



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

JC/2011/096
AMLTF/2011/05

EBA, ESMA and EIOPA's

Report on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements under the Third Money Laundering Directive [2005/60/EC]

April 2012

Contents

| | |
|--|-----------|
| List of Abbreviations | 3 |
| Chapter 1. Executive Summary | 4 |
| 1.1 Background and methodology..... | 4 |
| 1.2 Findings | 5 |
| 1.3 Conclusions and Recommendations..... | 5 |
| Chapter 2: Introduction | 7 |
| 2.1 The Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee) | 7 |
| 2.2 Requirements in the Third Money Laundering Directive (3 rd MLD)..... | 7 |
| 2.3 Work performed by the AML Committee in respect to analysis of certain aspects of the Third Money Laundering Directive (3 rd MLD) | 8 |
| Chapter 3: Assessment of supervisory expectations in relation to the treatment of Beneficial Owners for AML/CTF purposes..... | 9 |
| 3.1 Definition | 9 |
| 3.1.1 Calculation of the 25% threshold under Article 3(6) (a) (i) of the 3 rd MLD | 9 |
| 3.1.2 Categories of persons considered to otherwise exercise control over corporate entities (Article 3(6)(a)(ii) of the 3 rd MLD) | 11 |
| 3.1.3 Calculation of the 25% plus one share "threshold" for legal entities, under Article 3(6) (b) (ii) of the 3 rd MLD..... | 12 |
| 3.2 Control & ownership structure | 12 |
| 3.3 Verification of identity | 13 |
| 3.4 High risk indicators and enhanced due diligence | 14 |
| 3.4.1 General examples of high risk situations | 14 |
| 3.4.2 Examples of high risk situations regarding beneficial owners..... | 15 |
| 3.5 Requirements to keep information on Ultimate Beneficial Owners up to date | 16 |
| 3.5.1 Approaches to Updating beneficial ownership information | 17 |
| 3.5.2 Trigger events for updating information on UBO..... | 17 |
| 3.5 How institutions use the UBO information obtained for CDD purposes | 18 |
| Chapter 4: Annexes..... | 20 |
| Annex 1: Relevant Articles in 3 rd MLD in relation to Beneficial Owners | 20 |
| Annex 2: Availability of ownership and control information across the European Union on ultimate beneficial owners of legal entities and legal arrangements | 22 |
| Annex 3: Requirements from third Parties to report changes in Beneficial Owners | 27 |



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

List of Abbreviations

AML – Anti Money Laundering
AMLTF – Anti-Money Laundering Task Force of the EBA, ESMA and EIOPA
AML Committee – The Joint Committee of the European Supervisory Authorities’ Sub Committee on Anti Money Laundering
CDD - Customer Due Diligence
CTF – Counter Terrorist Financing
EBA - European Banking Authority
EEA - European Economic Area
EIOPA - European Insurance and Occupational Pensions Authority
EDD – Enhanced Due Diligence
ESMA - European Securities and Markets Authority
EU – European Union
MS – Member State of the European Union
PEP – Politically Exposed Person
SDD - Simplified Due Diligence
3rd MLD - Third Money Laundering Directive (2005/60/EC)

Chapter 1. Executive Summary

1.1 Background and methodology

1. This paper provides an overview of EU Member States' legal and regulatory provisions and supervisory expectations in relation to the application of the Third Money Laundering Directive¹ (3rd MLD)'s beneficial ownership Customer Due Diligence (CDD) requirements.
2. The 3rd MLD is a minimum harmonisation directive. This means that Member States in their transposition of this Directive may go beyond the minimum standards set out in this Directive. Accordingly, the Directive allows for differences in the national transposition of the Directive's requirements. Furthermore, the 3rd MLD introduces a risk-based approach and thus, the extent of measures applied by institutions may depend on the type of customer, business relationship, product or transaction. It is important that these national differences do not create any gaps which have the potential to be exploited for money laundering and terrorist financing purposes.
3. The data for this paper was obtained from financial services supervisors who are members of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, collectively known as the European Supervisory Authorities. National supervisors submitted replies to a questionnaire and discussed the issues in the Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee). The AML Committee's findings and conclusions are reflected in this paper.
4. This paper analyses EU Member States' current legal, regulatory and supervisory implementation of the anti-money laundering/counter terrorist financing (AML/CTF) frameworks in relation to the application by institutions of CDD measures on their customers' beneficial owners. It is not a transposition check of EU Directives. Further, this paper does not take into consideration the on-going discussion at the FATF on the revision of the FATF's 40+9 Recommendations.
5. In Chapter 2, this paper provides some background on the AML Committee and the work it has performed in relation to the analysis of certain requirements in the 3rd MLD. Chapter 3 consists of five sections: Section 1 discusses Member States' and national supervisors' approaches to credit and financial institutions' use of the 25% threshold to identify the "ultimate beneficial owner"; Section 2 describes the national transposition of the Directive's requirement to "establish the customer's control and ownership structure"; Section 3 describes Member States' practices in relation to situations requiring the application of enhanced due diligence; Section 4 discusses record-keeping requirements and Section 5 contains an overview of how institutions use the information on ultimate beneficial owners. An Annex in Chapter 4 maps different types and categories of legal arrangements and entities that exist in Member States and contains country-specific information on the extent to which it is possible to share information on beneficial owners with foreign regulators and other financial institutions.

