

White Paper

The Italian Regulation Landscape: Getting a Grip on Money Laundering and Financial Crime



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Italy is a significant player in the European political and economic scene. It has a strong voice as a founding member of the European Union, the European Council, the OECD, NATO and a member of the G7, G8 and G20. In this context, Italy also abides by similar laws as the rest of its co-members in these organisations, especially the European Union and European Council. This also applies to regulation, anti-money laundering and counter terrorist financing practices.

NAVIGATING THE COMPLIANCE LANDSCAPE

Like its neighbours, Italy fits in the European Framework when it comes to compliance, though it also carries specific characteristics. This means that the 4th EU AML Directive is the most important piece of compliance legislation for the country. It was implemented in Italy through Legislative Decree No 90 of the 25th of May 2017, more commonly known as the 2017 Decree. This introduced AML obligations that Italian entities need to follow, including for customer due diligence, record-keeping and reporting of suspicious transactions.

All of these rules apply to various categories of subject, from banks and financial intermediaries, through gambling services, to professionals and other non-financial entities including accountants, auditors and lawyers. Their activities are monitored by the Bank of Italy and the Ministry of Economy and Finance, which enforces the AML regime and applies any necessary administrative sanctions, supported by the Financial Security Committee. Additionally, operating independently of the Bank of Italy, the Financial Intelligence Unit (FIU) is also responsible for analysing information on suspicious transactions and can suspend transactions that involve money laundering or terrorist financing. The Financial Police assist in these investigations. Finally, some sectors in Italy have their own specific authorities, for example the Institute for the Supervision of Insurance and the Bureau of Anti-Mafia Investigation, which supervise the relevant entities and apply the necessary AML rules.¹

Overall, rules in Italy are similar to many other countries. Companies are required to do client due diligence and identify ultimate beneficial ownership before they enter in a business relationship, perform KYC when onboarding a new client, and assess the risk status of the client or business partner. And when more signs of money-laundering risk are present, like politically exposed people on a company's board of directors, bearer shares or complex company structures, enhanced due diligence is always recommended. However, there are some differences that should always be taken into consideration by companies doing business in Italy:

- Politically exposed persons (PEPs) – in Italy, (PEPs) can only be individuals, not entities. Their political roles have a wide range, from state and military officials, court members and diplomats, to members of boards of directors of state-owned entities, family members and local council members. Legislative Decree 90/2017 expanded the definition of PEPs to include Regional Council Assessors, European Parliament members, Mayors of metropolitan cities and mayors of cities, adding over 15,000 people to the list of Italian PEPs².

¹ Getting the Money Through, June 2019, *Anti-Money Laundering Italy*, <https://gettingthedealthrough.com/area/50/jurisdiction/15/anti-money-laundering-italy/>

² Tax Justice Network, *Financial Secrecy Index 2018*, <http://www.financialsecrecyindex.com/PDF/Italy.pdf>

- Ultimate beneficial ownership – Italian law says that the threshold for ownership to be identified is over 25%, which can cause problems for international companies that have lower thresholds.

EXPECTED CHANGES IN THE COMPLIANCE CLIMATE

UBO REGISTER

Companies doing business in Italy should also be aware of upcoming national changes. It will follow other EU countries in implementing the 5th AML Directive.³ One element of this that is expected to have a huge impact is an ultimate beneficial ownership (UBO) register. This does not currently exist in Italy, but is expected to go into force soon, with access granted to certain authorities, individuals and organisations with a legitimate interest. Currently the definition for beneficial owner in Italy is defined by L.D. 231/2007 as amended by L.D. 90/2017:

“Beneficial Owner” (BO) means: the natural person, other than the customer, in whose ultimate interest, the business relationship is established, the professional service is provided, or the transaction is executed. In addition, in the case of a customer other than a natural person, Article 20 of the above mentioned L.D. set out certain criteria for identification of the beneficial owner behind this type of customers.⁴

BENEFITS OF THE UBO REGISTER

The UBO register will have a major impact on information transparency, improving the reputation of the country and companies doing business in it, and also making research easier and faster for entities that deal with compliance frameworks. For large entities such as banks and other financial institutions, it will boost the speed of doing business in Italy, which is currently a crucial issue. On an international scale, it would restore faith in the Italian government: the US State Department, for example, has identified Italy as a “Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes”.⁵ It would also set a good example on the global stage, given the size of Italy’s economy and its global stature. Beneficial ownership identification is an international difficulty for companies that want to do fair and legal business. Good, transparent and comprehensive registries are still a distant goal.

CRYPTOCURRENCY REGULATION

The risk of rising cryptocurrency use, specifically suspicious transactions, is another risk that the country is expected to address soon. The Bank of Italy Financial Intelligence Unit reported a 140% spike in these transactions between 2017 and 2018, from 208 to 499. The trend in suspicious buying and selling of cryptocurrencies has grown since 2013 and has now attracted international attention with FATF (the Financial Action Task Force) releasing its Guidance for a Risk Based Approach to Virtual Assets and Virtual Asset Service Providers⁶ this June. Although most people agree that cryptocurrencies do not pose any risk to economic stability, world leaders agree with the words of U.S. Secretary of the Treasury Steven T. Mnuchin:

“The threat of criminal and terrorist misuse of virtual assets is serious and urgent, and the FATF expects all countries to take prompt action to

³ Schaap, *Update: The implementation of the UBO register in other EU countries*, <https://www.schaap.eu/en/update-implementatie-ubo-register-eu-landen/>

⁴ https://star.worldbank.org/sites/star/files/g20_bo_country_guide.pdf

⁵ Know Your Country, *Italy*, <https://www.knowyourcountry.com/italy1111>

⁶ FATF, *Guidance for a Risk Based Approach to Virtual Assets and Virtual Asset Service Providers*, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>

implement the FATF Recommendations in the context of virtual asset activities and service providers.”⁷

It is not so much the stability of economies worldwide that is a pressing issue here, rather the possibility of cryptocurrencies to be used in order to process illicit activities. And the specific nature of virtual assets is that they fulfil everything that criminals need – an anonymous and fast way of transferring funds to practically anyone.

