

Regulatory News Alert

AMLD5 has entered into force

20 July 2018

Background

On 19 June 2018, the new AML/CTF EU directive 2018/843 (AMLD5) has been published in the Official Journal of the European Union and entered into force on 9 July 2018 with effective application from 10 January 2020. It thereby amends and repeals EU Directive 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. This directive had shown its limits in the light of last terrorist attacks and various tax leaks that revealed the widespread use of offshore bank accounts and corporate vehicles in order to hide potentially illegal proceeds, in particular tax evasion.

In this context, the AMLD5 will aim to reduce the capabilities to exploit identified loopholes by criminals and better counter terrorism financing. This happens notably by increasing transparency about who really owns legal entities and trusts, broadening the criteria for assessing high-risk third countries and ensuring a common high level of safeguards for financial transactions from such countries. The directive tackles terrorist financing risks linked to anonymous use of virtual currencies and pre-paid instruments, by extending the scope of regulated entities and inducing professionals to resort to the latest digital solutions for AML/CTF.

Content of the Directive

The Commission proposes, among other things:

- **Improvement of the transparency on the beneficial owners of legal entities, trusts and similar legal arrangements as well as the setup of a national central register of bank and payment accounts and safe-deposit box holders**

AMLD5 improves the transparency and efficiency of the Beneficial Owner (BO) registries in various ways: BO registers of legal entities are publicly accessible for specific types of information gathered on the beneficial owner(s).

- BO registries of legal entities are publicly accessible for specific types of information gathered on the beneficial owner(s).
- BO registries of trusts and similar legal arrangements are now accessible to competent authorities, FIUs, obliged entities in the context of their due diligence measures, and to any person who can demonstrate a legitimate interest (although the directive does not define "legitimate interest").

- The national central register of bank, payment account, and safe-deposit box holders (centralized automated mechanisms: registers or data retrieval systems) will be accessible and limited to national FIUs and to national competent authorities.
- Finally, AMLD5 provides for the interconnection of all national registers (via the European Central Platform) to promote cooperation between EU Member States.

These new requirements implied that the Luxembourg bills of law establishing registry of beneficial ownership of trusts and similar legal arrangements (n° 7216) and of registered entities (n° 7217) have been amended on 10 July 2018 in order to comply with AMLD5.

- **Lists of politically exposed persons (PEPs)**

Member States are required to issue and keep up-to-date a list indicating the exact functions that qualify as prominent public functions according to their national laws, which will give obliged entities more clarity as to who will be considered as a PEP in a given Member State.

- **Enhanced Customer Due Diligence measures to be performed in the context of business relationship or financial transactions involving high-risk third countries**

- **Inducement to the recourse to digital means in Customer Due Diligence process**

The eIDAS Regulation (EU Regulation 910/2014) had provided the European Union with a common foundation for secure electronic interaction between citizens, economic, and public authorities.

AMLD5 now explicitly includes the capability for obliged entities to use eIDAS-compliant technological means for the completion of their Customer Due Diligence duties, paving the way for a real transition to the widespread use of electronic means for AML/CTF purposes.

- **Lowering the thresholds for electronic money and prepaid instruments**

- **Inclusion in the scope of AML/CTF obliged entities of**

- persons trading or acting as intermediaries in the trade of works of art (when the value of transactions or series of linked transactions amount to €10,000 or more)
- virtual currency providers and custodian wallet providers
- those who provide similar services to auditors, external accountants, and tax advisers as a principal business or professional activity
- estate agents who act as intermediaries in the letting of property (where the monthly rent is equivalent to €10,000)

- **Enhanced powers and cooperation between the FIUs and financial supervisory authorities**

What's next?

Most of the new amendments shall be transposed before 10 January 2020—18 months after its publication in the Official Journal of the European Union—while specific new requirements are subject to longer transposition (e.g., interconnection of all national registers expected in 2021, etc.).

Yet, if the new directive requirements improve the existing AML/CTF framework, the European Commission representatives acknowledge that additional efforts will still be needed in order to efficiently fight money laundering and terrorism financing. In that respect, an amendment project of AMLD5 is already under discussion at the EU level, which should mainly be oriented toward the harmonization of the predicate offences and the efficiency of legal prosecution procedures.

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Your contacts

Pascal Eber

Partner - Advisory & Consulting - AML

Tel: +352 45145 2649

peber@deloitte.lu

Simon Ramos

Partner – IM Advisory & Consulting

Leader

Tel: +352 45145 2702

siramos@deloitte.lu

Bastien Collette

Director - Advisory & Consulting - AML

Tel: +352 45145 3372

bacollette@deloitte.lu

Benoit Sauvage

Senior Manager – RegWatch, Strategy & Consulting

Tel: +352 45145 4220

bsauvage@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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