



The new anti-money laundering directives

Summarizing the changes and providing an update

Introduction

Recent global and European developments call for the need to strengthen the EU's efforts to combat money laundering and the financing of terrorist activities. In order to improve the effectiveness of the EU's Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) efforts (as they were set out in the 3rd AML Directive adopted in 2005 and transposed into the Greek Law 3691/2008), the European Commission issued the 4th AML Directive in May 2015 and repealed the previous one. The 4th AML Directive entails the amendments that need to be adopted by all Member States by 26 June 2017.

In addition, on 5 July 2016, the European Commission submitted a proposal for the amendment of the 4th AML Directive, which is intended to strengthen and complement the existing preventive legal framework by mandating additional AML/CTF measures and ensuring increased transparency of financial transactions and legal entities.

These amendments reinforce the increased need for transparency in financial transactions, and consequently, all financial institutions have to be fully prepared and equipped to face this new challenge.

The main amendments of the two Directives are outlined below.

4th AML Directive

The areas of focus primarily addressed in this Directive are as follows:

Ultimate Beneficial Owners (UBOs)

All corporate and legal entities incorporated within Member States, as well as any trustees of any express trust governed under Member States' law are required to obtain and hold adequate, accurate and current information on their beneficial ownership. This information will be held in a central register by the Member State and will be accessible by competent authorities, Financial Intelligence Units (FIUs) and, in the context of customer due diligence, to "obliged entities" (such as credit institutions and financial institutions: insurance companies and investment firms). Persons or organizations that can demonstrate a "legitimate interest" would also be able to access at least the following information on the beneficial owner: name, month, year of birth, nationality, and country of residence, as well as the nature and extent of the beneficial interest held.

Risk-based approach

There is a new requirement introduced whereby Member States will be required to show evidence that they have taken appropriate steps to identify, assess, understand, and mitigate AML/CTF risk. This will be achieved by conducting a "National Risk Assessment".

Furthermore, obliged entities are required to document their risk assessments (taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels), and have in place policies, controls, and procedures to mitigate and manage effectively AML/CTF risks.

Customer Due Diligence (CDD)

The threshold for cash transactions has been lowered from €15.000 to €10.000 (regardless if the transaction is carried out in a single operation or in several operations which appear to be linked). In Greece, as per Law 3691/2008, currently this threshold is equal to € 15.000.

Previous EU AML regime permitted certain financial institution customers and products to qualify for simplified customer due diligence (SCDD) status when they fell into a certain category (e.g., where a customer is a financial institution listed on a regulated market). The 4th AML Directive requires obliged entities to determine the level of AML risk posed by a customer prior to applying the SCDD status to such customer and provide justification for such qualification.

Furthermore, the new Directive prescribes minimum factors that must be considered by obliged entities when considering low-risk customers and applying SCDD. Some due diligence measures may not be required based on the nature and size of transactions involving electronic money. Similarly, the Directive is prescriptive with minimum factors that may indicate higher risk and thus require the performance of enhanced customer due diligence for customers (ECDD).

Politically Exposed Persons (PEPs)

Obliged entities are required to apply enhanced due diligence measures on PEPs, regardless of their country of residence. Under the 3rd AML Directive, enhanced due diligence measures were only applied for PEPs residing in other Member States or third countries. Obliged entities will therefore need to review their customer registers to ascertain if they need to reclassify and apply enhanced CDD to any existing customers as PEPs under the new definition, as well as applying these measures to new customers at take-on stage.

In addition, for at least 12 months after a PEP ceases to hold a position yielding this classification, obliged entities must take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

Policies & Procedures – Data Protection

With the aim of providing clarity around the interaction between AML/CTF and Data Protection, the Directive introduces a provision in respect to policies & procedures, which requires that data protection elements are considered within AML/CTF policies & procedures for sharing of customer information. The purpose of this addition is to achieve an appropriate balance between robust controls and the protection of the rights of data subjects.

The Directive also provides clarity to the application of AML/CTF rules for subsidiaries in third countries where AML/CTF legislation is deemed deficient, or non-equivalent. In these instances, the AML/CTF legislation applicable in the regulated entity's home Member State or equivalent standard should be applied.

Third-country equivalence

The 3rd AML Directive prescribes a “white list” of jurisdictions where AML/CTF legislation is considered equivalent to the EU. However, the 4th AML Directive revokes the equivalent status of these jurisdictions. Therefore, obliged entities need to perform risk assessments on countries they do business in and customers from these countries.

