

Third Money Laundering Directive

Name	Number	Web address
Third Money Laundering Directive	Directive 2005/60/EC	http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf

Status

- Political agreement was reached in ECOFIN on 7 June 2005.
- The final text was published in the Official Journal of the European Union on the 25 November 2005. The Directive entered into force on the twentieth day after its publication in the Official Journal. Member states had until 15 December 2007 to implement the Directive.
- The first set of comitology provisions was adopted in July 2006. It covers the definition of Politically Exposed Persons, criteria for Simplified Customer Due Diligence and for financial activity on an occasional or very limited basis.
- The Commission has decided not to make use of its comitology powers in the context of enhanced due diligence and equivalence.

UK Implementation Details

- The Money Laundering Regulations 2007, which implement the Directive in the UK, came into force on 15 December 2007.
- The Joint Money Laundering Steering Group (JMLSG) Guidance 2007 replaced the 2006 version of the guidance on 15 December 2007. The new guidance has been revised to reflect the changes to the UK's legal framework as a result mainly of the implementation of the Directive.
- In many cases, financial firms were already taking the measures that the Money Laundering Regulations 2007 made mandatory.

FSA Aims & Areas of Interest

We were working to support HM Treasury in the implementation of the Directive into UK law in a risk-based and proportionate way and ensure that new requirements were feasible, proportionate and justified by cost-benefit analysis.

We are now working with our European counterparts in the 3L3 AML Task Force to address any supervisory issues arising from the implementation of the Directive.

Background to Directive

The FATF is an international organisation that sets standards in the fight against money-laundering and terrorist financing. The EU translates these standards into EU law through Money Laundering Directives, which provide a common legal basis for the implementation of the FATF's Recommendations on Money Laundering.

The First Money Laundering Directive (1991) concentrated on combating the laundering of drugs proceeds through the traditional financial sector. This imposed obligations on financial sector firms, which included requirements relating to maintaining systems for customer identification, staff training, record keeping, and reporting of suspicious transactions.

The Second Money Laundering Directive (2001) amended the 1991 Directive to introduce changes in two main areas:

- it expanded the scope of predicate offences for which suspicious transaction reporting was mandatory, from drug trafficking to all serious offences; and
- it extended the scope of the Directive to a number of non-financial activities and professions (including lawyers, notaries, accountants, estate agents, art dealers, jewellers, auctioneers and casinos).

The Third Money Laundering Directive reflects the FATF's 2003 Recommendations. It replaces the First Money Laundering Directive as amended by the Second Money Laundering Directive.

Purpose of Directive

The main purpose of the Directive is to provide a common EU basis for implementing the revised FATF Recommendations on Money Laundering (issued in June 2003). It also takes account of the new risks and practices which have developed since the previous Directive. The Directive replaces the First Money Laundering Directive, as amended by the Second Money Laundering Directive.

Key provisions

- The Directive applies not just to the financial sector but to lawyers and accountants, casinos, estate agents, trust and company service providers and high value dealers; all persons subject to the Directive will have to be supervised for AML purposes by a competent authority.
- It explicitly covers terrorist financing as well as money laundering.
- It contains more detailed 'customer due diligence' provisions than existing directives. In particular these:
 - are defined as comprising not just customer identification and verification of identity, but also establishment of the purpose and intended nature of the business relationship and ongoing monitoring;
 - apply to new and existing customers;
 - require identification of beneficial owners and the verification of the beneficial owner's identity;
 - introduce exemptions from full customer due diligence ('simplified due diligence') for certain low risk situations; and
 - require 'enhanced due diligence' measures for situations that present a higher money laundering or terrorist financing risk and at least for non-face-to-face business, 'politically exposed persons' and international correspondent banking relationships.
- The Directive provides for comitology measures – legally binding implementing measures the Commission can adopt to clarify certain provisions of the Directive. Among others, the Commission may adopt criteria for simplified and enhanced due diligence, definitions of e.g. beneficial owner and politically exposed persons, and identify third countries that do not meet the provisions of the Directive.
- It recognises in EU law the concept of a risk-based/risk-sensitive approach to anti-money laundering.
- It applies a licensing/registration system for 'currency exchange offices', trust and company service providers that involves a fit and proper test for those who direct or beneficially own such businesses.
- It requires financial firms to apply customer due diligence and record-keeping standards to overseas branches and majority-owned subsidiaries (unless not permitted by local law).
- It introduces more explicit obligations on institutions to have systems for AML risk management and compliance.
- It includes miscellaneous provisions on, for example, the suspicious activity reporting regime and the relationship with Financial Intelligence Units.

Consultation

Consulting institution	Consulting details	Deadline
HM Treasury	Implementing the Third Money Laundering Directive: a consultation document.	20 October 2006
HM Treasury	Consultation paper on the future regulation of Money Service Businesses.	6 December 2006
HM Treasury	Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007.	2 April 2007
JMLSG	Consultation on the revised JMLSG Guidance 2007	7 September 2007

EU institution's meetings

EU institution	Details	Date
3L3 Anti Money Laundering Task Force	EU financial sector supervisors discuss the implementation of the directive's requirements, as well as related matters like the EU's Wire Transfer regulation.	Quarterly. Financial Crime Policy Unit attends.

Timetable	Deadline
Formulation of proposal	
Working group	
Commission's draft proposal	June 2004
Proposal to Council	
Parliament's option (first reading)	
Committee(s) amendments	
Cion decision on amendments	
COREPER	20 November 2004
Working group meetings	
Amendment sent to Cion	
Working group(s) report to Council	
Council	
Vote on adoption or common position	7 December 2004
Parliament's option on common position (second reading)	
Overall deadline for decision by parliament	
Rapporteur's option	
Deadline for amendments to option	
Committee(s) vote	
Plenary vote	24/25 May 2005
Council	
Approval or conciliation committee?	
Publication in the Official Journal	25 November 2005
Finalising level 2 measures	First set: 15 June 2006
UK Authorities' implementation	15 December 2007
Industry implementation	15 December 2007
COMMENTARY	

Internal Contacts		
FSA Lead	ISPC Lead	GCD Lead
Carolyn Gardner	Richard Chalmers	Margaret Stone