view of ML/TF risks affecting the EU financial sector. This information will also be shared with the competent authorities, to support them at all stages of the supervisory process and in particular where more specific money laundering and terrorist financing risks emerge.

The aim is for it to act as an early warning tool, which will help competent authorities to act before ML/TF risks crystallize.

Document published by Treasury General Directorate relating to guidance papers on a risk-based approach published by the FATF

The Treasury has included in a recent publication the various guidance papers published by the FATF relating to the risk-based approach, a principle that obliged entities have had to apply since 2012, for effective implementation of the FATF's recommendations.

Under a risk-based approach, obliged entities, countries, competent authorities and national supervisors should perform their own assessments of money laundering and terrorist financing risks using a three-stage method consisting principally of: (i) identifying and assessing potential risks, (ii) taking appropriate measures for their mitigation and, lastly, (iii) monitoring how the risks evolve. The actors mentioned above also have to document all these stages.

In 2019 the FATF published four guidance papers addressed to professionals working in the areas concerned. The guidance classifies the risks into geographic risk, customer risk, transaction or service risk and a fourth risk issued following the review of the FATF's recommendations on virtual assets. The four guidance papers are:

- Guidance for legal professionals, for the obliged entities identified in letters n) and ñ) of article 2.1 of Law 10/2010.

- Guidance for the accounting profession, those identified as obliged entities in letters m) or o) of article 2.1 of Law 10/2010.

- Guidance for trust and company service providers for the obliged entities in letter o) of article 2.1 of Law 10/2010 where, among other services, they act as managers or secretaries or hold a similar job at a company; provide a registered office or business address for a company; or act as trustees for a trust.

- The guidance for virtual asset service providers informs these providers that, to apply the recommendations, they should rely on tools such as customer due diligence, record keeping and suspicious transaction reporting.

The Treasury also highlights the document published by the FATF on the best practices for identifying the beneficial owner of a legal entity. The document is based on solutions adopted by certain countries to achieve a satisfactory level of transparency regarding the beneficial ownership of legal entities, by adopting mechanisms based on a company approach, an existing information approach and a registry approach.

Government opens consultation on amendment to AML/CTF Regulations

The Ministry of Economic Affairs and Digital Transformation published in March a prior consultation on the bill for a royal decree amending Royal Decree 304/2014 of May 5, 2014, approving the regulations implementing Anti-Money Laundering and Counter-Terrorist Financing Law 10/2010, of April 28, 2010 (the **AML/CTF Regulations**). This royal decree is aimed at adapting the law to the latest changes to domestic and European legislation, including the provisions in the Fifth Directive.

The main elements put in place and needing to be amended are:

- Change to the list of obliged entities.
- Strengthening of the rules on identifying beneficial owners of legal entities. This is achieved by creating a single beneficial ownership register.
- Broadening of the obligations to report products to the Centralized Banking Account Register.
- Inclusion of the list of due diligence measures for countries identified by the European Union.
- Treatment of the broader definition of politically exposed person (PEP).
- Clarification of the interaction between recent data protection rules and the AML/CFT rules.

An update of the AML/CTF Regulations had also been made necessary by the implementation of Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005, which affects the following elements:

- New obligations and controls for commodities used as highly-liquid stores of value, like gold.
- Obligations for unaccompanied movements of cash.
- Changes to the forms for declaring means of payment entering or leaving Spain.
- New claims system for interested parties against detentions of those means of payment by the customs authorities.

Lastly, the consultation launched a number of questions related to the proposed changes, to assess the options for putting in place the elements that the law determines. Notable questions are:

- *"Do you consider that the formal identification requirements are sufficient and proportionate?"*
- *"Is it necessary to adapt the application of enhanced and simplified due diligence measures?"*
- *"What about the internal control measures?"*
- *"Which enhanced due diligence measures may be advisable for high-risk jurisdictions?"*
- *"How should the elements of the law relating to virtual asset providers be implemented, including specific provisions on compliance with their anti-money laundering and counter-terrorist financing obligations? Do you consider to be necessary any additional measures to those set out in Law 10/2010? Do you consider that the level of risk associated with this type of services justifies a set of rules with enhanced prevention obligations, similar to that for high-risk sectors and obliged entities?"*

The consultation period ended on April 13, 2022. A delay is expected in publication of the reform of those regulations, insofar as their update could be conditioned by the approval of the package of European legislation currently at the proposal stage.

