



# 4<sup>th</sup> AML Directive – Update and Impact on Irish Financial Services & Fintech

Tuesday 19<sup>th</sup> July 2016

Peter Oakes



# Peter Oakes

- Executive and non-executive director and advisory committee member to regulated and unregulated companies, including Fintech, RegTech, MiFID and Funds. Panel Member, Fintech20 Ireland
- Solicitor admitted in Ireland, the United Kingdom and Australia
- Founder of Fintech Ireland & Fintech UK (RegTech Ireland & Regtech UK). These groups support 'fintech' & 'regtech' initiatives in Ireland & the UK
- 2014-2016: Board Director & Chief Risk Officer for Bank of America Merchant Services Europe (based in London)
- 2010-2013: Central Bank's first Director of Enforcement and AML/CTF Supervision in October 2010. Member of the Senior Leadership, Operations, Policy & Supervisory Risk Committees
- Over the past 25 years Peter has worked as a regulator (Ireland, UK & Australia) and in the investment management, payments, funds & fintech industries (UK & Ireland) in Board, C-Suite, Legal and Compliance/Risk roles. He has also advised Central Banks, Regulators and their senior management on a wide range of supervisory and enforcement issues

# www.peteroakes.com

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IRELAND CHAPTER **Tuesday 19 July 2016: 4th AML Directive - Update and impact on Irish Financial Services & Fintech**

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# www.fintechireland.com

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The screenshot shows the website's navigation bar with links for HOME, NEWS, BREXIT & IRELAND (highlighted), EVENTS, ABOUT, and GET INVOLVED. Below the navigation is a mailing list sign-up section with the fintech IRELAND logo and the text: "Join hundreds of others who subscribe to our Fintech Ireland email list for news, events & info - [click here](#)". Below this is a description of the organization: "Fintech Ireland: Your #fintech home and independent voice in #Ireland; representing fintech and #regtech in Ireland and for Ireland abroad." and a note: "Great! You have found **Fintech Ireland** ([www.fintechireland.com](http://www.fintechireland.com) and [www.fintechireland.ie](http://www.fintechireland.ie)): leading the promotion, support & facilitation of the #Irishfintech scene." Below the description is a list of three bullet points: "Fintech20 Ireland: Together with Simon Cocking of Irish Tech News, we led the formation of The Fintech20 Ireland Panel to build upon the work of the The Fintech 50 to source Irish fintech firms for this excellent initiative.", "Our LinkedIN Fintech Ireland Group: After you have connected with Peter Oakes on LinkedIN (at [www.linkedin.com/in/peteroakes](http://www.linkedin.com/in/peteroakes)), feel free to request membership of our Fintech Ireland LinkedIN Group [www.linkedin.com/groups/8321352](http://www.linkedin.com/groups/8321352). We would love to see you there.", and "Fintech Ireland Fintech Companies Map: Version 0.4.1 June 2016 issued by SuperGinger Dave (Dave Anderson) to reflect small edit only. No changes to names of fintech companies referenced in version 0.4 May 2016. Current Map - [click here](#). For more detail on Dave's work on the Map - [click here](#)". To the right of the website screenshot is a tweet from FinTech Ireland (@FinTechIreland) with the text: "Sunny day comes to an end in Dublin (18 July). Rooftops of #Rathmines" and a photo of a city skyline at dusk.



# Thanks

- CPL Resources



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- [www.cpl.ie](http://www.cpl.ie)

- ACAMS

- <http://www.acams.org/acams-chapters/ireland/>

- Please visit ACAMS for more info on support for financial crime professionals.

