

THE FIFTH ANTHMONEY LAUNDERING (AML) DIRECTIVE

The Fifth AML Directive entered into force on 9 July 2018 and will have to be implemented in all EU Member States by 10 January 2020. It is a targeted revision of the Fourth AML Directive, and so makes some amendments to the terms of the earlier Directive and widens its scope. This revision followed very quickly after the deadline for the implementation of the Fourth AML Directive. The early revision was brought about largely as a response to the terrorist attacks in 2015 and 2016 in Paris and Brussels and scandals such as those exposed by the Panama Papers. The AML Directive has two main aims: counteracting terrorist financing and increasing transparency of financial transactions.

Why is this important for the real estate sector?

The real estate market is vulnerable to being exploited by criminals and terrorists to launder money and finance terrorist acts. Last year the European Commission published a supranational risk assessment report of the risks of money laundering and terrorist financing affecting the internal market. The report concluded that the threat and vulnerability in the real estate sector is considered to be very significant. To try and prevent money laundering the EU imposes specific due diligence requirements on certain bodies (such as financial institutions) and professionals working in sectors which are considered to be exposed. These "obliged entities" include estate agents – here they are directly concerned by EU rules!

What are the main changes in the Fifth AML Directive?

The revised Directive aims at creating more transparency. The existing registers on beneficial ownership of companies will be open to obliged entities within the

framework of customer due diligence, and also to members of the general public. Those involved in money laundering may obscure the identities of the beneficial owners of the property or the origin and destination of the funds, for example by using corporate or trust vehicles to hide the ownership of assets and the beneficiaries, the source and destination of the money. Making it easier to find out who owns a corporate or legal entity is also intended to cut down on the use of "letterbox companies" to hide wealth and launder money, a practice which received a lot of attention following the Panama Papers. Beneficial ownership identification requirements are extended to certain trusts and similar legal arrangements. Member States will have to identify which trusts and similar legal arrangements the rules should apply to. Access to information about the beneficial owner of trusts will be available to obliged entities within the framework of customer due diligence and those with a legitimate interest. The national registers of beneficial ownership information will be interconnected to improve the

exchange of information between Member States.

The Directive aims to cut down on the use of anonymous prepaid cards which will be able to be used for cash or online only for small amounts (€50 and €150 respectively). There are also changes extending the scope of the Directive to include virtual currencies, tax related services and traders in works of art. Importantly for real estate professionals, obliged entities within the scope of the Directive's requirements will be "estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10 000 or more". Effectively this means the inclusion of letting agents, but only for high value transactions.

There are broader criteria for assessing high-risk third countries and systematic enhanced controls on financial transactions to and from these countries. Member States will have to implement enhanced due diligence measures to monitor suspicious transactions involving high-risk countries more

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strictly. The European Commission provides and updates a list of those countries which present an increased risk of money laundering. Member States will be required to set up centralised bank account registers or retrieval systems to identify holders of bank and payment accounts.

The Financial Intelligence Units (FIUs) will have access to more information through centralised bank and payment account registers or data retrieval systems. The revised Directive will further enhance the exchange of information and cooperation between money laundering supervisors and financial supervisory authorities. Member States will have to provide FIUs and competent authorities with access to information which allows the identification of any natural or legal persons owning real estate. By 31 December 2020, the Commission must report on the necessity and proportionality of harmonising such information included in any registers, and assessing the need for those registers to be interconnected.

Member States will be required to issue and keep an up-to-date list indicating prominent public functions for identification purposes (of politically exposed persons). The European Commission will compile a single

list of all prominent public functions, based on the information received from the Member States, including prominent public functions at EU level, and make this list public.

To update the way in which checks have to be carried out, the customer due diligence requirements for obliged entities will be able to be carried out using electronic means. There will be greater protection for whistleblowers who report money laundering. Member States will have to make sure that individuals who report suspicious activities are legally protected from threats or retaliatory action.

All EU Member States will have to transpose the Directive into national law. Its correct implementation will be important for the real estate sector, those working in it need to pay close attention to its requirements. Estate agents (including letting agents where applicable) will have to apply customer due diligence measures not only to new customers but also at appropriate times to existing customers on a risk-sensitive basis. They will be required to examine the background and purpose of all transactions that are at least one of the following: complex; unusually large transactions; conducted in an unusual pattern

or that do not have an apparent economic or lawful purpose.

To help deal with the challenges the AML requirements bring, and to find practical solutions for its members, CEPI is working on the development, with its Belgian member association IPI/BIV, of an “app” which will guide an agent easily and quickly through the due diligence process. This tool is already being used in Belgium and has the great advantage that it has the support of the Belgian authorities, so that if an estate agent uses the app for a transaction he/she is presumed to be in compliance with the rules and due diligence requirements.

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*Sources of further information
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 (the Fifth AML Directive)
[https://eur-lex.europa.eu/legal-content/en/TXT/?
uri=CELEX:32018L0843](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32018L0843)*

*CEPI groups 25 national associations in the EU and
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the real estate sector and professions to the European
institutions, improve market knowledge, strengthen
working relationships between professionals, and
oversee their professional ethics, professional practices
and quality of education www.cepi.eu.*