



REGULATORY UPDATE 4/2009

Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009

This newsletter is available online at:
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Note: this Newsletter is based upon the email alert we sent readers on 28th July 2009. It was written in response to numerous queries we received. It also contains a useful question and answers section on the new Bill and 3rd EU AML Directive which you can download and read at your leisure.

On Wednesday 28 July 2009 the Minister for Justice, Equality and Law Reform, Dermot Ahern T.D., finally published the long awaited Bill which will lead to law implementing the 3rd EU Anti-Money Laundering and Counter-Financing Directive today. The Bill, *Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009*, is 85 pages long and comprises of 5 Parts and 2 Schedules.

In announcing the new Bill, Minister Ahern said:

"In developing this legislation, I propose to consolidate Ireland's existing anti money laundering and terrorist financing laws, which are primarily contained in the Criminal Justice Act 1994. I have therefore decided to repeal and re-enact these provisions in a single consolidated piece of legislation."

Compliance Ireland has uploaded the Bill, the Explanatory Memorandum, a detailed note by the Minister and the Minister's Press Release at <http://www.complianceireland.com/Resources.html#AMLBILL> with a link also from www.antimoneylaundering.ie for readers.

The direct links are:

- **Bill -**
http://www.complianceireland.com/documents/CJA_Anti_Money_Laundering_Bill_published_20090728.pdf
- **Explanatory Memorandum -**
http://www.complianceireland.com/documents/CJA_Anti_Money_Laundering_Explanatory_Memorandum_published20090728.pdf

- **Detailed Note accompanying Minister's Press Release of 28 July 2009**

[http://www.complianceireland.com/documents/Detailed Money Laundering Note by Minister JELR 20090728.doc](http://www.complianceireland.com/documents/Detailed_Money_Laundering_Note_by_Minister_JELR_20090728.doc)

- **Copy of Minister's Press Release of 28 July 2009 –**

[http://www.complianceireland.com/documents/Minister JELR PressRelease 20090728.doc](http://www.complianceireland.com/documents/Minister_JELR_PressRelease_20090728.doc)

Compliance Ireland will write a series of articles on the new Bill and in addition to our usual AML/CFT training, we will be hosting seminars and will be involved with conferences on this very important topic in the coming weeks and months. In the interim, all senior managers, compliance officers and MLROs are recommended to download and read both the Bill and the Explanatory Memorandum. In the interim here is a short Q & A on the Bill and the 3rd EU AML Directive.

Short Q & A on the Bill and the 3rd EU AML Directive (including the steps Ireland is taking to introduce the Directive)

Question 1: What is the 3rd EU Anti-Money Laundering Directive?

Answer: The final text of the 3rd EU Anti-Money Laundering Directive (the “3rd Directive”) was formally adopted on 20 September and came into force on 15 December 2005. Member States had until 15 December 2007 to implement its provisions into national law. In addition to the financial and insurance sectors, the 3rd Directive applies to lawyers, notaries, accountants, real estate agents, casinos, trust and company service providers, and all providers of goods (whenever payments are made in excess of EUR15,000). The 3rd Directive imposes new requirements and consolidates, into one document, the 1st and 2nd EU Anti-Money Laundering Directives. Indeed, some Member States have already enacted certain parts of the 3rd Money Laundering Directive into national law, e.g. criminalising the financing of terrorism.

The 3rd Directive builds on existing EU legislation and incorporates into EU law the June 2003 revision of the Forty Recommendations of the Financial Action Task Force (FATF), the international standard setter in the fight against money laundering and terrorist financing. During the final stages of adoption by the European Commission the Internal Market and Services Commissioner Charlie McCreevy said: *“I am delighted that close cooperation between the European Parliament, the Council and the Commission has enabled the swift adoption of this crucial Directive which will boost the fight against terrorist financing and organised crime as well as preventing damage to the stability and reputation of the financial sector and the single market. These are top political priorities for the EU and I congratulate all parties on this final adoption.”*

The 3rd Directive requires credit institutions, financial institutions and other persons regulated for money laundering purposes to: (a) identify and verify the identity of their customer and of its beneficial owner and to monitor transactions with the customer, while taking into account a risk-based approach; (b) to report suspicions of money laundering and terrorist financing to their national authorities; and (c) to take supporting measures, such as record keeping, training of personnel and the establishment of internal policies and procedures. The 3rd Directive is completed with a section on supervision and monitoring by national authorities. Member States must establish appropriate penalties where those regulated for (anti) money laundering and (anti) financing of terrorism purposes fail to meet their obligations.

