

The proposed Fourth Money Laundering Directive

What the proposed Directive
means and how to keep your
business safe



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Money laundering continues to be a major concern for society, governments and law enforcement. Equally, businesses face the challenge of balancing compliance costs, commercial realities and reputational risk. The proposed Fourth Money Laundering Directive should benefit businesses, government and law enforcement by ensuring that resources can be targeted towards the areas of higher risk. The directive aims to focus more on the effectiveness of controls, with greater consistency of rules across the EU, simplifying cross-border trade and implementing the Financial Action Task Force (FATF) recommendations.

This report provides an update on the progress of the Directive. The Directive was considered by the European Parliament in March 2014 but further negotiations are currently taking place between the European Presidency, the Commission and the Council. It is expected to be adopted by the end of quarter 1 2015 at the latest. At that point, the final Directive will be available, but it will then be a matter for each EU Member State to transpose the Directive into their national legislation within a prescribed timescale, e.g. 12 months. This report explains the proposals and identifies the issues for businesses to help them review their existing systems and prepare for implementation.

Anticipated dates, activities and timeline:

Dates/Anticipated Dates	Activities
1991	First AML Directive is published and adopted by member states over the next two years.
2001	Second AML Directive is published.
2005	Third AML Directive is published.
15 March 2013	The European Commission hosted a conference to discuss the international framework and the proposed Directive.
Spring 2014	The 4th EU AML Directive was considered by the European Parliament and the Council of Ministers under the ordinary legislative procedure.
Oct-Dec 2014	Further negotiations taking place between the European Presidency, the Commission and the Council
Early 2015	The 4th EU AML Directive is expected to be adopted by the end of quarter 1 2015.
2015/2016	The EU Member States will have a prescribed timeframe from the date of adoption to implement the 4th EU AML Directive into national legislation.

Businesses face the challenge of balancing compliance costs, commercial realities and reputational risk



The Fourth Directive

Extended scope

The Directive proposes to bring all providers of gambling services within the scope of the regulation, including online gambling. In addition, for the gambling sector, Customer Due Diligence (CDD) will be required for single transactions of 2,000 euros or more.

IMPACT: Businesses in the gambling sector within the scope of the Directive will have to implement systems and controls to prevent money laundering, including undertaking CDD, training staff, monitoring transactions, keeping records and reporting suspicious transactions.

Tax crimes to be included as an offence

Tax evasion and other serious fiscal crimes will become criminal offences in all EU member states.

IMPACT: Businesses operating in jurisdictions in which tax evasion is not currently a crime will need to review their current systems to ensure compliance. Businesses operating in the UK will not be affected as tax evasion is already a criminal offence.

Consistency across borders

The Third Directive was not implemented consistently by Member States and the intention is that the Fourth Directive will result in a more coherent cross-border approach, which will simplify cross-border trade by ensuring legislation is adopted consistently in each Member State.

IMPACT: Businesses should be able to operate more effectively between jurisdictions because the inconsistencies in legislation would be reduced, allowing organisations to streamline systems and reduce costs.

Simplified Due Diligence (SDD)

At present, businesses can apply SDD in certain situations, which reduces the regulatory burden. The EU's initial view was that blanket exemptions are too permissive and lenient. However, it is now hoped that some exemptions will be reintroduced, as a result of lobbying. If an exemption is not available, businesses are likely to be required to assess whether a transaction or customer relationship is low risk on a case by case basis using the criteria set out in Annex II of the Directive and act accordingly.

IMPACT: Businesses may be able to apply SDD if they are satisfied that the customer or transaction presents a lower degree of risk. The Directive lists potentially lower risk factors in Annex II.

Enhanced Due Diligence (EDD) for domestic Politically Exposed Persons (PEPs)

The requirement to conduct EDD will be extended to cover domestic PEPs (e.g. MPs, judges or high-ranking armed forces officers and their close family members and known close associates) as well as foreign PEPs.

IMPACT: Businesses will need to amend their systems and controls to ensure that they can identify domestic PEPs and apply EDD. This will include the need to obtain senior management approval. The policies and procedures will need to be revised so employees know what the EDD requirements are for such clients.

Top tips for compliance:

- Does your organisation have a stringent monitoring and verification process for new customers?
- How much of this process is automated through technology? And can it evaluate high risk customers at the on-boarding stage?
- Do you have a knowledgeable and reliable AML compliance team or individual in place? Are these individuals well trained?
- Are the board and/or senior management involved in the oversight and management of compliance risks?
- Do you monitor the achievement of your compliance goals?
- Do you have robust policies and procedures in place in your company to detect and deter money laundering? Is there an escalation process for reporting potential non-compliance?
- Are systems integrated across all your offices?

