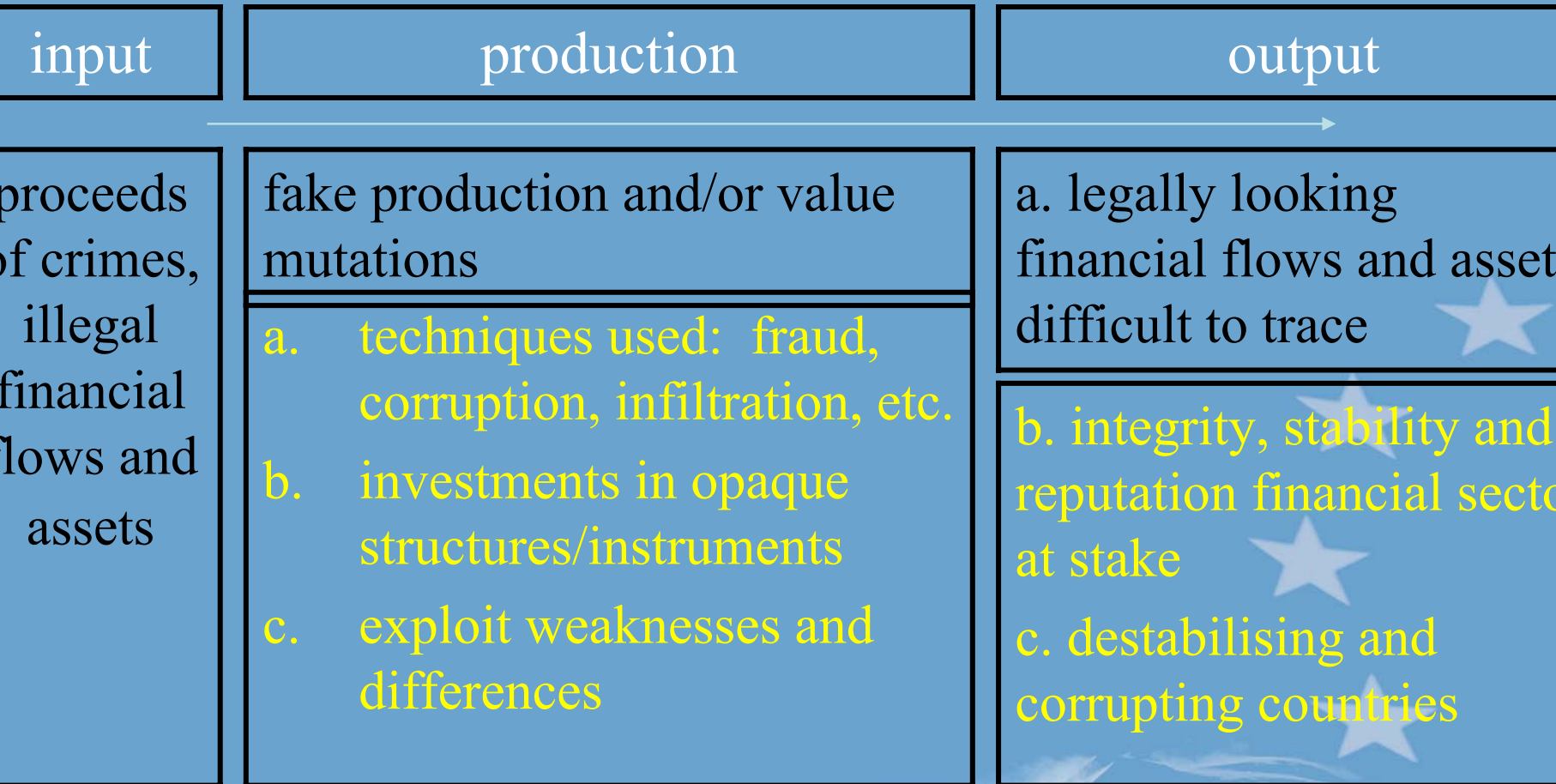


The 3rd EU anti-money laundering Directive

2005/60/EC of 26.10.2005 (OJ L 309, 25.11.2005, p.15)

