

Adoption of fifth Anti-Money Laundering Directive

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The fifth directive of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “**Fifth AML Directive**”) was published yesterday in the Official Journal of the European Union.

The Fifth AML Directive is a response to the recent terrorist attacks across the EU and the offshore leaks investigated in the Panama papers. It introduces 4 key changes to the AML regime:

- Member States should ensure that registers of ultimate beneficial owners of companies and other legal entities become accessible to the general public (but not the register of ultimate beneficial owners of trusts, which will still require demonstration of a legitimate interest);
- AML regime is extended to additional service providers such as electronic wallet providers, virtual currency exchange service providers, and art dealers, plus further specifications regarding the scope of application of the Fifth AML Directive with respect to tax advisors and estate agents are provided;
- Threshold for identifying holders of prepaid cards is lowered to €150;
- Member States will have to implement enhanced due diligence measures to monitor suspicious transactions involving high-risk countries more strictly.

The Fifth AML Directive will enter into force on 9 July 2018. EU Member States will then have 18 months to implement the Fifth AML Directive into national law (10 January 2020 deadline). In Belgium, amendments to the law of 18 September 2017 and the implementing decrees are expected.

Details of the major amendments

[Public access to register of ultimate beneficial owners](#)

The Fifth AML Directive maintains the distinction between register of ultimate beneficial owners (the “**UBO-register**”) for companies and other legal entities operating within the EU on the one side and trusts on the other.

The UBO-register for companies and other legal entities (in Belgium, under article 74 of the Law of 18 September 2017, companies, non-for-profit organizations and foundations) must become publicly accessible. There will be no longer a requirement to demonstrate legitimate interest.

Trusts and similar legal arrangements will now have to obtain and hold information on ultimate beneficial owners (as already provided in article 74 of the Law of 18 September 2017), where the previous directive limited such obligation to trusts that generate tax consequences. The register for trusts and similar legal arrangements will only become publicly accessible to persons able to demonstrate a ‘legitimate interest’ (to be defined by the Member States). Additionally, access to beneficial ownership of trusts that own a company that is not incorporated in the EU will be granted upon written request.

In both cases, the set of data made available to the public will be limited to certain essential data. Moreover, the Fifth AML Directive allows Member States to provide for an exemption if public access would expose

beneficial owners to disproportionate risks, to risks regarding fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or if the beneficial owner is a minor or otherwise legally incapable. Member States will also retain the right to provide broader access to information, in accordance with their national law.

Member States can require an online registration to get access to such information, together with a fee that shall not exceed the administrative costs of the register.

Finally, Member States should ensure that the national UBO-registers of the different Member States are interconnected, to facilitate international cooperation.

Extending the scope of the AML regime to additional service providers

The scope of the Fifth AML Directive has been widened to also cover custodian wallet providers and providers engaged in exchange services between virtual currencies and fiat currencies, in order to end the anonymity associated with virtual currencies. These platforms and providers are required to register and will have to meet the requirements of the AML regime.

Additionally, the scope of the AML regime is further extended to cover art dealers (with respect to transactions that amount to €10,000 or more) and all forms of tax advisory services and estate agents. Although the Fourth AML Directive already covered the latter two, further specifications regarding these entities have been introduced:

- Concerning tax advisors, the Fifth AML Directive specifies that this comprises any person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as a principal business or professional activity.
- The Fifth AML Directive also applies to estate agents, including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to €10,000 or more.

Threshold for identifying holders of prepaid cards is lowered

The Fifth AML Directive aims to substantially reduce the use of anonymous prepaid cards. The threshold for identifying the holders of prepaid cards is reduced from currently EUR 250 to EUR 150. The derogation of this identification requirement does not apply in the case of redemption in cash or withdrawal of cash, or remote payment transactions, where the amount exceeds EUR 50 per transaction. Prepaid cards issued in third countries will only be accepted in the EU if their issuance meets requirements equivalent to the EU AML regime.

Improving safeguards for transactions involving high-risk third countries

The European Commission has established and regularly updates a list of third countries presenting an increased risk of money laundering, notably including Afghanistan, Iraq, Iran, Syria and the Democratic People's Republic of Korea. The Fifth AML Directive introduces specific requirements with respect to these high-risk third countries in order to harmonize control measures at EU level.

More specifically, Member States will have to implement enhanced due diligence measures to monitor suspicious transactions involving high-risk countries more strictly. This includes, among others, the following measures:

- (i) obtaining additional information regarding the transaction as well as the natural and legal persons involved, obtaining the approval of senior management for establishing or continuing the business relationship, and conducting enhanced monitoring of the business relationship;
- (ii) the application of elements of enhanced due diligence, introducing systematic reporting mechanisms and limiting business relationships or transactions with high-risk third countries, the refusal of establishment of subsidiaries or branches or representative offices in high-risk countries, imposing increased supervisory examination and external audit requirements on any of these branches or subsidiaries, as well as requiring credit and financial institutions to review, amend and possibly terminate relationships with respondent institutions in high-risk third countries.

Other measures as part of the amendments

Finally, certain other amendments deserve to be highlighted:

- Member States are required to issue and keep an up-to-date list indicating prominent public functions for identification purposes; the Commission will compile a single list of all prominent public functions (based on the information received from the Member States, and also including the prominent public functions at EU level) and make this list public;
- the methods of carrying out customer due diligence have been widened to include electronic identification means or any other secure, remote or electronic identification process that is regulated, recognized, approved or accepted by the relevant national authorities; and
- the Fifth AML Directive obliges Member States to establish centralized national bank account registries or electronic data retrieval systems, which allow for identification of every natural or legal person holding or controlling payment and bank accounts or safe-deposit boxes held by a credit institution within their territory. National competent authorities should have unrestricted access to this information in order to perform their duties under the AML Directive.

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