Increased Due Diligence for Employees

There is currently a provision in the draft Directive requiring businesses to have policies, controls and procedures which cover employee screening.

IMPACT: Businesses that do not screen employees at present will need to consider how to verify employees, which could be costly and time consuming. Automated screening systems may provide a solution while providing reassurance for the business, particularly if the checks include the asylum and immigration requirements.

Reduction in the threshold for High Value Dealers

The original proposal in the directive reduced the threshold for a single value cash transaction from 15,000 euros to 7,500 euros, for high value dealers, such as the sale of a car or furniture. However, businesses should be aware that an amendment has been proposed that would keep the figure at 15,000 euros.

IMPACT: If the threshold is lowered, any business selling goods for cash in a single transaction of 7,500 euros will need to register in the UK with HM Revenue and Customs as a high-value dealer. Additionally, systems will be required to ensure appropriate due diligence is carried out on customers who wish to conduct a single cash transaction over this value.

Increased level of transparency of beneficial ownership

The proposals for an increased level of transparency of beneficial ownership for both companies and trusts have recently been broadly agreed. The data on companies will be available to regulators and regulated entities but access to the information about trusts will be restricted due to privacy concerns.

IMPACT: Businesses should be aware of this proposal and that it is likely to impose significant administrative burdens on companies and trusts. Although the introduction of such a register may provide some assistance in relation to companies, business will still have to undertake the usual due diligence on companies and trusts.



Businesses should be aware of the beneficial ownership proposals

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Not worth the risk

- In 2003 there were 153 fines with just \$2.7 million worth of penalties; while in 2012 there were just 16 fines that totalled \$1.1 billion in penalties.



(Source: BankersAccuity)

Those businesses who do not have a clear picture of their risks and how to mitigate them, should undertake a risk assessment process now, it is also good business practice

This infopaper has been written in association with Alison Matthews:

Alison Matthews was voted Anti Money Laundering Adviser 2014 (UK) in the Finance Monthly Awards 2014 and Money Laundering Advisor 2014 (UK) in the ACQ5 Global Awards 2014. She has advised on money laundering for over 20 years, (including 7 years in Professional Ethics at the Law Society), was an MLRO for a top 20 national law firm for over 10 years and chaired the Law Society's Money Laundering Taskforce having been an inaugural member. She lobbied on the Second and Third Directives, her AML Toolkit is published by the Law Society and she lectures for all the UK Law Societies.

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Written risk assessment

Each Member State (and regulated businesses) will be required to conduct a documented risk assessment to help regulators mitigate risks.

IMPACT: The National Risk Assessment should provide regulated businesses with a clear picture of the risks and threats in their country which will help them to identify, manage and mitigate their own risks. Many regulated businesses will already undertake written risk assessments that will have to be kept up to date and made available to the regulator. Those businesses that do not have a clear picture of their risks and how to mitigate them should undertake a risk assessment process now, which is, in any event, good business practice.

Sanctions for non-compliance

Under the Directive, it is proposed that administrative sanctions for breaches of the key requirements of the Directive are strengthened, including a proposal to impose a fine of up to 10 percent of the total annual turnover of a business and fines up to twice the amount of the benefit derived from the breach.

IMPACT: These proposals demonstrate the need for businesses to ensure that they have robust procedures, systems/controls and resource (including properly trained staff) in place to ensure compliance.

Data protection

It is generally accepted that there is a need to balance the requirements of the anti-money laundering/counter terrorist financing regimes with the data protection rights of individuals. The current proposals limit how long data can be held about customers, but there are still issues to be resolved in the Money Laundering Directive. The EU's Data Protection Regulation is expected to be finalised during 2015, which is expected to have a significant impact on businesses.

IMPACT: Once the Money Laundering Directive is adopted, Member States will have to consider how to transpose the requirements into national legislation particularly around data. Businesses should review what data they hold and for how long so they comply with the existing data protection obligations, which will help them to prepare for the new requirements.

Conclusion

The Fourth Money Laundering Directive is expected to be finalised by the end of quarter 1 2015, at the latest. (Each Member State will then have to implement the Directive by amending the relevant legislation; for example, in the UK, there will be revised Money Laundering Regulations.) While the final text is not yet available, this summary should provide businesses with a view of the current proposals and the issues that are still to be resolved. The emphasis is on effective systems/controls coupled with a more risk-based approach, which should enable businesses to target resources more accurately at the areas of real risk.

The Board should ensure that the systems/controls are operating effectively with the assistance of technology, keep up to date with the proposals and remind staff to be vigilant and raise concerns about money laundering and terrorist financing with the appropriate person.

We will be issuing regular updates on the amendments on our blog, to keep businesses informed and to help prepare for the changes. Go to gbgplc.com