The Fifth Money Laundering Directive (5MLD) And The UK

17 Jun 2019 Azizur Rahman.

With this week marking the end of the UK government’s consultation on the European Union’s Fifth Money Laundering Directive, Aziz Rahman outlines its likely effect.

This week has seen the closing date pass for comments to be submitted as part of the UK government’s consultation process on how to best transpose the European Union’s Fifth Money Laundering Directive into law. All submissions had to be made by June 10.

The Directive (5MLD) contains amendments to the Fourth Money Laundering Directive (4MLD) which will boost transparency and bolster the existing preventative framework in order to tackle the risk posed by money laundering and terrorist financing across the European Union (EU).

EU member states are obliged to implement 5MLD by January 2020. Even though the UK is still set to withdraw from the EU, it played a notable role in devising 5MLD and remains keen to prevent the financial system being used for money laundering and the financing of terrorism.
The UK government began the consultation period in April in order to determine the best way of bringing 5MLD into UK law in a way that balances the burden on business with the need for regulated businesses to actively discourage money laundering. The government has said that representations made in the consultation period will inform its final decisions on how 5MLD is transposed into UK law. The Treasury has also declared that it will explain why it has reached policy decisions that are made as part of the government response to the consultation.

The government has said it will only go further than the provisions of 5MLD if there is what it calls “good evidence that a material money laundering or terrorist financing risk exists that must be addressed”. It fully intends for any new provisions to come into force in national law by 10 January 2020, in line with Article 4 of 5MLD; which has set that date as the deadline for 5MLD to be incorporated into member states’ law.

**What is The Fourth Money Laundering Directive (4MLD)?**

The Fourth Money Laundering Directive (4MLD) was devised in order to strengthen the European Union (EU) against money laundering and terrorist financing and make sure that the EU was meeting the Financial Action Task Force’s (FATF) international anti-money laundering and counter-terrorist financing standards. It replaced the Third Money Laundering Directive and had to be transposed into member states’ law by 26 June 2017.

It came into force on June 26, 2015 and had to be on the statute books of member states by June 26 2017. Created to ensure a stronger, more risk-based approach to preventing money laundering and the financing of terrorism, it removed the automatic right to exempt certain customers or investors from due diligence checks; extending due diligence to domestic politically exposed persons (PEPs) - not just foreign ones - their family members and close associates.
4MLD also required corporates and legal entities, trusts and other similar structures to maintain adequate, accurate and current information on their beneficial ownership. Under 4MLD, beneficial ownership could be extended to those who have as little as 25% a stake in a body.

But only ten months after the provisions of 4MLD had to be transposed into member states’ legal systems, the European Parliament announced it had adopted the Fifth Anti-Money Laundering Directive. Although EU members have until next January to transpose the Fifth Directive into national law, some countries already have done.

What is The Scope of The Fifth Money Laundering Directive (5MLD)?

5MLD is not as all-encompassing as 4MLD, which imposed large-scale change on how businesses should seek to prevent money laundering. But it does add certain provisions that the Fourth Directive did not cover and it does extend its reach.

5MLD changes include:

- The regulation of virtual currencies and pre-paid cards to prevent terrorist financing.
- Measures to ensure greater transparency regarding beneficial ownership and trusts.
- Improvements to the safeguards covering transactions both to and from countries deemed to be a high risk.
- Making sure that all centralised national bank and payment account registers or central data retrieval systems are accessible in all member states.
Cryptocurrencies have consistently been viewed with suspicion, with the authorities concerned that they enable criminals to transfer ill-gotten gains more easily than they could using more traditional methods. 5MLD gives virtual currencies a legal definition. The virtual currency platforms and wallet providers will be regulated under 5MLD, placing a legal obligation on those handing them to conduct due diligence and report any transactions that appear to be suspicious.

Whereas 4MLD cut spending limits on prepaid cards, 5MLD will further lower the requirement for customer verification from €250 to €150 – and to €50 for certain remote transactions. Using anonymous prepaid cards that were issued in non-EU member states may not be permitted unless that state’s money laundering legislation is considered the equal of that of the EU.

While 4MLD introduced the requirement for EU members to have registers of beneficial ownership, the Fifth Directive goes considerably further. Under 5MLD, the public will have access to these registers – without even having to show that they have a legitimate interest in the records. It is hoped that this will ensure genuine clarity when it comes to the ownership of firms and bring to an end what has been a flourishing trade in the creation of what have become known as “brass plate” companies – firms set up solely to launder money and keep wealth out of sight.

Trusts will now have to demonstrate greater transparency; including regarding the aforementioned beneficial ownership requirements. The threshold for identifying beneficial ownership of trusts can be reduced from 25% to 10% if there is considered to be a significant money laundering or tax evasion risk.

When it comes to transactions from or involving high-risk countries, 5MLD requires enhanced due diligence. This will cover obtaining evidence about the source of funds, any information regarding beneficial ownership and background details relevant to the planned transaction. There may eventually become a blacklist of countries deemed to be high risk regarding money laundering.
But for now the wait is on to see precisely what approach the UK government takes in the wake of its consultation.

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