



**ACCOUNTANCY  
EUROPE.**

# **THE 5<sup>TH</sup> ANTI-MONEY LAUNDERING DIRECTIVE**

What changes for accountants?

**Factsheet**

**FACTS.**

**PROFESSIONAL MATTERS  
JUNE 2018**

## **HIGHLIGHTS**

Accountants and auditors play an important role in keeping European citizens safe from money laundering and terrorist financing. This factsheet highlights how their day-to-day work will be affected by the 5<sup>th</sup> EU Anti-Money Laundry Directive (AMLD).

The new Directive responds to public calls to counter terrorist financing and to address the lack of beneficial ownership transparency. We set out how the legal requirements will change for accountants.

Most notably we focus on the Directive's scope expansion, beneficial ownership and enhanced customer due diligence. To support accountants and professional accountancy institutes in understanding the changes, we included checklists for dealing with these revised requirements.

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## 5<sup>TH</sup> AML DIRECTIVE

In June 2018, the *Directive (EU) 2018/843 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (the 5<sup>th</sup> AMLD) became law. The Anti-money laundering Directive (AMLD) is the cornerstone of the European Union's (EU) anti-money laundering and countering the financing of terrorism (AML/CFT) policy. Member States have 18 months to transpose these new rules in their national legislation.

The 5<sup>th</sup> AMLD amends *Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (the 4<sup>th</sup> AMLD). It aims to respond to evolving trends in terrorism financing and the beneficial ownership (BO) transparency.

This factsheet provides a brief overview of the primary changes in the requirements for external auditors, accountants and tax advisors (hereafter accountants). It includes new requirements related to the scope, beneficial ownership transparency, customer due diligence (CDD), enhanced due diligence and other provisions relevant to accountants. The paper also highlights the main changes that are not directly applicable to accountants.

The checklist in the annex summarises the primary issues that are likely to change for accountants once the 5<sup>th</sup> AMLD is transposed into national legislation. Some of the new EU requirements might already exist in your national legislation if your government gave the 4<sup>th</sup> AMLD additional powers during transposition into national law ('gold-plated').

For a short overview of AML/CFT obligations for SME accountants, please see the our infopack *Preventing money laundry and terrorist financing* (June 2018).<sup>1</sup>

## EXPANSION SCOPE TO ALL TAX ADVISORS

The 4<sup>th</sup> AMLD is applicable to external auditors, accountants and tax advisors. However, it is not clear whether this means that other providers of tax advice are also subject to the obligations of the AMLD.

The 5<sup>th</sup> AMLD clarifies this by extending the scope of the legislation to any other person that provides material aid, assistance or advice on tax matters as principal business or professional activity. This closes a potential loophole and ensures a level playing field among certified and uncertified tax advisors.

## BENEFICIAL OWNERSHIP TRANSPARENCY

### HOLDING BENEFICIAL OWNERSHIP INFORMATION

The 4<sup>th</sup> AMLD requires corporate entities and trusts to hold information on who their beneficial owner is. This is any natural person who ultimately owns or controls an entity.

The 5<sup>th</sup> AMLD helps corporate entities and trusts comply with this obligation by requiring their beneficial owners to provide these entities with the information they need. Corporate entities and trusts need to give this information to their accountants.

Moreover, Member States will have to ensure that non-compliance with these rules is subject to effective, proportionate and dissuasive measures or sanctions.

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<sup>1</sup> <https://www.accountancyeurope.eu/publications/preventing-money-laundering-and-terrorist-financing/>

## BENEFICIAL OWNERSHIP TRUSTS REGISTERS

Under the 4<sup>th</sup> AMLD, Member States must set up registers with the BO information of corporate and other legal entities, as well as of trusts. However, due to differences in legal systems in Member States it may happen that trusts are not monitored or registered anywhere.

Therefore, the 5<sup>th</sup> AMLD clarifies that the Member State where the trust is administered is responsible for monitoring and registering the trust. This also applies to other types of legal arrangements with a similar structure or function, such as '*fiducie*', certain types of '*Treuhand*' or '*fideicomiso*'. Moreover, a trust must no longer generate tax consequences to be included in a BO register.

