

EU Anti-Money Laundering Developments: Fifth Directive Published and Sixth Directive Imminent

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Although the UK only implemented the European Union's Fourth Money Laundering Directive ("MLD 4")¹ in June 2017, the Fifth Money Laundering Directive ("MLD 5")² has now been published in the Official Journal of the European Union and the Sixth Money Laundering Directive ("MLD 6") appears to be close to publication. MLD 5 introduces relatively limited amendments to MLD 4. The UK government has elected to opt out of adopting MLD 6, which could otherwise have resulted in significant changes in the UK's anti-money laundering regime; however, MLD 6 is likely to have a major impact in other EU member states. Some of the key features of both Directives are summarised below.

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Fifth Money Laundering Directive. MLD 5 was published on 19 June 2018 and will enter into force on 9 July. EU member states will then have until 10 January 2020 to implement MLD 5 into national law. Although this is after the date that the UK leaves the EU, it is currently expected that the UK will adopt the provisions of MLD 5.

Additional organisations subject to money laundering rules. In response to evolving money laundering trends, several new categories of organisations will now be required to comply with EU anti-money laundering rules: virtual currency exchanges; custodian wallet providers for virtual currencies; persons (including art galleries and auction houses) trading or acting as intermediaries in the trade of art works worth at least EUR 10,000; and persons storing, trading or acting as intermediaries in the trade of art works worth at least EUR 10,000 when this is carried out by free ports.

Dealing with high-risk third countries. MLD 4 required organisations dealing with customers in high-risk third countries (as identified by the Commission) to apply enhanced due diligence measures, but did not specify what those measures should be. MLD 5 fills this gap by providing that enhanced due diligence involves taking steps such

¹ Directive (EU) 2015/849. Please see our previous client updates on MLD 4 (<https://www.debevoise.com/insights/publications/2015/08/fourth-anti-money-laundering-directive>) and the UK implementing regulations (<https://www.debevoise.com/insights/publications/2017/06/uk-implements-new-anti-money-laundering-rules>)

² Directive (EU) 2018/843

as obtaining: additional information on the customer and the beneficial owner; additional information on the intended nature of the business relationship; information on the source of funds and source of wealth of the customer and the beneficial owner; and the approval of senior management for establishing or continuing the business relationship. Organisations must also conduct enhanced ongoing monitoring of the business relationship.

Access to beneficial ownership information. MLD 5 expands the provisions of MLD 4 by requiring EU member states to make beneficial ownership information in relation to companies and other legal entities available to the general public. This will not affect the UK, which already makes this information publicly available through Companies House. In addition, MLD 5 extends access to beneficial ownership information in relation to trusts and similar legal arrangements to anyone who can demonstrate a “legitimate interest” or who files a written request concerning a particular trust.

Sixth Money Laundering Directive. On 7 June 2018, negotiators from the EU Parliament and Council agreed on the wording of MLD 6, which is intended to combat money laundering by reforming and harmonising the criminal laws of member states. It is expected that MLD 6 will be adopted at EU level in the coming months, with member states then given up to two years to transpose the new provisions into national law.

Jurisdiction. A member state is given jurisdiction over a money laundering offence where the offence is committed wholly or partly in its territory, or the offender is one of its nationals. Member states are also permitted to establish extraterritorial jurisdiction where the offender is a resident, or the offence is committed for the benefit of a legal entity established in the state.

Predicate offences. MLD 6 contains a list of 22 offences which may generate criminal property for the purposes of committing a money laundering offence. These predicate offences include terrorism, human trafficking, corruption, environmental crimes, tax crimes, market abuse and cybercrime.

Money laundering offences. Inciting, aiding and abetting, and attempting money laundering are specified as money laundering offences in MLD 6. In addition, MLD 6 prohibits ‘self-laundering’, where a person was both involved in the predicate offence and caused further harm by converting, transferring, concealing or disguising the resulting criminal property. Member states are required to ensure that money laundering is punishable by a maximum term of at least four years’ imprisonment.

Corporate liability. MLD 6 creates a framework for corporate criminal liability. Companies can be held liable where someone in a “leading position” commits money laundering for the company’s benefit, or where a lack of supervision or control by such a

person made the money laundering possible. A person will have a leading position in a company if they have a power of representation or authority to take decisions on behalf of the company, or authority to exercise control within the company.

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Please do not hesitate to contact us with any questions.

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