



EU money laundering directive is tougher than some U.S. requirements

By Matthew Squire
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As the deadline nears for the 25 member countries of the European Union to implement the provisions of the EU Third Money Laundering Directive, U.S. bankers have become aware that it's tougher in some provisions than the USA Patriot Act and other U.S. banking regulations.

In June 2005, the European Commission adopted the EU Third Money Laundering Directive which incorporates into EU law the 40 recommendations of the international anti-money laundering policy group the Financial Action Task Force (FATF). The directive contains provisions similar to those of the Patriot Act, including requirements for suspicious activity reporting, training and maintenance of policies. However, the directive applies to lawyers, notaries, accountants and real estate agents in addition to banks and other financial institutions. And, the directive's provisions are broader than U.S. anti-money laundering regulations.

For example, the Patriot Act Section 312 rules require institutions to conduct enhanced due diligence on accounts for foreign politically exposed persons (PEPs), defined as individuals having prominent public functions, their family members and close associates. However, unlike the U.S. rules, the EU directive requires banks to conduct risk-based due diligence on domestic PEPs as well as enhanced due diligence on foreign PEPs.

The directive also contains more comprehensive beneficial ownership disclosures than those contained in U.S. regulations. The EU directive recommends that banks identify owners of more than 25% of a foreign or domestic entity and the beneficial owners of legal entities and trusts, using a risk-based verification approach. The Section 312 rules require banks to only identify the beneficial owners of foreign private accounts of over \$1 million. The U.S. legal system has been criticized by FATF for lack of available information on the beneficial ownership of domestic entities.

The EU passed the directive with the intention of applying it to both EU and foreign institutions doing business in the region, however, complying with the directive should not pose a problem for U.S. banks there said **Michael Diaz** managing partner with Miami-based law firm **Diaz Reus Rolff & Targ**. "The vast majority of them operating in Europe are already operating at that high level of compliance anyway," said Diaz, "Especially any banks that have foreign correspondent relationships."

Domestic banks in the U.S. should also apply the EU standards to their compliance function and consider them as leading practices for AML compliance say regulatory specialists.

"Frankly U.S. banks that aren't complying to standards that are comparable to [the EU's directive] now are probably running risks that they are going to be criticized by the U.S. regulators because though it is not required by the Patriot Act, I can tell you that being on the line with examiners who are conducting examinations, they are looking for similar things," said Theresa Pesce, head of the KPMG Forensic's AML service line.

Examiners are not only holding banks to the minimum standards of the U.S. legislation and regulation, but are making recommendations along the lines of the EU directive in order to make the industry's AML programs more robust, said Ralph Fatigate director of AML compliance consulting with BDO Seidman LLP in New York.

"I think the examiners are absolutely on the right track on this," said Fatigate. "The passage of the directive in Europe can certainly have an impact on what we do here. I don't see a problem with the regulators here looking at the directive. Even though some of those things might not be the law here in the United States, we have to respect the letter and spirit of the law."

Pesce said that regulators are using the directive's standards concerning PEPs in their examinations. "The Patriot Act talks about identifying international private banking relationships, but the regulators are looking for PEPs in all areas," said Pesce. While it's not required under the Patriot Act, banks should take the EU directive's recommendation and identify domestic PEPs as well, said Pesce, "and maybe even a little bit lower in the hierarchy compared to what is traditionally defined by some as the most risky PEPs. I think that because banks need to look for proceeds of corruption, corruption can occur in lower levels, and I think it makes sense to apply those types of standards."

"There are minimum practices and there are leading practices and the institutions are best off if they get their arms around the leading practices," said Pesce.