These changes will increase the availability of BO trusts registers for accountants because Member States will have to set up a BO trusts register even if trusts are not part of their legal system.

Furthermore, the European Commission (EC) will compile a list of all the categories of trusts and legal arrangements with a similar structure of function. This list will be publicly available 14 months following the entry into force of the 5<sup>th</sup> AMLD.

It is important to keep in mind that accountants cannot exclusively rely on BO registers for their CDD. The registers are simply a tool to support accountants with their CDD.

## BENEFICIAL OWNERSHIP VERIFICATION

The 5<sup>th</sup> AMLD requires Member States to put in place mechanisms to ensure that the BO information in their registers is adequate, accurate and current. Accountants and other entities subject to the AMLD will have to contribute to these efforts by reporting any discrepancies they find between the BO information in the register and the BO information available to them through other sources. While resolving the discrepancy and if appropriate, Member States will have to highlight that the BO information from the register is disputed.

This is likely to make the registers more reliable and useful to accountants. Moreover, reporting entities are likely to benefit from each other's efforts in BO identification. For example, if a company's bank flagged a discrepancy, then the company's accountant will benefit from the corrected information. Equally, if a flagged discrepancy is under investigation, then the accountant will be able to see in the register that the BO information is disputed.

Nevertheless, the discrepancy reporting obligation can increase the compliance work of the accountant. Member States can minimise this by making it easy to report BO discrepancies. Therefore, it is important to engage with national authorities during the transposition of the 5<sup>th</sup> AMLD to support the development of a system that facilitates BO discrepancy reporting.

Finally, the 5<sup>th</sup> AMLD introduces public access to BO registers for corporate and legal entities. This is expected to increase civil society scrutiny of BO information and increase investors' confidence in financial markets.

## ESTABLISHMENT AND INTERCONNECTION OF BENEFICIAL OWNERSHIP REGISTERS

The 5<sup>th</sup> AMLD provides more time to Member States to set up the BO registers. The following deadlines will now apply:

- 18 months after the date of entry into force of the 5<sup>th</sup> AMLD: establishment BO registers for corporate and other legal entities
- 20 months after the date of entry into force of the 5<sup>th</sup> AMLD: establishment BO registers for trusts and other types of legal arrangements with a similar structure or function

Moreover, the 5<sup>th</sup> AMLD interconnects the national BO registers. The EC needs to do this by 32 months after the entry into force of the 5<sup>th</sup> AMLD.

## CUSTOMER DUE DILIGENCE

### ELECTRONIC IDENTIFICATION

Accountants need to identify their customer and verify their identity based on documents, data or information obtained from a reliable and independent source. The latest technical developments allow this to be done remotely and electronically.

The 5<sup>th</sup> AMLD recognises this by acknowledging that remote or electronic identification processes can be a reliable and independent source to identify and verify a customer's identity. It is important that these processes are secure and regulated, recognised, approved or accepted by the relevant national authorities. Like other identification means, there is a record keeping obligation of 5 years.

This change is likely to facilitate client onboarding. Under the 4<sup>th</sup> AMLD, the EU considered non-face-to-face business relationships as a factor of potentially higher risk that may require accountants to apply enhanced due diligence EDD measures. This will no longer be the case when accountants use secure electronic identification means.

### SENIOR MANAGING OFFICIALS

The 5<sup>th</sup> AMLD introduces stricter rules for when the senior managing official is identified as the beneficial owner. In that case, accountants will have to:

- take the 'necessary reasonable measures' to verify the identity of the natural person who holds the position of senior managing official
- keep records of their actions
- keep records of any difficulties encountered

### REGISTRATION IN THE BENEFICIAL OWNERSHIP REGISTER

Member States must ensure that the BO information of corporate entities and trusts is held in a central register.

The 5<sup>th</sup> AMLD requires accountants to collect proof of registration or an excerpt of the registers as part of their CDD when obtaining a new client with a registration obligation.

### CUSTOMER DUE DILIGENCE FOR EXISTING CUSTOMERS

Under the 4<sup>th</sup> AMLD, accountants must apply CDD measures to existing customers in two cases: (i) at 'appropriate times' on a risk-sensitive basis or (ii) when the relevant circumstances of a customer change.