¹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

1.2 Findings

6. This paper notes significant differences in the way Member States (MS) have implemented the 3rd MLD's beneficial ownership requirements. Many, but not all, of these differences are due to the minimum harmonisation nature of the 3rd MLD, which foresees that the detail of the national legal and regulatory frameworks can differ. In some cases, these differences are amplified by variations in the national interpretation of the risk-based approach, which ranged from a high-level, principles-based legal and regulatory Anti Money Laundering /Counter Terrorist Finance (AML/CTF) framework to a predominantly rules-based approach where specific AML/CTF risks and their mitigants are prescribed by public authorities.
7. The AML Committee identified significant differences in the following three areas:-

(a) The identification of beneficial owners

All MS require their financial institutions to identify their customers' beneficial owners. However, the way MS expect their financial institutions to identify their customers' beneficial owners differs. This means that institutions in different Member States might come to a different conclusion as to who is the ultimate beneficial owner of the same customer.²

(b) The verification of beneficial owners' identity

The AML Committee also noted different standards in relation to the verification of the beneficial owner's identity. Practices accepted by competent authorities range from verbal confirmation of the beneficial owners' identity on a risk-sensitive basis to the obligatory reference to reliable and independent sources in all cases. There are also significant differences in the extent to which MS require their financial institutions to verify the customer's ownership and control structure.

and

(c) The availability of information on ownership and control structure of customers

Finally, the AML Committee found that Member States do not share the same definition of legal entities³ such as foundations and legal arrangements such as trusts, and that the extent to which ownership and control information is publicly available varies considerably.

1.3 Conclusions and Recommendations

8. The AML Committee considers that there is a risk that differences in the way Member States require institutions to identify their customers' beneficial owners, may create gaps in the EC's AML/CTF defences, which could be exploited by criminals for ML/TF purposes. Different identification requirements mean that institutions in different

² In this context, the AML Committee noted material disparities in Member States' requirements to identify the beneficial owners of securities deposited in nominee accounts.

³ Article 3(6) (ii) (b) of the 3rd MLD refers to "legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds".

Member States may identify different persons as beneficial owners of one and the same customer. Where institutions fail to identify the *ultimate* beneficial owner, they may be unable adequately to assess the ML/TF risks associated with their business relationship, to mitigate ML/TF risk or fall short of their obligations under applicable sanctions legislation.

9. Different entities of the same group, which operate across EU borders, are applying national identification standards that may differ among themselves, which may affect the group's ability to form a consolidated view of its customer relationships and effective management of its AML/CTF risk.
10. The differences identified in the beneficial ownership identification requirements may have to be addressed to maintain the presumption of equivalence of all EU MS' AML/CTF provisions.
11. There is a risk that different approaches affect the level playing field for institutions across Europe as the cost of compliance with domestic legislation can differ depending on the respective beneficial ownership CDD regimes.
12. The AML Committee notes that at least some of the differences in MS' transposition of the 3rd MLD's beneficial ownership CDD requirements are a consequence of the minimum harmonisation nature of the directive. However, the AMLC also identified significant differences in Member States' definition of the beneficial owner, which appear to be caused by different understandings of the Directive's requirements. This fact indicates that there is a lack of clarity as to what the minimum requirements of the 3rd MLD are with regards to beneficial owners.
13. The AML Committee considers that there is a risk that these differences carry the potential negatively to affect the effectiveness of the European anti-money laundering and counter-terrorist financing regime.
14. The AML Committee therefore invites the Commission to consider whether work to foster convergence of national beneficial ownership identification standards is appropriate, possibly in the context of its forthcoming review of the 3rd MLD. This could include, but is not limited to:
 - (a) changes to Articles 3 and 8 of the 3rd MLD to clarify the definition of beneficial owner and customer due diligence and its application; or
 - (b) issuance by the EU Commission of implementation measures, in accordance with Article 40 (1) (a) of the 3rd MLD.

Chapter 2: Introduction

2.1 The Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee)

15. The Joint Committee of the European Supervisory Authorities' Sub Committee on Anti Money Laundering (AML Committee), was established in 2011, and assists the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) in a supervisory capacity, to ensure a consistent implementation of the EU law, in providing a supervisory contribution to the implementation of the Third Anti-Money Laundering Directive (3rd MLD), inter alia. The AML Committee has taken over the tasks of the former Anti Money Laundering Task Force (AMLTF), a joint committee of the former Level 3 Committees, CEBS, CESR and CEIOPS, including its Beneficial Owner Working Group.
16. The data included in this paper should be used for information only. It should not be used as a transposition check of EU Directives. It does not take into consideration the on-going discussion at the FATF on the revision of the FATF's 40+9 Recommendations. The data was collected from national supervisors in 27 EU Member States and 2 members of the EEA in the 2nd quarter of 2010. The AML Committee cannot guarantee that the data contained in this report is up-to-date. National supervisors contributing to the survey are responsible for the accuracy of the data.

2.2 Requirements in the Third Money Laundering Directive (3rd MLD)

17. The 3rd MLD introduces specific and detailed customer due diligence provisions relating to the identification and verification of the customer's and, where applicable, the beneficial owner's identity. Relevant institutions⁴ covered by the 3rd MLD are expected to know their customers and use this knowledge to prevent and detect money laundering and terrorist financing. Article 8(1) defines customer due diligence as:
- Identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
 - Identifying, where applicable, the beneficial owner and taking risk based and adequate measures to verify identity so that the institution or person covered by

⁴ For easier reading the term "institution" is used throughout this document and refers to Article 2 and 3 of Directive 2005/60/EC where

- Article 2 states that this Directive shall apply to (1) credit institutions and (2) financial institutions; and
- Article 3 states that for the purposes of this Directive the following definitions shall apply: 'credit institution' means a credit institution, as defined in the CRD and 'institution' means
 - an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices;
 - an insurance company;
 - an investment firm as defined in Dir 2004/39/EC (MiFID);
 - a collective investment undertaking marketing its units or shares;
 - an insurance intermediary as defined in Dir 2002/92/EC;
 - branches, when located in the Community, of institutions as referred to in points (a) to (e), whose head offices are inside or outside the Community.

