



## Fintech Alert | Updates | July 2020

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On 12 June this year the Spanish Ministry of Economic Affairs and Digital Transformation published a Draft Bill to amend Act 10/2010 of 28 April on Anti-money Laundering and the Financing of Terrorism (Spanish acronym: "LPBCFT") aimed at incorporating Directive (EU) 2018/843 of 30 May 2018 on the prevention of money laundering or terrorist financing – more commonly known as the Fifth Directive – into the Spanish legal system.

The most salient new features of the Draft Bill are centred around the addition of new liable parties, most notably including virtual currency exchange platforms, providers of exchange services between virtual currencies and legal tender, and custodian wallet providers, with the latter understood as those who offer custodial services of users' private credentials for the possession, safekeeping and transfer of virtual currencies (often referred to as cryptocurrencies).

Spanish lawmakers have looked to go one step further by including providers of exchanges between virtual currencies of the same category (as opposed to between virtual currency and real money). Given that this has been overlooked by the Fifth Directive, a blind spot in the fight against money laundering and terrorism financing has been uncovered.

The Draft Bill proposes the creation of a register for these new liable parties who provide services to residents in Spain, as well as for natural persons whose activities are managed in Spain and for legal persons established in the country, irrespective of where the recipients of the service are located in both the latter

cases. The Bank of Spain will be responsible for overseeing fulfilment of the obligation to register, not to mention the requirements of good repute. The period to apply for entry into the register will be nine months from the time at which the new LPBCFT comes into force.

The anonymity of cryptocurrencies means that they cannot be traced, which in turn provides a breeding ground for suspicious and not-so-legal transactions. This is the biggest hurdle to overcome. What's more, the ability to cross borders enables the so-called "crypto players" to locate themselves in jurisdictions with ineffective anti-money laundering measures. Given that cryptocurrencies are undoubtedly here to stay, lawmakers have opted to provide them with more certainty by requiring new liable parties to observe the money laundering guidelines prescribed by law.

In view of the new regulation at European level, many providers who currently engage in virtual money exchange, as well as custodian wallet providers, are relocating their registered offices to non-EU countries. Others have even decided to cease these activities

altogether due to high operating and user experience costs which entail the implementation of due diligence measures and fulfilment of the reporting obligations required in each of the Member States where these services are provided.

Despite the above, just including exchanges and custodian wallet providers as liable parties doesn't seem enough in light of the plethora of other players such as the trading platforms which bring together buyers and sellers of cryptocurrencies and fall outside of the scope of anti-money laundering regulation.

We will have to keep a close eye on any possible changes to the Bill based on further amendments which may come to light. The Draft Bill is expected to be passed by Parliament in 2Q 2020. [Please follow this link to the Bill.](#)

If you have any questions, please do not hesitate to contact our team:

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