Coverage of the gambling sector and tax crimes

The new Directive extends beyond casinos and now covers “providers of gambling services” under its scope, and also includes “tax crimes” under the definition of “criminal activity”. This means that tax crimes are now included in the list of predicate offenses for money laundering and terrorist financing activities.

Senior management

The new Directive introduces the new definition of “senior management” to mean “an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure”. Unlike the 3rd AML Directive, this definition will therefore not be restricted to members of the Board of Directors.

5th AML Directive

On 5 July 2016 the European Commission presented a new proposal for a Directive amending the 4th AML Directive, which is referred to as the 5th AML Directive. The amendments to the 4th AML Directive target the following items:

- A. **Designate virtual currency exchange platforms as obliged entities.** That means that these entities will need to apply CDD when switching virtual for real currencies.
- B. **Set lower maximum transaction limits for certain pre-paid instruments.** Lowering the thresholds (from € 250 to € 150) for non-reloadable prepaid payment instruments to which CDD measures must be applied and removing the CDD exemption for online use of prepaid cards. In addition, anonymous prepaid cards issued outside the EU can only be used in the EU where they can be shown to comply with requirements equivalent to the ones in the 4th AML Directive.
- C. **Enable FIUs to request information on money laundering and terrorist financing from any obliged entity.** Enabling Financial Intelligence Units within each Member State to request information on money laundering and terrorist financing from firms regardless of whether a suspicious transaction report has been made.
- D. **Enable FIUs and competent authorities to identify holders of bank and payment accounts.** Requiring Member States to set up centralized registries of the identities of holders of bank and payment accounts, or a centralized means of retrieving such data.

- E. **Harmonize the EU approach towards high-risk third countries.** Standardizing ECDD measures for dealing with natural or legal entities in high risk third countries.
- F. **Improve access to beneficial ownership information.** Requiring Member States to ensure compulsory disclosure of certain beneficial ownership information for companies engaged in profit making activities.
- G. **Exclude closed-loop cards from the definition of E-money.**

Current Legislative Initiatives – Presidency Compromise Texts

The 5th AML Directive is proceeding along the European Union’s legislative process.

On 28 October 2016, the Council of the European Union published the first “Presidency compromise text” version of the 5th AML Directive, which includes amendments that account for concerns raised by the European Central Bank and the European Banking Authority, regarding the contents and transposition date of the 4th AML Directive.

The second Presidency compromise text, published on 14 November 2016, includes changes to the definition of “virtual currencies” and “custodian wallet provider” and adds new paragraphs on the ban of anonymous prepaid cards and disclosure of beneficial ownership to any person or organization that can demonstrate a legitimate interest.

A third Presidency compromise text was published on 30 November 2016, and reflects amendments made by the Slovak Presidency in an attempt to reach a common agreed position, particularly on anonymous prepaid cards, disclosure of beneficial ownership and remote payment identification. As for implementation dates for the 5th AML Directive, instead of 26 June 2017 (when the 4th AML Directive takes effect), the text has been amended to provide for transposition into national law within six months of the 5th AML Directive’s publication in the Official Journal of the European Union.

The final text of 5th AML Directive will depend on the outcome of negotiations between the Presidency (on behalf of the Council) with the EU Parliament, leaving all these matters open to further change.

Impact on obliged entities

Due to the new requirements being imposed, there will be an increased requirement on obliged entities, and these entities should ensure that they are prepared for these changes, and have measures in place to train staff, update policies and procedures, and implement new controls. Additionally, obliged persons should ensure that they are sufficiently resourced to effectively implement the measures required, and to perform any remediation work.

How can Deloitte help?

Based on the facts, the changes taking effect will broaden the due diligence requirements, especially when referring to fund transfers from high risk countries. This increases the necessity of safeguards and controls that need to be applied when performing due diligence. Deloitte can add value to institutions by offering a high level of expertise and experience to improve existing AML systems or create new ones.

Deloitte can help institutions manage and strategize for AML changes by:

- Developing or enhancing clients' AML framework based on regulatory requirements and leading industry experiences
- Measuring the effectiveness of existing processes and controls
- Conducting AML Due Diligence methodology
- Assisting in transaction look back exercises
- Applying regulatory technology accelerators to achieve efficiencies
- Implementing or enhancing transaction monitoring and name screening system
- Client on-boarding and remediation programs
- AML training for employees/management to facilitate knowledge and capability building

We provide our clients with confidence and a clear path forward to confront the regulatory changes that require action.

Contacts

If you require further information on any of the issues mentioned above, or are interested in how Deloitte can help you address the challenges ahead, please do not hesitate to contact:

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