In response to calls from the regulated community, the European Commission released a working document on the 3rd Directive seeking comments by 21 October 2005 to 16 questions on customer due diligence (CDD). For example the EU Commission asks 'would the application of the risk based approach in connection with normal CDD procedures be in your view enough for institutions and persons covered by the directive to deal normally with the low risk situations' (see Question 1). The European Commission also asks a range of questions on the preferred approach to identifying business relationships with Politically Exposed Persons ('PEPs') and their family and associates. In particular, readers are asked whether a close list of categories of persons should be established in helping the regulated community identify business relationships with PEPS, their families and associates. (See Question 8).

Question 2: To whom does the 3rd Directive apply?

Answer: The 3rd Directive is applicable to the financial sector as well as lawyers, notaries, accountants, real estate agents, casinos, trust and company service providers. Its scope also encompasses all providers of goods, when payments are made in cash in excess of €15,000.

Those subject to the 3rd Directive must:

- identify and verify the identity of their customer and of its beneficial owner, and to monitor their business relationship with the customer;
- report suspicions of money laundering or terrorist financing to the public authorities, usually, the national financial intelligence unit; and
- take supporting measures, such as ensuring proper training of the personnel and the establishment of appropriate internal preventive policies and procedures.

Question 3: When will Ireland adopt the 3rd Directive into local law?

Answer: The Irish Minister for Justice, Equality and Law Reform published the *Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009* on 28th July 2009. The Irish Government has not yet publicly stated the date by which Ireland will comply with the requirements of the Directive. Now that the Bill has finally been published it will be debated by the Oireachtas (Irish Parliament). However as the Oireachtas has adjourned on 15th July 2009 for a 9 week [summer recess](#) the Bill will not be debated until sometime in mid-September at the earliest. The Irish Financial Regulator assumes that the updated Irish law will be implemented in Autumn (Northern Hemisphere) 2009 (see its 2008 Annual Report issued 21 July 2009). See also our 2nd Newsletter (covering AML) and our 3rd Newsletter (covering the creation of a new Irish Financial Services Regulator - the entity which will oversee AML/CFT conduct of business laws affecting financial/insurance companies in Ireland) issued 18 June 2009 for more information at <http://www.complianceireland.com/Newsletter.html>.

Even though the Act may be passed by the Oireachtas, the Minister has discretion to set the actual commencement date (or commencement dates for various sections). Thus firms may get some breathing space between the publication of the Act and the date of its commencement.

However Ireland cannot drag its feet on this matter. On 16 October 2008 the EU Commission launched infringement proceedings against Ireland (Spain, Belgium and Sweden) for failing to implement the 3rd EU Money Laundering Directive. This did not come as a surprise in Ireland as we were warned on 18 July 2008 by the EU that it would take action against Ireland unless we undertook quick and decisive action to implement the directive. As we did not take such action, we are now being sued by the EU Commission for our delay.

[Question 4: What is the main purpose of the new Criminal Justice \(Money Laundering and Terrorist Financing\) Bill 2009?](#)

Answer: The main purpose of this Bill is to:

- transpose the Third EU Money Laundering Directive (60/2005/EC) into Irish law.
- ensure that Ireland complies with the recommendations of the third mutual evaluation report on Ireland of the Financial Action Task Force, (FATF).
- repeals and re-enact the current anti-money laundering legislation (i.e. Criminal Justice Act 1994 (as amended) and other statutes).

In general, the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2009 (2010)* will prohibit money laundering as well as terrorist financing offences which in Ireland we have already outlawed. In Ireland, our latest response to prohibiting financing of terrorism was the Criminal Justice (Terrorist Offences) Act 2005.

