

FEDERICA FEDORCZYK*

**AFTER THE FIFTH ANTI-MONEY LAUNDERING
DIRECTIVE: HOW EU MEMBERS STATES ARE
EXPECTED TO IMPLEMENT AML/FT REGULATIONS**

ABSTRACT. The present paper aims at examining the major innovations introduced by the Fifth Anti-Money Laundering Directive, adopted by the European Parliament on 19 April 2018. Money laundering represents one of the most serious criminal phenomena and it is a major factor of contamination for the global economy, as it alters both the features of competition and the correct distribution of resources. In this context, the globalization of financial activity and the development of new technologies paved the way for a more sophisticated form of organized crime, which can now operate mainly by using anonymous instruments or hiding the identities of its members behind a front company. Therefore, appropriate measures have been established to contrast these illegal activities: indeed, now more than ever an effective international cooperation is required, based on mutual judicial assistance and common rules.

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* Law School Graduate, Roma Tre University.

1. Introduction: notions, legal framework and EU harmonization

The overview of the international prevention and contrast regime on laundering shows a complex framework, the result of the regulatory need to answer with proper reactions to the ever-growing evolution of money laundering techniques.¹

From a macroeconomic perspective, the International Monetary Fund pointed out a wide range of potential consequences of money laundering such as, for example, an increasing mistrust relating to financial institutions, which creates, as a result, a systemic risk for the stability of the financial sector and for monetary development. These phenomena grow in tandem with the ongoing globalization of the economy, which conceals serious and consistent risks even though up to now it has been without doubt essential in order to achieve a positive development in the worldwide economy.²

Although strictly related, “financial abuse”, “financial crime” and “money laundering” outline different concepts.³ While the notion of money laundering is more

1 According to the Third FATF Recommendations (see *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, 2012-2019) «countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences». According to the definition given in the 1988 United Nations Convention against illicit traffic in drugs and psychotropic substances (1988), money laundering is committed in presence of one of the following conducts: «a) the conversion or transfer of property derived from criminal activity for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity in evading the legal consequences of his action; b) the concealment or disguise of the true nature, source, location, disposition, movement or rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an active participation in such activity; c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an active participation in such activity».

2 «On one hand, it represents an unprecedented opportunity for economic growth and the improvement of the standards of living. It facilitates the diversification of risks and enhances the performance of economies, stimulating a more efficient allocation of resources. On the other hand, if not adequately governed, globalization presents the risk of destabilizing imbalances, growing, distributive iniquities among countries and inside individual countries» as stated by C. SANTINI, *Globalisation and Offshore Dimension – Building Integrity, Confidence and Cooperation*, Report submitted to the *Nineteenth International Symposium on Economic Crime*, Cambridge, 12.09.2001 in *Journal of Money Laundering Control*, Volume V, no. 4, London, 2002.

3 IMF, *Financial System Abuse, Financial Crime and Money Laundering, Background Paper*, February 12, 2001.

consolidated (a second-degree criminal offence based on a predicate offence⁴), the distinction between the first two is still uncertain. From a non-technical perspective, every breaking of the law can be qualified as an abuse, even if it is not regulated as a felony in the legal framework. Instead, in its internationally accepted legal meaning, the notion of financial abuse includes in some cases illegal financial activities potentially damaging for the financial system and in other cases activities exploding taxation's regulation for illegal purpose. Moreover, there is no common definition of financial crime: in a broad sense, it groups together all non-violent crimes (committed intentionally or culpably) that entail financial losses, but it could include also only those crimes committed with the aim of having an economic benefit. However, the term "financial crimes" could be also used whenever a financial institution is involved in the crime: for instance, the financial institution may be the victim of embezzlement or credit card frauds, or, on the other hand, it may sell fraudulent financial products or it may be used to keep or transfer the proceed of crimes (as it happens indeed with money laundering).

Notably, money laundering is becoming increasingly more complex, owing to the number and variety of the possible transactions in the modern economy. Furthermore, it involves not only traditional financial institutions located in different jurisdictions, but also financial intermediaries that are usually not connected with the banking sector, such as check cashing services, brokers or insurers.

