

Legal News

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Monaco EU FATF Money Laundering Terrorist Financing Corruption Legislation Regulation

Development in Monegasque legal framework against money laundering, corruption and financing of terrorism (Draft Law No. 1008)

Draft Law No. 1008 (set of 90 articles) strengthening the AML/CFT framework was received by the National Council on 12 February 2020. The entry into force is staggered until 31 December 2021.

Purpose of Draft Law No. 1008:

- ▶ **To strengthen the criminal law provisions on money laundering, corruption and trading in influence:**
 - **To extend the scope of the offence of money laundering**, with the new reference to the "*direct or indirect proceeds*" of the predicate offence punishable by a prison sentence of more than one year;
 - **To facilitate the proof of the illicit origin of the laundered funds** by creating a presumption of illicit origin of the laundered funds with reversal of the burden of proof, in cases where the conditions of the operation reveal the intention to conceal the illicit origin or the beneficial owner of the funds;
 - **To abolish the restrictions on the jurisdiction of Monegasque courts** with regard to corruption and trading in influence (to withdraw the reservation to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173)).
- ▶ **To adjust and complete the AML/CFT framework to fully comply with the FATF Recommendations and the European Union's "4th Anti-Money Laundering Directive" (Directive (EU) 2015/849)[1].**
- ▶ **To transpose [2] the "5th Anti-Money Laundering Directive" of the European Union (EU Directive 2018/843)[3], whose implementation deadline in Monaco has been set for 31 December 2020.**

The "5th Directive" complements and reinforces the provisions of the "4th Directive":

- Extension of the scope of persons subject to the AML/CFT legal framework (providers of online payment and e-money services);
- Clarifications concerning business relationships and envisaged transactions involving a high-risk third country (collection of additional information and possibility to provide for additional measures: prohibition on establishing subsidiaries in that country, systematic reporting, etc.);
- Establishment of consolidated supervision of banking and insurance groups (clarification of the degrees of intervention by the supervisory authorities of the parent undertaking and its subsidiaries/branches, specific policies for procedures relating to intra-group exchanges of information);

- Obligation to collect evidence of registration or an extract from the Register of Beneficial Owners of Legal Entities when entering into a relationship, and to declare any discrepancies between the information that is held and that recorded in the Register;
- Establishment of a standardised list of functions regarding “Politically Exposed Person (PEP)”.
- ▶ **To take into account the changes in European Union legislation on the cross-border transportation of cash introduced by Regulation (EU) 2018/1672 of 23 October 2018 [4], the deadline for implementation in Monaco being 31 December 2021**

European legislation broadens the legal definition of "cash", which includes : currency (banknotes and coins); bearer negotiable instruments (travellers' cheques, cheques, promissory notes or money orders), commodities used as highly-liquid stores of value (coins with a gold content of at least 90 %; bullion such as bars, nuggets or clumps with a gold content of at least 99,5 %; prepaid cards.

Legal framework related to Draft Law No. 1008:

- Act 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption, as amended
- Act No. 214 of 27 February 1936 amending Law No. 207 of 12 July 1935 on trusts, as amended
- Act No. 797 of 18 February 1966 on civil societies, as amended
- Criminal Code
- Criminal Procedure Code

1] 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 purpose 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.

2] Pursuant to Article 11(4) of the Monetary Agreement of 29 November 2011 between the Principality of Monaco and the European Union, made enforceable by Sovereign Order 3.559 of 5 December 2011, *"The Principality of Monaco shall adopt measures equivalent to those taken by the Member States in application of the Union acts necessary for the implementation of this Agreement and listed in Annex B".* ».

3] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

4] 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.