**Fifth Directive Changes**

Below is a summary of changes made to VinciWorks’ anti-money laundering courses in line with the EU’s Fifth Directive and the UK’s amendments to the Money Laundering Regulations.

These changes were made after extensive review the Fifth Directive and UK law. The impact of the Fifth Directive on organisations that are already in the regulated sector is minor.

The changes listed in the document are additions to the courses, nothing was removed.

The list of changes below does not include small textual changes, such as updates to names of laws and regulations. It includes all material updates made to the courses.

Brexit will not affect these regulations.

**AML Advanced**

## MODULE 3 CLIENT DUE DILIGENCE MEASURES

### LESSON 1 UNDERSTANDING CDD

#### Verifying Identify

The Fifth Directive introduces changes to the requirements for obliged entities on verifying the identities of customers or beneficial owners. Relevant persons must comply with and verify the identity of the customer, any person purporting to act on behalf of the customer and any beneficial owner of the customer when entering into a business relationship. Remote or electronic identification processes; regulated, recognised, approved or accepted at national level by the national competent authority may be taken into account.

The Fifth Directive also requires obliged entities to apply CDD when they have any legal duty in a calendar year to contact the customer for reviewing their relevant beneficial ownership information.

The Fifth Directive does not allow any automatic departure from CDD requirements, based on customer type alone. Instead, firms will be able to adjust the extent of CDD measures where a business relationship / transaction is determined to present a lower risk of money laundering.

### LESSON 3 SIMPLIFIED AND ENHANCED DUE DILIGENCE

#### Enhanced due diligence

Enhanced due diligence measures include obtaining information on the customer, beneficial owner, intended nature of the business relationship, source of funds, source of wealth of the customer and beneficial owner and reasons for intended or performed transactions.

The Fifth Directive adds to the existing list of "higher risk situations" which require the application of EDD to include transactions relating to:

“cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species.”

#### Country due diligence

The Fifth Directive requires those in business to carry out what amounts to due diligence on countries. Nations deemed to be high-risk because of their lack of effective anti-money regulations and due diligence requirements are placed on an EU list of states that require more intensive checks when money is moved from them into the EU. There is an obligation on regulated businesses to view this list and ensure that their due diligence procedures reflect the risk posed by financial movements from such countries.

EU list of high risk countries can be found [here](https://www.lawsociety.org.uk/support-services/advice/articles/european-commission-list-of-high-risk-third-countries/).

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### LESSON 4 THE PROCESS FOR BENEFICIAL OWNERS

#### Central register of beneficial ownership

The Fifth Directive places greater emphasis on transparency around ultimate beneficial ownership (UBO) as part of a targeted attempt to fight back against financial criminals who hide behind often complex and opaque corporate structures.

Under the Fifth Directive, member states are required to maintain inter-connected, publicly available national UBO registries. Separate registries for bank accounts must also be created, although these will only be accessible by authorities. UBO regulations will extend to trusts.

The Fifth Directive introduces “effective, proportionate and dissuasive measures or sanctions” for those failing to comply with UBO-related requirements.

It also extends the requirements relating to central registries, requiring that they be enhanced to ensure that their information is adequate, accurate and current.

In many circumstances, members of the general public will be able to access this information, although a ‘legitimate interest’ has been maintained for trusts.

### LESSON 5 THE BUSINESS RELATIONSHIP

#### Remain aware of risks

The Fifth Directive requires obliged entities to apply CDD when they have any legal duty in a calendar year to contact the customer for reviewing their relevant beneficial ownership information.

There is a requirement to report discrepancies of beneficial ownership information. This means regulated firms must report discrepancies between beneficial ownership information available at Companies House, and information which they obtain through their own compliance checks.

#### Examining transactions

Obliged entities must examine the background and purpose of all transactions if they are:

* Complex
* Unusually large
* Conducted in an unusual pattern
* Without apparent lawful or economic purpose

Under the Fourth Directive, the obligation was only to scrutinise transactions with no apparent legal or economic purpose which either:

* Unusually large
* Conducted in an unusual pattern

Among a list of customer risk factors at potentially higher risk, a customer being a third country national who applies for residence rights or citizenship in the member state in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities was added.

**AML Fundamentals**

## MODULE 3 CLIENT DUE DILIGENCE MEASURES

### LESSON 2

### In the UK, verification of a client’s identity must take place before the establishment of a business relationship or the carrying out of an occasional transaction.

### The Fifth Directive requires obliged entities to apply CDD when they have any legal duty in a calendar year to contact the customer for reviewing their relevant beneficial ownership information.

### If the client changes during the course of a matter, the identity of the new client must also be established and verified as soon as possible.

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**AML: Know Your Risk**

## Suspicious transactions

#### E-cash

Under the Fifth Directive, there are limits to monthly payment transactions and the maximum amount which can be stored electronically. Both limits are reduced from €250 to €150. In the case of redemption of the monetary value of electronic money, the previous amount of €100 has been reduced to €50.

Prepaid cards issued outside the EU are prohibited unless they were issued in a territory enforcing legislation equivalent to the EU’s AML and CDD standards.

**AML 360**

## Recent changes in Money Laundering law

#### Enhanced due diligence

The Fifth Directive requires enhanced due diligence when dealing with transactions from high risk countries. As well as obtaining evidence of the source of funds and source of wealth, information on beneficial ownership and background to the intended transaction must also be recorded.

#### Regulating cryptocurrency

Under the Fifth Directive, virtual currencies such as Bitcoin have a legal definition. Virtual currency platforms and wallet providers are regulated entities under the scope of the directive. While many already conduct due diligence and report suspicious transactions, the Fifth Directive makes it a legal requirement.

## Cryptocurrency

The Fifth Directive introduces a legal definition of cryptocurrency, also known as cryptooassets, which may broadly be regarded as “a digital representation of value that can be digitally transferred, stored or traded and is accepted… as a medium of exchange.”

Cryptocurrencies like Bitcoin and Ethereum are classified as exchange tokens. They aren’t regulated but fall under anti-money laundering regulations. Security tokens are classified as a specified investment and fall under FCA jurisdiction. Utility tokens are regulated by the FCA only if they are defined as e-money. Stablecoins can be defined as e-money, which is subject to the FCA’s control.

Under the Fifth Directive, cryptoassets (also known as cryptocurrencies) face more stringent controls, with exchanges being required to register with the relevant authorities in their jurisdictions, conduct customer due diligence, and prepare suspicious activity reports where these are deemed necessary.

Financial Intelligence Units (FIUs) are required to keep records — including names and addresses — of those purchasing virtual currency.

The Fifth Directive covers two types of cryptoasset business:

* Providers engaged in exchange services between virtual currencies and fiat currencies i.e. cryptocurrency exchanges
* Custodian wallet providers i.e. cryptocurrency wallet services where the service holds its users’ private keys

These categories of business are obliged entities for AML purposes, similar to traditional financial institutions such as banks. They are obligated to implement measures to counter money laundering and terrorist fundraising, such as customer due diligence and transaction monitoring. They are also required to maintain comprehensive records and report suspicious transactions.