

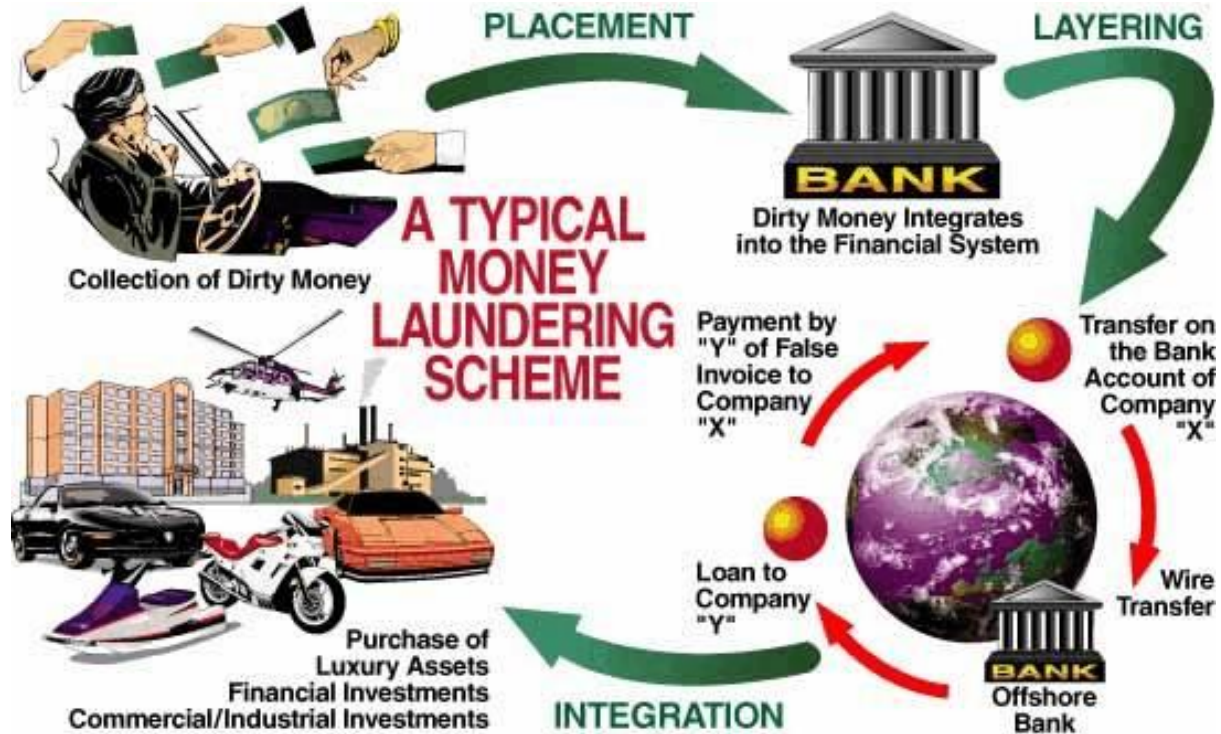
FIFTH ANTI-MONEY LAUNDERING DIRECTIVE

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Vienna, 14 February 2020



A TYPICAL MONEY LAUNDERING SCHEME



Source: United Nations Office on Drugs and Crime



PROGRAMME

1. Introduction of AMLD 5
2. Main issues of AMLD 5
3. UBO definition and UBO register
4. AMLD 6
5. Discussion



AMLD 5



FIFTH ANTI-MONEY LAUNDERING DIRECTIVE (AMLD 5)

- Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU
- Entered into force on 9 July 2018
- Must have been implemented in national law by all Member States by 10 January 2020
- Countries not yet having implemented AMLD 5: Czechia, Spain, Cyprus, Hungary, Malta, The Netherlands, Portugal, Romania, Slovenia and Slovakia