- 15.12.2005: entry into force
- Ultimately 15.6.2006, after public consultation: adoption implementing measures
- Ultimately 15.12.2007: implementation of the 3rd Directive by the Member States required
- Repeals 1st and 2nd Directive

Money laundering process



FATF Standard

-) A global Standard, comprising of the revised 40 general and 9 specific recommendations
-) An internationally accepted Methodology on the basis of which compliance with the FATF standard is assessed
-) Global application of the Methodology via regular assessments by IMF, World bank, FATF and FATF styled regional bodies like Moneyval (Council of Europe) of their members
-) Publication of assessment reports

Preventive EU action

1) Financial sector and businesses facilitating financial transactions/activities

2) Customs

3) Underground

Elements of preventive EU action:

- 1) Prohibit ML and TF
- 2) Identify/ verify/monitor customers/beneficial owners
- 3) Report suspicions to national FIU's
- 4) Take supporting measures in relation to 2) and 3): record keeping, training, risk management
- 5) Supervise nationally compliance with 2) to 4)
- 6) Comply with the Directive

Scope

Prohibits money laundering and terrorist financing

Predicate offences to ML need to include all “serious offences” as defined by CFD 2001/500/JHA

Serious offences:

offences punishable by deprivation of liberty or a
prohibition order for:

Member States having a maximum threshold: a maximum
term of imprisonment of more than one year; and

Member States having a minimum threshold: a minimum
term of imprisonment of more than six months

CDD: general principles

- Identify and verify the identity of the customer and its beneficial owner
- Identification and verification needs in principle to happen before establishment

Possible derogations in timing of CDD ·

1
2
3
the entities covered by the Directive shall be able to demonstrate to their supervisors that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing

not be performed through that account

Simplified/Enhanced Due Diligence

In **specific** situations, simplified CDD possible:

a) well supervised financial institutions

b) life insurance policies with low premium amounts

correspondent banking:

....a credit institution needs to take appropriate measures to ensure that they do not engage in or

the way, the collection of situations of low risk is not defined by situations of simplified CDD: there are many more situations of low risk than there are situations of simplified due diligence

Reporting

Report (on reasonable grounds) suspicions promptly (and unfiltered) to FIU

Report not narrower than predicate (serious) offences

Legal privilege in the context of legal proceedings

Disclosure of information reported to the FIU is prohibited; exceptions:

- supervisors/ law enforcement entities
- within a group
- beyond a group (within the same professional category provided it is related to same transaction and same customer)

Reporting in good faith does not incur any liability

.when committed by any person, who has a leading position within the legal person, based on:

- a) a power of representation of the legal person,
- b) an authority to take decisions on behalf of the legal person,
- c) an authority to exercise control within the legal person.

Legal persons are held liable when not fulfilling their obligations

Maintain and publish statistics to measure effectiveness of the anti-money laundering and anti-terrorist financing system and provide feedback

Supervision

National supervisors must have adequate powers and resources and at least monitor compliance and perform checks

Financial sector: core principles

Currency exchange offices, money transmitters, trust/company service providers and casinos now also need licence/registration in order to operate legally + refusal if management of the customer or its beneficial owners are not fit and proper

Other entities monitored taking into account risk

Compliance with the Directive

- Implementing measures in respect of selected issues
- selected definitions (beneficial owner, PEP's)

Politically Exposed Persons:

natural persons who are or have been entrusted with prominent functions and immediate family members or persons known to be close associates of such persons

Major elements of AML/CTF systems

5) Law enforcement and intelligence services

4) Financial intelligence Unit

3) Reporting entities

2) Supervision

1) AML+CTF legislation

Globalisation opens up markets....

....

but also possibilities for laundering money and financing terrorism...

as a consequence strengthening of effective co-operation is vital

- Combating money laundering and terrorist financing is:
 - creating smart barriers;
 - cooperating within and between countries; and
 - combating weaknesses and differences of substance.

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European Commission
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