

# *Vote of a Luxembourg Law implementing the 4<sup>th</sup> anti-money laundering directive: Almost there?*

09 February 2018

## *In Brief*

The Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereafter “4AMLD” or “the Directive”) was published on 5 June 2015 with a target transposition date set on 26 June 2017 for Member States.

On 26 April 2017, the Luxembourg Government tabled a draft bill (n°7128) before the Luxembourg Parliament (Chambre des Députés) aiming at implementing the 4AMLD in Luxembourg. The draft bill 7128 has been voted on 6 February 2018 and should soon become Law (“the 4AMLD law”) after Council of State clearance, then observance of signature and publication duties.

This Law adapts the Luxembourg legal framework to the 4AMLD by modifying the Law of 12 November 2004 on the fight against money laundering and terrorist financing (“the 2004 Law” or “the Law”<sup>1</sup>), as presented in this Flashnews, and other sectorial laws.

The 4AMLD Law however does not contain an important piece of 4AMLD: the central registers of beneficial owners (the UBO registers). Luxembourg legislator has dealt with the UBO registers separately by introducing on 6 December 2017 2 draft bills implementing these registers.

As of today, the legislative “package” implementing 4AMLD in Luxembourg is composed of:

- 4AMLD Law implementing 4AMLD
- Law of 23 December 2016 introducing tax crime as a predicate offence
- Draft bill 7217 implementing 4AMLD with regards to the creation of a central UBO register for commercial companies
- Draft bill 7216 implementing 4AMLD with regards to the creation of a central UBO register for trusts and similar arrangements

---

<sup>1</sup> Unless expressly mentioned “the 2004 Law” or “the Law” refers to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended by the 4 AMLD Law

## *What's in it?*

---

The main elements covered by the 4AMLD Law are summarised hereafter:

- Obligation to evaluate AML/CTF risk;
- European Union and national risk assessment;
- Updated Beneficial owner definition;
- Risk based customer due diligence (CDD);
- Tax crimes now within predicate offences;
- Larger scope;
- High risk third country provisions;
- Higher sanctions.

## *Who does it impact?*

---

The 2004 Law is applicable to all “Professionals” as defined in its Art. 2, (i.e. non-exhaustive list):

- Credit institutions;
- Professional of the Financial Sector (PFS);
- Insurance companies;
- Auditors, external accountants and tax advisors;
- Notaries and other independent legal professionals (under specific conditions);
- Trusts or company service providers;
- Estate agents;
- Traders in goods making or receiving cash payments above EUR 10,000;
- Providers of gambling services, including via distance communication means.

## *What are the main requirements?*

---

### ***Obligation to evaluate AML/CTF risk***

All professionals are required to **identify and evaluate the risks they face** taking into account notably the risk linked to the client type, transactions and channels of distribution. This evaluation has to be documented, up-to-date and available to supervisory authorities.

With regards to the financial sector, please note that most of these requirements have already been implemented by articles 4 and 5 of Regulation CSSF 12-02 and CSSF circulars 11/519 and 11/529.

### ***European Union and national risk assessment***

It may also be noted that, besides the above internal risk assessment (i.e. performed internally by the professionals) specifically mentioned in the 2004 Law, two other types of risk assessments are foreseen by the AMLD4: an assessment at EU level to be performed by the Commission and, taking account the latter, a national risk assessment to be conducted by all member states.

The Commission has issued its “assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities” on 26 June 2017 (COM(2017) 340 final).

This document notably takes into account a joint Opinion “**on the risks of money laundering (ML) and terrorist financing (TF) affecting the European Union's financial sector**” issued by European Supervisory Authorities (“ESAs”, i.e. EBA, EIOPA and ESMA) on 20 February 2017 (JC/2017/07). These reports are likely to provide useful guidance to all entities subject to the Law when assessing the money laundering risks they face.

The Luxembourg AML risk assessment will have to be made available to the Commission, the ESAs and the other Member States (article 7.5 of 4AMLD). It is also expected that appropriate information is made available promptly to the concerned entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments (article 7.4(e) of 4AMLD). The Luxembourg national risk assessment is not yet available.

### ***Updated Beneficial owner definition***

The definition of beneficial owner for corporate entities is updated **so to capture situations where it is not possible to identify a beneficial owner (“BO”)** as per the criteria originally set in the 2004 Law (i.e. a natural person who holds 25% of shares or who controls by other means directly or indirectly an entity). Article 1(7)a)ii) of the Law adds to the definition that if “after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified (i.e. BO under usual criteria), or if there is any doubt that the person(s) identified are the beneficial owner(s) **the natural person(s) who hold the position of senior managing official(s)** (...) is (are) to be considered as BOs for the purposes of the 2004 Law.

With regards to trusts and similar arrangements the Law now requires the identification **of all “participants”** to the arrangement i.e. the settlor, the trustee, the protector (if any), the beneficiaries and any other natural person exercising ultimate control.

### ***Risk based customer due diligence (CDD)***

In line with FATF recommendations issued in February 2012, rules on customer due diligence are refined and may vary depending of the risk: enhanced vigilance where the risks are greater, simplified measures where risks are lower. The 2004 Law contains further **explicit lists of risk factors** to be taken into consideration by obliged entities when performing their internal risk assessment and in particular determining application of simplified or enhanced due diligence measures.

