



CYPRUS

FINANCIAL SERVICES

FIRMS ASSOCIATION



ASSOCIATED WITH THE CYPRUS CHAMBER OF COMMERCE AND INDUSTRY (CCCI)

37, Prodromou Street, 1090, Nicosia, Cyprus
P.O. Box 25318, 1308, Strovolos, Nicosia, Cyprus
Tel. +357 22815725, Fax. +357 22815727,
e-mail cfsfa@cfsfa.org.cy, www.cfsfa.org.cy

NEWS BULLETIN

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What does the 5th Anti-Money Laundering Directive bring?

Dear Members, please be informed that the 5th European Directive has entered into force on 10th January 2020.

Although much of 5AMLD's content updates the 4MLD, it makes a significant new legislative step in the treatment of virtual currencies. In more detail, 5AMLD introduces the following measures:

Crypto currency

- A legal definition of crypto currency which may broadly be regarded as “a digital representation of value that can be digitally transferred, stored or traded and is accepted...as a medium of exchange.”
- Crypto currencies and crypto currency exchanges are considered “obliged entities”, and face the same CFT/AML regulations applied to financial institutions under 4AMLD. Practically, this involves an obligation to perform customer due diligence (CDD), and submit suspicious activity reports (SAR).
- 5AMLD actually goes further than 4AMLD in imposing reporting obligations by giving Financial Intelligence Units (FIU) the authority to obtain the addresses and identities of owners of virtual currency and, in so doing, to push back against the anonymity associated with the use of crypto currency.
- It also introduces regulation for providers of crypto currency exchanges and wallets – which must now be registered with the competent authorities in their domestic locations.

The introduction of regulations paves the way for EU operators to introduce more crypto currency products and, crucially, to compete with Asian countries, which have already made legislative progress in integrating crypto currency with financial markets.

Prepaid cards

After 4AMLD cut the monthly transaction limit on anonymous prepaid cards to €250 (a measure to combat terrorist financing), 5AMLD sets an even lower limit of €150: this limit also applies to the amount that can be stored or topped-up on the cards. The 5AMLD limit means that firms will be required to carry out identity checks on customers using prepaid cards funded with more than €150. Similarly, anonymous remote or online transaction limits are reduced to €50.

Prepaid cards issued outside the EU are now prohibited unless they were issued in a territory enforcing legislation equivalent to the EU's AML/CFT and KYC standards. Obligated entities must review the way they handle prepaid card payments and put mechanisms in place to identify (and refuse) transactions using cards from non-EU sources. This requirement may involve significant revision of existing systems and procedures.



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High Value Goods

5AMLD expands the scope of legislation regarding other stores of value: art traders, for example, or those acting as intermediaries, now have AML/CFT reporting obligations and will have to perform due diligence procedures on customers. The directive specifically singles out high value works of art for the first time, by applying AML checks to transactions involving art which amount to €10,000 or more. That rule applies to single transactions or multiple linked transactions.

The scope of 5AMLD is not limited to art: now, transactions involving a range of high value goods are considered high risk – including oil, arms, precious metals, and tobacco. Notably, historical, cultural and archaeological artifacts are included in the regulation – a move to specifically target funding for terrorist groups such as ISIS.

Beneficial Ownership

In 2017, 4AMLD introduced a focus on ultimate beneficial ownership (UBO) for the purposes of risk mitigation and money laundering prevention. 5AMLD builds on those steps, introducing the following measures:

- UBO lists (drawn up under 4AMLD) are to be made publicly accessible within 18 months of 5AMLD's implementation date.
- Trusts (or any similar arrangement) must observe beneficial ownership regulations and, like companies, must make that information available to authorities or others demonstrating legitimate interest.
- UBO national registers must be inter-connected at an EU level in order to facilitate cooperation and the exchange of information between member-state authorities.
- Member states are to strengthen their UBO verification mechanisms to ensure the information they carry is accurate and reliable.
- Member states must introduce separate UBO registers for bank accounts: unlike company UBO registers, these lists will not be publicly available and only accessible by authorities.

The requirement to register beneficial ownership and have that information publicly available is, a vital first step in detecting some of the vast flows of illicit funds transmitted through the financial system, and places a handicap on the preferred instrument of money launderers globally.



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High-Risk Third Countries

Companies that do business with customers from high-risk third countries are, under 5AMLD, required to perform enhanced due diligence measures specifically focused on addressing the deficiencies in those countries' AML protections and the money laundering risks they present.

The measures require firms to:

- Obtain information on customers and UBO, including establishing the purpose of proposed transactions and the source of UBO funding and wealth.
- Report transaction details with high-risk third countries to senior management and obtain approval prior to establishing or continuing those business relationships.
- Increase controls on specific business relationships and identify transactions that may need further scrutiny.

Politically Exposed Persons (PEPs)

5AMLD requires EU member states to compile and publicly release a functional PEP list made up of prominent politically exposed public functions. This requirement extends to accredited international organizations: the EU will also release an EU-level version of the list.

Functional PEP lists are rare and so can require explanation. The list created by the EU member states under their 5AMLD compliance obligations will feature the positions that are considered politically exposed but will not name the person fulfilling the function (which, of course, will change periodically).

These lists are designed to make it easier for smaller compliance teams, or those with lower volumes of customers, to identify the PEPs that they should be screening against and monitoring for ongoing changes to risk.

Keeping a list of people performing these functions up to date may involve significant administrative effort and companies should take careful steps to ensure a sufficient level of compliance.