The 5<sup>th</sup> AMLD extends this obligation by adding a third case: (iii) when there is a legal duty to contact the customer in the relevant calendar year to review 'any relevant information relating to the beneficial owner(s)'.

The extent to which this should change the CDD process for existing customers will depend on the existence of these legal contact duties in your national legislation.

## ENHANCED DUE DILIGENCE

### HARMONISATION OF ENHANCED DUE DILIGENCE MEASURES

The 4<sup>th</sup> AMLD requires accountants to apply enhanced customer due diligence measures to manage and mitigate risks from dealing with high-risk cases, such as natural persons or legal entities established in high-risk 3<sup>rd</sup> countries. Member States are free to determine what these EDD measures should include. The EC considers that the resulting different approaches create weak spots.

The 5<sup>th</sup> AMLD responds to this problem by harmonising the EDD measures that need to be applied when dealing with high-risk 3<sup>rd</sup> countries. Such measures range from obtaining additional client information to limiting business relationships with clients from high-risk 3<sup>rd</sup> countries. In addition, Member States can prohibit accountants from establishing branches or representative offices in such countries or require increased external audit requirements for branches or subsidiaries in these locations.

The impact of this new rule will depend on your current national AML/CTF framework. Some of the measures introduced by the 5<sup>th</sup> AMLD might already be required under current national legislation in some Member States.

## **A STRICTER BLACKLIST**

The 4<sup>th</sup> AMLD empowered the EC to identify high-risk 3<sup>rd</sup> countries with deficiencies in their AML/CFT regime. However, Members of the European Parliament consider the current 'AML/CTF blacklist' too restrictive and have criticised the EC for being too reliant on the FATF.

Therefore, the 5<sup>th</sup> AMLD extends the list of criteria that the EC needs to consider when establishing the EU AML/CFT blacklist. These new criteria include the availability of accurate BO information to authorities, the existence of effective sanctions, and the cooperation with EU national competent authorities.

This requirement will impact the compliance work of accountants. The new criteria are likely to lead to a longer blacklist. As a result, it will be important to stay informed about any change and assess whether this requires reviewing current due diligence measures.

## **POLITICALLY EXPOSED PERSONS LIST**

Accountants must apply additional due diligence measures when dealing with politically exposed persons (PEPs).

PEPs are defined as persons who are or have been entrusted with prominent public functions. The new list of such functions comprises certain positions in governments, parliaments, courts, courts of auditors, central banks, state-owned enterprises and international organisations. The definition is not country-specific, i.e. it includes domestic PEPs. The additional measures also have to be applied when dealing with their family members and close associates.

The 5<sup>th</sup> AMLD introduces an EU list to identify PEPs. Such lists will consist of prominent public functions:

- at national level, including of international organisations accredited to Member States
- at the level of EU institutions and bodies, including representative functions of third countries and international bodies accredited at EU level

This list will be publicly accessible and is likely to support accountants with their CDD work.

## **HIGH-RISK FACTORS**

Under the 4<sup>th</sup> AMLD, there is a list of factors that indicate potentially higher-risk situations. When faced with such factors, accountants are likely to be required to apply EDD measures.

The 5<sup>th</sup> AMLD extends this list of risk factors with customers that are a third country national who apply for residence rights or citizenship in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities.

## OTHER PROVISIONS FOR ACCOUNTANTS

### INFORMATION REQUESTS

The 5<sup>th</sup> AMLD will allow Financial Intelligence Units (FIUs) to ask accountants for information to combat money laundering and terrorist financing, even if no SAR was filed.

### REPORTING NON-COMPLIANCE

The 4<sup>th</sup> AMLD required competent authorities to establish a mechanism to encourage the reporting to competent authorities of potential or actual breaches of the national transposition of the AMLD.

The 5<sup>th</sup> AMLD extends this requirement to self-regulatory bodies 'where applicable'. For example, when self-regulatory bodies have an oversight function.

### TRANSPARENCY AND ACCOUNTABILITY

Member States can designate professional institutes as the authority to receive SARs. The 5<sup>th</sup> AMLD requires that such institutes publish an annual report with information about:

- measures in place related to sanctions for non-compliance
- number of reports of breaches of the AMLD received via the breaches reporting system
- number of SARs received by the institute and the number of SARs forwarded to the FIU
- number and description of measures taken to monitor compliance by accountants

### PROTECTION FOR REPORTING

Under the 4<sup>th</sup> AMLD, accountants that report suspicions of money laundering internally or to the FIU must be protected from threats, retaliatory or hostile action, and adverse or discriminatory employment actions.

The 5<sup>th</sup> AMLD extends this protection by introducing a right of complaint and effective remedy for accountants that are exposed to retaliatory action for reporting their suspicions.



## OTHER CHANGES

### VIRTUAL CURRENCIES

The 5<sup>th</sup> AMLD responds to the increased use of virtual currencies and their potential misuse for criminal purposes by extending the scope to:

- providers of exchange services between virtual currencies and fiat currencies, for example between Bitcoin and Euro
- custodian wallet providers

A custodian wallet provider is an entity that provides services to support their customers to hold, store and transfer virtual currencies.

The 5<sup>th</sup> AMLD defines virtual currencies as:

*“a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically”*

### BANK AND REAL ESTATE REGISTERS

Delayed access to the identity of bank and payment account holders and safe deposit boxes is obstructing FIU efforts to fight terrorism financing.

Therefore, 5<sup>th</sup> AMLD requires Member States to set up a central bank register or data retrieval system. These centralised automated mechanisms should allow FIUs and competent authorities to identify legal and natural persons that hold or control payment accounts, bank accounts, or safe deposit boxes held by a credit institution within their territory.

Similarly, Member States will need to provide FIUs and competent authorities with access to information to identify natural or legal persons owning real estate. This can also be done via registers or electronic data retrieval systems.

### OTHER PROVISIONS

The 5<sup>th</sup> AMLD:

- introduces stricter measures in relation to general purpose anonymous prepaid cards
- clarifies the powers of and cooperation between FIUs

## CHECKLIST

### CHANGES FOR ACCOUNTANTS TO APPLY TO STAY COMPLIANT

- ✓ Collect proof of registration in the BO register when onboarding a client with a registration obligation
- ✓ Report discrepancies you find between your client's BO information in the BO register and the information you find from other sources
- ✓ Adjust customer due diligence (CDD) procedures to account for stricter rules when the senior managing official of your client is identified as the beneficial owner
- ✓ Apply CDD measures to existing clients when contacting them because of a legal obligation to review information related to the beneficial owner
- ✓ Review enhanced due diligence (EDD) measures for dealing with high-risk 3rd countries to account for any potential changes following the harmonisation of EDD requirements at EU level
- ✓ Keep an eye on the EU AML blacklist, which is likely to grow larger than the Financial Action Task Force (FATF) one
- ✓ Clients from 3rd countries applying for residence rights or citizenship in exchange for capital transfers, purchase of property or government bonds, or investment in corporate entities must be considered as higher risk and are likely to require EDD
- ✓ Provide requested information to your Financial Intelligence Unit (FIU), even if no suspicious activity report (SAR) was filed

### CHANGES FOR ACCOUNTANTS TO TAKE INTO CONSIDERATION

- ✓ Increased reliability of the BO registers
- ✓ The interconnection of BO registers will allow access to registers in other EU countries
- ✓ Availability of BO registers for trusts administered in a Member State, even if these are not part of the national legal system
- ✓ Stronger sanctions for clients that provide inaccurate BO information to accountants
- ✓ Accountants reporting suspicion of money laundering or terrorist financing receive a right of complaint and effective remedy when exposed to retaliatory action
- ✓ Remote or electronic identification processes are recognised as a reliable source for customer identification and verification
- ✓ Authorities can introduce stricter rules when dealing with high-risk 3rd countries
- ✓ Publication of an EU list of prominent public functions to help identifying politically exposed persons (PEPs)

### CHANGES FOR ACCOUNTANCY INSTITUTES

- ✓ Obligation to introduce secure communication channels to encourage reporting of potential breaches of national AML legislation (where applicable)
- ✓ Institutes designated as the authority to receive SARs will have to publish an annual report. This must include information on the number of SARs received and the sanctions taken against members for non-compliance

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