

Summary of responses to
Informal consultation on the Third EC Money Laundering Directive

Introduction

1. This consultation was launched in response to the European Commission's preliminary draft articles for the Third EC Money Laundering Directive. The consultation incorporated an initial Regulatory Impact Assessment (RIA).¹
2. The consultation document was labelled "informal" as it was based on a draft European Commission proposal rather than the final proposal; this was because HM Treasury were aware that the final proposal would not be published until the summer of 2004 and wanted to solicit detailed stakeholder feedback as soon as possible. The consultation document was accompanied by a series of round-table meetings with affected sectors.
3. The consultation document was sent out to stakeholders on 27 May 2004 and responses were requested by 18 June 2004. The document was also published on the HM Treasury website. The short response period was due to the swift-moving EU timetable for this measure. On 1 July 2004 stakeholders were circulated with the text of the European Commission's final proposal², together with a document indicating the main changes since the previous draft, and were given until 26 July 2004 to comment further. Comments continued to be received through August and early September and the material garnered will be used in updating the RIA.
4. 48 formal responses were received, some in the form of joint responses. A list of the institutions and organisations which responded is to be found at the end of this summary.

Substantive points

5. There was a general feeling that the directive was appropriate and necessary. However there were concerns over particular points and articles as outlined below, and in particular there was considerable dissatisfaction about the timing of the directive, so soon after the previous money laundering directive was implemented.
6. It was widely felt that the directive should contain a general rider stating the need for a risk-based approach, to be applied to all areas of the directive. Another general point was that the directive refers to "credit and financial institutions", whereas "legal and natural persons subject to the directive" would represent more of the people encompassed by the directive.

¹ The text of the consultation document is available at: http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_moneylaundering_index.cfm

² The Commission's proposal is available at http://www.europa.eu.int/comm/internal_market/en/company/financialcrime/docs/com-2004-448_en.pdf

7. **Data Protection:** There is no reference to any data protection issues in the directive and certain responses asked how all the aims of the directive could be achieved if the current Data Protection Act restrictions were kept in place.
8. **Definitions:** A large amount of feedback was given on the definitions in the directive, especially the definitions of “money laundering”, “criminal activity”, and “business relationship”. Many suggested that these definitions were too vague and had too wide a scope, feeling that they should be narrowed down and defined more clearly. Concerning paragraph 18 of the preamble, it was felt that there should be a suitable definition of “introducer”, with rules to ascertain who could introduce who to whom (as certain firms will have different levels of security from others).
9. **Beneficial ownership:** A definition that raised particular concern was “beneficial owner”. The main criticism was the 10% threshold, which the majority of feedback suggested was too low. A level of 20% was generally felt to be more appropriate. The question of how to go about identifying beneficial owners was also raised in a number of responses; it was felt this might require a large amount of resources which might not be available, or it might simply be impossible to establish who the real beneficial owners were (and if they were indeed the ones who made the key decisions).
10. **Personal liability of Money Laundering Reporting Officers:** It was generally felt that this encouraged a high level of defensive reporting.
11. **Article 5(1):** A clear definition of what is meant by “**anonymous accounts**” was requested, as certain account-holders’ identities have to be protected.
12. **Article 5(2)(ii):** Some responses argued that the exemption from verification for occasional transactions had been at **€15,000** for many years, and in real terms was now too low.
13. **Article 5(2)(iii):** There was a widespread feeling that this article should be revised, as a **request for more information** may be regarded as tipping the customer off.
14. **Article 6:** On **timing**, a number of responses argued that certain industries should be able to postpone due diligence procedures to later in the business relationship.
15. **Article 7:** The **casino** industry felt that the level of €1000 as a trigger for identification in casinos was far too low, and should be brought in line with a figure the current US figure (\$10,000) or of the high-value dealers under the directive (€15,000), so as to be more manageable and applicable.
16. **Article 8:** Some responses wanted it to be made clear exactly when **simplified due diligence** could be applied, in order to avoid loopholes in the directive.

