

JULY 19, 2017

Strengthening the Fight against Money Laundering and Terrorism Financing

"Laundered money is oxygen to crime, terrorism and tax-avoidance. We need to cut off its supply as best we can. Today's stronger rules are a big step forward but we now need quick agreement on the further improvements the Commission proposed last July",

"(...) The new rules as of today are crucial to closing further loopholes. I urge all Member States to put them in place without delay: lower standards in one country will weaken the fight against money laundering and terrorist financing across the EU. I also call for quick agreement on the further revisions proposed by the Commission following the "Panama Papers" to increase transparency of beneficial ownership",

these were the greetings brought on June 26, 2017 by Frans Timmermans (First Vice-President) and by Věra Jourová (Commissioner for Justice, Consumers and Gender Equality) to the entering into force of the fourth anti-money laundering directive, Directive (EU) 2015/849, known as 4AMLD.

Until June 26, 2017 the Member States should have notified the transposition of the 4AMLD. In Romania, however, the Office for Prevention and Control of Money Laundering has published the bill for amending the existing Law no. 656/2002 on the prevention and sanctioning of money laundering only on May 19, 2017.

Main changes brought by the 4AMLD**I. Broadened scope - increasing the threshold for cash payments; covering the entire gambling sector; and expanding the "estate agents" concept**

By decreasing the amount of cash payments from EUR 15,000 to EUR 10,000, the 4AMLD's scope is considerably extended. Customer due diligence is now applied to any cash payments of EUR 10,000 or more in case of trading goods, regardless of whether the payment is made in a single or through multiple linked transactions.

The anti-money laundering provisions are now applicable to the entire

gambling sector and not only to casinos, as under the 3AMLD, by transforming all providers of gambling services into “obliged entities”.

In the real estate field, the “estate agents” concept is extended. Under the 4AMLD the Member States are permitted to widen the scope of estate agents, by also including the letting agents besides the real estate agents involved in the purchase or sale of real estate properties.

II. Risk-based approach - introducing risk assessments at EU and national Level

In line with the recommendations adopted since 2012 by the main international body in the fight against money laundering and terrorism financing, the FATF (Financial Action Task Force), the 4AMLD puts the risk-based approach at the centre of Europe’s anti-money laundering and countering the financing of terrorism regime.

The principle consists in adjusting the measures to be taken and the resources to be allocated to risk level involved by certain sectors and jurisdictions.

The risk-based approach, introduced by the amended directive (3AMLD), performed only by the obliged entities is now extended to national and even European level, as follows:

1. Supranational/European risk assessment performed by the Commission and the European

Supervisory Authorities (ESAs) – EIOPA, EBA, ESMA.

The Commission will draw up every two years reports that identify, analyse and evaluate those risks at Union level (considering the areas at greatest risks, the risk for each sector, the most widespread means used by criminals to launder illicit products), recommending afterwards to the Member States on the measures suitable for addressing the identified risks.

The first Commission’s report was published on June 26, 2017 with the purpose of supporting the Member States’ authorities in their practical approach. Also, the ESAs issued their first joint opinion on November 16, 2016.

2. National risk assessment performed by the Member States through the supervisory authorities, consisting in the Member States, after evaluating, assessing and mitigating the risks they encounter and identifying the sectors with higher or lower risk, being required to disclose their conclusions to other Member States, to the Commission and to the ESAs; and
3. Obliged entities’ risk assessment shall be documented, kept up-to-date and made available to the relevant authorities. Further, based on the risk assessments, the obliged entities are compelled to update

their internal policies, controls and procedures to mitigate the risks.

The risk assessment shall also support the obliged entities' decision between simplified and enhanced measures when performing customer due diligence.

III. Simplified or enhanced due diligence - removal of automatic simplified customer due diligence

Whereas under the 3AMLD the simplified customer due diligence (SDD) was applied automatically to certain customers and products, under the new legislation the SDD must be individually assessed on a risk-based approach.

The obliged entities have to be able to justify why they have considered the risk as being low enough to apply SDD, considering at least:

- customer risk factors;
- product, service, transaction or delivery channel risk factors; and
- geographical risk factors.

Related to the enhanced due diligence, the obliged entities are required to examine *"the background and purpose of all complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic and lawful purpose"*.

IV. Ultimate beneficial owner and central registers

The European Commission considers that *"understanding the beneficial*

ownership of companies is at the heart of the risk mitigation of financial crime and of prevention strategies for regulated firms."

In terms of identifying the beneficial owner, a significant reform concerns the case where no dominant shareholder can be determined. In this case, if all means of identification are exhausted and no suspicion arises, the 4AMLD allows the obliged entities to consider the senior managing official(s) as beneficial owner.

Legal entities and other corporate entities will be required to obtain and hold adequate, accurate and current information on their beneficial owners. Such information, in addition to information about their legal owner, will be provided to the obliged entities when performing customer due diligence.

The 4AMLD introduces for the first time a centralization at national level of the information referring to beneficial owners. This means that each Member State has to put in place a central public register for UBOs.

The information held in the central register should be accessible to competent authorities, to the Financial Intelligence Units, to the obliged entities and to any person that can demonstrate a legitimate interest. Based on the current draft bill published by the Office for Prevention and Control of Money Laundering, it seems that Romania will not make this register available to any

person that can demonstrate a legitimate interest.

However, the obliged entities performing customer due diligence will not rely exclusively on the information stored in the central register for identifying the ultimate beneficial owner. They have to continue performing a risk-based approach for fulfilling such obligation.

V. Increased pecuniary sanctions level and 'Naming and Shaming' complementary measures

While the maximum limits for administrative pecuniary sanctions were increased for both natural and legal persons, the greatest impact is upon credit institutions and financial institutions, where the maximum administrative fine can raise up to:

- a maximum of EUR 5,000,000 or 10% of the total annual turnover, in case of legal persons; and
- a maximum of EUR 5,000,000 in case of natural persons.

The competent authorities can also publish a public statement identifying the natural or legal person and the nature of the breach. The '*naming and shaming*' is also becoming popular in other European legal frameworks.

The practical implementation of all the regulatory developments might be challenging, especially for the financial and gambling industries.

The financial and gambling entities who have not already begun to do so should start preparing for customer due diligence based on risk assessment, obtaining ultimate beneficial owner information and updating the internal policies.

This document is intended for informational purposes only, does not represent legal advice and does not focus on particular cases.

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