



The fourth EU anti-money
laundering directive
Summarising the changes

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Financial Advisory



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The final version of the fourth European Union (EU) anti-money laundering directive ('the Directive') was enacted in June 2015, giving member states until June 2017 to transpose the Directive into national legislation. The purpose of the Directive is to remove any ambiguities in the previous legislation and improve consistency of anti-money laundering (AML) and counter terrorist financing (CTF) rules across all EU member states. The new Directive takes into account the latest recommendations of the Financial Action Task Force ("FATF") from 2012.

The Directive outlines a number of modifications to the third EU AML directive, and has been welcomed overall by the industry. The primary modifications relate to the areas of risk-based approach, ongoing monitoring, beneficial ownership, customer due diligence (CDD), politically exposed persons (PEPs), and third party equivalence. These amendments, along with other notable changes proposed in the Directive, are outlined more fully below.

Risk-based approach

There will be a new requirement introduced whereby member states will be required to evidence that they have taken appropriate steps to identify, assess, understand, and mitigate AML/CTF risk.

Additionally, while obliged entities (new name for "designated persons") are already required to evidence that they have taken steps to identify, assess, understand, and mitigate AML/CTF risk including giving consideration to risk factors such as customer, product, geography, and channel, this requirement and the factors for consideration will be more explicit in the Directive.

Ongoing monitoring

The Directive is more prescriptive with respect to the on-going monitoring of customers, and will be more specific in outlining factors for consideration / evidencing in conducting risk assessments for each customer, and how these risk assessments must be kept up-to-date.

This reinforces the requirement to undertake a risk based approach, and from a practical perspective, will mean that obliged entities must be able to evidence the rationale behind the risk rating applied to each customer.

Beneficial ownership

The Directive will introduce an explicit requirement for legal persons, including companies, to hold adequate, accurate, and current information on their own beneficial ownership. This information will be required to be made readily available to both competent authorities (FIAU) and obliged entities on request. Similarly, this requirement will also apply to trustees, who will be required to disclose their status to obliged entities.

Customer due diligence (CDD)

Under the current directive, obliged entities are already required to take enhanced measures where the customer risk is considered greater, and may apply simplified measures where the risks are considered lower.

However, the Directive will prescribe minimum factors to be taken into account before applying simplified CDD (SCDD) to a customer. In line with the above, obliged entities will need to be able to evidence why they have considered the risk to be low enough to apply simplified CDD, as opposed to a blanket approach of applying SCDD where customers fall into a certain category.

Similarly, as well as being more prescriptive in the requirement that enhanced CDD (ECDD) be performed in situations where the risk may be deemed higher, the Directive will detail some factors for consideration in this regard.

Politically exposed persons (PEPs)

As part of the Directive, the definition of PEPs will be extended to include domestic PEPs i.e. those in prominent public functions or in positions with organisations here in Malta. Obligated entities will therefore need to review their customer registers to ascertain if they need to reclassify and apply enhanced CDD to any existing customers as PEPs under the new definition, as well as applying these measures to new customers at take-on stage.

In addition to this, obliged entities will be required to monitor the risk posed when a person ceases to hold the title yielding PEP status for a period of at least 18 months, as opposed to the current obligation of 12 months.

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Third party equivalence

The Third EU AML Directive prescribes a “white list” of jurisdictions where AML/CTF legislation is considered equivalent to the EU. Under the Directive, this list of equivalent jurisdictions will be rescinded, and obliged entities will therefore need to perform a risk assessment on countries where they do business outside of the EU.

Policies and procedures – Data protection

With the aim of providing clarity around the interaction between AML/CTF and data protection, the Directive introduces a provision in respect of policies and procedures, which requires that data protection elements are considered within AML/CTF policies and procedures for sharing of customer information. The purpose of this addition is to strike an appropriate balance between robust controls and the protection of the rights of data subjects.

The Directive will also provide clarity as to the application of AML/CTF rules for subsidiaries in third countries where AML/CTF legislation is deemed deficient, or non-equivalent. In these instances, the AML/CTF legislation applicable in the regulated entity’s home member state or equivalent standard should be applied.

Record keeping

The Directive will include a maximum retention period for CDD documentation after the business relationship has ended, set at five years. As a caveat to this rule, this period can be extended by up to ten years if provided for under local legislation.

Definition of “Senior Management”:

A definition in respect of “senior management” will be introduced in the Directive as being an officer or employee with specific knowledge of the institution’s exposure to AML/CTF risk and sufficient seniority to make decisions affecting its risk exposure. This definition will therefore not be restricted to members of the board of directors.

Financial intelligence unit:

In order to strengthen the cooperation between financial intelligence units (FIU) of the member states in respect of exchanging information, specific requirements will be introduced. This will extend to FIUs:

- having access to financial, administrative and law enforcement information;
- being empowered to take early action in response to requests from law enforcement authorities within the member state; and
- establishing an operational analysis and strategic analysis function within the FIU.

Summary

The Directive will facilitate easier interpretation of requirements, and provide clarity on several areas that could be considered ambiguous.

The new requirements will necessitate an increased focus on AML/CTF from obliged entities, and the Directive is prescriptive in some of the measures to be taken, and steps to be evidenced in conducting CDD for customers.

Member states have up to June 2017 to implement it into local legislation. Due to the new requirements being proposed, there will be an increased requirement on obliged entities, and these entities should ensure that they are prepared for these changes, and have measures in place to train staff, update policies and procedures, and implement new controls. Additionally, obliged entities should ensure that they are sufficiently resourced to effectively implement the measures required, and to perform any required remediation work.

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