

Implementation of 5th AML Directive and KYC measures : what you need to know

The French implementation of the AML 5 Directive contains important new features regarding fight against money laundering and financing of terrorism. It modifies the procedures for identifying and verifying customer identity and tightens the conditions allowing issuers of electronic money to be exempt from it, under conditions sometimes specific to French law. Risk assessment by the entities concerned and the implementation of simplified measures remain solutions to be considered in order to limit the operational impact of this transposition.

Authorized by article 203 of the PACTE law of May 22, 2019, the French Government adopted, with a few weeks of delay, Ordinance 2020-115 of February 12, 2020 strengthening the national system for fighting money laundering and terrorist financing. This Ordinance implements Directive (EU) n°2018/843 of May 30, 2018 called "AML 5", itself amending Directive (EU) n°2015/849 called "AML 4". This Ordinance entered into force on February 14, 2020, at the same time as its Application Decrees Nos 2020-118 and 2020-119 of February 12, 2020.

Application to institutions "passporting" their services in France from another Member State

French KYC rules must be **complied with by institutions operating in France using agents or distributors** (L.561-2 of the French Monetary and Financial Code, "CMF") or established on the French territory through branches. They are therefore affected by the changes made to the French regulatory framework presented below. The foreign institutions concerned should nevertheless implement the exemptions specific to French law as well as the other more favourable provisions **with caution** insofar as they also **remain subject to the regulations of their Home Member State**.

Modification of the conditions applicable to the identification and verification of the identity of the client before entering into a business relationship

Easing of some identification criteria

Entry into a business relationship: face-to-face or equivalent – In France, since April 2018 and the implementation of the AML 4 Directive, two means of electronic identification are considered to be as reliable as face-to-face verification (R.561-5-1 CMF):

- The means of electronic identification presumed to be reliable within the meaning of the Post and Electronic Communications Code, namely those which are certified by the ANSSI - national authority in matters of security and defence of information systems - as responding to the "**high**" assurance level within the meaning of the European Regulation on electronic identification and trust services, known as the "eIDAS Regulation";
- The **means of electronic identification issued under a French electronic identification scheme notified to the European Commission** in accordance with the eIDAS Regulation.

While the latter shall until now match a "high" assurance level within the meaning of the eIDAS Regulation, the French transposition of AML 5 Directive **has lowered this level of requirement and now requires an assurance level "at least substantial"**.

The use of a notified means of identification with a substantial assurance level was not enough in itself before. Now it is considered **as secure as entering a face-to-face relationship** and **can therefore be used alone** even when the client is not physically present. This modification should make it easier to verify the client's identity, but its application is nevertheless subject to France's notification of such a scheme to the European Commission, which has **not been achieved at this stage**.

Verification of domicile is no longer necessary – The obligation for the institution to verify the domicile of the applicant before any account opening is deleted in any case.

Remote entry into business relationship

Entering into relationship remotely is no longer qualified as a high-risk situation – Before the implementation of AML 5 Directive, the physical absence of the client was considered in France, and on the basis of Annex III to the AML 4 Directive, as a high-risk situation. As such, it involved the implementation of at least two additional KYC measures among six proposed (**former R.561-20 CMF**). The new CMF architecture no longer considers remote entries into relationship as high-risk situations. In practice however, **the combination of two additional KYC measures remains required** when the client is not physically present and when the KYC measures equivalent to the face-to-face measures listed above cannot be implemented (**R.561-5-2 CMF**).

The additional measures resulting from French law are eased – The texts implementing the AML 5 Directive have **reduced the intensity** of some of these six measures, by making the following modifications:

- **Collection a single official document instead of two:** to benefit from the first additional measure, collecting the copy of a single official document certifying the identity of the client is now sufficient.
- **Electronic means of identification:** the characteristics of the electronic means of identification which can be used for the implementation of additional measures have been modified:
 - As indicated above, the use of a means of identification **notified to the European Commission** as presenting at least a substantial assurance level is no longer a complementary measure but is now considered **as secure as face-to-face verification**.
 - The new wording of article R.561-5-1 introduces as a complementary measure the use of a service **certified compliant by ANSSI at the substantial assurance level** within the meaning of the eIDAS Regulation. The level of assurance required is therefore the same as before – substantial – but the fact that it is certified by ANSSI and not notified to the European Commission should, we hope, speed up its availability on the French market. Indeed, during the month of January, the ANSSI declared that the "Identité Numérique" solution developed by La Poste complies with the substantial assurance level.
- **Introduction of the electronic registered delivery services:** the implementation of the AML 5 Directive introduces the possibility to verify the identity of the customer by using a **qualified electronic registered delivery service delivered by a trusted service provider**. These providers are listed by ANSSI, which lists seven to date, such as AR24, Orea, LetReco or Evelop. This new procedure is not simpler however since it also relies on an advanced electronic signature or seal.