IRELAND CHAPTER



# Outline – 4AMLD impact on ...

- \* Board and Senior Management Responsibility
- \* Supervision and Enforcement
- \* Policies & Procedures
- \* Risk Assessments
- \* Customer Due Diligence
- \* Beneficial Ownership
- \* Politically Exposed Persons
- \* Suspicious Activity Reports
- \* Record Keeping
- \* Correspondent Relationship
- \* Financial Intelligence Units
- \* Home and Host Responsibilities

# 4AMLD – 20 May 2015

- Note the Date

5.6.2015

EN

Official Journal of the European Union

L 141/73

## DIRECTIVES

### DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015

on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

# 4AMLD

- 69 Articles & 4 Annexures in Directive 2015/849
- Together with Regulation 2015/847 forms the **AML Package**
- Also need to take into account:
  - GDPR
  - 2009/101/EC (protection of interests of members & third parties)
  - Specific sector requirements, e.g. PSD 1 & 2, E-money, MiFID, Insurance, Banking etc
- Transposition Date = 26 June 2017



# 4AMLD Overview (1/6)

- **Risk Assessment:** Each Member State to produce a NRA every two years. Ensuring effective management and identification of ML & TF risks. Obligated entities must take NRA into account for their own AML risk assessments
- **Written Risk Assessment:** Firms to identify and assess the risks of ML & TF and document methodology. Be kept up-to-date too. *[easy target for regulators]*

## 4AMLD Overview (2/6)

- **Home and Host Responsibilities:** Branches & subsidiaries operating in other Member States to ensure that those establishments respect the Home Member State requirements
- **Simplified Due Diligence:** Automatic entitlement to apply SDD for specific customers is removed. Now need to determine (via demonstrable evidence) level of risk posed by a customer prior to applying SDD *[easy target for regulators]*

## 4AMLD Overview (3/6)

- **Third Country Equivalence Regime:** End to list of 'equivalent jurisdictions' and EC will instead identify high risk non-EU countries with strategic deficiencies in AML/CTF standards. Must apply EDD when dealing with entities/persons established in those countries [*easy target for regulators*]
- **Beneficial Ownership:** Member States to create a directory of the beneficial owners of corporate entities incorporated in their countries.

Not applicable to trusts [but note Proposals]

# 4AMLD Overview (4/6)

- **Politically Exposed Persons:** now means persons entrusted with a prominent public position domestically and domestic PEPs working for international organisations.  
and EDD [as per Art 22] to be applied for at least 12 months after person ceases to be a PEP [*easy target for regulators*]
- **High Value Dealers:** €10,000 is the new reduced threshold for making and receiving cash payments
- **Gambling:** The 4MLD now covers all gambling services and not just casinos

# 4AMLD Overview (5/6)

- **Suspicious Activity Reports:** In addition to reporting any suspicious transactions, must also report attempted transactions [*easy target for regulators*]
- **Correspondent Relationship:** Now captures all relationships between two financial or credit institutions
- **Record Keeping:** General Rule - Keep client information for period of 5 years after the end of the business relationship with the client [*easy target for regulators*]



## 4AMLD Overview (6/6)

- **Tax Crimes:** These are made predicate offences for purposes of money laundering
- **FIUs:** Their powers are strengthened. Member States to ensure that FIUs cooperate with each other across borders



*Proposals made by the  
European Commission on 5  
July 2016 impacting upon  
4AMLD*

# Health Warning!

- Important – need to read the Proposal along side the 4<sup>th</sup> AML Directive
- The slides in this presentation are a summary and not inclusive of all proposals or impact on 4<sup>th</sup> Directive

# Proposal of series of measures

- On 5 July 2016 certain Proposal issued by EC
- Proposal calls for transposition date of 1 January 2017
- Assume most people have reviewed 4AMLD noting release date 20 May 2015



# Why the July 2016 Proposal?

- The Proposal is aimed at enforcing the Action Plan for strengthening the combating of terrorist financing
- *Will it be transposed into Irish & other Member States law for 1 January 2017?*



# Headline proposed amendments

- Transposition date = 1 January 2017.
- Ultimate beneficial owner information transparency
- Enhancing powers and cooperation of EU FIUs
- Harmonising EU approach towards high-risk third countries
- For fintech (and others):
  - need to address and respond to ML/TF risks inherent in innovative and new payments technologies
  - bringing under the Directive as ‘obliged entities’:
    - persons who engage in exchange services between virtual & fiat currencies
    - wallet providers offering custodial services of credentials necessary to access virtual currencies

# Virtual / Digital Currencies Headlines

## Dublin pair plead guilty to selling drugs on 'dark net'

Bitcoin trader and film technician charged with possessing drugs worth €143,000

© Fri, Dec 18, 2015, 15:54



A bitcoin trader and a film technician were involved in an online global operation described as “a new era in drug dealing”, a court has heard.