- this Directive understands the ownership and control structure of the customer. This includes legal persons, trusts and similar legal arrangements;
- c) Obtaining information on the purpose and intended nature of the business relationship; and
 - d) Conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure they are consistent with the institution or person's knowledge of the customer and the business and risk profile. This includes, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.
18. Further Article 8(2) refers to provisions in relation to the risk-based approach: Namely, the institutions and persons covered by this Directive shall apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The institutions and persons covered by this Directive shall be able to demonstrate to the competent authorities that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.
19. This report focuses on particular aspects of customer due diligence: the transposition of the identification and verification requirements in relation to beneficial owners. Whilst customer due diligence is a broader concept and includes other measures such as continued monitoring of business relationship, we primarily refer to those two narrower aspects of CDD when we use the term "customer due diligence requirements" in the report.

2.3 Work performed by the AML Committee in respect to analysis of certain aspects of the Third Money Laundering Directive (3rd MLD)

20. In 2009, the AMLTF published a Compendium Paper on Member States' implementation practices in relation to the CDD requirements of the 3rd MLD for customers who are natural persons.⁵ Whilst working on this paper, the AMLTF noted differences in Member States' implementation of the beneficial ownership requirements of 3rd MLD which led to an increased and continued focus on the CDD requirements.
21. Accordingly the AMLTF established a Beneficial Owner Working Group, which issued a questionnaire to AMLTF Members, to assess legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements under the 3rd MLD, and identify any issues resulting from any differences noted in Member States' approach.
22. This paper is based on information provided by twenty seven Member States (MS) and 2 EEA countries.

⁵ <http://www.eba.europa.eu/getdoc/8369a533-cf27-41cc-9a84-0dffdd707577/Compendium-Paper-on-the-supervisory-implementation-.aspx>.

Chapter 3: Assessment of supervisory expectations in relation to the treatment of Beneficial Owners for AML/CTF purposes

3.1 Definition

23. Article 3 of the 3rd MLD defines the beneficial owner as “the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted”.
24. Article 3(6) of the 3rd MLD specifies that the beneficial owner “shall at least include
- (a) in the case of corporate entities:
 - i. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
 - ii. the natural person(s) who otherwise exercises control over the management of a legal entity;
 - (b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:
 - i. where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
 - ii. where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
 - iii. the natural person(s) who exercises control over 25% or more of the property of a legal arrangement or entity”.
25. All MS⁶ understand the term “ultimately” to include direct and indirect ownership, and state that indirect ownership can extend to grandparent level and beyond. But there are marked differences in the way MS expect their institutions to identify the beneficial owner.

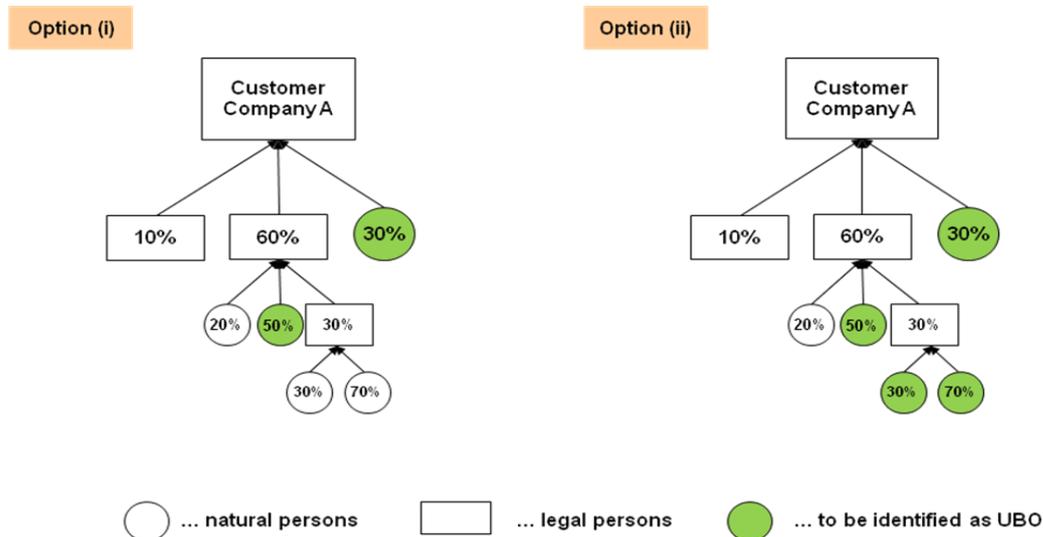
3.1.1 Calculation of the 25% threshold under Article 3(6) (a) (i) of the 3rd MLD

26. Art 3 (6)(1) of the 3rd MLD defines the beneficial owner as the natural person who ultimately owns or controls an institution’s corporate customer. Ownership and control are defined by reference to shareholdings or voting rights and the article states that a

⁶ The term Member States (MS) refers to all 27 EU Member States and the EEA Countries.

percentage of “25% plus one share” are normally sufficient to meet the ownership and control criterion.⁷

27. MS have taken different approaches to the interpretation of the 25% plus one share threshold under Article 3(6)(a)(i).



