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MLD4: A New Era in the Anti-Money Laundering Landscape for Credit and Financial Institutions in the EU

By [Nora Wouters](#), [Orestis Omran](#) on May 22, 2015

On April 20, 2015 the Council adopted its position at first reading on new rules aimed at preventing money laundering and terrorist financing. The legislative package consists of a [Directive](#) (commonly referred to as "Money Laundering Directive 4" or "MLD 4") and a [Regulation](#) ("the Wire Transfer Regulation") and is aimed at strengthening the EU's anti-money laundering regime and ensuring consistency with internationally acceptable standards and practices. Recommendations by the Financial Action Task Force ("FATF") were followed, while stricter rules were adopted vis-à-vis specific issues.

The most important provisions include: (i) expansion of the scope of [Directive 2005/60/EC](#) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ("Money Laundering Directive 3" or "MLD 3") to cover traders involved in transactions valued EURO 10,000 or more (previous threshold under MLD3 was EURO 15,000); (ii) introduction of a risk based approach pursuant to which decisions need to be made based on more concrete evidence and facts; (iii) enhanced due diligence for certain entities, such as credit institutions, to ensure adequate consumer protection by taking proportionate measures to the extent of the risks involved each time. In practice, this will mean more scrutiny on certain transaction that may go beyond mainstream "know your customer" obligations and for which adequate scrutiny and high level legal counseling will be required.

Another innovation of the new set of rules is the introduction of the obligation of corporate entities to disclose more information on their beneficial ownership. Beneficial ownership shall refer not only to natural or legal entities technically owning other entities, but also to such persons exercising control; exercise control may be identified in activities used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement and the exercise of dominant influence or the power to appoint senior management. Information will be stored and managed centrally at an EU level and will be accessible by competent regulatory authorities for supervisory purposes, credit institutions in the context of their due diligence obligations and any party that may demonstrate legitimate interest to be granted access to such information. Evidently, this will have an impact on various holding structures as far as tax management is concerned.

Furthermore, the new rules provide for enhanced fund traceability. This is expected to affect in particular payment institutions that would need to provide additional information on transactions they conduct, including on the payee, in conjunction with the already enhanced obligation they will have under the revised version of the Payment Services Directive ("PSD") which is expected to enter into force in the different EU Member States in 2016. Efficient fund traceability will definitely be a great tool in the prevention, detection and investigation of money laundering and terrorist financing.

The overall approach that MLD4 adopts points at more compliance obligation for a number of entities that are involved in the financial markets. In particular, credit and financial institutions, as the main pillars that ensure the integrity and stability of the financial system, will be subject to more complex customer due diligence requirements, which shall extend to all their cross border activities.

Both EU and foreign credit and financial institutions operating in the EU need to closely observe the recent developments in the EU anti-money laundering framework and to start preparing for compliance with the new rules, the enforcement of which is expected to be particularly rigorous. In fact, the financial sanctions to which credit and financial institutions may be subject are particularly burdensome and involve fines of at least €5 million or 10% of the total annual global turnover which always come together with considerable reputational harm. Expert legal counseling and thorough personnel training in the new compliance requirements are

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absolutely recommended.

The adoption of the Council's position enables the European Parliament, with which agreement was reached on December 16, 2014, to finally adopt the package at second reading at a forthcoming plenary session in the coming weeks. Member states will then have two years to transpose the Directive into national law whereas the regulation will be directly applicable.



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