17. *Article 9(1)(a)*: Many respondents argued that it was wrong to classify all **non-face-to-face transactions** as high risk - subjecting them to mandatory enhanced customer due diligence procedures. They favoured a risk assessment instead.
18. *Article 9(1)(c)*: A number of responses mentioned the practical difficulty that there is no authoritative “official” database of **politically exposed persons** (PEPs). They queried at what stage or position a person becomes a PEP, and how such a person is to be defined. Some asked how far down a family tree one should go when considering “close family members”.
19. *Article 10*: Many argued that there was no reason why one authorised firm should not be able to rely on another authorised firm for an **introduction** to a customer. They felt that ultimate responsibility should not be on those who were relying on the introducer as this would undermine the entire point of introduced business.
20. *Article 17*: There was a widespread feeling that details of **employees** who make suspicious activity reports should be kept confidential, to avoid deterring them from making such reports.
21. *Article 23*: The **ban on criminals** running certain organisations was felt to be too sweeping and the general view was that if someone has a criminal conviction they should not automatically be excluded; rather each case should be considered using a risk-based approach on a case-by-case basis.
22. The following institutions/organisations responded in the consultation process:

Financial and credit institutions

- Association of British Insurers (ABI)
- Association of Foreign Banks (AFB)
- Association of Friendly Societies
- Association of Independent Financial Advisors (AIFA)
- Association of Private Client Investment Managers and Stockbrokers (APCIMS)
- British Bankers’ Association (BBA)
- British Venture Capital Association (BVCA)
- Electronic Money Association (EMA)
- Finance and Leasing Association (FLA)
- Factors and Discounters Association (FDA)
- Friends Provident Life and Pensions Limited
- Futures and Options Association (FOA)
- GMAC Commercial Finance plc
- Halifax
- Investment & Life Assurance Group (ILAG)
- Investment Management Association (IMA)
- Jersey Financial Services Commission (FSC)
- Jordans
- Lloyds TSB
- London Investment Banking Association (LIBA),
- Mobile Broadband Group (MBG)
- PayPal

- Vodafone

Legal sector

- City of London Law Society
- The Directorate of the Council for Licensed Conveyancers
- General Council of The Bar
- Law Society
- Notaries Society

Accountancy sector

- Association of Accounting Technicians (AAT)
- Association of Taxation Technicians (ATT)
- Chartered Institute of Taxation (CIOT)
- Consultative Committee of Accountancy Bodies (CCAB)
- Institute of Chartered Accountants in England and Wales (ICAEW)
- London Society of Chartered Accountants Financial Planning Committee (LSCA)

Casino sector

- Ameristar Casinos Inc.
- British Casino Association
- Caesars Entertainment Inc.
- Casino Operators' Association of the UK
- Consolidated Press Holdings Limited
- Gaming Board for Great Britain
- Kerzner International Limited
- MGM Mirage Development Limited
- Sun International Group

Others, including high-value dealers

- British Art Market Federation (BAMF)
- British Cheque Cashers Association (BCCA)
- Charities Aid Foundation
- Institute of Interim Management
- Institute of Directors
- Law Commission
- National Association of Estate Agents (NAEA)
- Retail Motor Industry Federation (RMIF)
- Royal Institute of Chartered Surveyors (RICS)
- Society of Trust and State Practitioners (STEP)
- Thinking About Crime Limited
- Transparency International

HM Treasury, 23 September 2004

ANNEX 1:

Summary of responses to consultation document *Regulatory Impact Assessment on Disclosure of beneficial ownership of unlisted companies*

1. The consultation document on this Regulatory Impact Assessment was a joint publication between HM Treasury and the Department of Trade and Industry (DTI).³ It was published in July 2002 and responses were invited by 14 November 2002.
2. The consultation invited views on eight cumulative options for disclosure of beneficial ownership of unlisted companies. The responses were very varied and there was no consensus on the best way forward.
3. Furthermore, the consultation was superseded by events when it became clear in 2003 that beneficial ownership would be covered in the forthcoming Third EC Money Laundering Directive. The results of the beneficial ownership consultation are therefore included in this annex to the summary of the consultation on the Third Directive.
4. The Third Directive is still under negotiation; under the current proposal beneficial owners would have to be identified as part of standard customer due diligence procedures by the regulated sector, but there would be no requirement to establish any form of register.
5. Eleven responses were received from:
 - Association of Chartered Certified Accountants (ACCA)
 - Association of Private Client Investment Managers and Stockbrokers (APCIMS)
 - Experian
 - Faculty of Advocates
 - H.L. Miller & Co Solicitors
 - Information Commissioner
 - Institute of Chartered Accountants of Scotland
 - Institute of Chartered Secretaries and Administrators (ICSA)
 - Institute of Credit Management
 - Institute of Directors
 - Law Society
6. There follows a summary of the views on the different options presented.
 - *None of the options*