28. Under a “top down” approach (Option (i)), the ultimate beneficial owner is the person who owns/controls 25% plus one share or more of the *customer*; and under a “bottom up” approach (Option (ii)), the ultimate beneficial owner is the person who owns/controls 25% plus one share or more in the *customer or any entity that owns at least 25% plus one share of the customer*.
29. 13 MS broadly followed a “top down” approach, which means that in cases of indirect ownership the percentage/share is determined by reference to the customer only. Some MS require institutions to determine whether a natural person at grandparent level (or beyond) holds 25% plus one share of the customer or more, e.g. a 30% share (grandparent level) of a 60% percent share (parent level) in the customer is considered an indirect 18% share in the customer and is not normally considered an ultimate beneficial owner (Option (i) in the diagram above). Other MS following the “top-down” approach do not identify the UBO in this way, but determine whether a natural person at grandparent level (or beyond) exercises control or owns at least 25% plus one share of the *customer* (de jure or de facto).
30. 11 MS take the “bottom up” approach that ownership at any layer has to be counted in full, e.g. a 30% share (grandparent level) of a 60% percent share (parent level) in the customer is considered an indirect 30% share in the customer and thus a person who owns more than 25% of such entity is considered the ultimate beneficial owner (Option (ii) in the diagram above).
31. Almost all MS have transposed the beneficial ownership requirement in law and/or regulation. Some MS have supplemented this with guidance and one MS sets out its requirements in guidance alone.

⁷ Section 3.1.1 does not discuss situations where the beneficial owner has to be determined by reference to the customer’s ownership and control structure – please refer to section 3.1.2 and 3.2 for more information.

3.1.2 Categories of persons considered to otherwise exercise control over corporate entities⁸ (Article 3(6)(a)(ii) of the 3rd MLD)

32. The 3rd MLD requires institutions always to identify natural persons holding more than 25% of the shares or voting rights as the corporate customer's beneficial owner. It also requires institutions to identify as the corporate customer's beneficial owner anyone who "otherwise" exercises control over that customer.⁹

33. MS follow different approaches to establishing who exercises control over a corporate customer.

- Eight MS have adopted a very flexible approach and do not prescribe how institutions must assess who exercises control over the customer.
- Nine MS apply a flexible approach. While leaving it to the institution to assess who exercises control, they require the institutions to obtain evidence of that control function; for example institutions are supposed to obtain information from the registrar, or information from the beneficial owner of the persons in control.
- Twelve MS provide a minimum list of persons who are considered to exercise control but allow institutions to identify additional persons where appropriate. Examples include chairperson or member of the executive board, head of the supervisory board and members of the supervisory board, because these persons are considered by these MS's authorities to have significant influence on the customer's management due to their function as representatives of the shareholders.
- No MS provides an exhaustive list of persons exercising control.

34. MS also follow different approaches as to whether persons that own less than 25% plus one share of a company should nevertheless be considered a beneficial owner because they may "otherwise exercise control" over the customer.

- Nineteen MS have adopted a flexible, risk-based approach and do not prescribe any situations in which thresholds should be lowered. Institutions can adjust their approach on a risk-sensitive basis.
- Six MS have adopted a risk-based approach but give indications for situations in which a lowered threshold may be justified.
- One MS has explicitly lowered the threshold to 10% plus one share.

⁸Article 3 (6) (a) (ii) "the natural person(s) who otherwise exercises control over the management of a legal entity"

⁹ See also Section 3.2

3.1.3 Calculation of the 25% plus one share "threshold" for legal entities, under Article 3(6) (b) (ii) of the 3rd MLD

35. Article 3(6)(b) of the 3rd MLD defines the beneficial owner(s) of "legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds" as:

The natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

- i.;
- ii. where the individuals that benefit from the legal arrangement or entity¹⁰ have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
- iii.

36. Where the individuals that benefit from a legal arrangement or entity¹¹ have yet to be determined, 15 MS apply a 25% threshold. This means that institutions have to identify only those "classes of persons" which stand to benefit from at least 25% of the legal arrangement. 14 MS do not apply a threshold and expect institutions to decide, on a risk-sensitive basis, whom to identify as beneficial owners.

3.2 Control & ownership structure

37. Understanding the ownership and control structure of the customer is key to identifying the person who ultimately owns or controls the customer. It provides the basis for ensuring that the institution knows who is the beneficial owner.

38. All jurisdictions require their institutions to understand the ownership and control structure of their customers. Most MS require institutions always to verify the ownership and control structure of the customer where the conditions for SDD set out in Article 11 of the 3rd MLD are not met, but five MS require verification only where the ML/TF risk is increased.

39. In line with the risk-based approach adopted by most MS, institutions can adjust the type and extent of the measures to understand the customer's ownership and control structure. This means that in lower risk situations, most MS permit institutions to reduce the quality and quantity of measures or, in situations where a simplified due diligence is possible (Article 11 of 3rd MLD), not to apply them at all. Where the risk associated with the business relationship is increased, most MS require their institutions to increase the quality and quantity of their measures accordingly.

¹⁰ MS were requested to list the types or categories of such legal arrangements or entities known in their country and indicate if requirements of registration and public availability of the legal arrangements or entities apply. The objective was to establish whether the information of such legal arrangements or entities and their beneficial owners is easily and publicly available in the Member States. See Annex 2 for an overview.

¹¹ MS were requested to list the types or categories of such legal arrangements or entities known in their country and indicate if requirements of registration and public availability of the legal arrangements or entities apply. The objective was to establish whether the information of such legal arrangements or entities and their beneficial owners is easily and publicly available in the Member States. See Annex 2 for an overview.

