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The Fifth EU Anti-Money Laundering Directive and its impact on fintechs - An expert view by Nans Lorenzini, LIMONETIK

Since 1996, the European Union has been constantly legislating to regulate and protect the financial system and to avoid massive deregulation.

PARIS, ILE-DE-FRANCE, FRANCE, August 29, 2019 /EINPresswire.com/ -- The purview of regulators has widened; initially targeting the laundering of narcotics money, the campaign now includes all forms of crime, tax evasion, and terrorist financing.
At first, only banks and insurance companies were concerned. With the introduction of the Payment Service Directive 1 (PSD1) of 13 November 2007 and then PSD2 of 25 November 2015, the financial world opened up, resulting in a major change in the universe of payments and financial services. A large number of Fintech firms appeared on the scene, followed by the so-called regtechs.
These startups were a new kind of player that has revolutionised business offerings and services. Now regarded as full-fledged members of the financial sector, these companies are directly affected by all regulatory developments in their field such as the AML-CFT directives (Anti-Money Laundering and Counter-Terrorism Financing). The Fifth AML directive (5AMLD) will add significant detail to the Fourth Money Laundering Directive in the on-going fight against fraud and the financing of terrorism.

Review of the main measures in 4AMLD
The Directive (EU) 2015/849, known as the Fourth Money Laundering Directive (4AMLD), caused an upheaval in the financial world, intensifying the fight against money laundering. Implemented in June 2017, this AML-CFT directive allowed a risk-based graded approach.

The directive called for:
Setting up a beneficial ownership register

European member states had to create a central register (such as a company register) to identify the actual beneficiaries of companies and legal entities operating on their territory. The aim was to encourage economic transparency and combat money laundering and the financing of terrorism. The register would be used to identify natural persons who are ultimately in control of a company or legal entity and who actually benefit from it economically.
As part of their obligation to the "Know Your Customer (KYC)" or "Know Your Business (KYB)" policy, businesses offering payment services to professionals were now required to demand the beneficial ownership register from their customers. This obligation, by adding another layer to business relations, redefined the responsibilities of financial institutions and FinTechs, and the way they were organised.

New provisions for controlling digital currency
After being ignored, cryptocurrencies started to take off. They were being increasingly monitored, especially when it came to prepaid cards.

Increased monitoring of fintechs
Fintechs were new to the market and added to the European regulatory confusion. The Fourth Directive was the regulator's reaction to a legislative vacuum. Like other players, FinTechs were now on the radar screen of EU supervisors.

Wider application of the concept of the Politically Exposed Person (PEP) and creation of a designated representative for the monitoring authorities
Along with the new directives came an enriched glossary of terms. These regulations on the fight against corruption, money laundering, and the financing of terrorism have defined new responsibilities and job functions. The goal was to improve risk analysis. In the financial sector, it is essential to assess risk by analysing the customer's profile in as much detail as possible. France is reportedly ahead of other countries in this endeavour. Created by the Decree of 9 May 1990, France's financial intelligence unit, called the Unit for Intelligence Processing and Action against Illicit Financial Networks (TRACFIN), has been assessing and exposing trends and risks in the area of money laundering and terrorist financing in an annual report.

Contributions by the AML-CFT Directive
Besides providing the authorities with unprecedented powers to sanction organisations subject to AML-CFT controls, the EU has now added the Fifth Directive. The goal is to achieve European collaboration and to create rules that apply to everyone. This is also an EU response to criticism by financial institutions and fintechs about the difficulties of enforcing 4AMLD.
The Fifth Directive, which goes into effect on 10 January 2020, clarifies the previous directive by providing more detail. It is currently a hot topic, emphasising the fight against the financing of terrorism in a constantly tumultuous geopolitical context. Ever more effective systems are required to deal with the raging scandals, such as tax evasion in the Panama Papers. Moreover, previously neglected issues (eg cryptocurrencies, real estate agents and even accounting companies) are now under scrutiny.

The Fifth directive presents key measures such as:
• giving more power to the EU's financial intelligence units EU - the purpose is to facilitate greater transparency of the identity of the actual owners of enterprises and trusts through the creation of beneficial ownership registers;
• setting up centralised national bank account and payment account registers or central data-retrieval systems in all member states - this directive will have a major impact on fintechs and financial institutions;
• providing better access for financial intelligence units to information as well as better cooperation between them - this includes access to central bank account registers;
• preventing the risk of using prepaid cards and digital currencies to finance terrorism;
• improving guarantees for financial transactions from and to high-risk third-party countries.

The Fifth Directive – for better cooperation between EU member states

The creation of common standards will help to improve coordination between national monitoring authorities. In addition, the beneficial ownership registers should be accessible to anyone showing a legitimate interest. We have witnessed an upsurge in anti-money-laundering and counter-terrorism legislation. Even France's Action Plan for Business Growth and Transformation Pact (PACTE) applies AML-CFT concepts to include all the new payment service businesses.
By harmonising practices between the different European entities, the EU has defined a comprehensive legal framework for combating the use of goods or money collected for terrorist purposes. Better vigilance and regulation of transactions will help to fight against money laundering, a hot topic. The adoption of the Fifth Directive is proof that the EU is constantly adapting to the geopolitical and economic context in order to combat abuses.
While the text is part of a comprehensive legal framework applying to the financial sector, European member states are now anticipating the application of the directive and are preparing to implement these measures as soon as they are enforced.

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