The big changes to affect Irish financial institutions and other designated bodies/persons relates to:

- how they must perform customer due diligence (on a risk sensitive approach – this will be conducted on either a simplified, standard or enhanced identification process depending upon the circumstances);
- how they must adopt special procedures where a business proposes to do business with a foreign politically exposed person (PEP), a family member of a PEP or a close business associate of a PEP;
- how they must implement systems and controls to allow senior management to ensure that their business complies with the requirements. This covers internal policies, procedures, training and record keeping (but firms should, in a practical sense, already have implemented the key principles of the 'newish' requirements which exist under the current law);
- how they will respond to directions from the Garda not carry out a service/transaction for period not exceeding 7 days, which may be extended by the District Court (not exceeding 21 days) during the course of investigations;
- how they must continue to avoid the offence of tipping off – but with certain actions being excluded from the offence;
- how they will be supervised and be subject to sanctions by the Financial Regulator;
- how their directors, officer and senior managers will be liable for failures by the designated body/person.

Question 5: What type of persons will be subject to the new law?

Answer: The 2009 Bill/Act is applicable not just the financial sector but also to many non-financial professionals. These include:

- Credit Institutions
- Financial Institutions
- Insurance Companies
- Reinsurance companies and SPVs
- Intermediaries - investment, mortgage and insurance
- Money Transmitters
- Bureaux de Change
- Payment Institutions
- Credit Unions
- Other investment/insurance businesses regulated by the Irish Financial Services Regulatory Authority
- Chartered Accountants
- Solicitors
- Estate Agents and Auctioneers
- Non-Executive Directors
- Casinos (and Private Members' Clubs)
- Dealers in High Value Goods (where payments are made in cash in excess of €15,000)
- Trust and Company Service Providers
- Other Designated Bodies / Designated Persons (as may be specified from time to time)

Question 6: How will the new Bill achieve its purposes?

Answer: The Bill will achieve its purposes through:

- the 121 Sections in the Bill (*NB: Editor believes that some of the proposed sections will need to be redrafted*).
- consolidation of all of Ireland's anti money laundering legislation in a single statute.
- increasing the obligations on a wide range of legal persons, including credit and financial institutions, lawyers, accountants, estate agents, trust and company service providers, tax advisers and others in relation to money laundering and terrorist financing.
- requiring on the part of designated bodies covered by the legislation, such as Banks, Lawyers, Accountants, Real Estate Agents, and dealers in high value goods, to identify customers, to report suspicious transactions to An Garda Síochána and the Revenue Commissioners and to have specific procedures in place to provide to the fullest extent possible for the prevention of money laundering and terrorist financing. See Question 4 above for more details.
- providing that the categories of designated bodies (the new Act will use the term 'designated persons' instead of designated bodies) in respect of which there is no supervisory or competent authority, for example:
 - the Law Society in respect of solicitors.
 - the Financial Regulator in respect of credit and financial institutions.
 - the Department of Justice Equality and Law Reform for tax advisers who are not accountants or solicitors, and dealers in high value goods (i.e. those who

may receive cash receipts of €15,000 or more, e.g. people such as car and boat dealers, jewellers, art dealers and others).

As noted above, a significant change introduced in this Bill is the requirement for the designated persons covered by the Bill to undertake specific effective customer due diligence measures at the outset of a business relationship and certain other measures during the course of the business relationship.

Private Member's Gaming clubs will also be included in the legislation and will be required to comply with all of the requirements of the money laundering and terrorist financing legislation and will be monitored by the Department to ensure compliance.

Compliance Ireland will write a series of articles on the new Bill and in addition to our usual AML/CFT training, we will be hosting seminars and will be involved with conferences on this very important topic in the coming weeks and months. In the interim, all senior managers, compliance officers and MLROs are recommended to download and read both the Bill and the Explanatory Memorandum.

If you have any questions, require advice, training or simply wish to contact us with your comments on the Bill (which we can incorporate into our comments and send to the Minister and TDs) please email these to us at email@complianceireland.com. As noted above, the Oireachtas (Irish Parliament) is now in summer recess. It therefore will not debate the new Bill until mid-September. **Compliance Ireland** understands that the drafting of the Guidance Notes will be resumed now that the Bill has been published. *However those involved in this area should act now by reviewing and commenting upon the Bill to ensure that their comments are taken into account in the final format of the Act and Guidance Notes.*

END

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Compliance Ireland has advised many firms on how to structured and developed efficient and effective Compliance Functions and has independently reviewed Compliance Functions by firms upon their own initiative and when required by the Financial Regulator.

Contact us at email@complianceireland.com should you have any comments on this Newsletter or require assistance with your anti-money laundering obligations.

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