## Federal Agents Face Arrest for Alleged Silk Road Bitcoin Theft

Pete Rizzo (@pete\_rizzo\_) | Published on March 30, 2015 at 17:52 BST

NEWS



1



473



46



36



6



Two federal agents who took part in the US government's efforts to take down illicit online black market Silk Road have been charged with fraud for allegedly misusing funds denominated in bitcoin while on assignment.

# Virtual / Digital Currencies Headlines

**Mt. Gox ex-CEO pays close to \$100K in bail to walk out of Tokyo jail**

July 18, 2016

[0 Comments](#)



# Fintech (1/2)

- EC has travelled fast
- It is focussed on ensuring firms involved in new payments and currencies are brought swiftly into the fold, i.e.
  - understanding risks linked to new payment technologies
  - making them subject to performing risk assessments, CDD (and on-going CDD), policies & procedures, training and reporting of suspicious transactions

## Fintech (2/2)

limiting use of anonymous pre-paid cards by lowering identification thresholds to €150 from €250 and move away from CDD exemption under 4AMLD for online use of prepaid cards

however the Proposals noted that closed loop cards remain outside scope of 4AMLD



# Proposed Amendments to 4AMLD

3 July 2016 European Commission Proposals on 4<sup>th</sup> AMLD 2015/849

**DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of 20 May 2015

on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.

(2) The soundness, integrity and stability of credit institutions and financial institutions, and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates to disguise the origin of criminal proceeds or to channel lawful or illicit money for terrorist purposes. In order to facilitate their criminal activities, money launderers and financiers of terrorism could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the Union's integrated financial area entails. Therefore, certain coordinating measures are necessary at Union level. At the same time, the objectives of protecting society from crime and protecting the stability and integrity of the Union's financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs.

(3) This Directive is the fourth directive to address the threat of money laundering. Council Directive 91/308/EEC defined money laundering in terms of drugs offences and imposed obligations solely on the financial sector. Directive 2001/97/EC of the European Parliament and of the Council extended the scope of Directive 91/308/EEC both in terms of the crimes covered and in terms of the range of professions and activities covered. In June 2003, the Financial Action Task Force (FATF) revised its Recommendations to cover terrorist financing, and provided more detailed requirements in relation to customer identification and verification, the situations where a higher risk of money laundering or terrorist financing may justify enhanced measures and also the situations where a reduced risk may justify less rigorous controls. Those changes were reflected in Directive 2005/60/EC of the European Parliament and of the Council and in Commission Directive 2006/70/EC.

(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora. Union action should continue to take particular account of the FATF Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight

4th Directive Word (with Commission's proposals 20160705)

1/35

3 July 2016 European Commission Proposals on 4<sup>th</sup> AMLD 2015/849

Each Member State shall require that trustees of any express trust administered in that Member State obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

- (a) the settlor;
- (b) the trustee;
- (c) the protector (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising effective control of the trust.;

2. Member States shall ensure that trustees disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.

3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

"3a. The information referred to in paragraph 1 shall be held in a central register set up by the Member State where the trust is administered.;"

~~4. Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.~~

"4. Member States shall ensure that the information held in the register referred to in paragraph 3a is accessible in a timely and unrestricted manner by competent authorities and FIUs, without alerting the parties to the trust concerned. They shall also ensure that obliged entities are allowed timely access to that information, pursuant to the provisions on customer due diligence laid down in Chapter II. Member States shall notify to the Commission the characteristics of those mechanisms.