Anti-Money Laundering Commission publishes penalties imposed in 2021

As required by article 61.6 of Anti-Money Laundering and Counter-Terrorist Financing Law 10/2010, of April 28, 2010, the Anti-Money Laundering and Monetary Infringements Commission (CPBC) published on its website the final sanctions imposed in the administrative jurisdiction by the CPBC for infringements defined in articles 51 and 52 of Law 10/2010 (except for those defined in subarticle 3.a) in 2021, stating the type and nature of the infringement concerned and the penalty or penalties imposed for each infringement, although the entity, individual or individuals responsible for the infringement are not identified.

In 2021, the CPBC imposed 22 penalties in aggregate on 4 credit institutions for serious infringements due to a breach of statutory AML/CTF obligations, as set out below:

Obligation	No of penalties	Aggregate amount
Information	**6**	**€3,650,315.50**
Special analysis	4	€2,512.381.50
Notification	2	€1,137,934.00
Due diligence	**11**	**€1,990,583.00**
Continuous monitoring	4	€846,791.00
Purpose of the business relationship	4	€774,697.00
Enhanced due diligence	3	€369,095.00
Internal control	**5**	**€621,304.50**
Policies and procedures	3	€397,802.50
Internal control bodies	2	€223,502.00
Total	**22**	**€6,262,203.00**

The highest penalty imposed in 2021 was a fine amounting to €845,501, accompanied by a private reprimand for a "serious infringement due to breach of the suspicious transaction reporting obligation" to a credit institution (case 4002/2020), a penalty contained in article 52.1.h) and article 57 of Law 10/2010. The next highest involved a fine amounting to €833,001 and was imposed on the same credit institution due to a breach of the special review obligation for any transaction that might be related to money laundering, penalized in article 52.1.g) and article 57 of Law 10/2010.

Additionally, the Treasury made 14 requests to financial institutions (investment services firms, credit institutions, an insurance company and a real estate company) ordering them to adopt a range of measures that would enable them to fulfill the obligations set out in Law 10/2010.

The fines imposed by Treasury in 2021 amounted in aggregate to €6.3 million.

Below are the estimated figures for penalties imposed by other national supervisory authorities in 2021:

- CNMV: €6.37 million, duplicating the fines imposed a year earlier (3.23 million) on institutions for bad practices.

- Banco de España: reduced its penalties to a third, from €12.4 million in 2020 to €4.3 million in 2021.

- The General Directorate for Insurance and Pensions: imposed penalties amounting to €392,000, increasing its penalties by 40% on a year earlier (€176,013).

4. High risk jurisdictions for AML/CTF purposes

Non-cooperative jurisdictions with deficiencies in the field of combating money laundering and terrorist financing included on the lists prepared by the FATF and by the European Commission

The Office of the Secretary of the Anti-Money Laundering and Monetary Infringements Commission publishes on its website three times a year notices listing the non-cooperative jurisdictions in the field of combating money laundering and terrorist financing included on the lists prepared by the FATF and by the European Commission. The latest notice was published in March 2022.

HIGH-RISK JURISDICTIONS ACCORDING TO THE FATF

The list of high-risk jurisdictions according to the FATF is updated quarterly. The updates are available on its website .

Black list (high-risk jurisdictions):

- Iran

- Democratic People's Republic of Korea

Grey list (other "jurisdictions under increased monitoring"):

This list includes 23 countries with strategic deficiencies which are subject to an action plan and with respect to which the FATF recommends taking the identified risks into account:

- Albania
- Barbados
- Burkina Faso
- Cambodia
- United Arab Emirates
- Philippines
- Cayman Islands
- Haiti
- Jamaica
- Jordan
- Mali
- Malta
- Morocco
- Myanmar
- Nicaragua
- Pakistan
- Panama
- Senegal
- Syria
- South Sudan
- Turkey
- Uganda
- Yemen

HIGH-RISK JURISDICTIONS ACCORDING TO THE EUROPEAN UNION

These countries with strategic deficiencies are set out in Commission Delegated Regulation (EU) 2016/1675 of July 14, 2016, identifying high-risk third countries with strategic deficiencies and its later amendments.