AMLD 5 – MAIN ISSUES

- ❖ Coverage of the crypto market
- ❖ Expansion of scope of 'obliged entities'
- ❖ Tougher requirements on electronic money
- ❖ Enhanced due diligence measures for financial flows from high-risk territories
- ❖ Centralised automated mechanisms
- ❖ Easier access to UBO register



MAIN ISSUES



COVERAGE OF THE CRYPTO MARKET

- Platforms that offer the exchange of virtual currencies and custodian wallet providers fall within the scope of AMLD 5
- Introduction of definition of virtual currencies:

“a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically”



EXPANSION OF SCOPE OF 'OBLIGED ENTITIES'

- Virtual currency providers
- Custodian wallet providers
- Art traders: when value of transactions \geq EUR 10,000
- Those who provide similar services to auditors, external accountants and tax advisors as principal business or professional activity
- Estate agents acting as intermediaries in the letting of property with a monthly rent of \geq EUR 10,000



REQUIREMENTS OF 'OBLIGED ENTITIES'

- ✓ Carrying out customer due diligence
- ✓ Ongoing monitoring of transactions
- ✓ Reporting of unusual and suspicious transactions
- ✓ Virtual currency providers and custodian wallet providers must be registered



TOUGHER REQUIREMENTS ON ELECTRONIC MONEY

- Exemption to apply customer due diligence measure with respect to payment instruments:
 - that are non-reloadable *or* that have a maximum monthly payment transactions limit of EUR 150, which can be used only in the relevant Member State;
 - where the maximum amount stored electronically does not exceed EUR 150;
 - which are used exclusively to purchase goods or services;
 - which cannot be funded with anonymous electronic money; and
 - of which the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions
- The exemption does not apply to remote payment transactions that exceed EUR 50



ENHANCED DUE DILIGENCE MEASURES FOR FINANCIAL FLOWS FROM HIGH-RISK COUNTRIES

- Commission is authorised to identify high-risk third countries
 - Current list of high-risk third countries: Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Syria, Uganda, Vanuatu, Yemen, Ethiopia, Sri Lanka, Trinidad and Tobago, Tunisia, Pakistan, Iran, Democratic People's Republic of Korea
- Harmonisation of enhanced due diligence measures
- Prohibition to establish subsidiaries or branches in these high-risk third countries
- Member States may require obliged entities to apply additional mitigating measures



CENTRALISED AUTOMATED MECHANISMS

- To identify holders of bank and payment accounts
- To be set up by Member States by 10 September 2020
- Directly accessible to FIUs and national competent authorities
- FIUs must be able to provide the information in such registers to other FIUs
- Interconnection of such registers
- Reinforcement of the cooperation between the AML-CFT supervisory authorities



UBO DEFINITION AND UBO REGISTER



EU UBO DEFINITION – CORPORATE ENTITIES (I)

Any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

- the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.
- A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership.
- A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may, *inter alia*, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement.

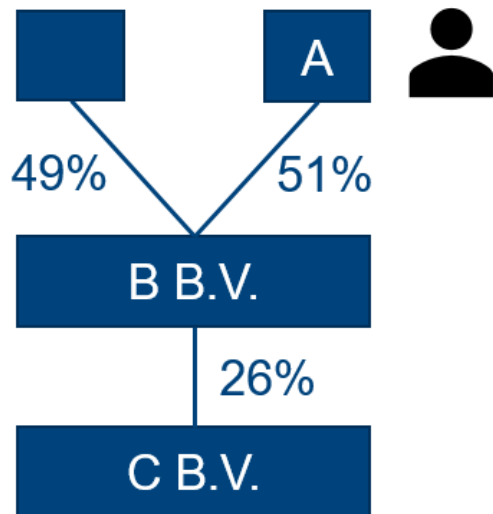


EU UBO DEFINITION – CORPORATE ENTITIES (II)