Competent authorities granted access to the central register referred to in paragraph 3a shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, including, tax authorities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and financing and seizing or freezing and confiscating criminal assets.;"

"4a. The information held in the register referred to in paragraph 3a of this Article with respect to any other trusts than those referred to in Article 7b (b) of Directive (EC) 2009/101 shall be accessible to any person or organisation that can demonstrate a legitimate interest. The information accessible to persons and organisations that can demonstrate a legitimate interest shall consist of the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as defined in Article 3(6)(b).

4b. Whenever entering into a new customer relationship with a trust or other legal arrangement subject to registration of beneficial ownership information pursuant to paragraph 3a, the obliged entities shall collect proof of registration whenever applicable.;"

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.

4th Directive Word (with Commission's proposals 20160705)

28/35

# Articles impacted by EC Proposals (1/2)

- Article 2 - obliged entities (note virtual currencies & custodial services necessary to access VCs)
- Art 3 - definitions (note virtual currencies)
- Art 12 & 13 - CDD
- Art 14 - CDD to existing customers
- Art 18 - ECDD
- Art 27 - reliance on 3<sup>rd</sup> parties
- Art 30 - central register (timely & unrestricted access by NCAs & FIUs) plus other requirements regarding beneficial ownership
- Art 31- disclosures around trust structures & others

# Articles impacted by EC Proposals (2/2)

- Art 32 & 33 - reporting obligations
- Art 30 - prohibition of disclosure
- Art 40 - Data Protection, Record-Retention & Statistical Data
- Art 47 - Supervision (note virtual currencies)
- Art 49 - National Cooperation
- Art 50 - Cooperation with ESAs
- Art 53-57 - Cooperation between FIUs & with Commission
- Art 66 & 67 - transposition date 1 January 2017 (*note the proposed transposition date – likely or not?*)



# Centralised Information Systems – banking / payment accounts

- Proposals require Member States to set-up centralised information systems on banking / payment accounts

to give faster access to FIUs to information on the identity of holders of bank and payment accounts

*Question:* Will we see a centralised bank and payment account register or other centralised mechanisms such as data retrieval systems in Ireland?

# Power of FIUs to request information

- Proposed that FIUs have the power to request any information from obliged entities without the need for a suspicious activity report

Ireland is probably covered here already to a large extent



# Harmonisation of EU approach - high-risk third countries

- Proposal sets out a minimum set of enhanced customer due diligence measures to be applied. This is consistent with latest FATF standards and limiting risk of regulatory arbitrage
- Art 18a lists additional steps to be performed:
  - information checks on customers
  - intended nature of business relationship
  - obtaining information source of funds or wealth
  - enhanced transaction monitoring ,and
  - systematic approval of senior management*

# Panama Papers

19/07/2016

Panama Papers: Argentina probes ties between ex-presidents, Miami real estate empire | Miami Herald

**REAL ESTATE NEWS** JULY 16, 2016 11:11 AM

## Argentina probes ties between ex-presidents, Miami real estate empire

### HIGHLIGHTS

A top aide to Néstor Kirchner shows up in Panama Papers

The aide is linked to \$65 million in condos and commercial properties

Argentine prosecutor suspects it's part of major money-laundering ring

# Transparency of UBO information – 1/3 (legal entities)

- Member States must hold information on the beneficial owners of all corporate and other legal entities incorporated within their territory in a national central register
- Competent authorities and obliged entities to have access to the register together with any person demonstrating “a legitimate interest” – *NB: the Proposal changes this.*

# Transparency of UBO information – 2/3 (legal entities)

- Upshot of Proposal and Directive 2009/101/EC (disclosure of company documents)
  - public disclosure of information on beneficial owners of firms and legal entities engaging in profit making activities.
  - information disclosed will consist of:
    - name
    - month and year of birth
    - nationality and the country of residence
    - of the beneficial owner
    - And nature and extent of beneficial interest held.
    - Proposal requires that this information be disclosed through the national central registers set by 4AMLD