A few responses did not support any of the options offered. The reasons given were:

 - there may be legitimate reasons for staying unidentified;
 - it would be a breach of owners' privacy;

³ The text of the consultation document is available at: http://www.hm-treasury.gov.uk/Consultations_and_Legislation/beneficial/consult_beneficial_index.cfm#

- the benefits would not justify the high costs;
 - it would be difficult to secure a clear legal definition of “beneficial interest,” as it is possible to have multiple layers of ownership.
- *Option 1a: A person should be obliged to disclose to a private company if they hold a beneficial interest in an unspecified percentage of that company’s shares which is more than 3%. Such persons should also disclose to the company when their beneficial interest drops below the 3% threshold. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

A majority of replies believed this option would be feasible and would provide a significant benefit over and above the cost it would incur to unlisted companies. However others argued that even this option was too severe and offered little benefit for the costs it would incur. One suggestion to reduce the severity of this option was to alter the threshold of 3% to a figure nearer to 10%. It was also thought that this option might be more widely accepted if the information was not too widely available, as privacy issues are a concern.

- *Option 1b: In addition to the above, persons holding beneficial interests in private companies above the 3% threshold should disclose to the company at the outset the percentage of the company’s shares in which they have a beneficial interest and disclose on an annual basis to what extent their beneficial interests have changed. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

A large number of the replies supported this option in principle, but it was widely suggested that it might be too burdensome and difficult to monitor. The same worries over privacy and the threshold level were expressed as for option 1a, and it was also thought that would be too much reliance on the honesty of the beneficial owners themselves.

- *Option 1c: In addition to the above, persons holding a beneficial interest above the 3% threshold should disclose to the private company within a specified period (such as two days) each time that their holding rises by one percentage point. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

Virtually all responses supporting option 1b also supported option 1c, as this was seen as a natural continuation to the assessment. Option 1c did not appear to raise any further concerns other than those mentioned above under option 1b.

- *Option 2: In addition to the above, information on beneficial interests exceeding the 3% threshold held in private and unlisted public companies should be disclosed by those companies to Companies House via annual returns. This notification made by the Company to Companies House should give the name of each beneficial shareholder and the percentage of their*

shareholding. This information should be made available on enquiry to law enforcement and regulatory authorities.

Almost all the responses which supported options 1 a-c also supported this option; however others thought that it was of no use whatsoever as many alterations could be made over a full year period.

- *Option 3: In addition to the above, all changes in legal share ownership and in beneficial interests exceeding the 3% threshold should be disclosed to Companies House as and when they occur rather than via annual returns. Disclosure should be made when ownership changes by at least one percentage point. A time leeway should be introduced to avoid unnecessary reporting whilst changes in legal ownership are being cleared and settled. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

Fewer responses supported this option, many believing it would impose too great a burden on the unlisted companies. Those that did support it found it to be a small step up from the base set out in options 1 a-c and option 2, and thought it would be of far greater benefit than option 2.

- *Option 4: In addition to the above, Companies House should establish a modern database which allows the name of a person to be inputted and then reveals which shareholdings and beneficial interests that person holds. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

This was again supported by a few of the responses; some thought the database was a good idea that could offer significant benefits but thought it should not be introduced as an addition to the other options but as an option in itself.

- *Option 5: In addition to the above, this modern database should allow the name of a person to be inputted and then reveal which directorships and shadow directorships that person holds. This information should be held by the company and made available on enquiry to law enforcement and regulatory authorities.*

Again support for option 5 was quite slim; many thought it offered significant benefits, but as an addition to the previous options it was likely to prove too burdensome.

7. In conclusion, the responses were varied, with support quickly tailing off after option 2. Many thought that a large amount of the burden was already established in options 1 a-c and some responses therefore preferred options 4 and 5 without the preceding options. Others thought the greatest benefit came in option 1.