One of the principal problems is that money laundering defies the rules governing monetary phenomena but at the same time it makes use not only of cash, but also of other kinds of financial instruments. In this context, globalization became a vehicle for economic crime: the speed and lower costs of electronic financial transactions, along with the removal of the barriers to the freedom of capital flows, facilitated criminal activities. Internet enables intermediaries to reach an unlimited number of users in short time and at very low cost. Moreover, jurisdictions characterized

⁴ A predicate offence is the underlying criminal activity which generated the laundered proceeds. An example of a predicate offence can be arms sales, which lead to profits which may then be laundered. The list of predicate offences can vary from country to country, because each country may decide, in accordance with its domestic law, how it will define those offences and the nature of any elements of those offences that make them serious ones.

by a weak regulation of financial system allow the proliferation of distorting economic activities, with a consequent damage of essential market requirements such as transparency, functionality, efficiency and security.⁵ Frequently, laundering takes advantage of the diversity of national regulations, which provide different kinds of controls and sanctions, possibly causing the so-called regulatory arbitrage.⁶

In order to contrast these illegal phenomena, a common institutional grid has been built. Its purpose is the prevention and the fight against financial crime and money laundering, both on the investigative and legal fronts.⁷ Initiatives in this field have developed on both national and international level, ranging from criminal and administrative law to Community standardisation (from the first Directive of 1991 to the last one of 20 May 2018) and giving a key role to the cooperation between countries and their institutions. Prevention and prosecution have been identified as the main targets: the former can be achieved with specific administrative and financial tools which may detect suspicious conduct; the latter with the unique criminalization of money laundering and its predicate offences.⁸

Nowadays, the main actors involved in this context are the FATF (Financial

5 Market's imperfections and shortcomings provide the main theoretical justification for the intervention of the State in the economic system: a market that doesn't utilize correctly its resources should be helped by the State, which then has to employ economic institutional prerogatives with regulation functions. On this topic, G.J. STIGLER, *The Economics of Information*, *Journal of Political Economy*, 69, 1961, pp. 213-225 and J.E. STIEGLITZ, *Markets, Market Failures and Development*, *The American Economic Review* Vol. 79, No. 2, Papers and Proceedings of the Hundred and First Annual Meeting of the American Economic Association, 1989, pp. 197-203.

6 Regulatory arbitrage has been defined as *those financial transactions designed specifically to reduce costs or capture profit opportunities created by different regulations or laws*. – Frank Partnoy, *Financial Derivatives and the Costs of Regulatory Arbitrage*, 22 J. CORP. L., 22, 1997, p. 211 at 227.

7 On the development of international regulations, see AA.VV. (edited by M. Condemi-F. De Pasquale), *Lineamenti della disciplina internazionale di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo*, Quaderni di Ricerca Giuridica della Consulenza Legale della Banca d'Italia, Roma, febbraio 2008.

8 «Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to the one based on serious offences. Each country would determine which serious crimes would be designated as money laundering predicate offences» – see FATF Recommendation no.3, FATF (2012-2019), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France.

Action Task Force),⁹ the IMF (International Monetary Fund) and the European Community, which operates mainly through its Directives. Additionally, the United Nations with International Agreements, the Council of Europe, and the Egmont Group,¹⁰ through the activity of the FIUs (Financial Intelligence Units)¹¹.

At international level, the FATF has significantly contributed to build an anti-money laundering model, providing Recommendations to create a body of guidelines and effective tools to contrast financial crimes.¹² Even though the Recommendations are not binding, FATF countries could spontaneously incorporate them into their domestic regulations, because they set out measures conceived as a series of simple standards of universal application.¹³ All the Recommendations relate to the identification of customers, the recording of transactions, the conservation of any related documents and the establishment of suitable internal procedures to detect any anomalous or unusual operation.

Such measures have been reproduced by the European Union Directives, which

9 In July 1989, the Paris summit of the Heads of State and Government of the Group of Seven (United States, Japan, Germany, France, Great Britain, Italy and Canada), as part of a series of measures to contrast drug trafficking, decided to set up the Financial Action Task Force (FATF), also known as GAFI (*Group d'Action Financière Internationale*). At first, the FATF comprised experts from the administration of G7 countries, however it was joined from the beginning by representatives of eight additional countries interested in contrasting drugs and money laundering (Australia, Austria, Belgium, Luxembourg, the Netherlands, Spain, Sweden and Switzerland) and the Commission of the European Communities. Its membership was subsequently extended to include countries of the OECD area, as well as the Gulf Cooperation Council. Nowadays, FATF counts 38 members.

