

# TAKING AIM AT ILL-GOTTEN GAINS

## HOW THE EUROPEAN UNION'S NEW ANTI-MONEY LAUNDERING DIRECTIVES 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 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.”<sup>1</sup>**

Recognising this, countries around the world are ramping up anti-money laundering (AML) regulation and enforcement. The most significant recent developments have come from the EU. The EU's Fourth Anti-Money Laundering Directive came into force in 2015, followed by a Fifth Anti-Money Laundering Directive in July 2018. In this white paper, we explore key questions about the directives and suggest how organisations can develop compliance programmes to address the evolving regulatory landscape.

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The 4AMLD was enacted in June 2015 and EU Member States are already required to have implemented its provisions into their national legislation. They have until 10 January 2020 to do the same for 5AMLD.

This has a significant impact on companies based in the EU. The EU requires all “obliged entities” to have compliance programmes in place to mitigate risk. 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.”<sup>2</sup>

## A Deeper Look at the 4AMLD

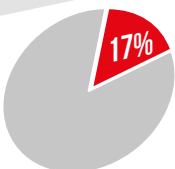
Naturally, the 4AMLD focuses on traditional financial services organisations such as credit and financial institutions, but the list of “obliged entities” from the original Directive also includes:

- 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 2018 revealed a good number of financial services still struggle with compliance.<sup>3</sup>

- Nearly 1 in 5 faced regulator enforcement actions within the past two years
- More than 75 percent have not conducted AML risk assessments since the Directive came into force
- 17 percent still do not have a formal business ethics and compliance programme

Even more concerning, perhaps, is that 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.



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.”<sup>4</sup> 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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HOST COUNTRIES’  
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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.<sup>5</sup> 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.”<sup>6</sup> 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.

## Why 5AMLD?

**5AMLD followed hot on the heels of 4AMLD. There are two main reasons for this.**

**Firstly**, a series of terrorist attacks in Europe reinforced the need for countries to do more to cut off the terrorists’ funding sources.

**Secondly**, in April 2016 the Panama Papers were released. This was a major leak of documents from the offshore law firm Mossack Fonseca, which revealed how complex corporate structures can be used to hide the true beneficial ownership of a company. The European Commission said it needed to make “urgent counter measures” to these developments. So 5AMLD was introduced to counter the financing of terrorism and increase transparency in financial transactions.<sup>7</sup>

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## What does 5AMLD mean for companies?

The main changes in 5AMLD are as follows:

**Extended scope of obliged entities:** 5AMLD expands the scope of AML and counter-terrorist financing obligations to include virtual currency providers, traders of works of art where the transaction is worth at least 10,000 euros, and certain individuals that provide advice and assistance on tax matters. This aims to combat terrorist financing risks linked to the use of virtual currencies and pre-paid instruments.

**Transparency on beneficial ownership:** Member states are now required to ensure that certain beneficial ownership information is publicly available on relevant corporate and other legal entities. This information includes the beneficial owner's name, birth date, nationality, residence and the nature and extent of their ownership.

**Wider access to beneficial ownership information:** 5AMLD also allows greater access to data on the beneficial ownership of trusts. It can now be accessed by Financial Intelligence Units, competent authorities, and the professional sectors subject to AML rules, such as banks and lawyers.

**Lowered thresholds for customer due diligence:** 5AMLD lowers the threshold at which companies must apply customer due diligence measures. The maximum monthly transaction limit for electronic money products which does not require customer due diligence is now 150 euros, which is a significant reduction on 250 euros. Companies must apply customer due diligence to transactions over this amount.

**PEP lists:** Member states are required to issue and keep up to date a list which specifies the functions that qualify as prominent public functions according to their national laws. This will help companies to identify who should be considered a PEP. The Commission's ultimate aim is to be able to draw up a single consolidated list of PEPs at the EU level.

**Broader criteria for assessing country risk:** 5AMLD adds new criteria for assessing high-risk third countries, including transparency of beneficial ownership. Member states must ensure that any industry dealing with countries with strategic deficiencies in their AML and counter-terrorism financing regimes face enhanced controls on financial transactions with those countries.

**Enhanced due diligence in high-risk countries:** 5AMLD specifies enhanced customer due diligence measures that companies must apply to transactions or business relationships involving high-risk third countries. It also allows member states to take additional measures in relation to these countries, such as preventing companies from establishing subsidiaries there.

**Improved information on customers:** 5AMLD requires member states to establish centralised automated mechanisms which allow them to quickly identify the holders of bank and payment accounts and safe-deposit boxes, as well as their beneficial owners. This can be accessed by financial supervisory authorities and national competent authorities. It also allows these authorities to identify any natural or legal persons owning properties.

**Improved cooperation between countries:** 5AMLD aims to improve cooperation and information exchange between financial supervisory authorities in member states, and with the European Central Bank. A joint working group has been set up to support this aim. To this end, information in each member state's register on beneficial ownership will be connected.

## AML Compliance Expectations Will Expand

The frequency of terrorist attacks has increased in recent years. This seems obvious just from following the news headlines: last year alone the UK suffered two major incidents in London and one in Manchester. But it is also borne out by statistics: member nations of the Organisation for Economic Co-operation and Development (OECD) have experienced a 650 per cent rise in terrorist attacks in recent years.

In response to this trend, 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 predicted last year that global spending on AML by financial services organisations would exceed \$8 billion a year.<sup>9</sup> This would be a 36 percent increase on spending in 2013. Given the need for risk mitigation across industries other than financial services, 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.

## 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

 [bis.lexisnexis.co.uk](https://bis.lexisnexis.co.uk)

 [BIS@lexisnexis.co.uk](mailto:BIS@lexisnexis.co.uk)

 **020 7400 2809**

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