New requirement for systematic communication by the third-party introducer

Since February 14, 2020, the third-party introducer must transmit the information collected for the implementation of the KYC measures **immediately and systematically**, whether the mandating institution requests it or not. In accordance with the AML 4 directive, the transmission of collected copies of supporting documents remains required only when the institution requests it (**R.561-13 CMF**).

Reinforcement of conditions allowing electronic money issuers to be exempt from KYC measures

More stringent exemption conditions from the AML 5 Directive – Subject to certain criteria and thresholds, electronic money issuers could be exempt from identifying their customers. These criteria and thresholds were modified as follows by the AML 5 directive, before being transposed as such in France (**R.561-16-1 CMF**):

- **The stored value cannot exceed 150 Euros** and, if the instrument is reloadable, the loading and payment limit cannot exceed this same threshold of 150 Euros over a period of 30 days. This threshold was previously 250 Euros.
- **Withdrawal and reimbursement** of electronic money are subject to KYC measures as soon as they exceed 50 Euros. This threshold was previously 100 Euros.
- **Remote payment transactions** now follow the same regime and must therefore be preceded by KYC measures beyond 50 Euros, subject to the specific French transition period mentioned below.

Provisions specific to the French regulatory framework – Through these implementation texts of Directive AML 5, the French regulator also adds a new exemption regarding cash loading and impose a new obligation:

- **New exemption allowing to load the e-money instrument in cash** without implementing KYC measures: the support **must not be reloadable** and the stored value **cannot exceed 50 Euros**. This exemption is in addition to the pre-existing one, according to which electronic money should only be spent in a limited network of people or for a limited range of goods or services (in addition to other storage and reloading conditions).
- **Constant vigilance**: electronic money issuers must now set up a general system for monitoring and analysing operations in order to detect unusual or suspicious transactions. The objective of this new obligation is to ensure that issuers can assess the risk of operations for which they decide not to implement KYC measures and detect when KYC measures are to be implemented.

French transition period for internet and remote payments – Article 21 of Decree 2020-118 grants a transition period **not provided for by the AML 5 Directive** to issuers of electronic money. During this period, they are exempt from any KYC obligation for internet and remote payments not exceeding 150 Euros, provided that the electronic money instrument meets certain limitations:

- **Use of electronic money**: purchase of consumer goods or services in a network of acceptors identified by the issuer and contractually linked to this issuer;
- **Maximum value stored**: 150 Euros;
- **Loading**: neither by cash nor by another anonymous electronic money instrument;
- **Reloading**: no reloading possible.

This transition period lasts **until January 1, 2021**. Then, all instruments allowing remote payments over 50 Euros will have to be subject to KYC measures.

Electronic money instruments issued outside of EU – In accordance with AML 5 Directive, as of July 10, 2020, any anonymous electronic money instruments issued in third countries must fulfil the exemption conditions partly listed above so that payment transaction acquirers can accept electronic money payments made with these anonymous instruments.

Simplified measures and risk assessment by obliged entities

The criteria for KYC exemption are increasingly limited, so that the implementation of the corresponding measures becomes inevitable for many entities. However, alternatives remain open.

Simplified KYC measures – The implementation of the AML 5 Directive has not reversed the possibility for the obliged entities, when they consider the risk of money laundering and terrorist financing to be low, to implement these KYC measures in simplified way ([L. 561-9. 1° CMF](#)). This simplification is however only relative and does not for example concern the verification of the identity of the client, which can at best only be deferred ([R. 561-14-1 CMF](#)).

Risk assessment – The entities concerned have therefore some leeway when they consider, under risk identification and assessment systems, that the risk is low. To identify and assess this risk, the CMF gives a certain number of factors to take into account ([L. 561-4 CMF](#)). As such, the implementation of the AML 5 Directive introduces a reference to Annexes II and III to the AML Directive 4. This insertion is not insignificant insofar as Annex II, which lists factors indicating lower risk, refers to certain types of electronic money instruments.

EBA consultation – Risk assessment by concerned entities is an issue getting more and more important within the French regulatory framework. However, this framework is almost only the implementation of European regulations, and it is therefore difficult to have a real influence on its development at national level. On the other hand, the European Banking Authority has launched a consultation, which will close in the coming weeks, aiming to modify its Guidelines of 4 January 2018 on risk factors. The responses to this consultation could thus be determining for risk assessment at all national levels.

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