10 The awareness of the transnational dimension of the “dirty” money circuits has given rise to a variety of international initiatives to contrast the laundering of illegal capital and these initiatives could be referred to two types of intervention. The first one relates to forms of cooperation that entail the adoption of binding agreements of international law (for instance, *The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* – Strasbourg, 8.XI.1990), while the second is linked to the initiatives of super national organizations specialized in the fight against money laundering (such as the Egmont Group, which is an informal international organization that groups together all the Financial Intelligence Units (FIUs).

11 Nearly all national legislations impose on credit and financial institutions (and on those who carry out activities that entail a money laundering risk) the obligation to report suspicious transactions to a central organization that is entrusted to receive, analyse and investigate the information disclosed in the reports. These organisations are the Financial Intelligence Units (FIUs).

12 The FAFT Recommendations have been revised over the years.

13 FAFT identified general principles that would allow Member State flexibility, because different countries have different legal systems and different regulations.

constantly amend its provisions in order to adequate and update the tools against money laundering and terrorist financing.¹⁴ The first anti-money laundering Directive was adopted in 1990 in order to prevent the misuse of the financial system for the purpose of money laundering. It provides that obliged subjects¹⁵ should apply customer due diligence (CDD) when entering into a business relationship: they should identify and verify the identities of clients, monitor and report suspicious transactions.

The Third Directive (2005/60/CE) emphasized customer due diligence procedures and record keeping based on the new “risk-based approach”.¹⁶ Furthermore, in order to effectively contrast money laundering and terrorism financing, each Member State shall establish a Financial Intelligence Unit (FIUs).

They have a key position between the private sector and competent authorities, because they monitor the work of economic operators to detect transactions suspected of links to money laundering and terrorist financing. In other words, a FIU is the central national authority competent for receiving any disclosures concerning illicit flows of capital, with the aim of avoiding fragmentation and making more effective the investigation and the prosecution of any financial crime.¹⁷ Indeed, the purpose of the FIUs is to collect and analyse the information which they receive with the aim of

14 The Fourth Directive replaced previous Directives 1991/308/CE, 2001/97/CE, 2005/60/CE, while the Fifth Directive emended the Fourth Directive (849/2015/CE).

15 The obliged entities are those who are subjected to the Directive’s provisions: credit institutions, financial institutions (which includes money service businesses), the following natural or legal persons when carrying out their professional activities: auditors, external accountants and tax advisors, notaries and other independent legal professionals that act on behalf of and for their clients in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their clients, trust or company service providers.

16 According to the risk-based approach, the extent and the impact of due diligence shall be calibrated according to the risk of money laundering (ML) and financing of terrorism (TF) associated with the individual client. The nature and extent of any assessment of ML/TF risks should be appropriate to the type of business, nature of clients and size of operations. This is usually performed as part of the overall client and engagement acceptance processes. The accountants should document these assessments and keep them up to date. In addition, they should have appropriate mechanisms to provide risk assessment information to competent authorities and supervisors. ML/TF risks can be organised into three categories: (a) country/geographic risk, (b) client risk and (c) transaction/service and associated delivery channel risk. See *Guidance For A Risk-Based Approach For The Accounting Profession*, FATF Report, 2019, p. 22.

17 See E. CASSESE-P. COSTANZO, *La terza Direttiva comunitaria in materia di antiriciclaggio e antiterrorismo*, *Giornale di diritto amministrativo*, 2006, no. 1, p. 5.

establishing links between suspicious transactions and underlying criminal activity in order to prevent and contrast money laundering and terrorist financing. Moreover, FIUs should disclose the results of their analysis and any other relevant information to the national competent authorities and to other FIUs, in order to ensure a full cooperation.

By 2015 the EU adopted a modernised regulatory framework (the Fourth Anti-Money Laundering Directive) inspired by the 2012 Recommendations of the FATF.¹⁸ The need for another Directive came from the fact that the Third Directive was interpreted and applied differently by State Members, with serious risk of unfair competition for the market. Therefore, in order to avoid fragmentation, the Fourth Directive provided specific measures of cooperation and elaboration of common guidelines and best practices, emphasizing the key role of FIUs and their information flows. In this context, for instance, FIUs could not deny providing information to other FIUs, in order to guarantee an effective collaboration beyond the national borders. Moreover, great improvements have been made also in the field of transparency and disclosure, given that all the information about the effective ownership of corporate assets shall be stored in a Central Archive and shall be made available to the national competent authorities and intermediaries responsible of due diligence. Those subjects then need to: 1) identify and verify the identity of their customers and of their beneficial owners and to monitor the transactions of and the business relationship with the customers; 2) report suspicions of money laundering or terrorist financing to the public authorities (usually, the FIUs); 3) take supporting measures, such as ensuring the proper training of personnel and the establishment of appropriate internal preventive policies and procedures.¹⁹

