

TAKING AIM AT ILL-GOTTEN GAINS

HOW THE EUROPEAN UNION FOURTH ANTI-MONEY LAUNDERING DIRECTIVE WILL IMPACT GLOBAL FINANCIAL INSTITUTIONS AND OTHER MULTATIONALS

Estimates of global money laundering transactions range from 2 to 5 percent of global GDP—as much as €1.9 trillion—that is subsequently used to underwrite bribery and corruption, expand criminal enterprises, and fund terrorist organisations. According to a newly released report by *Forbes*,

“ALMOST 70 PERCENT OF MONEY LAUNDERING AND TERRORIST FINANCING FLOWS THROUGH LEGITIMATE FINANCIAL INSTITUTIONS YET THE UNITED NATIONS OFFICE ON DRUGS AND CRIME ESTIMATES THAT LESS THAN 1 PERCENT OF THE GLOBAL TRADE IS SEIZED AND FROZEN.”¹

Recognising this, countries around the world are ramping up anti-money laundering (AML) regulation and enforcement—and the EU Fourth Anti-Money Laundering Directive (4AMLD) is the latest to come into force. This white paper explores key questions about the 4AMLD and how organisations can develop effective compliance programmes to address the evolving regulatory landscape.

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When the 4AMLD was enacted on June 25, 2015, the European Commission established a 2-year window for implementation by EU Member States. A 2016 amendment to the Directive identified additional “obliged entities” and shortened the implementation deadline by six months.

EU Member States are now transposing it into their national laws and all “obliged entities” must have compliance programmes in place to mitigate risk.² In a press release announcing the amendment, Věra Jourová, the EU’s Commissioner for Justice, Consumers and Gender Equality said: “The update of the Fourth Anti-Money Laundering Directive will prevent any loopholes in Europe for terrorists, criminals or anyone trying to play with taxation rules to finance their activities. Better cooperation to fight these issues will make the difference.”³

A Deeper Look at the 4AMLD

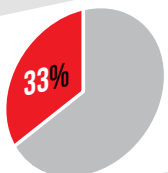
Naturally, the 4AMLD focuses on traditional financial services organisations such as credit and financial institutions, but the list of “obliged entities” from the original Directive also includes:

- Auditors, external accountants and tax advisors;
- Notaries and other independent legal professionals (under specific conditions);
- Trusts or company service providers;
- Estate agents;
- Traders in goods making or receiving payments above EUR 10,000; and
- Providers of gambling services.

As a result of a 2016 amendment, virtual currency exchanges and wallet providers were added to the list of obliged entities. While the compliance requirements of AML laws are nothing new for banks and other financial services organisations, PwC’s Global Economic Crime Survey 2016 revealed a good number of financial services still struggle with compliance.⁴

- 1 in 5 have faced regulator enforcement actions
- More than 25 percent have not conducted AML risk assessments across their global footprint
- 33 percent cite poor data quality as a significant challenge

Even more concerning, perhaps, is that the 4AMLD—along with the ever-widening scope of AML legislation worldwide—means that other organisations like retailers or digital/mobile payment services now face similar risks. They will need to catch up on understanding the requirements and implementing appropriate compliance programmes to mitigate risk—fast.



4AMLD Amendment Introduces Stricter Transparency Rules

In addition to adding virtual currency exchanges and wallet providers to the list of obliged entities, the 2016 amendment to the 4AMLD addresses the expectation of transparency in another way. While access to beneficial ownership registers has been restricted to individuals with a “legitimate interest”—such as enforcement authorities, journalists or lobbyists—the amendment suggests all EU citizens have the right to access such information.

A co-sponsor of the amendment, Judith Saargentini, said, “Complex company structures and shell companies make it easy for people to hide money. Through a public register for companies and trusts, the European Parliament wants to shed light on these structures and thereby combat them.”⁵ Moreover, the amendment also introduces additional transparency measures, such as centralised bank and payment account registers, standardising checks made by banks across the EU and improving collaboration and information-sharing between national financial intelligence units.

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STRAIN.”

RISK-BASED APPROACH

CUSTOMER DUE DILIGENCE

ON-GOING MONITORING

BENEFICIAL OWNERSHIP

DOCUMENTED PROCESS

What does the 4AMLD Require?

