

# THE IMPLEMENTATION OF THE 4TH AML DIRECTIVE AND THE KEY ELEMENTS

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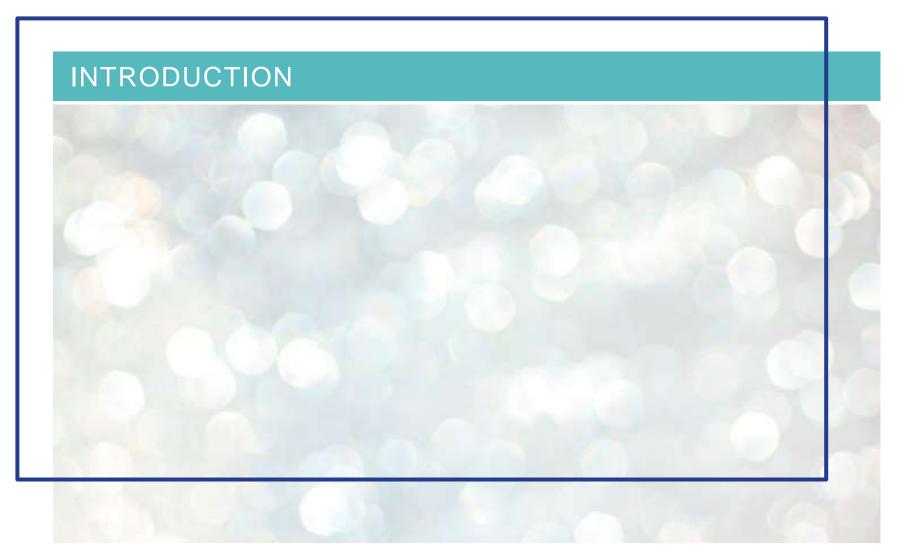
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# INTRODUCTION



### → CIRCUMSTANCES OF THE 4TH AML DIRECTIVE DEVELOPMENT

> Release of 40 updated recommendations by the Financial Action Task Force (FATF) in 2012

## → OBJECTIVES OF THE 4TH AML DIRECTIVE DEVELOPMENT

- > Develop the EU regulatory framework
- ➤ Complement the FATF's recommendations

### → ACHIEVEMENT

- ➤ Update the 3rd AML Directive
- >Many measures are unchanged or rewritten
- ➤ Longer text : 69 articles instead of 47

# INTRODUCTION





- → NATIONAL LEGAL INSTRUMENT OF IMPLEMENTATION IN FRANCE
- Law n°2016-731 of 3rd June 2016
- >Order n°2016-1635 of 1st December 2016
- >Article 139, Law n° 2016-1692 of 9th December 2016

- → NATIONAL LEGAL INSTRUMENT OF IMPLEMENTATION IN GERMANY
- Ministerial draft of 15th December 2016







# ENLARGEMENT OF THE OBLIGED ENTITIES



# → ENLARGEMENT OF THE OBLIGED ENTITIES BY THE DIRECTIVE

- > Persons trading in goods
- -Lowering the cash payment threshold from EUR 15 000 to EUR 10 000
- ➤ Providers of gambling services
- -Possibility of exemptions by Member States, except for casinos
- > Possibility to consider leasing agents as estate agents



# ENLARGEMENT OF THE OBLIGED ENTITIES



### → IMPLEMENTATION IN FRANCE :

- Persons dealing in some specific goods or providing services for cash payment or e-money payment of more than a certain amount which would be set by decree
- N.B. :Cash payments up to EUR 1000 are already prohibited for residents

- Legal representatives and managers of providers of gambling services were already concerned by the French legislation
- > Extension to providers of gambling services
- > Removal of the exception relating to leasing agents

### → IMPLEMENTATION IN GERMANY:

- Persons who execute payment services in the name of a payment service provider
- Pension funds, if they offer insurance that goes beyond company pension
- Insurance companies and intermediaries, if they practice special kinds of credit business
- Gambling services (not only in the internet) State lotteries are excluded



