



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Company law, corporate governance and financial crime

Brussels, 24 March 2006

**COMMITTEE ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING
DOC. 06/MARCH/5**

SYNTHESIS OF THE COMMENTS RECEIVED FROM INTERESTED PARTIES ON THE

**WORKING DOCUMENT OF INTERNAL MARKET AND SERVICES DIRECTORATE GENERAL
OF 15 FEBRUARY 2006 IN RELATION TO**

**DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE
PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY
LAUNDERING AND TERRORIST FINANCING**

Introduction

On 15 February 2006, the Internal Market and Services Directorate General published a working document in relation to the Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the so-called Third Directive)¹.

This working document called for comments on the draft possible implementing measures to the Third Directive. The publication of the working document was part of the open and transparent regulatory process that the Commission follows for drawing up technical implementing measures in the financial area (see recital 47 of the Directive).

The Internal Market and Services Directorate General would like to thank the interested parties who responded to this working document for their contributions. 15 responses from interested parties were received.

Contributions were received from interested parties located in 5 Member States and 3 countries or territories outside the EU. A number of contributions were submitted by European and international associations.

This report seeks to provide a synthesis of the main comments received. It does not provide detailed statistical data, but rather seeks to present a qualitative assessment of the contributions received. This synthesis is based on the replies of 13 interested parties². In particular, it does not integrate the comments received from public authorities, whether from Member States or from territories outside the EU.

General Comments

Some respondents regret that the draft implementing measures do not address the question of the equivalence of obligations in third countries. Others would have preferred that the implementing measures provide guidance on how to apply the obligations in practice, both as regards the identification of politically exposed persons (PEPs) or as regards the assessment of risk in the customer due diligence procedures. The need to further determine criteria for identifying beneficial owners has also been underlined.

Definition of politically exposed persons

Generally, respondents are of the view that the definition proposed in the consultation paper is too wide and therefore difficult to implement, and would prefer further concretisation. This consideration applies to the three categories: the persons exercising prominent public functions, their immediate family members and their close associates. A number of respondents would welcome an official list of PEPs to be established either by the Commission or by national authorities.

¹ Directive 2005/60/EC of 26 October 2005, published in the OJ L 309 of 25.11.2005.

² 2 replies from European or national associations of regulated professionals (e.g. accountants/auditors, lawyers etc.); 6 replies from European or National banking associations; 1 reply from an individual bank; 2 reply from national associations of financial institutions other than banking; 1 reply from individual financial institutions other than banks; 1 reply from a non identified party.

Although not allowed by the legal basis, several respondents would like the Commission to produce guidance in the implementing measures on how to identify PEPs, as there are two conditions for the applicability of Article 13 of the Directive: the existence of a PEP and the existence of additional risk factors. It has been signalled that for sole practitioners, it will be difficult to set up risk based procedures, as requested by the Directive, for the identification of PEPs. In this context, respondents strongly support the recital explaining that automatic liability of institutions and persons should be avoided if they have taken adequate measures to identify PEPs but failed. A respondent even considers that there never should be any kind of liability in this case. Several respondents requested that this recital is integrated in the text of the corresponding Article.

Concerning the persons covered as PEPs, the majority of respondents would prefer to limit the category to the national/federal level only.

As regards the persons that are "known" to exercise public functions or "known" to be close associates of persons exercising prominent public functions, some respondents require that it is clarified what one should understand by "known". They request that "known" is understood as "publicly known".

A respondent welcomed the paragraph indicating that PEPs should no longer be considered as such one year after cessation of functions.

Simplified Customer Due Diligence Procedures

Some respondents support the existing text, while others find that the criteria proposed remain strict and that granting more flexibility should be considered. Some of the respondents proposed a non-exhaustive list of products that should be covered by the simplified CDD procedures:

- Standard retail banking products;
- Contracts on capital-forming investments;
- Consumer loans;
- Loan agreement, in which the loan account is used for loan processing only, and the loan repayment is to be debited from an account opened in the customer's name with a credit institution subject to the Directive;
- Transactions with associations of apartments owners (i.e. jointly-owned buildings);
- Dealing in foreign exchange with own customers;
- Transactions concerning pre-paid cards which represent a similar low risk as e-money transactions (i.e. low threshold)

Although the applicability of Article 8(2) of the Directive on the assessment of the risk in CDD procedures is not directly connected with the implementing measures, some respondents fear that the strict criteria proposed for simplified CDD procedures will, as a consequence, limit the room of manoeuvre that institutions and persons should have under the normal CDD procedures to deal with low risk situations.

It has been also indicated that criteria must leave space for national interpretation, given that products differ from country to country.

A request for clarification has been made as regards the exact scope of simplified CDD as opposed to Article 8 of the Directive: in particular if the customer should be identified in simplified CDD procedures in order to be able to reply to the public authorities on whether a business relation with a customer has taken place in the previous years (cf. Article 32 of the Directive).

A comment has also been made requesting to adopt implementing measures of this kind on the basis of experience in the coming future, not now.

As regards simplified CDD for persons, some respondents request that lawyers should be considered as low risk persons, when fulfilling certain criteria (e.g. registration with professional body, supervision, existence of disciplinary sanctions etc).

Financial activity on a very limited or occasional basis

Many respondents welcomed the text, though consider it difficult to understand and have doubts about how it will be implemented in practice. While the draft article provides for decisions to be taken by Member States, some respondents seem to have misunderstood the text. They interpret it as imposing obligations to financial institutions, which is not the case.

*

*

*