



# 6<sup>th</sup> Anti-Money Laundering Directive ("6AMLD"):

A STEP FORWARD TO  
TAX TRANSPARENCY  
AND ACCOUNTABILITY

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A new Directive complementing and reinforcing the Fourth and the Fifth Anti-Money Laundering Directives (4AMLD and 5AMLD) was adopted on 23 October 2018. The newly adopted Directive has already been dubbed as the “6AMLD” due to its paramount feature- the new criminal law provisions relating to money laundering and financing of terrorism. Building on the European Union’s (EU) forward strides to combat money laundering and terrorist financing, the 6AMDL contains 5 amendments that EU business should look out for:

### **1. Harmonized definition of a “Predicate Crime”**

The 6 AMLD now provides a list of 22 specific Predicate Crimes which all EU Member States must criminalise in national legislation, unless they already have them in their criminal codes. The list of Predicate Crimes includes environmental crimes and tax crimes. Such introduction of such punitive measures may require businesses to re-assess their control mechanisms and risk appetite.

### **2. Extension of criminal liability to organisations**

The 6AMLD extends the criminal liability to legal persons such as companies or partnerships, including persons acting on their behalf, such as legal representatives or persons having authority to make decisions on behalf of / exercise control over a particular legal person. In light of the above amendment businesses should revise their internal governance mechanisms and, particularly, oversight arrangements to avoid falling foul of this provision.

### **3. Increased co-operation**

The 6AMLD introduces investigative tools and rules to determine which Member State would have jurisdiction when an offence falls within the jurisdiction of more than one Member State. Factors such as the territory of the Member State on which the offence was committed, the nationality or residency of the offender, the country of origin of the victim or victims, and the territory on which the offender was found – are all to be taken into account when deciding the jurisdiction.

### **4. Dual Criminality**

The Directive introduces the requirement for the offence to be unlawful in both jurisdictions, the country where the offence takes places and the jurisdiction in which the offence of money laundering is committed, meaning that such double requirement could make a material difference with respect to reporting of certain types of Predicate Crimes.

## 5. Enhanced punitive measures

Punitive measures have been enhanced for individuals and certain punitive measures were introduced for legal organisations. Individuals now face the minimum prison sentence for money laundering offences from 1 to 4 years combined with additional dissuasive criminal penalties such as temporary prohibition from public welfare benefits, or a ban from conducting business. The punitive measures for legal organisations include exclusion from entitlement to public benefits or aid, temporary or permanent exclusion from access to public funding, disqualification from commercial activities or even judicial winding-up. Therefore both financial and non-financial institutions should consider reinforcing their existing internal anti-money laundering (AML)/ counter terrorist financing (CTF) frameworks to mitigate the risk of criminal proceedings.

In December's G20 summit, G20 leaders promised to regulate crypto currencies and assets for AML and countering the financing terrorism in line with the Financial Action Task Force (FATF) standards. Just days following the G20 summit, the EU provisionally agreed on the new rules ensuring clear, robust and technologically-neutral legal framework to fight non-cash payment fraud. The proposed Directive specifically includes expanded scope for offences to include transactions through virtual currencies, introduces a minimum level for highest penalties ranging from 1 to 5 years, removes operational obstacles for EU-wide criminal justice co-operation and ensures rights of the victims.

Having been published in the Official Journal of the European Union on 11 November 2018, the 6AMLD will need to be transposed by the Member States by the end of 2020 such that in the time window available we encourage firms to take note of the upcoming changes and re-assess their knowledge base, risk appetite, and most importantly, AML and CFT frameworks.

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