

# Kluwer International Tax Blog

## Capturing Dematerialized Money through Anti-Money Laundering Provisions

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1. The Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament recently finalized the [amendments to the existing Anti-Money Laundering Directive \(AMLD\)](#). This decision was based on the related [proposal of the European Commission](#), submitted in July 2016. EU initiatives in this direction – including adoption of [AMLD](#) in 2015 and two Regulations in 2015 and 2016 to enhance transparency of fund transfers and identify third countries with significant deficiencies in anti-money-laundering legislation – are surely not a novelty. Most importantly, the EU is not alone in this struggle; its actions are in line with corresponding activities of the Financial Action Task Force and the OECD.
2. Amendments promoted in the recent decision of the competent Parliamentary Committees focus in particular on terrorist financing, money-laundering and tax evasion. Three types of measures are envisaged to curb such phenomena.
  1. *Firstly*, access to beneficial ownership registers should be granted to all EU citizens, irrespective of any legitimate interest that might or might not be manifested in relation to such information.
  2. *Secondly*, strict transparency requirements should apply to trusts and equivalent structures as well as to virtual currency platforms and custodian wallet providers. As a result, they should be obliged to identify beneficial owners or users correspondingly and guarantee the transparency of the financial transactions.
  3. *Thirdly*, identification requirements, in case of use of prepaid cards should be expanded, through application of a lower value threshold to this effect. Consent on the proposal at European Parliament level – expected within March – shall signal the initiation of discussions with the Commission and the Council for final adoption of the measures.
3. Introduction of anti-money-laundering legislation is of particular relevance to financial institutions and legal entities, since it might imply, amongst others, additional disclosure obligations and extension of liability of such legal persons as well as of their management. In addition, as is the case with the proposed measures commented herein, such provisions may envisage new or extended rights for citizens, hence being no less important for all persons in the EU, regardless of profession. In any case, money laundering, including tax evasion, is broadly

acknowledged as a global phenomenon affecting both developed and emerging economies, from which the EU community, as a whole, has not escaped. Its reach cannot but attract attention. In fact, according to a 2013 thematic paper prepared for the European Parliament, 2009 saw \$2.1 trillion being laundered and tax crimes caused the loss of 2-2.5% of EU Member States' combined annual GDP.

4. Even if in recent years an unprecedented volume of legislative measures to counter money laundering and tax evasion was introduced, or constantly updated worldwide, such offences seem to be intertwined with the history of human civilization. There is evidence that about 4,000 years ago, the Chinese were hiding their assets to dodge taxation and/or confiscation from governors. Such hidden assets were then re-injected into the market through investments in remote areas of the country or cross-border. These are the principles of money laundering, which encompass any practice of dressing assets illegally obtained or maintained with a cloak of legality, effectively shadowing their origins and beneficiaries. The ever-present conflict between rulers and ruled, State and citizen, tax legislator and taxpayer has always inspired the creation of structures beyond rulers' States' and legislators' reach. Only today the dynamics of the relationship seem to have been reversed.
5. Globalization and digitalization grant enormous potential to the once weak part of the ruler–ruled relationship, hence putting pressure to the former to amend his practices and create innovative solutions to save the game, if at all possible. Digital technology unveils new channels of money transfer, rendering everything virtual: transaction, parties, consideration. Legal persons can exist only on paper – or more precisely only on computer screens, transactions without reason and substance can be fully documented, money can disappear from one account and reappear in another merely as a change in numbers, virtual currencies suffice for effective payments. In other words, digitalization defines an entirely new world, in-between science fiction and reality, where everything is more or less grey, where black can be easily (mis)represented as white, where white might be darker than black.
6. In the neuronal webs of global techno finance money's *spectralized* light glows abstractly; money transforms in quanta and travels at the speed of light without confines, being everywhere and nowhere at the same time. In the unprecedented absence of any concreteness and materiality, money's pure essence manifests itself, abstract and intangible, a platonic idea rather than a limited asset. Thus, money rises far above the material world the world rulers used to know and could manage, even if it can always appear therein at will, perfectly concrete and tangible.
7. Transparency illuminating the dark areas, shedding light in the grey zones, seems to be the sole way forward. To this effect, several measures were suggested over the years to counter money laundering and tax evasion. Request of full transparency from financial institutions and legal persons with similar activities, establishment of interconnected shareholder registries and EU beneficial owner registry, demand for vigilant attention and full participation from all of the above subjects that made such suggestions. In this context, the recent proposal of the European Parliament seeks to enhance transparency requirements in order to unmask money-laundering phenomena and prevent their appearance in the future. Nevertheless, such requirements are susceptible to have implications in the areas of privacy and data protection. It is hence vital that any legislation in this direction include adequate safeguards for such fundamental rights and respects the principle of proportionality.

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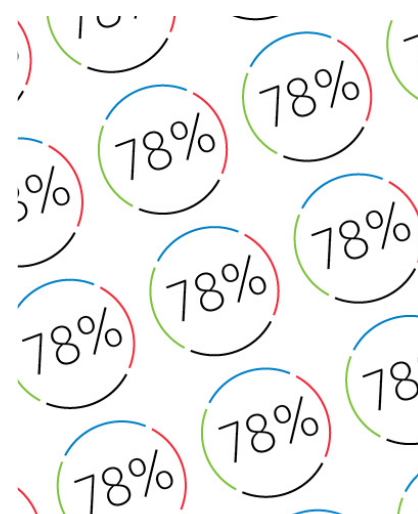
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