So how will the new FATF Guidance change this? Countries will have to assess and mitigate the risk of virtual asset activities and implement ways to sanction anyone who fails to follow the obligations. Virtual asset service providers will have to be licensed, registered and supervised by the competent authority. Of course, the right remains for countries to ban cryptocurrencies or impose stricter rules.

Italy is a member of FATF and will also be expected to follow its recommendations. It will be closely monitored in the next year along with other EU member states as to how they are implementing the changes. For businesses in Italy looking to venture into crypto territory, this is an important piece of regulation to watch out for.

SUMMARY: IMPROVING BUT APPROACH WITH CARE

Based on Italy’s complicated compliance framework and our research, assigning a risk status to the country would depend on how this task is approached. The Financial Action Task Force (FATF) graded Italy’s compliance with its recommendations back in 2016 as follows:

Compliant with 10;
Largely Compliant with 26;
Partially Compliant with 4;
Non-Compliant with 0.

This year FATF published a follow up report, stating that Italy has been re-rated on 8 of 40 recommendations (1 – Assessing risks & applying a risk-based approach, 16 – Wire transfers, 20 – Reporting of suspicious transactions, 26 – Regulation and supervision of financial institutions, 27 – Powers of supervision, 29 – Financial intelligence units, 35 – Sanctions and 40 – Other forms of international co-operation) and agreeing to maintain the Compliant rating for Recommendation 5 (Terrorist financing offence); maintain the Largely Compliant rating for Recommendations 2 (National co-operation and co-ordination), 8 (Non-profit organisations), 18 (Internal controls and foreign branches and subsidiaries) and 21 (Tipping-off and confidentiality); and maintain Partially compliant rating for Recommendation 7 (Targeted financial sanctions related to proliferation).⁸ This undoubtedly shows progress, leaving Italy 2 of 40 recommendations where it is partially compliant. Italy will continue to report back to FATF since there are still more changes to be desired, considering that according to FATF, a jurisdiction is considered to have significant AML deficiencies if any of the recommendations are rated either as NC “Non-Compliant” or PC “Partially Compliant.”⁹

Meanwhile, the Basel AML Index assigns Italy “Medium Risk” with a rank 77 out of 129 and a score of 5.09 on scale of 0 to 10, ranked best to worst.¹⁰ The index refers to data from FATF, Transparency International, the World Bank, the World Economic Forum, etc. The

⁷ Kevin Helms, 22 June 2019, Bitcoin.com, *FATF Releases Global Standards for Crypto Assets*, <https://news.bitcoin.com/fatf-global-standards-crypto-assets/>

⁸ March 2019, Financial Action Task Force, *Italy Follow-up Report and Technical Compliance Re-Rating*, <http://www.fatf-gafi.org/media/fatf/content/images/Follow-Up-Report-Italy-2019.pdf>

⁹ 2016, Financial Action Task Force, *Mutual Evaluation of Italy 2016*, <http://www.fatf-gafi.org/countries/d-i/italy/documents/mer-italy-2016.html>

¹⁰ 2018, Basel AML Index 2018, https://index.baselgovernance.org/sites/collective.localhost/files/aml-index/basel_aml_index_10_09_2018.pdf

United States Department of State considers the country a Jurisdiction of Primary Concern according to their 2018 International Narcotics Control Strategy Report. Vol II. Money Laundering and Financial Crime¹¹, citing domestic organised crime such as drug trafficking, tax evasion, tax fraud, smuggling and sale of counterfeit goods, extortion, corruption, illegal gaming, illegally disposing of hazardous waste, and loan sharking among some of the major sources of money laundering and the reasons for their concern.

Based on all this, we would advise companies to approach Italy with caution. Laws and regulations in the country are well developed and continue to fill in the gaps, however, there remains a large grey sector in economy, along with organised crime and consequential money laundering, as well as a serious risk of corruption, especially in public procurement. Certain sources, like the Italian Most Wanted list¹², which contains only 3 names, seem not exhaustive or trustworthy enough. Statistics show the black market economy in Italy accounts for 11.5% of GDP (around USD 220 billion) and the Italian National Risk Assessment (NRA) record that 75% of proceeds-generating crime in Italy is tax related. Finally, the number of suspicious transactions that have been reported to the Bank of Italy Financial Information Unit has not changed significantly since 2017.¹³

¹¹ 2018, US Department of State, *2018 International Narcotics Control Strategy Report (INCSR)*, <https://www.state.gov/documents/organization/278760.pdf>

¹² Internal Ministry of Italy, *Direzione Centrale della Polizia Criminale - Elenco dei latitanti di massima pericolosità*, <http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-centrale-polizia-criminale/direzione-centrale-polizia-criminale-elenco-dei-latitanti-massima-pericolosita>

¹³ Know Your Country, *Italy*, <https://www.knowyourcountry.com/italy1111>