



The EU 4th Money Laundering Directive

Key Points for Private Wealth Advisors

In the global political and economic landscape of the 21st century, the ability to have a homogenised and consistent approach to the integrity of financial institutions – especially given the last five years – is seen as increasingly vital. With governmental criticism as broad as a lack of transparency to the indirect financing of terrorism, financial institutions have been held accountable for a multitude of sins.

The EU's response came in October 2005, with the formal adoption of the 3rd Money Laundering Directive ("3MLD"). A minimum harmonising directive, the 3MLD put in place a minimal level of measures for member states to implement, with scope for individual nations to adopt stricter national measures if they wished.

In the UK, 3MLD was implemented as The Money Laundering Regulations 2007, with the Joint Money

Laundering Steering Group providing UK specific guidance.

In April 2012, the European Commission published a report reviewing 3MLD. The report acknowledged that the changes were, for the most part, working well. However, there were some updates and enhancements necessary to combat the evolution of money laundering and terrorism, as well as the revised Financial Action Task Force (FATF) standards



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– the inter-governmental body set up to promote and lobby for the implementation of the various directives.

These changes cumulatively became the 4th Money Laundering Directive (“4MLD”) which, at time of writing, has been voted through (in draft form) by the European Parliament on 11 March 2014. This has included substantial negotiations on 4MLD in its entirety beginning in the next few months between member states. From the day of adoption, member states will have two years to put all of 4MLD’s amendments into place.

4MLD - Changes that will affect our clients

- **Extend the scope of 3MLD** – 4MLD will reduce the threshold of persons dealing in goods for cash payments from EUR15, 000 to EUR7, 500. In addition to this, 4MLD will expect lawyers, accountants, casinos and even estate agents to be vigilant with regard to the risk of financial transactions.
- **Politically Exposed Person (PEP)** – 4MLD will extend the categories of individuals who are PEPs – defined as persons with a “prominent public function” by FATF. These individuals are more vulnerable to bribery and corruption given their title or office and should therefore be screened and monitored accordingly. They will be placed on a register, accessible by ‘competent authorities’, and will be notified of their ‘PEP’ status and presence on the list.
- **Beneficial Owner Information** – 4MLD will enhance the accessibility of beneficial owner information. This will require legal entities and trusts in member states territories to obtain and hold public, accurate and current information on their beneficial ownership “in a timely manner”. Such a register will be made publically available online, according to Amendment 93 passed on 11 March 2014.
- **CDD** – Both Simplified Due Diligence and Enhanced Due Diligence (SSD and EDD) have been tightened to remove exemptions for domestic PEPs (Article 19). The public registers will not be a substitute from carrying out the requisite due diligence.
- **Third-country equivalence** – 4MLD will take the focus away from the ‘white list’ of third country equivalence, being the list of countries that have an comparable standard of AML as the EU (USA, Singapore, Australia etc) and on to the ‘black list’. This will be a list of countries that do not reach the EU standard or are a particular risk. Those countries on the ‘black list’ shall be encouraged to establish their own, equivalent registers of beneficial ownership.
- **Risk based approach** – Article 7 of 4MLD will require member states to identify and mitigate risks, making their results available (on request) to other states, the European Commission and the European banking authorities. Firms must document their risk assessments and keep them up to date (Article 8). The European Commission will provide a 6-monthly assessment on the main threats to the internal market.
- **Home and Host responsibilities** – 4MLD will require that branches and subsidiaries in member states outside of their head office’s member state must apply the AML rules of the state they work in.
- **Harmonised administrative sanctions** – 4MLD will ensure that national supervisors will be required to co-ordinate when dealing with cross-border cases. Again, there will be a set of minimal level rules applied throughout member states to enhance the sanctions for breach of 4MLD requirements.
- **Financial Intelligence Units (FIUs)** – 4MLD will strengthen the powers of FIUs and their co-operation with each other cross border.
- **Data Protection** – 4MLD will balance the desire for data protection with the requirement for AML in order to keep in line with the proposed reform of the Data Protection Directive (“DPD”).



How will the above changes impact on trusts and family offices?

Beneficial owner information

The desire to increase transparency of beneficial ownership will inevitably focus heavily upon off-shore trusts. Indeed, it is this change that may well have the largest ramifications out of all of the amendments.

The main change – a public central registry of beneficial ownership information – will be unpopular with those who value their privacy in these jurisdictions. There is a real risk that the anonymity of clients will be compromised.

However, political opinion currently is strongly in favour of transparency, with MEPS voting resoundingly 643 to 30 in favour of the draft proposals on 11 March 2014.

As things stand, there are several key questions around this public registry – how much of the ‘adequate, accurate, current and up-to-date information’ required from all companies will be available to the general public in practice? How will the member states choose to interpret and implement 4MLD in their jurisdiction?

Advisers need to think about the impact of this legislation on their clients, and furthermore consider whether to make representations.

PEP list

Individuals on the ‘PEP list’ will be very keen to ensure that their presence on said list is not used against them, or for commercial purposes.

‘Black list’

The shift of focus to countries that do not meet the EU standard of AML could have an impact for both family offices and trusts. Family offices within the EU that represent non-EU nationals may well face increased scrutiny as to the provenance of their funds. Similarly, trusts in jurisdictions that do not meet the EU AML requirements will also be keen to ensure that they do not suffer the opprobrium of being based in a ‘black list’ country.

A risk based approach

A more general focus on risk (and its mitigation) will assuredly place an increased burden upon family offices and trusts. Family offices, with less of the transparency and regular inspection of publicly listed companies, may be seen as higher risk. The same diagnosis can be applied to the average trust.

Home and Host responsibilities

This amendment will particularly affect family offices, given the potential for differing levels of rigour around the EU. As discussed, the idea of harmonisation is that minimal levels of measures are applied throughout the member states. However, an Estonian family office based in Paris – despite their head office being in Tallinn – will have to comply with a French level of regulation, which may well have stricter rules.

Harmonised sanctions/FIUs

On a similar vein to the point above, one of the 4MLD’s main focuses is increased cross-border cooperation. The extension of powers of FIUs and an agreed level of administrative sanctions across member states will increase the possibility of punitive measures for both family offices and trusts.

Data Protection

One potential consolation for trusts that value discretion and privacy will be the acknowledgement of and adherence to the DPD, as reformed. Any request for further information and transparency will have to be balanced against the rights to privacy of the individuals within the trust. This is certainly an area to keep an eye on in the coming months, to ensure that the equilibrium between privacy and transparency is not forgotten.



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Summary

4MLD is very much a work in progress. With negotiations set to start in the Italian Presidency of the European Council (July-December 2014), 4MLD may not even be adopted until the end of the year. Member states will have a further two years to implement the changes.

The amendments themselves may well change significantly after further months of political wrangling, and the timeframe is not set in stone, but 4MLD itself is inevitable. Practitioners, family offices and trusts alike should be aware and alert to the scrutiny and transparency the directive will bring.



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