“Key messages from the 5th Anti-Money Laundering Directive,” i.e. Summary of the main changes that will impact our members and key concerns that may arise?

**Introduction**

Money laundering is a key enabler costing the UK estimations of £37billion and affects every one of us

Transposition of the Fifth Money Laundering Directive – HMT consultation dated April 2019 to which TISA responded to questions on behalf of its members

On 25 June 2015, the European Union **Fourth Anti-Money Laundering Directive** was the most sweeping AML legislation in Europe in several years.

On 19 June, the fifth Anti-Money Laundering Directive (5AMLD) was published in the Official Journal of the European Union. The Directive has important implications for virtual currencies and further toughens EU rules around information on the beneficial ownership of companies and trusts.

Now, we have the 5th Anti-money Laundering directive 5MLD will be implemented on 10 January 2020 with the amendment of national laws and subsequent conformity.

**Opening of beneficial ownership registers – Customer Due Diligence**

Beneficial ownership is one of the biggest areas of change under 5MLD. Member states are required to develop public ownership registers that are accessible and potentially interconnected across countries.

The ability to scrutinise ownership structures plays a big role in fighting the global money laundering problem. For financial institutions, the registers will provide more transparency on their clients

**Increased scrutiny of high-risk countries**

Customers from countries deemed to be high risk will be subject to enhanced due diligence under 5MLD to combat the increased money laundering risk.

It’s likely that countries such as Iran, North Korea and Yemen will be included on the list, although others, including Saudi Arabia and Panama, are under discussion. When the final list is confirmed, firms will need to be more vigilant in relation to these countries and make sure extra checks are carried out.

**Regulation of virtual currencies**

There have been growing concerns on the role of virtual currencies in terrorist financing. Its borderless and peer-to-peer structure is well-suited for criminal activity. The 5th money laundering directive puts virtual currency exchanges under AML laws, requiring the verification of customer identities and the need for due diligence programs. This move, along with many other global regulatory changes, will bring oversight to a sector that needs greater transparency to achieve its full potential.
1. The EU as an AML/Counter Terrorism Financing (CTF) network:

As a result of security concerns, frustration over blockages in information exchange and/or barriers to enforcement –AMLD5’s response to these problems is increasingly to treat the EU as a single network and to oblige Member States to cooperate accordingly

Specific measures include

- An EU-level ‘effectiveness assessment’ of national frameworks, with more emphasis on performance stats and an obligation for member states to report more widely on their national AML/CTF regime.

- Member states will be subject to more detailed scrutiny and data-based feedback of their AML/CTF performance.

- National agencies involved in enforcement and prevention, over and above supervision, will effectively have their performance assessed at the EU level.

- Beneficial owners (and their advisers / service providers) will find cross-border transactions and ownership structures must be more transparent.
2. Data, disclosure and financial crime:

AMLD5 takes the view not just that relevant data should move freely between member states, regulators and enforcement authorities, but also that public exposure of some data is fundamentally positive and will play a key role in minimising financial crime.

Specific measures include

- Making both certain portions of EU and national risk assessments AND a wider range of beneficial ownership data open to the public.

- Member states will be subject to more detailed scrutiny in relation to their national risk profile and will need to take legal and practical measures to foster cooperation.

- National agencies involved in enforcement and prevention should find it substantially easier to access the data they need to build cross-border cases or pursue criminals across EU and international borders, but will also be expected to share data more widely / provide more help to other FIUs.

- Journalists and Non-Government Organizations (NGOs) will find investigative reporting / analysis on AML/Counter terrorism finance risks and issues easier. Demonstrate “legitimate interest”.

- Financial institutions will find it harder to obscure their involvement with particular Ultimate beneficial owner and will have to put more effort into collecting and maintaining UBO data.

- Obligation has changed from may to a must - When the beneficial owner that has been identified is the senior managing official you must now verify their identity and record the actions taken and difficulties encountered.

- Professional associations tasked with regulating their professions for the purposes of AML/Counter terrorism finance TF will be subject to additional scrutiny.
3. Empowering financial intelligence units (FIU)

AMLD5 reveals the EU’s frustration with the patchy record to date of member state Financial Intelligence Units (FIUs). It seeks to break down barriers by clarifying the grounds for the exchange of information, as well as to ensure sufficient fundamental firepower.

Specific measures include:

- Clarifying the legal basis for exchange of data and broadening FIUs’ powers to access and proactively request data, whether from specific registers or from regulated firms / individuals.

- Member states will need to ensure their FIUs are fit-for-purpose and able to meet new obligations / make use of new information, as well as ensuring regulated entities and individuals meet new obligations.

- FIUs (and other competent authorities) will need to be ready to share information much more rapidly, as many current legal excuses and limitations have been excluded / removed.

- Regulated firms and individuals will need to be ready to provide more information to their national FIU on request (and possibly in response to another EU FIU).
4. Building the right tools

AMLD5 shows the EU trying to get to grips with the technological challenges of data transparency and exchange in the AML / CTF space, and giving the Commission an enhanced practical role in this area.

Specific measures include:

- Giving the Commission powers to set technical standard for the interconnection of new registers and setting hard deadlines for registers to be up and running and in some cases interconnected via the European Common Platform (ECP).

