



BELGIUM IMPLEMENTED THE 4TH ANTI-MONEY LAUNDERING DIRECTIVE A RISK-BASED APPROACH, YOU SAID?

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INTRODUCTION

The new Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) N° 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (the “**AMLD4**”) has been implemented into Belgian legislation by a law of 20 July 2017 on the prevention of money laundering, terrorist financing, and on the limitation of the use of cash (“*wet tot voorkoming van het witwassen van geld en de financiering van terrorisme en tot beperking van het gebruik van contanten*”/“*loi relative à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces*”) (the “**New AML Law**”).

The Belgian legislator chose to draft a brand new law, repealing the previous AML law of 11 January 1993 (the “**Old AML Law**”) instead of simply amending it. This decision should have a positive impact on the structural coherence and the lucidity of the new law.

It is most certainly welcome, given that the New AML Law is far longer than the Old AML Law (192 v. 45 articles)!

THE NEW RISK-BASED APPROACH

Among the many changes brought by the new legislation, the adoption of a risk-based approach

consecutive to the 2012 FATF recommendations¹ has garnered significant attention.

The risk-based approach assumes that the risks of money laundering (“**ML**”) and terrorism financing (“**TF**”) may take various forms. Hence, the responses to these threats cannot be uniform and must be differentiated on a case-by-case basis.

According to the Council of Europe, “*countries, state authorities, as well as the private sector should have an understanding of the ML/TF risks to which they are exposed and apply AML/CFT measures in a manner and to an extent which would ensure mitigation of these risks*”.

Accordingly, businesses/individuals subject to the New AML Law will have to proceed to a global assessment of the AML/TF risks they are facing and formulate efficient and adequate measures.

Even though the New AML Law has not entered into force yet, the Belgian National Bank has already anticipated these changes, e.g. regarding entities which apply for a license as payment institutions.

OTHER MAJOR CHANGES

As for the risk-based approach, the New AML Law also implements many other changes brought by the AMLD4.

It is worth noting the following modifications:

- The definition of politically exposed people (often referred to as “**PEPs**”) will be

¹ The FATF (Financial Action Task Force) is an inter-governmental body which sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing.

broadened. It will now encompass not only national persons who are or who have been entrusted with prominent public functions residing abroad but also those residing in the country;

- Member States will have to set up a central register which identifies the ultimate beneficial owner of companies and other legal entities (this register is often referred to as the “**UBO register**”);
- The providers of gambling services will become subject to AML requirements;
- Payments/donations in cash will be capped to 3,000 EUR. In this regard, AMLD4 authorised Member States to choose any threshold inferior to 10,000 EUR.
- The EU Commission has the task to identify a list of so-called “**high-risk third countries**”. It has done so in the Delegated Regulation (EU) 2016/1675. Member states must provide for enhanced customer due diligence measures for the obliged entities to apply when dealing with natural persons or legal entities established in high-risk third countries

HIGHER SANCTIONS

The violation of obligations deriving from the AML legislation will also be more severely sanctioned than in the past.

When it comes to financial institutions, the maximum fine equals the higher amount between 5,000,000 EUR and 10% of the total annual turnover according

to the latest available accounts approved by the board of directors.

Under the Old AML Law, the highest pecuniary sanction was 2,000,000 EUR.

These higher sanctions and the link with the total annual turnover is a general observable trend in European law (see also: the relevant provisions of the General Data Protection Regulation).

ENTRY INTO FORCE AND AMLD5

The New AML Law shall enter into force on the 10th day after its publication in the *Belgian Gazette* (which has not yet occurred at the time of drafting this article).

With the transposition of MiFID II and PSD II into national law in early 2018 and the application of the General Data Protection Regulation as from 25 May 2018, businesses active in the financial sector will face many regulatory challenges in the coming years.

These challenges are likely to increase as the European Union is already developing a 5th AMLD, revising AMLD4.

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Do you want to find out more about the implications of the new AML legislation for your activity in a Belgian or more general context? Feel free to contact our experts:
digitalfinance@simontbraun.eu