# NEW DISPOSAL OF THE RISK ASSESSMENT



# → IMPLEMENTATION OF A SUPRANATIONAL RISK ASSESSMENT BY THE DIRECTIVE

### → EUROPEAN COMMISSION LEVEL

- > Reporting obligation in order to identify, analyse and assess the risks affecting the internal market and relating to cross-border activities
- > Power to identify high-risk third countries

## → EUROPEAN SUPERVISORY AUTHORITIES LEVEL

- -European Banking Authority
- -European Insurance and Occupational Pensions Authority
- -European Securities and Markets Authority
- >Obligation to publish a joint opinion on the risks in the European financial sector
- ➤ In charged of drafting regulatory technical standards



# NEW DISPOSAL OF THE RISK ASSESSMENT



### → MEMBER STATES LEVEL

- >Identification of sectors which require simplified or enhanced due diligence measures
- >Obligation to take into account criterion specified by the Directive in the risk assessment
- -Risk variables to consider in the determination of due diligence measures
- -Factors and types of indicative elements of a potentially lower risk
- -Factors and types of indicative material of a potentially higher risk

### → OBLIGED ENTITIES LEVEL

- Obligation to implement due diligence procedures at a Group level
- >Obligation for payment institutions and e-money institutions headquartered in another Member State to appoint a permanent representative



# NEW DISPOSAL OF THE RISK ASSESSMENT



#### → IMPLEMENTATION IN FRANCE:

- Concerning due diligence procedures at a Group level, AML procedures taking into account the membership in a financial group were already recommended by the ACPR
- Extension of the obligation to appoint a permanent representative to the credit institutions

#### → IMPLEMENTATION IN GERMANY:

- Obliged entities must define and implement mechanisms of identification and assessment of risks and to classify these risks depending on the activities of the entity.
- ➤ In the context of a group, these mechanisms must be implemented at a group level.
- The risk analysis is to be documented and to be provided to the competent supervisory authorities.





### → INNOVATIONS ABOUT STANDARD DUE DILIGENCE WITHIN THE DIRECTIVE

- >Application of due diligence measures to occasional transactions
- -Of EUR 15 000 or more
- -Constituting transfer of funds exceeding EUR 1 000
- In the context of life insurance or investment policies: obligation to identify the beneficiary of the contract, in addition to the obligation relating to the customer and his beneficial owner
- >Obligation to consider at least 3 variables pointed out by the Directive within the risk assessment
- -Purpose of an account or relationship
- -Level of assets to be deposited by a customer or the size of transactions undertaken
- -Regularity or duration of the business relationship





### → IMPLEMENTATION IN FRANCE :

- Existing due diligence provisions applicable to occasional transactions:
- -Where the amount exceeds EUR 15 000, except for currency exchanged offices and providers of gambling services
- -Where the amount exceeds EUR 1 000 for currency exchanged offices
- -Irrespective of the amount, in the case of a transfer of funds or a manual exchange operation, while the client or his legal representative is not physically present for identification, or when providing asset custody services
- -Whatever the amount, for the sums and the operations suspected to be related to an offense punishable by deprivation of liberty for more than one year, financing of terrorism or tax crime.
- Special extension of due diligence procedures to the wagers in the betting and gaming sector

#### → IMPLEMENTATION IN GERMANY :

- Obligation to clarify whether the acting person is authorized to represent the contracting party
- Obligation to clarify whether contracting party or beneficial owner is a politically exposed person.
- > The obligation of identification remains the same





- → NEW CONDITIONS OF SIMPLIFIED DUE DILIGENCE FOLLOWING THE DIRECTIVE
- Automatic derogation only applicable to electronic money, subject to conditions
- >Obligation to justify simplified measures on the sole basis of the relevant risk assessment under conditions:
- -The business relationship or the occasional transaction presents a real lower risk degree
- A transactions and business relationship control exists to enable the detection of any suspicious or unusual transactions
- >Specific factors of a potentially lower risk to consider within an appropriate risk assessment
- -Customer risk factors
- -Product, service, transaction or delivery channel risk factors
- -Geographical risk factors





