

Money laundering: prevention of the use of the financial system, including terrorist financing (repeal. Directive 91/308/EEC)

2004/0137(COD) - 11/04/2012 - Follow-up document

The Commission presents a report on the application of Directive 2005/60/EC (Third AMLD) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The EU rules are to a large extent based on international standards adopted by the Financial Action Task Force (FATF) and, as the Directive follows a minimum harmonisation approach, the framework is completed by rules adopted at national level.

The purpose of this report is **threefold**:

- to provide feedback from the Commission's review process on how the Directive has been applied;
- to fulfil the obligations set out in Articles 42 and 43 of the Third AMLD i.e a specific examination of the treatment of lawyers and other independent legal professionals and on the threshold percentages with respect to the identification of beneficial owners;
- to consider the need for possible changes to the framework in light of both the Commission's own findings as well as the newly adopted international standards.

The report sets out the various issues raised by the Commission's review of the Third AMLD, the revisions of the FATF Recommendations, and the Directive's clauses that require the Commission to report to the European Parliament and the Council. **Generally, the existing framework appears to work relatively well, and no fundamental shortcomings have been identified which would require far-reaching changes to the Third AMLD.** The Directive will have to be revised in order to update it in line with the revised FATF Recommendations. In this context, one issue that will need to be considered is the level of harmonisation of the future EU framework. An important challenge for the future will be to focus efforts on improving the effectiveness of the rules. This is an area of work that the FATF is currently developing.

Application of the Directive: the report examines the application of the Directive through a number of identified key themes, which are central to the Third AMLD's objectives. These include the following: (i) criminalisation of ML/TF; (ii) scope of the Directive; (iii) customer due diligence; (iv) politically exposed persons; (v) beneficial ownership; (vi) reporting obligations; (vii) FIUs (viii) group compliance; (ix) supervision; (x) self-regulatory bodies; (xi) third country equivalence; (xii) administrative sanctions for non compliance with the Directive; (xiii) protection of personal data. Under each theme, consideration is given to how the existing rules have been applied, which factors may drive changes (in particular resulting from the international revision process), and what might be the possible options for changing the existing EU rules.

The 25% beneficial ownership threshold: the European Parliament and the Council require a report on the threshold percentages in the Directive, paying particular attention to the possible expediency and consequences of a reduction of the percentage in certain provisions from 25% to 20%. The external study concluded, on the basis of its survey of stakeholders and Member State authorities, that there were a significant number of stakeholders who would not favour lowering the threshold. It was felt that lowering the threshold would not bring significant advantages but would increase cost of compliance and administrative burden. The Commission has not received any further evidence of the need to modify the threshold.

The Commission will carefully consider whether it is appropriate to modify the 25% thresholds.

With regard to the **application of a risk-based approach**, the Directive leaves room for countries to design their own RBA and to decide on the degree of risk-based measures that may be applied by obliged entities. An external study report that a wide diversity of national measures can complicate cross-border compliance, and that there is a lack of practical guidance available.

Assessment of the Directive's treatment of lawyers and other independent legal professionals: findings would appear to suggest that it may not be necessary to fundamentally revise the treatment of lawyers in the new Directive. However, it may be appropriate to give further consideration to the under-reporting of suspicious transaction reports. The external study found that levels of reporting of suspicious transactions by some non- financial professions (in particular lawyers) are low compared to those of FIs. The issue of under-reporting in some jurisdictions remains a concern, and consideration could be given to ways to improving levels.