The predecessor to 4AMLD was in place for a decade before the new Directive was introduced. Much has changed in the world since then. ISIS rose from the ashes of a weakened Al-Qaeda and began spreading its terrorism, targeting western nations as happened in the 2015 Paris attacks.⁶ Conflict in Syria led to the exodus of millions of people—refugees left extremely vulnerable to human trafficking. As Human Rights First notes, “Host countries’ infrastructures are buckling under the strain, forcing refugees to rely on smugglers, treacherous migrant routes, and quasi-impossible border crossings in a continual search for protection.”⁷ In order to address money laundering that supports terrorist and criminal organisations, the 4AMLD requires companies to take an even more proactive approach to AML compliance. Key expectations include:

- ➔ **Risk-based approach:** Member States and obliged entities must provide evidence that they have undertaken appropriate steps to identify, assess, understand and mitigate AML risk. Banks, for example, will need to verify that they have evaluated associated risk factors including customers, products, geography and channel.
- ➔ **Customer due diligence:** With a risk-based approach, obliged entities must ‘right-size’ their customer due diligence based on the level of risk. The Directive also indicates determining factors to be used when deciding whether simplified or enhanced due diligence is required.
- ➔ **On-going monitoring:** To support the risk-based approach, the Directive also requires on-going monitoring to ensure risk ratings remain up to date.
- ➔ **Beneficial ownership:** The Directive introduces an explicit requirement for individuals and companies to maintain “adequate, accurate and current information” on beneficial ownership and make it available to obliged entities and authorities on demand.
- ➔ **Documented process:** In addition to maintaining auditable records of customer due diligence, obliged entities must retain those records for a period of five years after the relationship has ended.

The 4AMLD also updated its definition of “senior management” beyond that of the Board of Directors. The updated definition applies to officers or employees with specific knowledge of AML risk exposure and the requisite seniority to make decisions affecting an entities risk exposure. And given the potential of criminal culpability if violations—whether by accident or by design—come to light, this change alone should incentivise a top-down mandate for robust compliance. To meet these updated obligations, organisations need to revisit their strategies and processes to ensure they have an effective AML compliance programme in place. Tools that support automated screening, risk assessment, due diligence and risk-based negative news monitoring will also help organisations stay on top of potential risks more time- and cost-effectively.

AML Compliance Expectations Will Expand

According to the Global Terrorism Index 2016 from the Institute of Economics and Peace (IEP), the overall number of terrorism deaths has declined. Despite this positive news, another trend in terrorism remains: Member nations of the Organisation for Economic Co-operation and Development (OECD) have experienced a 650 percent rise in terrorist attacks in recent years.⁸ Steve Killelea, Executive Chairman of IEP, said, “The attacks in the heartland of western democracies underscore the need for fast paced and tailored responses to the evolution of these organisations.”

Governments have set their sights on bringing visibility to the money trails that lead to criminal and terrorist organisations—and companies can expect more regulation in the future. With the threat of enforcement actions, costly penalties and criminal charges against individuals, WealthInsight expects global spending on AML compliance to increase nearly nine percent to more than €7.5 billion this year—and that estimate is based on financial services organisations only.⁹ Given the need for risk mitigation across other industries, the figure is likely much higher—as is the need for organisations to implement effective due diligence processes to screen, monitor and protect against AML compliance failures.

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About LexisNexis® Business Insight Solutions

We help our customers mitigate business risks, meet their strategic goals and accomplish greater return on investment. Using our efficient, flexible and cost-effective due diligence and monitoring solutions empowers our customers to find the information they need on people, companies and countries. Our experienced industry specialists and thought leaders are well-versed in the evolving requirements our customers need to address.

LexisNexis Business Insight Solutions delivers interconnected and flexible product modules aligned to the customer workflow including:

- ➔ **PEP, watch list and negative news screening and monitoring**
- ➔ **Enhanced due diligence and reporting**
- ➔ **Outsourced due diligence, compliance and risk advisory**
- ➔ **Content integration and data feeds into proprietary systems**

Ask how we can support an efficient due diligence and monitoring strategy to help organisations address AML compliance expectations as they evolve.

For more information

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2. http://europa.eu/rapid/press-release_IP-16-2380_en.htm?locale=en
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