



June 2018

▣ Fifth Money Laundering Directive Update

On 14 May 2018 the European Council voted in favour of the proposed Fifth Money Laundering Directive namely the 'Proposal for a Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC' ("**MLD5**"). Save for minor drafting changes, the text adopted by the Council is the same as that adopted by the European Parliament on 19 April 2018.

MLD5 was drafted partly as a response to the terrorist attacks that shook Europe in 2015 and 2016 in Paris and Brussels, along with the Panama Papers leak which revealed the chink in the armour of the European Union's fight against terrorist financing. MLD5's twin aims – counteracting terrorist financing and increasing transparency of financial transactions – look to address these shortcomings by fine tuning the Fourth Money Laundering Directive which had a deadline for transposition a mere six days before Council adopted MLD5.

MLD5 intends to increase transparency in financial transactions by introducing some radical reforms:

- ▣ *Centralised Beneficial Ownership Registers*: Current beneficial ownership identification requirements are to be extended to certain trusts and similar legal arrangements, with Member States being required to identify which trusts and similar legal arrangements the rules should apply to. In addition, Member States will be required to allow access to beneficial ownership information on corporate and other legal entities in a sufficiently coherent coordinated way, through central registers in which

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beneficial ownership information is set out, by establishing a clear rule of public access, so that third parties are able to ascertain throughout the EU, who are the beneficial owners of corporate and other legal entities.

- ▣ *Risky countries*: Closer scrutiny and clarification on enhanced due diligence will be given to transactions involving nationals from risky countries when assessing whether the money has been laundered.
- ▣ *Letterbox Companies*: By providing all citizens with access to the beneficial ownership register of all companies operating within the EU, this should assist in preventing the use of letterbox companies to launder money, hide wealth and avoid paying taxes.
- ▣ *Extending the scope of industries subject to MLD5*: Art dealers, tax advisors, letting agents and crypto currency exchanges will be required to verify the identity of clients and to perform customer due diligence to ensure they 'know their customer' similarly to the existing obligations on financial institutions.
- ▣ *Anonymous Prepaid Cards*: Noting that the rental cars used in the attacks in France in 2016 were paid with anonymous cards, the transaction threshold for requiring customer identification when using general purpose anonymous prepaid cards is to be reduced from €250 to €150.
- ▣ *Crypto Currencies*: MLD5 will also end the anonymity associated with virtual currencies such as bitcoin and require virtual currency exchange platforms and custodians to exercise due diligence and customer verification requirements with such exchanges. Thus when a crypto currency holder seeks to convert their currency to euro, European banks will be required to know who the customer (the beneficial owner) is and where the money originates from. In addition, these exchange platforms, all currency exchanges and trust or company service providers will have to be registered.
- ▣ *EU Financial Intelligence Units ("FIUs")*: The powers of FIUs and their access to financial information will be enhanced under MLD5 by requiring the establishment of centralized national bank and payment account registers or central data retrieval systems in each Member State.
- ▣ *Whistle blowers*: There will be greater protection for whistleblowers who report money laundering – including anonymity.

The MLD5 will be published shortly in the Official Journal and has an estimated deadline for transposition before the end of 2019. A copy of the text of the MLD5 can be found [here](#).

For further guidance regarding MLD5, please refer to the contacts above, or to your usual contact within Dillon Eustace.

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