As an example, **outright exemptions** under simplified customer due diligence for certain categories of clients or transactions (article 3-1 of the 2004 Law before modification) **have been deleted** and replaced by a reference to a list of low risk factors (annex III). As a result, there will no longer be situations or transactions for which simplified customer due diligence can be automatically applied. Electronic money, under specific conditions, may benefit from derogatory provisions not allowing some CDD measures to apply.

A similar approach is followed for enhanced due diligence criteria with article 3-2 of the Law now referring to an annex IV on high risk factors. Please note that relations with high-risk countries, PEPs and correspondent banking are still mandatory high-risk situations whereas the absence of physical presence of client when entering into relation is not anymore.

Finally Joint Guidelines on simplified and enhanced customer due diligence have been issued by European Supervisory Authorities (“ESAs”, i.e. EBA, EIOPA and ESMA) on 26 June 2017 (JC/2017/37).

### ***Tax crimes now within predicate offences***

Tax crimes relating to direct and indirect taxes are expressly considered by the 4AMLD as predicate offences. The amendments to Luxembourg tax Law and Criminal Code introduced by the Law of 23 December 2016 on the 2017 Tax reform have introduced **two tax offences** (“fraude fiscale aggravée” and “escroquerie fiscale”) as designated primary money laundering offences. This leaves very few doubts on what Luxembourg authorities’ will do to comply with the new framework in order to preserve the good reputation of the Luxembourg financial sector and its strong anti-money laundering regime.

A joint Circular 17/650 issued by the Luxembourg FIU (“Cellule de Renseignement Financier”) and the CSSF on 17 February 2017 provides details on the application of the 2004 Law to predicate tax offenses.

### ***Larger scope***

The 2004 Law has a wider scope: this is notably achieved by including **gambling services** to the category of professionals subject to the Law (whether provided in a physical location e.g. casinos and, that’s the novelty, **by electronic means or any other technology e.g. internet gambling**) or lowering the cash transaction threshold for traders in goods (from EUR 15,000 to EUR 10,000).

### ***High-risk third country provisions***

With a view to establish a common approach towards non-EU countries that have deficient anti-money laundering and counter-terrorist financing regimes (“high-risk third countries”), the European Commission is now specifically empowered to identify (i.e. to point out) these countries. Beyond a foreseeable “name and shame” effect, the presence of customers originating from a country in this list is likely to **trigger enhanced customer due diligence controls** for the professionals as mentioned above.

It is also worthwhile mentioning by contrast that **enhanced customer due diligence measures need not be automatically applied in the case of majority-owned branches or subsidiaries located in high-risk third countries** of professionals established in the European Union, if such branches or subsidiaries fully comply with the policies and procedures in force at Group level (article 3-2(2) of the 2004 Law).

### ***Higher sanctions***

**Sanctions** for professionals breaching the Law have been **stiffly raised** in comparison to the 1,250,000 euros fine in the former version of the 2004 Law. Violations of the Law are now subject to administrative fines of 5,000,000 euros or 10% of total turnover (group turnover in case of consolidated groups) for corporates. Natural persons may also face a 5,000,000 euros fine.

## What's next?

The vote of the 4AMLD Law constitutes a major step towards Luxembourg compliance with 4AMLD, which should be fully achieved when the draft bills implementing BO registers will pass in their turn. Nevertheless, professionals subject to the Law should ensure they comply today with its far-reaching provisions, especially considering the sanctions faced.

## How can we help?

We can help our clients to conceptually, strategically and operationally understand and implement the 2004 Law. Our services may notably include:

- Organising informational workshops to raise awareness on the key contents of the 2004 Law;
- Diagnosis (including impact analysis on clients' business, definition or update of the risk assessment model, gap assessment and recommendations);
- Implementation (road map definition, implementation and onsite support).

*For more information, please contact us:*

Subscribe to our Flash News on  
[www.pwc.lu/subscribe](http://www.pwc.lu/subscribe)

Roxane Haas	Partner	+352 494848 2451	roxane.haas@lu.pwc.com
Birgit Goldak	Partner	+352 494848 5687	birgit.goldak@lu.pwc.com
Michael Weis	Partner	+352 494848 4153	michael.weis@lu.pwc.com

PwC Luxembourg ([www.pwc.lu](http://www.pwc.lu)) is the largest professional services firm in Luxembourg with 2,850 people employed from 77 different countries. PwC Luxembourg provides audit, tax and advisory services including management consulting, transaction, financing and regulatory advice. The firm provides advice to a wide variety of clients from local and middle market entrepreneurs to large multinational companies operating from Luxembourg and the Greater Region. The firm helps its clients create the value they are looking for by contributing to the smooth operation of the capital markets and providing advice through an industry-focused approach.

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com) and [www.pwc.lu](http://www.pwc.lu).

© 2018 PricewaterhouseCoopers, Société coopérative. All rights reserved.

In this document, "PwC" or "PwC Luxembourg" refers to PricewaterhouseCoopers, Société coopérative which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity. PwC IL cannot be held liable in any way for the acts or omissions of its member firms.