# Transparency of UBO information – 3/3 (trusts)

- The previous two slides deal with disclosure of UBO information in the case of profit making entities
- For other types of structures e.g. trusts utilised for family offices and charities, the Proposal provides for information to be accessible to persons/ organisations that can demonstrate a “legitimate interest”.
- If this can be demonstrated the information will consist of:
  - name
  - the month and year of birth
  - the nationality and the country of residence



# Lowering of beneficial owner identification - 10%

- Where an entity presents a specific risk of money laundering or tax avoidance, the threshold triggering beneficial owner identification drops from 25% to 10%
- This information will also need to be reported to the central registers
- There are additional responsibilities here for 'obliged entities' under Directive 2011 / 16 / EU (administrative cooperation on taxation). This implements the OECD's Common Reporting Standard CR5 Directive

# When will the Proposals be considered?

- Proposals must go before European Parliament and the Council of Ministers
- Summer lull  
Council and Parliament went on recess 2 days after the Proposals were made public (i.e. 7 July)  
return second week September  
debate the Proposals – when? October?  
*what does this mean for the likelihood of a 1 January 2017 transposition (and indeed before 26 June 2017)?*

# Future of Finserv & Fintech – tools to help compliance

- FinServ
- FinTech
- Regulation
- RegTech

<http://businessandfinance.com/ceo-qa-peter-oakes/>

INTERVIEWS & FEATURES

## CEO Q&A



Peter Oakes, founder, Fintech Ireland

### FINTECH TIMES

**Peter Oakes talks to Niamh Mac Sweeney about the challenges and opportunities for Ireland's Fintech industry, and the potential impact of BREXIT.**

**Q: How is the fintech industry performing in Ireland?**  
**A:** Fintech is a bit of a catch word right now. Some think that this industry was born yesterday. However, Ireland has long been the home for many technology firms servicing financial services since the start of the IFSC.

**Q: What is driving this evolution?**  
**A:** As technology has enabled greater interaction, many of the tech pioneers turned their attention to financial services, such as payments and mutual funds. Jump forward to today and we are creating a dynamic fintech ecosystem, deeper and wider than the pioneers may have ever contemplated.

**Q: What are the key trends and investments taking place in the fintech industry in Ireland?**  
**A:** In Ireland, like elsewhere around the world, everyone is doing their own thing but they are generally pulling in the same direction - from the government, incubators, accelerators and support groups like Fintech Ireland.

It is great to see Ireland make a statement of commitment to fintech in the IFS2020 Strategy. It's difficult to get any accurate figures for investment in fintech globally. Reports range from \$13.8bn to \$22bn in 2015. In the case of Ireland, the figure for 2015 is reported to be \$631mn. That's not a bad performance.

**Q: Some of these fintech companies are early stage and fast growth companies. How did these companies come to be established and why is their growth prospects and potential so great?**  
**A:** Some are established by experienced industry hands, others by less experienced but visionary millennials. What they all share is a passion for delivering financial services which are far more connected, efficient, better and cheaper than that being provided by the traditional banking, insurance, payments and investment industries.

Some were established to 'cherry pick' specific aspects of the banking and insurance value chain. These players don't wish to provide, for example, a full banking service, but rather focus on specific services, such as foreign currency (CurrencyFair), money remittance (TransferMate) and providing credit (GRID Finance).

Others are gearing up for new EU regulations which will allow non-banks to use existing bank infrastructure to provide bank accounts and without being a full blown bank.

This is a sea-change, but the real

28 | Business & Finance July 2016

- If you need help with financial services regulation including AML/CFT get in contact with Peter Oakes at [peter@peteroakes.com](mailto:peter@peteroakes.com)

Advisory

Representation – *before regulators on supervisory & enforcement matters*

Training

Resources

Director Services

# Thank you

Contact Peter Oakes to discuss non-executive director & consulting services for regulated financial entities, fintech & other innovative companies



<https://ie.linkedin.com/in/peteroakes>



[peter@peteroakes.com](mailto:peter@peteroakes.com)



[+353 87 2731434](tel:+353872731434)