

The Third Anti-Money Laundering Directive (2005/60/EC) has been transposed into Luxembourg Law dated 10 July 2008

The new rules, described in draft laws 5756 and 5811, amend the Law dated 12 November 2004 on the fight against money laundering and terrorist financing (“AML/ATF Law”).

Significant changes foreseen in the Third Directive (or “Directive”):

- **Broader scope of application:**

The group of persons covered by the Third Directive is further extended, now including life insurance intermediaries as well as trust and company service providers and all traders in goods for transactions in cash of 15,000 Euros and more.

- **New definitions (Art. 1):**

The Directive creates a larger definition of money laundering, and introduces definitions for Politically Exposed Persons (PEP) and Beneficial Owners. It introduces more specific and detailed provisions on the identification of customers, in particular with regards to trusts, company service providers and non-listed companies.

- **Introduction of a risk-based approach (Art. 3):**

The Directive introduces the so-called “risk-based approach”, whereby entities subject to AML rules are required to adapt their practices and processes to the assessed level of money laundering and financing of terrorism risks. Whereas previous directives gave relatively little detail about customer due diligence procedures and left these matters to sector guidance, the Third Directive sets out the detail of what type customer due diligence measures are to be applied depending on the related risks. Specific examples are described in the amended articles of law: quoted companies, Luxembourg public authorities, public companies, supervised entities, pension plan, correspondent banks, transactions with PEP, ...

- **Introduction of third party reliance (Art. 3-3):**

Reliance on certain defined third parties becomes possible, responsibility remains with the professional.

What will change in Luxembourg?

The Third Directive will assimilate a more consistent standard of money laundering preventative measures across the EU. Its transposition into national law in Luxembourg should, however, entail fewer changes to the existing market practice than in many other European countries. The risk-based approach has already been an industry standard for financial sector players in Luxembourg. Concepts like the “Politically Exposed Person” or “Beneficial Owner” are already regulatory practice in Luxembourg.

Nevertheless, the changes to the AML Law and the penal code are not to be underestimated. The most important changes include the following:

- The list of offences that can be the basis for money laundering has been significantly enlarged. It now includes all offences leading to a minimum prison sentence of more than six months.
- Rules of reliance on third parties to perform customer due diligence have been introduced: Such third parties don't need to be from the same sector of activity as the professional, but need to be subject to equivalent rules than the ones in application in Luxembourg. The documents or data used for identification purposes can be different from the ones required in Luxembourg.
- The need for credit and financial institutions to have systems in place that enable them to respond fully and rapidly to enquiries from the anti-money-laundering unit of the public prosecutor's office (“FIU”) (Art. 4-3).
- Under certain specific conditions, professionals will be authorised to communicate information on suspicious cases notified to the FIU to other professionals (see details in the new article 5 paragraph 5).

Recommended Actions

The changes introduced by the amendments of the Law dated 12 November 2004 require all institutions within the scope of the Law to review their procedures to ensure that all changes are taken into account. Most importantly:

- Proper definition of money laundering and anti-terrorism financing risk management approach;
- Review of customer identification and transaction monitoring processes and procedures to align with a risk-based approach;
- Adjustment of training.

How PricewaterhouseCoopers can help?

We can help you to comply with the ever-changing regulations and to meet best practices in order to prevent money laundering and terrorist financing. We can review your processes and develop the corresponding organisational structures to support and implement your AML/ATF strategy. In this respect, we provide a broad range of expertise and experience, including:

- Assessment of your AML/ATF risk-exposure.
- Diagnostic / review / gap analysis of AML/ATF policy and procedures of your entity (or intermediaries such as funds distributors, independent clients advisors,...) to provide you with the comfort that you are compliant, or have a programme in place to become compliant, with AML and financial crime regulations.
- Assistance in AML/ATF tools pre-analysis to help you choosing the best integrated and comprehensive solution (name matching and transaction monitoring tools), based on an analysis of the specificities of your activities, law and regulation applicable to your company, size of your company, cost / efficiency ratio, etc.
- Finding the best way to design and optimise your AML/ATF internal control system and tools (rules based engine, case management procedures, defining alert clearance and escalation procedures,...).

- Designing and implementing adequate and effective procedures,
- Review of your data management, Client Relationship Management (CRM) and Know Your Customer (KYC) systems and consideration of the necessity of remediation services.
- Design and facilitation of your AML/ATF training programme.

This document as well as the draft laws n° 5756 and 5811 can also be found on the PricewaterhouseCoopers Luxembourg website: www.pwc.com/lu.

Contact

For further information on this issue, please refer to the following contact in order to be oriented to the appropriate person within the PwC Luxembourg Anti-Money Laundering Taskforce:

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