

## The EU 4th Money Laundering Directive: the new framework emerges

The European Commission has released the text of draft legislation to update the European anti-money laundering ("AML") and counter-terrorism financing ("CTF") framework. It has issued legislative proposals for the Fourth Money Laundering Directive ("4MLD") and a separate draft regulation setting out new information requirements in relation to funds transfers.

The Commission's legislative proposals are principally aimed at giving effect to changes to the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation maintained by the Financial Action Task Force ("FATF") (see Clifford Chance briefing – February 2012). However, there are some areas in which it has gone further to seek to strengthen international co-operation and harmonise the approach to AML compliance across Europe. The key changes are summarised below.

<p>Risk based approach</p>	<p>4MLD will increase the emphasis on the risk based approach which has formed an integral part of the UK AML regime for many years, and moves away from the current system of exemptions from customer due diligence requirements based on third country equivalence. It acknowledges that the levels and types of action required to be taken by member states, supervisors and firms will vary according to the nature and severity of risks in particular jurisdictions and sectors, and clarifies the types of situations in which simplified customer due diligence will be appropriate, as against those where it is necessary for firms to conduct enhanced checks.</p> <p>4MLD will update the current list of circumstances when simplified customer due diligence will be appropriate by removing financial institutions which are themselves subject to AML/CTF regulation, listed companies and domestic public authorities from the categories of clients to be regarded as posing a lower risk. Instead, regulated firms will need to consider guidance issued by member states on lower risk categories and they will then have to decide whether each customer relationship or transaction presents a low risk.</p> <p>Under 4MLD, transactions including those involving public limited companies, public bodies, particular types of insurance, pensions and some other financial products and some defined jurisdictions will qualify for simplified due diligence. Conversely, examples of transactions where enhanced due diligence will be required include those involving asset holding vehicles and cash-intensive businesses, those where unusual or apparently unnecessarily complex ownership structures are in place and those associated with "higher risk" jurisdictions such as countries subject to financial sanctions or identified as not having effective AML or CTF systems.</p>
<p>Extended definition of politically exposed persons</p>	<p>The new directive will clarify that enhanced due diligence will always be appropriate where transactions involve politically exposed persons ("PEPs"). The definition of PEPs has been widened to include domestic individuals occupying prominent public positions, in addition to those from abroad.</p>

<p>Lower exemptions for one-off transactions and expansion of the perimeter</p>	<p>Under the proposals, the numbers of transactions in which customer due diligence will be required will also be increased by the reduction of the threshold over which traders in high value goods must undertake customer due diligence when dealing with cash transactions, from EUR15,000 to EUR 7,500. Customer due diligence requirements will also be extended from "casinos" to other parts of the gambling sector.</p>
<p>New requirements on beneficial ownership information</p>	<p>The proposals aim to increase transparency by requiring companies and trusts to hold information on their beneficial ownership, and to make this information available to supervisors and parties conducting due diligence on them. The definition of a beneficial owner will remain unchanged, covering those who own or control 25 per cent or more of a business, but revised clarification is given as to how such persons are to be identified.</p>
<p>Inclusion of tax crimes as predicate offences</p>	<p>Although tax crimes have long been predicate offences in the UK, this has not been the case in many other jurisdictions. The proposals add tax evasion and other serious fiscal offences to the list of predicate offences.</p>
<p>Reinforcement of sanctioning powers and requirements to co-ordinate cross-border action</p>	<p>A new set of minimum principles-based rules aims to strengthen administrative sanctions. Stronger and clearer requirements are imposed in relation to the collection and reporting of data by national authorities and in relation to the exchange of information and co-operation between them.</p>
<p>National and Europe-wide risk assessments</p>	<p>Each member state will be required to carry out a risk assessment at national level and to make the findings available to regulated firms to help them conduct their risk assessments. In addition, it is proposed that the European Supervisory Authorities will undertake an assessment, provide a joint opinion on the AML risks facing the EU and provide regulatory technical standards on specific issues.</p>
<p>New information requirements for funds transfers</p>	<p>The draft regulation on wire transfers tightens existing legislation and aims to increase the traceability of payments by requiring the inclusion of information on payees. It will introduce requirements on payment service providers to verify the identities of beneficiaries for payments originating outside the EU for amounts over EUR 1,000, to put in place risk based procedures to determine when to execute, reject or suspend transfers and to keep records for five years. It also clarifies that credit or debit cards and mobile phones and other electronic devices will be covered by the requirements if they are used to transfer funds.</p>

At the consultation stage, the Commission's proposals did not meet with universal agreement. In particular, the UK government, adopting a view also taken by the majority of businesses which responded, opposed some of the measures, which it saw as a precursor to an increasingly federal model of AML

and CTF regulation (see Clifford Chance briefing – August 2012). It, and they, pointed to the need to preserve flexibility as to how to tackle different risks in their own jurisdictions.

The Commission has acknowledged these concerns, but has implemented its proposals largely unchanged. The

legislative proposals seek to strike a balance between the need for businesses to be allowed the latitude to make informed decisions as to the levels of risk in individual transactions, whilst encouraging greater collaboration, co-operation and consistency of approach between national authorities.

As we noted when FATF published its amendments to its standards and when the Commission unveiled its consultation exercise last year, whilst the proposals introduce some new obligations, the impact of most of the changes on UK regulated firms is unlikely to be substantial (although in certain areas, such as in the approach to simplify due diligence, they will have to change their procedures). Most of the requirements added in the amendments to the FATF standards and now brought forward in these legislative proposals already form part

of the UK AML/CTF regime. However, they are likely to require more significant structural and legislative changes in many jurisdictions in which UK firms operate.

The changes set out in the legislative proposals are not immediate. They will now be considered by the European Parliament and the Council of Ministers. In the case of the draft directive, changes to domestic implementing legislation in individual jurisdictions will be required thereafter. In the meantime, AML and CTF enforcement authorities in the UK, US and other jurisdictions have

reaffirmed their commitment to taking decisive action where firms fall short of their obligations in high profile cases involving the imposition of substantial penalties. As these obligations continue to evolve and, in many jurisdictions, become more onerous, firms are advised to keep their compliance arrangements under close review and implement changes where necessary.

The full text of the proposals for 4MLD and the new regulations can be found at [http://ec.europa.eu/internal\\_market/company/financial-crime/index\\_en.htm](http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm).

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