40. MS broadly fall into one of four categories:

- Eleven MS have adopted a flexible, risk-based approach and do not prescribe the steps institutions need to take to understand, and, where applicable, verify the ownership and control structure of the customer. Institutions can adjust their approach in line with the perceived risk associated with the business relationship.
- Ten MS have adopted a risk-based approach where institutions can themselves decide on the majority of steps to take to understand and, where applicable, verify the ownership and control structure of the customer, subject to a limited number of minimum requirements. These minimum requirements are set out in law, regulation or binding guidance and are in most cases limited to obtaining an explanation from the customer as to its ownership and control structure. In some cases, this is complemented with a specific requirement to conduct independent research.
- Seven MS prescribe the steps institutions have to take to understand and, where applicable, verify the ownership and control structure of the customer, but allow institutions flexibility in determining the extent of these measures on a risk-sensitive basis. Requirements are set out in legislation and regulation and, in some cases, binding guidance.
- One MS prescribes the steps institutions have to take to understand and, where applicable, verify the ownership and control structure of the customer. Institutions are not allowed to apply a risk-based approach to determine the extent of these measures.

3.3 Verification of identity

41. Art 8, 3rd MLD requires institutions to verify the identity of their customers' beneficial owners.

- Twenty three MS have adopted a flexible risk-based approach and allow their institutions to adjust the extent of their verification measures on a risk-sensitive basis.
- Three MS have adopted a risk-based approach and allow their institutions to adjust the extent of their verification measures on a risk-sensitive basis within certain parameters set by law or regulation.
- Two MS do not allow institutions to adjust the extent of their verification measures on a risk-sensitive basis.

42. MS also differ in their transposition of the 3rd MLD's requirement to verify the beneficial owners' identity "so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is".

43. Nine MS expect institutions to verify the beneficial owner's identity and, where applicable, the customer's ownership and control structure on the basis of reliable and independent sources. Twenty three MS expect institutions to verify the beneficial owner's identity and the customer's ownership and control structure so that the

institution is satisfied that it knows who the beneficial owner is, rather than exclusively on the basis of reliable and independent sources. Some MS define reliability by reference to certain criteria (normally a reference to the issuing authority of identification documents – e.g. national government agencies or international organisations); other MS do not define this term at all. A third group of MS incorporates a list of documents deemed acceptable for verification purposes in their national legislation, regulation or guidance. Six MS consider verbal information from the customer sufficient to meet the national verification requirement in at least some cases.

3.4 High risk indicators and enhanced due diligence

44. Art. 13 (1) of the 3rd MLD requires institutions to apply enhanced customer due diligence (EDD) measures in situations where the ML/TF risk is increased.

3.4.1 General examples of high risk situations

45. The 3rd MLD also sets out, in Article 13, three specific cases where EDD must always apply:
- where the customer has not been physically present for identification purposes, Art. 13 (2);
 - in respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Art. 13 (3); and
 - in respect of transactions or business relationships with politically exposed persons residing in another MS or in a third country, Art. 13 (4).
46. However other indicators pointing to a high risk scenario should also be considered in conjunction with the directive's requirements.
47. Member States broadly fall into one of the following categories:
- Some MS have adopted a flexible, risk-based approach, expecting their institutions to identify higher risk situations in addition to those set out in the 3rd MLD and to determine the extent of customer due diligence measures on a risk-sensitive basis.
 - Four MS have adopted a risk-based approach, expecting their institutions to identify higher risk situations in addition to those set out in the 3rd MLD but have supplemented this with guidance to suggest ways to mitigate higher risk situations.
 - Some MS have adopted a risk-based approach, expecting their institutions to identify higher risk situations in addition to those set out in the 3rd MLD but have supplemented in law, regulation or guidance the 3rd MLD's high risk categories with additional cases of specific EDD measures.

- Two MS set out in law or regulation exactly what constitutes high risk and prescribe the measures institutions have to apply in those circumstances.

3.4.2 Examples of high risk situations regarding beneficial owners

48. Some MS have incorporated in their legislation or regulation specific high risk scenarios other than those described in the 3rd MLD that have a particular regard to beneficial owners. These include private banking relationships, links to non-compliant jurisdictions, offshore business relations, complex or unusual transactions and cases where the UBO is a politically exposed person (PEP).

3.4.2.1 UBO of a private banking relationship

49. Fifteen MS consider private banking high risk, and require institutions to apply EDD measures to customers and their beneficial owners, dependent on other risk factors present, and specify this in guidance, regulation or legally binding documents. One MS considers private banking relationships high risk, and requires institutions to apply EDD measures to all private banking clients and their beneficial owners, irrespective of other risks present.
50. Seven MS do not identify private banking as always presenting a high ML/TF risk.

3.4.2.2 Links to FATF non-compliant jurisdictions

51. Twenty four MS consider links to a third country without FATF-compliant measures high risk and specify this in guidance, regulation or legally binding documents. Sixteen MS expect the application of EDD measures to the customer and their beneficial owners in this case, with the remainder requiring the application of EDD measures to customers and their beneficial owners where other risk factors are also present.
52. Four MS do not explicitly qualify links to FATF non-compliant jurisdictions as high risk.

3.4.2.3 Offshore business relations

53. Sixteen MS consider links to offshore jurisdictions high risk and specify this in guidance, regulation or legally binding documents. Of these, eight MS prescribe the measures financial institutions have to take in these situations to mitigate the increased risk, including in relation to the treatment of beneficial owners. Seven MS expect the application of EDD measures to customers and their beneficial owners only where other risk factors are also present.
54. Six MS do not single out connections to offshore jurisdictions as a high risk indicator.

