

What there is to know about Sixth AML Directive

2/2/21

Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law ("6AMLD") came into force on 3 December 2020.

The new directive aims to give the financial institutions and the regulators an opportunity to do more in their fight against money laundering and terrorism financing by adopting tighter rules compared to the previous directive and imposing greater responsibility on the financial institutions, as well as increasing the liability and penalties for these crimes.

6AMLD adds to the list of crimes that qualify as money laundering to include certain tax crimes, environmental crimes, and cybercrimes. This is the first time cybercrimes have been listed as money laundering crimes.

6AMLD widens the range of persons that can be prosecuted to include organisations. In other words, if an organisation's employee is involved in money laundering or helps the organisation in the process of money laundering, the organisation can now be prosecuted. There are tight sanctions including removal of state entitlements, a ban on doing business, subjection to court supervision, and provisional or final closure of any entities used in committing the crime.

EU individuals convicted of money laundering now face up to four years' imprisonment (previously one year).

6AMLD also widens the range of crimes covered by the definition of money laundering to include aiding and abetting, which amount to money laundering, so they attract the same penalties.

Money laundering can involve a double crime: the so-called predicate offence¹ can take place in one country and the money illegally obtained can later be laundered in another country. 6AMLD tackles the problem of double crime by laying down special requirements for exchange of information between countries to decide which of them will begin prosecuting the offender to ensure criminal proceedings are brought centrally in only one member state.

Any private or public organisation that fails to meet 6AMLD requirements will face sanctions across the EU from 3 June 2021. Organisations are expected to provide training for their existing staff and new hires and to adapt their internal control systems so their employees can detect suspicious activities arising from the new predicate offences.

¹ A predicate offence is one that involves illegally obtaining the money that is later laundered.