



Thursday, 4 February 2016

Money Laundering: the sequel – MLD 4 now set for early release across Europe?

It is not uncommon these days to see postponement and delays in EU legislation (as in the context of Solvency II, the Benchmarks Regulation and MiFID II). Accelerated implementation of a Directive that has been settled and published in the Official Journal is rather more novel. The Fourth Money Laundering Directive (MLD 4) was published on 5 June 2015 and, as currently drafted, requires transposition into national law by 26 June 2017. However, on 2 February 2016 the European Commission called for Member States to implement the Directive six months earlier than that, **by the end of 2016 at the latest**. This is despite the fact that Level 2 and Level 3 measures are still being finalised and H.M. Treasury has yet to consult on UK implementation measures.

The call was made during the Commission's launch of a new Action Plan to tackle the fight against terrorism in particular, which will involve some further amendments to MLD 4. These amendments are expected by the end of June 2016 at the latest, although it is not clear whether the Commission intends them to take effect alongside the existing provisions of the Directive in December, if that is even feasible.

We summarised the impact of MLD 4 in our New Year Briefing, available [here](#).

The proposed amendments will include:

- **Compulsory enhanced due diligence measures to be taken in relation to high risk third countries:** under MLD 4 obliged entities will be required to conduct enhanced due diligence measures against those third countries appearing on the Commission's "black list" – the list of high risk third countries published by the Commission. The development of the delegated act which will name these countries is being accelerated and will appear in June. At the same time, the Commission will look to make amendments to the Directive to define a list of **compulsory** enhanced due diligence measures which obliged entities will have to apply in respect of such jurisdictions.

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- **Bringing virtual currency exchange platforms within scope of MLD 4:** virtual currency exchange platforms will be brought within the scope of the Directive with a view to helping to identify those who trade in virtual currencies. The Commission is also considering whether to apply the existing licensing requirements and rules of the Payment Services Directive (PSD 2) to such platforms and also to virtual "wallet providers".
- **Addressing the misuse of prepaid instruments (such as prepaid cards):** in light of the fact that prepaid cards are used by terrorists (and were used during the recent Paris attacks), the Commission will be looking into ways of reducing the terrorist financing risks posed by such cards and the anonymity that goes with them, without "wiping out the benefits that these instruments offer in their normal use". The changes to MLD4 may focus on reducing existing exemptions (e.g. the thresholds below which identification is not required) and requiring CDD measures on online activation of a prepaid card.
- **Establishing centralised bank and payment account registers:** the Commission proposes the introduction of centralised bank and payment account registers or electronic data retrieval systems and making them accessible to FIUs and other competent authorities at least. It is also considering whether to allow wider access to such registers to entities such as law enforcement agencies, asset recovery offices and tax authorities.
- **Enhancing the powers of EU Financial Intelligence Units (FIUs):** the amendments will extend the scope of and access to information available to FIUs and improve co-operation and exchange of information between FIUs and other enforcement agencies.

The Action Plan also includes a number of other measures over and above the proposed amendments to MLD 4, including an amendment to the Cash Control Regulation, a proposal for which is planned by the end of 2016 and a proposal to harmonise the criminalisation of money laundering.

Documents relating to the Commission's Action Plan (which include a factsheet, Q&As and the formal Communication to the European Parliament and the Council) are [here](#).

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