On **February 21, 2022, the European Commission published Commission Delegated Regulation (EU) 2022/229** of 7 January 2022, on amending Regulation 2016/1675 and supplementing Directive 2015/849 of the European Parliament and of the Council, which updates the EU's list of high-risk countries and adds or deletes a considerable number of countries from this list.

- It adds: Burkina Faso, the Philippines, Haiti, Cayman Islands, Jordan, Mali, Morocco, Senegal and South Sudan.

- And deletes jurisdictions including the Bahamas, Botswana, Ghana, Irak and Mauritius.

So now the EU list of high-risk third countries mention North Korea and Iran separately, which reflects the separate treatment that the FATF gives to these countries.

Along with these, it also lists as countries with strategic deficiencies:

Afghanistan, Barbados, Burkina Faso, Cambodia, the Philippines, Haiti, the Cayman Islands, Jamaica, Jordan, Mali, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, South Sudan, Trinidad and Tobago, Uganda, Vanuatu, Yemen and Zimbabwe.

Council reviews EU list of non-cooperative countries and territories for tax purposes.

On February 24, the Council adopted conclusions on the EU list of non-cooperative jurisdictions for tax purposes, in which it decides to keep the following countries on the list: Fiji, Guam, US Virgin Islands, Palau, Panama, Samoa, American Samoa, Trinidad and Tobago, and Vanuatu.

The revised list (Annex I) only includes jurisdictions that have either not engaged in a constructive dialog with the EU on tax governance or have failed to deliver on their commitments to implement the necessary reforms. Those reforms should aim to comply with a set of objective tax good governance criteria, which include tax transparency, fair taxation and implementation of international standards designed to prevent tax base erosion and profit shifting.

In addition to this list, the Council approved the usual state of play document (Annex II) which reflects the commitments of cooperative jurisdictions to reform their legislation to implement the agreed tax good governance principles.

Several countries have made commitments, in particular regarding the recommendations of the OECD Forum on Harmful Tax Practices. Other countries also commit to taking measures to reform their preferential tax regimes or to continue improving their legislation.

5. International sanctions regime

Overview of the main sanctions imposed on Russia by the European Union and measures to be taken into account by Spanish companies

In the context of the international crisis in Ukraine, certain countries and international organizations have taken coercive measures against Russia aimed at imposing sanctions on the Russian government, in response to the occupation of Ukraine initiated on February 24, 2022. In this document we describe the main measures imposed.

The European Union has approved provisions adopting six packages of international sanctions in response to the invasion and military attack on Ukraine, which it adds to those that have been in force since 2014 due to the illegal annexation of Crimea. These measures are adopted by the Council of the European Union as regulations and are binding throughout the European Union.

They are designed to:

- weaken the Kremlin's ability to finance the war;
- impose **economic and political costs** on Russia's political elite responsible for the invasion.

The measures include:

- individual sanctions,
- economic sanctions,
- restrictions on media,
- diplomatic measures.

The EU has also adopted sanctions against **Belarus** in response to its involvement in the invasion of Ukraine.

EU institutions have published various guides and articles to assist with understanding and implementing these sanctions:

- EU restrictive measures against Russia over Ukraine (since 2014))
- Timeline - EU restrictive measures in response to the crisis in Ukraine (background information)
- Guidance notes on the implementation of certain provisions of Regulation 833/2014 on restrictive measures.

In Spain the Anti-Money Laundering Commission published an Information notice addressed to the individuals and entities required to implement international financial sanctions imposed by European regulations which lists and explains the current international sanctions.

The CPBC has also published a Notice on the prohibition on acceptance of deposits exceeding €100,000 under Council Regulation (EU) 2022/328 of 25 February 2022 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine and an Information chart on deposits exceeding €100,000 under Regulation (EU) 2022/328.

In this article we analyze in detail and in chronological order the sanctions imposed by the European Union on Russia as a result of the invasion of Ukraine and with a brief mention of those adopted by the United States, the United Kingdom and Switzerland.

The adopted sanctions are constantly changing and being updated while the armed conflict is taking place.

North Korea: EU adds to sanctions list 8 individuals and 4 entities involved in financing nuclear program

The Council has added 8 individuals and 4 entities to the list of persons subject to restrictive measures against the Democratic People's Republic of Korea. These restrictive measures consist of a travel ban, an asset freeze and a prohibition on making funds available to the persons on the list.

