

European Commission report on the application of the Third Anti-Money Laundering Directive - Frequently asked questions

1. What are money laundering and terrorist financing?

1.1 What is money laundering?

Money laundering is the conversion of the proceeds of criminal activity into apparently clean funds, usually via the financial system. This is done by disguising the sources of the money, changing its form, or moving the funds to a place where they are less likely to attract attention.

"Criminal activity" includes fraud, corruption, drug dealing and other serious crimes.

1.2 What is terrorist financing?

Terrorist financing is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to carry out terrorist offences.

2. What is the EU already doing to fight money-laundering and terrorist financing?

2.1 What is the current legal framework?

The current EU legislation, the so-called Third Anti-Money Laundering Directive (the 3rd AMLD), is in force since 2005. It provides a European framework around the international Financial Action Task Force (FATF) standards (see [IP/04/832](#)).

The Directive applies to the financial sector as well as to lawyers, notaries, accountants, real estate agents, casinos and company service providers. Its scope also encompasses all providers of goods, when payments are made in cash in excess of €15 000.

Those subject to the Directive need to:

- identify and verify the identity of their customers and of their beneficial owners, and to monitor the transactions of and the business relationship with the customers;
- report suspicions of money laundering or terrorist financing to the public authorities - usually, the financial intelligence unit; and
- take supporting measures, such as ensuring the proper training of personnel and the establishment of appropriate internal preventive policies and procedures.

The Directive introduces additional requirements and safeguards for situations of higher risk (e.g. trading with correspondent banks situated outside the EU).

Since the existing Directive is based on the international standards, it will need to be reviewed in order to reflect the new FATF standards (see question 4.3.).

2.2 What are the other elements of the anti-money laundering framework?

The Third Anti-Money Laundering Directive (3rd AML) is part of a broader set of legislative measures aimed at the prevention of money laundering and terrorist financing, including:

- [Directive 2006/70](#) containing a number of implementing measures with respect to Politically Exposed Persons, simplified customer due diligence procedures and limited exemptions.
- [Regulation 1781/2006](#), which ensures traceability of transfers of funds by requiring information on the payer to accompany transfers of funds for the purposes of the prevention, investigation and detection of money laundering and terrorist financing.
- [Regulation 1889/2005](#) on controls of cash, which requires persons entering or leaving the EU to declare cash sums they are carrying if the value amounts to €10 000 or more.
- EU [Council Decision 2000/642](#) concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information,
- A number of EU legal instruments imposing sanctions and restrictive measures on governments of third countries, or non-state entities and individuals.

2.3. How do Member States cooperate in this field?

The 3rd AMLD requires Member States to provide appropriate assistance in order to facilitate coordination of AML matters. At the practical level, Member States take an active part in the EU Financial Intelligence Unit platform. At the policy level, Member States participate in regular meetings of the Committee for the Prevention of Money Laundering and Terrorist Financing (CPMLTF) and the Anti-Money Laundering Committee.

The “EU Financial Intelligence Units’ Platform” is an informal group set up in 2006 by the European Commission, which gathers Financial Intelligence Units from the Member States. Its main purpose is to facilitate cooperation among the national financial intelligence units (FIUs), whose tasks are to receive, analyse and disseminate to competent authorities reports about suspicions of money laundering or terrorist financing. The European Commission participates in the Platform and provides support.

3. How will the European Commission update EU rules?

It is important to rapidly implement the international standards which were adopted by the Financial Action Task Force on 16 February. The adoption of the Commission's application report on the Directive presents the outcome of its own review process, and the way is now paved for the preparation of an impact assessment and the adoption of a legislative proposal in Autumn 2012.

3.1 What plans does the EU have to update the Third Anti-Money Laundering Directive?

In anticipation of the need to revise the Directive further to the adoption of a new set of international standards, the Commission launched its own review in 2010. This process has included the publication of an application study conducted by external consultants, and targeted consultations with private stakeholders, civil society organisations and Member States¹. Further evidence has been provided by European supervisors' anti-money laundering committee.

The Commission's application report makes a broad examination of the Directive and concludes that generally, the legal framework appears to work well and that no fundamental shortcomings have been identified which would require far-reaching changes. The Directive will need to be revised in order to update it in line with the revised FATF Recommendations, and in particular to enhance the risk based approach to AML compliance and supervision.

3.2 Is feedback is expected on this report?

The Commission's report assesses the key elements in the Directive and sets out considerations of possible future changes. The Commission invites comments to these considerations, and in particular seeks views on the likely impact that possible changes to the Directive might have. They can be sent by 13 June to the following email address: MARKT-AML@ec.europa.eu.

3.3 Does the EU also have plans to update other elements of the framework?

[Regulation 1781/2006](#) on information accompanying the transfers of funds will also need to be updated in light of the revised international standards. The Commission has ordered a study on the application of Regulation, the results of which will be factored into the Commission's impact assessment.