2. The major innovations in the Fifth Anti-Money Laundering Directive

The Fifth Anti-Money Laundering Directive, which amends the Fourth Anti-Money Laundering Directive, was published in the Official Journal of the European Union on 19 June 2018. The amendments to the Fourth Directive aim at ensuring

18 As it results from MEMO/12/246.

19 European Commission report on the application of the Third Anti-Money Laundering Directive - 11 April 2012.

more transparency, helping competent authorities to effectively detect criminal and terrorist financing flows. As it results from the *Proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC* (Strasbourg, 5.7.2016) the amendments should: «(a) ensure more legal certainty for obliged entities as regards the enhanced customer due diligence measures which need to be applied in relation to high-risk third countries; (b) improve the detection of suspicious virtual currency transactions; (c) reduce the misuse of anonymous prepaid instruments; (d) improve FIUs' access to, and exchange of, information held by obliged entities; (e) ensure swift access to relevant information on the identity of holders of bank and payment accounts to prevent and detect transactions linked to money laundering and terrorist financing; (f) enhance transparency of beneficial ownership of corporate and legal arrangements».

The modern digital market implies the need to redefine the areas of traceability of financial flows that can, due to their opacity, hide laundering phenomena.²⁰ In this context, after the terrorist attacks of 2015-2016 and the publication of the Panama Papers,²¹ the field of application of the Directive was extended in order to cover new phenomena not previously considered. The emergency imposed tight transposition deadlines, with the prescription for Member States to transpose the Directive by 10

20 As indicated in the second recital of Directive 2018/843/CEE, «recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming increasingly popular as alternative financial systems, whereas they remain outside the scope of Union law or benefit from exemptions from legal requirements, which might no longer be justified. In order to keep pace with evolving trends, further measures should be taken to ensure the increased transparency of financial transactions, of corporate and other legal entities, as well as of trusts and legal arrangements having a structure or functions similar to trusts ('similar legal arrangements'), with a view to improving the existing preventive framework and to more effectively countering terrorist financing. It is important to note that the measures taken should be proportionate to the risks».

21 In August 2015, a digitised file with more than eleven million documents from the archives of the Panamanian law firm *Mossack-Fonseca* about secret information on 214,000 offshore companies used as cover for illegal activities was delivered to the newspaper *German Süddeutsche Zeitung* and the *International Consortium of Investigative Journalists (ICIJ)*. See N. MAINIERI, *Quinta direttiva europea antiriciclaggio: il decreto di recepimento 125/2019 entra in vigore*, in *Rivista di diritto bancario*, Novembre 2019, p. 2 et seq.

January 2020. The new rules cover four main areas: virtual currencies,²² register of beneficial owners, enhanced due diligence and FIUs' role.

The Directive considers the anonymity of virtual currencies particularly risky because they can easily be used by terrorist groups and other national criminal organisations. Therefore, the new rules apply to all entities providing services related to the holding, storing and transferring of virtual currencies, as well as to persons providing services comparable to those provided by auditors, external accountants and tax advisors (already subject to the Fourth Anti-Money Laundering Directive). These new actors – which include: a) all the providers engaged in exchange services between virtual currencies and fiat currencies; b) the custodian wallet providers;²³ c) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to €10,000 or more; d) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or a series of linked transactions amounts to € 10,000 or more – will now have to identify their customers and report any suspicious activity to the FIUs. In response to the increasing use of virtual assets for money laundering and terrorist financing, also the FATF updated its *Guidance for a risk-based approach to virtual asset service providers* in June 2019, in order to reach a more level playing field across the virtual asset ecosystem.

Likewise, in order to contrast the illegal use of other anonymous financial instruments, the Fifth Directive further reduces anonymous prepaid cards' limits and maximum amounts under which obliged entities are allowed not to apply customer due diligence measures provided by Directive 2015/849/CE. Therefore, Member States will now have the possibility to allow the anonymous use of electronic money products only

22 The expression “virtual currencies” means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.

23 Custodian wallet provider means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.

in two situations: when customers use their prepaid instruments directly in the shop for a transaction of maximum €150.00 and when customers carry out an online transaction with a prepaid card below €50.00. In all other circumstances, customer identification will be compulsory. In addition, Member States may decide not to accept on their territory payments carried out with anonymous prepaid cards.

The second area of innovations concerns the register of beneficial owners.²⁴ There was the need to improve transparency on the real owners of trusts and companies, by establishing a centralised automated mechanism (such as central registries or central electronic data retrieval systems) in every Member State, in order to get access to information on the identity of bank holders and their beneficial owners. In this regard, Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold accurate and current information on their beneficial ownership.²⁵ While the Fourth Directive allowed access to the information contained in the Registers to each natural and legal person who was able to demonstrate a legitimate interest, with the Fifth Directive the beneficial ownership Registers for legal entities is totally public and can be accessed by following the established procedure. Therefore, access is no longer limited to persons who can demonstrate legitimate interests. In addition, similar disclosure requirements also apply to Trusts: indeed, the access to the data of the beneficial owner of trusts will be granted without restrictions to competent authorities and FIUs, while it will be subordinated to the existence of a legitimate interest for individuals. The national Registers on beneficial ownership information will be interconnected to promote cooperation and exchange of information between Member States, who should constantly verify beneficial ownership's information collected to help improve the reliability of these registers.

Another major area of amendment regards due diligence for high-risk countries,

24 Beneficial ownership refers to anyone who enjoys the benefits of ownership a company and control it, without being on the record as being the owner. Usually, a beneficial owner is an individual which owns or controls more than 25% of company's share or voting rights, or otherwise who exercise control over the company or its management. Where such an interest is held through a trust, the trustee or anyone who controls the trust will be registered as the beneficial owner.

25 As stated in the 25th recital of the Directive 2018/843/CE.

where the anti-money laundering regulations present significant weaknesses.²⁶ When dealing with these countries in business relationships or transactions, Member States shall require obliged entities to apply «the following enhanced customer due diligence measures:

- (a) obtaining additional information on the customer and on the beneficial owner(s);
- (b) obtaining additional information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner(s);
- (d) obtaining information on the reasons for the intended or performed transactions;
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;
- (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination».²⁷

Furthermore, Member States should require that obliged entities apply

26 Under the Fourth and Fifth Anti-Money Laundering Directives, the Commission is mandated to carry out an autonomous assessment and identify the high-risk third countries. The list has been established on the basis of an analysis of 54 countries, which meet at least one of the following criteria: a) they have systemic impact on the integrity of the EU financial system; b) they are reviewed by the International Monetary Fund as international offshore financial centres; c) they have economic relevance and strong economic ties with the EU. For each country, the Commission assessed the level of existing threat, the legal framework and the controls put in place to prevent money laundering and terrorist financing risks and their effective implementation. At this regard, the list of the Commission includes those countries with low transparency on beneficial ownership information, no appropriate and dissuasive sanctions or which do not cooperate nor exchange information. The Commission concluded that 23 countries have strategic deficiencies in their anti-money laundering/counter terrorist financing regimes. The 23 jurisdictions are: Afghanistan, American Samoa, The Bahamas, Botswana, Democratic People's Republic of Korea, Ethiopia, Ghana, Guam, Iran, Iraq, Libya, Nigeria, Pakistan, Panama, Puerto Rico, Samoa, Saudi Arabia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, US Virgin Islands, Yemen.

27 Amending Article 18 of the Directive 2018/843/CE. In addition, Member States may require obliged entities to ensure, where applicable, that the first payment be carried out through an account in the customer's name with a credit institution subject to customer due diligence standards that are not less robust than the one of the Directive.

additional mitigating measures, complementary to the enhanced customer due diligence measures, in accordance with a risk-based approach.²⁸ In this regard, the assessment of the individual clients' degree of risk is of utmost relevance and should be carried out considering several elements, such as the clients' conduct and the type of transaction, in order to assign them a specific risk class.