#### → IMPLEMENTATION IN FRANCE:

- > Restrictions of the cases of simplified due diligence in France to :
- Weak risk of laundering
- Low-risk persons or products in addition to absence of suspicions about money laundering
- > Conditions of application would be set by Decree
- Derogation for the electronic money issuers, in the absence of suspicion about money laundering, subject to conditions of amount which would be set by decree

### → IMPLEMENTATION IN GERMANY:

- Restriction of the cases of simplified due diligence in Germany to:
- Weak risk of laundering
- Low-risk persons or product in addition to absence of suspicions about money laundering
- Conditions of application could be set by Decree





- → NEW DEFINITION OF THE "POLITICALLY EXPOSED PERSONS" BY THE DIRECTIVE
- > Specific nomenclature including national persons
- -Members of the administrative, management or supervisory bodies of State-owned enterprises
- -Directors, deputy directors and members of the board or equivalent function of an international organization
- > All PPEs are concerned by the enhanced due diligence measures





#### → IMPLEMENTATION IN FRANCE:

- > Existing ACPR recommendation in France :
- Already recommended to assess risks according to a special professional activity of a French person regarding the PPE's functions

#### → IMPLEMENTATION IN GERMANY:

- Extension of the PEP regime to cover domestic PEP's
- Federal Ministry of Finance can state further groups of persons who will be classified as PEPs





### → NEW WAY TO IDENTIFY THE "BENEFICIAL OWNER" FOLLOWING THE DIRECTIVE

- > Reminder of Legal entities' beneficial owners
- Quantitative criterion of share capital ownership
- -Secondary criterion pointing out the natural person(s) who hold the position of senior managing official(s)
- ➤ New definition of Trusts' beneficial owners
- The settlor
- The trustee(s)
- The protector
- The beneficiaries
- Any other natural person exercising ultimate control over the trust
- >Obligations of identification applicable to legal entities and trusts
- -To obtain and hold adequate, accurate and current information on their beneficial ownership
- -To provide these informations to obliged entities
- -To hold these informations adequate, accurate and current in a central register available to competent authorities and FIUs or CRF





#### → IMPLEMENTATION IN FRANCE:

- ➤ Obligation of identification concerns :
- -Companies and economic interest groups
- -Commercial companies
- -Other registered legal persons
- ➤ Creation of a public register of legal persons' beneficial owners
- Integrated in the Companies register
- ➤ Information available for :
- -Competent authorities
- -Obliged entities
- -Third parties having a legitimate interest for legal persons information

#### → IMPLEMENTATION IN GERMANY:

- Obligation of identification concerns :
- Legal persons
- Judicable partnerships
- Trusts
- Creation of a public register of legal persons' beneficial owners
- > Information available for:
- Everyone, only a registration on the internet is needed
- Access may be excluded when an inspection is unreasonable



# REPORTING OBLIGATION



- → OBLIGATION FOR THE OBLIGED ENTITIES TO REPORT SUSPICIOUS TRANSACTION INCLUDING
- Tax crimes relating to direct taxes and indirect taxes punishable by deprivation of liberty or a detention order for a minimum of more than six months and a maximum of more than one year



# REPORTING OBLIGATION



#### → SPECIFIC SITUATION IN FRANCE:

- French monetary and financial Code already includes tax crime into the scope of offences concerned by reporting obligations
- >Obligation subject to the condition of identify one of 16 defined criteria

#### → SPECIFIC SITUATION IN GERMANY:

- German criminal Code includes tax crime into the scope of offences concerned by reporting obligations only if it is committed commercial
- An obliged entity without subsidiary in Germany has no reporting obligation.