- A UBO is always a natural person
- Each entity always has one or more UBO(s) and each entity within a group has its own UBO(s)
- If, after having exhausted all possible means and provided that there are no grounds for suspicion
 - no person holding direct or indirect ownership can be identified; or
 - if there is any doubt that the person identified is the beneficial owner,
the natural person(s) within the organisation who hold(s) the position of senior managing official will be considered the (pseudo)UBO



INDIRECT OWNERSHIP (EU VS DUTCH LAW)

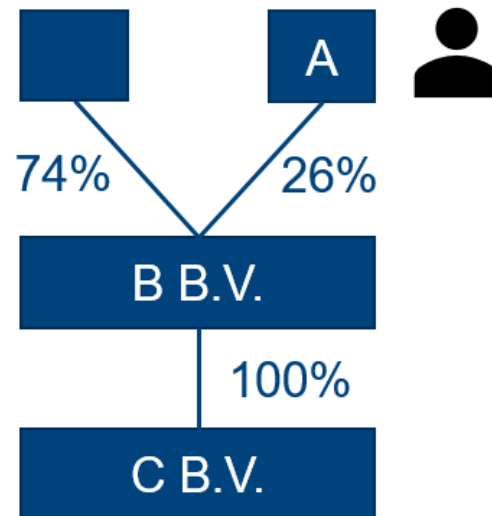


EU

Netherlands

A has control over B (> 50%)
B holds > 25% in C
→ A is UBO of C

A indirectly holds
51% of 26 = 13,26% in C B.V.
→ A is not the UBO of C



EU

Netherlands

A has no control over B (< 50%)
→ A is not the UBO of C

A indirectly holds > 25% in C
→ A is the UBO of C



EU UBO DEFINITION - TRUSTS

- Categories of natural persons who in any event must be considered as UBO are
 - the settlor(s);
 - the trustee(s);
 - if applicable, the protector(s);
 - the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; and
 - any other natural person exercising ultimate control over the trust by means of direct or in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b); indirect ownership or by other means



INTRODUCTION OF PUBLIC UBO REGISTER

- Member States must have a national UBO register for
 - Corporate and other legal entities: by 10 January 2020
 - Trust and similar legal arrangements: by 10 March 2020
- Interconnection of UBO registers within the EU via European Central Platform by 20 March 2021
- The following basic UBO information must be made publicly available
 - Month and year of birth, nationality, country of residence, nature and extent of the beneficial interest held
 - Not only for persons / organisations with legitimate interest



ACCESSION TO UBO REGISTER

1. Competent authorities and FIUs, without any restriction
 2. Obligated entities, within the framework of customer due diligence
 3. Any member of the general public
- Access to certain information may be restricted under the following circumstances
 - Exposure to disproportionate risks for the UBO
 - Risk of fraud, kidnapping, blackmailing, extortion, harassment, violence or intimidation
 - UBO is a minor or legally incapable
 - Protected information remains available to FIUs, credit- and financial institutions and obliged entities that are public officials, e.g. notaries



OBLIGATIONS OF RELEVANT PARTIES

- Corporate or other legal entities
 - Obligation to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held
- UBO
 - Obligation to provide information necessary for the corporate or other legal entity to comply with the requirements in the first bullet point
- Obligated entities
 - Obligation to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them



AMLD 6



SIXTH ANTI-MONEY LAUNDERING DIRECTIVE (AMLD 6)

- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law
- Entered into force on 2 December 2018
- Must be implemented in national law by all Member States by 3 December 2020
- AMLD 6 aims to define the same offence of money laundering in the legislations of the Member States and enable more effective and faster cross-border cooperation between the competent authorities



AMLD 6

- Minimum rules on criminal liability for money laundering
 - Definition of 'criminal activities' that are to be considered as “predicate offences” regarding money laundering
 - E.g. terrorism, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, corruption, fraud, tax offences related to direct and indirect taxes, insider trading and market manipulation, cybercrime etc.
 - Description of certain conduct that must be punishable as a criminal offence
 - Minimum sanctions
 - Extension of criminal liability to legal entities



DISCUSSION



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