3.4.2.4 Complex or unusual transactions/ transactions without apparent purpose

55. Twenty-two MS consider complex or unusual contract terms or unusual large transactions high risk and specify this in guidance, regulation or legally binding documents.
56. Thirteen MS oblige institutions to apply EDD to beneficial owners on a risk sensitive basis, whereas nine MS do not have specific provisions in that respect.
57. Nineteen MS stated that institutions must consider transactions that have no apparent economic or visible lawful purpose as high risk, such that EDD measures have to be applied. Out of these, twelve MS prescribe in legally binding documents how firms have to mitigate the increased risk in these situations; for example three jurisdictions expect institutions to perform enhanced written analyses of any transactions that may have no apparent economic or visible lawful purpose and collect additional data.
58. The remaining eight jurisdictions do not explicitly refer to these transactions being high risk, but expect financial institutions to adjust their CDD measures on a risk-sensitive basis.

3.4.2.5 UBO is a Politically Exposed Person (PEP)

59. The majority of MS go beyond the minimum requirements of the 3rd MLD and expect institutions to establish whether the beneficial owner is a politically exposed person (PEP). Seven MS do not expect this, with four considering this to be an implicit requirement of beneficial owner identification in higher risk situations: in line with a risk-based approach, firms are expected to apply enhanced due diligence measures in higher risk situations. Depending on the situation, these will include checks to establish whether the beneficial owner or his/her associate is a PEP.

3.4.2.6 Other cases

60. In addition to the scenarios described above, laws, regulations and guidance in seven jurisdictions set out additional high risk scenarios with regard to UBOs where EDD must apply. Examples include companies with bearer shares, situations in which clients' accounts are held in the name of third persons, persons engaged in electronic gambling and situations where the source of funds is unclear.

3.5 Requirements to keep information on Ultimate Beneficial Owners up to date

61. Article 8(1) (d) of the 3rd MLD requires institutions to conduct ongoing monitoring of the business relationship. This includes a requirement to keep documents, data or information obtained for CDD purposes up to date.
62. Twenty five MS have transposed this article by requiring institutions to obtain updated CDD information on customers and on the customers' beneficial owners of legal or

corporate entities or arrangements; for example, some MS require institutions to obtain updated passport information, once a passport expires. Three MS do not extend the requirement for institutions to keep CDD documents, data or information up to date to CDD information obtained on beneficial owners.

3.5.1 Approaches to Updating beneficial ownership information

63. Of the twenty five MS that require institutions to keep beneficial ownership information up to date,
 - Twelve MS do not prescribe how this requirement should be met,
 - Six MS require institutions to update beneficial ownership information when there is a change in data, but at least once within a given period, e.g. five years.
 - Eight MS require institutions to update information on their customers' beneficial owners at regular intervals, irrespective of any changes.
64. Institutions in twenty two MS are required regularly to review identification evidence on legal entities. Seven MS do not require this.
65. Most MS do not define what "regularly" means and allow institutions to assess themselves when an update is necessary.
 - Seven MS allow institutions to decide when such reviews should be conducted, provided these reviews happen within a set timeframe. This means that institutions may define the frequency and trigger events of updates, provided an update is performed within a given period, e.g. five years; and
 - Seven MS set strict time lines to institutions to conduct their reviews.
66. In relation to the customer risk classification, twelve MS do not distinguish between the requirements to update identification evidence of beneficial owners according to the customer's risk classification (low, medium or high risk).
67. The other MS distinguish according to the customer's risk classification:
 - Six MS have introduced specific requirements for more frequent updates for higher risk customers;
 - One MS has special requirements for special groups such as PEPs, bearer share companies etc; and
 - Twelve MS require institutions to develop and adopt a risk based approach.

3.5.2 Trigger events for updating information on UBO

68. Nineteen MS expect their institutions to update customer due diligence data on Beneficial Owners (even if such updates might not necessarily be in the context of AML) if certain events occur. Ten MS do not have this requirement for their institutions, but expect institutions to update information on a risk based approach (e.g. within an adequate timeframe).
69. Examples of events that trigger obligatory updates in some MS include:
 - A change in a Director/secretary/legal representative of the entity (fourteen MS).

- A Change of shareholder(s) (seventeen MS).
- Expiry of identification data (e.g. as with passports) (eleven MS).
- Change in authorised signature(s) of the entity's account(s) with the institution (fourteen MS).
- Changes in business/economic profile of the company (eleven MS).
- Change of the trading office of the company (nine MS).
- Change of trustees/fiduciaries (eleven MS).
- Change of name/trademark of the entity (nine MS).
- Change of principal trading partners (five MS).
- Assumptions of new major business (ten MS).
- Unusual transactions going through at the entity's accounts (thirteen MS).

3.5 How institutions use the UBO information obtained for CDD purposes

70. The responses provided by the MS did not contain very specific descriptions on the use or storing of information on the UBOs. However, most MS responded that institutions collect and store information on UBOs. Although few MS set out specific requirements on how institutions must use the information collected on UBOs, institutions are generally expected to use the information to determine the level of risk associated with the customer, and they must be able to provide the FIU with that information in case of suspicious transactions reports or on request of the FIU. Some MS pointed out that the information is also necessary for screening against required financial sanctions and terrorist lists.
71. Information about the beneficial owner obtained as part of the CDD process also serves to provide institutions with a better understanding of their customer, the risk associated with the business relationship and a basis for monitoring of the business relationship. However, in most MS, it is down to each firm - within the framework of the law (which includes record-keeping obligations) - to decide how best to use the information so obtained.
72. Twenty six MS responded that institutions collect and store the information on UBOs. There were little descriptions on how the storing is arranged in practice. Some MS explained that collecting and storing of information depends on institutions' internal systems. Although beneficial ownership CDD information is not explicitly detailed in any legal text, there is an expectation that information is appropriately stored according to the provisions of Art 30(a) of the 3rd MLD for audit and supervisory purposes and to enable for example quick responses to requests by the FIU.

