



Stakeholders' Newsletter

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Fifth Anti-Money Laundering Directive

Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “**Fifth Anti-Money Laundering Directive**” or “**5MLD**”) came into force in the E.U. in 2018. In April 2019, HM Treasury issued a [Consultation](#) on the transposition of 5MLD in the U.K. Although the deadline to respond to the Consultation has passed, the FMLC would like to draw attention to certain issues of legal uncertainty.

5MLD expands the E.U.’s anti-money laundering regime to include, *inter alia*, cryptoassets. The FMLC has resolved to send a letter drawing attention to an issue of uncertainty in respect of 5MLD’s definition of virtual currencies. The definition in 5MLD seems to exclude the possibility of cryptoassets which qualify as money being caught within the regulatory perimeter, and therefore excludes some of the best-known cryptoassets. In 2016, the FMLC [concluded](#) that economically tradeable currencies could indeed qualify as “money” in certain circumstances.

The regime has also been extended to apply to all express trusts, new and pre-existing, not just those that have tax consequences. This gives rise to the potential for the provisions to have a disproportionate impact in the U.K. since trusts are employed so extensively under English law for arrangements which would be contractual in other jurisdictions. The FMLC had published a [paper](#) in 2006 which highlighted similar issues in respect of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the “**Third Anti-Money Laundering Directive**”). It will send a letter to HM Treasury reiterating the point and drawing to certain other uncertainties arising from 5MLD .

2019 Quadrilateral Conference

The Quadrilateral conference is an annual meeting amongst the FMLC and its sister organisations—the Financial Markets lawyers group at the New York Federal Reserve (“**FMLG**”), the European Financial Markets Group at the European Central Bank (“**ECB**”) and the Financial Law Board of the Bank of Japan (“**FLB**”)—to discuss topics of mutual interest. This year’s conference took place on 11 and 12 July in Tokyo. FMLC Chairman, Lord Thomas, and Chief Executive, Joanna Perkins, attended together with Members of the Committee and other stakeholders who are closely involved with the Committee’s work. They participated in a range of panel discussions on issues of legal uncertainties surrounding benchmarks reform, financial market responses to Brexit and regulatory developments in relation to FinTech.

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