



EU anti-money laundering laws from experience to proposal for action

The involvement of professional categories
in the fight against money-laundering.
The main anti-money-laundering obligations

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Importance of money-laundering

- Economic
- Social
- Legal

Illegal vs. legal economy

Legislation as an instrument for achieving social and economic stability

- Legislation defining money laundering as a criminal offence
- Legislation which is meant to prevent, repress, impede and hinder money laundering

How money-laundering shows itself

**It is not an immediate event
but the result of several actions that develop:**

- During an indefinite period of time
- In a space without borders/limits

International objectives to effectively fight money laundering

- Homogeneous, shared definition of the area of illegality to fight
- Finding a minimum legislative standard which all nations must adopt

The 40 gafi - fatf recommendations

The evolution of the international fight against money laundering

- From the fight against narcotics to the fight against all “serious crimes”
- From the involvement of the financial world to the involvement of professionals and entrepreneurs

European and national legislation

- European Parliament and Council Directive of October 26th 2005, n. 2005/60/CE (3rd Directive)
- Legislative Decree 231 of November 21st, 2007

Involvement of professionals in the fight against money laundering

The focus on professionals is justified not only because of the data and information which professionals can potentially share with the authorities to help prevent and suppress money laundering, but also to avoid collusion and connivance between the criminal and the professional worlds. (white collar crime)

Critical areas related to the extension of anti-money laundering legislation to professionals

- Vulnerus with regard to priveleged communications
- Lack of consideration of the specificity of the professional world with respect to financial operators

General principles of anti-money laundering laws

Art. 3 of D.Lgs. 21 November 2007, no. 231 requirements

- Active collaboration
- Weightening obligations with reference to large or small risks
- Prohibition to implement additional investigation activities not directly linked to the professional performance
- Adaptation of laws on the basis of the specific characteristics of the various professions and the difference of the target group relevance

Main anti-money laundering requirements

Requirement of sufficient verification - Articles 16, 18, 19, 20 e 21 of Legislative Decree 231/2007

- Identification of the client and verification of identity through documents, data and information obtained from a reliable third party source
- Identification of effective owner (if any) and verification of identity
- Acquisition of information regarding the nature and purpose of the relationship with the professional or the service required
- Constant monitoring during the course of the professional relationship

Requirement of identification of the client

Timing and method - Article 19 of Legislative Decree 231/2007

- Before establishing an ongoing professional relationship
- Upon assignment to carry out a professional service
- Upon executing the transaction

“Identity information” which must be obtained in order to comply with obligations are; the first name, last name, place and date of birth, address, fiscal code and details of the I.D. document or, if the subject is not a physical person, the name, legal address and fiscal code, or for legal entities, the VAT ID

Requirement to identify the legal owner

Timing, method and criteria - Article 19 of Legislative Decree 231/2007

Natural person for whom an operation or activity is carried out; in the case of a legal entity, the person or natural person who ultimately possesses or controls the entity or are its beneficiaries

- Before establishing an ongoing professional relationship
- Upon assignment to carry out a professional service
- Upon executing the transaction

- Declaration written and signed by the client
- Contents of public registries, lists, acts or documents accessible to anyone
- Any other appropriate means

Risk based approach

Requirements simplified and reinforced through adequate verification - Article 25 and following and Article 28 and following of Legislative Decree 231/2007

Transaction relating to black listed areas

Risk commensurate with the client or the transaction being carried out - Article 20 of Legislative Decree 231/2007

Exemption to requirement

Exemption for notaries

Article 23 of Legislative Decree 231/2007

If it is not possible to abstain as there exists a legal obligation to receive the document that is that the execution of the transaction by its nature cannot be delayed or if abstention may hinder the investigation, there remains a requirement to immediately report the transaction as per article 41

Requirement to register and conserve

Article 36 and 38 of Legislative Decree 231/2007

- Documents must be conserved and information must be saved in order to meet the requirements of verification of the client. This is to allow their use in any investigation on money laundering or the financing of terrorism and for analysis by the UIF or any other competent authority
- Collection and storage of information must take place in a timely manner and in any case not later than the 30th day after: the transaction takes place, the beginning, change or end of the professional relationship or the end of the professional service

Financial traceability

Article 49 of Legislative Decree 231/2007

- The use of cash is prohibited for sums equal to or greater than 1.000 euro. Separate payments for the same operation for the purposes of evasion is prohibited
- Bank checks and cashiers check for sums equal to or greater than 1.000 euro must be marked as non-transferable (the use of multiple checks for the same operation in order to exceed the maximum value is not foreseen)
- Infractions must be reported to the MEF within 30 days

Notification requirement

Article 41 of Legislative Decree 231/2007

- The notification requirement imposed on the professional is in effect if the professional
 - Knows
 - Suspects
 - Has reasonable motives to suspect
 1. that there are currently
 2. that there have been
 3. that there have been attempts made to carry out, operations related to money laundering or the financing of terrorism

Indicators of anomalies

Ministerial Decree Justice Minister April 16th 2010

The professional must carry out a global evaluation of the operation based on all of the objective and subjective information relating to activities carried out after the professional relationship starts, before sending a notification. Any information not relating to this professional relationship is excluded with the exception of the professional's requirement to ask about the scope and nature of the operation of professional service