73. All MS responded that the information on UBOs is usually or at least in some cases fed into the customer profile in computer systems, depending on institutions' IT or internal systems. Little further information was given on specific situations.
74. Seventeen MS stated that their institutions record information in a way that enables them to see all business relations associated with a specific UBO. This information is valuable for FIU's and institutions' own risk management. Other MS did not explain whether or not their relevant practice depended on the approach taken by their regulated firms and their IT-systems.

Chapter 4: Annexes

Annex 1: Relevant Articles in 3rd MLD in relation to Beneficial Owners

Article 3:

For the purposes of this Directive the following definitions shall apply:.....

(6) 'beneficial owner' means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 8

Customer due diligence measures shall comprise:

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer;

[...]

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.

2. The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements set out in paragraph 1, but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction. The institutions and persons covered by this Directive shall be able to demonstrate to the competent authorities mentioned in Article 37, including self-

regulatory bodies, that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

Article 9

[...]

6. Member States shall require that institutions and persons covered by this Directive apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.

Article 11

1. By way of derogation from Articles 7(a), (b) and (d), 8 and 9(1), the institutions and persons covered by this Directive shall not be subject to the requirements provided for in those Articles where the customer is a credit or financial institution covered by this Directive, or a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in this Directive and supervised for compliance with those requirements.

Article 13

1. Member States shall require the institutions and persons covered by this Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), in situations which by their nature can present a higher risk of money laundering or terrorist financing, and at least in the situations set out in paragraphs 2, 3, 4 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria established in accordance with Article 40(1)(c).

2. Where the customer has not been physically present for identification purposes, Member States shall require those institutions and persons to take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures:

- (a) ensuring that the customer's identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or institution covered by this Directive;
- (c) ensuring that the first payment of the operations is carried out through an account opened in the customer's name with a credit institution.

Article 30

Member States shall require the institutions and persons covered by this Directive to keep the following documents and information for use in any investigation into, or analysis of, possible money laundering or terrorist financing by the FIU or by other competent authorities in accordance with national law:

- (a) in the case of the customer due diligence, a copy or the references of the evidence required, for a period of at least five years after the business relationship with their customer has ended;

Annex 2: Availability of ownership and control information across the European Union on ultimate beneficial owners of legal entities and legal arrangements

Requirements to identify ultimate beneficial owner also apply, when the customer is one of the undertakings referred to in Article 3 (6)(ii)(b) of the 3rd MLD ("legal entities, such as foundations", and legal arrangements, such as trusts, which administer and distribute funds").

The objective of the table below is to provide a high-level simplified overview of existing registration and publication requirements in the Member States. Such information may assist firms in identifying and verifying beneficial owners of such undertakings. It should be noted that in the Member States there appears to be a very wide range of the types of undertakings referred to in Article 3 (6)(ii)(b) of the 3rd MLD with varying definitions. For more detail reference is made to the national legal framework in the Member States.

Type/category: 1) Foundations

| | Registration required? | | Publication of control structure required? | | Publication regarding beneficiaries required? | |
|---------------------|---|--|--|---|---|---|
| | Yes | No | Yes | No | Yes | No |
| Foundations (known) | Austria Belgium Bulgaria Czech ¹² Estonia Finland France Germany ¹³ Greece Hungary Italy Latvia Lithuania Luxembourg Malta Netherlands Norway Poland Portugal Romania Slovenia Slovakia Spain | Denmark ¹⁴ Ireland Liechtenstein * Sweden UK | Austria Belgium Bulgaria Czech Estonia Finland France Greece Italy Malta Netherlands Norway Poland Portugal Romania Slovenia Spain | Denmark Germany Ireland Latvia Liechtenstein Lithuania Luxembourg Slovakia Sweden UK | Belgium Czech Norway Poland Spain | Austria Bulgaria Denmark Estonia Finland France Germany Greece Ireland Italy Latvia Liechtenstein Lithuania Luxembourg Malta Netherlands Portugal Slovenia Slovakia Sweden UK |
| N/A (unknown) | Cyprus | | | | | |

¹² Includes foundations and foundation funds (CZ: "nadace a nadační fondy").

¹³ Some basic information is available from regional directories.

¹⁴ For DK and LI - In case of commercial foundations and associations the registration is required, while neither the publication of control structure nor publication regarding beneficiaries is required.