The new additions include individuals who have held senior positions at institutions participating in activities in the missile program and individuals and entities that have engaged in sanctions evasion and that could generate funds for illegal weapons programs.

The EU is determined to stem the movement of components, funds and know-how which could be used by the Democratic People's Republic of Korea to support activities in its illegal weapons programs.

The decision brings to 65 the number of persons on the EU's separate list. Additionally, the EU has frozen the assets of 13 entities as part of its own sanctions rules. It has also transposed all the relevant UN Security Council resolutions, imposing sanctions on 80 individuals and 75 entities currently on the UN's list.

See here for a history of these sanctions.

Negotiations for reinstating the Iran nuclear agreement continue

The powers involved in the Joint Comprehensive Plan of Action (JCPOA) have held what is now the seventh round of negotiations for reinstating the agreement, in an attempt to keep it in force after the United States withdrew in May 2018, and the ensuing non-fulfillment of its objectives by Iran.

The negotiations took place in Vienna where the original agreement was signed on July 14, 2015. Although the United States and Iran have not held direct bilateral talks, the Iranian government has not dismissed this option. The Iranian Foreign Affairs Minister stated in a recent televised interview that if they arrived at a stage where that condition was necessary to obtain a good agreement, they would be willing to consider it.

The JCPOA is formed by the five permanent members of the UN Security Council – China, France, Russia, the United Kingdom and the United States – together with Germany, Iran and the European Union. Its objective is to limit Iran's nuclear capabilities, in exchange for lifting economic sanctions imposed on this country.

In May 2018, the United States administration, led at the time by Donald Trump, announced that it was withdrawing from the agreement, and simultaneously imposed new economic sanctions on Iran.

Following the change of administration in the U.S., talks on the agreement resumed in January 2021. The current U.S. Administration, led by Joe Biden, intends to rescue the terms of the original JCPOA.

European Union imposes restrictive measures against Myanmar/Burma

Following the coup on February 1, 2021, the European Union imposed the fourth round of sanctions for continuing human rights breaches in Myanmar.

The individuals targeted by sanctions include, in addition to those already listed, government ministers, members of the Union Electoral Commission and state-owned companies with close ties to the *Tatmadaw* (Myanmar's armed forces).

The measures consist of a travel ban prohibiting the targeted individuals from entering or transiting through any EU country. Internally, an embargo has been placed on any type of arms or equipment that can be used for repression and they are prohibited from engaging in any military cooperation with the *Tatmadaw*.

The European Union is deeply concerned by recent events involving violence. It will therefore continue to provide humanitarian assistance and implement any sanctions that may be necessary to prevent greater consequences in the country.

European Council adds to list of EU sanctions against terrorism

On February 2, 2022 the European Council increased the EU sanctions list to include two groups and two individuals with links to Al Qaeda and the Islamic State (IS). These targeted individuals operate in the organization and execution of terrorist attacks in Afghanistan and neighboring countries and therefore pose a serious and continuous threat to regional and international stability.

The groups and individuals targeted by the European Council are the regional branch of “Al-Qaeda in the Indian Subcontinent” (AQIS), and their leader Osama Mahmood, as well as “Da’esh – Hind Province” linked to ISIL (Daesh) which operates in India, and Aziz Azam, spokesperson for ISIL-K (Islamic State in the Khorasan province). They have an important role in promoting the violent jihad ideology of Al-Qaeda and Daesh and inciting terrorist acts in support of these organizations through their propaganda activities.

These measures carry a travel ban and an asset freeze for eight individuals and two entities. Additionally, due to the EU regime applying separately since 2016, all individuals and entities belonging to the EU are subject to the prohibition on making funds available to the individuals and individuals included on the list.

The EU remains committed to taking action against those who continue to threaten international peace and security by planning, financing and committing terrorist attacks, and by spreading their terrorist propaganda around the world.

Team:

Luis de la Peña

Luis.de.la.pena@garrigues.com

Pilar Cruz-Guzmán

pilar.cruz-guzman@garrigues.com

Maria Luz Gómez

marialuz.gomez@garrigues.com

Follow us:

GARRIGUES

Hermosilla, 3
28001 Madrid Spain
T +34 91 514 52 00 - **F** +34 91 399 24 08

garrigues.com