

WEBINAR

understanding **5MLD**

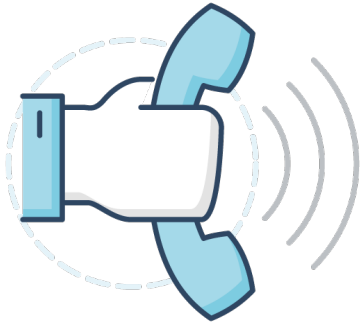
practical implications and anticipating
future regulatory changes

with **Dr Henry Balani**

compliance and AML consultant and academic

webinar brought to you by  **encompass**

housekeeping



meet our speaker



Dr Henry **Balani**

Compliance and AML consultant
and academic

- 20+ Years Experience
- 12 Years at Accuity
- Professional Services lead at Pega Systems
- Principal at Blockchain Advisory Institute
- Blockchain & Digital Assets
- Sanctions and Regulatory Compliance

Agenda

- Overview – what is the 5th Money Laundering Directive (5MLD)
- How is 5MLD different from previous money laundering directives?
- How to meet 5MLD requirements?
- Implications of American regulations
- Upcoming changes to 6MLD
- Q&A

What is the 5th Money Laundering Directive?

an overview

What is the 5th Money Laundering Directive?

- Money Laundering Directive (EU) 2018/843 aka 5th Money Laundering Directive (5MLD)
- EU member states must implement by 10th Jan 2020
- Intended to address gaps from the 4th MLD (implemented June 2017)
- Driven by following events:
 - Paris and Brussels terrorist attacks in late 2015 and early 2016
 - Panama Papers leak in early 2016
 - EU intent to align with FATF anti-money laundering recommendations

What 5MLD is looking to address?