Type/category: 3) Legal arrangements (trusts), which administer and distribute funds

| | Registration required? | | Publication of control structure required? | | Publication regarding beneficiaries required? | |
|--|--|--|--|--|---|---|
| | Yes | No | Yes | No | Yes | No |
| Legal arrangements (trusts), which administer and distribute funds (known) | Czech ¹⁹ France Ireland Italy Liechtenstein ²⁰ | Cyprus Lithuania Malta UK | Czech France | Cyprus Ireland Italy Liechtenstein Malta UK | | Czech Cyprus France Ireland Italy Liechtenstein Malta UK |
| N/A (unknown) | Austria Belgium Bulgaria Denmark Estonia Finland Germany Greece Hungary Latvia Luxembourg Netherlands Norway Poland Portugal Romania Slovenia Slovakia Spain Sweden | | | | | |

¹⁹ Includes public beneficial associations (CZ: "obecně prospěšné společnosti")

²⁰ Alternatively a certified copy of the formation deed can be deposited with the Public Register

Type/category: 4) Other legal arrangements than trusts

| | Registration required? | | Publication of control structure required? | | Publication regarding beneficiaries required? | |
|--|--|---|--|---|---|--|
| | Yes | No | Yes | No | Yes | No |
| Other legal arrangements than trusts (known) | Czech ²¹ Estonia Finland ²² Ireland Latvia Luxembourg Romania Slovenia Slovakia | Lithuania UK | Czech Estonia Finland Romania Slovenia | Ireland Latvia Luxembourg Slovakia UK | Slovenia | Czech Estonia Finland Ireland Latvia Luxembourg Slovakia UK |
| N/A (unknown) | Austria Belgium Bulgaria Cyprus Denmark France Germany Greece Hungary Italy Liechtenstein Malta Netherlands Norway Poland Portugal Spain Sweden | | | | | |

²¹ Includes churches and religious associations (CZ: "církve a náboženské společnosti")

²² Includes undistributed estate of a deceased person, records are only kept by the tax authorities

Type/category: 5) Any other type/category

| | Registration required | | Publication of control structure required? | | Publication regarding beneficiaries required? | |
|---------------------------------|---|---------------------------------|--|---------------------|---|------------------------------|
| | Yes | No | Yes | No | Yes | No |
| Any other type/category (known) | Czech ²³ Hungary Slovakia ²⁴ | Finland ²⁵ Latvia | Czech | Finland Slovakia | | Czech Finland Slovakia |
| N/A (unknown) | Austria Belgium Bulgaria Cyprus Denmark Germany Greece Italy Liechtenstein Lithuania Luxembourg Malta Netherlands Norway Poland Portugal Romania Slovenia Spain Sweden UK | | | | | |

²³ Includes citizen associations (CZ "občanská sdružení")

²⁴ Non-profit organisations, non-investment funds.

²⁵ includes non-registered citizen associations, sport or pupils clubs - these are not legal persons.

Annex 3: Requirements from third Parties to report changes in Beneficial Owners

| | | |
|----|--|---|
| | Require from third Parties (such as intermediaries e.g. trusts and company service providers, notaries/lawyers, or public accountants etc) to report changes in Beneficial Owners to the relying party (i.e. institutions) | |
| | Yes | No |
| MS | CY Cyprus, FR France, IT Italy, LI Liechtenstein, LT Lithuania, MT Malta, PT Portugal, RO Romania, ES Spain | AT Austria, BE Belgium, BG Bulgaria, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, DE Germany, EL Greece, HU Hungary, IE Ireland, LV Latvia, LU Luxembourg, NL Netherlands, NO Norway, PL Poland, SK Slovakia, SI Slovenia, SE Sweden, UK United Kingdom |

Possibilities to share information on UBO

| | Share information on beneficial owners (for AML/CFT purposes) among EU regulators | | Share information on beneficial owners (for AML/CFT purposes) with 3 rd countries regulators | | Share information with "other parties" (e.g. other authorities, institutions, group of institutions). | |
|----|---|---|---|---|---|---|
| | Yes | No | Yes ²⁶ | No | Yes ²⁷ | No |
| MS | BE Belgium, BG Bulgaria, CY Cyprus, CZ Czech Republic, DK Denmark, EE Estonia, ES Spain, FI Finland, FR France, DE Germany, EL Greece, IE Ireland, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia | AT Austria, HU Hungary, NL Netherlands, PL Poland, SI Slovenia, UK United Kingdom | BE Belgium, BG Bulgaria, CY Cyprus, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, FR France, DE Germany, EL Greece, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia | AT Austria, ES Spain, HU Hungary, IE Ireland, NL Netherlands, PL Poland, SI Slovenia, UK United Kingdom | BG Bulgaria, CZ Czech Republic, DK Denmark, EE Estonia, FI Finland, FR France, DE Germany, EL Greece, IE Ireland, IT Italy, LV Latvia, LI Liechtenstein, LT Lithuania, LU Luxembourg, MT Malta, NL Netherlands, NO Norway, PT Portugal, RO Romania, SE Sweden, SK Slovakia, SI Slovenia, ES Spain | AT Austria, BE Belgium, CY Cyprus, HU Hungary, PL Poland, UK United Kingdom |

²⁶ From the countries that can share information, twelve (BE, BG, CZ, DK, EE, EL, FR, IT, LT, MT, SI and SK) share information under a reciprocal agreement, a treaty, or based on a memorandum of understanding with the other party. Nine (CY, DE, FI, LI, LU, LV, PT, RO and SE) parties share only supervisory information that should be treated as confidential by other regulators and one (NO) country did not specify any restrictions

²⁷ Six (BG, CZ, DE, FR, RO, SE) institutions share information under certain provisions of their national legal framework, six (EL, IT, LI, LV, PT, SK) share information with certain parties only, four (MT, NL, NO, SI) share information through their Financial Intelligence Units (FIUs), one (ES) if a reciprocal agreement, a treaty or a memorandum of understanding exists, one (ES) as specified under the law and in case a memorandum of understanding exists, three (DK, LT, LU) countries do not specify any limitations and one country (FI) is allowed to exchange information under the law but is not obliged to do so.