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# FIUS' PREROGATIVES



- → STRENGTHENING OF THE FIUS' PREROGATIVES BY THE DIRECTIVE
- ➤ Cooperation between the FIUs and the Commission
- > Exchange of informations between FIUs
- >Affirmation of the FIU's independence

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# FIUS' PREROGATIVES



#### → IMPLEMENTATION IN FRANCE:

- ➤ Enlargement of Tracfin's rights to communicate with obliged entities
- ➤ Creation of a Tracfin's power of alert
- ➤ Creation of a direct access to the criminal records file
- New rules of communication and exchange of informations with other State services and with foreign Financial intelligence units

#### → IMPLEMENTATION IN GERMANY:

- > Operational analysis and evaluation of notifications
- Prohibition of transactions and other immediate measures







# COMPETENT AUTHORITIES' PREROGATIVES



# → IMPLEMENTATION OF NATIONAL COOPERATION MEASURES

>Obligation to implement effective mechanisms of cooperation and coordination between FIUs, supervisors and other competent authorities involved in AML/CFT



# COMPETENT AUTHORITIES' PREROGATIVES



#### → IMPLEMENTATION IN FRANCE

#### → IMPLEMENTATION IN GERMANY

- >Identification of competent authorities for each sector concerned
- No concrete measures

- >Extension of the National Sanctions Commission's powers according to the new obliged entities
- > Definition of the competent authorities' prerogatives and powers
- > Especially, enlargement of the ARJEL's prerogatives



# STRENGTHENING OF SANCTIONS



- HARMONISATION OF ADMINISTRATIVE SANCTIONS BY THE DIRECTIVE
- > Breaches concerned:
- -Customer due diligence
- -Suspicious transaction reporting
- -Record-keeping
- -Internal controls
- Increase of maximum administrative pecuniary sanctions to at least EUR 1 000 000
- Increase of pecuniary fines for credit or financial institutions
- -At least EUR 5 000 000 or 10 % of the total annual turnover for legal persons
- -At least EUR 5 000 000 for natural persons
- > Public statement identifying the natural or legal person and the nature of the breach
- > Possibility of sanctioning the members of the management body and other natural persons responsible for the breach of a legal person

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# STRENGTHENING OF SANCTIONS



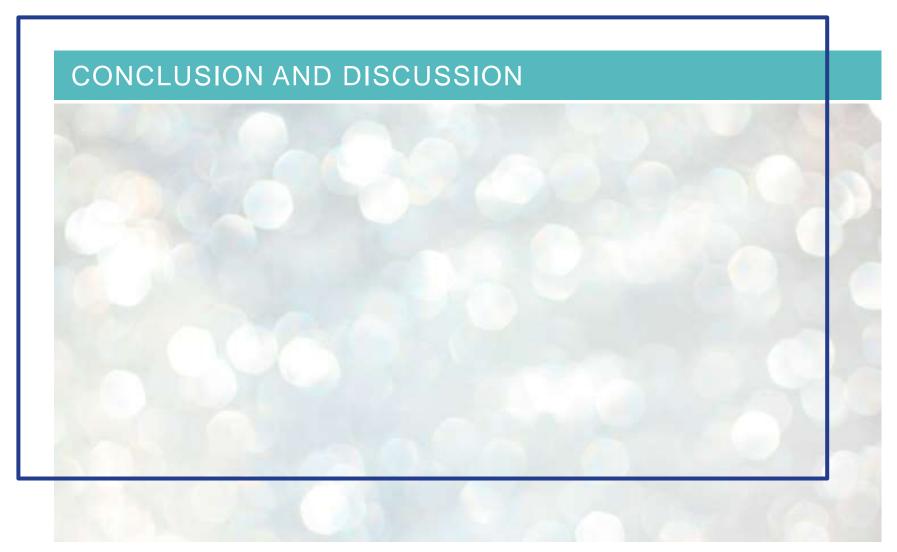
#### → IMPLEMENTATION IN FRANCE

- Minimum level of pecuniary fines is already set at EUR 1 000 000 and varying according to the nature of entities
- > Existing publicity about fines

#### → IMPLEMENTATION IN GERMANY

- Minimum level of pecuniary fines up to EUR 200 000 (for breaches that are not serious, systematic or a combination thereof)
- Apart from that implementation of the AMLD
- "Naming and Shaming"
- Contracting parties and shareholders can be sanctioned







# CONCLUSION AND DISCUSSION



# TOWARDS A NEW DIRECTIVE WITH A MASTER WORD:

**TRANSPARENCY** 



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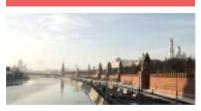
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