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THE 6TH ANTI-MONEY LAUNDERING DIRECTIVE

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ONE-ON-ONE INTERVIEW

THE 6TH ANTI-MONEY LAUNDERING DIRECTIVE

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Nick Parfitt is responsible for determining Acuris Risk Intelligence's approach to the market and building subject-matter expertise. He has 18 years' experience in project and programme management, business process change and in implementing technology and business solutions at financial services, telecoms and public sector organisations. His experience in the financial crime sector spans seven years helping tier 1 financial institutions assess and improve AML, KYC and sanctions operations. Mr Parfitt has worked for several tier 1 banks in the UK and holds an MBA (Distinction) from Cardiff University, and a BA (Hons) in Biochemistry from Imperial College.



R&C: Could you provide an overview of the intent and scope of the forthcoming EU Sixth Anti-Money Laundering Directive (6AMLD)?

Parfitt: Back in September 2018, the European Parliament “adopted a legislative resolution on the proposal for a directive of the European Parliament and of the Council on countering money laundering by criminal law”. This proposed directive aims to set minimum rules, or harmonise, the definition of criminal offences and sanctions under existing money laundering regulations, supports and adds to the preventative aspects of money laundering directives, and strengthens the legal framework around police cooperation. Approximately six months after the adoption of the Fifth EU Anti-Money Laundering Directive (5AMLD), on 12 November 2018, the Sixth EU Anti-Money Laundering Directive (6AMLD) was published by the European Parliament. While there are numerous proposed amendments that EU-regulated firms need to be aware of, the primary changes include harmonisation of predicate crimes to create a single list of 22 offences that include environmental crimes and cyber crime, broadening money laundering offences to include ‘aiding and abetting’, and ‘attempting’ and ‘inciting’, criminal liability extension to legal persons, mandated international cooperation when prosecuting money laundering

offences, tougher punishments and dual criminality requirements for certain offences.

R&C: Why is the European Commission looking to make changes so soon after the introduction of 5AMLD? How do the proposed measures of 6AMLD differ from its predecessor?

Parfitt: It may seem as if the ink is not yet dry on 5AMLD and certain member states are still struggling to implement 4AMLD in its entirety. However, 6AMLD is a logical extension to previous directives in that it aims to eliminate the existing ‘interpretation’ loopholes between member states’ domestic legislation to stop criminal arbitrage, and furthermore, provides clear guidance on where future focus will be. This can only be helpful. The inclusion of two new predicate crimes, environmental and cyber crime, clearly shows commitment to the safeguarding of the EU’s habitats and wildlife and the growing importance of cyber issues and their link to national security.

R&C: How does 6AMLD strengthen the AML sanctions already available to member states? Are penalties set to increase for the most serious money laundering offences?

Parfitt: Under 6AMLD, sanctions have been strengthened “in order to deter money laundering throughout the Union, member states should

ensure that it is punishable by a maximum term of imprisonment of at least four years”, and further states, “member states should also provide for additional sanctions or measures, such as fines, temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, temporary disqualifications from the practice of commercial activities or temporary bans on running for elected or public office”. For legal persons punishments include “exclusion from public benefits or aid, a temporary or even permanent ban from doing business, compulsory winding-up and a temporary or permanent closure of establishments used to commit the offence”. The language of the directive talks about enabling member states to ensure that when sentencing offenders, aggravating circumstances that are set out in the directive should be considered, and they retain discretion as to whether these circumstances should increase a sentence. Whether this leads to more severe sentencing for the most serious money laundering offences remains to be seen, although I suspect it will, otherwise why allude to it? It should also be noted that under the ‘requirement for dual criminality’ member states are required to criminalise money laundering arising from six specific predicate crimes even if the crime was lawful in the incurred jurisdiction.

R&C: What are some of the main challenges and issues likely to emerge

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following the implementation of 6AMLD? How should firms address potential uncertainties?

Parfitt: First, organisations need to comply with the ‘nuts and bolts’ of the directive, ensuring their policies, procedures and controls incorporate the additional predicate crimes and account for the harmonisation of the EU’s 22 specific predicate crimes and additional money laundering offences. They also need to determine how they maintain compliance and do not fall foul of more nuanced rules and that key staff understand their responsibilities and exposure. Governance structures and more robust

risk management frameworks need to be applied and reviewed regularly, with key risk indicators (KRIs) at the top of the agenda with board-level visibility and accountability.

R&C: What will 6AMLD mean for firms' staff training and monitoring systems, to ensure obligations are met?

Parfitt: Training programmes will need to be enhanced and extended to cover the changes arising from 6AMLD and the same will apply to monitoring systems. However, there is likely to be more impact on screening systems and third party or proprietary data, especially where new data sets are required for environmental and cyber crime. Data acquisition methodologies and models will have to be changed in order to maintain effectiveness, which can take time. While one can almost hear the groan from employees regarding 'yet' another mandatory training course, environmental and cyber crimes are easier for people to relate to. Similarly, the requirement for dual criminality over human trafficking, smuggling and sexual exploitation are real-world horrors that we all have a duty of care to stamp out.

R&C: What advice would you offer to firms on preparing for 6AMLD? How can data and technology be used to manage compliance and reduce exposure to risks?

Parfitt: First, make sure your organisation truly understands the impact of 6AMLD and look for the higher risk areas first. As with all money laundering regulation, take a risk-based approach. Given the addition to the predicate crimes and money laundering offences, look to ensure current systems can easily cope with scope changes and the addition of new data sets – and if they cannot, what is the roadmap to address deficiencies? We saw the inclusion of tax evasion as a predicate crime from the Financial Action Task Force (FATF) some years ago, so the direction of travel is to include more categories, which are likely to become ever more nuanced. Ensure your business is prepared and can accommodate changes easily.

R&C: Based on your experience, do firms need to act now to ensure they are ready for 6AMLD? Where should they start?

Parfitt: Prepare an enterprise-wide risk assessment to determine the materiality of the changes required and plan to close the gaps through a risk-based approach. Ultimately, the changes being proposed are sensible and necessary and will not be the last, so best to get ahead of them now. Brexit, by the way, will not alleviate the need to address 6AMLD. **R&C**