Growth in terrorism trends



Increasing sophistication of money laundering globally

What the 5MLD is looking to address

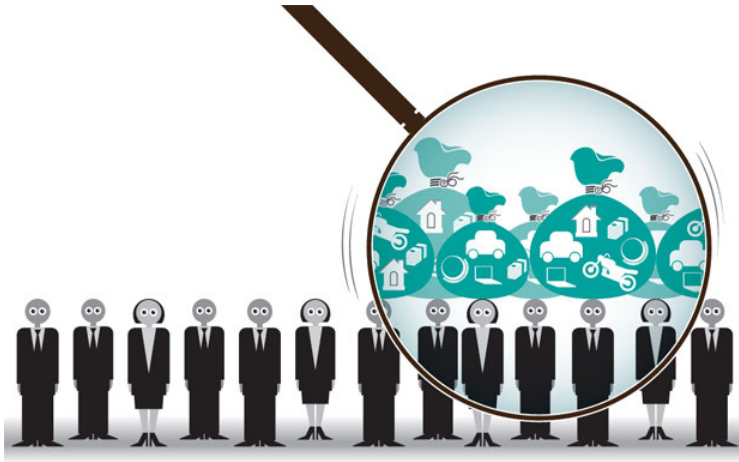


Variety of money
laundering channels:
trade, art, real estate



Use of virtual currencies and
anonymous pre-paid cards

What the 5MLD is looking to address

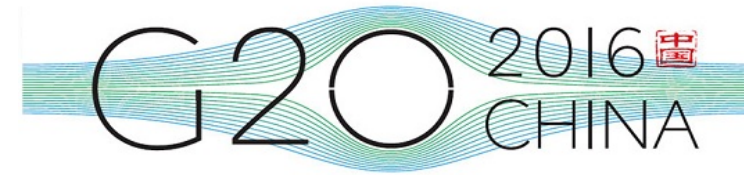


Transparency of financial transactions



Use of offshore jurisdictions to disguise ultimate beneficial owner

What the 5MLD is looking to address



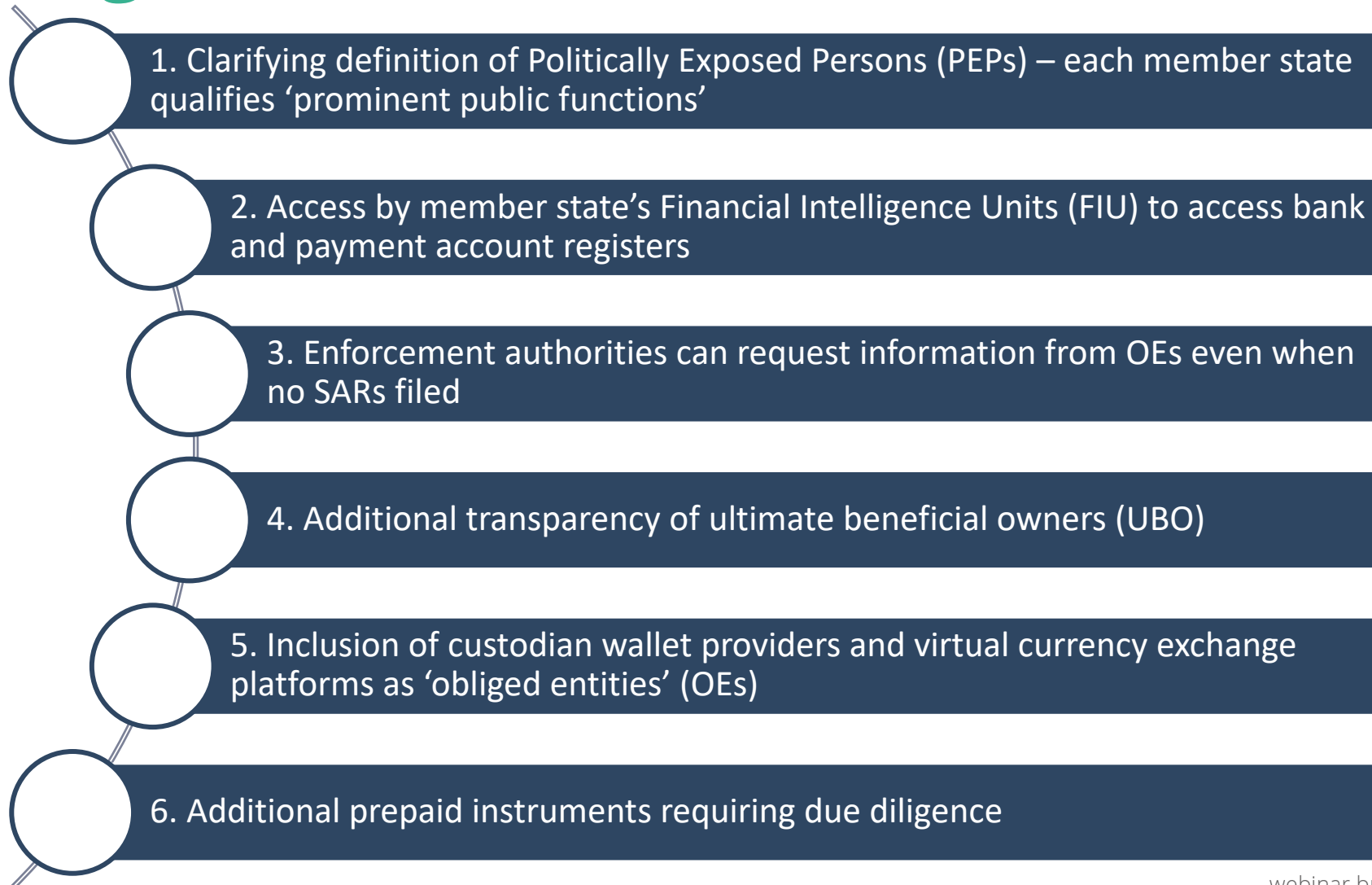
Aligning with FATF money laundering directives to prevent global terrorist financing

G20 statement to exchange tax data including beneficial ownership information



How is 5MLD different from previous money laundering directives?

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1. Clarifying definition of Politically Exposed Persons (PEPs) – each member state qualifies ‘prominent public functions’
 2. Access by member state’s Financial Intelligence Units (FIU) to access bank and payment account registers
 3. Enforcement authorities can request information from OEs even when no SARs filed
 4. Additional transparency of ultimate beneficial owners (UBO)
 5. Inclusion of custodian wallet providers and virtual currency exchange platforms as ‘obliged entities’ (OEs)
 6. Additional prepaid instruments requiring due diligence

How to meet 5MLD requirements?

How to meet 5MLD requirements?

