

Ireland – 5th Anti-Money Laundering

by Henry Duggan

On 19th June 2018, the 5th Anti-Money Laundering Directive (Directive (EU) 2018/843)¹ was published. This revised Directive, which updated the previously published 4th Anti-Money Laundering Directive², required transposition by all EU Member States on or before 10th January 2020. This new Directive provided significant enhancements to further enhance the financial crime frameworks across EU member states, thereby providing greater protection against money laundering and terrorist financing. As has been promulgated by the European Commission³, these new enhancements focussed on:

- Enhancing transparency by setting up publicly available registers for companies, trusts and other legal arrangements.
- Enhancing the powers of EU Financial Intelligence Units and providing them with access to broad information for the carrying out of their tasks.
- Limiting the anonymity related to virtual currencies and wallet providers, and also for pre-paid cards.
- Broadening the criteria for the assessment of high-risk third countries and improving the safeguards for financial transactions to and from such countries.
- Setting up central bank account registries or retrieval systems in all Member States.

The European Court of Justice found that the 4th Money Laundering Directive was not fully transposed into Irish law until 3rd December 2019⁴.

As a result, Ireland was fined €2 million on 16th July 2020 for failing to transpose the Directive before the required due date of 26th June 2017 (which was required of all EU member states). Following this, the publication of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020⁵ in September provided the initial steps for the transposition of the 5th Anti-Money Laundering Directive into Irish law.

In essence this bill moved to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to Directive (EU) 2018/843 of the European Parliament and of the Council of 30th May 2018 amending 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 Directives 2009/138/EC and 2013/36/EU; and to provide for related matters. This was subsequently achieved in March 2021 through the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021.

So, this raises the question as to the impact of the 5th Anti-Money Laundering Directive on the AML environment in Ireland. A number of important developments occurred across the following areas⁶:

- New categories of “designated persons” were introduced in the new legislation. This definition was expanded to include the following:
 - **Property service providers** – Property and Estate Agents who are involved in the letting of properties where the monthly rental income is at least €10,000.

- **Tax advisors** – Individuals involved in the provision of taxation advice to clients.
- **Virtual currency providers** – Similar to the requirements already imposed on financial institutions, virtual currency providers will now have to conduct the appropriate due diligence on clients.
- **Art dealers** – Those involved in the trading of pieces of art where the value (either alone or in conjunction with linked transactions) is at least €10,000.
- **Politically Exposed Persons (“PEP”)** – Under the new requirements, designated persons are required to continue to monitor politically exposed persons for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons. Additionally, the definition of a PEP has been updated to any individual performing a prescribed function – where the Minister for Finance will issue guidelines as to what may be considered to be prominent public function.
- **High Risk Countries** – Designated persons will be required to apply the following measures to manage and mitigate the risk of money laundering and terrorist financing additional when dealing with a customer established or residing in a high-risk third country:
 - a. Obtaining additional information on the customer and on the beneficial owner.

1 EUR-Lex - 32018L0843 - EN - EUR-Lex (europa.eu)

2 EUR-Lex - 32015L0849 - EN - EUR-Lex (europa.eu)

3 Anti-money laundering and counter terrorist financing | European Commission (europa.eu)

4 Judgment of the Court (Grand Chamber) of 16 July 2020. - Publications Office of the EU (europa.eu)

5 b2320d.pdf (oireachtas.ie)

6 a0321.pdf (oireachtas.ie)

- b. Obtaining additional information on the intended nature of the business relationship.
- c. Obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner.
- d. Obtaining information on the reasons for the intended or performed transactions.
- e. Obtaining the approval of senior management for establishing or continuing the business relationship.
- f. Conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.

- **Beneficial Ownership -**

The new requirements also highlight that designated persons are required to ascertain that information relating to beneficial ownership included in the relevant Central Register of Beneficial Ownership.

- **Senior Managing Officials -**

Where the beneficial owner is the senior managing official referred to in Article 3(6)(a)(ii) of the 4th Money Laundering Directive, a designated person will be required to take the necessary measures to verify the identity of that person and must keep records of the actions taken to verify the person's identity including any difficulties encountered in the verification process.

- **Prepaid Cards -**

The customer due diligence limits relating to prepaid cards has now been reduced down from the previously existing threshold of €250 to a maximum monthly amount to €150.

- **Safety Deposit Boxes -**

The new requirements prohibit the creation of anonymous safety-deposit boxes by financial institutions.

- **Financial Intelligence Unit Feedback -**

The new act also reinforces the necessity for the Irish Financial Intelligence Unit, where practicable, to provide timely feedback to a designated person who is required to make a report on the effectiveness of and follow-up to reports made to it.

Tippling Off – The new act also updates an additional defence to the offence of “tipping off” for the person to prove that, at the time of the disclosure that:

- a. the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, and
- b. the disclosure was to:
 - i. a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or
 - ii. a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures adopted in accordance with section 54, or, as the case may be, Article 45 of the 4th Money Laundering Directive.”

In conclusion, the transposition of the 5th Anti-Money Laundering Directive into Irish law, provides a significant further enhancement of the previously existing framework. However, it is important to note that merely enacting legislation does not guarantee an enhanced level of protection from illicit activities such as money laundering and terrorist financing. There is a clear responsibility on those in the regulated sector to ensure that the current AML/CFT frameworks

within financial institutions and other regulated entities are enhanced to reflect the additional requirements in the new legislation.

Additionally, there is also a clear requirement to ensure that appropriate monitoring of controls are in place to monitor the effectiveness of new countermeasures on an ongoing basis, and then take remedial action if needed. Similarly, there is also a need for enforcement and regulatory bodies to monitor the implementation and effectiveness of those in the regulated sector. The 5th Anti-Money Laundering Directive provides an opportunity to further strengthen the financial crime regulatory environment within Ireland, thereby further enhancing the jurisdiction's reputation as an international financial services centre going forward.

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