- Member states will need to dedicate sufficient resources to build required registers in the right timescales, as well as ensuring regulated entities and affected beneficial owners / account holders provide the data. Even where a specific register is not mandated, member states will need to consider how required information should be collected and made available.

- The Commission will need to dedicate resources to review existing national level solutions and ECP progress, prior to setting standards.

- Regulated firms will need to be ready to provide timely data in the required formats.
5. Shining a light on beneficial ownership

Possibly the biggest change in AMLD5 is the introduction of mandatory, interconnected registers to beneficial ownership data, with a particular focus on removing the current lack of clarity around trusts.

Beneficial ownership – National register

Access to information in national registers has been broadened – so the beneficial ownership of corporates is accessible to any member of the public (previously needed to show a legitimate interest) – but there are some exemptions in certain circumstances – new ones added include if the Beneficial owner would be exposed to disproportionate risk, extortion and harassment.

There is also a new obligation for firms to report discrepancies between the Beneficial owner information in central registers and Beneficial owner information available to them.

Trusts register

5MLD also extends the beneficial ownership requirements to trusts that weren’t previously in scope (so that would include express trusts and those that are tax neutral) – in fact to any legal arrangement that is similar to a trust is now included.

Anonymous safe deposit boxes

One part of 5MLD has already been transposed into UK law – anonymous safe deposit boxes which are not permitted - this came into effect on the 10 January 2019:

Customer due diligence must be applied to all that were in existence on at that date, or before they are used in any way.

Specific measures include

- Setting up a new extended beneficial ownership register covering all trusts and similar legal arrangements, providing for public access to beneficial ownership registers (including a 'legitimate interest' argument in law), and creating new registers or centralised rights of access (bank accounts, deposit boxes, property owners).

- Member states will need to take practical steps to organise new registers / expand coverage and access to existing ones. This will need to happen before the deadline to transpose the directive into national law, to meet the required timetable for access and interconnection.

- Financial institutions will need to plan for the additional work involved in disclosing account and deposit box holder information and will need to update trust DD processes.

- Beneficial owners (and their advisers / service providers) will need to consider where / how to register various vehicles, based on new provisions.
6. Capturing virtual currencies

AMLD5 is sparse on the detail of how virtual currencies could be regulated in practice, but it does make a clear statement of intent in terms of regulatory capture of these currencies and some key associated economic agents.

New scope and definitions – virtual currency exchanges and custodian wallet providers

Virtual currency exchanges and custodian wallet providers to be included in the scope. Cryptocurrencies are a “new” area and being used more frequently, thus different/new risks.

Specific measures include

- Making exchange service and custodian wallet providers for virtual currencies regulated entities.
- Member states will need to identify those entities which need to be registered and consider how to regulate and police them at a national level.
- Financial institutions / card providers will need to consider whether they or their partners / customers meet the technical definitions of exchange services provider or custodian wallet provider.
- Other Distributed Ledger Technology firms / virtual currency providers will need to consider if / where they should register and what impact regulation may have on their business models.
7. Refining the risk based approach

Whilst maintaining the principles of risk-based decision-making set out in AMLD4, the amended directive is careful to provide additional guidelines in areas, such as ongoing and enhanced due diligence, where the EU believes leaving it up to member states has not so far produced the right outcomes.

Customer due diligence (CDD) new obligation

New obligation when entering into a business relationship with a corporate/trust/legal entity or similar arrangement – to obtain proof of registration or get an excerpt of the register.

Another new requirement – is to apply CDD to existing customers when the relevant circumstances of the customer changes or when there is a legal duty to contact the customer to review beneficial owner information. Although this bit about change of relevant circumstances was in old text – the question would be when does a legal duty arises.

EDD additional measures and amendments

There will be a prescriptive list of enhanced due diligence measures that will need to be taken into account for third countries – information such as purpose and nature of the relationship, source of funds and so on.

Specific measures include

- Member states being obliged to provide exhaustive lists of ‘permitted public function’ in their territories (to be treated as PEPs) and a range of more explicit rules for regulated entities, particularly in relation to ongoing due diligence and enhanced due diligence for counterparties in high risk third countries.

- Member states will need to update national legislation and guidelines relating to due diligence and must consider their current sanctions for non-performance of DD / failure to maintain Ultimate beneficial owner (UBO) data.

- Regulated entities (in particular financial institutions) will need to review and update their due diligence processes and their guidance on permitted counterparties / customers.
8. Lower e-money thresholds

The thresholds at which CDD measures must be applied for electronic money products such as prepaid cards have been lowered – so for maximum balance and monthly transaction limits it has reduced from 250 to 150 Euros. And for cash redemptions and withdrawals the maximum limit is now 50 Euros instead of 100.

Electronic identification and other processes

5MLD introduces text relating to electronic identification – so now in addition to the usual ID and V requirements – on basis of documents and information from reliable and independent sources – we have the inclusion of electronic information from services under eIDAS as well as from any other electronic identification processes “secure, remote or electronic identification process” that are “regulated, recognised, approved or accepted by the relevant authorities”.

This raises a number of questions such as – what will be the criteria for approval process, how will the criteria relate to different levels of assurance.