



Fifth Anti-Money Laundering Directive



1. *Background*

The new EU Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “5th AML Directive”) has entered into force on 9 July 2018. Member States of the European Union are required to implement the 5th AML Directive into national law by 10 January 2020.

2. *Objectives of the new directive*

The European Commission presented the proposal for the 5th AML Directive in July 2016 in the wake of terrorist attacks and the revelations of the Panama Papers scandal, and is part of the Commission's Action Plan of February 2016 to strengthen the fight against terrorist financing. Accordingly, its main objectives are:¹

- to increase transparency about who really owns companies and trusts to prevent money laundering and terrorist financing via opaque structures;
- to improve the work of Financial Intelligence Units² with better access to information through centralised bank account registers;
- to tackle terrorist financing risks linked to anonymous use of virtual currencies and of pre-paid instruments;
- to improve the cooperation and exchange of information between anti-money laundering supervisors and with the European Central Bank;
- to broaden the criteria for assessing high-risk third countries and ensure a common high level of safeguards for financial flows from such countries.

¹ Fact Sheet of the European Commission dated 09 July 2018 (*Strengthened EU rules to prevent money laundering and terrorism financing*)

² A central, national unit that is responsible for receiving and analysing information from private entities on financial transactions which are considered to be linked to money laundering and terrorist financing. The FIUs disseminate the results of its analyses to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or terrorist financing. (*4th Anti-Money Laundering Directive*)

3. Key changes

The first main improvement concerns **the transparency on the real owners** of companies and trusts. Member States will need to ensure that registers of ultimate beneficial owners of companies are accessible to the general public. This wider access to part of the beneficial ownership information will enhance public scrutiny and will contribute to preventing the misuse of legal entities for money laundering and terrorist financing purposes. Meanwhile the access to data on the beneficial owner of trusts will be accessible without any restrictions to competent authorities, Financial Intelligence Units, the professional sectors subject to Anti-Money laundering rules (banks, lawyers...) and will be accessible to other persons who can demonstrate a legitimate interest. The 5th AML Directive also prescribes the interconnection of the beneficial ownership registers at EU level.

The new Directive has extended the **scope of the AML regime** to (i) entities which provide services that are in charge of holding, storing and transferring virtual currencies, to (ii) persons providing similar kinds of services to those provided by auditors, external accountants and tax advisors, to (iii) art dealers, plus further specifications are provided to (iv) tax advisors and (v) estate agents. These new actors will have to identify their customers and report any suspicious activity to the Financial Intelligence Units.

Another change relates to the **anonymity on electronic money products (prepaid cards)** in particular when used online. The threshold for identifying holders of these products is lowered to EUR 150 when customers use them directly in the shop. The other case where Member States may still allow anonymity is when customers carry out an online transaction with a prepaid card below EUR 50.

Regarding the **assessment of high-risk third countries**, new criteria have been added, including transparency of beneficial ownership. In addition, Member States will have to adopt and apply systematic enhanced controls on the financial transactions from and to the countries listed by the European Commission and presenting deficiencies in their AML regimes.

Furthermore, the 5th AML Directive – in line with its objectives – includes new rules for the Member States related to:

- the setting up of centralised bank account registers or retrieval systems to identify holders of bank and payment accounts;
- the increase of powers of EU Financial Intelligence Units and facilitating their cooperation;
- the enhancing of the exchange of information and cooperation between money laundering supervisors and financial supervisory authorities including with the European Central Bank.

The full text of the 5th AML Directive is available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>