The new Directive also aims at enhancing the role of FIUs, by allowing them to collect all the information available and to exchange them rapidly. Member States authorities and obliged entities should provide Financial Investigation Units unconditional access to all the data in their possession. In this regard, Member States should endeavour to ensure a more efficient and coordinated approach to deal with financial investigations related to terrorism and money laundering. In the exercise of their tasks, FIUs should have access to information and be able to exchange it without impediments, through appropriate cooperation with law enforcement authorities. Information should flow directly and without delays in all cases of suspected criminality and in cases involving the financing of terrorism. Therefore, it is essential to further enhance the effectiveness and efficiency of FIUs, by clarifying their powers of and the cooperation between them.²⁹ In the Fourth Directive, the power for FIUs to obtain additional information from obliged entities could be activated only by a prior suspicious transaction report sent from the obliged entities. Instead, in the Fifth Directive this power might be triggered also by the FIU's own analysis or by information and report provided by another FIU.³⁰ In addition, information of a prudential nature relating to credit and financial institutions should be exchanged between competent authorities supervising credit and financial institutions and prudential supervisors should not be obstructed by legal uncertainty, which might arise as a result of the

28 As stated in the 12th recital of the Directive 2018/843/CE. At this regard, those measures shall consist of one or more of the following: «(a) the application of additional elements of enhanced due diligence; (b) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions; (c) the limitation of business relationships or transactions with natural persons or legal entities from the third countries identified as high risk countries».

29 As stated in the 16th recital of the Directive 2018/843/CE.

30 Clearly, this does not include indiscriminate requests for information, but only information requests based on sufficiently defined conditions.

absence of explicit provisions in this field.³¹

3. Conclusion: brief notes on the transposition of the Fifth Directive in Italy and future perspectives

It must be remembered that the transposition of the Fourth Directive had already led to an amendment of *D.lgs.*³² 231/2007, through *D.lgs.* n. 90/2017, which entered into force on 4 July 2017. However, in September 2019, the European Parliament adopted a Resolution on the implementation of anti-money laundering legislation in Europe, highlighting a framework of shortcomings in the application of the relevant provisions. Therefore, the European Commission was called upon to ensure a more transparent process of transposition, with clear and concrete standards.

On 26 October 2019, with *D.lgs.* 125/2019, Italy officially transposed the Fifth Directive. The main purpose of the Decree was to ensure the traceability of suspected financial flows, to strengthen customer due diligence, to enhance national and international cooperation and to introduce stricter sanctions for violating anti-money laundering provisions. With this important step, the Italian legislator adopted a wide reading of the indications contained in the Fifth Directive, not limited to the effective transposition of its provisions, but also addressing and defining better the Fourth Directive's provisions. In this respect, the response of Italian anti-money laundering legislation to the constant evolution of such criminal phenomena has always been particularly positive. In its follow-up Report AML/CFT of March 2019 the FATF, after the re-rating process of last February, has assigned to our country a flattering evaluation. Indeed, according to the FATF, Italy continues to make substantial progress in the field of contrasting illicit financial flows.³³ Italy has received the maximum evaluation – “largely compliant” – on twenty out of the Forty FAFT Recommendations,³⁴ including

31 As stated in the 19th recital of the Directive 2018/843/CE.

32 Law Decree.

33 FATF, Anti-money laundering and counter-terrorist financing measures – “Italy-Follow-up Report& Technical Compliance Re-Rating”, March 2019.

34 The FATF Forty Recommendations have been recognised by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism.

some of great significance, such as the implementation of risk-based approach applied by financial intermediaries and professionals, the coordination and cooperation between authorities, the regulation on the reporting of suspicious transactions and the FIU's regulations.

As shown above, the evolution of the legislation has led to the identification of relevant cases based on objective parameters, limiting the discretion and the initiative of the obliged entities. An example could be found in the system of suspicious reporting, where at first the choice to make a suspicious report was left to the discretion of the financial intermediary, whereas now it is mandatory in presence of the conditions prescribed by the law. Even though a wider range of relevant cases and of subjects obliged to actively respect the anti-money laundering regulation certainly has positive consequences in terms of prevention, this does not imply any reduction in the number of rules and legislation related to the phenomenon. Indeed, European institutions, national institutions, supervisory authorities, FIUs and obliged entities adopt rules and good practices which form all together a regulatory framework that it is not always coherent.

Therefore, a possible solution, at least from the point of view of a correct compliance, could be the introduction of a new European Anti-Money Laundering Supervisory Authority, following the example of the banking and insurance sectors. From an even more forward-looking perspective, it would be necessary to adopt law enforcement measures at global level in order to contrast anyone who breaks the rules of transparency, whether they are criminal organisations or tax evaders. However, this would only happen with the agreement of all the organizations involved in the fight against ML/FT and without their overlapping.