The Commission also plans to incorporate the implementing measures in [Directive 2006/70](#) into the new Anti-Money laundering Directive, as well as introducing strengthened cooperation arrangements between Financial Intelligence Units, which are currently dealt with in EU [Council Decision 2000/642](#).

4. What is being done at global level to strengthen the fight against money laundering?

4.1. Who is responsible for the international standards?

The FATF is the global standard-setter for measures to combat money laundering, terrorist financing, and (most recently) the financing of proliferation. It is an intergovernmental body with 36 members, and with the participation of over 180 countries through a global network of FATF-style regional bodies.

The European Commission is one of the founding members of the FATF and plays an active role in the working groups and plenary meetings which are held three times a year. In addition, 15 EU Member States are FATF members in their own right.

¹ http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

4.2. Why a revision of the international standards?

The original FATF standards on anti-money laundering were amended in the aftermath of the 9/11 attacks to include measures to counter terrorist financing. The Recommendations were fully revised in June 2003 to reflect an increased awareness of money laundering and terrorist financing issues; this was incorporated in the 3rd AMLD.

The latest revision of recommendations, adopted on 16 February 2012, marks a continuation of this process with an increased focus on the effectiveness of regimes to counter money laundering and terrorist financing.

4.3. How will the international standards change with the new FATF agreement?

Key Changes introduced by the new Standards:

Introducing a risk-based approach: For the first time, the new standards include a risk based approach. This means countries more at risk of money laundering or terrorist financing need to do more than those less at risk. Countries need first to clearly understand the money laundering and terrorist financing risks which affect them, and adapt their Anti Money laundering/Counter Financing of Terrorism (AML/CFT) system to the nature of these risks – with enhanced measures where the risks are higher and the option of simplified measures where the risks are lower. Under the risk-based approach, countries will be able to target their resources more effectively and apply preventative measures that correspond to the risks of particular sectors or activities. A well-implemented risk-based approach means that the AML/CFT system will be more effective and less costly.

Improving Transparency measures: There is little transparency at the moment around some of the parties involved in various transfers, in particular electronic transfers making them vulnerable to misuse by criminals and terrorists. The new agreement has strengthened transparency requirements. This means requiring that there is reliable information available about the ownership and control of companies, trusts, and other legal persons or legal arrangements. It also means more rigorous requirements on the information which must accompany electronic funds transfers. Measures to improve transparency, implemented on a global basis, will make it harder for criminals and terrorists to conceal their activities.

Towards more effective International Cooperation: With the increasing globalisation of money laundering and terrorist financing threats, the FATF has also enhanced the scope of international cooperation between government agencies, and between financial groups (e.g. simplified extradition mechanisms). The revised Recommendations will allow more effective exchanges of information, tracing of, freezing of, confiscation of and repatriation of illegal assets.

Identification of clear Operational Standards: the FATF Recommendations concerned with law enforcement and Financial Intelligence Units have been expanded significantly. The revisions clarify the role and functions of the operational agencies responsible for combating money laundering and terrorist financing; and set out the range of investigative techniques and powers which should be available to them.

New threats & new priorities to be covered: The FATF will also address new and aggravated threats and respond to the priorities set out by the international community, e.g. through the G20, in particular:

- *Financing of Proliferation* - The proliferation of weapons of mass destruction is a significant security concern, and a tough approach on financing can be an effective way to combat this threat. The FATF has adopted a new Recommendation aimed at ensuring consistent and effective implementation of targeted financial sanctions when these are called for by the UN Security Council.
- *Corruption & Politically Exposed Persons* - The FATF Recommendations tighten the requirements on "politically exposed persons"; i.e. people who may represent a higher risk of corruption by virtue of the positions they hold. The requirement to apply enhanced due diligence to foreign politically exposed persons has been expanded with new recommendations also applying to domestic politically exposed persons and international organisations, and to the family and close associates of all politically exposed persons – reflecting the methods used by corrupt officials and kleptocrats to launder the proceeds of corruption.
- *Tax Crimes* - The list of predicate offences for money laundering has been expanded to include tax crimes. Tax crimes are brought within the scope of the powers and authorities used to combat money laundering. This will contribute to better coordination between AML and Tax authorities, and remove potential obstacles to international cooperation regarding tax crimes.
- *Terrorist Financing* – The financing of terrorism remains a serious concern for the international community, and remains a major focus of the FATF. The FATF recommendations reflect both the fact that terrorist financing is a long-standing concern, and the close connections between anti-money laundering measures and measures to counter the financing of terrorism.

5. Next steps

Today's adoption of the Commission's application report on the Directive represents an important step towards revising the Directive. This will be followed by the preparation of an impact assessment and the adoption of a legislative proposal in Autumn 2012. The Commission is also planning to organise a public hearing on 23 November 2012.

More information:

http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm