

How Brexit affects AML/CTPF 2/4/21



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The UK left the EU on 1 January 2021 and now fits the definition of a “third country.” Having joined the European Community on 1 January 1973, the UK is the first country to have formally left the EU after spending 47 years as a member state. Changes brought about by Brexit are affecting not only taxation, immigration and trading but also the operation of the Anti Money Laundering and Counter Terrorism and Proliferation Financing (“AML/CTPF”) Act.

To what extent is UK legislation consistent with EU enactments?

The UK has adopted mandatory requirements of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 for keeping actual ownership transparent, improving communication between compliance officers and the European Central Bank, identifying politically exposed persons, and determining risks in third countries.

What the UK has refused to adopt is Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 (“6AMLD”) effective from 3 December 2020, on the grounds that British AML/CTPF legislation is already consistent with, and in a number of areas even more developed than, 6AMLD. However, the EU has taken a strict stance to ensure all UK companies doing business in the EU are 6AMLD compliant.

It is important to note that 6AMLD includes conditions requiring higher security standards for transactions with third countries to mitigate risks potentially associated with money transfers and customer identification as well as other activities.

The UK is only one rule short of full compliance with 6AMLD: corporate liability for failure to prevent money laundering. 6AMLD permits member states to hold an entity liable if it has failed to carry out adequate control or supervision, resulting in money laundering. Although corporate criminal liability is part of UK law, this principle should be extended to failure to prevent offences.

How will Brexit affect subjects of EU and UK law?

Before leaving the EU, the UK amended its AML/CTPF legislation effective from 6 October 2020 with reference to EU companies doing business in the UK:

- If the customer holds a life insurance policy, the new legislation requires companies issuing policies to identify the holder and the nature of the transaction in order to assess the level of money laundering and terrorism financing risk. The information obtained is used to manage and mitigate potential risks.
- When doing business with a third-country customer, financial and credit institutions are to run an extra due diligence check where money transfers are made.
- Given the use of electronic identification in the “Know Your Customer” process, which is also prescribed by 6AMLD, the UK legislation states that the provider of information or the app developer must be able to provide information in such detail as to efficiently prevent and mitigate risks potentially associated with money laundering and terrorism financing.

The EU legislation provides that when it comes to transactions involving money transfers between British and EU suppliers of goods and services, information on particular documents is to be gathered from official sources, such as public registers, and subjects of EU law may carry out a standard customer check. With the UK out, the risk profiles have changed and require a customer due diligence review.

In summary, customer checks are likely to take longer and slow down business, yet the upside is new technology being developed in customer identification and due diligence to facilitate UK-EU business.