1) PEP identification

- Member states need to maintain up to date list of “prominent public functions” for identification purposes
- Need to include accredited international organisations and EU version
- Does not necessarily include individual names, only functions
- PEP identification triggers enhanced due diligence (EDD), does not mean the individual is sanctioned

What Obligated Entities need to consider:

- Need to focus on risk of function – risk based approach
 - Establish risk tolerance level of your OE
 - Indicators can include country, relative seniority, # of close associates that are also PEPs, # of family members, # of negative news articles
- What is your financial institutions geographic reach? Domestic? International?
- License commercial list providers
- Use official lists and cross reference against sanctioned entities

How to meet 5MLD requirements?

2) Information sharing by EU member states FIUs

- Requires member states to set up centralised bank account registers to identify account holders, *including UBOs*
- Account data to be accessed include Account holder, Beneficial owner, Payment account (IBAN), Safe deposit box

What Obligated Entities need to consider:

- OEs will need systems in place to provide to the FIUs
 - Need to be easily accessible, unfiltered, timely and comply with data privacy laws
 - Typically OEs have databases that can integrate with third party applications using APIs

How to meet 5MLD requirements?

3) Complying with law enforcement requests

- Law enforcement agencies can request customer information even if no SARs have been filed

What Obligated Entities need to consider:

- OEs will have to train selected staff on how to handle requests
- Typically senior management, Compliance officers, Legal will review the requests
- Need to identify nature of request and ability to comply
- Technology/databases need to be 'tuned' to respond efficiently and effectively

How to meet 5MLD requirements?

4) Additional transparency related to UBOs

- Beneficial ownership registers required to be maintained by member states
- Registers must be verified, accurate and reliable
- European Commission needs to ensure compatibility between member state registers and be made public for those with 'legitimate interests' (to be defined by each member state)

What Obligated Entities need to consider:

- OEs need to standardise process of collecting customer information, including UBOs
- KYC records need to be reviewed for accuracy, timeliness and completeness
- OEs need to review their customer records against public registers
- Assist law enforcement agencies as needed in an investigation
- [UK Companies House](#) serves as a template

How to meet 5MLD requirements?

5) Addressing new financial services providers

- Custodian wallet providers and virtual currency exchanges need to be screened by OEs
- Also now classified as OEs requiring Anti-Money Laundering/Know Your Customer checks

What Obligated Entities need to consider:

- OEs need to compile a list of these new financial services providers
- Wallet owners need to be identified and recorded as part of KYC checks – need to link virtual currency addresses with the owners of virtual currency
- Wallet providers and virtual currency exchanges need to implement AML regime similar to other financial institutions

How to meet 5MLD requirements?

6) Lower thresholds for pre-paid instruments

- OEs required to identify holders of pre-paid cards valued over € 150 (down from € 250) and any remote payment transactions over € 50

What Obligated Entities need to consider:

- OE should conduct operational assessment and to ensure current payment systems can be adjusted for pre-paid and remote payment transactions
- Transactions need to be identified and should be rejected when
 - Source is from high risk territories or with poor AML standards
 - Transactions are anonymous



Implications of American regulations

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- Recent actions by Trump administration create inconsistencies in global approach
- Unilateral re-imposition of Iran sanctions
- New 'secondary sanctions' that potentially punish OEs that transact with American sanctioned entities

What Obligated Entities need to consider:

- OEs need to assess exposure of client base to American sanctioned entities
- Create 'firewalls' between USD and non USD transactions

Upcoming changes to 6MLD

6MLD: Recognition that current Directive still needs to be updated

- Need to stay vigilant in the fight against money laundering
- Goal is to implement in EU member states by June 2021
- Need to improve coordination between EU member states law enforcement agencies
- Looking to harmonise twenty two predicate offences, including tax related crimes, cybercrime and environmental offences
 - Goal is to establish common definition of money laundering across all EU member states
 - Existing “Spanish bullfighter” test where funds from bullfighting (deemed illegal outside Spain) is removed
- Establish minimum prison sentences for money laundering offences (5 years)
- Ban convicted money launderers from working in the public sector and from public office
- Convict both firms and individuals in the firm for money laundering
- Bar convicted firms from obtaining public contracts

any questions?





thank you!



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