

France's new anti-money laundering measures

Recently French and European institutions have modified legislation relating to anti-money laundering ('AML') and counter terrorist financing ('CTF'). Cathie-Rosalie Joly and Philippe Riboulin of Ulys law firm discuss the new measures relating to AML/CTF from the French legislature.

The launch of an action plan by the Ministry of Finance

The action plan, which formed part of a speech given by the Deputy Secretary General, Frédéric Visnovsky, on 3 September 2015, contains eight concrete measures:

1. Reduce the payment limit threshold in cash;
2. Report to the TRACFIN (anti-money laundering service of the French Ministry of Finance) cash withdrawals and deposits over €10,000, cumulated on a monthly basis (which is part of the systematic communication of information on 'Remittance and cash withdrawal');
3. Monitor physical transfers of capital more closely at French borders;
4. Roll back anonymity in the use of prepaid cards (this rolling back will be effective with the implementation in France of the 4th Anti-Money Laundering Directive ('4AMLD'), which reduces the payment limit for electronic money instruments);
5. Assign a key role to FICOBA and include payment accounts (FICOBA is the central register of bank accounts opened in France);
6. Impose an inspection of ID for any currency exchange over €1,000;
7. Systematise reinforced due diligence measures; and
8. Freeze immovable and movable assets.

Certain points in the above list,

such as assigning to FICOBA a key role, still need to be consecrated by official texts in order to become effective, whereas others (such as systematising reinforced due diligence measures) will come into force with the implementation of the 4AMLD and also with the coming adoption of the revised Payments Services Directive.

TRACFIN annual report

The report, named 'Tendencies and risks analysis in 2014,'¹ follows the adoption of the 4AMLD on 20 May 2015. It appears from this report that money laundering alerts from banks and credit institutions represent 86% of the global volume of alerts emanating from the financial sector. Also, the report points out that certain activities, such as terrorism financing or drug dealing, may be detected through low but repeated amounts.

Among the operations, transactions in cash, money transfers and cheques are declared most often. By contrast, alerts implying financial flows in e-money did not grow in number as much in 2014 as in previous years. Concerning electronic money, the report points out the fact that certain means of transferring electronic money are anonymous and that this constitutes a particular risk, reinforced by the fact that nothing can guarantee that a prepaid card's buyer will be its final user. In practice, those means of payment may be used in the framework of money laundering and terrorism financing. In order to improve on knowledge of these risks, the report contains a reminder that the 4AMLD specifies that 'Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States

can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register.'

Concerning the use of virtual currencies, a work group, entitled 'Virtual currencies,' which was put in place by TRACFIN in December 2013, delivered a report on 11 July 2015, entitled 'Regulating virtual currencies.' This report set out the group's recommendations to Michel Sapin, the French Minister for Finance. The group established a panorama of risks and threats inherent to virtual currencies and made recommendations in order to reduce the impact of these.

The report contains a definition of the term 'virtual currency,' which is 'traditionally defined as a unit of account stored on an electronic medium.' The report also clearly distinguishes virtual from electronic money and emphasises that virtual currencies do not fall within the legal scope of the second Electronic Money Directive. The group makes recommendations for regulating virtual currencies to prevent them from being used for fraudulent purposes and money laundering, namely:

- limiting the use of virtual currencies (the group recommends putting in place KYC procedures);
- regulation and cooperation (making sure that the AML/CTF system is capable of addressing the risks posed by virtual currencies and harmonising regulations at EU and international level); and
- knowledge and investigation.

Other AML developments

Obligation to appoint a central point of contact

Electronic money issuers and payment institutions, must, when they use French agents or distributors, appoint a central contact point (Permanent

Representative, 'PR'). This central contact point will be in charge of complying with AML/CTF measures within applicable legislation.

An annual report must be submitted in March of every year to the French Supervisory Authority ('ACPR') regarding the activity in France of the entity and the information regarding the conditions in which the PR ensures the implementation of their AML/CTF obligations. The report is made pursuant to the Instruction n° 2013-I-08 related to information delivery under Article L. 561-3, IV and Article D. 561-3-1, III of the French Monetary and Financial Code of 24 June 2013, and will contain information:

- regarding activity in France: the number of clients, the number and total amount of transactions per year, the number of payment agents or persons that distribute electronic money, the number of declarations sent to TRACFIN;
- regarding procedures put in place: measures applying due diligence with respect to customers and merchants, for the surveillance of payment operations, for reporting requirements in suspicious cases, and measures applying due diligence in order to freeze financial assets; and
- regarding the conditions in which the PR ensures the implementation of their AML/CTF obligations for the activities of the considered institution that operates on the French market.

Constant legal knowledge management is necessary for the PR; he/she must pursue up-to-date legal information regarding

Regarding the requirement to appoint a central point of contact, it has to be noted that in France (and Belgium) this central contact point could be exercised by a law firm

electronic money activity and payment services activity in France, in particular financial and AML regulations, and relevant information concerning new reports, decisions, and guidelines from the ACPR, TRACFIN or other relevant French authorities.

Regarding the requirement to appoint a central point of contact, it has to be noted that in France (and Belgium) this central contact point requirement could be exercised by a law firm. In this context, the law firm constitutes the central contact point for authorities to which it must communicate any suspicious operations and also constitutes an intermediary between legal authorities and payment services institutions.

Publication of the Decree lowering the cash payment limit

Apart from the adoption of the 4AMLD, new measures have been put in place in France in relation to anonymous transactions. A Decree entering into force on 1 September 2015¹ limits the anonymous transactions in the economy that can be linked to money laundering or terrorist financing operations. The payment limit in cash (applicable to relations with a professional only) will be reduced to €1,000. Until now, purchases could be paid in cash up to a value of €3,000. This modification is also applicable to payments made through e-money², but not to:

- payments made by persons who are incapable of being bound by cheques or any other means of payment, such as those who do not have a deposit account;

- payments between natural persons acting as non-professionals; and
- payments of state expenditures and other public persons.

The publication of this Decree modifies Article D. 112-3 of the French Monetary and Financial Code. As a consequence, electronic money and payment institutions will have to modify their general conditions of sale in order to be compliant with these new thresholds.

New thresholds for TRACFIN reports on cash operations

As of 1 January 2016, cash deposits and withdrawals on and from bank/payment accounts will have to be reported to TRACFIN where those operations reach €10,000 per month, in one or across several operations. This obligation is part of the 'Systematic Communication of Information' on 'Remittance and cash withdrawal,' which applies to financial institutions.

Furthermore, all the money remittance operations made from cash or electronic money payments over a certain threshold (€1,000 per operation or €2,000 cumulated in a calendar month) have to be notified to TRACFIN.

Cathie-Rosalie Joly Partner
Philippe Riboulin Associate
 Ulys, Paris
cathierosalie.joly@ulyes.net

1. http://www.economie.gouv.fr/files/tracfin_rapport_analyse2014.pdf
 2. Décret n° 2015-741 du 24 juin 2015 pris pour l'application de l'article L. 112-6 du code monétaire et financier relatif à l'interdiction du paiement en espèces de certaines créances.
 3. Article L. 112-6 of the French Monetary and Financial Code.

SIGN UP FOR FREE EMAIL ALERTS

E-Finance & Payments Law & Policy provides a free email alert service. We send out updates on exclusive content, forthcoming events and each month on the day of publication we send out the headlines and a precis of all of the articles in the issue.

To receive these free email alerts, register on www.e-comlaw.com/efplp or email sara.jafari@e-comlaw.com